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GRENADA

ACT NO. 2 OF 2018

I assent,



CÉCILE E. F. LA GRENADE

*Governor-General.**18th January, 2018.*

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

[By Order].

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives, and by the authority of the same, as follows—

PART I**PRELIMINARY**

1.—(1) This Act may be cited as the

CONSUMER PROTECTION ACT, 2018.

Short title and
commencement.

(2) This Act shall come into force on such date as may be appointed by the Minister by Order published in the *Gazette*.

Interpretation—

2.—(1) In this Act—

“acquire”, in relation to—

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

“appropriate laboratory” means a laboratory that is—

- (a) staffed with trained personnel;
- (b) accredited by an accreditation body; and
- (c) equipped to undertake 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 a good or service is supplied otherwise than free of charge;

“business day” excludes Sundays, Saturdays and bank holidays;

“business enterprise” means any person or type of organisation, other than a non-profit organisation, involved in the production or the trade in a good, or the provision of a service, except a person who works under a contract of employment, or holds office as director or secretary of a company;

“commercial purpose”, in relation to a consumer, does not include use, by the consumer, of a good bought and used or a service availed exclusively for the purposes of earning a livelihood by means of self-employment;

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

- (a) a consumer;
- (b) any voluntary consumer association registered under any law for the time being in force;
- (c) the Office;
- (d) one or more consumers, where there are numerous consumers having the same interest; or
- (e) in case of death of a consumer, his or her legal heir or representative;

“complaint” means an oral or written statement alleging one or more grounds under section 32;

“conditional sale agreement” means an agreement for the sale of a good under which—

- (a) the purchase price or part of such price is payable by instalments; and
- (b) the title to the goods is to remain with the vendor, notwithstanding that the purchaser is to be in possession of the good until the fulfilment of such conditions as to payment of instalments or otherwise as may be specified in the agreement;

“consumer” means a person—

- (a) who buys any good under an agreement or transaction and includes any other user of the good, when such use is made with the consent of the person who buys the good, but does not include a person who obtains the good for resale or for any commercial purpose;
- (b) who hires or avails of any service under a consumer agreement and includes any other beneficiary of such services, when such service is availed of with the consent of the hirer, but does not include a person who hires or avails of such a service for any commercial purposes;
- (c) to whom a good is intended to be supplied in the course of business carried on by a supplier or potential supplier; or
- (d) for whom a service is supplied in the course of a business carried on by the supplier or potential supplier;

and the person does not seek to receive the good or service for the purpose of a business carried on by him or her, except that the term consumer, in respect to unfair contract terms, shall be limited to a natural person;

“Consumer Affairs Advisory Body” and “Advisory Body” mean the Consumer Affairs Advisory Body established under section 9;

“Consumer Affairs Office” and “Office” mean the Consumer Affairs Office established under section 6;

“Consumer Affairs Tribunal” and “Tribunal” mean the Consumer Affairs Tribunal established under section 11;

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

“consumer good” means a good which is ordinarily intended for private use or consumption, not being—

- (a) an aircraft, other than hang-glider;
- (b) a controlled drug within the meaning of the Drug Abuse (Prevention and Control) Act, Chapter 84A; or
- (c) tobacco;

“Court” means a Magistrate Court or the High Court;

“defect” means any fault, imperfection or short-coming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force under any contract, express or implied or as is claimed by the supplier in any manner whatsoever in relation to any good;

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

“document” includes electronic records;

“electronic signature”, in relation to a document required to be signed or initialled, means an electronic method used to identify a person and to indicate the intention of that person in respect of the information contained in the document;

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

“guarantor”, in relation to a person to or for whom a good or service is supplied, includes a person who undertakes to indemnify the supplier against any loss which the person may incur in respect of the supply of the good or provision of the service to or for that person;

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

“Ministry” means the Ministry responsible for Consumer Affairs;

“negligence” includes—

- (a) the breach of 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) the breach of any common law duty to take reasonable care;

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

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

“service” includes a service of any description which is made available to users, but excludes any service rendered free of charge or under a contract of personal service or employment services;

“supplier” means—

- (a) a seller of a good or service;
- (b) a person providing a service; or
- (c) any person responsible for the provision of a good or service including a manufacturer, producer or distributor or an agent, in the course of trade and commerce;

(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;
- (c) “supply of services” includes—
 - (i) the undertaking and performance for gain or reward of engagements for any matter other than the supply of goods; and
 - (ii) both the rendering of services to order and the provision of services by making them available to potential users,

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

(3) If a provision of this Act requires a document to be signed or initialled by a party to a transaction, that signing or initialling may be effected in any manner recognised by law, including by use of an electronic signature.

Purposes of the Act.

3.—(1) The purposes of this Act are to promote and advance the social and economic welfare of consumers in Grenada by—

- (a) establishing a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible for the benefit of consumers generally;
- (b) reducing and ameliorating any disadvantages experienced in accessing any supply of goods or services by consumers;
- (c) promoting fair and ethical business practices and social, economic and environmental responsibility in consumer markets;
- (d) protecting consumers from all forms and means of unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices including deceptive, misleading, unfair or fraudulent conduct;
- (e) improving consumer awareness and information;
- (f) encouraging responsible and informed consumer choice and behaviour;
- (g) promoting consumer confidence, empowerment and the development of a culture of consumer responsibility, through individual and group education, vigilance, advocacy and activism;
- (h) providing a consistent, accessible and efficient system of consensual resolution of disputes arising from consumer transactions; and

- (i) providing for an accessible, consistent, harmonised, effective and efficient system of redress for consumers.

(2) To better ensure the realisation of the purposes of this Act and the enjoyment of the consumer rights recognised or conferred by this Act, the Office, in addition to its responsibilities set out in this Act, is responsible for—

- (a) taking reasonable and practical measures to—
 - (i) promote the purposes of this Act; and
 - (ii) protect and advance the interests of all consumers across all sectors of the economy, whether of a private or public nature;
- (b) monitoring and reporting each year to the Minister on the availability of goods and services including—
 - (i) price and market conditions;
 - (ii) annual state of consumer protection report;
 - (iii) conduct and trends affecting consumer rights; and
 - (iv) any other matter relating to the supply of goods and services.

Application of the Act.

4.—(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 an entity or transaction, the Office or a Court shall consider the real substance of the entity or transaction and in so doing may disregard the outward form.

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

(4) Notwithstanding any other provision of this Act, consumers shall be entitled to the rights conferred by this Act, in relation to the supply of water and electricity, to both existing and future consumers.

(5) Subject to subsection (3), nothing in this Act shall apply to a contract made before the date on which this Act comes into operation.

(6) Subject to section 100, this Act binds the Crown.

5.—(1) An organisation is a consumer organisation if it purports to provide services for the protection of consumers by—

Consumer organisations.

- (a) promoting and protecting consumer rights;
- (b) representing the collective interests of consumers before judicial and administrative bodies;
- (c) promoting consumer interests to the Government and persons engaged in the business of producing, supplying or distributing a good or providing a service; or
- (d) collecting, processing and disseminating objective information for the benefit of consumers.

- (2) No consumer organisation shall purport to—
- (a) promote and protect consumer rights;
 - (b) represent the collective interests of consumers before judicial or administrative bodies;
 - (c) represent consumers' interests to the Government and persons engaged in the business of producing, supplying or distributing goods or providing services; or
 - (d) collect, process and disseminate objective information for the benefit of consumers,

unless the consumer organisation is duly registered as a non-profit organisation under the Companies Act, Chapter 58A.

PART II

CONSUMER AFFAIRS OFFICE

Establishment of
Consumer Affairs
Office.

6.—(1) There is established the Consumer Affairs Office within the Ministry responsible for consumer affairs.

(2) The Office shall be provided with such number of public officers as are required for the proper discharge of its functions.

(3) Any appointments under subsection (2) shall, if the appointment is to be an officer in the Public Service, be made pursuant to the Constitution, but otherwise shall be made by the Minister.

7.—(1) The Office shall be responsible for implementing the policy established by the Ministry.

Responsibilities, functions, duties and powers of the Office.

(2) Without prejudice to the generality of subsection (1), the responsibilities of the Office shall include—

- (a) carrying out in accordance with Part V, on its own initiative or at the request of any person, such investigations in relation to the conduct of business or any complaint by a consumer in relation to the supply of goods or services that will enable the Office to determine whether—
 - (i) any person is engaged in practices that are in contravention of this Act; or
 - (ii) goods or services are supplied in contravention of this Act;
- (b) making reports and recommendations as it thinks fit to the Minister in respect of investigations made under paragraph (a);
- (c) promoting the development of and monitoring the operations of organisations formed to provide services for the protection of consumers to ensure that they fulfil the criteria listed in section 5 and ensure that the consumer's interests receive due consideration at those forums;
- (d) collecting, compiling and analysing information in relation to any trade or business and the marketing of goods and services;

- (e) providing information to consumers respecting their rights and obligations as consumers to enable them to make informed choices about goods and services at competitive prices;
- (f) providing information and guidelines to the public on the functions of the Office and obligations of consumers and business enterprises under this Act;
- (g) receiving and evaluating complaints and taking appropriate action in relation thereto;
- (h) promoting fair and honest trade policies including promoting compliance with the provisions of this Act;
- (i) prescribing, promoting, monitoring and enforcing Codes of Practice and maintaining a register of the Codes of Practice;
- (j) conduct education programmes for the benefit of consumers and suppliers including educating and assisting consumers generally in resolving complaints;
- (k) making arrangements for the resolution of disagreements between consumers and suppliers;
- (l) carrying out such other functions as the Minister may assign to the Office from time to time;

- (m) submitting to the Minister annual reports 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 contemplated by that subsection;
- (n) conducting research, collecting, and collating information in respect of consumer affairs;
- (o) liaising with other regional and international consumer agencies to facilitate redress in cross-border dispute;
- (p) promote the development of and collaborate with consumer organisations to ensure that the consumer's interests receive due consideration;
- (q) acting as Grenada's competent authority for consumer affairs in CARICOM; and
- (r) performing any other function or duty imposed or assigned to the Office under this Act or any other enactment.

(3) The Office shall, for the purpose of carrying out the duties conferred on it by subsections (1) and (2), any other provision of this Act, and any other law have power to, among other things—

- (a) obtain information from persons under investigation;

- (b) hold public and private hearings and inquiries;
- (c) summon witnesses;
- (d) administer oaths and receive evidence;
- (e) require documents to be verified by affidavit;
- (f) enter, search and seize;
- (g) make test purchases;
- (h) inspect goods; and
- (i) recommend to the Minister of Finance that any person's licence be suspended or cancelled where such person is found to be in gross violation of any provision of this Act or any other law that relates to this Act.

(4) Without prejudice to subsections (1), (2) or (3), the Office 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.

8.—(1) The Minister shall appoint a Director of the Consumer Affairs Office from among persons with previous management experience and knowledge of the local business environment and consumer affairs and other related experience.

Director of the Consumer Affairs Office.

(2) The Director shall—

- (a) be appointed on such terms and conditions as may be specified in his or her instrument of appointment;
- (b) be the chief executive of the Office;
- (c) have full responsibility for the day-to-day management of the business of the Office;
- (d) perform such duties as are conferred or imposed on him or her by this Act and the Regulations.

PART III

CONSUMER AFFAIRS ADVISORY BODY

9.—(1) There is established a body to be called the Consumer Affairs Advisory Body which shall function as an advisory body to the Office and the Minister on matters relating to consumer affairs.

Establishment of Consumer Affairs Advisory Body.

(2) The provisions of Schedule I shall have effect as to the constitution of the Advisory Body and otherwise in relation thereto.

Functions of the Advisory Body.

10. The functions of the Advisory Body shall be to—

- (a) facilitate the development of consumer affairs policies;
- (b) facilitate the development of consumer affairs legislation;
- (c) review work-plans and programmes of the Office;
- (d) provide guidance on matters related to analysis and applicable international standards;
- (e) perform such other functions as are relevant to the effective implementation of this Act.

PART IV

CONSUMER AFFAIRS TRIBUNAL

Establishment of Consumer Affairs Tribunal.

11.—(1) There is established a tribunal to be known as the Consumer Affairs Tribunal.

(2) The provisions of Schedule II shall have effect as to the constitution of the Tribunal and otherwise in relation thereto.

Functions and powers of the Tribunal.

12.—(1) The functions of the Tribunal shall be—

- (a) subject to subsection (2), to hear and determine matters referred to it pursuant to section 13;

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

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

- (3) For the purposes of this part, the Tribunal may—
- (a) issue a summons and enforce the attendance of any party or witness and examine the party or witness on oath;
 - (b) order the discovery and production of any document or other object producible as evidence;
 - (c) call and examine witnesses;
 - (d) requisition the report of the analysis or test from the appropriate laboratory or from any other relevant source;
 - (e) require that any document or article submitted to the Office be verified by affidavit; and
 - (f) make orders pursuant to section 21.

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

Instituting proceedings before the Tribunal.

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

Request for legal representation for complainant.

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

Rights and obligations of person summoned.

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

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

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

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

(4) A person who, without sufficient cause fails or refuses to obey a summons issued by the Tribunal commits an offence and is liable, on summary conviction, to a fine not exceeding \$5,000 and in default of payment of the fine, to imprisonment for a term not exceeding two years.

Failure of complainant to attend hearing.

16.—(1) Where a complainant fails to appear before the Tribunal on the date of the hearing, the Tribunal may either

dismiss the complaint for default or decide the matter on its merits.

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

17. The Tribunal shall—

Duration of hearing.

- (a) hear and determine every complaint as expeditiously as possible; and
- (b) decide each complaint no later than—
 - (i) three months from the date on which proceedings were instituted before the Tribunal, where the complaint does not necessitate analysis or testing of commodities; and
 - (ii) five months from the date on which proceedings were instituted before the Tribunal, where the complaint necessitates analysis or testing of commodities.

18.—(1) A person who appears as a witness before the Tribunal and who, without reasonable excuse, refuses or fails to answer a question that he or she is required to answer by the presiding member at the proceeding, commits an offence and is liable, on summary conviction, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Failure to answer questions.

(2) Any person who, without sufficient cause, obstructs or interrupts the proceedings of the Tribunal commits an offence and is liable, on summary conviction,

to a fine not exceeding \$5,000 or in default of payment of the fine to imprisonment for a term not exceeding two years.

False or misleading evidence.

19. A person who appears as a witness before the Tribunal and gives evidence that, to his or her knowledge, is false or misleading commits an offence and is liable, on summary conviction, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Contempt of Tribunal.

20. A person who does any act that, if the Tribunal were a Court, would constitute an offence, commits an offence and is liable, on summary conviction, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Power to make orders.

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

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

- (a) declaring the transaction or conduct which is the subject of the complaint to be in breach of the provisions of this Act;
- (b) directing the opposite party to do one or more of the following—
 - (i) to remove the defect from the goods in question;
 - (ii) to replace the goods with new goods of a similar description, which shall be free from any defect;

- (iii) to pay to the consumer a refund and interest, where appropriate;
- (iv) to remove the deficiencies in the services in question;
- (v) to desist and discontinue the unfair trade practice or the restrictive trade practice;
- (vi) to refrain from offering the hazardous goods for sale;
- (vii) to withdraw the hazardous goods from being offered for sale;
- (viii) to cease the manufacture of hazardous goods or to desist from offering services which are hazardous in nature;
- (ix) to issue corrective advertisement to neutralise the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;
- (x) to provide for adequate costs to parties in addition to the fees, if any paid to the laboratory for analysis or testing of goods; or
- (xi) in relation to any other matter or measures as it deems appropriate or necessary in order to further the objects of this Act.

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

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

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

(5) Subject to this Act, the procedure relating to the conduct of the meetings of the Tribunal, its sittings and other matters shall be such as may be prescribed.

Adjournments and interim orders.

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

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

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

Failure to comply with order of the Tribunal.

23.—(1) Any person who fails to comply with an order of the Tribunal commits an offence and is liable, on summary conviction, to a fine not exceeding \$20,000, and in the case

of a continuing offence, to a further fine of \$100 for each day or part thereof during which the offence continues.

(2) Where it is proved that a supplier has failed to obey an order of the Tribunal, every director and officer of the supplier shall be liable, on summary conviction, to a fine of \$5,000 or to imprisonment for two years or to both, unless the director or officer proves that all necessary and proper means in his or her power were taken to obey and carry out the order and that he or she was not at fault for the failure to obey the order.

(3) Where an amount is due from any person under an order made by the Tribunal, the person entitled to the amount may make an application to the Tribunal and the Tribunal may issue a certificate for the amount to the police officer or administrative head (by whatever name called) and the second person shall proceed to recover the amount in the same manner as arrears due to the State.

24.—(1) An appeal shall lie on a question of law to a Judge of the Supreme Court from a decision or order of the Tribunal. Appeal.

(2) The appellant shall give notice of the appeal to the Tribunal and to the adverse party interested no later than 28 calendar days of the decision or order and the parties shall be entitled to be represented by counsel at the hearing of the appeal.

25. No appeal shall, of itself, stay or suspend the operation of any decision or order of the Tribunal but a Judge may stay or suspend, in whole or in part, the operation of the decision or order of the Tribunal pending the appeal, upon such terms as the Judge may think fit. Stay of proceedings pending appeal.

Costs of appeal. **26.** All costs incidental to the hearing of an appeal shall be—

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

Determination of question of law. **27.** On the hearing of the appeal and the determination of the question of law involved in the appeal, the Judge shall give his or her decision to the Tribunal and the Tribunal shall make an order in accordance with that decision.

Alleged defects requiring proper analysis and laboratory report. **28.—**(1) Where the complainant alleges a defect in a good which cannot be determined without proper analysis or test of the good, the Tribunal shall, in the prescribed manner—

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

- (ii) determine whether the good suffers from any defect alleged in the complaint, from any other defect or pose any health risk; and
- (iii) report its findings to the Tribunal within a period of 45 calendar days of the receipt of the reference or within such extended period as may be granted by the Tribunal.

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

(3) The Tribunal shall remit the amount deposited to its credit under subsection (2) to the appropriate laboratory to enable the laboratory to carry out the necessary analysis or tests.

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

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

Receipt and distribution of laboratory report.

(2) If any party disputes the accuracy of the findings of the appropriate laboratory or the accuracy of the methods of analysis or test adopted by the appropriate laboratory, the

Tribunal shall require the opposite party or the complainant to submit in writing the grounds and nature of the party's dispute with regard to the report made by the appropriate laboratory.

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

Procedure subsequent to receipt of laboratory reports and responses.

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

(2) The Tribunal, after considering all the evidence shall, by order, perform its functions set out in section 12 (1).

PART V

COMPLAINTS

Who may lodge a complaint.

11.—(1) Subject to subsections (2) and (4), a consumer who alleges that he or she has been adversely affected in relation to a good or service he or she has acquired or agreed to acquire may lodge a complaint to the Office on one or more grounds under section 32 in accordance with the procedure set out in section 33.

(2) Notwithstanding subsection (1), in relation to any good or service acquired or agreed to be acquired the following persons may lodge complaints to the Office—

- (a) a consumer organisation;
- (b) subject to subsection (3), 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) Consumers referred to in subsection (2) (b) may lodge a complaint only upon their receipt of written permission to lodge the complaint from the Office.

(4) Where a consumer is—

- (a) a minor, 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.

(5) Where a person lodges a complaint under any of the circumstances referred to in this section, the person who lodges the complaint shall, for the purpose of lodging and resolving the complaint, be referred to as the “complainant”.

(6) For the purposes of this section—

“minor” means a person below the age of full civil legal responsibility as defined under the Age of Civil Legal Responsibility Act, 2011; and

“parent” means a natural parent, or adoptive parent, of a minor, for the purposes of the Child (Protection and Adoption) Act, Chapter 44A;

“legal guardian” means an individual, other than a parent or a minor, who—

- (a) has custody of the consumer;
- (b) resides with and having care of the consumer;
- (c) under a written agreement or Court order, is required to provide support for the consumer or has a right of access to the consumer; or
- (d) is a foster caregiver of the consumer.

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

Grounds for complaint.

32. A complainant may make a complaint on any of the following grounds—

- (a) an unfair trade practice, unfair transaction or an unfair term has been adopted by a supplier under Part VIII and Part IX;
- (b) the good bought by him or her or agreed to be bought by him or her suffer from one or more defects;

- (c) the services hired or availed of or agreed to be hired or availed of by him or her suffer from deficiency in any respect;
- (d) the supplier has charged, for the good or for the service 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 good or any package containing the good;
 - (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) a good 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 good 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 good so offered is unsafe to the public or is hazardous to life and safety;
- (f) the supplier offers a service which is hazardous or likely to be hazardous to life and safety of

the public when used, which the supplier could, with due diligence, have known to 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).

Procedure for lodging complaint.

33.—(1) Subject to subsection (2), a complainant may lodge a complaint to the Office orally or in writing.

(2) Where a complainant is contemplating litigation or any further action in relation to the complaint, the complaint shall be made in writing.

(3) Upon receipt of the complaint and receipt of payment of the prescribed fee, the Office shall—

- (a) record the complaint in writing; and
- (b) direct the complainant to read and sign the written record.

(4) Where the complainant is visually impaired, unable to read or unable to write, the member of staff of the Office shall read the written record in the complainant's hearing and request that the complainant affix his or her mark to the written record.

(5) 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.

Investigative powers of the Office.

34.—(1) The Office shall only investigate a complaint made against a supplier if the complainant satisfies the

Office that he or she has notified the supplier of the contravention of this Act and has received no reasonable redress.

(2) The Office 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 enactment or any other enactment.

(3) Unless the Court otherwise directs, the commencement of an action in Court in connection with a complaint under investigation by the Office shall not preclude the investigation.

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

(5) Upon receipt of a complaint, the Office shall proceed to investigate the complaint unless the Office 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 in accordance with section 38 (4);
- (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, it is not necessary to admit the complaint.

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

(7) Where the Director decides to investigate a complaint, the Office shall—

- (a) refer a copy of the complaint to the opposite party mentioned in the complaint; and
- (b) in writing, direct the opposite party to submit to the Office a written response to the complaint.

(8) No later than—

- (a) 30 calendar days; or
- (b) such greater period as the Office may specify which shall in no case exceed 45 calendar days,

after receipt of the documents under subsection (7), the opposite party may submit to the Office a written response to the complaint which shall in good faith set out the opposite party's version of events.

35.—(1) Upon receipt of the response of the opposite party, the Office shall—

Office to examine complaint and response.

- (a) examine the complaint and supporting materials or documents;
- (b) examine the response of the opposite party and any supporting materials and documents; and
- (c) conduct any further investigations that the Office considers necessary.

(2) If the opposite party fails to make a written response in accordance with section 34 (9), the Office shall complete its investigation based on the complaint and any other evidence or supporting materials or documents submitted by the complainant.

(3) Notwithstanding subsection (2), if the opposite party fails to make a written response in accordance with section 34, the Office may conduct any further investigations that the Office considers necessary.

36.—(1) The Office may, in its absolute discretion, determine whether to conduct or continue an investigation under this Act.

Discretion whether to conduct investigation.

(2) Without limiting the generality of subsection (1), the Office may refuse to conduct or continue any investigation if it considers that—

- (a) the subject-matter of the complaint is trivial;
- (b) the complaint is frivolous or vexatious or not made in good faith;

- (c) the delay in making the complaint was unreasonable;
- (d) the complainant does not have a sufficient interest in the subject-matter of the complaint;
- (e) the subject-matter of the complaint could more appropriately be dealt with by another body or in another forum; or
- (f) having regard to all the circumstances of the case, it is not necessary to conduct or continue an investigation.

(3) Where the Office decides not to conduct or continue an investigation—

- (a) it shall, in writing, inform the complainant of that decision and the reasons for the refusal; and
- (b) the complainant shall bear the cost related to the complaint if the refusal is by reason of paragraph (a) or (b) of subsection (2).

(4) Subject to subsection (5), the Office shall not investigate a complaint unless it is filed within 2 years from the date on which the cause of action has arisen.

(5) The Office may investigate a complaint filed after the period specified in subsection (4), if the complainant satisfies the Office that he or she had sufficient cause for not filing the complaint within such period.

37.—(1) The Office 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 the Office; and
- (b) produce any document which is—
 - (i) in the possession or under the control of the person summoned under paragraph (a); and
 - (ii) relevant to the matter under investigation.

(2) A summons under this section—

- (a) shall be in the form set out in Schedule III; and
- (b) may be served by—
 - (i) a member of the Police Force;
 - (ii) a bailiff; or
 - (iii) any other person authorised by the Office.

38.—(1) A person summoned to attend and give evidence or to produce a document before the Office—

Obligations of persons summoned.

- (a) shall be entitled 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) may be entitled to be paid his or her expenses, including travelling expenses, at the rates pre-

scribed for witnesses in civil proceedings who are entitled to have their expenses paid from the public fund.

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

(3) A person who without sufficient cause—

(a) fails or refuses to obey a summons issued by the Office under section 37;

(b) being a witness before the Office—

(i) leaves proceedings of the Office, without its permission; or

(ii) refuses to answer any question put to him or her by or with the permission of the Office; or

(c) obstructs or interrupts the proceedings of the Office,

commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 and in default of payment of the fine, to imprisonment for a term not exceeding two years.

Appeal.

39.—(1) Subject to subsection (2), any person aggrieved by an order made by the Tribunal may prefer an appeal against such order to the High Court no later than 28 calendar days after the date of the order, in accordance with Part 60 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000.

(2) The High Court may consider an appeal after the expiry of the period specified in subsection (1) if it is satisfied that there was sufficient cause for not filing it within that period.

PART VI

CONSUMER RIGHTS

40.—(1) This Act shall be interpreted in a manner that gives effect to the purposes set out in section 3.

Ambiguities to benefit consumer.

(2) When interpreting or applying this Act, a person, the Court or the Tribunal may consider—

- (a) appropriate foreign and international law; and
- (b) appropriate international conventions, declarations or protocols relating to consumer protection.

(3) Without limiting the generality of subsections (1) and (2), the Tribunal or the Court shall, when—

- (a) interpreting or applying a provision of this Act, if a provision of this Act, read in context, can be reasonably construed to have more than one meaning, prefer the meaning that best promotes the spirit and purposes of this Act, and will best improve the realisation and enjoyment of consumer rights generally and in particular by persons referred to in section 7 (4); and

- (b) interpreting 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, strictly interpret the information and the document to the benefit of the consumer, in such a manner 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.

Unsolicited goods
or services.

41.—(1) A request for a good or service shall not be inferred solely on the basis of payment, inaction or the passing of time.

(2) Where a consumer is a party to a consumer agreement referred to in subsection (4) (c) and, during the course of the agreement, there is a material change in the good or service, the good or service 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.

(3) 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.

(4) A consumer is not required to pay a supplier for any good or service supplied to the consumer under a consumer agreement unless—

- (a) before it is supplied to the consumer, the consumer has expressly requested the supplier to supply the particular good or service;
- (b) the consumer has implicitly requested the supplier to supply the good or service by—
 - (i) tendering payment for it; or
 - (ii) conduct that could reasonably lead the supplier to believe that the consumer has requested the supplier to supply the goods or services; or
- (c) the supplier has entered into an agreement to supply the good or service, from time to time, to the consumer without further approval or specific request.

(5) Subject to subsection (6), a supplier—

- (a) is not entitled to demand payment or make any representation that suggests that a consumer is required to make payment in respect of any unsolicited good or service, despite their subsequent use, receipt, misuse, loss, damage or theft; and
- (b) is liable to pay to the recipient of an unsolicited good referred to in paragraph (a), such reasonable costs as are incurred in respect of the storage of the good.

(6) Subsection (5) does not apply to a recipient of an unsolicited good if—

- (a) the recipient has unreasonably refused to permit the supplier or the owner of the good to take possession of the good; or
- (b) the good was received in circumstances in which the recipient knew or might reasonably be expected to have known, that the good was not intended for him or her.

(7) Where a supplier has received payment from or on behalf of a consumer in respect of an unsolicited good or service, the consumer may in writing demand a refund of the payment within one year after having made the payment.

(8) A supplier who receives a demand for a refund under subsection (7) shall refund the payment within 10 business days of the receipt of the written demand.

(9) Where a consumer receives any unsolicited good from a supplier, the consumer—

- (a) may—
 - (i) subject to paragraph (b) (ii), retain the good without payment; or
 - (ii) return the good to the supplier at the supplier's risk and expense; and
- (b) subject to subsection (6), is not liable for any—
 - (i) loss or damage to the good while it is in transit, or at any time after it is received by the consumer, whether or not they remain in the consumer's possession; or
 - (ii) use or depletion of, or damage to the good at any time after 10 business days after receipt by the consumer, unless during that time, the supplier has notified the consumer that the good was delivered in error and has arranged to recover it, at the supplier's risk and expense.

(10) Subject to subsection (11), a good or service is unsolicited if the good or service is supplied to a consumer who did not request it.

(11) A good or service shall not be regarded as unsolicited if—

- (a) the good or service was intended for another person and the recipient knew or

ought to have known that the good or service was intended for another person;

- (b) there is a non-material change to a periodically supplied good or service; or
- (c) the good or service is supplied under a written future performance agreement that provides for the periodic supply of the good or service to the recipient without further solicitation.

(12) Where a supplier delivers a good or service to a recipient other than the person for whom the good or service is intended, qualifying under subsection (11) (a), the supplier shall retain all obligations to determine whether the good or service was delivered to the intended person and to retrieve the good or service from the recipient at the cost of the supplier.

Right to select suppliers and products.

42. A supplier shall not require, as a condition of supplying, or offering to supply, any good or service, or as a condition of entering into a consumer agreement, that the consumer—

- (a) purchases any other good or service from that supplier;
- (b) enters into an additional agreement or transaction with the same or another supplier; or
- (c) agrees to purchase any good or service from a designated third party.

Right to authorise services.

43.—(1) This section applies to a transaction or 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—

- (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 service is supplied.

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

- (a) subject to subsection (3) (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 Regulations, exempt from this section any transaction or consumer agreement referred to in subsection (1) that is below a prescribed threshold.

Right to choose and examine goods.

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

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

(3) Where a good that a consumer has not previously examined is delivered to the consumer, the consumer is deemed not to have accepted it until the consumer has had a reasonable opportunity of examining it for the purpose of ascertaining whether it is in conformity with the consumer agreement.

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

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

- (a) the supplier is responsible to deliver the good 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 good remain at the supplier's risk until the consumer has accepted delivery.
- (2) The consumer has the right to require—
- (a) delivery of any good 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 service at the time agreed with the supplier.

(3) Where a consumer agreement does not provide a specific time for delivery of any good or supply of any service, the supplier shall not require the consumer to accept delivery of the good or performance of the service 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 good or service

and common practices and standards associated with the delivery of the good or performance of the service.

Acceptance of
goods or services.

46.—(1) A consumer is deemed to have accepted the supply of a good or service, if—

- (a) the consumer expressly or implicitly communicates to the supplier that the consumer has accepted it;
- (b) the good has been delivered to, or the service has been performed for, the consumer and the consumer does any act in relation to it that is inconsistent with the supplier's ownership of the good or responsibility to perform the service, as the case may be; or
- (c) in the case of a good, after the lapse of a reasonable time required for examining the good to ascertain its conformity with the transaction, the consumer retains the good without intimating to the supplier that the consumer has rejected it.

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

- (a) accept the goods and pay for the agreed quantity at the agreed rate; and
- (b) treat the excess quantity of goods as unsolicited goods in accordance with section 41.

(3) Where a supplier delivers to a consumer all of the goods the supplier agreed to sell together with goods

of a different description not contemplated in the consumer agreement, the consumer may accept the goods that are in accordance with the agreement and treat the remainder as unsolicited goods in accordance with section 41.

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

- (a) accept the goods that are in accordance with the agreement and treat the remainder as unsolicited goods in accordance with section 41; or
- (b) reject the whole and rescind the consumer agreement in accordance with section 48.

(5) Nothing in subsections (2), (3) and (4) precludes a consumer from accepting an excess quantity of goods that the consumer agreed to buy, or goods of a different description not contemplated in the consumer agreement, by expressly communicating to the supplier in writing acceptance of the goods on agreed terms, which shall form part of the consumer agreement.

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

Right to cancel reservation.

(2) Where a supplier makes a commitment or accepts a reservation to supply a good or service on a later date, the supplier may require payment of a deposit in advance, not exceeding the prescribed amount or prescribed percentage of the cost of the good or service that has been reserved.

(3) Where a consumer cancels a booking or reservation for a good or service, the supplier may apply to the deposit a reasonable cancellation charge and reimburse the consumer of any remainder of the deposit.

(4) For the purposes of this section, a cancellation charge is not reasonable if it exceeds a fair amount in the circumstances, having regard to—

- (a) the nature of the good or service 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.

(5) 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.

(6) Section 46 (2), read with the changes required by the context, applies in respect of a cancellation in terms of this section.

Right to rescind or
cancel agreement.

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

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

- (a) no later than 10 business days after delivery of the good 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 good to the consumer; or
 - (ii) any other marketing in circumstances in which the consumer is unable to choose or examine the good referred to in section 61;
- (b) no later than 5 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 good to the consumer.

(3) A consumer may rescind a consumer agreement referred to in subsection (2), not later than 6 months after the agreement, if the supplier—

- (a) being required to be licensed or registered pursuant to any enactment regulating the commercial activity of 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 by giving in writing 30 calendar days' notice to the supplier, cancel without penalty, a consumer agreement—

- (a) for the supply of a continuous service;
- (b) to purchase a good or service on a periodic recurring basis by subscription;
- (c) to make a donation on a periodic recurring basis.

(5) A consumer may, at any time by giving notice in writing to the supplier, cancel without penalty, a consumer agreement to purchase a good, if the supplier fails to deliver the good within the agreed time or, in the absence of an agreed time, reasonable time.

(6) The expense and risk of return are borne by the supplier if a good is unacceptable.

(7) Where a consumer exercises the right to cancel or rescind a consumer agreement, the supplier—

- (a) is not entitled to collect any payment in terms of the consumer agreement; and
- (b) is obliged to return any payment received from a consumer no later than 5 business days after receiving notice of the rescission of a consumer agreement.

(8) This section does not apply with respect to a consumer agreement in terms of which a good has been delivered to the consumer, if—

- (a) any enactment prohibits the return of the good to the supplier once it has been supplied to, or at the direction of, a consumer; or
- (b) after having been supplied to, or at the direction of, the consumer—
 - (i) the good has been partially or entirely eaten, consumed, depleted or destroyed, unless the consumer was reasonably unable to determine that the good was unfit for the intended purpose without partially eating, consuming, depleting or destroying it; or
 - (ii) the good has been partially or entirely disassembled, physically altered, or affixed, attached, joined or added to, blended or combined with, or embedded within, another good or other property.

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

50.—(1) Where a document is required to be delivered to a consumer under this Act, the document shall be provided— Right to information in plain and user-friendly language.

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

(2) For the purposes of this Act, a document is in plain and user-friendly 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 good or service, 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 Office may, after consultation with the Bureau of Standards, publish guidelines for methods of assessing whether a document satisfies the requirements of subsection (1) (b).

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

51.—(1) Where a consumer enters into a consumer agreement for the supply of any good or service and dies before the good or service is supplied—

- (a) the personal representative of the consumer's estate may give notice to the supplier—
 - (i) requiring delivery of the good or supply of the service, 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 good, 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 referred to in paragraph (b), on the terms contemplated in the consumer agreement; and

(d) upon acquisition or completion of those special-order good, holds it 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 VII**DUTIES OF SUPPLIERS**

Information to
consumer.

52.—(1) At any time before payment is made for any good, 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 good being sold—

- (a) where applicable, the origin, care, terms, components, hazards, proper use, weight, size and instructions for assembly and installation of the good; and
- (b) where chargeable, the professional fees of the supplier in respect of the good.

(2) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000, and in default of payment of the fine, to imprisonment for a term not exceeding 2 years.

(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 good by the consumer that can be directly attributed to the consumer's lack of information.

Display of price of
goods or services.

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

- (a) designed and intended predominantly as a form of advertisement of the supplier, good or service; and

- (b) in the case of a good, 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 a particular good or service if it is—
 - (i) appended, annexed or affixed to, written, printed, stamped or located upon, or otherwise applied to the good or to any band, ticket, covering, label, package, reel, shelf, or other thing used in connection with the good or on which the good is mounted for display or exposed for sale;
 - (ii) published in relation to the good in a catalogue available to the public if a time is specified in the catalogue as the time after which the good 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 good or service; and
 - (b) a price shall not be regarded as being displayed in relation to a good if—

- (i) the price was appended to the good outside Grenada in relation to the supply of the good outside Grenada; 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 a good for sale or offers to supply any service in relation to which more than one price is concurrently displayed, section 54 applies.

(4) Subsection (3) does not apply in respect of the price of a good or service if the price of the good or service is determined by an enactment.

(5) Where a supplier has provided an estimate for any good or service, in accordance with section 43, the price for the service, or the good and service, 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 continued provision of goods or services in relation to the repair, maintenance or installation.

(6) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000, and in default of payment of the fine, to imprisonment for a term not exceeding 2 years.

54.—(1) Subject to section 36, where more than one price is displayed on a good— Dual pricing.

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

(2) A supplier who contravenes subsection (1) (b) commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 or imprisonment for a term not exceeding 12 months or to both such fine and imprisonment.

(3) It is a defence to the prosecution of a defendant for a contravention of this section 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 respondent; or
 - (ii) an accident or to some other cause beyond the respondent's control; and
- (b) the defendant had taken all reasonable precautions and exercised due diligence to avoid the contravention.

55.—(1) A person shall not carry on a business, advertise, promote, offer to supply or supply any good or service, or enter into a transaction or consumer agreement with a consumer under any name except— Identification of supplier.

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

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

- (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 \$5,000, and in default of payment of the fine, to imprisonment for a term not exceeding 2 years.

Product labelling
and trade descrip-
tions.

56.—(1) A supplier of a good shall not display, offer to supply or supply any good, other than goods exempted

pursuant to subsection (3), unless a trade description of the good is—

- (a) applied to the good, or to any covering, label or reel in or on which the good is packaged, or attached to the good;
- (b) displayed together with, or in proximity to, the good in a manner that is likely to lead to the belief that the good is 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 good.

(2) A supplier of a good shall—

- (a) not offer to supply, display, or supply any good if the supplier knows, reasonably could determine, or has reason to suspect, that—
 - (i) a trade description applied to the good 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 good has been altered in contravention of subsection (4); and
- (b) with respect to any good within that person's control, take reasonable steps to pre-

vent any other person from doing anything referred to in paragraph (a).

(3) The Minister may, by Regulations—

(a) exempt a particular good or category of goods from the application of subsection (1) if—

(i) the good, or the category of goods, is 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; or

(ii) the information required under this section is self-evident, given the nature of the good, 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 a particular good or category of goods, which if satisfied, would exempt the good from the application of this section.

(4) No person shall—

(a) knowingly apply to any good a trade description that is likely to mislead the

consumer as to any matter implied or expressed in that trade description; or

- (b) alter, deface, cover, remove or obscure a trade description or trade mark applied to any good in a manner calculated to mislead consumers,

and a supplier shall take reasonable steps to prevent any other person from doing anything referred to in paragraph (a) or (b) in relation to a good of the supplier.

(5) A supplier who contravenes this section, including paragraphs (a) and (b) of subsection (4) in respect of a good of another supplier, commits an offence and is liable on summary conviction to a fine not exceeding \$5,000, and in default of payment of the fine, to imprisonment for a term not exceeding 2 years.

(6) 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 good;
 - (ii) the name of the producer or producers of any good;
 - (iii) the ingredients of any good, or material of which any good is made;

- (iv) the place or country of origin of any good;
 - (v) the mode of manufacturing or producing any good; or
 - (vi) any good 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.

57.—(1) Subject to subsection (3) of this section, a person who packages any prescribed good, or imports any such good, for supply to consumers shall, in addition to the requirements of section 56, display on or in association with that packaging or the good, 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 good; 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 good;
- (b) the estimated energy requirements per hour of use, if the operation of the good requires the utilisation of energy other than muscle power;

- (c) the nature and intensity of any potentially harmful energy radiation, if the good, or any component of the good, emits any such radiation; and
- (d) the need for special handling, or waste disposal, of the good, any component of it or any material in which the good was packaged, if such special handling or waste disposal—
 - (i) is required under any enactment; or
 - (ii) is 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 the consumer a good that is prescribed pursuant to subsection (1), shall—

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

(3) Subsection (1) of this section 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 public regulation.

(4) A supplier of a good shall—

- (a) not display, supply or offer to supply any good if the supplier knows, reasonably could determine, or has reason to suspect, that a notice applied to the good—
 - (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) No person shall—

- (a) knowingly apply to any good a notice that is likely to mislead the consumer as to any matter implied or expressed in that notice; or
- (b) alter, deface, cover, remove or obscure a notice applied to any good in a manner calculated to mislead consumers,

and a supplier shall take reasonable steps to prevent any other person from doing anything contemplated in paragraph (a) or (b) in relation to a good of a supplier.

(6) A supplier who contravenes this section, including paragraphs (a) and (b) of subsection (5) in respect of goods of another supplier, commits an offence and is liable on summary conviction to a fine not exceeding \$5,000, and

in default of payment of the fine, to imprisonment for a term not exceeding 2 years.

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

Disclosure of re-conditioned goods.

- (a) has been 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 good stating clearly that it has been re-conditioned, 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 \$5,000 or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

59.—(1) Where there is a consumer agreement for the sale or supply of a good on the basis of a description, the good sold shall correspond with the description.

Supply by description and sample.

(2) A consumer agreement for the supply of a good is not prevented from being a consumer agreement for supply of a good on the basis of a description for the purpose of subsection (1) if the good when exposed for sale or hire is selected by the consumer.

(3) Where the supply of a good is on the basis of a sample, the good supplied shall correspond with the sample.

(4) Where the consumer has agreed to purchase or lease a good on the basis of a description or sample of the good, it is an implied condition of the agreement that the good delivered to the consumer shall—

- (a) correspond with the description or sample; and
- (b) be free from any defect that would not be apparent from the description or on reasonable examination of the sample.

(5) Where the consumer has agreed to purchase or lease a good on the basis of a sample and description of the good, the good shall correspond with the sample and the description.

(6) For the purposes of section 44 (2), a consumer of a good referred to in subsection (3) or (5) shall be given a reasonable opportunity by the seller to examine the good supplied and compare the good with the sample before accepting the good and section 44 (3) shall apply accordingly.

(7) The provisions of this section shall not apply to a sale by auction or competitive tender.

Sales records.

60.—(1) A supplier of a good or service shall provide a written durable record or an electronic record if available and accepted by the consumer of each transaction over \$10 to the consumer to whom the good or service is supplied, including in that record, the following information—

- (a) the supplier's name, or registered business name, and VAT registration number;
- (b) the address of the premises at which or from which the good or service was supplied;
- (c) the date on which the transaction occurred;

- (d) a name or description of the good or service supplied or to be supplied;
- (e) the unit price for each good or service supplied or to be supplied;
- (f) the quantity of each good or service supplied or to be supplied;
- (g) the total price of the transaction, before any applicable taxes;
- (h) the amount of any applicable taxes;
- (i) the total price of the transaction, including any applicable taxes; and
- (j) such other information as may be prescribed under this Act or any other enactment.

(2) The Minister may, by Regulations, 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 \$2,000 or to imprisonment for a term not exceeding 12 months or to both such fine and imprisonment.

(4) A sales record under this section—

- (a) shall be adequate proof of the purchase of the good or service; and
- (b) may be used for the purposes of a refund in any of the circumstances specified in this Act.

Measurement of
goods.

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

(2) For the purposes of subsection (1), a supplier of any good that is 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 Standards Act, Chapter 310.

(3) Subject to subsection (4), a supplier commits an offence and is liable on summary conviction to a fine not exceeding \$2,000, if the supplier, in selling or purporting to sell any good by weight or other measurement or by number, delivers or causes to be delivered to the consumer, a quantity lesser than the quantity that—

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

(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.

62.—(1) A supplier shall issue express warranties in relation to the supplier's good or service, as the case may be, and such express warranties shall be clear, whether the good is new or used and whether the service offered is the repair of any appliance, furniture, equipment or other good.

(2) Where a warranty given by a manufacturer is attached to a good 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 the repair or replacement of a defective good—

- (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 a good 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) Implied warranties, in the absence of express warranties, shall apply to the supply and repair of all goods.

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

(7) Penalties for breach of warranty include repairs, replacement, partial or full refund, allocation of damages and, if necessary, imposition of sanctions as provided under any enactment.

Implied warranties as to quality and fitness.

63.—(1) Subject to subsection (2), where a supplier supplies a good to a consumer, there shall be an implied warranty that the good is of reasonably acceptable quality.

(2) Subsection (1) does not apply if—

- (a) defects are specifically drawn to the attention of the consumer before the consumer agreement is made; or
- (b) the consumer examines the good before the consumer agreement is made and has an opportunity to detect defects which that examination ought to reveal.

(3) The provisions of this section shall not apply to a sale by auction or competitive tender.

(4) Where a consumer agreement for the supply of a good, expressly or by implication, is to the effect that the good is to be supplied on the basis of a sample, it shall be an implied warranty that the good corresponds in quality with the sample.

(5) Where a good is supplied to a consumer, there shall be an implied warranty that the good is unused, unless before the consumer accepts the good—

- (a) the supplier discloses to the consumer that the good is not unused; or

- (b) the consumer knows or ought to know that the good is not unused or is likely not to be unused.

(6) For the purposes of subsection (5), a good is unused notwithstanding that it has been used by the supplier or any other person to test, prepare or deliver it, if it has not been so used to an unreasonable extent.

(7) A good of any kind is of a “reasonably acceptable quality” for the purposes of this section if it is as fit for the purposes for which goods of that kind are commonly bought as it is reasonable to expect having regard to—

- (a) any description applied to it;
- (b) the price, if relevant;
- (c) the state or condition of the good;
- (d) the durability of the good;
- (e) freedom of the good from minor defects;
- (f) the safety and price of the good;
- (g) any representations made by the seller or supplier of the good; and
- (h) any other relevant circumstance.

64.—(1) This section applies if a supplier—

- (a) undertakes to provide a consumer with a good or service upon payment of a fee;
- (b) provides the declared benefit attached to the service or use of the good; and

Damage resulting from use of goods or services.

(c) inadvertently causes bodily injury or pecuniary loss to be sustained by the consumer, independent of all other causes or contributory negligence.

(2) A supplier shall, upon presentation by the consumer of a document from the Tribunal substantiating that, in its opinion, a complaint is valid and well founded—

(a) undertake to pay the consumer all reasonable costs incurred or to be incurred in correcting the damage so caused; and

(b) initiate payment of compensation no later than 7 business days after the complaint is received at the registered office of the supplier, or in accordance with the period set out in the document, whichever is greater.

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

(a) the supplier has provided complementary goods or services which fail to function well or cause damage or other loss; or

(b) the consumer fails to avail himself or herself of some other good or service that may be recommended by the supplier as supplementary or complementary.

65.—(1) Where there is a consumer agreement for the supply of a good, there shall be an implied warranty that the good is not defective or damaged.

Supply of damaged goods to consumer.

(2) Where—

- (a) within the warranty period, a good supplied to a consumer is defective or damaged so as to fail to provide the benefit and uninterrupted enjoyment for which it was intended; and
- (b) the defect or damage is not due to negligence or abuse by the consumer,

the supplier shall be responsible or liable for the replacement or repair of the good and any related costs, at no cost to the consumer.

(3) Subject to subsection (4), a supplier shall, in the event of repair of a good referred to in subsection (2), return the good to the consumer in a fully repaired and functional state within such period, after receipt of the good for repair or replacement, as the Tribunal, after consultation with the supplier, considers appropriate.

(4) Where a good referred to in subsection (3) is not returned to the consumer within the period specified by the Tribunal under that subsection, the supplier shall provide, where the Tribunal determines that it is suitable and possible, 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 good.

66.—(1) Subject to subsection (3), a consumer may return a good to a supplier if the consumer— Return of defective goods.

- (a) is encouraged to acquire the good by the supplier's declaration and description of the good; and

- (b) after acquiring the good, discovers within a reasonable time that the good is defective in a material particular from those declared or described.
- (2) Where a good is returned pursuant to subsection (1)–
- (a) the supplier shall be afforded a reasonable opportunity to inspect the good and fix the defect; and
 - (b) if the defect is not fixed after a reasonable time, the supplier shall give to the consumer in exchange for the returned good, monetary compensation to the value of the good or another amount agreed between the consumer and the supplier.
- (3) Subsection (2) shall not apply unless the good is returned–
- (a) in the condition in which they were purchased; or
 - (b) with minimal damage resulting from reasonable exposure in the normal course of the customer’s use of the goods prior to discovery of the defect.
- (4) A supplier commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 if the supplier fails–

- (a) to replace the goods within 7 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.

67.—(1) Subject to subsections (4) and (5), a consumer may return a good to a supplier if the consumer—

Return of materially different goods.

- (a) is encouraged to acquire the good by the supplier's declaration and description of the good; and
- (b) after acquiring the good, discovers that the acquired good is different in the material particular from the supplier's declaration and description.

(2) Subject to subsection (4), where a good is returned pursuant to subsection (1), the supplier shall be afforded a reasonable opportunity to inspect the good and—

- (a) shall replace the good—
 - (i) no later than 7 business days of the return of the good to the supplier; or
 - (ii) where the replacement is to be imported, no later than 5 business days after the replacement is imported; or
- (b) at the election of the consumer, immediately refund the value of the good or such

other amount as may be agreed between the consumer and supplier.

(3) Where a good is returned under subsection (1), the supplier shall not charge the consumer a restocking fee for the good.

(4) Subsection (2) does not apply unless the good is returned to the supplier—

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

(5) Subsection (1) shall not apply if a consumer who acquires a good that in every way is similar or identical to the one requested or described and declared by the supplier, having left the place from which the supplier sold the good, for any reason decides that he or she no longer wants it.

Approved and
non-approved
services.

68.—(1) A supplier shall—

- (a) only provide such a service as is 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 service not approved by him or her.

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

Suppliers of-
fering repair
services.

- (a) the name, address and telephone number of the consumer;
- (b) an accurate description of the good to be repaired, including any identification number or mark;
- (c) an estimate of the replacement value of the good 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 good—
 - (i) is 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—

- (a) 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; and

- (b) obtain a written indemnity from the consumer if the consumer chooses not to require the supplier to effect the recommended repairs.

(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 \$2,000.

Advertised delivery date.

70.—(1) Where by reason of a date or period advertised by a supplier for the delivery of any good, whether new, used or repaired, a consumer—

- (a) has entered into a consumer agreement with the supplier to deliver the good; and
- (b) makes a deposit pursuant to the consumer agreement referred to in paragraph (a) in respect of the delivery of the good,

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

(2) If the good is not delivered to the consumer by the 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 for the period beginning with the date of deposit and ending on the date of its refund, at an annual rate of ten percentage points above the Treasury Bill rate applicable at the former date; or
- (b) deliver the good by another date or within another period on terms to be agreed with the consumer.

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- (3) A supplier who has—
- (a) advertised a completion or delivery date; and
 - (b) obtained from the consumer a deposit against the provision of the good or service,

may elect to terminate the consumer agreement within 7 business days after the receipt of the deposit and in such a case, the supplier shall refund the full value of the deposit received.

71.—(1) A person shall not demand or accept payment or other consideration for the supply of a good or service, if at the time of the demand or acceptance, the person—

Conditions of demanding and accepting payment.

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

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

General standards for the promotion of goods or services.

- 72.—**(1) A supplier shall not promote a good or service—
- (a) in a manner that is misleading, fraudulent or deceptive in respect of—
 - (i) the nature, properties, advantages or uses of the good or service;
 - (ii) the manner in or conditions on which the good or service may be purchased, leased or otherwise acquired;
 - (iii) the price at which the good 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 service;
 - (iv) the sponsoring of any event; or
 - (v) any other material aspect of the good or service;
 - (b) in a manner that is reasonably likely to imply a false, misleading or deceptive representation concerning the good or service, as contemplated in section 73;
 - (c) the supply, purchase, sale or possession of which is unlawful;
 - (d) to be supplied in a manner that 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 good or service that is inconsistent with any enactment.

(2) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000, and in default of payment of the fine, to imprisonment for a term not exceeding 2 years.

PART VIII

UNFAIR TRADE PRACTICES

73.—(1) It is an unfair trade practice for a supplier to make a false, misleading or deceptive representation or to engage in conduct that is or is likely to be misleading or deceptive, particularly in relation to the nature, manufacturing process, characteristics, or suitability for purpose or quality of a good or service.

False, misleading or deceptive representations.

(2) With respect to any good or service that is the subject of a consumer agreement or in the marketing of any such good or service, the supplier shall not, by words or conduct—

- (a) directly or indirectly express or imply a false, misleading or deceptive representation concerning a material fact to a consumer;

- (b) use exaggeration, innuendo or ambiguity as to a material fact, or fail to disclose a material fact if 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.

(3) 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) a good or service—
 - (i) has an ingredient, performance characteristic, accessory, use, benefit, quality, sponsorship or approval that it does not have;
 - (ii) is of a particular standard, quality, grade, style or model;
 - (iii) is new or unused, if it is not or if it is reconditioned or reclaimed, subject to subsection (4);

- (iv) has been used for a period, to an extent, or in a manner that is materially different from the facts;
- (v) has been supplied in accordance with a previous representation;
- (vi) is 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.

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

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

Prohibition on unfair trade practices.

74.—(1) No supplier shall adopt or indulge in any unfair trade practice.

(2) For the purposes of this section, “unfair trade practice” includes any trade practice which, for the purpose of promoting the sale, use or supply of a good or for the provision of a service, adopts any of the following—

- (a) making any statement, whether orally or in writing or by visible representation which—
 - (i) falsely represents that the good is of a particular standard, quality, quantity, grade, composition, style or model;
 - (ii) falsely represents that the service is of a particular standard, quality or grade;

- (iii) falsely represents any re-built, second-hand, renovated, reconditioned or old good as a new good;
 - (iv) represents that the good or service has sponsorship, approval, performance, a characteristic, an accessory, a use or a benefit which the good or service does not have;
 - (v) represents that the supplier has a sponsorship or approval or affiliation which such supplier does not have;
 - (vi) materially misleads the public concerning the price at which a product or like product or good or service, has been or are, ordinarily sold or provided;
 - (vii) gives false or misleading facts disparaging the good, service or trade of another supplier;
- (b) making a false or misleading representation concerning the need for, or the usefulness of, any good or service;
 - (c) subject to subsection (5), giving to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any good that is not based on an adequate or proper test thereof;

- (d) making a public representation in a form that purports to be a warranty or guarantee of a product or of any good or service if—
 - (i) the purported warranty or guarantee is materially misleading; or
 - (ii) there is no reasonable prospect that the purported warranty or guarantee will be carried out;
- (e) making a public representation in a form that purports to be a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if—
 - (i) the purported promise is materially misleading; or
 - (ii) there is no reasonable prospect that the purported promise will be carried out;
- (f) publishing any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of a good or service that is—
 - (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;

- (g) offering of gifts, prizes or other items with the intention of not providing them as offered 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;
- (h) withholding from the participants of any scheme offering gifts, prizes or other items free of charge, on its closure the information about final results of the scheme;
- (i) offering for sale or supply a good intended to be used, or of a kind likely to be used, by consumers, knowing or having reason to believe that the good does not comply with the standards prescribed by competent authority 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 good;
- (j) permitting the hoarding or destruction of a good, if such hoarding raises or is intended to raise the price of the good or another similar good;
- (k) refusing to sell a good or to make a good available for sale, if such refusal raises or

is intended to raise the price of the good or another similar good;

- (l) refusing to provide any service if such refusal raises or is intended to raise the price of the services; and
- (m) manufacturing of a spurious good or offering such a good for sale or adopts deceptive practices in the provision of a service.

(4) For the purpose of subsection (3) (a) (vi), a representation as to price shall be deemed to refer to the price at which the product or good or service has been sold or provided by suppliers generally in the relevant market, unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made.

(5) For the purposes of subsection (3) of this section, a statement that is—

- (a) expressed on an article offered or displayed for sale, or on its wrapper or container;
- (b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is 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.

(6) 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.

(7) For the purpose of subsection (3) (f), “bargaining 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.

(8) For the purposes of subsection (3) (h), 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 newspapers in which the scheme was originally advertised.

(9) 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 \$10,000 and with imprisonment for a term not exceeding 3 years.

Prohibition on restrictive trade practices.

75.—(1) No supplier shall adopt or indulge in a restrictive trade practice.

(2) For the purposes of this section, a “restrictive trade practice” is a trade practice which—

- (a) tends to bring about manipulation of price or conditions of delivery or affect flow of supplies in the market relating to a good or service in such a manner as to impose on the consumers unjustified costs or restrictions;
- (b) delays beyond the period agreed to by a supplier in supply of a good or in providing a service which has led or is likely to lead to rise in the price; or
- (c) requires a consumer to buy, hire or avail of any good or service as condition precedent to buying, hiring or availing of another good or service.

(3) A supplier who, in the ordinary course of business, adopts or indulges in a restrictive trade practice commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 and to a term of imprisonment not exceeding 5 years.

Unreasonable transactions.

76.—(1) No supplier shall supply or agree to supply any particular good or service to a consumer pursuant to an unreasonable transaction.

(2) A transaction is an unreasonable transaction if the supplier knows, or reasonably ought to have known, or recognised from the interaction between the supplier and the consumer that—

- (a) the good or service is materially unsuitable for the purpose to which the consumer intends to apply it, irrespective of whether the good or service is of good quality or is reasonably fit for its customary intended purpose; and
- (b) the consumer is unlikely to be able to make such a determination, having regard to the nature of the good or service, and the consumer's apparent age, education, experience and familiarity with such good or service.

(3) An unreasonable transaction is unenforceable against a consumer.

77.—(1) No supplier shall—

Unfair transactions.

- (a) offer to supply, supply, or enter into a consumer agreement to supply, any good or service under an unfair transaction; or
- (b) market any good or service, or negotiate, enter into or administer a consumer agreement for the supply of any good or service, in a manner that results in an unfair transaction, having regard to—
 - (i) the fair value of the good or service;

- (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 transaction is unfair if—

- (a) the transaction is excessively one-sided in favour of any person other than the consumer or other person to whom a good or service 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) An unfair transaction is unenforceable against a consumer.

Unconscionable
conduct.

78.—(1) No supplier shall, in the ordinary course of business with a consumer, engage in unconscionable conduct.

(2) “Unconscionable conduct” includes—

- (a) use of force, physical force, coercion, undue influence, pressure or harassment,

unfair tactics or any other similar conduct, in connection with—

- (i) the marketing of any good or service;
 - (ii) the supply of any good or service to a consumer;
 - (iii) the negotiation, conclusion, execution or enforcement of an agreement to supply any good or service to a consumer;
 - (iv) the demand for, or collection of, payment for any good or service by a consumer; or
 - (v) the recovery of any good from a consumer;
- (b) taking advantage of the fact that a potential consumer was substantially unable to protect his or her own interests because of disability, illiteracy, ignorance, inability to understand the language of an agreement, or any other similar factor.

(3) Without limiting the generality of what may be taken into account in determining whether conduct is unconscionable, there may be taken into account that the supplier or an employee of the supplier knows or ought to know that—

- (a) the consumer is not reasonably able to protect his or her interests due to disability, ignorance, illiteracy, inability to under-

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- stand the language of an agreement or similar factors;
- (b) the price grossly exceeds the price at which a similar good or service is 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.

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

Renegotiation of terms.

79.—(1) It is an unfair practice for a person to use his, her or its custody or control of a consumer's good to pressure the consumer into renegotiating the terms of a consumer agreement.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

80. No person shall, in the course of trade or commerce, advertise for supply, at a specified price, a good or service which the person— Bait advertising.

- (a) does not intend to offer for supply or provide in reasonable quantities; or
- (b) has no reasonable grounds for believing the person 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.

81. 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. To publish in good faith.

82.—(1) No person shall promote, operate or participate in a pyramid selling scheme. Pyramid scheme.

(2) For the purposes of this section, “pyramid selling scheme” means a scheme that—

- (a) provides for the supply of a good or service or both for reward;

- (b) to the participants of the scheme, constitutes primarily an opportunity to sell an investment opportunity rather than an opportunity to supply a good or service; and
- (c) is unfair, or is likely to be unfair, to many of the participants in that—
 - (i) the financial rewards of many of the participants are dependent on the recruitment of additional participants and not on investments; and
 - (ii) the number of additional participants that must be recruited to produce reasonable rewards to participants is either not attainable, or is not likely to be attained, by many of the participants.

(4) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

(5) This section is subject to legislation dealing with the pyramid selling of services which shall take precedence.

(6) The Office shall cooperate and share information with the Police Force and the Financial Intelligence Unit in the identification and investigation of pyramid selling activity and persons promoting, operating or participating in any pyramid selling scheme.

83.—(1) Where a consumer has entered into a consumer agreement and the supplier has engaged in an unfair practice, the consumer may rescind the consumer agreement. Rescission.

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

- (a) the return or restitution of the good or service 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.

(3) Section 83 (1) shall limit the entitlement of a consumer to any other remedy available in law.

84.—(1) Subject to subsection (2), for the purposes of a prosecution under this Part, it is a defence if the defendant proves— Defences for contravention of this Part.

- (a) that the contravention in respect of which the proceeding was instituted was due to—
 - (i) a mistake;
 - (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 the defendant's control; and

(b) that the defendant 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 7 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 defendant's possession.

(3) In proceedings under this section, in relation to a contravention of a provision of this Part committed by the publication of an advertisement, it is a defence if the defendant proves that—

(a) the defendant is a person whose business it is to publish or arrange for the publication of advertisements;

(b) the defendant received the advertisement for publication in the ordinary course of business; and

(c) the defendant did not know and had no reason to suspect that its publication would amount to a contravention of a provision of this Part.

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

(a) make to the consumer, restitution of any deposit made by the consumer;

(b) pay to the consumer, by way of damages, a sum representing the costs reasonably incurred by that consumer as a result of the offence; and

(c) pay to the Court such sum as represents the reasonable costs incurred in relation to the prosecution of the offence.

PART IX

UNFAIR TERMS

86.—(1) A term in a consumer agreement is unfair if, to Unfair terms. 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 an equivalent good or service; 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 good or service, or an equivalent good or service, 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 a good, whether the good was manufactured, processed or adapted to the special order of the consumer;
- (e) the nature of the good or service 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) If 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) make an order that the consumer agreement is voidable;
- (b) make an order that the unfair term would be construed in a manner that is consistent with this Act; or
- (c) make any other order as may be necessary to prevent the effect of the consumer agreement being unfair or unreasonable to any of the parties, notwithstanding the principle that effect must be given to the

contractual terms agreed upon by the parties.

(6) Without prejudice to the generality of subsection (1), a term in a consumer agreement which is set out in Schedule IV is unfair, if not individually negotiated.

Written terms to be plain and intelligible.

87.—(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 good or service supplied in exchange.

Excluding, restricting or modifying liability.

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

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

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

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

Indemnity
subject to rea-
sonableness.

90.—(1) Liability for the loss or damage of a good of a type ordinarily supplied for private use or consumption shall not be excluded or restricted by reference to any term or notice contained in or operating by reference to a guarantee of the good, if the loss or damage—

Loss and
damage from
defective goods
or negligence of
manufacturer.

- (a) arises from the good proving defective while in consumer use; or
 - (b) results from the negligence of a person concerned in the manufacture or distribution of the good.
- (2) For the purposes of this section—
- (a) a good is to be regarded as being in consumer use if a person is using the good or has control or possession of the good for use, otherwise than exclusively for the purposes of a business; and
 - (b) anything in writing is a guarantee if the writing contains or purports to contain a

promise or assurance, however worded or presented, that defects will be made good by complete or partial replacement, or by repair, monetary compensation or otherwise.

Effect of obligation.

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

Satisfying reasonableness where agreement terminated.

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

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

Reasonableness.

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

(2) Where a person seeks to restrict liability to a specified sum of money by reference to a notice of a term of the consumer agreement, and the question arises (under this

Act or any other enactment) as to whether the term or notice satisfies the requirement of reasonableness, regard shall be had to the factors specified in subsection (3).

(3) For the purposes of subsection (2), regard shall be had to—

- (a) the resources that the person could expect to be available to the person 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, herself or itself by insurance.

(4) 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 X

PRODUCT LIABILITY

94.—(1) In this Part—

Interpretation of
Part X.

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

“loss” 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”, in relation to a product, means—

- (a) the person who manufactured the product;
- (b) in the case of a substance which has been won or abstracted, the person who won or abstracted the substance;
- (c) in the case of a product which has not been won or abstracted but initial characteristics of which are attributable to an industrial or other process having been carried out, for example, in relation to agricultural produce, the person who carried out that process; and

“product” means any good, 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 the supplier’s supply of that product as the person supplying any of the other products so comprised.

Defect inferred. **95.**—(1) There is a defect in a product for the purposes of this Part if the safety of the product is not such as persons are generally entitled to expect.

(2) For the purposes of subsection (1), “safety” in relation to a product, includes—

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

(3) 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.

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

Liability for defects.

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

- (a) the producer of the product;
- (b) a person who, by putting his, her or its name on the product or using a trademark or other distinguishing mark in relation to the product, has held himself, herself or itself out to be the producer of the product; and
- (c) the supplier who imported the product into Grenada.

(2) Subject to this Part, where loss is suffered, wholly or partly, by a defect in a product, the supplier who supplies the product, whether to—

- (a) the consumer;
- (b) the producer of a product in which the product in question is comprised; or
- (c) 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 subsection (1) 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, to comply with the request under subparagraph (i).

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

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

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

Damage to property giving rise to liability.

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

tuting 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) (b) to have knowledge of a fact ascertainable by him or her only with the help of expert advice, unless he or she has failed to take all reasonable steps to obtain and, where appropriate, to act on that advice.

Prohibition on exclusions from liability.

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

Defences in civil proceedings.

99. In any proceedings before the Tribunal or the Court, under this Part in respect of a defect in a product, it is a defence to prove that—

- (a) the defect is attributable to compliance with a requirement imposed by or under any enactment;

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

with instructions given by the producer of the subsequent product.

Application to Crown.

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

PART XI

CONSUMER SAFETY

Interpretation of “consumer safety”.

101. In this Part, “consumer safety” means—

- (a) the reduction of risks to consumers in the provision of goods and 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.

102.—(1) A person shall not—

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

(2) For the purposes of this section, a good fails to meet the general safety requirement if it is not safe, having regard to all the circumstances, including—

- (a) the manner in which, and purposes for which, the good is being or would be marketed;
- (b) the packaging and presentation of the good;
- (c) the use of any mark in relation to the good;
- (d) any instructions or warnings which are given or would be given with respect to the keeping, use or consumption of the good;
- (e) any applicable safety standards or technical regulations; and
- (f) the existence of any means by which it would have been reasonable for the good to have been made safer.

(3) For the purposes of this section, a good 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 good; or
- (iii) any provision of any enactment imposing safety requirements with respect to the good 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 good, it is a defence for the supplier to prove that—

- (a) the supplier reasonably believed that the good would not be used or consumed in Grenada; or
- (b) the supplier supplied the good, offered or agreed to supply it, or exposed or possessed it for supply, to a consumer, neither knowing nor having reasonable ground for believing that the good failed to comply with the general safety requirements.

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

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

(6) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000, and in default of the payment of the fine, to imprisonment for a term not exceeding 5 years.

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

Information in regard to goods with inherent risks.

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

(2) The supplier shall adopt measures to enable the consumer to—

- (a) be informed of the risks which a good may pose; and
- (b) take appropriate action to avoid those risks by warning the consumers as to the 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, her or its activities, monitor the safety of such a good.

Agreement to exchange information.

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

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

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

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

Safety regulations.

105.—(1) The Minister may, in consultation with the Bureau of Standards, make Regulations for the purposes of consumer safety, including ensuring that—

- (a) goods to which this section applies are safe;

- (b) goods to which this section applies which are unsafe, or would be unsafe in the hands of persons of a particular description, are not made available to persons generally or, as the case may be, to persons of that description; and
 - (c) appropriate information is, and inappropriate information is not, provided in relation to goods to which this section applies.
- (2) Without prejudice to the generality of subsection (1), regulations under this section may—
- (a) contain provisions with respect to the performance, composition or contents, design, construction, finish or packaging of goods to which this section applies, and with respect to other matters relating to such goods;
 - (b) contain provisions with respect to the giving, refusal, alteration or cancellation of approvals of such goods, of descriptions of such goods or of standards for such goods;
 - (c) contain provisions with respect to the conditions that may be attached to any approval given under the regulations;
 - (d) contain provisions prescribing the fees to be paid on the giving or alteration of any approval under the regulations and on the making of an application for such an approval or alteration;

- (e) contain provisions with respect to appeals against refusals, alterations and cancellations of approval given under the regulations and against the conditions contained in such approvals;
- (f) contain provisions for requiring goods to which this section applies to be approved under the regulations or to conform to the requirements of the regulations or to descriptions or standards specified in or approved by or under the regulations;
- (g) contain provisions with respect to the testing or inspection of goods to which this section applies, including provision for determining the standards to be applied in carrying out any test or inspection;
- (h) contain provisions with respect to the ways of dealing with goods of which some or all do not satisfy a test required by or under the regulations or a standard connected with a procedure so required;
- (i) contain provisions requiring a mark, warning or instruction or any other information relating to goods to be put on or to accompany the goods or to be used or provided in some other manner in relation to the goods, and for securing that inappropriate information is not given in relation to goods either by means of misleading marks or otherwise;

- (j) contain provisions prohibiting persons from supplying, or from offering to supply, agreeing to supply, exposing for supply or possessing for supply, goods to which this section applies and component parts and raw materials for such goods;
 - (k) contain provisions requiring information to be given to any such person as may be determined by or under the regulations for the purpose of enabling the person to exercise any function conferred on the person by the regulations;
 - (l) contain different provisions for different cases;
 - (m) provide for exemptions from any provisions of the Regulations; and
 - (n) contain such supplemental, consequential and transitional provisions as the Minister considers appropriate.
- (3) This section applies to all goods other than—
- (a) aircraft;
 - (b) growing crops and things comprised in land by virtue of being attached to it;
 - (c) water, food and fertilisers; and
 - (d) drugs within the meaning of the Food and Drugs Act, Chapter 110.

Contravention of safety regulations.

106.—(1) Where regulations under section 105—

- (a) prohibit a person from supplying or offering or agreeing to supply any good or from exposing or possessing any goods for supply, the person commits an offence if the person contravenes the prohibition; or
- (b) require a person who makes or processes any good in the course of carrying on a business—
 - (i) to carry out a particular test or use a particular procedure in connection with the making or processing of the good with a view to ascertaining whether the good satisfies any requirements of such regulations; or
 - (ii) to deal or not to deal in a particular way with a quantity of the good of which the whole or part does not satisfy such a test or does not satisfy standards connected with such a procedure,

the person commits an offence if the person does not comply with the requirement.

(2) A person who contravenes a provision of regulations under section 105 which prohibits or require the provision, by means of a mark or otherwise, of information of a particular kind in relation to a good, commits an offence.

(3) Where regulations under section 105 require any person to give information to another for the purpose

of enabling that other to exercise any function, that person commits an offence if—

- (a) the person fails without reasonable cause to comply with the requirement; or
- (b) in giving the information which is required—
 - (i) the person makes any statement which the person knows is false in a material particular; or
 - (ii) the person recklessly makes any statement which is false in a material particular.

(4) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding \$5,000, and in default of the payment of the fine, to imprisonment for 2 years.

PART XII

RECALL OF GOODS

107.—(1) Subject to sections 110 and 111, where the Minister, acting on the advice of the Bureau of Standards, is satisfied that—

Compulsory
recall of goods.

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

the Minister may, by Notice in writing published in the *Gazette* and not less than two newspapers in general circulation in Grenada, mandate actions set out in subsection (2).

(2) Without limiting the liability of subsection (1), the supplier may be required to do any of the following—

- (a) take action within the period specified in the notice to recall the good; and
- (b) disclose to the public, or to a class of persons specified in the notice, in the manner and within the period specified in the notice, any of the following—
 - (i) the nature of a defect in, or a dangerous characteristic of, the good specified in the notice;
 - (ii) the circumstances, being circumstances specified in the notice, in which the use of the good is dangerous; and
 - (iii) availability of a refund to a person to whom the good was supplied, whether by the supplier or by another person, the price of the good, within the period specified in the notice.

(3) The Minister may, by Notice in writing published in the *Gazette* and not less than two newspapers of general circulation in Grenada, give directions as to the manner in which the supplier is to carry out a recall of a good required under subsection (1).

(4) Where a supplier under subsection (1) undertakes to—

- (a) repair a good, the supplier shall cause the good to be repaired so that every defect in the good specified in the notice under subsection (1) is remedied;
- (b) replace a good, the supplier shall replace the good with a like good which, if a defect in, or a dangerous characteristic of, the first-mentioned good was specified in the notice under subsection (1), do not have that defect or characteristic;
- (c) repair or replace a good, the cost of the repair or replacement, including any necessary transportation costs, shall be borne by the supplier.

(5) Where a good is recalled pursuant to a requirement made by the Minister under subsection (1), a supplier who has supplied the recalled good shall, as soon as practicable after the supply of the good, give a notice in writing to the other person—

- (a) stating that the good is subject to recall; and
- (b) if the good contains a defect or have a dangerous characteristic, setting out the nature of the defect or characteristic.

(6) Where a supplier is required under subsection (5) to give a notice in writing to another person, the supplier

shall, no later than 10 business days after giving that notice, provide the Minister with a copy of that notice.

(7) A person who contravenes subsection (6) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 and in the case of a continuing offence to pay a fine of \$100 per day in respect of which the contravention continues after conviction.

Compliance with goods recall notice.

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

(a) shall comply with the requirements of the notice; and

(b) shall not, in trade or commerce—

(i) where the notice specifies a defect in, or a dangerous characteristic of, the good, supply a good of the kind to which the notice relates which have that defect or characteristic; and

(ii) in any other case, supply a good of the kind to which the notice relates.

Loss or damage caused by contravention of goods recall notice.

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

110.—(1) Subject to section 111, where the Minister proposes to publish a Notice under section 107 (1), the Minister shall by notice in writing published in the *Gazette* and not less than two newspapers in general circulation in Grenada, invite any supplier who supplies or proposes to supply a good of the kind referred to in the draft to notify the Minister whether that supplier wishes the Minister to hold a conference in relation to the proposed notice. Conference to be held in certain cases.

(2) A notice published under subsection (1) shall set out a draft of the notice the Minister proposes to publish under section 107 (1) and a summary of the reasons for the proposed notice.

(3) Where the Minister is not requested in accordance with subsection (1) to hold a conference, the Minister shall proceed to take such action under section 107 as he or she thinks fit.

(4) Where the Minister is required pursuant to subsection (1) to hold a conference, the Minister shall hold the conference no later than 14 business days after receipt of the notification under subsection (1), and shall give notice of the day, time and place for the conference to each person concerned.

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

- (a) the Minister, or a person nominated in writing by the Minister, shall be present;
- (b) each supplier who notified the Minister may be present or represented;
- (c) any other person whose presence at the conference is considered by the Minister

to be appropriate may be present or represented; and

- (d) the procedure to be followed shall be as determined by the Minister.

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

(7) The Minister shall, as far as is practicable, ensure that each person who, in accordance with subsection (5), is entitled to be present is given a reasonable opportunity at the conference to—

- (a) present his, her or its case; and
- (b) in particular, inspect any documents which the Minister proposes to consider for the purpose of making a decision after the conclusion of the conference.

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

Exception in case of danger to public.

111.—(1) Where it appears to the Minister that a good of a particular kind create an imminent risk of death, serious illness or serious injury, the Minister, without regard to any action of a supplier of the good shall, without reasonable delay, publish in the *Gazette* and in not less than two newspapers in general circulation in Grenada, a Notice under section 107 (1) in relation to the good.

(2) Where the Minister publishes a notice pursuant to subsection (1)—

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

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

Power to obtain information, documents and evidence.

- (a) to furnish to the Minister or authorised officer, and within such reasonable time as is specified in the notice, any such information;
- (b) to produce to the Minister or authorised officer, in accordance with such reasonable requirements as are specified in the notice, any such documents; or

- (c) in person or by his, her or its representative to appear before the Minister or authorised officer at such reasonable time and place as are specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.

(2) Subject to subsection (4), where an authorised officer has reason to believe that a good is likely to cause injury to a consumer, the authorised officer may, accompanied by Police Officers, enter any premises in or from which he or she has reason to believe that a supplier supplies the good, and for the purposes of ascertaining whether a good of that kind, may—

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

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

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

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

(5) For the purposes of this section and section 113 an “authorised officer” means the Director, or an officer authorised by the Minister for the purposes of this section, and in no case shall the Director delegate his or her powers as an authorised officer.

113.—(1) Where an authorised officer has reason to believe that a good is likely to cause injury to a consumer, the authorised officer may make to a magistrate an application to exercise powers under section 112 (2), and the application shall be accompanied by an affidavit setting out the grounds on which the issue of the warrant is being sought.

Application for
warrant.

(2) A magistrate may issue a warrant authorising the authorised officer named in the warrant, with such assistance as the officer thinks necessary and if necessary by force, to—

- (a) enter the premises specified in the warrant;
and
- (b) exercise the powers of an authorised officer under section 112 (2) in relation to those premises,

if the magistrate is satisfied that there are reasonable grounds for issuing the warrant, having been given by the applicant or some other person, such further information, if any as the magistrate may require concerning the grounds on which the issue of the warrant is being sought.

(3) A warrant issued under subsection (2) shall—

- (a) specify the purpose for which the warrant is issued;
- (b) state whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;
- (c) include a description of the good for which inspection or sampling is authorised; and
- (d) specify the day on which the powers under the warrant shall expire, which in no case shall be a day later than 7 business days after the day on which the warrant is issued.

(4) An authorised officer or an officer assisting the authorised officer shall, before entering the premises under a warrant under subsection (2)–

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

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

- (a) the safety of any individual, including the authorised officer or the other officer assisting the authorised officer; or

- (b) that the effective execution of the warrant is not frustrated.

(6) Where an authorised officer takes samples under section 112 (1) (b), the Office shall pay a reasonable price for the good sampled.

(7) A person who—

- (a) refuses or fails to comply with a notice under this section to the extent that the person is capable of complying with the notice; or
- (b) in purported compliance with such a notice furnishes information or gives evidence that, to the person's knowledge, is false or misleading in a material particular,

commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

(8) A person who refuses or fails to provide an authorised officer acting in accordance with subsection (2) with all reasonable facilities and assistance for the effective exercise of the authorised officer's powers under that subsection commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

(9) Any information furnished or evidence given by a person under this section, any document produced by a person under this section, and any information, evidence or document obtained under this section, is inadmissible in evidence against the person—

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

Voluntary recall of goods.

114.—(1) Where a supplier voluntarily takes action to recall a good because the good is likely to cause injury, loss or damage to any person, the supplier shall, within 2 business days after taking that action, give a notice in writing to the Minister—

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

(2) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

Suppliers to be given notice in certain cases.

115. Where the Minister publishes a Notice under section 110 (1) or pursuant to section 111 (1), he or she shall—

- (a) no later than 2 business days after the publication of that notice; or
- (b) if it is not practicable to do so within that period, as soon as practicable after the end of that period,

cause a copy of the notice to be given to each person who, to the knowledge of the Minister, supplies a good of the kind to which the notice relates.

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

Certain actions not to affect insurance contracts.

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

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

PART XIII

DISTANCE SELLING

117. In this Part—

Interpretation of Part XIII.

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

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

Agreement to
exchange infor-
mation.

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

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

(3) Where there are amendments to an agreement referred to in subsection (1), the Minister may amend an Order published under subsection (1) accordingly.

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

Application.

119. This Part shall apply to distance-selling contracts, but does not apply to—

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

Prior information
requirements.

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

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

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

(3) In a distance-selling contract for the sale of a good, the consumer is to receive confirmation of the information in subsection (1) in a durable medium available and accessible by the consumer.

Acceptance or decline of internet consumer agreement.

121.—(1) A supplier shall provide the consumer with an express authority to accept or decline a consumer agreement entered into through an electronic transaction, and to correct errors immediately before entering into the consumer agreement.

(2) For the purposes of this section, “electronic transaction” shall be construed in accordance with the Electronic Transactions Act, 2013.

Payment by credit card.

122. A consumer may request cancellation of a payment where fraudulent use is made of his or her payment card, and the consumer is to be re-credited with the sums paid.

Performance.

123.—(1) Unless the parties have agreed otherwise, the supplier shall execute a consumer’s purchase order no later than 30 calendar days after the day on which the consumer forwarded his or her purchase order to the supplier.

(2) Where a supplier is unable to perform the contract because the good or service is not available, the supplier shall inform the consumer of the situation as soon as practicable and refund any sums received within 30 calendar days of informing the consumer.

Burden of proof.

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

PART XIV**MISCELLANEOUS**

125.—(1) A provision or term of a consumer agreement is void if—

Void provisions of consumer agreements.

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

- (ii) the consumer has received any good or service, or a document that is required by this Act to be delivered to the consumer, that has not in fact been delivered or rendered to the consumer;
- (d) it expresses an agreement by the consumer to forfeit any money to the supplier if the consumer—
 - (i) exercises the right of rescission under section 83;
 - (ii) fails to comply with a provision of the agreement before the consumer receives any good or service pursuant to the agreement;
- (e) it expresses, on behalf of the consumer—
 - (i) an authorisation for any person acting on behalf of the supplier to enter any premises for the purposes of taking possession of a good to which the agreement relates;
 - (ii) an undertaking to sign in advance any documentation relating to enforcement of the agreement, whether such documentation is complete or incomplete at the time it is signed; or
 - (iii) consent to a pre-determined value of costs relating to enforcement of the agreement except to the extent that is consistent with this Act; or

- (f) it expresses an agreement by the consumer to—
 - (i) deposit with the supplier, or with any other person at the direction of the supplier, an identity document, credit or debit card, bank account or automatic teller machine access card, or any similar document or device; or
 - (ii) provide a personal identification code or number to be used to access an account.

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

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

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

(3) A supplier shall not—

- (a) directly or indirectly require or induce a consumer to enter into a supplementary agreement, or sign any document, that contains a provision that would be void if it were included in a primary agreement;
- (b) request or demand a consumer to give the supplier possession of an instrument

referred to in subsection (1) (f) (i) other than for the purpose of identification, or to make a copy of the instrument;

- (c) request or demand a consumer to reveal any personal identification code or number referred to in subsection (1) (f) (ii); or
- (d) direct any other person to do anything referred to in this subsection on behalf or for the benefit of the supplier.

(4) A supplier who contravenes any provision of paragraph (b) or (c) of subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term of 2 years.

Goods or services
acquired by instal-
ment.

126.—(1) This section applies to any case where a supplier contracts to—

- (a) provide a consumer with a good or service over an extended period of time; and
- (b) receive from the consumer periodic payments for the good or service.

(2) The supplier shall—

- (a) present a claim for the exact amount of, or the exact percentage of, the total value of the good or service actually received to date by the consumer; and
- (b) upon presentation of such claim, be entitled to terminate the consumer agreement if payment in full is not made—

- (i) within a reasonable time after the presentation of the claim; or
- (ii) by a pre-determined payment date which forms part of the consumer agreement.

(3) In the event that the supplier is unable to present a claim in accordance with subsection (2), the supplier may—

- (a) present the consumer with an estimated claim; and
- (b) if the estimated claim is reasonably accurate, request that the consumer pay the estimated amount on the following conditions—
 - (i) the amount paid shall be credited to the amount owing at the next time that an accurate claim is presented; and
 - (ii) the supplier shall not, solely on the ground that the consumer has not paid the estimated amount, terminate the consumer agreement or impose any penalty contained in the event of breach by the consumer.

(4) A supplier who presents an estimated claim for a good or service shall present an accurate claim no later than 90 calendar days after presentation of the estimated claim.

(5) Subsection (4) shall apply notwithstanding that the consumer of the good or service does not pay the estimated amount claimed or pays it in full or in part.

Apportionment
of payments
where service
not received.

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

(2) A supplier shall—

- (a) be liable to make a full refund to the consumer, if for reasons not attributable to the consumer, any benefit under the consumer agreement is not received by the consumer; or
- (b) where the benefit is received only in part—
 - (i) refund a proportionate part of the fees collected; or
 - (ii) be entitled to receive a similar proportionate part of any unpaid fees.

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

(4) A supplier who offers a service to the consumer shall—

- (a) stipulate the extent of the benefits to be attached to the service; and
- (b) provide the consumer with an appropriate warranty that—
 - (i) the benefit shall be received for a reasonable time, subject to the fulfilment of such conditions attached by

the supplier as may be reasonable to the consumer's receipt of that benefit; and

- (ii) if the benefit is not so received, the supplier shall again provide the service free of cost to the consumer.

128.—(1) A supplier commits an offence if, in taking action pursuant to the powers contained in a bill of sale of moveable or personal property pledged by a consumer in the event of default in repayment of a loan, the supplier—

Supplier purporting to act on bill of sale.

- (a) employs any person other than an authorised person under the bill of sale to recover any or all of the property pledged in the bill of sale in the event of default in repayment of a loan; or
- (b) carries out an act of seizure although the consumer's indebtedness to the supplier—
 - (i) has already been discharged; or
 - (ii) is currently being serviced in accordance with existing contractual provisions.

(2) A supplier who commits an offence under subsection (1) is, upon summary conviction, liable to a fine not exceeding \$10,000, and in default of payment to imprisonment for a term not exceeding 2 years.

(3) A person, who wrongfully seizes the property of a consumer, notwithstanding any other charge that may be brought against the person, commits an offence under this Act and is liable on summary conviction to a fine not

exceeding \$10,000, and in default of payment to imprisonment for a term not exceeding 2 years.

(4) The Court may order a person convicted of an offence under subsection (2) or (3) to pay to the consumer an amount equal to 10 times the market value of the property seized plus an amount of \$200 per day for every day that the consumer has been deprived of the use and enjoyment of the property.

(5) Any person who—

- (a) threatens to seize a consumer's property under the powers contained in a bill of sale notwithstanding the consumer's indebtedness to the vendor has already been discharged; or
- (b) recklessly damages a consumer's property while exercising distraint,

commits an offence and is liable, upon summary conviction, to a fine not exceeding \$10,000, and in default of payment to imprisonment for a term not exceeding 5 years.

(6) The Court may order a supplier convicted of an offence to compensate the consumer for all expenses reasonably incurred as a result of the breach and the legal action.

Trade coupons
and similar pro-
motions.

129.—(1) No person shall offer any prize with the intention of not providing it, or providing it other than as offered.

(2) A document setting out an offer referred to in subsection (1) shall fully and clearly state—

- (a) the nature of the prize being offered;

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

(3) A person who contravenes subsection (1) commits an offence and is liable, upon summary conviction, to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 5 years.

130.—(1) No person shall, directly or indirectly, inform a consumer that the consumer— Promotional competitions.

- (a) has won a competition, if—
 - (i) no competition has in fact been conducted;
 - (ii) the consumer has not expressly or impliedly entered into the competition, or has not in fact won the competition;
 - (iii) the prize for that competition is subject to a previously undisclosed condition; or
 - (iv) the consumer is required to offer further consideration for the prize, after the results of the competition have been announced; or

- (b) has a right to a prize or benefit—
 - (i) that the consumer has not solicited or to which the consumer does not in fact have a right;
 - (ii) if the prize or benefit was generally available or offered to all similar prospective consumers or class of prospective consumers; or
 - (iii) if, before becoming eligible to receive the prize or benefit, the consumer is required to offer further consideration for the prize or to purchase any particular good or service.
- (2) The promoter of a promotional competition shall—
 - (a) not require any consideration to be paid by or on behalf of any participant in the promotional competition;
 - (b) file a copy of the competition rules in the prescribed manner and form with the Office no later than the date on which consumers are first able to participate in the competition;
 - (c) make the competition rules available on request and without cost to any participant;
 - (d) comply with any obligations under the Gaming Act, 2016; and

- (e) not award a prize in a competition to—
 - (i) a winner of the competition if it is absolutely unlawful to supply the good or service to the prize winner, but this subparagraph does not preclude a prize to a person merely because that person's right to possess or use the prize is or may be restricted or regulated by, or otherwise subject to, any public regulation; or
 - (ii) any person who is a director, member, partner, employee or agent of, or consultant to the promoter, or any other person who directly or indirectly controls, or is controlled by, the promoter, or to a supplier of a good or service in connection with the competition.

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

- (a) the participant is required to pay any consideration, directly or indirectly for the opportunity to participate in the promotional competition, for access to the competition, or for any device by which a person may participate in the competition; or
- (b) participation in the promotional competition requires the purchase of any good or

service, and the price charged for the good or service is more than the price, excluding discounts, ordinarily charged for the good or service or a similar good or service without the opportunity of taking part in a promotional competition.

(4) An offer to participate in a promotional competition shall be in writing, and must fully and clearly state—

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

(5) The requirements of subsection (4) may be satisfied—

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

(6) The right to participate in a promotional competition is fully vested in a person immediately upon—

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

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

(8) A right contemplated in subsection (6) or (7) shall not be—

- (a) made subject to any further condition; or
- (b) contingent upon a consumer–
 - (i) paying any consideration to the promoter for the prize; or
 - (ii) satisfying any further requirements than those stipulated in terms of subsection (3).

(9) The Minister may, by Regulations, prescribe–

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

(10) For the purposes of this section–

“participant” means a person who expressly or impliedly enters into a promotional competition;

“promoter” means a person who directly or indirectly promotes, sponsors, organises or conducts a

promotional competition, or for whose benefit such a competition is promoted, sponsored, organised or conducted.

131.—(1) A supplier shall not accept payment for any good or service if the supplier— Over-selling and over-booking.

- (a) has no reasonable basis to assert an intention to supply the good or provide the service; or
- (b) intends to supply a good or service that is materially different from the good or service in respect of which the payment or consideration was accepted.

(2) If a supplier makes a commitment or accepts a reservation to supply a good or service on a specified date or at a specified time, and on the date and at the time contemplated in the commitment or reservation, fails because of insufficient stock or capacity to supply that good or service, or a similar or comparable good or service of the same or superior quality, class or nature, the supplier shall—

- (a) refund to the consumer any amount paid in respect of that commitment or reservation, together with interest at the prescribed rate from the date on which the amount was paid until the date of re-imburement; and
- (b) compensate the consumer for consequential damages in an amount equal to the total of any economic loss, and loss of anticipated use or enjoyment, suffered by the consumer as a consequence of the supplier's breach of the contract.

Lay-aways.

132.—(1) If a supplier agrees to sell a particular good to a consumer, to accept payment for the good in periodic instalments, and to hold the good until the consumer has paid the full price for the good—

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

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

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

(3) If a consumer referred to in subsection (1)—

- (a) terminates or rescinds the agreement before fully paying for the good, the supplier may charge a cancellation fee before refunding the amount paid by the consumer towards the full price; or
- (b) fails to complete the payment for the good no later than 60 business days after the anticipated date of completion, or within such other agreed period which shall not be less than 60 business days, the supplier may—
 - (i) regard the consumer as having rescinded the agreement; and
 - (ii) charge a cancellation fee in respect of the good before refunding the amount paid by the consumer towards the full price.

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

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

133.—(1) Where a consumer has exercised, asserted or sought to uphold any right set out in this Act or in a consumer agreement with a supplier, the supplier commits an offence and is liable on summary conviction to a fine not exceeding \$5,000, if, in response to the action of the consumer, the supplier—

Protection of
consumer rights.

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

(2) If a consumer agreement or any provision of the agreement is declared to be unlawful by virtue of this Act, the supplier shall not, in response to that decision—

- (a) alter the terms of any other consumer agreement with the consumer to the impugned agreement, except to the extent necessary to correct a similarly unlawful provision; or
- (b) take any action to accelerate, enforce, suspend or terminate another consumer agreement with the consumer to the impugned agreement.

Written consumer agreements.

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

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

(3) The Minister may prescribe—

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

(4) Notwithstanding the requirements of an agreement subject to this section—

- (a) an agreement between a supplier and consumer shall satisfy the requirements under sections 49 and 50;
- (b) a change to a document recording a written agreement, or an amended agreement, after it is signed by the consumer, if applicable, or delivered to the consumer, is void unless—
 - (i) the change reduces the consumer's obligations or liabilities under the agreement; or
 - (ii) after the change is made, the consumer signs or initials opposite the change in the margin of the document; and

- (c) if the parties to an agreement agree to amend any term, the supplier shall deliver to the consumer a document that reflects the amendment to the agreement, no later than 20 business days after the date of the parties' agreement to the amendment.

Rights reserved.

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

No waiver of substantive and procedural rights.

136.—(1) The substantive and procedural rights given under this Act apply notwithstanding any agreement or waiver to the contrary.

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

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

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

137.—(1) The Office may, on its own initiative or upon a request of any person, report to the Attorney-General information in respect of any contravention or breach of the provisions of this Act. Institution of proceedings under this Act.

(2) Where the Office is of the opinion that a supplier is engaged in conduct that does not necessitate instituting any proceedings under this Act, the Office may demand a written undertaking from the supplier to the effect that the supplier shall desist from that kind of conduct.

(3) A written undertaking given by a supplier under subsection (2) is enforceable in a Court.

(4) Nothing in this section shall be deemed to limit the private right of action available to an individual to enforce his rights under the provisions of this Act.

138. Unless, otherwise provided in this Act, a person who contravenes any provision of this Act or omits or fails to comply with any regulations, or an order made by the Tribunal, under this Act, commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding 2 years or both. General penalty provision.

139.—(1) Where, in any proceedings under this Act in respect of any conduct engaged in by a body corporate, it is necessary to establish the intention of the body corporate, it is sufficient to show that a director, employee or agent of the body corporate by whom the conduct was engaged in had that intention. Establishing intention of a body corporate.

(2) Any conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate or by any other person at the direction or with

the consent or agreement, whether express or implied, of a director, employee or agent of the body corporate shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.

Regulations.

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

(2) Without limiting the generality of subsection (1), the Minister may make Regulations—

- (a) respecting the regulation of the distribution, purchase or sale of goods or any class or description of goods;
- (b) providing for the recall of certain goods and services that are dangerous or hazardous to safety and for the refund or remission by the supplier of the purchase price paid;
- (c) requiring persons carrying on or employed in connection with any trade or business to furnish information concerning all or any of the elements of the cost or sale price of goods or any class or description of goods bought or sold in such trade or business, whether by wholesale or retail;
- (d) requiring the provision and maintenance, at places at which goods are offered for sale by retail, of means by which consumers of any goods are offered for sale by retail may ascertain measurement of the goods;

- (e) prescribing all things required to be prescribed; and
- (f) respecting such procedure relating to the conduct of the meetings of the Office, its sittings and other matters as may be required to be prescribed.

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

SCHEDULE I

(Section 9)

CONSTITUTION OF CONSUMER AFFAIRS ADVISORY BODY

1. Composition of Consumer Affairs Advisory Body. (1) The Consumer Affairs Advisory Body shall consist of not less than seven and not more than eleven members appointed by the Minister in accordance with subparagraph (2).

(2) The Minister shall select members of the Advisory Body with relevant knowledge or experience including—

- (a) the Director of Consumer Affairs;
- (b) the Director of Trade or his or her nominee;
- (c) the Attorney General or his or her nominee;
- (d) a representative of an organisation purporting to provide services for the protection of consumers;
- (e) a representative of the Grenada Chamber of Industry and Commerce;
- (f) the Director of the Grenada Bureau of Standards or his or her nominee;

(g) a representative of Trade Union Council.

2. Chairperson and Deputy Chairperson. The Minister shall appoint a Chairperson and a Deputy Chairperson from among the members.

3. Tenure of office. Each member of the Tribunal shall be—

- (a) appointed for a period not exceeding three years; and
- (b) eligible for reappointment.

4. Revocation of appointment. The Minister may, at any time, revoke the appointment of the Chairperson or any other member of the Advisory Body if the member—

- (a) becomes incapable, by reason of mental or physical capacity, of carrying out his or her duties;
- (b) is convicted of an offence under this Act or under the Criminal Code;
- (c) is guilty of misconduct;
- (d) is absent, except on providing reasons to the Advisory Body, from all meetings of the body held during two consecutive months or during any three months in any period of twelve months.

5. Resignation. (1) Any member of the Advisory Body, other than the Chairperson, may at any time resign his or her office by instrument in writing addressed to the Minister and transmitted through the Chairperson, and from the date of the receipt by the Minister of the instrument such member shall cease to be a member of the Tribunal.

(2) The Chairperson may at any time resign his or her office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of the receipt of such instrument by the Minister.

6. Meetings and procedures. (1) The Advisory Body shall meet at least once in each quarter and at such other times as the Chairperson determines is necessary for the efficient discharge of its functions.

(2) The Advisory Body shall determine its own procedure and may make rules governing such procedure as are considered necessary.

(3) Any member of the Advisory Body who has any interest, directly or indirectly, in any matter before the body—

- (a) shall disclose the nature of the interest to the Advisory Body; and
- (b) shall not take part in any deliberations or decisions of the Advisory Body with respect to that matter.

(4) A disclosure under this section shall be recorded in the minutes.

7. Appointment of sub-committees, working groups. (1) The Advisory Body may appoint sub-committees for the purpose of advising it on any specialised area of consumer affairs.

(2) Persons may be appointed to such sub-committee mentioned in subsection (1) for a period not exceeding two years but any person so appointed shall be eligible for reappointment.

SCHEDULE II

(Section 11)

CONSTITUTION OF CONSUMER AFFAIRS TRIBUNAL

1. Appointment of members. (1) The Consumer Affairs Tribunal shall consist of not less than three and not more than seven members appointed by the Governor-General in accordance with subparagraph (2).

(2) The Governor-General shall select members of the Tribunal from among persons who are suitably qualified, knowledgeable and experienced in the matters of—

- (a) consumer affairs;
- (b) law;
- (c) economics;
- (d) business;
- (e) accounting; or
- (f) information technology.

2. Chairperson and Deputy Chairperson. The Governor-General shall appoint a Chairperson and a Deputy Chairperson from among the members of the Tribunal and who shall possess the qualifications to hold office as a Magistrate.

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

4. Tenure of office. Each member of the Tribunal shall be—

- (a) appointed for a period not exceeding three years; and
- (b) eligible for reappointment.

5. Revocation of appointment. The Governor-General may, at any time, revoke the appointment of the Chairperson or any other member of the Tribunal if the member—

- (a) becomes incapable, by reason of mental or physical capacity, of carrying out his or her duties;
- (b) is convicted of an offence under this Act or under the Criminal Code;
- (c) is guilty of misconduct;
- (d) fails to comply with subsection (14).

6. Resignation. (1) Any member of the Tribunal, other than the Chairperson, may at any time resign his or her office by instrument in writing addressed to the Governor-General and transmitted through the Chairperson, and from the date of the receipt by the Governor-General of the instrument such member shall cease to be a member of the Tribunal.

(2) The Chairperson may at any time resign his or her office by instrument in writing addressed to the Governor-General and such resignation shall take effect as from the date of the receipt of such instrument by the Governor-General.

7. Temporary appointment. (1) Where a member of the Tribunal, other than the Chairperson, is unable to conduct proceedings to completion, the Governor-General may appoint another person to act temporarily for the member.

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

8. Filing of vacancy. If any vacancy occurs in the membership of the Tribunal such vacancy shall be filled by the appointment of another member in the manner in which the previous member was appointed and the member so appointed shall, subject to the provisions of this Schedule, hold office for the remainder of the period for which the previous member was appointed.

9. Constitution of Tribunal to perform functions. (1) Subject to subparagraphs (2) and (3), the chairperson shall preside over every sitting of the Tribunal.

(2) Where the chairperson is absent or unable to preside, the deputy chairperson shall preside.

(3) Where the chairperson and the deputy chairperson are absent or unable to preside, the other members of the Tribunal may elect another member to act temporarily as chairperson of the sitting of the Tribunal.

(4) The decisions of the Tribunal shall be by a majority votes of the members and, in addition to an original vote, the chairperson or other person presiding shall have a casting vote in any case in which the voting is equal.

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

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

11. Procedure. (1) The Tribunal shall determine its own proceedings and shall sit at such times as may be necessary or expedient for the transaction of business and for the consideration of matters under inquiry and such sittings shall be held at such places and times and on such days as the Tribunal may determine.

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

12. Remuneration of members. There shall be paid to the members of the Tribunal such remuneration, whether by way of honorarium, salary or fees and such allowances as the Governor-General may determine.

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

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

15. Disclosure of interest. Any member of the Tribunal who has an interest, directly or indirectly in any matter brought before the Tribunal—

- (a) shall disclose the nature of the interest to the Tribunal; and
- (b) shall not take part in any deliberations or decisions of the Tribunal with respect to that matter.

SCHEDULE III

(Section 37)

SUMMONS TO WITNESS

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

You are hereby summoned to appear before the Consumer Affairs Office at (place) upon the day of _____ at _____ o'clock and to give evidence respecting (state the matter). (If the person summoned is to produce any documents, add):

And you are required to bring with you (specify the papers, books, records and documents required).

Therefore fail not at your peril.

Given under the hand of (Chairperson or his or her delegated member of the Office) this _____ day of _____ 20__.

SCHEDULE IV

(Section 86)

TERMS WHICH ARE UNFAIR IF NOT INDIVIDUALLY NEGOTIATED

1. Unfair terms. A term of a consumer agreement which has the object or effect of—

- (a) excluding or limiting the legal liability of a supplier in the event of the death of the consumer or personal injury to the latter resulting from an act or omission of that supplier;
- (b) inappropriately excluding or limiting the legal rights of the consumer *vis-a-vis* the supplier or another party in the event of total or partial non-performance or inadequate performance by the supplier of any of the contractual obligations of the supplier, including the option of off-setting a debt owed to the supplier against any claim which the consumer may have against the supplier;
- (c) making an agreement binding on the consumer whereas provision of services by the supplier is subject to a condition whose realisation depends on his or her own will alone;
- (d) permitting the supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the supplier where the latter is the party cancelling the contract;
- (e) requiring the consumer to pay a disproportionately high sum in compensation if he or she fails to fulfil his or her obligation;
- (f) authorising the supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the supplier to retain the sums paid for services not yet supplied by the supplier where it is the supplier who dissolves the contract;
- (g) enabling the supplier to terminate a contract of indeterminate duration without reasonable notice except where there are good grounds for doing so;
- (h) automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express his or her desire not to extend the contract is unreasonably early;
- (i) irrevocably binding the consumer to terms with which he or she had no real opportunity of becoming acquainted before the conclusion of the agreement;

- (j) enabling the supplier to unilaterally alter the terms of the agreement without a valid reason which is specified in the agreement;
- (k) enabling the supplier to unilaterally alter without a valid reason, any characteristics of the product or service to be provided;
- (l) providing for the price of a good to be determined at the time of delivery or allowing a supplier to increase their price without in both cases giving the consumer the corresponding right to cancel the agreement if the final price is too high in relation to the price agreed when the agreement was concluded;
- (m) giving the supplier the right to determine whether the good or service supplied by the supplier are in conformity with the agreement;
- (n) giving the supplier the exclusive right to interpret any term of the agreement;
- (o) limiting the supplier's obligation to respect commitments undertaken by the supplier's agents, or making the supplier's commitments subject to compliance with a particular formality;
- (p) obliging the consumer to fulfil all his or her obligations where the supplier does not perform his, her or its obligations;
- (q) giving the supplier the possibility of transferring his rights and obligations under the agreement, where this may serve to reduce the guarantees for the consumer, without the latter's consent;
- (r) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by—
 - (i) requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions;
 - (ii) unduly restricting the evidence available to him or her; or
 - (iii) imposing on him or her a burden of proof which, according to the applicable law, should lie with another party to the agreement.

2. Exception to paragraph 1 (g). Paragraph 1 (g) does not apply to a term by which a supplier of financial services reserves the right to terminate unilaterally a contract of

indeterminate duration without notice where there is a valid reason, provided that the supplier is required to inform the other party or parties immediately.

3. Exception to paragraph 1 (j). (1) Paragraph 1 (j) does not apply to a term under which a supplier of financial services reserves the right to alter the rate of interest payable by the consumer or due to the latter, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties at the earliest opportunity and that the latter are free to dissolve the contract immediately.

(2) Paragraph 1 (j) does not apply to a term under which a supplier reserves the right to alter unilaterally the conditions of a contract of indeterminate duration, provided that the supplier is required to inform the consumer with reasonable notice and that the consumer is free to dissolve the contract.

4. Exceptions to paragraph 1 (g), (j) and (l). Paragraphs (g), (j) and (l) of section 1 do not apply to—

- (a) transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the supplier does not control; or
- (b) agreements for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency.

5. Exception to paragraph 1 (l). Paragraph 1 (l) does not apply to price indexation clauses, where lawful, provided that the method by which prices vary is explicitly described.

Passed by the House of Representatives this 15th day of November, 2017.

WILLAN A. THOMPSON
Clerk to the House of Representatives.

Passed by the Senate this 24th day of November, 2017.

WILLAN A. THOMPSON

Clerk to the Senate.

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