

ANTIGUA AND BARBUDA



CONSUMER PROTECTION BILL, 2024

No. of 2024

ANTIGUA AND BARBUDA
CONSUMER PROTECTION BILL, 2024
ARRANGEMENT OF CLAUSES

CLAUSE

PART I

PRELIMINARY

1. Short title and commencement.....	10
2. Interpretation.....	10
3. Purposes of the Act.....	15
4. Application of the Act.....	16
5. Consumer organisations.....	16

PART II

DEPARTMENT OF CONSUMER AFFAIRS

6. Department of Consumer Affairs.....	17
7. Functions and powers of the Department.....	17
8. Director of Consumer Affairs.....	19

PART III

CONSUMER GUIDANCE COUNCIL

9. Consumer Guidance Council.....	19
10. Functions of the Council.....	19

PART IV

CONSUMER AFFAIRS TRIBUNAL

11. Establishment of Consumer Affairs Tribunal.....	20
12. Functions of the Tribunal.....	20

13. Powers of the Tribunal 20

PART V

RECEIPT, INVESTIGATION AND HEARING OF COMPLAINTS

14. Who may lodge a complaint 21

15. Procedure for lodging complaints 22

16. Investigative procedure of the Department 22

17. Failure of opposite party to respond..... 23

18. Department to examine complaint and response..... 23

19. Alleged defects requiring testing 24

20. Receipt and distribution of laboratory report. 24

21. Power to summon persons and demand document production 24

22. Power to seize and search 25

23. Power to suspend or discontinue investigation 26

24. Power to investigate not precluded 26

25. Power to investigate on own initiative 26

26. Report to Tribunal..... 26

27. Fixing of hearing 27

28. Panel of Members of Tribunal 27

29. Power to summons persons to give evidence 27

30. Obligations of persons summoned 27

31. Right to be heard 28

32. Procedure of Tribunal generally..... 28

33. Failure of party to attend hearing 28

34. False or misleading evidence 28

35. Discontinuation of hearing..... 28

36. Order of the Tribunal 29

37. Costs in discretion of Tribunal 29

38. Failure to comply with order of the Tribunal 29

39. Appeal..... 29

PART VI

CONSUMER RIGHTS

40. Ambiguities to benefit consumer 29

41. Unsolicited goods or services: relief from legal obligations. 30

42. Consumer’s right to select suppliers and products. 32

43. Consumer’s right to authorise services. 32

44. Consumer’s right to choose and examine goods. 33

45. Consumer’s rights with respect to delivery of goods or supply of services. 33

46. Consumer’s acceptance of goods or services 34

47. Consumer’s right to cancel reservation. 34

48. Consumer’s right to rescind or cancel agreement. 35

49. Right to information in official language 36

50. Right to information in plain and user-friendly language. 37

51. Right of consumer’s estate to choose whether to uphold agreement. 37

52. Protection of consumer rights. 38

PART VII

DUTIES OF SUPPLIERS

53. Information to consumer. 39

54. Disclosure of price of goods or services 39

55. Dual pricing 40

56. Identification of supplier 41

57. Product labelling and trade descriptions 41

58. Disclosure of environmental facts affecting goods 43

59. Disclosure of re-conditioned goods..... 44

60. Supply by description and sample..... 45

61. Sales records 45

62. Utility of sales record 46

63. Measurement of goods 46

64. Warranties 47

65. Implied warranties as to quality and fitness 47

66. Quality of goods or services 48

67. Damage resulting from use of service or goods 49

68. Supply of damaged goods to consumer 50

69. Return of defective goods 50

70. Return of materially different goods 51

71. Approved and non-approved services 52

72. Businesses offering repair services 52

73. Advertised delivery date. 53

74. Conditions of demanding and accepting payment 53

75. General standards for the promotion of goods or services 53

PART VIII

UNFAIR TRADE PRACTICES

76. False, misleading or deceptive representations. 55

77. Prohibition on restrictive trade practices 56

78. Prohibition on unfair trade practices. 57

79. Unreasonable transactions 59

80. Unfair or unjust transactions 60

81. Unconscionable conduct 60

82. Renegotiation of terms 62

83. Bait advertising 62

84. Printing, publishing, distributing, broadcasting or telecasting in good faith 62

85. Pyramid scheme 62

86. Rescission 63

87. Defences for contravention of this Part 63

88. Court may order payment of damages or costs 64

PART IX**UNFAIR TERMS**

89. Unfair terms	64
90. Written terms to be plain and intelligible	66
91. Excluding restricting or modifying liability	66
92. Indemnity subject to reasonableness	66
93. Loss and damage from defective goods or negligence of manufacturer	66
94. Effect of obligation	67
95. Satisfying reasonableness where agreement terminated	67
96. Reasonableness	67

PART X**PRODUCT LIABILITY**

97. Interpretation of this Part	68
98. Defect inferred	68
99. Liability for defects	69
100. Damage giving rise to liability	70
101. Prohibition on exclusions from liability	70
102. Defences in civil proceedings	70
103. Application to Crown	71

PART XI**CONSUMER SAFETY**

104. Interpretation of “consumer safety”	71
105. General safety requirements	72
106. Information in regard to goods with inherent risks	73
107. Establishment of a regional alert system	74
108. Safety regulations	74

109. Contravention of safety regulations 75

PART XII

RECALL OF GOODS

110. Voluntary recall of goods..... 76
111. Compulsory recall of goods 77
112. Compliance with goods recall notice 78
113. Loss or damage caused by contravention of goods recall notice 78
114. Conference to be held in certain cases 78
115. Exception in case of danger to public 79
116. Power to obtain information, documents and evidence..... 80
117. Application for warrant..... 81
118. Suppliers to be given notice in certain cases 82
119. Certain actions not to affect insurance contracts 82

PART XIII

DISTANCE SELLING

120. Interpretation of this Part 83
121. Application..... 83
122. Agreement to exchange information 83
123. Prior information requirements 84
124. Acceptance or decline of distance selling contract 84
125. Payment by credit or debit card 84
126. Performance 84
127. Burden of proof..... 85

PART XIV

MISCELLANEOUS

128. Void provisions of consumer agreements 85
129. Goods or services acquired by instalment 87

130. Apportionment of payments where service not received 87

131. Supplier purporting to act on bill of sale 88

132. Trade coupons and similar promotions 89

133. Promotional competitions 89

134. Over-selling and over-booking 92

135. Lay-aways 93

136. Written consumer agreements 94

137. Rights reserved 94

138. No waiver of substantive and procedural rights 94

139. Institution of proceedings under this Act 95

140. Obstruction of officers and Members 95

141. General penalty provision 95

142. Good faith defence 95

143. Establishing intention of a body corporate 95

144. Regulations 96

145. Repeal, savings and transitional provisions 97

146. Amendments consequential to Act 98

SCHEDULES

- SCHEDULE 1 – Constitution and Procedures of the Consumer Guidance Council
- SCHEDULE 2 – Consumer Affairs Tribunal
- SCHEDULE 3 – Summons to Witness
- SCHEDULE 4 – Terms which are Unfair if not individually negotiated

ANTIGUA AND BARBUDA
CONSUMER PROTECTION BILL, 2023
NO. OF 2023

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 Department and for connected purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows:

PART I
PRELIMINARY

1. Short title and commencement

- (1) This Act may be cited as the Consumer Protection Act, 2023.
- (2) This Act shall come into force on a date appointed by the Minister by Notice published in the *Gazette* and different dates may be appointed for the coming into force for different parts and sections of this Act.

2. Interpretation

- (1) In this Act

“acquire” in relation to

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

(b) services, includes accepting the provision of services;

“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;

“advertisement” means any form of communication made to the public or a section of the public for the purpose of promoting goods or services;

“appropriate laboratory” means a laboratory that—

- (a) is staffed with trained personnel;
- (b) meets the requirements of the ISO/IEC 17025 standard; and
- (c) is equipped to undertake the testing and analysis of goods;

“business” includes a professional practice or any other undertaking that is carried on for gain or reward or in the course of which goods or services are supplied otherwise than free of charge;

“business day” means a day other than a Saturday, Sunday or public holiday;

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

“Bureau of Standards” means the Antigua and Barbuda Bureau of Standards established under section 3 of the Standards Act Cap. 411 and which was preserved and continued under section 3 of the Standards Act 2017, No. 24 of 2017.

“CARICOM” means the Caribbean Community established under section 2 of the Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the Caricom Single Market and Economy, signed at Nassau, The Bahamas on July 5, 2001.

“CARICOM Member State” means a State that is a member of CARICOM in accordance with Article 3 of the Revised Treaty of Chaguaramas;

“commercial purpose” in relation to a consumer, does not include use, by the consumer, of goods bought and used or services 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) a voluntary consumer association registered under any law for the time being in force;
- (c) the State
- (d) one or more consumers, where there are numerous consumers having the same interest; or
- (e) in the case of death of a consumer, his or her legal heir or representative;

“complaint” means any allegation made by a complainant that—

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

- (b) the goods bought by him or agreed to be bought by him suffer from one or more defects;
- (c) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;
- (d) the supplier has charged, for the goods 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 goods or any package containing such goods;
 - (iii) displayed on the price list exhibited by him by or under any law for the time being in force; or
 - (iv) agreed between the parties;
- (e) goods which will be hazardous to life and safety when used, are being offered for sale to the public
 - (i) in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force; and
 - (ii) the supplier could have known with due diligence that the goods so offered are unsafe to the public or are hazardous to life and safety;
- (f) the supplier offers services which are hazardous or likely to be hazardous to life and safety of the public when used, which the supplier could, 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);

“consumer” is a person—

- (a) who buys any goods under an agreement or transaction and includes any other user of the goods, when such use is made with the consent of the person who buys the goods, but does not include a person who obtains such goods for resale or for any commercial purpose where that person’s annual turnover exceeds a threshold value determined by the Minister by Order;
- (b) who hires or avails of any services under an agreement or transaction and includes any other beneficiary of such services, when such services are availed of with the consent of the hirer, but does not include a person who hires or avails of such services for any commercial purpose;
- (c) to whom goods are intended to be supplied in the course of business carried on by a supplier or potential supplier; or
- (d) for whom services are supplied in the course of a business carried on by the supplier or potential supplier; and the person does not seek to receive the goods or services in

the course of a business carried on by him, except that the term consumer, in respect to unfair contract terms, shall be limited to a natural person;

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

“consumer goods” mean goods which are ordinarily intended for private use or consumption, not being—

- (a) aircraft, other than hang-gliders;
- (b) dangerous drugs within the meaning of Misuse of Drugs Act Cap. 283; or
- (c) tobacco;

“Council” means the Consumer Guidance Council continued under section 9;

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

“defect” in relation to goods, means any fault, imperfection or shortcoming 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;

“Department” means the Department of Consumer Affairs continued under section 6;

“Director” means the Director of the Consumer Affairs Department continued 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;

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

“hire purchase agreement” means an agreement for the sale of goods 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 in the vendor, notwithstanding that the purchaser is to be in possession of the goods, until the fulfilment of such conditions as to payment of instalments or otherwise, as may be specified in the agreement;

“in the course of business” means where –

- (a) goods or services are supplied by a person carrying on a business; and
- (b) payment for the supply of the goods or the services is made or is required, whether by contract, by virtue of any law or otherwise, to be made;

“ISO/IEC 17025” means the standard containing general requirements for the competence of testing and calibration laboratories issued by the International Organisation for Standardisation;

“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 or 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;

“person” includes a body corporate and an unincorporated body;

“prescribed” means prescribed by Regulations;

“price” includes any representation that may reasonably be inferred to be an indication of the cost of a good or service to a consumer;

“real property” means immovable property;

“services” include a service of any description which is made available to users, but does not include the rendering of any service free of charge or under a contract of personal service or employment services;

“special-order goods” means goods that a supplier expressly or implicitly was required or expected to procure, make or alter specifically to satisfy the customer’s requirements;

“supplier” includes—

- (a) a seller of goods or services;
- (b) a person providing a service; or
- (c) any person responsible for the provision of goods or services including a manufacturer, producer or distributor, or an agent;

“supply of goods” includes where a person, in the course of business, whether as principal or agent —

- (a) sells (otherwise than under a hire purchase agreement), hires or lends goods to another person;
- (b) enters into a hire purchase agreement or a contract for work and materials to furnish goods to another person;
- (c) exchanges goods for any consideration other than money;

- (d) unless the context otherwise requires, gives goods to another person, either as a prize or otherwise.

“supply of services” includes —

- (a) the undertaking and performance for gain or reward of engagements for any matter other than the supply of goods; and
- (b) 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.

“Tribunal” means the Consumer Affairs Tribunal established under section 11.

(2) In this Act, a reference to the acquisition or supply of goods or services includes a reference to—

- (a) an agreement to supply or acquire goods or services; and
- (b) the acquisition or supply of goods or services together with other property or other services, or both.

(2) 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 recognized by law, including by use of an electronic signature.

3. Purposes of the Act

The purposes of this Act are to promote and advance the social and economic welfare of consumers in Antigua and Barbuda 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 , unfair, unreasonable, unjust or otherwise improper trade practices including deceptive, misleading, 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;
- (h) providing a consistent, accessible and efficient system of consensual resolution of disputes arising from consumer transactions; and
- (i) providing for an accessible, consistent, harmonized, effective and efficient system of redress for consumers.

4. Application of the Act

- (1) Subject to subsection (3), this Act applies to all persons involved in trade or business whether through the purchasing, acquisition or supplying of goods or services.
- (2) In determining whether this Act applies to a person or transaction, the Department, a tribunal or a court shall consider the real substance of the person 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), this Act shall not apply to a contract made before the date on which this Act comes into operation.
- (6) Subject to section 103, this Act binds the Crown.

5. Consumer organisations

An organization is a consumer organisation if it is a duly registered, non-profit organisation and purports to provide services for the protection of consumers by—

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

PART II

DEPARTMENT OF CONSUMER AFFAIRS

6. Department of Consumer Affairs

- (1) The Department of Consumer Affairs established under section 3 of the Consumer Protection and Safety Act, Cap. 97 shall continue in being.
- (2) The Department shall be staffed with such number of public officers as are required for the proper discharge of its functions.

7. Functions and powers of the Department

- (1) The Department shall be responsible for implementing the policy established by the Ministry.
- (2) Without prejudice to the generality of subsection (1), the functions of the Department shall include—
 - (a) carrying out in accordance with Part III, on its own initiative or at the request of any person, such investigations in relation to the conduct of business or any complaint lodged under section 14, in relation to the supply of goods or services, that will enable the Department 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) 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 Department 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) conducting educational programmes for the benefit of consumers and suppliers, including educating and assisting consumers generally in resolving complaints;
 - (j) making arrangements for the resolution of disagreements between consumers and suppliers;
 - (k) carrying out such other functions as the Minister may assign to the Department from time to time;
 - (l) monitoring and reporting each year to the Minister on the availability of goods and services including—
 - (i) price and market conditions;
 - (ii) the performance of public and private suppliers;
 - (iii) conduct and trends affecting consumer rights; and
 - (iv) any other matter relating to the supply of goods and services.
 - (m) conducting research, collecting, and collating information in respect of consumer affairs;
 - (n) commissioning the testing of goods in appropriate laboratories
 - (o) promoting the purposes of this Act and protecting and advancing the interests of consumers across all sectors of the economy, whether of a private or public nature;
 - (p) advising the Minister generally on consumer affairs;
 - (q) liaising with other regional and international consumer agencies to facilitate redress in cross-border dispute;
 - (r) acting as Antigua and Barbuda's competent authority for consumer affairs in CARICOM; and
 - (s) performing any other function or duty assigned to or imposed on the Department under this Act or any other enactment.
- (3) The Department shall, for the purpose of carrying out its functions under sub-sections (1) and (2), any other provision of this Act, and any other law have the power to, among other things—
- (a) conduct investigations;
 - (b) obtain information from any persons under investigation;
 - (c) require documents to be verified by affidavit;
 - (d) enter, search and seize;
 - (e) make test purchases;
 - (f) inspect goods; and

- (g) 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.

8. Director of Consumer Affairs

- (1) The Director of Consumer Affairs established under section 4 of the Consumer Protection and Safety Act, Cap. 97 shall continue in being.
- (2) The Director shall—
 - (a) be appointed on such terms and conditions as may be specified in his instrument of appointment;
 - (b) be the chief executive of the Department;
 - (c) have full responsibility for the day-to-day management of the business of the Department;
 - (d) perform such duties as are conferred or imposed on him by this Act and any Regulations made under this Act.

PART III

CONSUMER GUIDANCE COUNCIL

9. Consumer Guidance Council

- (1) The Consumer Guidance Council established under section 6 of the Consumer Protection and Safety Act, Cap. 97, shall continue in being.
- (2) The provisions of the Schedule 1 shall have effect as to the constitution and procedures of the Council.

10. Functions of the Council

The functions of the Council are—

- (a) consider issues, questions and reports referred to it by the Minister and report to the Minister on their consumer policy implications;
- (b) identify and give guidance on emerging issues affecting Antigua and Barbuda's market and consumers;
- (c) facilitate the development of consumer protection policies;

- (d) generally provide guidance on any matter relating to consumer affairs.

PART IV

CONSUMER AFFAIRS TRIBUNAL

11. Establishment of Consumer Affairs Tribunal

- (1) There is established a Tribunal to be known as the Consumer Affairs Tribunal.
- (2) The provisions of Schedule 2 shall have effect as to the constitution and procedures of the Tribunal.

12. Functions of the Tribunal

The functions of the Tribunal shall be to—

- (a) review reports submitted by the Department;
- (b) hear and determine matters referred to it by the Department;
- (c) monitor the investigation of complaints by the Department;
- (d) providing redress against violations of this Act; and
- (e) carry out such other functions incidental to the proper discharge of its functions under paragraphs (a) to (c).

13. Powers of the Tribunal

- (1) For the purposes of discharge of its functions under this Act, the Tribunal may—
- (a) institute hearings and hear and determine matters;
- (b) summon witnesses;
- (c) administer oaths and examine witnesses;
- (d) compel the production of such books records papers and documents as it may deem necessary or proper for any proceeding or hearing held by it;
- (e) order the discovery and production of any document and, examine any documents produced;
- (f) require any document submitted to the Tribunal to be verified by affidavit;
- (g) dismiss complaints and discontinue hearings;
- (h) make orders, including interim orders;

- (i) do all necessary and proper acts in the lawful exercise of its powers or the performance of its duties.
- (2) The Tribunal shall have the power to hear orally any person who, in its opinion, is able to furnish the information required by the Tribunal, or who will be affected by an investigation or hearing, and shall hear the person if the person has made a written request for a hearing showing that he or she is an interested party likely to be affected by the result of the investigation or hearing, or that there are particular reasons why he or she should be heard orally.

PART V

RECEIPT, INVESTIGATION AND HEARING OF COMPLAINTS

14. Who may lodge a complaint

- (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 Department in accordance with the procedure set out in section 15.
- (2) Notwithstanding subsection (1), in relation to any goods or services acquired or agreed to be acquired, the following persons may lodge a complaint to the Department –
- (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 State.
- (3) Persons referred to in subsection (2) (b) may lodge a complaint only upon the receipt of written permission to lodge the complaint from the Department.
- (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 18 years; and

“parent or legal guardian” means –

- (a) the mother of the minor;
- (b) the putative father of the minor;
- (c) an individual having custody of the minor;
- (d) an individual residing with and having care of the minor;
- (e) the step-mother or step-father of the minor;
- (f) an individual who, under a written agreement or court order, is required to provide support for the minor or has a right of access to the minor; or
- (g) a foster caregiver of the minor.

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

15. Procedure for lodging complaints

- (1) Subject to subsection (2), a complainant may lodge a complaint to the Department orally or in writing, including via telephone or electronic means.
- (2) Upon receipt of a complaint the Department shall –
 - (a) record the complaint in writing; and
 - (b) direct the complainant to read and sign the written record.
- (3) Where the complainant is visually impaired, unable to read or unable to write, a member of staff shall read the written record in the complainant’s hearing and request that the complainant affix his or her mark to the written record.
- (4) A complaint made pursuant to this section shall–
 - (a) (a) set out any alleged act or omission on the part of a supplier who is in breach of this Act; and
 - (b) (b) be accompanied by any supporting materials and documents the complainant may have in his or her possession.

16. Investigative procedure of the Department

- (1) The Department shall only investigate a complaint made against a supplier where the complainant satisfies the Department that the complainant has submitted a complaint to the supplier and has failed to obtain reasonable redress.
- (2) Upon receipt of a complaint, the Department shall proceed to investigate the complaint unless the Department is satisfied that –
 - (a) the subject matter of the complaint is trivial;

- (b) the complaint is frivolous, vexatious or not made in good faith;
 - (c) the complaint was filed more than three years from the date on which the cause of action arose;
 - (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.
- (3) Where the Department decides not to proceed with 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 Department's decision not to proceed is by reason of paragraph (a) or (b) of subsection (2).
- (4) Where the Department decides to investigate a complaint, the Department 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 Department a written response to the complaint.
- (5) A written response submitted pursuant to subsection 4(b) shall—
- (a) set out the opposite party's version of events;
 - (b) be accompanied by any supporting materials and documents the opposite party may have in its possession; and
 - (c) be returned to the Department within thirty days of the opposite party's receipt of the complaint in accordance with subsection (4) (a) or such extended period, not to exceed fifteen days, as may be specified by the Department.

17. Failure of opposite party to respond

If the opposite party fails to make a written response in accordance with section 16(5), the Department shall complete its investigation based solely on the complaint and any supporting materials or documents submitted by the complainant.

18. Department to examine complaint and response

Upon receipt of the response of the opposite party, the Department shall –

- (a) examine the complaint and any 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 Department considers necessary.

19. Alleged defects requiring testing

(1) Where a complainant alleges a defect in a good which cannot be determined without proper test or analysis of the good, the Department shall, in the prescribed manner—

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

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

(3) Upon completion of the requisite testing or analysis, the appropriate laboratory shall submit its report to the Department.

20. Receipt and distribution of laboratory report.

(1) Upon receipt of a laboratory report from an appropriate laboratory, the Department shall forward to both parties a copy of the 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 Department shall require the disputing party to submit in writing the grounds and nature of the party's dispute with regards to the report.

(3) The Department shall include the laboratory report and any written submissions received by the Department under subsection (2) in its report to the Tribunal under section 26.

21. Power to summon persons and demand document production

(1) The department may, in relation to any investigation being conducted by it summon a person to—

- (a) attend and give a statement to the Department;
- (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 person who fails or refuses, without sufficient cause, to attend to give a statement or produce a document when requested to do so by the Department commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 dollars and in default of payment of the fine, to imprisonment for a term not exceeding two years.

22. Power to seize and search

(1) Where, during an investigation, the Department has reasonable cause to suspect that a book, document or thing relating to an offence under or contravention of this Act, is being kept or concealed in any place, the Department shall apply to a magistrate for a warrant to search and seize the book document or thing.

(2) Where the magistrate is satisfied by information under oath that—

- (a) there is reasonable ground for suspecting that an offence has been committed or that there has been a contravention of the Act; and
- (b) evidence of the commission of that offence or contravention of this Act is to be found in that book, document or thing that is likely to be found in any place, the magistrate may at any time issue a search warrant authorising an officer of the Department named in the warrant, with or without a member of the Police Force, to enter and search such place specified in the warrant, for such book, document or thing and to seize and take away such book, document or thing.

(3) The officer of the Department referred to in subsection (2) is not personally liable for any loss or damage arising from the execution of a search warrant under this section.

(4) Where the officer has seized the book, document or thing under subsection (2), the officer shall take it to the Department, which may retain it, taking reasonable care to ensure that it is preserved, until the conclusion of the investigation.

(5) Where a book, document or thing has been seized under subsection (2), a magistrate may, on the application of an interested person order that the book, document or thing be returned to the person from whom it was seized, or the person who is otherwise legally entitled thereto, if the magistrate is satisfied that the book, document or thing will not be required for the purposes of the investigation.

(6) The person from whom any book, document or thing is seized under subsection (2) is entitled at all reasonable times, and subject to such reasonable conditions as may be imposed by the Department, to inspect the book, document or thing and, in the case of a book or document, to obtain a copy thereof.

(7) The Department shall be given at least 7 calendar days' notice of an application made under subsection (5).

(8) Where a book, document or other thing has been seized, inspected or examined by an officer of the Department, the officer may make or cause to be made one or more copies thereof, and a document purporting to be certified by the officer to be a copy made under this section is admissible in evidence and has the same probative value as the original document.

23. Power to suspend or discontinue investigation

(1) The Department may, in its absolute discretion, discontinue an investigation where it is of the opinion that the matter being investigated does not justify further investigation.

(2) Where the Department decides to discontinue an investigation it shall, in writing, inform the complainant of the decision and the reasons for the decision.

(3) The Department may, at any time before conclusion of an investigation—

- (a) suspend the investigation, where the complainant and the opposite party have agreed to mediate their matter, pending the outcome of any mediation proceedings;
- (b) discontinue the investigation following confirmation from the complainant and the opposite party of successful completion of any mediation proceedings.

24. Power to investigate not precluded

(1) The Department 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 any other enactment.

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

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

25. Power to investigate on own initiative

The Department may, on its own initiative, carry out any investigation that it considers necessary and desirable in connection with the matters falling under the provisions of this Act.

26. Report to Tribunal

(1) Upon conclusion of an investigation, on its own initiative or on the basis of a complaint lodged in accordance with section 15, the Department shall prepare a full report of the investigation, together with its findings and recommendations, and submit a copy to the Tribunal.

(2) The Director shall review all reports prepared under subsection (1), before submission.

27. Fixing of hearing

(1) Where, on receipt of a report under section 26, the Tribunal determines that there may be a breach of this Act the Tribunal shall, in a timely manner—

- (a) fix a date, time and a place for a hearing in respect of the complaint; and
- (b) serve a notice of hearing on the complainant under section 14 and the opposite party.

(2) Notice of hearings shall be in such form and given in such manner as the Tribunal may determine.

28. Panel of Members of Tribunal

(1) A panel of members of the Tribunal, not being less than 3 in number at any hearing, shall sit and hear and determine matters laid before the Tribunal under this Part.

(2) A decision of the panel on a hearing is as valid and binding as if it were made by the Tribunal.

29. Power to summons persons to give evidence

(1) The Tribunal may summon a person to attend and give evidence before the Tribunal.

(2) A summons under this section –

- (a) shall be in the form set out in Schedule 3; and
- (b) may be served by –
 - (i) a member of the Police Force;
 - (ii) a bailiff; or
 - (iii) any other person authorised by the Tribunal.

30. Obligations of persons summoned

(1) A person summoned to attend and give evidence before the Tribunal shall be entitled –

- (a) in respect of such attendance, the giving of evidence, the disclosure of any communication or the production of any document, to the same rights and privileges as a person summoned before a court; and
- (b) to be paid his or her expenses, including travelling expenses, at the rates prescribed for witnesses in civil proceedings who are entitled to have their expenses paid from the 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) A person who, without sufficient cause—

- (a) fails or refuses to obey a summons issued by the Tribunal under section 29;

- (b) being a witness before the Tribunal –
 - (i) leaves a proceedings of the Tribunal, without its permission; or
 - (ii) refuses to answer any question put to him by or with the permission of the Tribunal; or
- (c) (c) obstructs or interrupts the proceedings of the Tribunal.

commits an offence and is liable on summary conviction to a fine not exceeding \$5000 and in default of payment of the fine, to imprisonment for a term not exceeding two years.

31. Right to be heard

- (1) At any hearing before the Tribunal, both the complainant and the opposite party are entitled to be—
 - (a) heard in person; or
 - (b) represented by an agent or attorney-at-law.
- (2) Hearings of the Tribunal shall take place in public but the Tribunal may,
 - (a) whenever the circumstances so warrant; or
 - (b) whenever it deems appropriate, conduct hearings in private.

32. Procedure of Tribunal generally

Except as otherwise provided in this section, the Tribunal may by regulation or otherwise regulate its own procedure.

33. Failure of party to attend hearing

- (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 opposite party fails, without reasonable excuse, to appear before the Tribunal, the Tribunal may decide the matter on its merits in the opposite party's absence.

34. False or misleading evidence

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 dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

35. Discontinuation of hearing

The Tribunal may, at any stage, discontinue a hearing where it is of the opinion that the matter does not justify further hearing and shall give reasons for the discontinuation.

36. Order of the Tribunal

- (1) At the conclusion of a hearing, the Tribunal, after considering all the evidence, shall make an order which shall state its decision and, where applicable, a time within which the order is to be complied with.
- (2) Where the order of the Tribunal includes an award of damages, such damages shall be limited only to compensatory damages.
- (3) A certified copy of the order shall be served upon the party against whom it is made within 21 days of the date the order is made and at that time notice thereof shall be given to the other parties to the proceedings.

37. Costs in discretion of Tribunal

The costs of and incidental to any proceedings before the Tribunal may be awarded for or against a party in the discretion of the Tribunal.

38. Failure to comply with order of the Tribunal

Any person who fails to comply with the order of the Tribunal made under section 36 commits an offence and is liable, on summary conviction, to a fine not exceeding \$10,000 dollars and in the case of a continuing offence, to a further fine of \$100 dollars for each day or part thereof.

39. Appeal

- (1) Subject to sub-section (2), any person aggrieved by an order made by the Tribunal may prefer an appeal against such order to the High Court within a period of 28 days from the date of the order, in accordance with the rules of court.
- (2) The appellant shall give notice of the appeal, in accordance with the rules of court, to the Tribunal and to the adverse party interested, and the Tribunal and the adverse party interested shall be entitled to be represented at the hearing of the appeal.
- (3) 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 order pending the appeal, upon such terms as the Judge may think fit.

PART VI

CONSUMER RIGHTS

40. Ambiguities to benefit consumer

- (1) The Consumer Protection Tribunal or the court shall, when
 - (a) interpreting or applying a provision of this Act, if the provision, 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; 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.

41. Unsolicited goods or services: relief from legal obligations.

- (1) A request for goods or services shall not be inferred solely on the basis of payment, inaction or the passing of time.
- (2) Where a consumer is a party to an agreement referred to in subsection (4)(c) and, during the course of that agreement there is a material change in the goods or services, the goods or services shall be treated as unsolicited from the time of the material change unless the supplier is able to establish that the consumer consented to the material change.
- (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 goods or services supplied to the consumer under a consumer agreement unless –
 - (a) the consumer has implicitly requested the supplier to supply the goods or services by–
 - (i) tendering payment for them; or
 - (ii) conduct that could reasonably lead the supplier to believe that the consumer has requested the supplier to supply the goods or services;
 - (b) before they are supplied to the consumer, the consumer has expressly requested the supplier to supply those particular goods or services; or
 - (c) the supplier has entered into an agreement to supply the goods or services, 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 goods or services, despite their subsequent use, receipt, misuse, loss, damage or theft; and
 - (b) is liable to pay to the recipient of unsolicited goods referred to in paragraph (a), such reasonable costs as are incurred in respect of the storage of the goods.
- (6) Subsection (5) does not apply to or in relation to a recipient of unsolicited goods if –
 - (a) the recipient has unreasonably refused to permit the supplier or the owner of the goods to take possession of the goods; or
 - (b) the goods were received in circumstances in which the recipient knew or might reasonably be expected to have known, that the goods were not intended for him.
- (7) Where a supplier has received payment from or on behalf of a consumer in respect of unsolicited goods or services, 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 goods from a supplier, the consumer -
 - (a) may–
 - (i) subject to paragraph (b)(ii), retain the goods without payment; or
 - (ii) return the goods to the supplier at the supplier’s risk and expense; and
 - (b) subject to subsection(6), is not liable for any
 - (i) loss or damage to those goods while they are in transit, or at any time after they are received by the consumer, whether or not they remain in the consumer’s possession; or
 - (ii) use or depletion of, or damage to those goods at any time after 10 business days after receipt by the consumer, unless during that time, the supplier has notified the consumer that the goods were delivered in error and has arranged to recover them, at the supplier’s risk and expense.
- (10) Subject to subsection (11), goods or services are unsolicited if the goods or services are supplied to a consumer who did not request them.
- (11) Goods or services will not be regarded as unsolicited if
 - (i) the goods or services were intended for another person and the recipient knew or ought to have known that the goods or services were intended for another person;
 - (ii) there is a non-material change to periodically supplied goods or services; or

- (iii) the goods or services are supplied under a written future performance agreement that provides for the periodic supply of goods to the recipient without further solicitation.

42. Consumer's right to select suppliers and products.

(1) A supplier shall not require, as a condition of supplying, or offering to supply, any goods or services, or as a condition of entering into a consumer agreement, that the consumer –

- (a) purchases any other goods or services from that supplier;
- (b) enters into an additional agreement or transaction with the same or another supplier; or
- (c) agrees to purchase any goods or services from a designated third party,
- (d) unless the supplier can show financial or other efficiency benefits to the consumer.

(2) Without limiting the generality of subsection (1), a supplier requires a consumer to purchase additional goods or services if the supplier

- (a) supplies the primary goods and any additional goods in a common package, and offers them for supply at a single price;
- (b) attaches to or inserts within, or in the packaging of, any primary goods a promotional coupon, credit slip, voucher or similar device to be used as full consideration for the purchase of any additional goods or services; or
- (c) installs within or encodes upon the primary goods, or any component of them, any additional goods, but does not alternatively offer them for supply separately and at individual prices.

43. Consumer's right to authorise services.

(1) This section applies to any 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 that property for the purpose of repair or maintenance; or
- (b) in any other case, the consumer requests an estimate before any services are supplied.

(2) A supplier to whom this section applies is not entitled to charge a consumer for the supply of any goods or services contemplated in subsection (1) unless –

- (a) 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.

44. Consumer’s right to choose and examine goods.

- (1) Where any goods are displayed in, or sold from, open stock, a consumer has the right to select or reject any particular item from that stock.
- (2) Where a supplier delivers goods to a consumer under a consumer agreement, the supplier shall, on request, allow the consumer a reasonable opportunity to examine the goods for the purpose of ascertaining whether they are in conformity with the consumer agreement.
- (3) Where goods that a consumer has not previously examined are delivered to the consumer, the consumer is deemed not to have accepted them until the consumer has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the consumer agreement.

45. Consumer’s rights with respect to delivery of goods or supply of services.

- (1) Unless otherwise expressly provided or anticipated by reason of a course of dealing or trade practice in a consumer agreement, it is an implied condition of every transaction for the supply of goods that –
 - (a) the supplier is responsible to deliver the goods to the consumer –
 - (i) within a reasonable time;
 - (ii) subject to subsection(2)(a), at the supplier’s place of business, if the supplier has one, and if not, at the supplier’s residence; and
 - (iii) at the cost and risk of the supplier; and
 - (b) the goods remain at the supplier’s risk until the consumer has accepted delivery.
- (2) The consumer has the right to require –

- (a) delivery of any goods at the –
 - (i) date and time agreed; and
 - (ii) 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 goods or supply of any service, the supplier shall not require that the consumer to accept delivery or performance of the goods or services at an unreasonable time.
- (4) In determining whether delivery or performance was conducted at an unreasonable time, the Tribunal or court shall bear in mind the nature of the goods or services and common practices and standards associated with the delivery of the goods or performance of the services.

46. Consumer's acceptance of goods or services

- (1) A consumer is deemed to have accepted goods when
- (a) the consumer expressly or implicitly communicates to the supplier that the consumer has accepted them;
 - (b) the goods have been delivered to the consumer, and the consumer does any act in relation to them that is inconsistent with the supplier's ownership of the goods; or
 - (c) after the lapse of a reasonable time required for examining the goods to ascertain its conformity with the transaction, the consumer retains the goods without intimating to the supplier that the consumer has rejected them.
- (2) Where a supplier delivers to a consumer a quantity of goods larger 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 some of the goods the supplier agreed to sell together with goods of a different description not contemplated in the consumer agreement, the consumer may –
- (a) accept the goods that are in accordance with the agreement and reject the remainder; or
 - (b) reject the whole.

47. Consumer's right to cancel reservation.

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

- (2) (2) Where a supplier makes a commitment or accepts a reservation to supply goods or services on a later date, the supplier may –
- (a) require payment of a deposit in advance, not exceeding the prescribed amount or prescribed percentage of the cost of the goods or services that have been reserved; and
 - (b) impose a reasonable charge for cancellation of the order or reservation.
- (3) For the purposes of this section, a cancellation charge is not a reasonable for cancellation if it exceeds a fair amount in the circumstances, having regard to—
- (a) the nature of good or the 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.
- (4) If a consumer is unable to carry out a reservation or advance booking by reason of the death of the consumer, the supplier –
- (a) may not impose any cancellation fee in respect of the reservation or booking; and
 - (b) shall refund to the administrator of the consumer’s estate any deposit paid by the consumer in respect of the reservation or booking.
- (5) Section 51, read with the changes required by the context, applies in respect of a cancellation in terms of this section.

48. Consumer’s right to rescind or cancel agreement.

- (1) The provisions of this section are in addition to and not in substitution for any right to return goods and receive a refund that may otherwise exist in law between a supplier and consumer.
- (2) Subject to subsection (3), a consumer may rescind a consumer agreement –
- (a) within 14 business days after delivery of goods to be supplied in terms of the agreement, if the agreement arises as a result of –
 - (i) direct, distance or electronic marketing by the supplier and contemplates the delivery of goods to the consumer; or –
 - (ii) any other marketing in circumstances in which the consumer is unable to choose or examine goods referred to in section 44;

- (b) within 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 goods to the consumer.
- (3) A consumer may rescind a consumer agreement referred to in subsection (2) within a period of 6 months after the agreement, if the supplier –
 - (a) being required to be licensed or registered in terms of any enactment, 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 days notice to the supplier, cancel without penalty, a consumer agreement –
 - (a) for the supply of a continuous service;
 - (b) to purchase goods or services on a periodic recurring basis by subscription; or
 - (c) to make a donation on a periodic recurring basis.
- (5) The expense and risk of return are borne by the supplier if goods are unacceptable.
- (6) A supplier
 - (a) is not entitled to collect any payment in terms of a rescinded agreement; and
 - (b) is obliged to return any payment received from a consumer within 5 business days after receiving notice of the rescission of a consumer agreement.
- (7) This section does not apply with respect to a consumer agreement in terms of which goods have been delivered to the consumer, if –
 - (a) any enactment prohibits the return of those goods to the supplier once they have been supplied to, or at the direction of, a consumer; or
 - (b) after having been supplied to, or at the direction of, the consumer, the goods have been partially or entirely—
 - (i) eaten, consumed, depleted or destroyed, unless the consumer was reasonably unable to determine that the goods were unfit for the intended purpose without partially eating, consuming, depleting or destroying them; or
 - (ii) disassembled, physically altered, or affixed, attached, joined or added to, blended or combined with, or embedded within, other goods or property.

49. Right to information in official language

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

50. Right to information in plain and user-friendly language.

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

- (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 goods or services, could be expected to understand the content, significance, and import of the document without undue effort, having regard to –

- (a) the context, comprehensiveness and consistency of the document;
- (b) the organisation, form and style of the document;
- (c) the vocabulary, usage and sentence structure of the text; and
- (d) the use of any illustrations, examples, headings, or other aids to reading and understanding.

(3) The Department may, after consultation with the Bureau of Standards, publish guidelines for methods of assessing whether a document satisfies the requirements of paragraph (a) of subsection (1).

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

(1) Where a consumer who enters into a consumer agreement for the supply of any goods or services dies before the goods or services are supplied –

- (a) the personal representative of the consumer's estate may give notice to the supplier—
 - (i) requiring delivery of the goods or supply of the services, in accordance with the agreement; or
 - (ii) terminating the 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 paragraph (a)(ii) of subsection(1) relates to the supply of any special-order goods, the supplier, after receiving notice of the termination—

- (a) shall not order, procure, make or alter anything not procured, made or altered;
 - (b) shall ensure the diligent completion of anything that had been procured or begun to be made or altered;
 - (c) is entitled to reimbursement for any costs for procurement or work referred to in paragraphs (a) and (b), on the terms contemplated in the agreement; and
 - (d) upon acquisition or completion of those special-order goods, holds them in trust for the benefit of the consumer's estate, subject to further direction by the administrator of that estate.
- (3) This section does not apply in respect of a consumer agreement for the supply of funeral or burial services.

52. Protection of consumer rights.

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

- (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 transaction or agreement with the consumer, to the detriment of the consumer; or
 - (d) takes any action to accelerate, enforce, suspend or terminate an agreement with the consumer.
- (2) If a consumer agreement, or any provision of such an agreement is, in terms of this Act, declared to be unlawful, or is severed from the agreement, the supplier who is a party to that agreement shall not, in response to that decision –
- (a) alter the terms or conditions of any other transaction or consumer agreement with another party to that agreement, except to the extent necessary to correct a similarly unlawful provision; or
 - (b) take any action to accelerate, enforce, suspend or terminate another agreement with another party to that agreement.

PART VII

DUTIES OF SUPPLIERS

53. Information to consumer.

(1) At any time before payment is made for any goods, whether sold as used or unused, a supplier shall, in addition to the requirements of any other enactment relating to packaging, labelling or description of goods, provide to the consumer in the English language, the information mentioned in subsection (2), concerning the goods being sold.

(2) The information referred to in subsection (1) is –

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

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

(4) Where a supplier fails to comply with subsection (1) he shall, notwithstanding anything to the contrary in the warranty document, be responsible for any damage done to the goods by the consumer that can be directly attributed to the consumer's lack of information.

54. Disclosure of price of goods or services

(1) A supplier shall not display goods for sale, or offer to supply any prescribed services without displaying a price in relation to those goods or services, unless the display is –

- (a) designed and intended predominantly as a form of advertisement of the supplier, goods or services; and
- (b) in the case of goods, in an area within the supplier's premises to which the public does not ordinarily have access.

(2) For the purposes of this section, --

- (a) a price is displayed in relation to particular goods or services if it is –
 - (i) appended, annexed or affixed to, written, printed, stamped or located upon, or otherwise applied to the goods or to any band, ticket, covering, label, package, reel, shelf, or other thing used in connection with the goods or on which the goods are mounted for display or exposed for sale;
 - (ii) published in relation to the goods in a catalogue available to the public if a time is specified in the catalogue as the time after which the goods may not be sold at

that price, and that time has not yet passed or in any other case, the catalogue may reasonably be regarded as not out of date; or

(iii) in any way represented in a manner from which it may reasonably be inferred that the price represented is a price applicable to the goods or services; and

(b) a price shall not be regarded as being displayed in relation to goods if –

(i) the price was appended to the goods outside [Antigua and Barbuda] in relation to the supply of the goods outside [Antigua and Barbuda]; or

(ii) the display of that price is fully covered and obscured by a second displayed price.

(3) Subject to subsection (4), where a supplier displays goods for sale or offers to supply any services in relation to which more than one price is concurrently displayed, section 55 applies.

(4) Subsection (3) does not apply in respect of the price of goods or services if the price of those goods or services is determined by an enactment.

(5) Where a supplier has provided an estimate for any goods or services, in accordance with in section 60, the price for that service, or goods 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 dollars, and in default of payment of the fine, to imprisonment for a term not exceeding 2 years.

55. Dual pricing

(1) Subject to section 57 where more than one price is displayed on goods –

(a) the customer is entitled to pay the lowest of the prices that are displayed on the goods; and

(b) a supplier shall not, in the course of trade, supply the goods at a price that is higher than the lowest price displayed on the goods.

(2) A supplier who contravenes subsection (1)(b) commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 dollars 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 person 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 another 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 respondent had taken all reasonable precautions and exercised due diligence to avoid the contravention.

56. Identification of supplier

(1) A person shall not carry on a business, advertise, promote, offer to supply or supply any goods or services, or enter into a transaction or consumer agreement with a consumer under any name except –

- (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 the following particulars on any trade catalogue, trade circular, business letter, order for goods, sales record or statement of account issued –

- (a) the name, title or description under which the business is carried on;
- (b) a statement of the place at which, or from which, the business is carried on; and
- (c) if the activity is carried on under a name referred to in subsection (1)(b), the name of the person to whom that name is registered.

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

57. Product labelling and trade descriptions

(1) A supplier of goods shall not display, offer to supply or supply any goods, other than goods that are exempted under subsection (3), unless a trade description of the goods is –

- (a) applied to the goods, or to any covering, label or reel in or on which the goods are packaged, or attached to the goods;
- (b) displayed together with, or in proximity to, the goods in a manner that is likely to lead to the belief that the goods are designated or described by that description; or

- (c) contained in any sign, advertisement, invoice, wine list, business letter, business paper, or other commercial communication on the basis of which a consumer may request or order the goods.
- (2) A supplier of goods shall –
 - (a) not offer to supply, display, or supply any goods if the supplier knows, reasonably could determine, or has reason to suspect, that –
 - (i) a trade description applied to the goods is likely to mislead the consumer as to any matter implied or expressed in that trade description; or
 - (ii) a trade description or trade mark applied to the goods has been altered in contravention of subsection (4); and
 - (b) with respect to any goods within that person’s control, take reasonable steps to prevent any other person from doing anything referred to in paragraph (a) of this subsection.
- (3) The Minister may, by Regulations–
 - (a) exempt particular goods or categories of goods from the application of subsection (1) if –
 - (i) the goods, or that category of goods, are subject to regulation under any other enactment, and the Minister is satisfied that the regulatory scheme provides for adequate disclosure of information to the consumer to achieve the purposes of this section; or
 - (ii) the information required under this section is self-evident, given the nature of the goods, and the manner and circumstances in which they are customarily made available for supply to the public; or
 - (b) prescribe circumstances of displaying or selling particular goods or categories of goods, which if satisfied, would exempt those goods from the application of this section.
- (4) No person shall –
 - (a) apply to any goods a trade description that is likely to mislead the consumer as to any matter implied or expressed in that trade description;
 - (b) alter, deface, cover, remove or obscure a trade description or trade mark applied to any goods in a manner calculated to mislead consumers; or
 - (c) with respect to any goods within that person’s control, fail to take reasonable steps to prevent any other person from doing anything referred to in paragraph (a) or (b) of this subsection.

(5) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 dollars 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 goods;
- (ii) the name of the producer or producers of any goods;
- (iii) the ingredients of any goods, or material of which any goods are made;
- (iv) the place or country of origin of any goods;
- (v) the mode of manufacturing or producing any goods;
- (vi) any goods being the subject of any patent, privilege or copyright; or

(b) any figure, work or mark, other than a trade mark, that, according to the custom of the trade, is commonly understood to be an indication of any matter contemplated in paragraph (a) of this subsection.

58. Disclosure of environmental facts affecting goods

(1) Subject to subsection (3) of this section, a person who packages any prescribed goods, or imports any such goods, for supply to consumers shall, in addition to the requirements of section 57, display on or in association with that packaging or the goods, a notice in the prescribed manner and form that discloses –

(a) the presence, nature and extent of –

- (i) any genetically modified ingredients or components of the goods; or
- (ii) any ingredients or components that have been determined to present a chemical or biological hazard to humans, relative to their concentration in the goods;

(b) the estimated energy requirements per hour of use, if the operation of the goods requires the utilisation of energy other than muscle power;

(c) the nature and intensity of any potentially harmful energy radiation, if the goods, or any component of the goods, emit any such radiation; and

(d) the need for special handling, or waste disposal, of the goods, any component of them or any material in which the goods were 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 that consumer goods that are prescribed under subsection(1), shall—

- (i) inform the consumer of any relevant information before supplying those goods; and
- (ii) after complying with subparagraph (i), obtain the consumer's express consent to install goods that are the subject of a notice required by subsection (1), before supplying those goods.

(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 goods shall –

- (a) not display, supply or offer to supply any goods if the supplier knows, reasonably could determine, or has reason to suspect, that a notice applied to the goods –
 - (i) is likely to mislead the consumer as to any matter implied or expressed in that notice; or
 - (ii) has been altered as contemplated in subsection(5); and
- (b) with respect to any goods within that person's control, take reasonable steps to prevent any other person from doing anything contemplated in paragraph (a) of this subsection.

(5) A supplier shall not—

- (a) apply to any goods a notice that is likely to mislead the consumer as to any matter implied or expressed in that notice;
- (b) alter, deface, cover, remove or obscure a notice applied to any goods in a manner calculated to mislead consumers; or
- (c) with respect to any goods within the person's control, fails to take reasonable steps to prevent any other person from doing anything contemplated in paragraph (a) or (b) of this subsection.

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

59. Disclosure of re-conditioned goods

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

- (a) have been re-conditioned, re-built or re-made; and

(b) bear the trade mark of the original manufacturer or supplier, shall apply a conspicuous notice to those goods stating clearly that they have been reconditioned, re-built or re-made.

(2) A person who contravenes subsection (1) commits an offence and is liable, on summary conviction, to a fine not exceeding \$10,000.00 dollars or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

60. Supply by description and sample

(1) Where there is a contract for the sale or supply of goods on the basis of, or by reference to a description, the goods sold shall correspond with the description.

(2) A contract for the supply of goods is not prevented from being a contract for supply of goods on the basis of, or by reference to a description for the purpose of subsection (1) if the goods, when exposed for sale or hire, are selected by the consumer.

(3) Where the supply of goods is on the basis of, or by reference to a sample, the bulk of goods supplied shall correspond with the sample.

(4) Where the consumer has agreed to purchase or lease goods on the basis of, or by reference to—

(a) a description or sample of the goods, it is an implied condition of the agreement that the goods delivered to the consumer –

(i) correspond with the description or sample; and

(ii) are free from any defect that would not be apparent from the description or on reasonable examination of the sample; or

(b) a sample and description of the goods, it is not sufficient that the bulk of the goods correspond with the sample if the goods do not also correspond with the description.

(5) A consumer of the goods referred to in subsection (3) and subsection (4)(b) shall be given a reasonable opportunity by the supplier to compare the goods supplied with the sample before accepting the goods.

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

61. Sales records

(1) A supplier of goods or services shall provide a written durable record or an electronic record if available and accepted by the consumer of each transaction over \$10 dollars to the consumer to whom the goods or services are supplied, including in that record, the following information –

(a) the supplier's name, or registered business name, and VAT registration number, if any;

- (b) the address of the premises at which or from which the goods or services were supplied;
- (c) the date on which the transaction occurred;
- (d) a name or description of the goods or services supplied or to be supplied;
- (e) the unit price for each of the goods or services supplied or to be supplied;
- (f) the quantity of each of the goods or services supplied or to be supplied;
- (g) the total price of the transaction, 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.

62. Utility of sales record

The sales record provided under section 61 by a supplier –

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

63. Measurement of goods

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

(2) For the purposes of subsection (1), a supplier of any goods that are sold by reference to its weight, volume or other measurement shall provide to the consumer at the time of purchase, appropriate measurement standards in accordance with the Metrology Act.

(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 goods by weight or other measurement or by number, delivers or causes to be delivered to the consumer, a quantity lesser than the quantity that –

- (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.

64. Warranties

(1) A supplier shall issue explicit warranties in relation to the supplier's goods or services, as the case may be, whether the goods are 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 goods sold, or provided in the course of a service, the supplier—

(a) shall be deemed to have issued to the customer, the manufacturer's warranty as an explicit 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 defective goods

(a) there is implied, a warranty that the repair or replacement shall be carried out within a reasonable time; and

(b) implied warranties applicable to a contract for sale of goods shall apply to the repaired or replaced goods.

(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 explicit warranties, shall apply to the supply and repair of all goods.

(6) In the absence of an explicit warranty, and, subject to the standard conditions of warranties, an implied warranty of 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 criminal sanctions as provided under any enactment.

65. Implied warranties as to quality and fitness

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

(2) Subsection (2) does not apply if—

(a) defects are specifically drawn to the attention of the consumer before the contract is made; or

(b) the consumer examines the goods before the contract is made as regards defects which that examination ought to reveal.

(3) Where—

- (a) a supplier supplies goods to a consumer; and
- (b) the consumer, expressly or by necessary implication, makes known to the supplier or the person by whom any antecedent negotiations are conducted any particular purpose for which the goods are being acquired, there shall be implied in the contract for the supply of the goods a warranty that the goods supplied are fit for that purpose, whether or not that is the purpose for which the goods are commonly supplied.

(4) The warranty referred to in subsection (3) shall not be implied where the circumstances show that the consumer does not rely or that it is unreasonable for him or her to rely on the skill or judgment of the supplier or the person by whom any antecedent negotiations are made.

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

(6) Where a contract for the supply of goods, expressly or by necessary implication, is to the effect that the goods are to be supplied on the basis of or by reference to sample, there shall be implied in that contract a warranty that—

- (a) the bulk of the goods corresponds in quality with the sample;
- (b) the consumer shall have a reasonable opportunity of comparing the bulk of the goods with the sample; and
- (c) the goods shall be free from any defect rendering them unsatisfactory if the defects would not be apparent on reasonable examination.

(7) Where goods are supplied to a consumer there shall be an implied warranty that the goods are unused, unless before the consumer accepts the goods—

- (a) the supplier discloses to the consumer that the goods are not unused; or
- (b) the consumer knows or ought to know that the goods are not unused or are likely not to be unused.

(8) For the purposes of subsection (7), goods are unused notwithstanding that they have been used by the supplier or any other person to test, prepare or deliver them, if they have not been so used to an unreasonable extent.

66. Quality of goods or services

(1) Where goods or services are supplied under a consumer agreement there is an implied warranty by the supplier that the goods or services are of a reasonably acceptable quality.

(2) Goods of any kind are of a “reasonably acceptable quality” within the meaning of this Part if they are as fit for the purposes for which goods of that kind are commonly bought as it is reasonable to expect having regard to—

- (c) any description applied to them;

- (d) the price, if relevant;
- (e) the state or condition of the goods;
- (f) the durability of the goods;
- (g) freedom of the goods from minor defects;
- (h) the safety and price of the goods;
- (i) any representations made by the supplier of the goods; and
- (j) any other relevant circumstance.

(3) The implied conditions and warranties applying to the sale of goods by virtue of the Sale of Goods Act Cap. 393 are deemed to apply with necessary modifications to goods that are leased or traded or otherwise supplied under a consumer agreement.

(4) A term or acknowledgement in a consumer agreement that purports to negate or vary any implied condition or warranty under the Sale of Goods Act Cap. 393 or any deemed condition or warranty under this Act, is void.

(5) A term or acknowledgement referred to in subsection (4) is severable from the agreement.

67. Damage resulting from use of service or goods

(1) This section applies if a supplier –

- (a) undertakes to provide a consumer with goods or a service upon payment of a fee;
- (b) provides the declared benefit attached to the service or use of the goods; and
- (c) inadvertently causes bodily injury or pecuniary loss to be sustained by the consumer, independent of all other causes or contributory negligence.

(2) A supplier shall, upon presentation by the consumer of a document from the Department 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 within 7 days after the complaint is received at the registered Department of the supplier.

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

- (a) he 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 of some other goods or service that may be recommended by the supplier as supplementary or complementary.

68. Supply of damaged goods to consumer

(1) Where—

- (a) within the warranty period, goods 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 failure is not due to negligence or abuse by the consumer,
- (c) the supplier shall be responsible for the replacement or repair of the goods, at no cost to the consumer.

(2) Subject to subsection (3), a supplier shall, in the event of repair of goods referred to in subsection (1) return the goods to the consumer in a fully repaired and functional state within such period, after receipt of the goods for repair or replacement, as the Department, after consultation with the supplier, considers appropriate.

(3) Where the goods referred to in subsection (2) is not returned to the consumer within the period specified by the Department under that subsection, the relevant supplier shall provide in circumstances where 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 goods.

69. Return of defective goods

(1) Subject to subsections (3) and (4), a consumer may return goods to a supplier if the consumer—

- (a) was encouraged to acquire goods by the supplier's declaration and description of the goods; and
- (b) after acquiring the goods , discovers within a reasonable time that the goods are defective in a material particular from those declared or described.

(2) Where goods are returned pursuant to subsection (1), the supplier shall, in exchange for the returned goods –

(a) replace the goods—

- (i) within 7 days of the return of the goods to the supplier;
 - (ii) or in the case of where the replacement is to be imported, within 5 days plus the time taken for importation; or
- (b) at the election of the consumer, immediately refund the value of the goods or such other amount as may be agreed between the consumer and supplier.

(4) A supplier is obliged to replace or make refunds on goods returned pursuant to subsection (1) only where the goods are returned –

- (c) in the condition in which they were purchased; or
- (d) with minimal damage resulting from reasonable exposure in the normal course of use of the goods prior to discovery of the material difference between the goods received and the goods declared and described.

(4) A consumer who acquires goods that in every way are similar or identical to the one requested or described and declared by the supplier shall not be entitled to a refund if, having left the place from which the supplier sold the goods, the consumer for any reason decides that he no longer wants them.

(5) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 dollars if the supplier fails—

- (a) to replace the goods within 14 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 himself and the consumer.

70. Return of materially different goods

(1) Subject to subsections (4) and (5), where a consumer—

- (a) is encouraged to acquire goods by the supplier's declaration and description of the goods; and
- (b) after acquiring the goods, discovers that the acquired goods are different in a material particular from that intended to be acquired, the actions specified in subsection (2) apply.

(2) The actions referred to in subsection (1) (b) are—

- (a) the consumer may return the goods acquired to the supplier;
- (b) the supplier shall be afforded a reasonable opportunity to inspect the goods; and
- (c) if the defect is not fixed after a reasonable time, or cannot be fixed, the supplier shall give to the consumer in exchange for the returned goods, monetary compensation to the value of the goods or another amount agreed between the consumer and the supplier.

(3) Where goods are returned under subsection (2), the supplier shall not charge the consumer a restocking fee for the goods.

(4) Subsection(1) does not apply unless the goods are returned to the supplier in the condition in which they were purchased or with minimal damage resulting from reasonable exposure in the normal course of the consumer's use of the goods before discovery of the material difference between the goods received and the goods that the consumer requested.

(5) A consumer who acquires goods that in every way are similar or identical to the one requested or described and declared by the supplier shall not be entitled to a refund if, having left the place from which the supplier sold the goods, the consumer for any reason decides that he no longer wants it.

71. Approved and non-approved services

(1) A supplier shall—

- (a) only provide such services as are approved by the consumer; and
- (b) not require a consumer to commit to pay for services which, in addition to those contracted, may, in the opinion of the supplier, be necessary or appropriate.

(2) A consumer shall not be liable to pay for any service not approved by him.

72. Businesses offering repair services

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

- (a) the name, address and telephone number of the consumer;
- (b) a reasonably accurate description of the goods to be repaired, including any identification number or mark;
- (c) an estimate of the replacement value of the goods in its present state as agreed with the consumer or as declared by an independent valuer of such goods;
- (d) an estimate of the labour and other costs to be paid by the consumer in respect of the repairs to be effected; and
- (e) the date on which the goods—
 - (i) are received for repair; and
 - (ii) will be ready for delivery.

(2) The supplier shall give a copy of the record referred to in subsection (1) 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 he deems necessary for the consumer to enjoy reasonably long and uninterrupted use of the repaired goods; 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 dollars.

73. Advertised delivery date.

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

(a) has entered into a consumer agreement with the supplier to deliver the goods; and

(b) makes a deposit pursuant to the consumer agreement referred to in paragraph (a) in respect of the delivery of the goods, the advertised date or period shall form part of the contract between the supplier and the consumer.

(2) If the goods are 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 goods by another date or within another period on terms to be agreed with the consumer.

(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 goods or service, may elect to terminate the contract within 7 days after the receipt of the deposit and in such a case, the supplier shall refund the full value of the deposit received.

74. Conditions of demanding and accepting payment

(1) A person shall not demand or accept payment or other consideration for the supply of goods or services, if at the time of the demand or acceptance, that person—

(a) does not intend to supply the goods or services;

(b) intends to supply goods or services which are materially different from the goods or services in respect of which the payment or other consideration is demanded or accepted; or

(c) does not have reasonable grounds to believe that the goods or services will be supplied within the period specified, or if no period is specified, within a reasonable time.

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

75. General standards for the promotion of goods or services

(1) A supplier shall not promote goods or services—

- (a) in a manner that is misleading, fraudulent or deceptive in respect of—
 - (i) the nature, properties, advantages or uses of the goods or services;
 - (ii) the manner in or conditions on which those goods or services may be purchased, leased or otherwise acquired;
 - (iii) the price at which the goods may be acquired, or the existence of, or relationship of the price to, any previous price, or competitors price for comparable or similar goods or services;
 - (iv) the sponsoring of any event; or
 - (v) any other material aspect of the goods or services;
- (b) in a manner that is reasonably likely to imply a false or misleading representation concerning those goods or services, as contemplated in section 76;
- (c) the supply, purchase, sale or possession of which is unlawful;
- (d) to be supplied in a manner that is inconsistent with any law; or
- (e) in a manner that –
 - (i) is degrading to the dignity of any person;
 - (ii) depicts, simulates, suggests, represents or reasonably appears to promote a use or application of those goods or services that is inconsistent with any law; or
 - (iii) subject to subsection (2) of this section, implies or expresses a preference for any particular group of prospective consumers distinguishable from the general population on the basis of a prohibited ground of unfair discrimination set out in the Constitution.

(2) Paragraph (e)(iii) of subsection (1) does not apply to the extent that particular goods or services are reasonably intended or designed to satisfy specific needs or interests that are common to or uniquely characteristic of a particular group of prospective consumers distinguishable from the general population.

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

PART VIII

UNFAIR TRADE PRACTICES

76. False, misleading or deceptive representations.

- (1) It is an unfair trade practice for a person in the course of trade or commerce 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, suitability for purpose or quality of goods or services.
- (2) With respect to any goods or services that are the subject of a consumer agreement or in the marketing of any such goods or services, the supplier shall not, by words or conduct —
 - (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, or allow a consumer to incorrectly believe, that —
 - (a) the supplier has status, affiliation, connection, sponsorship or approval that he does not have;
 - (b) goods or services —
 - (i) have ingredients, performance characteristics, accessories, uses, benefits, qualities, sponsorship or approval that they do not have;
 - (ii) are of a particular standard, quality, grade, style or model;
 - (iii) are new or unused, if they are not or if they are reconditioned or reclaimed, subject to subsection (4);
 - (iv) have been used for a period, to an extent, or in a manner that is materially different from the facts;
 - (v) have been supplied in accordance with a previous representation;
 - (vi) are available, or can be delivered or performed within a specified time;
 - (c) land or other real property —

- (i) has characteristics that it does not have;
 - (ii) may lawfully be used, or is capable of being used, for a purpose that is in fact unlawful or impracticable; or
 - (iii) has or is proximate to any facilities, amenities or natural features that it does not have, or that are not available to it;
- (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 assists the supplier in obtaining a new or potential customer.
- (4) A representation contemplated in subsection (3)(b)(iii) to the effect that goods are new or unused is not false, misleading or deceptive if those goods have been used –
- (a) by or on behalf of the manufacturer, importer, distributor or supplier; and
 - (b) 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.
- (6) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 or to a term of imprisonment not exceeding 6 months or to both.

77. Prohibition on restrictive trade practices

- (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 goods or services 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 goods or in providing services 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 goods or, as the case may be, services as condition precedent to buying, hiring or availing of other goods or services.

(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 or to a term of imprisonment not exceeding 5 years.

78. Prohibition on unfair trade practices.

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

(2) For the purposes of this section, a reference to an “unfair trade practice” includes a reference to any trade practice which, for the purpose of promoting the sale, use or supply of goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice specified in subsection (3).

(3) The unfair methods and practices and deceptive practices referred to in subsection (2) include—

- (a) the practice of making any statement, whether orally or in writing or by visible representation which—
 - (i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
 - (ii) falsely represents that the services are of a particular standard, quality or grade;
 - (iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;
 - (iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do 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 products or goods or services, have been or are, ordinarily sold or provided;
 - (vii) gives false or misleading facts disparaging the goods, services or trade of another supplier;
- (b) the practice of making a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
- (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 goods that is not based on an adequate or proper test thereof;

- (d) giving to the public a representation in a form that purports to be a warranty or guarantee of a product or of any goods or services 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) giving to the public a 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) permitting the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or 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) permitting the 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) permitting the sale or supply of goods intended to be used, or that are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by a 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 goods;
 - (j) permitting the hoarding or destruction of goods, if such hoarding raises or is intended to raise the price of the goods or other similar goods;
 - (k) refusing to sell goods or to make goods available for sale, if such refusal raises or is intended to raise the price of the goods or other similar goods;
 - (l) refusing to provide any service if such refusal raises or is intended to raise the price of the services; and
 - (m) manufacturing of spurious goods or offering such goods for sale or adopts deceptive practices in the provision of services.
- (4) For the purpose of subsection (3)(a)(vi) of this section, a representation as to price shall be deemed to refer to the price at which the product or goods or services have been sold or provided

by suppliers generally in the relevant market, unless it is clearly specified to be the price at which the goods have 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,
- (d) 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) of this section, “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) of this section, 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 dollars or to imprisonment for a term not exceeding 3 years or to both.

79. Unreasonable transactions.

(1) A supplier shall not supply or agree to supply any particular goods or services to a consumer if the supplier knows, or reasonably ought to have known, or recognised from the interaction between the supplier and the consumer that the –

- (a) goods or services are materially unsuitable for the purpose to which the consumer intends to apply them, irrespective of whether the goods or services are of good quality or are reasonably fit for their customary intended purpose; and

(b) consumer is unlikely to be able to make such a determination, having regard to the nature of the goods or services, and the consumer's apparent age, education, experience and familiarity with such goods or services.

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

(3) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 dollars or to imprisonment for a term not exceeding 6 months or to both.

80. Unfair or unjust transactions

(1) A supplier shall not –

(a) offer to supply, supply, or enter into an agreement to supply, any goods or services at a price or on terms that are unfair or unjust; or

(b) market any goods or services, or negotiate, enter into or administer an agreement for the supply of any goods or services, in a manner that is unfair or unjust, having regard to—

(i) the fair value of the goods or services;

(ii) the circumstances of the agreement;

(iii) the nature of the parties to that 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 or unjust if—

(a) the transaction is excessively one-sided in favour of any person other than the consumer or other person to whom goods or services are 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 detriment upon a false, misleading or deceptive representation, or statement of opinion, provided by or on behalf of the supplier.

(3) An unfair or unjust transaction is unenforceable against a consumer.

(4) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 dollars or to imprisonment for a term not exceeding 6 months or to both.

81. Unconscionable conduct

(1) It is an unfair practice for a supplier, in the ordinary course of business with a consumer, to engage in unconscionable conduct.

(2) Without limiting the generality of subsection (1), a supplier must not use physical force, coercion, undue influence, pressure or harassment, unfair tactics or any other similar conduct, in connection with the –

- (a) marketing of any goods or services;
- (b) supply of goods or services to a consumer;
- (c) negotiation, conclusion, execution or enforcement of an agreement to supply any goods or services to a consumer;
- (d) demand for, or collection of, payment for goods or services by a consumer; or
- (e) recovery of goods from a consumer.

(3) In addition to any conduct referred to in subsection (2), it is unconscionable for a supplier to take advantage of the fact that a potential consumer was substantially unable to protect his or her own interests because of disability, illiteracy, ignorance, inability to understand the language of an agreement, or any other similar factor.

(4) Without limiting the generality of what may be taken into account in determining whether conduct on the part of or a representation by a supplier is unconscionable, there may be taken into account that the supplier or his employee knows or ought to know that –

- (a) the consumer is not reasonably able to protect his interests due to disability, ignorance, illiteracy, inability to understand the language of an agreement or similar factors;
- (b) the price grossly exceeds the price at which similar goods or services are readily available to like consumers;
- (c) the consumer is unable to receive a substantial benefit from the subject matter of the representation;
- (d) there is no reasonable probability of payment of the obligation in full by the consumer;
- (e) the terms of the consumer transaction 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 detriment; or
- (g) consumer is being subjected to undue pressure to enter into a consumer transaction.

(5) A consumer agreement concluded on the basis of an unconscionable representation or unconscionable conduct is unenforceable at the option of the consumer.

(6) A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 dollars or to imprisonment for a term not exceeding 6 months or to both.

82. Renegotiation of terms

(1) A person who has custody or control of a consumer's goods shall not use such custody and control 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 dollars or imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

83. Bait advertising

(1) A person shall not, in the course of trade or commerce, advertise for supply, at a specified price, goods or services which that person –

(a) does not intend to offer for supply or provide in reasonable quantities; or

(b) has no reasonable grounds for believing he or she can supply, immediately, or within a reasonable time, at that price for a period that is, and in quantities that are, unreasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

(2) A person 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 6 months or to both.

84. Printing, publishing, distributing, broadcasting or telecasting in good faith

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.

85. Pyramid scheme

(1) A person shall not promote, operate or participate in a pyramid selling scheme.

(2) For the purposes of this section, the term "pyramid selling scheme" means a scheme that –

(a) provides for the supply of goods or services or both for reward;

(b) to many participants, constitutes primarily an opportunity to sell an investment opportunity rather than an opportunity to supply goods or services; 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.

(3) In subsection (2) “participants” means participants in a pyramid scheme.

(4) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 dollars 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 Department 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.

86. Rescission

(1) Where a consumer has entered into a consumer agreement in the course of which transaction the supplier has engaged in an unfair practice, the consumer agreement may be rescinded by the consumer and the consumer is entitled to any remedy that is available in law.

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

- (a) the return or restitution of the goods or services is no longer possible; or
- (b) rescission would deprive a third party of a right in the subject-matter of the 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 agreement exceeds the reasonable value of the goods or services or to recover damages, or both.

87. Defences for contravention of this Part

(1) Subject to subsection (2) in a prosecution under this Part, it is a defence if the defendant proves –

- (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 his or her control; and

- (b) that he or she took reasonable precautions and exercised due diligence to avoid the contravention.
- (2) If a defence under 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 he or she has, not later than 7 days before the day on which the hearing of the proceeding commenced, served on the person by whom the proceeding was instituted, a notice in writing giving such information that would identify or assist in the identification of the other person as was then in his or her 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 he or she –
- (c) is a person whose business it is to publish or arrange for the publication of advertisements;
- (d) received the advertisement for publication in the ordinary course of business; and
- (e) did not know and had no reason to suspect that its publication would amount to a contravention of a provision of this Part.

88. Court may order payment of damages or costs

Upon the conviction of a person of an offence under this Part, the Court may, in addition to any other sanctions, order the person to –

- (a) make to the consumer, restitution of any deposit made by the consumer;
- (b) pay to the consumer, by way of damages, a sum representing the costs reasonably incurred by that consumer as a result of the offence;
- (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

89. Unfair terms

- (1) A term in a consumer agreement is unfair if, to the detriment of the consumer, it causes an imbalance in the rights of the supplier and the consumer.
- (2) In determining whether a term is unfair a 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 agreement relative to each other, taking into account –
 - (i) the availability of equivalent goods or services; and
 - (ii) suitable alternative sources of supply;
 - (b) whether the consumer received an inducement to agree to the term, or, in agreeing to the term, had an opportunity of acquiring the goods or services or equivalent goods or services, from any source of supply under a contract that did not include that term;
 - (c) whether the consumer knew or ought reasonably to have known of the existence and extent of the term, having regard to any custom of trade and any previous dealings between the parties;
 - (d) in the case of supply of goods, whether the goods were manufactured, processed or adapted to the special order of the buyer;
 - (e) the nature of the goods or services for which the agreement was concluded;
 - (f) the interests of the supplier;
 - (g) the other terms of the agreement or of another agreement on which it is dependent;
 - (h) the interests of the particular class of consumers who are likely to adhere to the agreement; and
 - (i) the circumstances attending the conclusion of the 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 a court, after having considered all the circumstances contemplated in subsection (2), is of the opinion that a term is unfair, it may
- (j) rescind or amend the agreement or a term of the agreement; or
 - (k) make any other order as may be necessary to prevent the effect of the agreement being unfair or unreasonable to any of the parties, notwithstanding the principle that effect 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 the Schedule 4 is unfair, if not individually negotiated.

90. Written terms to be plain and intelligible

- (1) A supplier shall ensure that a written term in a consumer agreement is expressed in plain and intelligible language.
- (2) If there is doubt about the meaning of a written term in a consumer agreement, the interpretation that is most favourable to the consumer shall prevail.
- (3) In so far as a written term in a consumer agreement is plain and intelligible, the assessment of its fairness shall not relate to –
 - (a) the definition of the main subject-matter of the agreement; or
 - (b) the adequacy of the price or remuneration as against the goods or services supplied in exchange.

91. Excluding restricting or modifying liability

- (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 to the agreement; or
 - (b) the exercise of a right conferred by Part VI.
- (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.

92. Indemnity subject to reasonableness

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.

93. Loss and damage from defective goods or negligence of manufacturer

- (1) Liability for the loss or damage of goods 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 goods, if the loss or damage –
 - (a) arises from the goods proving defective while in consumer use; or
 - (b) results from the negligence of a person concerned in the manufacture or distribution of the goods.
- (2) For the purposes of this section –
 - (a) “goods are to be regarded as being in consumer use” when a person is using the goods has control or possession of the goods for use, otherwise than exclusively for the purposes of a business; and

- (b) anything in writing is a guarantee if the writing contains or purports to contain a promise or assurance (however worded or presented) that defects will be made good by complete or partial replacement, or by repair, monetary compensation or otherwise.

94. Effect of obligation

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

95. Satisfying reasonableness where agreement terminated

- (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.

96. Reasonableness

- (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 a 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 which the person could expect to be available to him 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 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

97. Interpretation of this Part

(1) In this Part

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

“damage” means death or personal injury to any person or any loss of or damage to any property, including land;

“manufacture”, in relation to animals or agricultural produce, includes to rear or grow;

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

(a) the person who manufactured the product;

(b) in the case of a substance which has been abstracted, the person abstracted the substance;

(c) in the case of a product which has not been 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 goods, including animals or agricultural produce reared or grown for supply, and, subject to subsection (2), includes a product which is comprised in another product, whether by virtue of being a component part or raw material or otherwise.

(2) For the purposes of this Part, a person who supplies a product in which other products are comprised, whether by virtue of being component parts or raw materials or otherwise, shall not be treated by reason only of his supply of that product as the person supplying any of the other products so comprised.

98. Defect inferred

(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 safety –

(a) with respect to products comprised in that product; and

(b) in the context of the risk of damage to property and 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 from the fact alone that the safety of a product which is supplied after is greater than the safety of the product in question.

99. Liability for defects

(1) Subject to this Part, where damage is caused, wholly or partly, by a defect in a product—

(a) the following persons are liable for the damage—

- (i) the producer of the product;
- (ii) a person who, by putting his name on the product or using a trade mark or other distinguishing mark in relation to the product, has held himself out to be the producer of the product; and
- (iii) a person who has imported the product into Antigua and Barbuda, to, in the course of business, supply it to another person;

(b) a person who supplied the product, whether to the person who suffered the damage, to the producer of a product in which the product in question is comprised or to any other person, is liable for the damage if—

- (i) the person who suffered the damage requests the supplier to identify one or more of the persons, whether still in existence or not, to whom paragraph (a) applies in relation to the product;
- (ii) that request is made within a reasonable time after the damage occurs; and
- (iii) the supplier fails, within a reasonable time after receiving the request, either to comply with the request or to identify the person who supplied the product to him.

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

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

100. Damage giving rise to liability

(1) A person is not liable under section 101 for any damage to any property which, at the time of the damage, is not—

- (a) of a description of property ordinarily intended for private use, occupation or consumption; and
- (b) intended by the person suffering the damage mainly for his 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 instituting proceedings for damages against a defendant or respondent who did not dispute liability and was able to satisfy a judgment;
- (b) a person's knowledge includes knowledge which he might reasonably have been expected to acquire—
 - (i) from facts observable or ascertainable by him; or
 - (ii) from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek.

(4) A person shall not be taken by virtue of subsection (3) to have knowledge of a fact ascertainable by him only with the help of expert advice unless he has failed to take all reasonable steps to obtain and, where appropriate, to act on that advice.

101. Prohibition on exclusions from liability

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

102. Defences in civil proceedings

In any proceedings under this Part in respect of a defect in a product it is a defence to show 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, that is to say
 - (i) that the only supply of the product to another by the supplier was otherwise than in the course of a business of the supplier;
 - (ii) that section 99(1)(a) does not apply to the supplier, or applies to him 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 has existed in the producer's 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.

103. Application to Crown

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 Cap.121.

PART XI

CONSUMER SAFETY

104. Interpretation of “consumer safety”

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.

105. General safety requirements

(1) A person shall not –

- (a) supply any goods which fail to meet the general safety requirement;
- (b) offer or agree to supply any such goods; or
- (c) expose or possess any such goods for supply.

(2) For the purposes of this section, goods fail to meet the general safety requirement if they are not safe having regard to all the circumstances, including –

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

(3) For the purposes of this section, goods shall not be regarded as failing to meet the general safety requirement in respect of –

- (a) anything which is shown to be attributable to compliance with any requirement imposed by or under any enactment; or
- (b) any failure to do more in relation to any matter than is required by—
 - (i) any safety regulations imposing requirements with respect to that matter;
 - (ii) any standards of safety prescribed for the purposes of this section and imposing requirements with respect to the goods; or
 - (iii) any provision of any enactment imposing such requirements with respect to the goods as are designated for the purposes of this subsection by any such enactment.

(4) In any proceedings against a person for an offence under this section in respect of any goods, it is a defence for the person to show that –

- (a) he or she reasonably believed that the goods would not be used or consumed in Antigua and Barbuda;
- (b) he or she supplied the goods, offered or agreed to supply them or, as the case may be, exposed or possessed them for supply in the course of carrying on a retail

business neither knowing nor having reasonable ground for believing that the goods failed to comply with the general safety requirements; or

- (c) the terms on which he or she supplied the goods or agreed or offered to supply them or, in the case of goods which he or she exposed or possessed for supply, the terms on which he or she intended to supply them provided for, or contemplated, the acquisition of an interest in the goods by the persons supplied or to be supplied.

(5) For the purposes of subsection (4)(b), goods are supplied in the course of carrying on a retail business if –

- (a) whether or not the goods are themselves acquired for a person's private use or consumption, they are supplied in the course of carrying on a business of making a supply of consumer goods available to persons who generally acquire them for private use or consumption; and
- (b) the descriptions of the goods do not, to a significant extent, include manufactured or imported goods which have not previously been supplied in Antigua and Barbuda.

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

106. Information in regard to goods with inherent risks

(1) The supplier shall provide consumers with the relevant information –

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

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

- (a) be informed of the risks which the goods might pose, and
- (b) take appropriate action to avoid such 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 activities, monitor the safety of such goods.

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

107. Establishment of a regional alert system

- (1) The Minister may, in consultation with other Ministers responsible for consumer protection in the CARICOM Member States, establish a modality to exchange information with respect to inherently dangerous goods circulating in the CARICOM region.
- (2) The Department shall collaborate with competent authorities responsible for consumer protection in CARICOM Member States, to develop a rapid alert system for the purpose of subsection (1).

108. Safety regulations

- (1) The Minister may, after consulting the Department, make safety regulations for the purposes of 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), safety regulations may—
- (a) contain provisions with respect to the performance, composition or contents, design;
 - (b) construction, finish or packaging of goods to which this section applies, and with respect to other matters relating to such goods;
 - (c) 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;
 - (d) contain provisions with respect to the conditions that may be attached to any approval given under the regulations;
 - (e) 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;
 - (f) 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;
 - (g) 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;

- (h) (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;
 - (i) 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;
 - (j) 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;
 - (k) contain provisions prohibiting persons from supplying, or from offering to supply, agreeing to supply, exposing for supply or possessing for supply, goods and component parts and raw materials for such goods;
 - (l) 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 that person to exercise any function conferred on him by the regulations;
 - (m) contain different provisions for different cases;
 - (n) provide for exemptions from any provisions of the regulations;
 - (o) 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 fertilizers; and
 - (d) controlled drugs within the meaning of the Misuse of Drugs Act Cap. 283.

109. Contravention of safety regulations

- (1) Where safety regulations—
- (a) prohibit a person from supplying or offering or agreeing to supply any goods or from exposing or possessing any goods for supply, the person commits an offence if he contravenes the prohibition; or
 - (b) require a person who makes or processes any goods 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 goods with a view to ascertaining whether the goods satisfy any requirements of such regulations, the person commits an offence if he does not comply with the requirement; or
 - (ii) to deal or not to deal in a particular way with a quantity of the goods 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 he does not comply with the requirement.
- (2) A person who contravenes a provision of safety regulations which prohibits or require the provision, by means of a mark or otherwise, of information of a particular kind in relation to goods, commits an offence.
- (3) Where safety regulations require any person to give information to another for the purpose of enabling the other to exercise any function, that person commits an offence if –
- (a) he or she fails without reasonable cause to comply with the requirement; or
 - (b) in giving the information which is required of him or her –
 - (i) he or she makes any statement which he knows is false in a material particular; or
 - (ii) he or she 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 \$5000.00 dollars and in default of the payment of the fine, to imprisonment for 2 years.

PART XII

RECALL OF GOODS

110. Voluntary recall of goods

- (1) Where a supplier voluntarily takes action to recall goods because the supplier knows the goods will or may cause injury, loss or damage to any person, he or she shall, within 2 business days after taking that action, give a notice in writing to the Director—
- (a) stating that the goods are subject to recall; and
 - (b) setting out the nature of the defect in, or dangerous characteristic of, the goods.
- (2) A supplier who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 dollars.

111. Compulsory recall of goods

(1) Subject to sections 114 and 115, where—

(a) are supplied or likely to be supplied on or after the coming into force of this Act; and

(b) the Director, after consultation with the Bureau of Standards, is satisfied that—

(i) the goods are goods of a kind which will or may cause injury, loss or damage to any person; and

(ii) the supplier has not taken satisfactory action to prevent the goods causing injury loss or damage to any person, the Director may, by notice published in the Gazette and at least 2 newspapers in general circulation in Antigua and Barbuda, require the supplier to take the actions set out in subsection (2).

(2) The supplier may be required to do one or more of the following—

(a) take action, within the period specified in the notice, to recall the goods;

(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, one or more of the following –

(i) the nature of a defect in, or a dangerous characteristic of, the goods specified in the notice;

(ii) the circumstances, being circumstances specified in the notice, in which the use of the goods is dangerous;

(iii) the procedure for disposing of the goods specified in the notice;

(iv) the procedure for obtaining a refund, repair or replacement of the goods specified in the order;

(c) give an undertaking to any persons to whom the goods were supplied to—

(i) the price of the goods, within the period specified in the notice; or

(ii) repair or replace the goods.

(3) The Minister may, in the notice issued under subsection (1), give directions as to the manner in which the supplier is to carry out a recall of goods required under subsection (1).

(4) Where the supplier undertakes to—

(a) repair the goods, the supplier shall cause the goods to be repaired so that any defect in the goods is remedied;

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

112. Compliance with goods recall notice

Where a notice under section 111(1) is in force in relation to a supplier, that 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 characteristics of, the goods, supply goods of the kind to which the notice relates which have that defect or characteristic; and
 - (ii) in any other case, supply goods of the kind to which the notice relates.

A supplier who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 dollars and, in the case of a continuing offence under paragraph (a), to pay a fine of \$100 dollars per day in respect of which the contravention continues.

113. Loss or damage caused by contravention of goods recall notice

Where a supplier fails to comply with a notice under section 111 and another person suffers injury, loss or damage by reason of a defect in, or a dangerous characteristic of, the goods or by reason of not having particular information as to a characteristic of the goods, that other 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.

114. Conference to be held in certain cases

(1) Subject to section 115, where the Director proposes to publish a notice under section 111 (1) the Director shall, by notice in writing published in the Gazette and at least 2 newspapers in general circulation in Antigua and Barbuda, invite any person, who supplied or proposes to supply the goods to which the proposed section 111(1) notice would relate, to notify the Director, within a specified period, whether that person wishes the Director to hold a conference in relation to the proposed notice.

(2) A notice published under subsection (1) shall set out a draft of the notice the Director proposes to publish under section 111(1) and a summary of the reasons for the proposed notice.

(3) Where the Director is not requested under subsection (1) to hold a conference, the Director shall proceed to take such action under section 111 as he or she thinks fit.

(4) Where the Director is requested to hold a conference under subsection (1), the Director shall hold the conference within 14 calendar days of publication of the notice in the Gazette, and shall give notice of the day, time and place for the conference to each person concerned.

(5) At a conference held under subsection (1)—

- (a) the Director or a person nominated by the Director shall be present;
- (b) each supplier who notified the Director in accordance with subsection (4) is entitled to be present or to be represented;
- (c) any other person whose presence at the conference is considered by the Director to be appropriate is entitled to be present or to be represented; and
- (d) the procedure to be followed shall be as determined by the Director.

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

(7) The Director shall, as far as is practicable, ensure that each person or the person's representative who, in accordance with subsection(5), is entitled to be present, is given a reasonable opportunity at the conference to –

- (a) present his or her case; and
- (b) in particular, inspect any documents which the Director 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.

(9) After the conclusion of the conference—

- (a) if the Director is satisfied, on the basis of documentation presented, risk assessment, or undertakings given, that the notice should not be issued, cancel the proposed notice under section 111; or
- (b) the Director may proceed with issuing a notice under section 111.

115. Exception in case of danger to public

(1) Where it appears to the Director that goods of a particular kind create an imminent risk of death, serious illness or serious injury, the Director, without regard to any action of a supplier of the goods shall, without delay, publish a notice in relation to the goods under section 111, except that the Director may publish the notice in any media as appears to the Director to be appropriate in the circumstances, and the Director may, in addition, also issue the notice directly to a supplier.

(2) Where the Director issues or publishes a notice under subsection (1) —

- (a) in a case where the notice is published before the Director takes any action under section 114(1) in relation to goods of a particular kind, section 114 does not apply in

relation to the action that the Director may take under section 111 in relation to goods of that kind; or

- (b) in any other case, any action taken by the Director under section 111(1) in relation to the goods of a particular kind ceases to have effect and, if a conference had been arranged under section 114 or had or commenced, the Director may publish the notice under section 111 (1) without regard to the action taken under section 114.

116. Power to obtain information, documents and evidence

(1) Where the Director or authorised officer has reason to believe that a person who, in trade or commerce, supplies consumer goods 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 goods of that kind, the Director or authorised officer may, by notice in writing served on that person, require him—

- (a) to furnish to the Director or authorised officer, and within such reasonable time as is specified in the notice, any such information;
- (b) to produce to the Director 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 representative to appear before the Director 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 the Director or authorised officer has reason to believe that goods will or may cause injury to a consumer, he may, accompanied by police officers, enter any premises in or from which he or she has reason to believe that a person supplies goods of that kind in trade or commerce and for the purposes of ascertaining whether goods of that kind will or may cause injury to any consumer do the things specified in subsection (3).

(3) Subject to subsection (4), an authorised officer who has entered any premises for the purposes referred to in subsection (2) is empowered to—

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

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

- (a) pursuant to a warrant issued under section 117; or
- (b) in circumstances where the exercise of those powers is required without delay in order to protect life or public safety.

(5) 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).

(6) In this section, an “authorised officer” is an officer authorised by the Minister for the purposes of this section.

117. Application for warrant

(1) Where an application is made to a magistrate under section 116(5), the magistrate may issue a warrant authorising an 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 116(1) in relation to those premises.

(2) A magistrate shall not issue a warrant under subsection (1) unless—

- (a) an affidavit has been furnished to the magistrate setting out the grounds on which the issue of the warrant is being sought;
- (b) the applicant or some other person has given to the magistrate such further information, if any as he may require concerning the grounds on which the issue of the warrant is being sought; and
- (c) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(3) A warrant issued under subsection (1) 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 kind of goods authorised to be inspected or sampled; and
- (d) specify a day, not being later than 7 days after the day on which the warrant is issued, at the end of which the warrant ceases to have effect.

(4) An authorised officer or a person assisting such officer shall, before entering the premises under a warrant under subsection (1)—

- (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 a person assisting such officer is not required to comply with subsection (4) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure—

- (a) (a) the safety of any person, including the authorised Officer or the person assisting the Officer; or
 - (b) (b) that the effective execution of the warrant is not frustrated.
- (6) A person commits an offence and is liable on summary conviction to a fine not exceeding \$5000 if the person—
- (a) refuses or fails to comply with a notice under this section to the extent that he is capable of complying with the notice; or
 - (b) in purported compliance with such a notice furnishes information or gives evidence that, to his knowledge, is false or misleading in a material particular.
- (7) 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 \$5000.
- (8) 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 not admissible in evidence against that person—
- (a) in any proceedings instituted by him; or
 - (b) in any other proceedings, other than proceedings against him for a contravention of a provision of this section.

118. Suppliers to be given notice in certain cases

Where the Director publishes a notice under section 111(1) or under section 115(1) he or she shall, within two business days after the publication of that notice, or, 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 Director, supplies goods of the kind to which the notice relates.

119. Certain actions not to affect insurance contracts

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

- (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 Department, the Tribunal or to an officer authorised by the Department or the Tribunal information relating to any goods supplied or proposed to be supplied by that supplier.

PART XIII

DISTANCE SELLING

120. Interpretation of this Part

(1) In this Part—

“distance-selling contract” means any contract concerning goods or services 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 one or more means of distance communication up to and including the moment at which the contract is concluded.

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

(2) A distance selling contract between a consumer in Antigua and Barbuda and a supplier in another country shall be effective and actionable by the consumer in Antigua and Barbuda if Antigua and Barbuda has entered into a distance-selling agreement having provisions relating to judicial and administrative redress, appointment of a focal point, sanctions, and other information necessary to enforce the distance-selling contract in the state of the supplier.

121. Application.

(1) This Part does not apply to a contract—

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

122. Agreement to exchange information

(1) Where Antigua and Barbuda 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 under subsection (1) may contain 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) If an agreement referred to in subsection (1) is amended, the Minister may amend an order published under subsection (1) accordingly.

(4) An order under this section is subject to affirmative resolution.

123. Prior information requirements

(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, except in certain cases where this right does not exist;
- (g) the cost of using the means of distance communication where it is calculated 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) where appropriate, 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 indefinitely or recurrently.

(2) The information in subsection (1) is to be provided in a clear and comprehensible manner and in good 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.

124. Acceptance or decline of distance selling contract

A supplier shall provide the consumer with an express authority to accept or decline the distance-selling contract and to correct errors immediately before entering it.

125. Payment by credit or debit card

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

126. Performance

(1) Unless the parties have agreed otherwise, the supplier shall execute a consumer's order for a good or service within 30 calendar days from the day following that on which the consumer forwarded his or her 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 and refund any sums received within 30 calendar days of informing the consumer.

127. Burden of proof

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

PART XIV**MISCELLANEOUS****128. Void provisions of consumer agreements**

(1) A provision of a consumer agreement, or a condition to which an agreement is subject, is void if—

- (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 fraudulent conduct;
- (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 fail to do 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 or warranties 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 goods or services, 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 48;
 - (ii) fails to comply with a provision of the agreement before the consumer receives any goods or services 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 goods to which the agreement relates;
 - (ii) an undertaking to sign in advance any documentation relating to enforcement of the agreement, irrespective of 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;
- (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) Where a consumer agreement that contains a provision referred to in subsection (1) falls for consideration before the Tribunal or a court, the Tribunal or the court shall—
- (a) if the provision is void, sever any void provision from the agreement to the extent required to render it lawful;
 - (b) if it is reasonable to alter the provision having regard to the agreement as a whole, alter the provision to the extent required to render it lawful;
 - (c) declare the entire agreement void as from the date that the agreement took effect; or
 - (d) make any further order that is just and reasonable in the circumstances with respect to the void provision, or the entire agreement, as the case may be.
- (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—
 - (i) 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;
 - (ii) reveal any personal identification code or number referred to in subsection (1)(f)(ii); or
 - (c) (c) direct, or knowingly permit, any other person to do anything referred to in this subsection on behalf of or for the benefit of the supplier.

(4) A supplier who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.00 or to imprisonment for a term not exceeding 2 years.

129. Goods or services acquired by instalment

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

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

(2) The supplier shall –

- (a) present a claim for the exact amount of, or the exact percentage of, the total value of the goods or services 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 as mentioned in 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 conditions specified in subsection(4).

(4) The conditions referred to in subsection (3) are that –

- (a) any excess in the amount paid will be credited to the amount owing at the next time that an accurate claim is presented; and
- (b) the supplier shall, under no circumstances, be able to terminate the agreement or impose any penalty therein contained in the event of breach by the consumer, solely on the ground that the consumer has not paid the estimated amount, either in full or in part.

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

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

130. Apportionment of payments where service not received

(1) Where a service is provided to a consumer—

- (a) the supplier is deemed to be providing the consumer with a benefit under the relevant agreement; and
 - (b) 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, the benefit is not received by the consumer; or
 - (b) where the benefit is received only in part by the consumer—
 - (i) refund a proportionate part of the fees collected; or
 - (ii) subject to subsection (3), 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 fee under subsection (1) (b) 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 benefit that is deemed to be attached to the service; and
 - (b) provide the consumer with an appropriate warranty that –
 - (i) the benefit shall be enjoyed for a reasonable time, subject to the fulfilment of such conditions attached by the supplier as may be reasonable to the consumer's enjoyment of that benefit; and
 - (ii) if the benefit is not so enjoyed, the supplier shall again provide the service free of cost to the consumer.

131. Supplier purporting to act on bill of sale

- (1) A supplier shall not, 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—
 - (a) employ 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) carry 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 contravenes subsection (1) commits an offence and is liable, upon summary conviction, to a fine not exceeding \$10,000.00, and in default of payment of such fine 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 him, commits an offence under this Act and is liable on summary conviction to a fine not exceeding \$10,000.00, 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 double the market value of the property seized plus an additional daily amount for every day that the consumer has been deprived of the use and enjoyment of the property seized.

(5) A person who –

(a) threatens to seize a consumer's property under the powers contained in a bill of sale although the consumer's indebtedness to the vendor has already been discharged; or

(b) recklessly damages the consumer's property while exercising distraint, commits an offence and is liable, upon summary conviction, to a fine not exceeding \$10,000.00, and in default of payment to imprisonment for a term not exceeding 2 years.

(6) The court may order a person convicted of an offence under this section to compensate the consumer for all expenses reasonably incurred as a result of the breach committed and the legal action.

132. Trade coupons and similar promotions

(1) A person shall not 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) must fully and clearly state—

(a) the nature of the prize being offered;

(b) the goods or services 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.

A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$2000.00.

133. Promotional competitions

(1) A person shall not, directly or indirectly, inform a consumer that the consumer—

(a) has won a competition, if—

(i) no competition has in fact been conducted;

- (ii) the consumer has not expressly or implicitly 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;
 - (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 goods or services.
- (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 with the Department 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) not award a prize in a competition to —
 - (i) a winner of the competition if it is absolutely unlawful to supply those goods or services to the prize winner, but this sub-paragraph 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 goods or services in connection with that competition.
- (3) For greater certainty in applying subsection (2)(a), a promoter shall be regarded as having required or received 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 goods or services, and the price charged for those goods or services is more than the price,

excluding discounts, ordinarily charged for those or similar goods or services 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 person 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 through or 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) must not be—

- (a) made subject to any further condition; or
- (b) contingent upon a person –

- (i) paying any consideration to the promoter for the prize; or
 - (ii) satisfying any further requirements than those stipulated in terms of subsection(4).
- (9) The Minister may 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 implicitly 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.

134. Over-selling and over-booking

(1) A supplier shall not accept payment for any goods or services if the supplier –

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

(2) If a supplier makes a commitment or accepts a reservation to supply goods or services 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 those goods or services, or similar or comparable goods or services of the same or better 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) in addition, compensate the consumer for –
 - (i) breach of contract in an amount equal to the full contemplated price of the goods or services that were committed or reserved; and

- (ii) consequential damages in an amount equal to the total of any economic loss, and loss of anticipated use or enjoyment, sustained by the consumer as a consequence of the supplier's breach of the contract.

135. Lay-aways

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

- (a) each amount paid by the consumer is held by the supplier in trust for the benefit of the consumer; and
- (b) the particular goods remain at the risk of the supplier until the consumer takes possession of them.

(2) If a supplier is unable to deliver possession of any of the goods contemplated in subsection (1) when the consumer has paid the full price for the goods, the supplier shall, at the option of the consumer –

- (a) supply the consumer with an equivalent quantity of goods that are at least comparable in description, design and quality; or
- (b) refund to the consumer the money paid by the consumer, with interest at a legal rate, if the inability to supply the goods is due to circumstances beyond the supplier's control.

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

- (a) terminates or rescinds the agreement before fully paying for the goods, 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 goods within [60] business days after the anticipated date of completion, the supplier –
 - (i) may regard the consumer as having rescinded the agreement; and
 - (ii) may charge a cancellation fee in respect of the goods before refunding the amount paid by the consumer towards the full price.

(4) A cancellation fee under this section may 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).

136. Written consumer agreements

- (1) This section applies only to a continuous service agreement and any other categories of consumer agreement as may be prescribed.
- (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) Despite the requirements stipulated for any category of written consumer agreement under this section—
 - (a) a written consumer agreement between a supplier and consumer must satisfy the requirements of sections 49 and 50;
 - (b) a change to a document recording a written consumer agreement, or an amended consumer 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 a written consumer agreement agree to change its terms, the supplier must deliver to the consumer a document that reflects their amended agreement within 20 business days after the date of the agreement to amend.
- (5) For the purposes of this section a “continuous service” means a plan or arrangement in which a subscription or purchasing agreement continues until the consumer cancels the service.

137. Rights reserved

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

138. No waiver of substantive and procedural rights

- (1) Notwithstanding any agreement or waiver to the contrary, the substantive and procedural rights given under this Act apply.
- (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 invalid insofar as it purports to prevent a consumer from exercising a right given under this Act or commencing an action in court.

(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 in court.

139. Institution of proceedings under this Act

(1) The Department may, on its own initiative or upon a request of any person, report to the Director of Public Prosecutions or the Attorney General information in respect of any contravention or breach of the provisions of this Act.

(2) Where the Department is of the opinion that a supplier is engaged in conduct that does not necessitate instituting any proceedings under this Act, the Department 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 (1) is enforceable in a court of law.

(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.

140. Obstruction of officers and Members

A person who assaults, obstruct or interferes with any Member of the Tribunal or officer of the department in the exercise of his or her functions or duties under this Act commits an offence and is liable on summary conviction to a fine not exceeding \$25,000.00 or to imprisonment for a term not exceeding 1 year or both.

141. General penalty provision

Unless, otherwise provided in this Act, a person who commits an offence under this Act for which no penalty is attached is liable to payment of a fine not exceeding \$5,000.00 or imprisonment for a term not exceeding 2 years or both.

142. Good faith defence

No staff of the Department, or official or reference laboratory or any government entity shall be liable to suit for damages or to prosecution in respect of anything done in good faith in the performance of official functions under this Act.

143. Establishing intention of a body corporate

(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.

(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.

144. Regulations

(1) The Minister may make Regulations for the purposes of giving effect to the provisions of this Act, and for prescribing all things required to be prescribed.

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

- (a) prescribing the procedures for the collecting, sealing and authenticating of samples;
- (b) prescribing the requirements for the provision of estimates to consumers and exempting classes of transaction and consumer agreements from the prescribed requirements;
- (c) providing for maximum deposits chargeable for commitments or reservations in relation to the supply of goods or services;
- (d) prescribing forms required to be prescribed under this Act;
- (e) exempting goods from the requirements of product labelling and trade descriptions;
- (f) stipulating disclosure of environmental factors in relation to goods and the form and manner of such disclosure;
- (g) prescribing safety standards for goods;
- (h) prescribing thresholds, odds, standards, forms, and auditing and reporting requirements in relation to promotional competitions;
- (i) prescribing rates of interest applicable to refunds to consumers and maximum amounts chargeable as cancellation fees;
- (j) providing for the categories of consumer agreements to which the requirements of written consumer agreements apply;
- (k) providing for the recall of certain goods and services which are dangerous or hazardous to safety and the refund or remission by the vendor of paid;
- (l) 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;

- (m) requiring the provision and maintenance, at places at which goods are offered for sale by retail, of means whereby prospective purchasers of any goods are offered for sale by retail may ascertain their weight or measurement; or
 - (n) respecting such procedure relating to the conduct of the meetings of the Department, its sittings and other matters as may be required to be prescribed.
- (3) Nothing in subsection (2) shall be deemed to authorize the Minister to make any Regulations in relation to any goods if the exportation, distribution, purchase, sale or price thereof is, regulated under or by virtue of the provisions of any other enactment.

145. Repeal, savings and transitional provisions

- (1) The Consumer Protection and Safety Act, Cap. 97 is repealed.
- (2) Notwithstanding the repeal of the former Act under subsection (1), as from the date on which this Act comes into force—
 - (a) all notices, designations and certificates issued under the former Act, in respect of any matter dealt with in that Act are deemed to have been issued under this Act;
 - (b) all regulations notices or orders made under the former Act and in force on the coming into effect of this Act, shall continue in force as if they were issued under this Act, except where the conflict with, and until they are Regulations, notices and orders made under this Act;
 - (c) the staff of the Department established under the former Act who were staff members immediately before the effective date remain the staff of the Department;
 - (d) the members of the Consumer Guidance Council appointed under the former Act—
 - (i) are deemed to be members of the Consumer Guidance Council established under this Act, and
 - (ii) remain in Department for the unexpired term of their Department;
 - (e) all assets, liabilities, rights and obligations of the Department remain the assets, liabilities, rights and obligations of the Department; and
 - (f) a specification, code of practice, standard or document issued under the former Act, which is in force immediately before the coming into force of this Act shall continue in force and is deemed to be an Antiguan and Barbudan Standard which has been set and issued under this Act.
- (3) Any action taken, before the date on which this Act comes into force, by the Department under the former Act is deemed to have been taken under this Act.
- (4) For purposes of this section, “former Act” means the Consumers Protection and Safety Act Cap. 97 repealed under subsection (1) of this section.

146. Amendments consequential to Act

- (1) The Supply of Goods & Services (Implied Terms) Act, Cap. 421A is amended by inserting after section 1 the following new section —

“1A Scope of application

This Act does not apply to a contract to which the Consumer Protection Act, 2022 applies.”

- (2) The Unfair Contract Terms Act, Cap. 451 is amended by deleting section 3 and substituting the following—

“Application

This Act does not apply to a contract —

- (a) made before the date on which the Act comes into force; or
- (b) to which the Consumer Protection Act, 2022 applies.”

- (3) The Sale of Goods Act, Cap. 393 is amended by inserting after section 1 the following new section —

“1A. Scope of application

This Act does not apply to a contract to which the Consumer Protection Act 2019 applies except as it relates to implied conditions and warranties.”

- (4) The Distribution and Price of Goods Act, Cap. 138 is hereby amended by deleting the definition of consumer and inserting the following —

“consumer” has the same meaning as within the Consumer Protection Act;”.

SCHEDULE 1

(Section 9)

CONSTITUTION AND PROCEDURES OF THE CONSUMER GUIDANCE COUNCIL

Appointment of Members

1. (1) The Council shall consist of nine members being —
 - a. three persons nominated by the Governor General in his or her discretion;
 - b. two persons nominated by the Minister from the private sector, with knowledge of commercial activity and the mechanics of the production and supply of goods and services to consumers in Antigua and Barbuda;
 - c. two persons nominated by the Minister and qualified to advise on matters mentioned in paragraph (b) by virtue of their knowledge, experience or interest in organisations established for the protection of consumers; and
 - d. two ex-officio members, one being the Director of Consumer Affairs, who shall be the Secretary of the Council, and the other being the Director of the Bureau of Standards.
- (2) The Minister shall appoint persons nominated to the Council by instrument in writing.

Publication

2. The names of the members of the members of the Council, and any subsequent change in members of the Council, shall be published in the Gazette.

Chairperson and Deputy Chairperson

3. The Minister shall appoint a Chairperson from among the members of the Council and the members shall select from among themselves a Deputy Chairperson.

Tenure of Office

4. The Minister shall appoint each member of the Council for a period of two years and a member so appointed is eligible for re-appointment on the expiration of his or her term of office.

Revocation of appointment

5. The Minister may at any time revoke the appointment of the Chairman or any other member of the Council if the member—

- a. becomes incapacitated, by reason of mental or physical capacity, of carrying out his or her duties;
- b. has been convicted of a criminal offence except where the offence is a minor traffic offence or has been spent;
- c. is guilty of misconduct;
- d. fails to make a disclosure as required under paragraph 12;
- e. is absent from three consecutive meetings of the Council without excuse.
- f.

Resignation of Council Member

6. A nominated member of the Council may resign his or her office at any time by letter addressed to the Minister, and conveyed to the Chairman, and such resignation takes effect from the date the letter is received by the Minister.

7. The Chairman may resign his or her office by letter conveyed to the Minister, and such resignation takes effect from the date the letter is received by the Minister.

Vacancy in membership

8. If any vacancy occurs in the membership of the Council such vacancy shall be filled by the appointment of another member in accordance with paragraph (1), 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.

Meetings

9. Where the Chairman is absent or unable to act, the Deputy Chairperson shall preside at Council meetings, and where both the Chairperson and Deputy Chairperson are absent or unable to act, the members of the Council present at a meeting shall elect one of their members to preside.
10. The Council shall meet at least once every quarter, and at such other times as are necessary or expedient for transacting the business of the Council.
11. The quorum at meetings is five and decisions of the Council shall be taken by a majority of votes.
12. The Chairperson, or other person presiding at a meeting shall, in addition to his or her original vote, have a casting vote in any case in which the votes are equal.
13. Except as provided in this paragraph, the Council shall determine its own procedures.

Conflict of interest

14. A member of the Council whose interest may directly or indirectly be affected by a decision of the Council on any matter, shall disclose the nature of his or her interest at the first meeting of the Council at which he or she is present after the relevant facts have come to his knowledge.
15. A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Council, and after the disclosure the member concerned may not vote on the matter, and unless otherwise directed by the Council, shall not be present at any meeting when the matter is being decided.
16. All documents made by and all decisions of the Council shall be authenticated by the Chairperson or the Secretary of the Council.

Remuneration

17. There shall be paid to the members of the Council such remuneration, whether by way of fees, travelling or other allowances, as the Minister may determine.

SCHEDULE 2

(Section 11)

CONSUMER AFFAIRS TRIBUNAL

1. (1) The Tribunal shall consist of a Chairperson, a Deputy Chairperson and not more than 9 other members, who shall be appointed by the Minister by instrument in writing.

(2) The Chairperson shall be an attorney-at-law of at least 10 years standing, or a person who has held high judicial office.

2. Subject to paragraphs 3, 4 and 5 a member of the Tribunal referred to in paragraph 1 holds office for a period not exceeding 5 years but is eligible for re-appointment.

3. A Member other than the Chairperson may at any time resign his or her office by instrument in writing addressed to the Chairperson, who shall forthwith cause the same to be forwarded to the Minister; and upon the date of receipt by the Chairperson of such instrument, the Member ceases to be a member of the Tribunal unless some other date is mentioned in the instrument.

4. The Chairperson may at any time resign his or her office by instrument in writing addressed to the Minister; and upon the date of receipt by the Minister of such instrument, the Chairperson ceases to be Chairperson and a member unless some other date is mentioned in the instrument.

5. A vacancy arises in the membership of the Tribunal on the death or resignation of a Member.

6. The Minister may terminate the appointment of any Member if the Member—

- a. fails to disclose his or her interest in a business enterprise under deliberation by the Tribunal;
- b. fails without reasonable excuse to attend three consecutive meetings of the Tribunal;
- c. has become bankrupt or has made an arrangement with his or her creditors;
- d. is incapacitated by physical or mental illness;

- e. engages in behaviour such as fraud, or has a conflict of interest as a result of engaging in paid employment that conflicts with the functions of the Tribunal; or
- f. is otherwise unable or unfit to discharge the functions of a Member.

7. Where a vacancy arises or membership of the Tribunal is terminated in accordance with paragraph 5 or 6, a person may be appointed in accordance with paragraph 1 to fill that vacancy.

8. The Members are eligible for such remuneration, whether by way of fees, travelling or other allowances, as the Minister may determine.

9. The names of all the Members of the Tribunal as first constituted and every change in the membership of the Tribunal shall be published in the Gazette.

10. The seal of the Tribunal shall be kept in the custody of the Chairperson, Deputy Chairperson, or such other Member as the Members may approve, and may be affixed to documents or instruments pursuant to a resolution of the Tribunal and in the presence of the Chairperson or the Deputy Chairperson.

11. The seal of the Tribunal shall be authenticated by the signature of the Secretary to the Tribunal and the signature of either the Chairperson or the Deputy Chairperson.

12. All documents other than those required by law to be under seal may be signed under the hand of the Chairperson, the Deputy Chairperson or the Secretary.

13. The Tribunal shall meet at such times as may be necessary or expedient for the transaction of its business, and each meeting shall be held on such days and at such times and places as the Tribunal determines.

14. The Chairperson, or in his or her absence the Deputy Chairperson, shall preside at all meetings of the Tribunal and, in the absence of both the Chairperson and the Deputy Chairperson, the Members present and constituting a quorum may elect a temporary Chairperson to preside at that meeting.

15. A majority of the Members shall constitute a quorum with respect to conducting the general functions of the Tribunal.

16. Subject to this Schedule, the Tribunal may regulate its own procedure and may delegate to any of its members the power and authority to carry out on behalf of the Tribunal such duties as the Tribunal determines.

17. The decisions of the Tribunal shall be by a majority of votes and in the event of an equality of votes the Chairperson or the Deputy Chairperson presiding at the meeting has a second or casting vote.

18. Minutes of each meeting are to be kept by the Secretary or other person appointed by the Tribunal for the purpose, and are to be confirmed by the Tribunal at its next meeting and signed by the Chairperson or other person presiding at that meeting.

SCHEDULE 3

(Section 29)

SUMMONS TO WITNESS

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

You are hereby summoned to appear before the Consumer Affairs Department 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 (Chairman or his delegated member of the Department) this _____ day of 20__.

SCHEDULE 4

(Section 89)

TERMS WHICH ARE UNFAIR IF NOT INDIVIDULLY 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 him;
- (c) making an agreement binding on the consumer whereas the provision of services by the supplier is subject to a condition whose realisation depends on his 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 fails to fulfil his 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 him where it is the supplier himself 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 desire not to extend the contract is unreasonably early;
 - (i) irrevocably binding the consumer to terms with which he 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 goods 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 goods or services 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 his agents, or making his commitments subject to compliance with a particular formality;
 - (p) obliging the consumer to fulfil all his obligations where the supplier does not perform his;
 - (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
 - (iii) imposing on him 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).

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.

4. Exception to paragraph 1(j).

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 he is required to inform the consumer with reasonable notice and that the consumer is free to dissolve the contract.

5. 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.

6. 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.

EXPLANATORY MEMORANDUM

This Bill seeks to update the laws relating to Consumer Protection and the provision of goods and services.

The Bill contains 146 Clauses divided over Nine (9) Parts and Four (4) Schedules.

PART I – PRELIMINARY – Clauses 1 - 5 deals with the purpose and application of the Act. The purpose of the Act is to promote and advance the social and economic welfare of consumers in Antigua and Barbuda. Unless a trader or service provider is exempted by Order subject to an affirmative Resolution of this House, the Act shall apply to ALL persons involved in trade or business and in the supply of goods and services.

PART II – DEPARTMENT OF CONSUMER AFFAIRS – Clauses 6 - 8

This Part continues the Department of Consumer Affairs which was established under the Former Act, that is, the Consumer Protection and Safety Act, Cap. 97. The functions of the Department of Consumer Affairs are set out in Clause 7.

PART III – CONSUMER GUIDANCE COUNCIL – Clauses 9 – 10

The Consumer Guidance Council established under the Former Act is continued and its functions which have been updated and outlined in Clause 10.

PART IV – CONSUMER AFFAIRS TRIBUNAL – Clauses 11 – 13

The tribunal will hear and determine matters referred to it by the Department; monitor the investigation of complaints, provide redress against violations and deal with other matters referred to it that are incidental to the proper discharge of its functions under the Act. It has the power to summons witnesses, administer oath and examine witnesses, compel the production of records etc. and make Orders accordingly.

PART V – RECEIPT, INVESTIGATION AND HEARING OF COMPLAINTS – Clauses 14 – 39

This Part outlines detailed provisions regarding the lodging of complaint, the procedure for investigating a complaint, including the power of search and seizure of records, making a report to the Tribunal and setting a hearing etc.

Note that the tribunal has the power to award costs to a complainant in its own discretion.

PART VI – CONSUMER RIGHTS – Clauses 40 – 52

This Part sets out the rights of a consumer, that is, the matters for which the consumer is entitled to seek redress if he or she is aggrieved. These rights include, but are not limited to: A right to select suppliers and products, a right to choose and examine goods, a right to cancel reservations and to rescind or cancel contractual agreements in certain circumstances.

At Clause 40, it is stated, for the avoidance of any doubt, that ambiguities in the interpretation of any of the rights provided by this Act, shall be resolved to the benefit of the consumer.

PART VII – Duties of Suppliers – clauses 53 – 75

This clause sets out the duties of suppliers as it relates to the production of goods and the provision of services. The duties of all suppliers include ensuring that goods are adequately labelled in clear language, also that the price of the goods or service being offered to the consumer is properly disclosed.

PART VIII – Unfair Practice – clauses 76 – 88

This section concerns measures to deal with false, misleading or deceptive representations made by a supplier or manufacture. Clause 74 (3) provides some guidance on the types of statements that are considered false, misleading or deceptive.

This provisions of this Part are more comprehensive than previous legislations would have provided for. For example –

Clause 77 **prohibits restrictive trade practices;**

Clause 78 **prohibits unfair trade practices**

Clause 79 deals with **unreasonable transactions** such as providing a consumer with a good or service that that supplier knows is not materially suitable for the purpose for which the consumer explains the good or service is required. Such transactions are unenforceable.

Clause 80 deals with **unfair or unjust transactions;** and

Clause 81 deals with **unconscionable conduct**. Such conduct include, but is not limited to circumstances where the supplier knows or ought to have known that the consumer is not reasonably able to protect its interests in the negotiations due to a disability, ignorance, illiteracy, or even a language barrier; where the consumer is likely unable to receive any substantial benefit from the good or service, or the terms of the transaction are so adverse to the consumer as to be inequitable.

PART IX – Unfair Terms – clauses 89 – 96

This stipulates that the terms of any agreement between a supplier and a consumer must be expressed in plain and intelligible language. Where the meaning of any word is in doubt or is ambiguous, the meaning has to be resolved in a manner most favourable to the consumer.

PART X – Product liability - clauses 97 – 103

This Part deals with determining who is liable for certain defects in a product or for damages resulting wholly or partially from such defects. It also prohibits the inclusion, in any contract, of a term which excludes the liability of the supplier/manufacturer for the defect or any damage caused as a result of the defect.

PART XI – Consumer Safety – clauses 104 – 109

“Consumer Safety” means the reduction of risks to consumers in the provision of goods and services, the provision of information or instructions in regard to the keeping, use or consumption of goods; as well as, the reduction of any harm or damage to the consumers by taking preventive

and proactive measures. In this regard, clause 105 sets out general safety requirements, while clause 106 provides information on dealing with products that contain inherent risks. At clause 107, provision is made for the Minister to establish or become a part of a regional alert system where information can be exchanged among Departments of Consumer Affairs throughout CARICOM regarding inherently dangerous goods.

This Part also provides for the making of safety regulations by the Minister after consulting the Department.

PART XII – Recall of Goods – clauses 110 -119

Recall may be on a voluntary or compulsory basis. This Part sets out the procedure for making the recall, the steps that must be taken when a recall is made, as well as, providing the means for the Department to obtain the assistance of the court in carrying out its mandate.

PART XIII – Distance selling – clauses 120 – 127

At clause 120, the term distance selling and distance communication are defined. Essentially, this part deals with the enforceability of a contract between a supplier and a consumer under an organised distance sales or service scheme, such as purchases through Amazon, Ebay or from a catalog, for example, the purchase of Avon products.

By this Act, such contracts are effective and actionable

PART XIV – Miscellaneous – clauses 128 – 146 deals with various provisions which enhance the effectiveness of the legislation and ensures that it ties with other legislations which affect supplier-consumer relations.

This Act repeals the Consumer Protection and Safety Act, Cap 97 and makes consequential amendments to several legislations.

The four (4) Schedules refer to matters outlined in the Bill.

Hon. E. P. Chet Greene
Minister with responsibility for the
Department of Consumer Affairs