



# Competition and Consumer Act 2010

## Act No. 51 of 1974 as amended

This compilation was prepared on 20 April 2011  
taking into account amendments up to Act No. 23 of 2011

**Volume 1** includes: Table of Contents  
Sections 1 – 119

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

**Volume 2** includes: Table of Contents  
Sections 10.01 – 178

**Volume 3** includes: Table of Contents  
Schedules 1 and 2  
Note 1  
Table of Acts  
Act Notes  
Table of Amendments  
Notes 2 – 4  
Table A

Prepared by the Office of Legislative Drafting and Publishing,  
Attorney-General's Department, Canberra

Excerpted portions only

## Chapter 2—General protections

### Part 2-1—Misleading or deceptive conduct

#### 18 Misleading or deceptive conduct

- (1) A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.
- (2) Nothing in Part 3-1 (which is about unfair practices) limits by implication subsection (1).

Note: For rules relating to representations as to the country of origin of goods, see Part 5-3.

#### 19 Application of this Part to information providers

- (1) This Part does not apply to a publication of matter by an information provider if:
  - (a) in any case—the information provider made the publication in the course of carrying on a business of providing information; or
  - (b) if the information provider is the Australian Broadcasting Corporation, the Special Broadcasting Service Corporation or the holder of a licence granted under the *Broadcasting Services Act 1992*—the publication was by way of a radio or television broadcast by the information provider.
- (2) Subsection (1) does not apply to a publication of an advertisement.
- (3) Subsection (1) does not apply to a publication of matter in connection with the supply or possible supply of, or the promotion by any means of the supply or use of, goods or services (the **publicised goods or services**), if:
  - (a) the publicised goods or services were goods or services of a kind supplied by the information provider or, if the information provider is a body corporate, by a body corporate that is related to the information provider; or
  - (b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who

- supplies goods or services of the same kind as the publicised goods or services; or
- (c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that supplies goods or services of the same kind as the publicised goods or services.
- (4) Subsection (1) does not apply to a publication of matter in connection with the sale or grant, or possible sale or grant, of, or the promotion by any means of the sale or grant of, interests in land (the **publicised interests in land**), if:
- (a) the publicised interests in land were interests of a kind sold or granted by the information provider or, if the information provider is a body corporate, by a body corporate that is related to the information provider; or
- (b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who sells or grants interests of the same kind as the publicised interests in land; or
- (c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that sells or grants interests of the same kind as the publicised interests in land.
- (5) An **information provider** is a person who carries on a business of providing information.
- (6) Without limiting subsection (5), each of the following is an **information provider**:
- (a) the holder of a licence granted under the *Broadcasting Services Act 1992*;
- (b) a person who is the provider of a broadcasting service under a class licence under that Act;
- (c) the holder of a licence continued in force by section 5(1) of the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*;
- (d) the Australian Broadcasting Corporation;
- (e) the Special Broadcasting Service Corporation.
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Section 20

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## Part 2-2—Unconscionable conduct

### 20 Unconscionable conduct within the meaning of the unwritten law

- (1) A person must not, in trade or commerce, engage in conduct that is unconscionable, within the meaning of the unwritten law from time to time.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) This section does not apply to conduct that is prohibited by section 21 or 22.

### 21 Unconscionable conduct

- (1) A person must not, in trade or commerce, in connection with the supply or possible supply of goods or services to another person, engage in conduct that is, in all the circumstances, unconscionable.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) Without in any way limiting the matters to which the court may have regard for the purpose of determining whether a person (the **supplier**) has contravened subsection (1) in connection with the supply or possible supply of goods or services to another person (the **consumer**), the court may have regard to:
- (a) the relative strengths of the bargaining positions of the supplier and the consumer; and
  - (b) whether, as a result of conduct engaged in by the person, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier; and
  - (c) whether the consumer was able to understand any documents relating to the supply or possible supply of the goods or services; and
  - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the consumer or a person acting on behalf of the consumer by the supplier or a person acting on behalf of the supplier in relation to the supply or possible supply of the goods or services; and

Excerpted portions only

## Chapter 3—Specific protections

### Part 3-1—Unfair practices

#### Division 1—False or misleading representations etc.

##### 29 False or misleading representations about goods or services

- (1) A person must not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services:
  - (a) make a false or misleading representation that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use; or
  - (b) make a false or misleading representation that services are of a particular standard, quality, value or grade; or
  - (c) make a false or misleading representation that goods are new; or
  - (d) make a false or misleading representation that a particular person has agreed to acquire goods or services; or
  - (e) make a false or misleading representation that purports to be a testimonial by any person relating to goods or services; or
  - (f) make a false or misleading representation concerning:
    - (i) a testimonial by any person; or
    - (ii) a representation that purports to be such a testimonial; relating to goods or services; or
  - (g) make a false or misleading representation that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits; or
  - (h) make a false or misleading representation that the person making the representation has a sponsorship, approval or affiliation; or
  - (i) make a false or misleading representation with respect to the price of goods or services; or

- (j) make a false or misleading representation concerning the availability of facilities for the repair of goods or of spare parts for goods; or
- (k) make a false or misleading representation concerning the place of origin of goods; or
- (l) make a false or misleading representation concerning the need for any goods or services; or
- (m) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy (including a guarantee under Division 1 of Part 3-2); or
- (n) make a false or misleading representation concerning a requirement to pay for a contractual right that:
  - (i) is wholly or partly equivalent to any condition, warranty, guarantee, right or remedy (including a guarantee under Division 1 of Part 3-2); and
  - (ii) a person has under a law of the Commonwealth, a State or a Territory (other than an unwritten law).

Note 1: A pecuniary penalty may be imposed for a contravention of this subsection.

Note 2: For rules relating to representations as to the country of origin of goods, see Part 5-3.

- (2) For the purposes of applying subsection (1) in relation to a proceeding concerning a representation of a kind referred to in subsection (1)(e) or (f), the representation is taken to be misleading unless evidence is adduced to the contrary.
- (3) To avoid doubt, subsection (2) does not:
  - (a) have the effect that, merely because such evidence to the contrary is adduced, the representation is not misleading; or
  - (b) have the effect of placing on any person an onus of proving that the representation is not misleading.

### **30 False or misleading representations about sale etc. of land**

- (1) A person must not, in trade or commerce, in connection with the sale or grant, or the possible sale or grant, of an interest in land or in connection with the promotion by any means of the sale or grant of an interest in land:



Section 31

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- (a) make a false or misleading representation that the person making the representation has a sponsorship, approval or affiliation; or
- (b) make a false or misleading representation concerning the nature of the interest in the land; or
- (c) make a false or misleading representation concerning the price payable for the land; or
- (d) make a false or misleading representation concerning the location of the land; or
- (e) make a false or misleading representation concerning the characteristics of the land; or
- (f) make a false or misleading representation concerning the use to which the land is capable of being put or may lawfully be put; or
- (g) make a false or misleading representation concerning the existence or availability of facilities associated with the land.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) This section does not affect the application of any other provision of Part 2-1 or this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

### **31 Misleading conduct relating to employment**

A person must not, in relation to employment that is to be, or may be, offered by the person or by another person, engage in conduct that is liable to mislead persons seeking the employment as to:

- (a) the availability, nature, terms or conditions of the employment; or
- (b) any other matter relating to the employment.

Note: A pecuniary penalty may be imposed for a contravention of this section.

### **32 Offering rebates, gifts, prizes etc.**

- (1) A person must not, in trade or commerce, offer any rebate, gift, prize or other free item with the intention of not providing it, or of not providing it as offered, in connection with:
  - (a) the supply or possible supply of goods or services; or

- (b) the promotion by any means of the supply or use of goods or services; or
- (c) the sale or grant, or the possible sale or grant, of an interest in land; or
- (d) the promotion by any means of the sale or grant of an interest in land.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) If a person offers any rebate, gift, prize or other free item in connection with:
- (a) the supply or possible supply of goods or services; or
  - (b) the promotion by any means of the supply or use of goods or services; or
  - (c) the sale or grant, or the possible sale or grant, of an interest in land; or
  - (d) the promotion by any means of the sale or grant of an interest in land;

the person must, within the time specified in the offer or (if no such time is specified) within a reasonable time after making the offer, provide the rebate, gift, prize or other free item in accordance with the offer.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) Subsection (2) does not apply if:
- (a) the person's failure to provide the rebate, gift, prize or other free item in accordance with the offer was due to the act or omission of another person, or to some other cause beyond the person's control; and
  - (b) the person took reasonable precautions and exercised due diligence to avoid the failure.
- (4) Subsection (2) does not apply to an offer that the person makes to another person if:
- (a) the person offers to the other person a different rebate, gift, prize or other free item as a replacement; and
  - (b) the other person agrees to receive the different rebate, gift, prize or other free item.

Section 33

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- (5) This section does not affect the application of any other provision of Part 2-1 or this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

**33 Misleading conduct as to the nature etc. of goods**

A person must not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods.

Note: A pecuniary penalty may be imposed for a contravention of this section.

**34 Misleading conduct as to the nature etc. of services**

A person must not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any services.

Note: A pecuniary penalty may be imposed for a contravention of this section.

**35 Bait advertising**

- (1) A person must not, in trade or commerce, advertise goods or services for supply at a specified price if:
- (a) there are reasonable grounds for believing that the person will not be able to offer for supply those goods or services at that price for a period that is, and in quantities that are, reasonable, having regard to:
    - (i) the nature of the market in which the person carries on business; and
    - (ii) the nature of the advertisement; and
  - (b) the person is aware or ought reasonably to be aware of those grounds.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person who, in trade or commerce, advertises goods or services for supply at a specified price must offer such goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to:

- (a) the nature of the market in which the person carries on business; and
- (b) the nature of the advertisement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

### **36 Wrongly accepting payment**

- (1) A person must not, in trade or commerce, accept payment or other consideration for goods or services if, at the time of the acceptance, the person intends not to supply the goods or services.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person must not, in trade or commerce, accept payment or other consideration for goods or services if, at the time of the acceptance, the person intends to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is accepted.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) A person must not, in trade or commerce, accept payment or other consideration for goods or services if, at the time of the acceptance:

- (a) there are reasonable grounds for believing that the person will not be able to supply the goods or services:
  - (i) within the period specified by or on behalf of the person at or before the time the payment or other consideration was accepted; or
  - (ii) if no period is specified at or before that time—within a reasonable time; and
- (b) the person is aware or ought reasonably to be aware of those grounds.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (4) A person who, in trade or commerce, accepts payment or other consideration for goods or services must supply all the goods or services:

- (a) within the period specified by or on behalf of the person at or before the time the payment or other consideration was accepted; or

Section 37

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- (b) if no period is specified at or before that time—within a reasonable time.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (5) Subsection (4) does not apply if:
  - (a) the person's failure to supply all the goods or services within the period, or within a reasonable time, was due to the act or omission of another person, or to some other cause beyond the person's control; and
  - (b) the person took reasonable precautions and exercised due diligence to avoid the failure.
- (6) Subsection (4) does not apply if:
  - (a) the person offers to supply different goods or services as a replacement to the person (the *customer*) to whom the original supply was to be made; and
  - (b) the customer agrees to receive the different goods or services.
- (7) Subsections (1), (2), (3) and (4) apply whether or not the payment or other consideration that the person accepted represents the whole or a part of the payment or other consideration for the supply of the goods or services.

### 37 Misleading representations about certain business activities

- (1) A person must not, in trade or commerce, make a representation that:
  - (a) is false or misleading in a material particular; and
  - (b) concerns the profitability, risk or any other material aspect of any business activity that the person has represented as one that can be, or can be to a considerable extent, carried on at or from a person's place of residence.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person must not, in trade or commerce, make a representation that:
  - (a) is false or misleading in a material particular; and
  - (b) concerns the profitability, risk or any other material aspect of any business activity:

- (i) that the person invites (whether by advertisement or otherwise) other persons to engage or participate in, or to offer or apply to engage or participate in; and
- (ii) that requires the performance of work by other persons, or the investment of money by other persons and the performance by them of work associated with the investment.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

### **38 Application of provisions of this Division to information providers**

- (1) Sections 29, 30, 33, 34 and 37 do not apply to a publication of matter by an information provider if:
  - (a) in any case—the information provider made the publication in the course of carrying on a business of providing information; or
  - (b) if the information provider is the Australian Broadcasting Corporation, the Special Broadcasting Service Corporation or the holder of a licence granted under the *Broadcasting Services Act 1992*—the publication was by way of a radio or television broadcast by the information provider.
- (2) Subsection (1) does not apply to a publication of an advertisement.
- (3) Subsection (1) does not apply to a publication of matter in connection with the supply or possible supply of, or the promotion by any means of the supply or use of, goods or services (the **publicised goods or services**), if:
  - (a) the publicised goods or services were goods or services of a kind supplied by the information provider or, if the information provider is a body corporate, by a body corporate that is related to the information provider; or
  - (b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who supplies goods or services of the same kind as the publicised goods or services; or
  - (c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that supplies

Section 38

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goods or services of the same kind as the publicised goods or services.

- (4) Subsection (1) does not apply to a publication of matter in connection with the sale or grant, or possible sale or grant, of, or the promotion by any means of the sale or grant of, interests in land (the *publicised interests in land*), if:
- (a) the publicised interests in land were interests of a kind sold or granted by the information provider or, if the information provider is a body corporate, by a body corporate that is related to the information provider; or
  - (b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who sells or grants interests of the same kind as the publicised interests in land; or
  - (c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that sells or grants interests of the same kind as the publicised interests in land.

Excerpted portions only



## **Part 5-2—Remedies**

### **Division 1—Pecuniary penalties**

#### **224 Pecuniary penalties**

- (1) If a court is satisfied that a person:
- (a) has contravened any of the following provisions:
    - (i) a provision of Part 2-2 (which is about unconscionable conduct);
    - (ii) a provision of Part 3-1 (which is about unfair practices);
    - (iii) section 66(2) (which is about display notices);
    - (iv) a provision (other than section 85) of Division 2 of Part 3-2 (which is about unsolicited consumer agreements);
    - (v) a provision (other than section 96(2)) of Division 3 of Part 3-2 (which is about lay-by agreements);
    - (vi) section 100(1) or (3) or 101(3) or (4) (which are about proof of transactions and itemised bills);
    - (vii) section 102(2) or 103(2) (which are about prescribed requirements for warranties and repairers);
    - (viii) section 106(1), (2), (3) or (5), 107(1) or (2), 118(1), (2), (3) or (5), 119(1) or (2), 125(4), 127(1) or (2), 128(2) or (6), 131(1) or 132(1) (which are about safety of consumer goods and product related services);
    - (ix) section 136(1), (2) or (3) or 137(1) or (2) (which are about information standards);
    - (x) section 221(1) or 222(1) (which are about substantiation notices); or
  - (b) has attempted to contravene such a provision; or
  - (c) has aided, abetted, counselled or procured a person to contravene such a provision; or
  - (d) has induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene such a provision; or
  - (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or

Section 224

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- (f) has conspired with others to contravene such a provision;  
the court may order the person to pay to the Commonwealth, State or Territory, as the case may be, such pecuniary penalty, in respect of each act or omission by the person to which this section applies, as the court determines to be appropriate.
- (2) In determining the appropriate pecuniary penalty, the court must have regard to all relevant matters including:
- (a) the nature and extent of the act or omission and of any loss or damage suffered as a result of the act or omission; and
  - (b) the circumstances in which the act or omission took place; and
  - (c) whether the person has previously been found by a court in proceedings under Chapter 4 or this Part to have engaged in any similar conduct.
- (3) The pecuniary penalty payable under subsection (1) is not to exceed the amount worked out using the following table:

<b>Amount of pecuniary penalty</b>		
<b>Item</b>	<b>For each act or omission to which this section applies that relates to ...</b>	<b>the pecuniary penalty is not to exceed ...</b>
1	a provision of Part 2-2	(a) if the person is a body corporate—\$1.1 million; or (b) if the person is not a body corporate—\$220,000.
2	a provision of Part 3-1 (other than section 47(1))	(a) if the person is a body corporate—\$1.1 million; or (b) if the person is not a body corporate—\$220,000.
3	section 47(1)	(a) if the person is a body corporate—\$5,000; or (b) if the person is not a body corporate—\$1,000.

<b>Amount of pecuniary penalty</b>		
<b>Item</b>	<b>For each act or omission to which this section applies that relates to ...</b>	<b>the pecuniary penalty is not to exceed ...</b>
4	section 66(2)	(a) if the person is a body corporate—\$50,000; or (b) if the person is not a body corporate—\$10,000.
5	a provision of Division 2 of Part 3-2 (other than section 85)	(a) if the person is a body corporate—\$50,000; or (b) if the person is not a body corporate—\$10,000.
6	a provision of Division 3 of Part 3-2 (other than section 96(2))	(a) if the person is a body corporate—\$30,000; or (b) if the person is not a body corporate—\$6,000.
7	section 100(1) or (3) or 101(3) or (4)	(a) if the person is a body corporate—\$15,000; or (b) if the person is not a body corporate—\$3,000.
8	section 102(2) or 103(2)	(a) if the person is a body corporate—\$50,000; or (b) if the person is not a body corporate—\$10,000.
9	section 106(1), (2), (3) or (5), 107(1) or (2), 118(1), (2), (3) or (5) or 119(1) or (2)	(a) if the person is a body corporate—\$1.1 million; or (b) if the person is not a body corporate—\$220,000.
10	section 125(4)	(a) if the person is a body corporate—\$16,500; or (b) if the person is not a body corporate—\$3,300.

Section 224

<b>Amount of pecuniary penalty</b>		
<b>Item</b>	<b>For each act or omission to which this section applies that relates to ...</b>	<b>the pecuniary penalty is not to exceed ...</b>
11	section 127(1) or (2)	(a) if the person is a body corporate—\$1.1 million; or (b) if the person is not a body corporate—\$220,000.
12	section 128(2) or (6), 131(1) or 132(1)	(a) if the person is a body corporate—\$16,500; or (b) if the person is not a body corporate—\$3,300.
13	section 136(1), (2) or (3) or 137(1) or (2)	(a) if the person is a body corporate—\$1.1 million; or (b) if the person is not a body corporate—\$220,000.
14	section 221(1)	(a) if the person is a body corporate—\$16,500; or (b) if the person is not a body corporate—\$3,300.
15	section 222(1)	(a) if the person is a body corporate—\$27,500; or (b) if the person is not a body corporate—\$5,500.

- (4) If conduct constitutes a contravention of 2 or more provisions referred to in subsection (1)(a):
- (a) a proceeding may be instituted under this Schedule against a person in relation to the contravention of any one or more of the provisions; but
  - (b) a person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.

**225 Pecuniary penalties and offences**

- (1) A court must not make an order under section 224 against a person in relation to either of the following matters (a *consumer protection breach*):

- (a) a contravention of a provision referred to in section 224(1)(a);
- (b) conduct referred to in section 224(1)(b), (c), (d), (e) or (f) that relates to a contravention of such a provision;

if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the consumer protection breach.

- (2) Proceedings for an order under section 224 against a person in relation to a consumer protection breach are stayed if:
- (a) criminal proceedings are started or have already been started against the person for an offence; and
  - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the consumer protection breach.

The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings are dismissed.

- (3) Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a consumer protection breach regardless of whether an order under section 224 has been made against the person in respect of the breach.
- (4) Evidence of information given, or evidence of the production of documents, by an individual is not admissible in criminal proceedings against the individual if:
- (a) the individual previously gave the evidence or produced the documents in proceedings for an order under section 224 against the individual in relation to a consumer protection breach (whether or not the order was made); and
  - (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the consumer protection breach.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the order.

Section 226

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**226 Defence**

If, in proceedings under section 224 against a person other than a body corporate, it appears to a court that the person has, or may have:

- (a) engaged in conduct in contravention of a provision referred to in subsection (1)(a) of that section; or
- (b) engaged in conduct referred to in subsection (1)(b), (c), (d), (e) or (f) of that section that relates to a contravention of such a provision;

but that the person acted honestly and reasonably and, having regard to all the circumstances of the case, ought fairly to be excused, the court may relieve the person either wholly or partly from liability to a pecuniary penalty under that section.

**227 Preference must be given to compensation for victims**

If a court considers that:

- (a) it is appropriate to order a person (the *defendant*) to pay a pecuniary penalty under section 224 in relation to:
  - (i) a contravention of a provision referred to in subsection (1)(a) of that section; or
  - (ii) conduct referred to in subsection (1)(b), (c), (d), (e) or (f) of that section that relates to a contravention such a provision; and
- (b) it is appropriate to order the defendant to pay compensation to a person who has suffered loss or damage as result of that contravention or conduct; and
- (c) the defendant does not have sufficient financial resources to pay both the pecuniary penalty and the compensation;

the court must give preference to making an order for compensation.

**228 Civil action for recovery of pecuniary penalties**

- (1) The regulator may institute a proceeding in a court for the recovery on behalf of the Commonwealth, a State or a Territory, as the case may be, of a pecuniary penalty referred to in section 224.
- (2) A proceeding under subsection (1) may be commenced at any time within 6 years after the contravention or conduct.

**229 Indemnification of officers**

- (1) A body corporate (the *first body*), or a body corporate related to the first body, commits an offence if it indemnifies a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against either of the following liabilities incurred as an officer (within the meaning of the *Corporations Act 2001*) of the first body:
- (a) a liability to pay a pecuniary penalty under section 224;
  - (b) legal costs incurred in defending or resisting proceedings in which the person is found to have such a liability.

Penalty: \$2,750.

- (2) For the purposes of subsection (1), the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

**230 Certain indemnities not authorised and certain documents void**

- (1) Section 229 does not authorise anything that would otherwise be unlawful.
- (2) Anything that purports to indemnify a person against a liability is void to the extent that it contravenes section 229.

Section 232

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## Division 2—Injunctions

### 232 Injunctions

- (1) A court may grant an injunction, in such terms as the court considers appropriate, if the court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute:
  - (a) a contravention of a provision of Chapter 2, 3 or 4; or
  - (b) attempting to contravene such a provision; or
  - (c) aiding, abetting, counselling or procuring a person to contravene such a provision; or
  - (d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision; or
  - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
  - (f) conspiring with others to contravene such a provision.
- (2) The court may grant the injunction on application by the regulator or any other person.
- (3) Subsection (1) applies in relation to conduct constituted by applying or relying on, or purporting to apply or rely on, a term of a consumer contract that has been declared under section 250 to be an unfair term as if the conduct were a contravention of a provision of Chapter 2.
- (4) The power of the court to grant an injunction under subsection (1) restraining a person from engaging in conduct may be exercised:
  - (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of a kind referred to in that subsection; and
  - (b) whether or not the person has previously engaged in conduct of that kind; and
  - (c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.



- (5) Without limiting subsection (1), the court may grant an injunction under that subsection restraining a person from carrying on a business or supplying goods or services (whether or not as part of, or incidental to, the carrying on of another business):
  - (a) for a specified period; or
  - (b) except on specified terms and conditions.
- (6) Without limiting subsection (1), the court may grant an injunction under that subsection requiring a person to do any of the following:
  - (a) refund money;
  - (b) transfer property;
  - (c) honour a promise;
  - (d) destroy or dispose of goods.
- (7) The power of the court to grant an injunction under subsection (1) requiring a person to do an act or thing may be exercised:
  - (a) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
  - (b) whether or not the person has previously refused or failed to do that act or thing; and
  - (c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing.

### **233 Consent injunctions**

If an application is made under section 232, the court may, if it considers that it is appropriate to do so, grant an injunction under this section by consent of all the parties to the proceedings, whether or not the court is satisfied as required by section 232(1).

### **234 Interim injunctions**

- (1) If an application is made under section 232, the court may, if it considers it is desirable to do so, grant an interim injunction under this subsection pending the determination of the application.
  - (2) If a responsible Minister or the regulator made the application under section 232, the court must not require the applicant or any other person to give any undertakings as to damages as a condition of granting the interim injunction.
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Section 235

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- (3) If:
- (a) in a case to which subsection (2) does not apply the court would, but for this subsection, require a person to give an undertaking as to damages or costs; and
  - (b) a responsible Minister gives the undertaking;
- the court must accept the undertaking by the responsible Minister and must not require a further undertaking from any other person.

**235 Variation and discharge of injunctions**

A court may vary or discharge an injunction (including an interim injunction) that it has granted under this Division.

**Division 3—Damages****236 Actions for damages**

- (1) If:
  - (a) a person (the *claimant*) suffers loss or damage because of the conduct of another person; and
  - (b) the conduct contravened a provision of Chapter 2 or 3;the claimant may recover the amount of the loss or damage by action against that other person, or against any person involved in the contravention.
- (2) An action under subsection (1) may be commenced at any time within 6 years after the day on which the cause of action that relates to the conduct accrued.

Section 237

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**Division 4—Compensation orders etc. for injured persons and orders for non-party consumers**

**Subdivision A—Compensation orders etc. for injured persons**

**237 Compensation orders etc. on application by an injured person or the regulator**

- (1) A court may:
- (a) on application of a person (the *injured person*) who has suffered, or is likely to suffer, loss or damage because of the conduct of another person that:
    - (i) was engaged in a contravention of a provision of Chapter 2, 3 or 4; or
    - (ii) constitutes applying or relying on, or purporting to apply or rely on, a term of a consumer contract that has been declared under section 250 to be an unfair term; or
  - (b) on the application of the regulator made on behalf of one or more such injured persons;

make such order or orders as the court thinks appropriate against the person who engaged in the conduct, or a person involved in that conduct.

Note 1: For applications for an order or orders under this subsection, see section 242.

Note 2: The orders that the court may make include all or any of the orders set out in section 243.

- (2) The order must be an order that the court considers will:
- (a) compensate the injured person, or any such injured persons, in whole or in part for the loss or damage; or
  - (b) prevent or reduce the loss or damage suffered, or likely to be suffered, by the injured person or any such injured persons.
- (3) An application under subsection (1) may be made at any time within 6 years after the day on which:
- (a) if subsection (1)(a)(i) applies—the cause of action that relates to the conduct referred to in that subsection accrued; or
  - (b) if subsection (1)(a)(ii) applies—the declaration referred to in that subsection is made.

**238 Compensation orders etc. arising out of other proceedings**

- (1) If a court finds, in a proceeding instituted under a provision of Chapter 4 or this Chapter (other than this section), that a person (the *injured person*) who is a party to the proceeding has suffered, or is likely to suffer, loss or damage because of the conduct of another person that:
- (a) was engaged in a contravention of a provision of Chapter 2, 3 or 4; or
  - (b) constitutes applying or relying on, or purporting to apply or rely on, a term of a consumer contract that has been declared under section 250 to be an unfair term;

the court may make such order or orders as it thinks appropriate against the person who engaged in the conduct, or a person involved in that conduct.

Note: The orders that the court may make include all or any of the orders set out in section 243.

- (2) The order must be an order that the court considers will:
- (a) compensate the injured person in whole or in part for the loss or damage; or
  - (b) prevent or reduce the loss or damage.

**Subdivision B—Orders for non-party consumers****239 Orders to redress etc. loss or damage suffered by non-party consumers**

- (1) If:
- (a) a person:
    - (i) engaged in conduct (the *contravening conduct*) in contravention of a provision of Chapter 2, Part 3-1, Division 2, 3 or 4 of Part 3-2 or Chapter 4; or
    - (ii) is a party to a consumer contract who is advantaged by a term (the *declared term*) of the contract in relation to which a court has made a declaration under section 250; and
  - (b) the contravening conduct or declared term caused, or is likely to cause, a class of persons to suffer loss or damage; and
  - (c) the class includes persons who are non-party consumers in relation to the contravening conduct or declared term;

Section 240

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a court may, on the application of the regulator, make such order or orders (other than an award of damages) as the court thinks appropriate against a person referred to in subsection (2) of this section.

Note 1: For applications for an order or orders under this subsection, see section 242.

Note 2: The orders that the court may make include all or any of the orders set out in section 243.

- (2) An order under subsection (1) may be made against:
  - (a) if subsection (1)(a)(i) applies—the person who engaged in the contravening conduct, or a person involved in that conduct; or
  - (b) if subsection (1)(a)(ii) applies—a party to the contract who is advantaged by the declared term.
- (3) The order must be an order that the court considers will:
  - (a) redress, in whole or in part, the loss or damage suffered by the non-party consumers in relation to the contravening conduct or declared term; or
  - (b) prevent or reduce the loss or damage suffered, or likely to be suffered, by the non-party consumers in relation to the contravening conduct or declared term.
- (4) An application under subsection (1) may be made at any time within 6 years after the day on which:
  - (a) if subsection (1)(a)(i) applies—the cause of action that relates to the contravening conduct accrued; or
  - (b) if subsection (1)(a)(ii) applies—the declaration is made.

**240 Determining whether to make a redress order etc. for non-party consumers**

- (1) In determining whether to make an order under section 239(1) against a person referred to in section 239(2)(a), the court may have regard to the conduct of the person, and of the non-party consumers in relation to the contravening conduct, since the contravention occurred.
- (2) In determining whether to make an order under section 239(1) against a person referred to in section 239(2)(b), the court may have regard to the conduct of the person, and of the non-party

consumers in relation to the declared term, since the declaration was made.

- (3) In determining whether to make an order under section 239(1), the court need not make a finding about either of the following matters:
- (a) which persons are non-party consumers in relation to the contravening conduct or declared term;
  - (b) the nature of the loss or damage suffered, or likely to be suffered, by such persons.

### **241 When a non-party consumer is bound by a redress order etc.**

- (1) A non-party consumer is bound by an order made under section 239(1) against a person if:
- (a) the loss or damage suffered, or likely to be suffered, by the non-party consumer in relation to the contravening conduct, or the declared term, to which the order relates has been redressed, prevented or reduced in accordance with the order; and
  - (b) the non-party consumer has accepted the redress, prevention or reduction.
- (2) Any other order made under section 239(1) that relates to that loss or damage has no effect in relation to the non-party consumer.
- (3) Despite any other provision of:
- (a) this Schedule; or
  - (b) any other law of the Commonwealth, or a State or a Territory;
- no claim, action or demand may be made or taken against the person by the non-party consumer in relation to that loss or damage.

## **Subdivision C—Miscellaneous**

### **242 Applications for orders**

- (1) An application may be made under section 237(1) or 239(1) even if an enforcement proceeding in relation to the conduct, or the term of a consumer contract, referred to in that subsection has not been instituted.

Section 243

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- (2) The regulator must not make an application under section 237(1)(b) on behalf of one or more persons unless those persons have consented in writing to the making of the application.

**243 Kinds of orders that may be made**

Without limiting section 237(1), 238(1) or 239(1), the orders that a court may make under any of those sections against a person (the *respondent*) include all or any of the following:

- (a) an order declaring the whole or any part of a contract made between the respondent and a person (the *injured person*) who suffered, or is likely to suffer, the loss or damage referred to in that section, or of a collateral arrangement relating to such a contract:
  - (i) to be void; and
  - (ii) if the court thinks fit—to have been void ab initio or void at all times on and after such date as is specified in the order (which may be a date that is before the date on which the order is made);
- (b) an order:
  - (i) varying such a contract or arrangement in such manner as is specified in the order; and
  - (ii) if the court thinks fit—declaring the contract or arrangement to have had effect as so varied on and after such date as is specified in the order (which may be a date that is before the date on which the order is made);
- (c) an order refusing to enforce any or all of the provisions of such a contract or arrangement;
- (d) an order directing the respondent to refund money or return property to the injured person;
- (e) except if the order is to be made under section 239(1)—an order directing the respondent to pay the injured person the amount of the loss or damage;
- (f) an order directing the respondent, at his or her own expense, to repair, or provide parts for, goods that had been supplied by the respondent to the injured person;
- (g) an order directing the respondent, at his or her own expense, to supply specified services to the injured person;



- (h) an order, in relation to an instrument creating or transferring an interest in land, directing the respondent to execute an instrument that:
  - (i) varies, or has the effect of varying, the first mentioned instrument; or
  - (ii) terminates or otherwise affects, or has the effect of terminating or otherwise affecting, the operation or effect of the first mentioned instrument.

#### **244 Power of a court to make orders**

A court may make an order under Subdivision A or B of this Division whether or not the court:

- (a) grants an injunction under Division 2 of this Part; or
- (b) makes an order under section 236, 246, 247 or 248.

#### **245 Interaction with other provisions**

Subdivisions A and B of this Division do not limit the generality of Division 2 of this Part.

Section 246

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## Division 5—Other remedies

### 246 Non-punitive orders

- (1) A court may, on application of the regulator, make one or more of the orders mentioned in subsection (2) in relation to a person who has engaged in conduct that:
  - (a) contravenes a provision of Chapter 2, 3 or 4; or
  - (b) constitutes an involvement in a contravention of such a provision.
- (2) The court may make the following orders in relation to the person who has engaged in the conduct:
  - (a) an order directing the person to perform a service that is specified in the order, and that relates to the conduct, for the benefit of the community or a section of the community;
  - (b) an order for the purpose of ensuring that the person does not engage in the conduct, similar conduct, or related conduct, during the period of the order (which must not be longer than 3 years) including:
    - (i) an order directing the person to establish a compliance program for employees or other persons involved in the person's business, being a program designed to ensure their awareness of the responsibilities and obligations in relation to such conduct; and
    - (ii) an order directing the person to establish an education and training program for employees or other persons involved in the person's business, being a program designed to ensure their awareness of the responsibilities and obligations in relation to such conduct; and
    - (iii) an order directing the person to revise the internal operations of the person's business which led to the person engaging in such conduct;
  - (c) an order requiring the person to disclose, in the way and to the persons specified in the order, such information as is so specified, being information that the person has possession of or access to;

- (d) an order requiring the person to publish, at the person's expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order.

Note: The following are examples of orders that the court may make under subsection (2)(a):

- (a) an order requiring a person who has made false representations to make available a training video which explains advertising obligations under this Schedule;
  - (b) an order requiring a person who has engaged in misleading or deceptive conduct in relation to a product to carry out a community awareness program to address the needs of consumers when purchasing the product.
- (3) This section does not limit a court's powers under any other provision of this Schedule.

### **247 Adverse publicity orders**

- (1) A court may, on application of the regulator, make an adverse publicity order in relation to a person who:
  - (a) has contravened a provision of Part 2-2 or Chapter 3; or
  - (b) has committed an offence against Chapter 4.
- (2) An *adverse publicity order* in relation to a person is an order that requires the person:
  - (a) to disclose, in the way and to the persons specified in the order, such information as is so specified, being information that the person has possession of or access to; and
  - (b) to publish, at the person's expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order.
- (3) This section does not limit a court's powers under any other provision of this Schedule.

### **248 Order disqualifying a person from managing corporations**

- (1) A court may, on application of the regulator, make an order disqualifying a person from managing corporations for a period that the court considers appropriate if:

Section 248

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- (a) the court is satisfied that the person has contravened, has attempted to contravene or has been involved in a contravention of any of the following provisions:
  - (i) a provision of Part 2-2 (which is about unconscionable conduct);
  - (ii) a provision of Part 3-1 (which is about unfair practices);
  - (iii) a provision (other than section 85) of Division 2 of Part 3-2 (which is about unsolicited consumer agreements);
  - (iv) section 106(1), (2), (3) or (5), 107(1) or (2), 118(1), (2), (3) or (5), 119(1) or (2), 125(4), 127(1) or (2), 128(2) or (6), 131(1) or 132(1) (which are about safety of consumer goods and product related services);
  - (v) section 136(1), (2) or (3) or 137(1) or (2) (which are about information standards);
  - (vi) a provision of Chapter 4 (which is about offences); and
- (b) the court is satisfied that the disqualification is justified.

Note: Section 206EA of the *Corporations Act 2001* provides that a person is disqualified from managing corporations if a court order is in force under this section. That Act contains various consequences for persons so disqualified.

- (2) In determining under subsection (1) whether the disqualification is justified, the court may have regard to:
  - (a) the person's conduct in relation to the management, business or property of any corporation; and
  - (b) any other matters that the court considers appropriate.
- (3) If the court makes an order under subsection (1), the regulator must:
  - (a) notify ASIC; and
  - (b) give ASIC a copy of any such order.

Note: ASIC must keep a register of persons who have been disqualified from managing corporations: see section 1274AA of the *Corporations Act 2001*.

- (4) For the purposes of this Schedule (other than this section or section 249), an order under this section is not a penalty.

**249 Privilege against exposure to penalty or forfeiture—  
disqualification from managing corporations**

- (1) In a civil or criminal proceeding under, or arising out of, this Schedule, a person is not entitled to refuse or fail to comply with a requirement:
  - (a) to answer a question or give information; or
  - (b) to produce a document or any other thing; or
  - (c) to do any other act;on the ground that the answer or information, production of the document or other thing, or doing that other act, as the case may be, might tend to expose the person to a penalty (including forfeiture) by way of an order under section 248.
- (2) Subsection (1) applies whether or not the person is a defendant in the proceeding or in any other proceeding.
- (3) A person is not entitled to refuse or fail to comply with a requirement under this Schedule:
  - (a) to answer a question or give information; or
  - (b) to produce a document or any other thing; or
  - (c) to do any other act;on the ground that the answer or information, production of the document or other thing, or doing that other act, as the case may be, might tend to expose the person to a penalty (including forfeiture) by way of an order under section 248.

**250 Declarations relating to consumer contracts**

- (1) A court may, on the application of a party to a consumer contract or on the application of the regulator, declare that a term of such a contract is an unfair term.
- (2) Subsection (1) does not apply unless the consumer contract is a standard form contract.
- (3) Subsection (1) does not limit any other power of the court to make declarations.

Section 251

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## Division 6—Defences

### 251 Publication of advertisement in the ordinary course of business

- (1) This section applies to a proceeding under this Part in relation to a contravention of a provision of Part 2-1 or 2-2 or Chapter 3 if the contravention was committed by the publication of an advertisement.
- (2) In the proceeding, 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; and
  - (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 such a provision.

### 252 Supplying consumer goods for the purpose of re-supply

- (1) This section applies to a proceeding under this Part in relation to a contravention of a provision of Part 2-1 or 2-2 or Chapter 3 committed by:
  - (a) the supplying of consumer goods that did not comply with a safety standard for such goods; or
  - (b) the supplying of consumer goods by a supplier who did not comply with an information standard for such goods.
- (2) In the proceeding, it is a defence if the defendant proves that:
  - (a) the consumer goods were acquired by the defendant for the purpose of re-supply; and
  - (b) the consumer goods were so acquired from a person who carried on in Australia a business of supplying such goods otherwise than as the agent of a person outside Australia; and
  - (c) either:
    - (i) the defendant did not know, and could not with reasonable diligence have ascertained, that the consumer goods did not comply with that safety standard, or that the defendant had not complied with that information standard, as the case may be; or

- (ii) the defendant relied in good faith on a representation by the person from whom the defendant acquired the goods that there was no safety standard or information standard, as the case may be, for such consumer goods.
- (3) A defendant is not entitled to rely on the defence provided by subsection (2) unless:
  - (a) the court gives leave; or
  - (b) the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a written notice identifying the person from whom the defendant acquired the consumer goods.

### **253 Supplying product related services for the purpose of re-supply**

- (1) This section applies to a proceeding under this Part in relation to a contravention of a provision of Part 2-1 or 2-2 or Chapter 3 committed by:
  - (a) the supplying of product related services that did not comply with a safety standard for such services; or
  - (b) the supplying of product related services by a supplier who did not comply with an information standard for such services.
- (2) In the proceeding, it is a defence if the defendant proves that:
  - (a) the product related services were acquired by the defendant for the purpose of re-supply; and
  - (b) the product related services were so acquired from a person who carried on in Australia a business of supplying such services otherwise than as the agent of a person outside Australia; and
  - (c) either:
    - (i) the defendant did not know, and could not with reasonable diligence have ascertained, that the product related services did not comply with that safety standard, or that the defendant had not complied with that information standard, as the case may be; or
    - (ii) the defendant relied in good faith on a representation by the person from whom the defendant acquired the goods that there was no safety standard or information

Section 253

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standard, as the case may be, for such product related services.

- (3) A defendant is not entitled to rely on the defence provided by subsection (2) unless:
- (a) the court gives leave; or
  - (b) the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a written notice identifying the person from whom the defendant acquired the product related services.