

## **Legislative Council—No 47A**

As reported with an amendment, report adopted, Standing Orders suspended and passed remaining stages, 9 November 2010

South Australia

# **Statutes Amendment and Repeal (Australian Consumer Law) Bill 2010**

A BILL FOR

An Act to amend the *Fair Trading Act 1987* to make provision for the application of the Australian Consumer Law as a law of South Australia; to amend the *Statutes Amendment and Repeal (Fair Trading) Act 2009*; and to repeal the *Fair Trading (Telemarketing) Amendment Act 2009*, the *Manufacturers Warranties Act 1974* and the *Trade Standards Act 1979*.

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Statutes Amendment and Repeal (Australian Consumer Law) Act 2010*.

### **5 2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

### **3—Amendment provisions**

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## Part 2—Amendment of *Fair Trading Act 1987*

### 4—Amendment of long title

Long title—delete "in respect of certain unfair or undesirable trade practices," and substitute:

5                           for the application of the Australian Consumer Law as a law of South  
                              Australia;

### 5—Substitution of section 3

Section 3—delete the section and substitute:

#### 3—Interpretation

10                       (1) In this Act, unless the contrary intention appears—

*application law* means—

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

20                       *Australian Consumer Law* means (according to the context)—

- (a) the Australian Consumer Law text; or
- (b) the Australian Consumer Law text, applying as a law of a  
                              participating jurisdiction, either with or without  
                              modifications;

25                       *Australian Consumer Law (SA)*—see section 14(1)(b);

*Australian Consumer Law text* means the text described in  
section 13;

*authorised officer* means a person who is an authorised officer under  
section 7;

30                       *Commissioner* means the Commissioner for Consumer Affairs;

*Competition and Consumer Act* means the *Competition and  
Consumer Act 2010* of the Commonwealth;

*consumer affairs authority* means—

- (a) the Commissioner; or
- 35                           (b) a person or authority that has, under a law of another  
                              jurisdiction, powers and functions similar to those of the  
                              Commissioner;

***District Court*** means the Administrative and Disciplinary Division of the District Court;

***instrument*** means any document whatever, including the following:

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

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

***involved***—a person is involved, in a contravention of a provision of this Act or in conduct that constitutes such a contravention, if the person—

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

***jurisdiction*** means a State or the Commonwealth;

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

***Magistrates Court*** means the Civil (Consumer and Business) Division of the Magistrates Court;

***modifications*** includes additions, omissions and substitutions;

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

*related Act* means an Act or a provision of an Act—

- (a) of which the Commissioner is stated, in that Act, to have the administration; or
- (b) that is prescribed by the regulations to be a related Act;

*State* includes a Territory;

*Territory* means the Australian Capital Territory or the Northern Territory of Australia;

*this jurisdiction* means South Australia;

*trader* means a person who in the course of a business—

- (a) supplies, or offers to supply, goods or services; or
- (b) sells or lets, or offers to sell or let, premises;

*trading debt* means a debt owed to a trader.

- (2) A reference in this Act to the supply of goods or services extends to the supply of both goods and services.
- (3) The regulations may exclude a person, or a class of persons, from the ambit of the definition of *consumer* for the purposes of this Act (other than the Australian Consumer Law (SA)).
- (4) Terms used in this Act and also in the Australian Consumer Law (SA) have, unless the contrary intention appears, the same meanings in this Act as they have in that Law.
- (5) For the purposes of this Act—
  - (a) a jurisdiction is taken to have applied the Australian Consumer Law as a law of the jurisdiction if a law of the jurisdiction substantially corresponds to the provisions of the Australian Consumer Law text, as in force from time to time; and
  - (b) that corresponding law is taken to be the Australian Consumer Law, or the Australian Consumer Law text, applying as a law of that jurisdiction.

## 6—Insertion of section 4A

After section 4 insert:

### 4A—Extraterritorial application

- (1) This Act is intended to have extraterritorial application insofar as the legislative powers of the State permit.

- (2) Without limiting subsection (1), this Act extends to conduct either in or outside the State that—
- (a) is in connection with goods or services supplied in the State; or
  - (b) affects a person in the State; or
  - (c) results in loss or damage in the State.

## **7—Substitution of Parts 3 and 4**

Parts 3 and 4—delete the Parts and substitute:

### **Part 3—Australian Consumer Law**

#### **Division 1—Application of Australian Consumer Law**

##### **13—Australian Consumer Law text**

The Australian Consumer Law text consists of—

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

##### **14—Application of Australian Consumer Law**

- (1) The Australian Consumer Law text, as in force from time to time—
- (a) applies as a law of this jurisdiction; and
  - (b) as so applying may be referred to as the *Australian Consumer Law (SA)*; and
  - (c) as so applying is a part of this Act.
- (2) This section has effect subject to sections 15, 16 and 17.

##### **15—Future modifications of Australian Consumer Law text**

- (1) A modification made by a Commonwealth law to the Australian Consumer Law text after the commencement of this section does not apply under section 14 if the modification is declared by proclamation to be excluded from the operation of that section.
- (2) A proclamation under subsection (1) only has effect if it is made within 2 months after the date of the modification.
- (3) Subsection (1) ceases to apply to the modification if a further proclamation so provides.
- (4) For the purposes of this section, the date of the modification is the date on which the Commonwealth Act effecting the modification receives Royal Assent or the regulation effecting the modification is registered under the *Legislative Instruments Act 2003* of the Commonwealth.

## 16—Meaning of generic terms used in Australian Consumer Law

In the Australian Consumer Law (SA)—

*court*—

- 5
- (a) in respect of proceedings under section 218 of the Australian Consumer Law (SA)—means the Magistrates Court; and
  - (b) in respect of any other proceedings—means the court of this State having appropriate jurisdiction in relation to the proceedings;

10 *regulator* means the Commissioner.

## 17—Interpretation of Australian Consumer Law

- 15
- (1) The *Acts Interpretation Act 1901* of the Commonwealth applies as a law of this jurisdiction to the Australian Consumer Law (SA).
  - (2) For the purposes of subsection (1), the Commonwealth Act mentioned in that subsection applies as if—
    - (a) the statutory provisions in the Australian Consumer Law (SA) were a Commonwealth Act; and
    - (b) the regulations in the Australian Consumer Law (SA) or instruments mentioned under that Law were regulations or instruments under a Commonwealth Act.
  - (3) The *Acts Interpretation Act 1915* does not apply to—
    - (a) the Australian Consumer Law (SA); or
    - (b) any instrument under that Law.

## 18—Application of Australian Consumer Law

- 25
- (1) The Australian Consumer Law (SA) applies to and in relation to—
    - (a) persons carrying on business within this jurisdiction; or
    - (b) bodies corporate incorporated or registered under the law of this jurisdiction; or
    - (c) persons ordinarily resident in this jurisdiction; or
    - (d) persons otherwise connected with this jurisdiction.
  - (2) Subject to subsection (1), the Australian Consumer Law (SA) extends to conduct, and other acts, matters and things, occurring or existing outside or partly outside this jurisdiction (whether within or outside Australia).
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## **Division 2—References to Australian Consumer Law**

### **19—References to Australian Consumer Law**

- 5
- (1) A reference in any instrument to the Australian Consumer Law is a reference to the Australian Consumer Law of any or all of the participating jurisdictions.
  - (2) Subsection (1) has effect except so far as the contrary intention appears in the instrument or the context of the reference otherwise requires.

### **20—References to Australian Consumer Laws of other jurisdictions**

- 10
- (1) This section has effect for the purposes of an Act, a law of this jurisdiction or an instrument under an Act or such a law.
  - (2) If a law of a participating jurisdiction other than this jurisdiction provides that the Australian Consumer Law text as in force for the time being applies as a law of that jurisdiction, the Australian Consumer Law of that jurisdiction is the Australian Consumer Law text, applying as a law of that jurisdiction.
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## **Division 3—Application of Australian Consumer Law to Crown**

### **21—Division does not apply to Commonwealth**

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In this Division, *participating jurisdiction* or *other jurisdiction* does not include the Commonwealth.

### **22—Application law of this jurisdiction**

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The application law of this jurisdiction binds (so far as the legislative power of Parliament permits) the Crown in right of this jurisdiction and of each other jurisdiction, so far as the Crown carries on a business, either directly or by an authority of the jurisdiction concerned.

### **23—Application law of other jurisdictions**

- 30
- (1) The application law of each participating jurisdiction other than this jurisdiction binds the Crown in right of this jurisdiction, so far as the Crown carries on a business, either directly or by an authority of this jurisdiction.
  - (2) If, because of this Part, a provision of the law of another participating jurisdiction binds the Crown in right of this jurisdiction, the Crown in that right is subject to that provision despite any prerogative right or privilege.
- 35

## 24—Activities that are not business

- (1) For the purposes of sections 22 and 23, the following activities do not amount to carrying on a business:
- (a) imposing or collecting—
    - (i) taxes; or
    - (ii) levies; or
    - (iii) fees for authorisations;
  - (b) granting, refusing to grant, revoking, suspending or varying authorisations (whether or not they are subject to conditions);
  - (c) a transaction involving—
    - (i) only persons who are all acting for the Crown in the same right (and none of whom is an authority of a State); or
    - (ii) only persons who are all acting for the same authority of a State; or
    - (iii) only the Crown in right of a State and 1 or more non-commercial authorities of that State; or
    - (iv) only non-commercial authorities of the same State;
  - (d) the acquisition of primary products by a government body under legislation, unless the acquisition occurs because—
    - (i) the body chooses to acquire the products; or
    - (ii) the body has not exercised a discretion that it has under the legislation that would allow it not to acquire the products.
- (2) Subsection (1) does not limit the things that do not amount to carrying on a business for the purposes of sections 22 and 23.
- (3) In this section—
- acquisition of primary products by a government body under legislation*** includes vesting of ownership of primary products in a government body by legislation;
- authorisation*** includes a licence, permit or certificate that allows the holder of the authorisation to supply goods or services;
- government body*** means a State or an authority of a State;
- primary products*** means—
- (a) agricultural or horticultural produce; or
  - (b) crops, whether on or attached to the land or not; or
  - (c) animals (whether dead or alive); or
  - (d) the bodily produce (including natural increase) of animals.

- (4) For the purposes of this section, an authority of a State is *non-commercial* if—
- (a) it is constituted by only 1 person; and
  - (b) it is neither a trading corporation nor a financial corporation.

5                   **25—Crown not liable to pecuniary penalty or prosecution**

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

15                   **Division 4—Miscellaneous**

**26—Conferral of functions and powers on certain bodies**

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

**27—No doubling-up of liabilities**

- (1) If—
- (a) an act or omission is an offence against the Australian Consumer Law (SA) and is also an offence against an application law of another participating jurisdiction; and
  - (b) the offender has been punished for the offence under the application law of the other jurisdiction,
- the offender is not liable to be punished for the offence against the Australian Consumer Law (SA).
- 35                   (2) If a person has been ordered to pay a pecuniary penalty under the application law of another participating jurisdiction, the person is not liable to a pecuniary penalty under the Australian Consumer Law (SA) in respect of the same conduct.

## 28—Certain proceedings prevented in certain circumstances

If a person expiates an alleged offence against the Australian Consumer Law (SA), proceedings cannot be started or continued against the person under section 224 of the Australian Consumer Law (SA) in relation to an alleged contravention of a provision of the Australian Consumer Law (SA) in respect of the same conduct.

## 28A—Minister may require information

- (1) The Minister may, by notice in writing given to a person, require the person to provide (within the period specified in the notice) any information that is reasonably necessary for the purpose of determining whether—
- (a) a provision of Part 3-3 of the Australian Consumer Law (SA) is being or has been complied with; or
  - (b) the Minister should impose or revoke an interim ban on consumer goods, or product related services, of a particular kind; or
  - (c) the Minister should issue a recall notice for consumer goods of a particular kind; or
  - (d) the Minister should publish a safety warning notice about consumer goods and product related services under section 129 of the Australian Consumer Law (SA).
- (2) Subject to subsection (3), a person given a notice under this section—
- (a) must not refuse or fail to comply with a reasonable requirement under this section; and
  - (b) must not knowingly make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in an answer given or information provided under this section.

Maximum penalty: \$20 000.

- (3) A person is not required to provide information under this section if the provision of the information would result in or tend towards self-incrimination.

## 28B—Minister to publish certain notices in Gazette

- (1) If, under the Australian Consumer Law (SA), the Minister publishes a written notice on the Internet, the Minister must, as soon as reasonably practicable after the publication, publish the notice in the Gazette.
- (2) A failure of the Minister to publish a notice in the Gazette as required under subsection (1) does not affect the validity of a notice published on the Internet.

## 28C—Cost of testing

(1) If, as the result of an examination, analysis or test of consumer goods, or product related services, conducted under this Act, the Minister—

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- (a) imposes an interim ban on the goods or services; or
- (b) issues a recall notice for the goods,

the Minister may recover as a debt from a manufacturer or supplier of the goods or from a supplier of the services the reasonable cost of any such examination, analysis or test.

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(2) If, as the result of an examination, analysis or test of consumer goods, or product related services, conducted under this Act—

- (a) the goods are found not to comply with an applicable safety standard; or
- (b) the services are found not to comply with an applicable safety standard,

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the Minister may recover as a debt from a manufacturer or supplier of the goods or from a supplier of the services the reasonable cost of any such examination, analysis or test.

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(3) If a person provides (in contravention of this Act) materially inaccurate information in relation to consumer goods or product related services, the Minister may recover as a debt from that person the reasonable cost of any examination, analysis or test carried out for the purpose of testing the accuracy of the information.

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(4) The court by which a person is convicted of an offence against this Act may, on the application of the Minister, order payment of any amount that the Minister is entitled to recover from the convicted person under this section.

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(5) The Minister must, before proceeding to recover costs from a person under this section, supply to the person a statement setting out details of the examination, analysis or test that was carried out and the costs that were incurred.

35

(6) In proceedings for the recovery of the cost of carrying out an examination, analysis or test to which this section applies, a certificate apparently signed by the Minister—

- (a) certifying that the Minister supplied a statement in accordance with subsection (5) on a date specified in the certificate; or
- (b) certifying the amount of the costs,

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will be accepted, in the absence of proof to the contrary, as proof of the matter so certified.

## 8—Amendment of heading to Part 5

Heading to Part 5—delete "Part 5" and substitute:

### Part 4

## 9—Amendment of section 34—Correction of errors

5 Section 34(8)—delete subsection (8)

## 10—Repeal of Part 6

Part 6—delete the Part

## 11—Substitution of heading to Part 7

Heading to Part 7—delete the heading and substitute:

## 10 **Part 5—Additional consumer protection provisions**

## 12—Substitution of section 42

Section 42—delete the section and substitute:

### 42—Recreational services

- 15 (1) Subject to this section, a term of a contract for the supply of recreational services by a person (the *supplier*) to a consumer may exclude, restrict or modify a guarantee that would otherwise have been implied in the contract under section 60 or 61 of the Australian Consumer Law.
- 20 (2) Subsection (1) applies only if—
- 25 (a) the exclusion, restriction or modification contained in the term is limited to excluding, restricting or modifying the liability of the supplier for any personal injury suffered by the consumer or another person for whom or on whose behalf the consumer is acquiring the services (a *third party consumer*); and
  - (b) the term contains the prescribed particulars and is in the prescribed form; and
  - (c) the term is brought to the attention of the consumer and any third party consumer prior to the supply of the services; and
  - 30 (d) the consumer agrees to the term in the prescribed manner; and
  - 35 (e) a statement containing any other information prescribed by regulation is made available to the consumer and any third party consumer in accordance with the requirements prescribed by regulation.

- 5 (3) Subsection (1) does not operate to exclude, restrict or modify the liability of the supplier for damages for any significant personal injury suffered by the consumer or any third party consumer if it is established (by applying the general principles set out in section 34 of the *Civil Liability Act 1936*) that the reckless conduct of the supplier caused the injury.
- 10 (4) A term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term of the contract) is void if it purports to indemnify, or has the effect of indemnifying, a person who supplies recreational services in relation to any liability that may not be excluded, restricted or modified under this Act or any other Act or law.
- 15 (5) Subsection (4) does not apply in respect of a contract of insurance.
- (6) The Commissioner must publish information setting out the rights of consumers in relation to contracts for the supply of recreational services on a website determined by the Commissioner.
- (7) In this section—

*conduct* includes any act or omission;

*personal injury* means bodily injury and includes—

- 20 (a) mental and nervous shock; and  
(b) death;

*reckless*—a person's conduct is reckless if the person—

- 25 (a) is aware, or should reasonably have been aware, of a significant risk that his or her conduct could result in personal injury to another; and  
(b) engages in the conduct despite the risk and without adequate justification;

*recreational services* means services that consist of participation in—

- 30 (a) a sporting activity or a similar leisure-time pursuit; or  
(b) any other activity that—  
(i) involves a significant degree of physical exertion or physical risk; and  
(ii) is undertaken for the purposes of recreation, enjoyment or leisure;
- 35

*significant* means not nominal, trivial or minor.

### 13—Repeal of heading to Part 8

Heading to Part 8—delete the heading

### 14—Repeal of heading to Part 8A

40 Heading to Part 8A—delete the heading

**15—Amendment of heading to Part 9**

Heading to Part 9—delete "Part 9" and substitute:

**Part 6**

**16—Repeal of Part 10**

5 Part 10—delete the Part

**17—Amendment of heading to Part 11**

Heading to Part 11—delete "Part 11" and substitute:

**Part 7**

**18—Amendment of section 76—Conduct of legal proceedings on behalf of consumers**

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Section 76(1)—after "this Act" insert:

(other than the Australian Consumer Law (SA))

**19—Amendment of section 78—Entry and inspection**

Section 78(1)—delete subsection (1) and substitute:

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(1) For the purposes of this Act or any related Act, an authorised officer may at any reasonable time—

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- (a) enter and search any premises; and
- (b) stop, enter and search any vessel or vehicle; and
- (c) open any container, package or other item found in the premises, vessel or vehicle; and
- (d) make any inspection; and
- (e) conduct any analysis or test; and
- (f) take any samples; and
- (g) examine, copy and take extracts from any books or documents; and
- (h) take any books or documents; and
- (i) seize and remove anything that constitutes evidence of an offence against this Act or a related Act; and
- (j) on payment or tender of a reasonable price for any goods found in any premises, vessel or vehicle—remove the goods from the premises, vessel or vehicle; and
- (k) take photographs, films or video recordings; and
- (l) take measurements and make notes; and

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30



- (m) give directions reasonably required in connection with the exercise of a power conferred by any of the above paragraphs or otherwise in connection with the administration, operation or enforcement of this Act or a related Act.

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## 20—Insertion of sections 78B and 78C

After section 78A insert:

### 78B—Dealing with goods bought or seized

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- (1) If goods are examined, analysed or tested under this Division, the Minister must—

- (a) if the goods were seized and removed under this Division; or  
(b) if the goods were purchased and removed under this Division and the examination, analysis or test leads to the institution of proceedings for an offence against this Act,

15

by notice in writing served on the person who is the owner (or apparent owner) of the goods at the person's address last known to the Minister, inform the person of the results of the examination, analysis or test.

20

- (2) If proceedings for an offence against this Act are instituted against a person as a result of the examination, analysis or test, the Minister must, if it is reasonably practicable in the circumstances, allow the person to have the goods examined, analysed or tested on the person's own behalf.

25

- (3) The Minister must inform a person from whom goods were seized under this Division, by notice in writing served on the person at the person's address last known to the Minister, if—

- (a) proceedings are not instituted for an offence against this Act in relation to the goods within 3 months of their seizure; or  
(b) proceedings are instituted within that period but the defendant is not subsequently convicted,

30

and, on receiving such notice, the person is entitled—

- (c) to recover the goods; or  
(d) if the goods have been destroyed or damaged, or have deteriorated—to recover from the Minister as a debt the market value of the goods at the time of their seizure.

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- (4) If the goods have not been recovered by the person within 12 months after service of the notice under subsection (3), the Minister may dispose of the goods as the Minister thinks fit.

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- (5) If goods are seized and removed and the person from whom the goods were seized is convicted of an offence against this Act in relation to the goods, the court convicting the person may, in addition, order that the goods be forfeited to the Crown.

### 78C—Embargo notices

- (1) This section applies if—
- (a) an authorised officer is authorised to seize any record, device or other thing under this Division; and
  - (b) the record, device or other thing cannot, or cannot readily, be physically seized and removed or stored.
- (2) An authorised officer may issue an embargo notice under this section.
- (3) An embargo notice is a notice forbidding the use, movement, sale, leasing, transfer, deletion of information from or other dealing with the record, device or other thing, or any part of it, without the written consent of an authorised officer.
- (4) The embargo notice must—
- (a) contain the particulars required by the regulations; and
  - (b) list the activities that it forbids; and
  - (c) set out a copy of subsection (9).
- (5) On issuing an embargo notice, an authorised officer must—
- (a) cause a copy of the notice to be served on the owner of the record, device or other thing; or
  - (b) if that person cannot be located after all reasonable steps have been taken to do so, affix a copy of the notice to the record, device or other thing in a prominent position.
- (6) A person must not knowingly do anything that is forbidden by an embargo notice.  
Maximum penalty: \$10 000.
- (7) A person must not instruct or request another person to do anything that the first mentioned person knows is forbidden by an embargo notice.  
Maximum penalty: \$10 000.
- (8) It is a defence to a prosecution for an offence against subsection (6) to establish that the person charged—
- (a) moved the record, device or other thing, or part of it, for the purpose of protecting or preserving it; and
  - (b) notified the authorised officer who issued the embargo notice of the move, and of the new location of the record, device or other thing or part of it, within 48 hours after the move.
- (9) A person on whom an embargo notice has been served must take reasonable steps to prevent another person from doing anything forbidden by the embargo notice.  
Maximum penalty: \$10 000.

- (10) Despite anything to the contrary in any other Act or at law, a sale, lease, transfer or other dealing with a record, device or other thing, or part of it, in contravention of this section is void.

**21—Amendment of section 79—Assurances**

5 Section 79(1)—after "this Act" insert:

(other than the Australian Consumer Law (SA))

**22—Insertion of section 82A**

Before section 83 insert:

**82A—Application of Division**

10 This Division does not apply in relation to conduct that constitutes or would constitute a contravention of a provision of the Australian Consumer Law (SA).

**23—Amendment of section 83—Injunctions**

Section 83(2)—delete "(other than section 57)"

15 **24—Repeal of section 84**

Section 84—delete the section

**25—Amendment of section 85—Orders for compensation**

Section 85(3) and (4)—delete subsections (3) and (4) and substitute:

- 20 (3) An application under subsection (2) may be commenced at any time within 3 years after the day on which the cause of action arose.

**26—Insertion of section 86A**

Before section 87 insert:

**86A—Application of Division**

25 This Division (other than section 91) does not apply in relation to conduct that constitutes or would constitute a contravention of a provision of the Australian Consumer Law (SA) or proceedings relating to such conduct.

**27—Amendment of section 91—Evidentiary provisions**

Section 91(3) and (4)—delete subsections (3) and (4)

30 **28—Amendment of section 91A—Public warning statements**

Section 91A—after subsection (2) insert:

- 35 (3) A public statement may not be made under subsection (1) about the conduct of a person if a public warning notice could be issued under section 223 of the Australian Consumer Law (SA) relating to the same conduct.

## 29—Amendment of section 97—Regulations

Section 97(2) and (3)—delete subsections (2) and (3) and substitute:

- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) be of general or limited application; and
  - (b) confer powers or impose duties in connection with the regulations on the Minister, the Commissioner or an authorised officer; and
  - (c) exempt a specified person or class of persons, or a specified transaction or class of transactions, from compliance with this Act or a specified provision of this Act, either absolutely or on conditions or subject to limitations; and
  - (d) make different provision according to the classes of persons, or the matters or circumstances, to which they are expressed to apply; and
  - (e) prescribe codes of practice to be complied with by traders; and
  - (f) incorporate, adopt, apply or make prescriptions by reference to, with or without modifications, any document formulated or published by any body or authority as in force at a particular time or from time to time; and
  - (g) make provisions of a saving or transitional nature—
    - (i) consequent on the amendment of this Act by a relevant Act; or
    - (ii) relevant to the interaction between this Act and a relevant Commonwealth Act; and
  - (h) fix expiation fees, not exceeding \$1 200, for alleged offences against this Act or the regulations; and
  - (i) impose penalties not exceeding \$2 500 for contravention of, or failure to comply with, a regulation.
- (3) A provision of a regulation made under subsection (2)(g) may, if the regulation so provides, take effect from the commencement of a relevant Act or relevant Commonwealth Act or from a later day.
- (4) In this section—
- relevant Act** means the *Statutes Amendment and Repeal (Australian Consumer Law) Act 2010*;
- relevant Commonwealth Act** means—
- (a) the *Trade Practices Amendment (Australian Consumer Law) Act (No 2) 2010* of the Commonwealth; or
  - (b) any other Act of the Commonwealth relevant to the interaction between this Act and the Competition and Consumer Act.

### **30—Transitional provision**

5 An assurance in connection with a matter in relation to which the Commissioner has a power or function under Part 10 of the *Fair Trading Act 1987* included in the register of assurances maintained under section 80 of that Act immediately before the commencement of section 16 of this Act will be taken to be an undertaking for the purposes of section 218 of the Australian Consumer Law (SA) accepted by the Commissioner in connection with the relevant matter.

## **Part 3—Amendment of *Statutes Amendment and Repeal (Fair Trading) Act 2009***

### **31—Variation of section 11—Amendment of section 3—Interpretation**

Section 11(1)—delete subsection (1)

### **32—Repeal of section 34**

Section 34—delete the section

### **33—Repeal of section 36**

15 Section 36—delete the section

## **Part 4—Repeal of *Fair Trading (Telemarketing) Amendment Act 2009***

### **34—Repeal of *Fair Trading (Telemarketing) Amendment Act 2009***

The *Fair Trading (Telemarketing) Amendment Act 2009* is repealed.

## **Part 5—Repeal of *Manufacturers Warranties Act 1974***

### **35—Repeal of *Manufacturers Warranties Act 1974***

The *Manufacturers Warranties Act 1974* is repealed.

## **Part 6—Repeal of *Trade Standards Act 1979***

### **36—Repeal of *Trade Standards Act 1979***

25 The *Trade Standards Act 1979* is repealed.