

消費者法規翻譯叢書之十九

外國消費者保護法

(第十九輯)

行政院消費者保護處 編印
中華民國101年10月

序言

美國總統甘乃迪於1962年揭示消費者享有一講求安全、知道真相、選擇及表達意見四大權利；1963年國際消費者組織聯盟（IOCU）再加入基本需求、請求賠償、消費教育及健康環境四大權利，宣示消費者應享有八大權利，並負五大義務—認知、行動、關懷、環保、團結義務；聯合國繼於1985年通過「保護消費者指導方針」。從以上之宣示，消費者保護事務已成為世界各國政府的共通關注之議題。

我國為更有效保護消費者權益，並順應世界潮流，於歷經個別立法保護時期及消費者保護方案時期後，終於民國(下同)83年1月11日經總統公布施行消費者保護法，使我國正式進入消費者保護法時期，為我國消費者保護法制展開新紀元，嗣後並於92年、94年修訂部分條文。

值此保障消費者之思想已蔚為世界潮流之際，為健全並周延我國有關消費者保護法制及充實消費者保護之新知，原行政院消費者保護委員會於84年起，即著手編印外國消費者保護法規選輯，自84年6月出版外國消費者保護法第1輯至100年止，共計出版18輯。選輯內容，則包括派員出國考察或開會時所蒐集，及經由國外政府機關、國際組織網站下載之消費者保護相關法規，並將之譯介，彙編成書，以供作該會及各界瞭解各國消費者保護相關法規及比較研究之參考。

時值政府組織改造之際，行政院消保處自本(101)年1月1日改制成立後，仍承繼原行政院消費者保護委員會編印出版外國消費者保護法規資訊之初衷，賡續編印出版外國消費者保護法第19輯，本書內容為歐盟消費者信貸指令(Directive 2008/48/

EC of The European Parliament and of The Council of 23 April 2008)、加拿大產品安全法(Canada Consumer Product Safety Act)及澳洲2010年競爭與消費者法—關於不公平契約條款(Part 2-3—Unfair Contract Terms)與特別保護章節(Chapter 3—Specific protections)，並採用中文翻譯及英文左右對照方式印刷，俾供讀者閱讀之便利。

本選輯中譯文部分，係由前資策會科技法律研究所郭組長佳玫負責翻譯；謹此敘明，並表謝忱。

行政院消費者保護處 謹識

中華民國101年10月

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歐盟消費者信用契約指令 (Directive 2008/48/EC)

歐洲議會及理事會根據歐洲共體條約第95條、執委會草案、歐洲經濟及社會委員會，以及依據條約第251條所定之程序制訂，並依循

- (1) 1986年12月22日理事會87/102/EEC指令調整會員國有關消費者信用相關法律、規範及行政命令以符合共同體層級之消費者信用契約規範。

DIRECTIVE 2008/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,
and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social
Committee ⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of
the Treaty ⁽²⁾,

Whereas:

(1) Council Directive 87/102/EEC of 22 December 1986 for the
approximation of the laws, regulations and administrative
provisions of the Member States concerning consumer credit ⁽³⁾

⁽¹⁾ OJ C 234, 30.9.2003, p. 1.

⁽²⁾ Opinion of the European Parliament of 20 April 2004 (OJ C 104 E, 30.4.2004, p. 233), Council common position of 20 September 2007 (OJ C 270 E, 13.11.2007, p. 1) and Position of the European Parliament of 16 January 2008 (not yet published in the Official Journal). Council Decision of 7 April 2008.

⁽³⁾ OJ L 42, 12.2.1987, p. 48. Directive as last amended by Directive 98/7/EC of the European Parliament and of the Council (OJ L 101, 1.4.1998, p. 17).

- (2) 執委會於1995年提出關於87/102/EEC指令執行及利害關係諮詢報告，並於1997年公布該報告反應意見摘要，1996年亦曾提出第二份執行報告。
- (3) 前述報告及諮詢特別顯露出，各會員國間有關一般與消費者信用貸款之法律與規範的巨大差異。有關各會員國轉換87/102/EEC指令為內國法的分析也顯示出，各會員國由於在法律或經濟上的差異，導致在消費者保護機制上也相當不同。
- (4) 各國的差異導致事實上與法律上，在共同體內發生一些案例，借貸人間競爭扭曲，以及會員國內部市場在適用87/102/EEC指令產生障礙。
- (5) 近年來的消費者的信用貸款型式及利用發展得頗為明顯。新的信貸工具推陳出新並被接受及發展，爰此，修正現行的規範並擴充其適用確有其必要。

lays down rules at Community level concerning consumer credit agreements.

- (2) In 1995, the Commission presented a report on the operation of Directive 87/102/EEC and undertook a broad consultation of the interested parties. In 1997, the Commission presented a summary report of reactions to the 1995 report. A second report was produced in 1996 on the operation of Directive 87/102/EEC.
- (3) Those reports and consultations revealed substantial differences between the laws of the various Member States in the field of credit for natural persons in general and consumer credit in particular. An analysis of the national laws transposing Directive 87/102/EEC shows that Member States use a variety of consumer protection mechanisms, in addition to Directive 87/102/EEC, on account of differences in the legal or economic situation at national level.
- (4) The *de facto* and *de jure* situation resulting from those national differences in some cases leads to distortions of competition among creditors in the Community and creates obstacles to the internal market where Member States have adopted different mandatory provisions more stringent than those provided for in Directive 87/102/EEC. It restricts consumers' ability to make direct use of the gradually increasing availability of cross-border credit. Those distortions and restrictions may in turn have consequences in terms of the demand for goods and services.
- (5) In recent years the types of credit offered to and used by consumers have evolved considerably. New credit instruments have appeared, and their use continues to develop. It is therefore

- (6) 依據共同體合約，歐盟內部市場構成一個確保商品與服務得自由流通的區域。而透明與有效的信貸服務市場也在此蓬勃成長並發展為跨境的商業活動。
- (7) 基於簡化消費者在市場的運作的現狀與問題，有必要制訂規範以調和共同體的核心框架。從持續發展的消費信貸市場及歐洲公民的大量移動的角度，具有前瞻性的共同體立法以因應未來的信貸形式，並賦予會員國適當的執法彈性，應有助於建立確保消費者信貸法的架構。
- (8) 市場提供有效程度的消費者保護以保障消費者的信賴是重要的。因此，靈活移動的借貸服務，在借貸雙方均有需求的理想的條件下，在個別會員國的特殊條件下將會成為可能。
- (9) 完全的規範調和對於確保消費者在共同體享有一致性的保護是有必要的。會員國不應任由內國法令凌駕於指令的規定。然而，在指令的調和確實有一些受到限制，但若非有調和規範存在，會員國勢必會任意自由引用國內規範。據

necessary to amend existing provisions and to extend their scope, where appropriate.

- (6) In accordance with the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods and services and freedom of establishment are ensured. The development of a more transparent and efficient credit market within the area without internal frontiers is vital in order to promote the development of cross-border activities.
- (7) In order to facilitate the emergence of a well-functioning internal market in consumer credit, it is necessary to make provision for a harmonised Community framework in a number of core areas. In view of the continuously developing market in consumer credit and the increasing mobility of European citizens, forward-looking Community legislation which is able to adapt to future forms of credit and which allows Member States the appropriate degree of flexibility in their implementation should help to establish a modern body of law on consumer credit.
- (8) It is important that the market should offer a sufficient degree of consumer protection to ensure consumer confidence. Thus, it should be possible for the free movement of credit offers to take place under optimum conditions for both those who offer credit and those who require it, with due regard to specific situations in the individual Member States.
- (9) Full harmonisation is necessary in order to ensure that all consumers in the Community enjoy a high and equivalent level of protection of their interests and to create a genuine internal market. Member States should therefore not be allowed to

此，會員國得維持現有課與借貸服務提供人法律責任、解除契約或撤銷契約規定。從會員國的觀點，對於無限制的借貸契約需規定借貸人或貸款人請求救濟的最少期間。

- (10) 本指令的定義中已經調和適用範圍。會員國有執行該指令之義務，且即使指令未涵括至會員國法，依共同體法，在適用上亦不應被差別對待。但若低於200歐元或高於75000歐元的信貸，則可排除指令之適用，並以會員國內國法規範之。若有消費信貸的定義與指令不符，則對於相關之金融商品或服務之契約得為部分適用。

maintain or introduce national provisions other than those laid down in this Directive. However, such restriction should only apply where there are provisions harmonised in this Directive. Where no such harmonised provisions exist, Member States should remain free to maintain or introduce national legislation. Accordingly, Member States may, for instance, maintain or introduce national provisions on joint and several liability of the seller or the service provider and the creditor. Another example of this possibility for Member States could be the maintenance or introduction of national provisions on the cancellation of a contract for the sale of goods or supply of services if the consumer exercises his right of withdrawal from the credit agreement. In this respect Member States, in the case of open-end credit agreements, should be allowed to fix a minimum period needing to elapse between the time when the creditor asks for reimbursement and the day on which the credit has to be reimbursed.

- (10) The definitions contained in this Directive determine the scope of harmonisation. The obligation on Member States to implement the provisions of this Directive should therefore be limited to its scope as determined by those definitions. However, this Directive should be without prejudice to the application by Member States, in accordance with Community law, of the provisions of this Directive to areas not covered by its scope. A Member State could thereby maintain or introduce national legislation corresponding to the provisions of this Directive or certain of its provisions on credit agreements outside the scope

- (11) 對於指令只能部分適用之特殊信貸契約，會員國不需將指令之其他規定轉換為內國法，亦即，會員國仍有在內國法規調整上的自主，在特定類型信貸契約無需與指令調和。
- (12) 有關持續性服務之契約，或消費者為一定期間之商品或服務支付合約，例如定期支付之保險契約，由於涉及契約雙方利益或契約履行，此係不同考量，惟並非本指令所規範之範圍。

of this Directive, for instance on credit agreements involving amounts less than EUR 200 or more than EUR 75 000.

Furthermore, Member States could also apply the provisions of this Directive to linked credit which does not fall within the definition of a linked credit agreement as contained in this Directive. Thus, the provisions on linked credit agreements could be applied to credit agreements that serve only partially to finance a contract for the supply of goods or provision of a service.

- (11) In the case of specific credit agreements to which only some provisions of this Directive are applicable, Member States should not be allowed to adopt national legislation implementing other provisions of this Directive. However, Member States should remain free to regulate, in their national legislation, such types of credit agreements as regards other aspects not harmonised by this Directive.
- (12) Agreements for the provision on a continuing basis of services or for the supply of goods of the same kind, where the consumer pays for them for the duration of their provision by means of instalments, may differ considerably, in terms of the interests of the contractual parties involved, and the modalities and performance of the transactions, from credit agreements covered by this Directive. Therefore, it should be clarified that such agreements are not regarded as credit agreements for the purposes of this Directive. Such types of agreement include, for example, an insurance contract where the insurance is paid for in monthly instalments.

- (13) 本指令不適用於特定類型之信貸合約，例如支付卡等需於三個月內支付及不顯著之支付項目。

- (14) 涉及不動產擔保，或者涉及融資、取得或保留不動產或建物的信貸契約，由於涉及非常特殊之關係，並非本指令適用範圍，然基於標的建物之更新或增值之信貸契約則不在此限。

- (15) 無論借貸人為法人或自然人均適用本指令之規範。然本指令並未影響會員國中信貸消費者對於特定法人之限制規定。

- (16) 本指令中的特定規定應適用於基於交易、商業或職業，以借貸人之身分與消費者締結信貸契約之自然人及法人。但發行信用商品或信用卡或信用媒介之組織及其行為並不適用本指令。

- (13) This Directive should not apply to certain types of credit agreement, such as deferred debit cards, under the terms of which the credit has to be repaid within three months and only insignificant charges are payable.
- (14) Credit agreements covering the granting of credit secured by real estate should be excluded from the scope of this Directive. That type of credit is of a very specific nature. Also, credit agreements the purpose of which is to finance the acquisition or retention of property rights in land or in an existing or projected building should be excluded from the scope of this Directive. However, credit agreements should not be excluded from the scope of this Directive only because their purpose is the renovation or increase of value of an existing building.
- (15) The provisions of this Directive apply irrespective of whether the creditor is a legal person or a natural person. However, this Directive does not affect the right of Member States to limit, in conformity with Community law, the provision of credit for consumers to legal persons only or to certain legal persons.
- (16) Certain provisions of this Directive should apply to natural and legal persons (credit intermediaries) who, in the course of their trade, business or profession, for a fee, present or offer credit agreements to consumers, assist consumers by undertaking preparatory work in respect of credit agreements or conclude credit agreements with consumers on behalf of the creditor. Organisations which allow their identity to be used in promoting credit products, such as credit cards, and which may also recommend those products to their members should

- (17) 本指令只規定與消費者相關之信貸媒介之特定義務。各會員國應保留實施信貸媒介業者之其他義務，包含有收取服務費用之相關責任規定。
- (18) 透過2005/29/EC不公平消費者商業行為指令中資訊揭露之規定，消費者應免於遭受不公平或誤導行為之侵害。本指令中對信貸契約廣告規定需提供特定標準資訊，以利消費者與其他業者進行比較。前述資訊應以明確、簡要與顯著方式提供。如無法告知借貸金額時，亦應告知借貸上限以利消費者評估。會員國得自行於其內國法制訂廣告中有關資訊揭露或借貸成本資訊之規定。

not be regarded as credit intermediaries for the purposes of this Directive.

- (17) This Directive regulates only certain obligations of credit intermediaries in relation to consumers. Member States should therefore remain free to maintain or introduce additional obligations incumbent on credit intermediaries, including the conditions under which a credit intermediary may receive fees from a consumer who has requested his service.
- (18) Consumers should be protected against unfair or misleading practices, in particular with respect to the disclosure of information by the creditor, in line with Directive 2005/29/ EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market ('Unfair Commercial Practices Directive')⁽¹⁾. However, this Directive should contain specific provisions on advertising concerning credit agreements as well as certain items of standard information to be provided to consumers in order to enable them, in particular, to compare different offers. Such information should be given in a clear, concise and prominent way by means of a representative example. A ceiling should be provided where it is not possible to indicate the total amount of credit as the total sums made available, in particular where a credit agreement gives the consumer freedom of drawdown with a limitation with regard to the amount. The ceiling should

(¹) OJ L 149, 11.6.2005, p. 22.

（19）為使消費者得為適當評估，適當資訊例如成本及其義務等之提供有其必要。為確保借貸人的最大可能的透明性及相似性，例如年利率、平均期間、借貸利率、分期付款期數、利息資本化等均為必要提供資訊。

（20）消費借貸成本應包括所有成本如所收利益、手續費用、稅金、仲介費用與其他消費者必須支付之費用，但不含

indicate the upper limit of credit which can be made available to the consumer. In addition, Member States should remain free to regulate information requirements in their national law regarding advertising which does not contain information on the cost of the credit.

- (19) In order to enable consumers to make their decisions in full knowledge of the facts, they should receive adequate information, which the consumer may take away and consider, prior to the conclusion of the credit agreement, on the conditions and cost of the credit and on their obligations. To ensure the fullest possible transparency and comparability of offers, such information should, in particular, include the annual percentage rate of charge applicable to the credit, determined in the same way throughout the Community. As the annual percentage rate of charge can at this stage be indicated only through an example, such example should be representative. Therefore, it should correspond, for instance, to the average duration and total amount of credit granted for the type of credit agreement under consideration and, if applicable, to the goods purchased. When determining the representative example, the frequency of certain types of credit agreement in a specific market should also be taken into account. As regards the borrowing rate, the frequency of instalments and the capitalisation of interest, creditors should use their conventional method of calculation for the consumer credit concerned.
- (20) The total cost of the credit to the consumer should comprise all the costs, including interest, commissions, taxes, fees for

公證費用。

- (21) 信貸契約的借貸利率若依參考利率為定期變更，則不應視為固定利率之信貸契約。
- (22) 會員國得在內國法禁止借貸人要求消費者公開其銀行帳戶，或以該信貸契約為由訂其他附加契約或要求付費購買其他服務。但會員國得容許與其他服務結合之搭售服務，但消費者在締結契約前必須被告知信貸與其他服務的條件，且附加服務費用應包含在該全部信貸成本中。倘若事先無法確定成本，消費者應於預約狀態時獲得充分的資訊。除非價格有特殊情形，借貸人將被推定知悉附加費用的成本並已提供資訊予消費者。

credit intermediaries and any other fees which the consumer has to pay in connection with the credit agreement, except for notarial costs. Creditors' actual knowledge of the costs should be assessed objectively, taking into account the requirements of professional diligence.

- (21) Credit agreements in which a borrowing rate is periodically revised in line with changes occurring in a reference rate referred to in the credit agreement should not be regarded as credit agreements with a fixed borrowing rate.
- (22) Member States should remain free to maintain or introduce national provisions prohibiting the creditor from requiring the consumer, in connection with the credit agreement, to open a bank account or conclude an agreement in respect of another ancillary service, or to pay the expenses or fees for such bank accounts or other ancillary services. In those Member States where such combined offers are allowed, consumers should be informed before the conclusion of the credit agreement about any ancillary services which are compulsory in order for the credit to be obtained in the first place or on the terms and conditions marketed. The costs payable in respect of those ancillary services should be included in the total cost of the credit; alternatively, if the amount of such costs cannot be determined in advance, consumers should receive adequate information about the existence of costs at a pre-contractual stage. The creditor must be presumed to have knowledge of the costs of the ancillary services which he offers to the consumer himself, or on behalf of a third party, unless the price thereof depends on the

- (23) 為達消費者保護的適當要求以及不課予借貸者過度之負擔，對於特殊類型的信貸契約，指令中亦對預約的資訊要求有所限制。
- (24) 在契約締結前，消費者無論是否在行銷階段，都應被提供一致性的資訊。預約時的資訊要求亦適用於借貸仲介。但若商品或服務供應商為附加服務的借貸仲介時，由於其係於提供商品或服務交易時額外提供此項服務，信貸仲介並非其交易目的，因此指令中對於締約前的資訊提供責任將會造成阻礙。在此種情形，除借貸人仍需符合有效的消費者保護要求外，得以當事人合意或適當方式為之。
- (25) 提供消費者資訊的潛在拘束力高於信貸契約，借貸人在契約期間均受會員國規範所拘束。

specific characteristics or situation of the consumer.

(23) For specific types of credit agreements, however, it is appropriate, in order to ensure an adequate level of consumer protection without placing an excessive burden on creditors or, where applicable, credit intermediaries, to restrict the pre-contractual information requirements of this Directive, taking into account the specific character of such types of agreements.

(24) The consumer needs to be given comprehensive information before he concludes the credit agreement, regardless of whether or not a credit intermediary is involved in the marketing of the credit. Therefore, in general, the precontractual information requirements should also apply to credit intermediaries.

However, where suppliers of goods and services act as credit intermediaries in an ancillary capacity, it is not appropriate to burden them with the legal obligation to provide the pre-contractual information in accordance with this Directive.

Suppliers of goods and services may be deemed, for example, to be acting as credit intermediaries in an ancillary capacity if their activity as credit intermediaries is not the main purpose of their trade, business or profession. In those cases, a sufficient level of consumer protection is still achieved since the creditor is responsible for ensuring that the consumer receives the full pre-contractual information, either from the intermediary, if the creditor and the intermediary so agree, or in some other appropriate manner.

(25) The potentially binding character of the information to be provided to the consumer prior to the conclusion of the credit

- (26) 會員國應考量信貸市場的特殊性，並採取適當措施以推動各階段的責任信貸關係。這些措施應包括有關消費者資訊及宣導，包括風險警示及過度信用擴張。在擴展信用市場時，借貸人不應從事無承擔能力或未徵信之借貸，會員國應採取必要的監督以避免類似情形發生及必要時對借貸人之處罰。參酌2006/48/EC商業信用指令中有關避免信用風險的規定，借貸人應承擔確認消費者個人信用的責任，不僅從消費者個人為申貸所提供的信用資料，亦應包括長期的商業信用關係。會員國主管機關得給予借貸人適當的命令或指導，消費者亦應審慎並遵守契約義務。

agreement and the period of time during which the creditor is to be bound by it may be regulated by the Member States.

- (26) Member States should take appropriate measures to promote responsible practices during all phases of the credit relationship, taking into account the specific features of their credit market. Those measures may include, for instance, the provision of information to, and the education of, consumers, including warnings about the risks attaching to default on payment and to over-indebtedness. In the expanding credit market, in particular, it is important that creditors should not engage in irresponsible lending or give out credit without prior assessment of creditworthiness, and the Member States should carry out the necessary supervision to avoid such behaviour and should determine the necessary means to sanction creditors in the event of their doing so. Without prejudice to the credit risk provisions of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions ⁽¹⁾, creditors should bear the responsibility of checking individually the creditworthiness of the consumer. To that end, they should be allowed to use information provided by the consumer not only during the preparation of the credit agreement in question, but also during a longstanding commercial relationship. The Member States' authorities could also give appropriate instructions and

(¹) OJ L 177, 30.6.2006, p. 1. Directive as last amended by Directive 2008/24/EC (OJ L 81, 20.3.2008, p. 38).

(27) 儘管有提供締約前的資訊，在商品範圍內，消費者仍需要額外的協助以評估締結最適於自己需要及財務狀況的借貸契約。因此會員國應確保消費者能獲得與信用商品有關的必要協助，而有關信用商品特徵等重要資訊應考量消費者的經濟狀況，並以消費者得理解方式，以個人化方式告知消費者。

(28) 為評估消費者的信用狀況，借貸人基於法律與現實需要，應檢索相關資料庫。而為避免因借貸人間的競爭所導致的損害，僅得以檢索在會員國合法建立的公共或私人資料庫。

guidelines to creditors. Consumers should also act with prudence and respect their contractual obligations.

- (27) Despite the pre-contractual information to be provided, the consumer may still need additional assistance in order to decide which credit agreement, within the range of products proposed, is the most appropriate for his needs and financial situation. Therefore, Member States should ensure that creditors provide such assistance in relation to the credit products which they offer to the consumer. Where appropriate, the relevant pre-contractual information, as well as the essential characteristics of the products proposed, should be explained to the consumer in a personalised manner so that the consumer can understand the effects which they may have on his economic situation. Where applicable, this duty to assist the consumer should also apply to credit intermediaries. Member States could determine when and to what extent such explanations are to be given to the consumer, taking into account the particular circumstances in which the credit is offered, the consumer's need for assistance and the nature of individual credit products.
- (28) To assess the credit status of a consumer, the creditor should also consult relevant databases; the legal and actual circumstances may require that such consultations vary in scope. To prevent any distortion of competition among creditors, it should be ensured that creditors have access to private or public databases concerning consumers in a Member State where they are not established under nondiscriminatory conditions compared with creditors in that Member State.

- (29) 若基於檢索結果，需拒絕此項申貸，借貸人應通知消費者有關資料庫檢索之結果。借貸人並無義務提供共同體法律所禁止之資訊，如洗錢或金融恐怖行為，因此類資訊基於公共安全或預防犯罪或刑事調查之必要而不應提供。
- (30) 本指令並未規範信貸契約效力等契約法的議題，會員國得依共同體法制訂內國規範。會員國得制定法律制度來管理信貸契約並拘束借貸人。假使同一時間指令對於締約前的資訊已經有所規定，會員國的規定將作為借貸人提供給消費者的補充資訊，並得分別以「標準歐洲消費者信用資訊」的文件提供。
- (31) 為使消費者明瞭信貸契約的權利與義務，相關資訊應簡明易懂。
- (32) 為確保資訊的完全透明，應提供消費者包含締約前與締

- (29) Where a decision to reject an application for credit is based on the consultation of a database, the creditor should inform the consumer of this fact and of the particulars of the database consulted. However, the creditor should not be obliged to give such information when this is prohibited by other Community legislation, for example legislation on money laundering or the financing of terrorism. Furthermore, such information should not be given if this would be contrary to objectives of public policy or public security, such as the prevention, investigation, detection or prosecution of criminal offences.
- (30) This Directive does not regulate contract law issues related to the validity of credit agreements. Therefore, in that area, the Member States may maintain or introduce national provisions which are in conformity with Community law. Member States may regulate the legal regime governing the offer to conclude the credit agreement, in particular when it is to be given and the period during which it is to be binding on the creditor. If such an offer is made at the same time as the pre-contractual information provided for by this Directive is given, it should, like any additional information the creditor may wish to give to the consumer, be provided in a separate document which may be annexed to the Standard European Consumer Credit Information.
- (31) In order to enable the consumer to know his rights and obligations under the credit agreement, it should contain all necessary information in a clear and concise manner.
- (32) In order to ensure full transparency, the consumer should be

約後借款利率之資訊。在契約存續期間，有關利率的調整及支付的變更應告知消費者，此無損於會員國內國法對於消費者資訊提供的相關規定，或導致利率或付款條件的改變或終止契約。

- (33) 契約當事人均應有權終止開放型信用額度借貸，即使事先已同意此項借貸，借貸人仍能以客觀因素暫緩消費者使用開放信用額度。原因可能包括懷疑信用詐欺或消費者有顯著無法履行義務的風險。但指令並不干預會員國內契約法關於契約當事人終止信貸契約的權利義務規定。

- (34) 為使近似契約撤回的程序概念，制訂與2002/65/EC遠距

provided with information concerning the borrowing rate, both at a pre-contractual stage and when the credit agreement is concluded. During the contractual relationship, the consumer should further be informed of changes to the variable borrowing rate and changes to the payments caused thereby. This is without prejudice to provisions of national law not related to consumer information which lay down conditions for, or prescribe the consequences of, changes, other than changes concerning payments, in borrowing rates and other economic conditions governing the credit, for instance rules providing that the creditor may change the borrowing rate only where there is a valid reason for such change or that the consumer may terminate the contract should there be a change in the borrowing rate or in some other economic condition concerning the credit.

- (33) The contracting parties should have the right to effect a standard termination of an open-end credit agreement. In addition, if agreed in the credit agreement, the creditor should have the right to suspend the consumer's right to draw down on an open-end credit agreement for objectively justified reasons. Such reasons may include, for instance, suspicion of an unauthorised or fraudulent use of the credit or a significantly increased risk of the consumer being unable to fulfil his obligation to repay the credit. This Directive does not affect national law in the area of contract law regulating the rights of the contracting parties to terminate the credit agreement on the basis of a breach of contract.
- (34) In order to approximate the procedures for exercising the right of

消費者金融服務銷售指令相似的無罰則與無賠償責任撤銷契約有其必要。

- (35) 消費者在收受商品後撤銷信貸契約，特別是分期付款購買或租賃的情形，本指令將不影響會員國有關返還商品的相關規定。
- (36) 在一些案例中，有國家立法對於消費者無法如期取得服務或商品有所補償。在此類案例中，消費者會希望可以早日收受商品或服務，但在信貸契約，會員國會排除類似規定，即使因為消費者希望能早日取得，撤銷權的期限也會縮減而導致該補償不可能實現。
- (37) 相關連的信貸契約，意即因購買商品而成立具有相互關係之信貸契約，消費者因其買賣契約，依共同體法得行使契約撤銷權時，亦不再受其相關連之信貸契約所拘束。但此不影響內國法適用在無效買賣契約相關的信貸契約或消費者行使內國法所賦予的契約解除權。此既不

withdrawal in similar areas, it is necessary to make provision for a right of withdrawal without penalty and with no obligation to provide justification, under conditions similar to those provided for by Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services ⁽¹⁾.

- (35) Where a consumer withdraws from a credit agreement in connection with which he has received goods, in particular from a purchase in instalments or from a hiring or leasing agreement providing for an obligation to purchase, this Directive should be without prejudice to any regulation by Member States of questions concerning the return of the goods or any related questions.
- (36) In some cases, national legislation already provides that funds cannot be made available to the consumer before the expiry of a specific deadline. In these cases, consumers may wish to ensure that they receive the goods or services purchased early. Therefore, in the case of linked credit agreements, Member States may exceptionally provide that, if the consumer explicitly wishes early receipt, the deadline for the exercise of the right of withdrawal could be reduced to the same deadline before which funds cannot be made available.
- (37) In the case of linked credit agreements, a relationship of interdependence exists between the purchase of goods or

(¹) OJ L 271, 9.10.2002, p. 16. Directive as last amended by Directive 2007/64/EC (OJ L 319, 5.12.2007, p. 1).

影響消費者在內國法中有關消費者與商品或服務供應商間的權利，亦不影響消費者未簽契約而購買商品或服務的任何付款行為。

（38）在特定情形，消費者應被允許對借貸人主張因買賣契約所生的損害賠償。會員國應決定在何種情形下，消費者得在向借貸人請求前，藉由訴訟先向供應商主張賠償。本指令不應剝奪消費者在內國法規範下的向供應商或借貸人之這項權利。

（39）在信貸契約合意前，消費者應有權解除其義務。無論是一部或全部之提前清償，借貸人應斟酌所節省的成本，對提前清償進行補償。決定計算補償的方式，應謹守幾

services and the credit agreement concluded for that purpose. Therefore, where the consumer exercises his right of withdrawal in respect of the purchase agreement, based on Community law, he should no longer be bound by the linked credit agreement. This should not affect national law applicable to linked credit agreements in cases where a purchase agreement has been voided or where the consumer has exercised his right of withdrawal based on national law. Nor should this affect the rights of consumers granted by national provisions according to which no commitment may be entered into between the consumer and a supplier of goods or services, nor any payment made between those persons, as long as the consumer has not signed the credit agreement to finance the purchase of the goods or services.

- (38) Under certain conditions, the consumer should be allowed to pursue remedies against the creditor in the event of problems related to the purchase agreement. However, Member States should determine to what extent and under what conditions the consumer is required to pursue his remedies against the supplier, in particular by bringing an action against the latter, before being in a position to pursue them against the creditor. This Directive should not deprive consumers of their rights under national provisions attaching joint and several liability to the seller or supplier of services and to the creditor.
- (39) The consumer should have the right to discharge his obligations before the date agreed in the credit agreement. In the case of early repayment, either in part or in full, the creditor should be

項原則：計算方式在契約成立前及契約履行期間，具透明與一致性；補償之計算方式應易於適用及有立於主管機關監督控管；基於消費者貸款之事實狀態，提供期間與金額，而非以中長期資金運作機制模式採計；賠償的最上限應以固定單一費率計算。以上原則適足反應消費信貸的特性而與以中長期資金運作機制有所不同，如同抵押貸款固定利率。

（40）會員國應制訂提前清償之補償規定，對借貸人超過12個月期間的債設定門檻。該門檻應斟酌消費者信貸市場的平均量，不應超過10000歐元。

（41）消費者的權益不應因借貸人將其信貸契約的權利轉讓而遭受不利益。在信貸契約轉讓至第三人時，應為告知消

entitled to compensation for the costs directly linked to the early repayment, taking into account also any savings thereby made by the creditor. However, in order to determine the method of calculating the compensation, it is important to respect several principles. The calculation of the compensation due to the creditor should be transparent and comprehensible to consumers already at the pre-contractual stage and in any case during the performance of the credit agreement. In addition, the calculation method should be easy for creditors to apply, and supervisory control of the compensation by the responsible authorities should be facilitated. Therefore, and due to the fact that consumer credit is, given its duration and volume, not financed by long-term funding mechanisms, the ceiling for the compensation should be fixed in terms of a flat-rate amount. This approach reflects the special nature of credits for consumers and should not prejudice the possibly different approach in respect of other products which are financed by long-term funding mechanisms, such as fixed-rate mortgage loans.

- (40) Member States should have the right to provide that compensation for early repayment may be claimed by the creditor only on condition that the amount repaid over a 12-month period exceeds a threshold defined by Member States. When fixing that threshold, which should not exceed EUR 10 000, Member States should for instance take into account the average amount of consumer credits in their market.
- (41) Assignment of the creditor's rights under a credit agreement should not have the effect of placing the consumer in a less

費者。原始借貸人與受轉讓人在契約成立時，即對消費者提供面對面信用服務時，此項告知對消費者不會有重大影響。在歐盟層級的規定通知消費者轉讓在所述情形並非必要。

(42) 會員國應保留內國法要求基於有效執行交易、擔保、清算資產之集中表單，以作為銀行強制清算使用。

(43) 為提升共同體內部市場的效能與消費者的高度保護，進行境內平均年利率資訊的比較有其必要。儘管統計的數學格式一致，但由於個別會員國在成本要件上的不同，以致年平均利率在87/102/EEC指令下仍未在共同體內實施比較。本指令應定義簡明一致的消費者信貸成本。

(44) 為確保市場的透明性、穩定性，以及將來的調和一致，

favourable position. The consumer should also be properly informed when the credit agreement is assigned to a third party. However, where the initial creditor, in agreement with the assignee, continues to service the credit vis-à-vis the consumer, the consumer has no significant interest in being informed of the assignment. Therefore, a requirement at EU level that the consumer be informed of the assignment in such cases would be excessive.

- (42) Member States should remain free to maintain or introduce national rules providing for collective forms of communication when this is necessary for purposes relating to the effectiveness of complex transactions such as securitisations or liquidation of assets that take place in the compulsory administrative liquidation of banks.
- (43) In order to promote the establishment and functioning of the internal market and to ensure a high degree of protection for consumers throughout the Community, it is necessary to ensure the comparability of information relating to annual percentage rates of charge throughout the Community. Despite the uniform mathematical formula for its calculation, the annual percentage rate of charge provided for in Directive 87/102/EEC is not yet fully comparable throughout the Community. In individual Member States different cost factors are taken into account in the calculation thereof. This Directive should therefore clearly and comprehensively define the total cost of a credit to the consumer.
- (44) In order to ensure market transparency and stability, and

會員國應確保適當的借貸人的監管措施。

- (45) 本指令遵循依歐盟基本權所定之各項基本權利及原則，特別是在個人資料保護、財產權的保障、無差別待遇、家庭及職業保護及消費者保護。
- (46) 倘本指令的目標，即會員國對消費者信貸的法律、規範及行政管理的一般規定無法建立，並達共同體的保護層級，共同體得依共同體契約第5條之原則採行必要措施。依據該條所訂之比例原則，本指令不會逾越目標之必要手段。
- (47) 會員國應制訂其內國法有關侵權之罰則以確保指令之貫徹，並審慎斟酌處罰的選項，以符有效性、比例性及嚇阻性。
- (48) 執行本指令之必要措施應依理事會決定1999/468/EC之程

pending further harmonisation, Member States should ensure that appropriate measures for the regulation or supervision of creditors are in place.

- (45) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for the rules on protection of personal data, the right to property, nondiscrimination, protection of family and professional life, and consumer protection pursuant to the Charter of Fundamental Rights of the European Union.
- (46) Since the objective of this Directive, namely the establishment of common rules for certain aspects of the laws, regulations and administrative provisions of the Member States concerning consumer credit, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (47) Member States should lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and ensure that they are implemented. While the choice of penalties remains within the discretion of the Member States, the penalties provided for should be effective, proportionate and dissuasive.
- (48) The measures necessary for the implementation of this Directive

序行使執行權限予執委會。

- (49) 執委會應授權採納額外對年平均利率的計算假設。倘前述措施於本指令中屬一般目標及非必要因素，則必須依1999/468/EC決定第5a條所訂程序通過。
- (50) 依據完善法律制度機構間協議第34點，會員國被鼓勵儘可能以該國或共同體利益制訂與指令具相互關係之轉換規定並進行公布。
- (51) 衡量87/102/EEC指令對於消費者信貸章節的修正與調整規定後，基於共同體的立法明確性，爰以本指令取代之。

本指令已經通過

should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.

(49) In particular, the Commission should be empowered to adopt additional assumptions for the calculation of the annual percentage rate of charge. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(50) In accordance with point 34 of the Interinstitutional Agreement on better law-making ⁽²⁾, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

(51) Accordingly, taking account of the number of amendments that need to be made to Directive 87/102/EEC due to the evolution of the consumer credit sector and in the interests of the clarity of Community legislation, that Directive should be repealed and replaced by this Directive,

HAVE ADOPTED THIS DIRECTIVE:

(1) OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/ 512/EC (OJ L 200, 22.7.2006, p. 11).

(2) OJ C 321, 31.12.2003, p. 1.

第一章 主要內容、範圍及定義

第一條 主要內容

本指令之目的係為調和會員國有關消費者信貸之法律、規範及行政規定。

第二條 範圍

1. 本指令適用信貸契約。
2. 本指令不適用於以下情形：
 - (a) 有抵押或其他動產擔保之貸款契約；
 - (b) 基於保留土地或建物財產權目的之貸款契約；
 - (c) 低於200或高於75000歐元之信貸契約；
 - (d) 在未登載於契約或另以契約方式中要求購買契約標的義務之租賃契約；且此項義務係借貸方單方所決定；
 - (e) 透支及須於一個月內清償之信貸契約；

CHAPTER I SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1 Subject matter

The purpose of this Directive is to harmonise certain aspects of the laws, regulations and administrative provisions of the Member States concerning agreements covering credit for consumers.

Article 2 Scope

1. This Directive shall apply to credit agreements.
2. This Directive shall not apply to the following:
 - (a) credit agreements which are secured either by a mortgage or by another comparable security commonly used in a Member State on immovable property or secured by a right related to immovable property;
 - (b) credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building;
 - (c) credit agreements involving a total amount of credit less than EUR 200 or more than EUR 75 000;
 - (d) hiring or leasing agreements where an obligation to purchase the object of the agreement is not laid down either by the agreement itself or by any separate agreement; such an obligation shall be deemed to exist if it is so decided unilaterally by the creditor;
 - (e) credit agreements in the form of an overdraft facility and

- (f) 設定在三個月內清償之無息或無其他費用之信用貸款；

- (g) 雇主對受僱人以免息或低於市場年平均利率，且未公開之信用貸款；

- (h) 與指令2004/39/EC第4條（1）所定義之投資或與指令2006/48/EC第4條貸款機構，基於利用指令2004/39/EC附錄之投資工具，並與投資結合並為交易之信貸契約；

- (i) 與法院或主管機關完成清算之信貸契約；

- (j) 既有貸款之延期付款、免費用之信貸契約；

- where the credit has to be repaid within one month;
- (f) credit agreements where the credit is granted free of interest and without any other charges and credit agreements under the terms of which the credit has to be repaid within three months and only insignificant charges are payable;
 - (g) credit agreements where the credit is granted by an employer to his employees as a secondary activity free of interest or at annual percentage rates of charge lower than those prevailing on the market and which are not offered to the public generally;
 - (h) credit agreements which are concluded with investment firms as defined in Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ⁽¹⁾ or with credit institutions as defined in Article 4 of Directive 2006/48/EC for the purposes of allowing an investor to carry out a transaction relating to one or more of the instruments listed in Section C of Annex I to Directive 2004/39/EC, where the investment firm or credit institution granting the credit is involved in such transaction;
 - (i) credit agreements which are the outcome of a settlement reached in court or before another statutory authority;
 - (j) credit agreements which relate to the deferred payment, free of charge, of an existing debt;

⁽¹⁾ OJ L 145, 30.4.2004, p. 1. Directive as last amended by Directive 2008/10/EC (OJ L 76, 19.3.2008, p. 33).

(k) 以消費者被要求放棄由借貸人保管之擔保品與消費者被質押的標的而成立的信貸契約；

(l) 設定相同或低於法規所定利率之非公開貸款，該貸款利率低於現行市場利率或免息之有利消費者之信貸契約。

3. 對透支型與三個月內需清償之信用貸款，僅有第1條至第3條，第4條（1）與第4條(2)a到c，第4條（4），第6條到第9條，第10條（1）、（4）、（5），第12條、第15條、第17條、第19條與第32條可以適用。

4. 超出限度的信貸契約僅第1條至第3條、第18、20、22及32條可適用。

5. 會員國應決定第1、4、6、7、9、10(1) (a)到(h)、10(2)、10(4)、11、13、16、32適用於由以下宗旨成立信貸契約之組織：

- (a) 基於成員互利而設立；
- (b) 除成員外未圖利他人；
- (c) 符合國內法要求之社會目的；
- (d) 收受並管理存款及提供成員貸款；

- (k) credit agreements upon the conclusion of which the consumer is requested to deposit an item as security in the creditor's safe-keeping and where the liability of the consumer is strictly limited to that pledged item;
 - (l) credit agreements which relate to loans granted to a restricted public under a statutory provision with a general interest purpose, and at lower interest rates than those prevailing on the market or free of interest or on other terms which are more favourable to the consumer than those prevailing on the market and at interest rates not higher than those prevailing on the market.
3. In the case of credit agreements in the form of an overdraft facility and where the credit has to be repaid on demand or within three months, only Articles 1 to 3, Article 4(1), Article 4(2)(a) to (c), Article 4(4), Articles 6 to 9, Article 10(1), Article 10(4), Article 10(5), Articles 12, 15, 17 and Articles 19 to 32 shall apply.
 4. In the case of credit agreements in the form of overrunning, only Articles 1 to 3, 18, 20 and 22 to 32 shall apply.
 5. Member States may determine that only Articles 1 to 4, 6, 7 and 9, Article 10(1), points (a) to (h) and (l) of Article 10(2), Article 10(4) and Articles 11, 13 and 16 to 32 shall apply to credit agreements which are concluded by an organisation which:
 - (a) is established for the mutual benefit of its members;
 - (b) does not make profits for any other person than its members;
 - (c) fulfils a social purpose required by domestic legislation;
 - (d) receives and manages the savings of, and provides sources of credit to, its members only; and

- (e) 提供等同或低於市場上年平均利率之貸款或提供國內法所定最高限額貸款，及其成員關係以同住或在特定地具有現有或已退休之雇傭關係，或成員間符合內國法中其他基於共同聯合關係之資格。

會員國得比較於單一組織所有已達成協議的信貸契約之全部價值，若低於所有類似組織之信貸契約總價值1%，而排除本指令於此類信貸契約之適用。

會員國應每年檢視前述排除適用是否仍有必要，與在要件不存在時撤銷其排除適用。

6. 會員國的決定僅第1、4、6、7、9、10(1)(a)到(h)、10(2)、10(4)、11、13、16、18、32應適用於安排借貸人與消費者對違約時為債務延長或清償方式達成合意之信貸契約，且：

(e) provides credit on the basis of an annual percentage rate of charge which is lower than that prevailing on the market or subject to a ceiling laid down by national law, and whose membership is restricted to persons residing or employed in a particular location or employees and retired employees of a particular employer, or to persons meeting other qualifications laid down under national law as the basis for the existence of a common bond between the members.

Member States may exempt from the application of this Directive credit agreements concluded by such an organisation where the total value of all existing credit agreements entered into by the organisation is insignificant in relation to the total value of all existing credit agreements in the Member State in which the organisation is based and the total value of all existing credit agreements entered into by all such organisations in the Member State is less than 1 % of the total value of all existing credit agreements entered into in that Member State.

Member States shall each year review whether the conditions for the application of any such exemption continue to exist and shall take action to withdraw the exemption where they consider that the conditions are no longer met.

6. Member States may determine that only Articles 1 to 4, 6, 7, 9, Article 10(1), points (a) to (i), (l) and (r) of Article 10(2), Article 10(4), Articles 11, 13, 16 and Articles 18 to 32 shall apply to credit agreements which provide for arrangements to be agreed by the creditor and the consumer in respect of deferred payment

- (a) 前述安排得因違約而導致法律程序；
- (b) 消費者並未因此較先前契約而受不利益。

若信貸契約屬第三項之範圍，僅該項規定得適用之。

第三條 定義

基於本指令之目的，適用以下定義：

- (a) 「消費者」為本指令中，以貿易、商業或同業為交易之自然人；
- (b) 「借貸人」係指基於以貿易、商業或同業同意提供貸款或貸款承諾自然人或法人；
- (c) 「信貸契約」係指借貸人提供或承諾予消費者延期清償、貸款或其他相似的金融服務之契約，但不包括以持續性提供商品或服務之契約而分期付款之契約；
- (d) 「透支」係指借貸人提供高過消費者現有帳戶額度，以

or repayment methods, where the consumer is already in default on the initial credit agreement and where:

- (a) such arrangements would be likely to avert the possibility of legal proceedings concerning such default; and
- (b) the consumer would not thereby be subject to terms less favourable than those laid down in the initial credit agreement.

However, if the credit agreement falls within the scope of paragraph 3, only the provisions of that paragraph shall apply.

Article 3 Definitions

For the purposes of this Directive, the following definitions shall apply:

- (a) ‘consumer’ means a natural person who, in transactions covered by this Directive, is acting for purposes which are outside his trade, business or profession;
- (b) ‘creditor’ means a natural or legal person who grants or promises to grant credit in the course of his trade, business or profession;
- (c) ‘credit agreement’ means an agreement whereby a creditor grants or promises to grant to a consumer credit in the form of a deferred payment, loan or other similar financial accommodation, except for agreements for the provision on a continuing basis of services or for the supply of goods of the same kind, where the consumer pays for such services or goods for the duration of their provision by means of instalments;
- (d) ‘overdraft facility’ means an explicit credit agreement whereby

供消費者得調度資金之明確信貸契約；

(e) 「超額」係指以默示方式接受借貸人所提供之超過消費者現有帳戶額度並供消費者調度資金之透支貸款；

(f) 「貸款仲介」係指並非以借貸人身份，基於貿易、商業或同業，為賺取費用，以金錢形式或其他財務形式：

(i) 介紹或提供信貸契約給消費者；

(ii) 承擔協助消費者準備前款信貸契約之相關工作；

(iii) 代表借貸人與消費者成立信貸契約；

(g) 「消費者全部借貸成本」係指包括利率、手續費、稅金及其他消費者基於信貸契約而被要求繳交之費用，為借貸人所知悉，不含因信貸契約所生之公證；另外附加服務之成本，為強制取得貸款或貸款極限或條件所成立之服務契約而產生的保險補貼亦包含之；

(h) 「消費者得支付之總額」係指消費者之信貸金額總額與全部借貸成本；

- a creditor makes available to a consumer funds which exceed the current balance in the consumer's current account;
- (e) ‘overrunning’ means a tacitly accepted overdraft whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer's current account or the agreed overdraft facility;
- (f) ‘credit intermediary’ means a natural or legal person who is not acting as a creditor and who, in the course of his trade, business or profession, for a fee, which may take a pecuniary form or any other agreed form of financial consideration:
- (i) presents or offers credit agreements to consumers;
 - (ii) assists consumers by undertaking preparatory work in respect of credit agreements other than as referred to in (i); or
 - (iii) concludes credit agreements with consumers on behalf of the creditor;
- (g) ‘total cost of the credit to the consumer’ means all the costs, including interest, commissions, taxes and any other kind of fees which the consumer is required to pay in connection with the credit agreement and which are known to the creditor, except for notarial costs; costs in respect of ancillary services relating to the credit agreement, in particular insurance premiums, are also included if, in addition, the conclusion of a service contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed;
- (h) ‘total amount payable by the consumer’ means the sum of the total amount of the credit and the total cost of the credit to the

- (i) 費用年平均利率係指以全部借貸金額之年平均利率，包括第19條所指之成本說明之消費者信貸全部成本；
- (j) 「借貸利率」係指以年為基礎為計算貸款之固定或變動利率；
- (K) 「固定借貸利率」係指借貸人與消費者所同意，在契約存續期間以單一借貸利率，或排除單一固定特定利率，而以不同時期之數個借貸利率之利率。若信貸契約中並未決定全部借貸利率，將會被視為以前述方式在成立契約時定借貸利率；
- (l) 「全部貸款總額」係指最高限額或信貸契約得借貸的總數；
- (m) 「耐用媒介」係指可使消費者儲存被個人傳遞資訊及將來仍可讀取，並且所儲存的資訊得以不受變更重製的任何工具；
- (n) 「信貸連結契約」係指一信貸契約：
 - (i) 為提供特定商品或服務而提供排他性融資；

consumer;

- (i) ‘annual percentage rate of charge’ means the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit, where applicable including the costs referred to in Article 19(2);
- (j) ‘borrowing rate’ means the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down;
- (k) ‘fixed borrowing rate’ means that the creditor and the consumer agree in the credit agreement on one borrowing rate for the entire duration of the credit agreement or on several borrowing rates for partial periods using exclusively a fixed specific percentage. If not all borrowing rates are determined in the credit agreement, the borrowing rate shall be deemed to be fixed only for the partial periods for which the borrowing rates are determined exclusively by a fixed specific percentage agreed on the conclusion of the credit agreement;
- (l) ‘total amount of credit’ means the ceiling or the total sums made available under a credit agreement;
- (m) ‘durable medium’ means any instrument which enables the consumer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;
- (n) ‘linked credit agreement’ means a credit agreement where
 - (i) the credit in question serves exclusively to finance an agreement for the supply of specific goods or the provision

- (ii) 客觀而言有二個契約形式，商業單位基於商品或服務供應商而提供消費者融資貸款，或由第三者，及借貸方與供應商合作，在提供商品或服務時提供貸款，或在信貸契約中明確特定提供某項商品或服務。

第二章 預備信貸契約成立之資訊及實踐

第四條 廣告的標準資訊

1. 任何提供利率或消費者借貸成本的資訊之信貸契約的廣告應符合本條的資訊標準。

前項提供利率或消費者借貸成本之信貸契約，本項義務不應適用於內國法要求提供前項信貸契約廣告中關於費用年平均利率的規定。

- of a specific service, and
- (ii) those two agreements form, from an objective point of view, a commercial unit; a commercial unit shall be deemed to exist where the supplier or service provider himself finances the credit for the consumer or, if it is financed by a third party, where the creditor uses the services of the supplier or service provider in connection with the conclusion or preparation of the credit agreement, or where the specific goods or the provision of a specific service are explicitly specified in the credit agreement.

CHAPTER II INFORMATION AND PRACTICES PRELIMINARY TO THE CONCLUSION OF THE CREDIT AGREEMENT

Article 4 Standard information to be included in advertising

1. Any advertising concerning credit agreements which indicates an interest rate or any figures relating to the cost of the credit to the consumer shall include standard information in accordance with this Article.

This obligation shall not apply where national legislation requires the indication of the annual percentage rate of charge in advertising concerning credit agreements which does not indicate an interest rate or any figures relating to any cost of credit to the

2. 標準資訊應以清楚、簡明、顯著方式表示範例：
 - (a) 同時提供固定或浮動借貸利率之費用及消費者借貸的全部成本；
 - (b) 貸款總額
 - (c) 費用年平均利率，尤其是第2條第3項之信貸契約，會員國得決定是否提供費用年平均利率。
 - (d) 信貸契約期間
 - (e) 特定商品或服務付款的貸款，現金價與預付款總額；
 - (f) 消費者可支付總額與分期付款金額。
3. 成立與信貸契約相關之附加服務的契約，特別是保險等需強制取得貸款或依照行銷之條件，且服務成本無法事先決定，其契約之義務應以明確、簡要及顯著方式表示，並一併告知費用年平均利率。
4. 本條並不影響指令2005/29/EC。

- consumer within the meaning of the first subparagraph.
2. The standard information shall specify in a clear, concise and prominent way by means of a representative example:
 - (a) the borrowing rate, fixed or variable or both, together with particulars of any charges included in the total cost of the credit to the consumer;
 - (b) the total amount of credit;
 - (c) the annual percentage rate of charge; in the case of a credit agreement of the kind referred to in Article 2(3), Member States may decide that the annual percentage rate of charge need not be provided;
 - (d) if applicable, the duration of the credit agreement;
 - (e) in the case of a credit in the form of deferred payment for a specific good or service, the cash price and the amount of any advance payment; and
 - (f) if applicable, the total amount payable by the consumer and the amount of the instalments.
 3. Where the conclusion of a contract regarding an ancillary service relating to the credit agreement, in particular insurance, is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed, and the cost of that service cannot be determined in advance, the obligation to enter into that contract shall also be stated in a clear, concise and prominent way, together with the annual percentage rate of charge.
 4. This Article shall be without prejudice to Directive 2005/29/EC.

第五條 訂約前的資訊

1. 在消費者被信貸契約或要約拘束前，借貸人及貸款仲介應基於所提供之貸款契約或要約之條款或條件，及時提供消費者必要資訊，以利消費者與其他要約進行比較，告知其契約意向或資訊，並為是否成立契約之決定。前述資訊應以書面或耐用之媒介，並依附件二之「歐洲消費者貸款標準資訊」形式提供。如此借貸人將被視為符合指令2002/65/EC第3條第1項與第2項之資訊要求。

此處所稱之資訊應敘明：

- (a) 貸款的類型；
- (b) 借貸人或貸款仲介的身分與實體住址；
- (c) 全部貸款總額與撥款條件；
- (d) 信貸契約的期間
- (e) 關於購買特定商品或服務，其價格，及其連結貸款契約貸款延期清償的形式；

Article 5 Pre-contractual information

1. In good time before the consumer is bound by any credit agreement or offer, the creditor and, where applicable, the credit intermediary shall, on the basis of the credit terms and conditions offered by the creditor and, if applicable, the preferences expressed and information supplied by the consumer, provide the consumer with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement. Such information, on paper or on another durable medium, shall be provided by means of the Standard European Consumer Credit Information form set out in Annex II. The creditor shall be deemed to have fulfilled the information requirements in this paragraph and in Article 3, paragraphs (1) and (2) of Directive 2002/65/EC if he has supplied the Standard European Consumer Credit Information.

The information in question shall specify:

- (a) the type of credit;
- (b) the identity and the geographical address of the creditor as well as, if applicable, the identity and geographical address of the credit intermediary involved;
- (c) the total amount of credit and the conditions governing the drawdown;
- (d) the duration of the credit agreement;
- (e) in the case of a credit in the form of deferred payment for a specific good or service and linked credit agreements, that good or service and its cash price;

- (f) 借貸利率，借貸利率的條件，與任何相對於原始利率之其他參考利率，包含期間、條件與變更貸款利率之程序；若有借款利率適用不同的情形時，則其上述全部適用之利率；

- (g) 費用年平均利率與消費者全部應負總額，業者應依據消費者提供有關貸款偏好的一或以上的要素，以案例說明並以假設方式計算其利率，例如貸款契約期間與全部貸款總額，借貸人應將此項要素納入考量；若一信貸契約以不同收費或借款利率提供數種撥款方式，且借貸人以附件一第二部份的要點b進行假設，即表示此類型的貸款契約的撥款機制會導致較高的費用年平均利率；

- (h) 金額、數字與消費者清償次數，基於償付票款之目的，不同借款利率之未償貸款清償次序分配；

- (i) 記錄付款與撥款之一或數個帳戶的維持費用，除非得隨意公開一帳戶作為付款與撥款使用，任何衍生自信貸契

- (f) the borrowing rate, the conditions governing the application of the borrowing rate and, where available, any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedure for changing the borrowing rate; if different borrowing rates apply in different circumstances, the abovementioned information on all the applicable rates;
- (g) the annual percentage rate of charge and the total amount payable by the consumer, illustrated by means of a representative example mentioning all the assumptions used in order to calculate that rate; where the consumer has informed the creditor of one or more components of his preferred credit, such as the duration of the credit agreement and the total amount of credit, the creditor shall take those components into account; if a credit agreement provides different ways of drawdown with different charges or borrowing rates and the creditor uses the assumption set out in point (b) of Part II of Annex I, he shall indicate that other drawdown mechanisms for this type of credit agreement may result in higher annual percentage rates of charge;
- (h) the amount, number and frequency of payments to be made by the consumer and, where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purposes of reimbursement;
- (i) where applicable, the charges for maintaining one or several accounts recording both payment transactions and drawdowns,

約及前述費用的條款均得變更；

- (j) 公證契約中之消費者應支付的成本之存在方式；
- (k) 與信貸契約相關的附加服務契約之義務，特別是保險政策等需強制取得貸款或基於行銷條款而成立之契約；
- (l) 遲延清償之利率及金額理算協商，以及違約的支付費用；
- (m) 未清償結果之警告；
- (n) 擔保請求；
- (o) 撤銷權存在或喪失；
- (p) 提前清償權，與借貸人基於第16條之賠償請求權；
- (q) 消費者被依據第9條（2）評估信用資料而被立刻及免費告知的權利；
- (r) 消費者取得信貸契約副本之權利。但借貸人不願與消費

unless the opening of an account is optional, together with the charges for using a means of payment for both payment transactions and drawdowns, any other charges deriving from the credit agreement and the conditions under which those charges may be changed;

- (j) where applicable, the existence of costs payable by the consumer to a notary on conclusion of the credit agreement;
- (k) the obligation, if any, to enter into an ancillary service contract relating to the credit agreement, in particular an insurance policy, where the conclusion of such a contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed;
- (l) the interest rate applicable in the case of late payments and the arrangements for its adjustment, and, where applicable, any charges payable for default;
- (m) a warning regarding the consequences of missing payments;
- (n) where applicable, the sureties required;
- (o) the existence or absence of a right of withdrawal;
- (p) the right of early repayment, and, where applicable, information concerning the creditor's right to compensation and the way in which that compensation will be determined in accordance with Article 16;
- (q) the consumer's right to be informed immediately and free of charge, pursuant to Article 9(2), of the result of a database consultation carried out for the purposes of assessing his creditworthiness;
- (r) the consumer's right to be supplied, on request and free

者成立契約時則不適用，且

（s）借貸人受訂約前資訊拘束的期間。

任何借貸人得提供予消費者之資訊應依「歐洲消費者貸款標準資訊」格式方式另行提供給消費者。

2. 若有指令2002/65/EC第3條（3）以語音電話溝通方式之情形，作為該指令第3條（3）第2點關於金融服務的主要特徵描述，應至少包括本條第1項之（c）、（d）、（e）、（f）、（h）與（1），並與有關費用年平均利率及消費者應付總額一起說明。
3. 若契約係依消費者要求以遠距通訊方式成立，而無法提供第1項之資訊，則應參酌第2款，在契約成立後，借貸人應立即以「歐洲消費者貸款標準資訊」之格式，提供消費者充分之訂約前之資訊。
4. 消費者接獲以「歐洲消費者貸款標準資訊」之格式提供之資訊，應免費取得契約副本。但借貸人不願與消費者成立契約

of charge, with a copy of the draft credit agreement. This provision shall not apply if the creditor is at the time of the request unwilling to proceed to the conclusion of the credit agreement with the consumer; and

- (s) if applicable, the period of time during which the creditor is bound by the pre-contractual information.

Any additional information which the creditor may provide to the consumer shall be given in a separate document which may be annexed to the Standard European Consumer Credit Information form.

2. However, in the case of voice telephony communications, as referred to in Article 3(3) of Directive 2002/65/EC, the description of the main characteristics of the financial service to be provided pursuant to the second indent of Article 3(3)(b) of that Directive shall include at least the items referred to in points (c), (d), (e), (f) and (h) of paragraph (1) of this Article, together with the annual percentage rate of charge illustrated by means of a representative example and the total amount payable by the consumer.
3. If the agreement has been concluded at the consumer's request using a means of distance communication which does not enable the information to be provided in accordance with paragraph 1, in particular in the case referred to in paragraph 2, the creditor shall provide the consumer with the full precontractual information using the Standard European Consumer Credit Information form immediately after the conclusion of the credit agreement.
4. Upon request, the consumer shall, in addition to receiving the Standard European Consumer Credit Information, be supplied

時則不適用。

5. 基於消費者清償之信貸契約，若無法產生與全部貸款金額之立即相對應的分期償還，但被用於一定期間及基於信貸契約條款之資金，或附加契約，則第1項之訂約前資訊，除非有提供保證，否則應包含對於無法保證清償貸款總額之明確與簡要的說明。

6. 會員國應確保借貸人與貸款仲介提供消費者適當之說明，以利消費者能瞭解信貸契約的內容，並依其需要及財務狀況進行評估，依第一項提供產品之必要特徵及對消費者產生之特定效果等提供訂約前資訊說明，包含消費者違約之結果。會員國得因應資訊對象給予協助或指導，在信貸契約的特殊情形，誰應提供資訊與資訊應提供給誰及貸款之類型等。

free of charge with a copy of the draft credit agreement. This provision shall not apply if the creditor is at the time of the request unwilling to proceed to the conclusion of the credit agreement with the consumer.

5. In the case of a credit agreement under which payments made by the consumer do not give rise to an immediate corresponding amortisation of the total amount of credit, but are used to constitute capital during periods and under conditions laid down in the credit agreement or in an ancillary agreement, the pre-contractual information required under paragraph 1 shall include a clear and concise statement that such credit agreements do not provide for a guarantee of repayment of the total amount of credit drawn down under the credit agreement, unless such a guarantee is given.
6. Member States shall ensure that creditors and, where applicable, credit intermediaries provide adequate explanations to the consumer, in order to place the consumer in a position enabling him to assess whether the proposed credit agreement is adapted to his needs and to his financial situation, where appropriate by explaining the pre-contractual information to be provided in accordance with paragraph 1, the essential characteristics of the products proposed and the specific effects they may have on the consumer, including the consequences of default in payment by the consumer. Member States may adapt the manner by which and the extent to which such assistance is given, as well as by whom it is given, to the particular circumstances of the situation in which the credit agreement is offered, the person to whom it is

第六條 透支信貸契約或特定契約的訂約前資訊要求

1. 在消費者被信貸契約或依第2條（3）、（5）或（6）之要約拘束前，借貸人及貸款仲介應依借貸人所提供之貸款內容與條件，提供消費者必要資訊，以利消費者與其他要約進行比較，告知其契約意向或資訊，並為是否成立契約之決定。

此處所指之資訊應敘明

- (a) 貸款的類型；
- (b) 借貸人或貸款仲介的身分與實體住址；
- (c) 全部貸款總額與撥款條件；
- (d) 信貸契約的持續期間；
- (e) 借貸利率的條件，與任何相對於原始利率之其他參考利率，包含期間、條件與變更貸款利率之程序；

offered and the type of credit offered.

Article 6 Pre-contractual information requirements for certain credit agreements in the form of an overdraft facility and for certain specific credit agreements

1. In good time before the consumer becomes bound by any credit agreement or offer concerning a credit agreement as referred to in Article 2(3), (5) or (6), the creditor and, where applicable, the credit intermediary shall, on the basis of the credit terms and conditions offered by the creditor and, if applicable, the preferences expressed and information supplied by the consumer, provide the consumer with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement.

The information in question shall specify:

- (a) the type of credit;
- (b) the identity and geographical address of the creditor as well as, if applicable, the identity and geographical address of the credit intermediary involved;
- (c) the total amount of credit;
- (d) the duration of the credit agreement;
- (e) the borrowing rate; the conditions governing the application of that rate, any index or reference rate applicable to the initial

- (f) 費用年平均利率與消費者全部應負總額，以案例說明並以假設方式計算其利率；
- (g) 終止信貸契約之條件及程序；
- (h) 信貸契約基於第2條（3）消費者被要求清償全部貸款之指示；
- (i) 遲延清償之利率及金額計算協商，以及違約之支付費用；
- (J) 消費者被依據第9條（2）查詢信用資料而被立刻及免費告知的權利；
- (k) 信貸契約基於第2條（3），有關從契約成立時與有關前述費用變更之條款；
- (l) 借貸人受訂約前資訊拘束的期間。

以上資訊應載於書面或其他類似，具持久性的媒介，而且所有的資訊都應是顯著的，如同附件三之歐洲消費者信用資訊規定要求般。亦即，借貸者如有依歐洲消費者信用資訊

- borrowing rate, the charges applicable from the time the credit agreement is concluded, and, where applicable, the conditions under which those charges may be changed;
- (f) the annual percentage rate of charge, illustrated by means of representative examples mentioning all the assumptions used in order to calculate that rate;
 - (g) the conditions and procedure for terminating the credit agreement;
 - (h) in the case of credit agreements as referred to in Article 2(3), where applicable, an indication that the consumer may be requested to repay the amount of credit in full at any time;
 - (i) the interest rate applicable in the case of late payments and the arrangements for its adjustment, and, where applicable, any charges payable for default;
 - (j) the consumer's right to be informed immediately and free of charge, pursuant to Article 9(2), of the result of a database consultation carried out for the purposes of assessing his creditworthiness;
 - (k) in the case of credit agreements as referred to in Article 2(3), information about the charges applicable from the time such agreements are concluded and, if applicable, the conditions under which those charges may be changed;
 - (l) if applicable, the period of time during which the creditor is bound by the pre-contractual information.

Such information shall be provided on paper or on another durable medium and all information shall be equally prominent. It may be provided by means of the European Consumer Credit Information

規定，提供資訊者，其應依本規定及2002/65/EC指令第3條（1）及（2）規定之資訊需求，滿足上開資訊。

2. 信貸契約有第2條（3）之情形，會員國得決定費用年平均利率無須提供。

3. 信貸契約有第2條（5）與（6）之情形，依本條第1項提供之資訊包含：

（a）金額、數字與消費者清償次數，基於償付票款之目的，不同借款利率之未償貸款清償次序分配；

（b）提前清償權，與借貸人之賠償請求權及方式；

信貸契約屬第2條（3）之範圍，僅得適用本條第1項規定。

4. 以語音電話溝通方式之情形，以及消費者即時取得透支貸款，關於金融服務的主要特徵描述，應至少包括本條第1項之（c）、（d）、（e）、（f）、（h）與（1）之內容。另外，屬第3項之信貸契約，主要特徵之描述應包含載明契約期間。

form set out in Annex III. The creditor shall be deemed to have fulfilled the information requirements in this paragraph and in Article 3(1) and (2) of Directive 2002/65/EC if he has supplied the European Consumer Credit Information.

2. In the case of a credit agreement of the kind referred to in Article 2(3), Member States may decide that the annual percentage rate of charge need not be provided.
3. In the case of a credit agreement as referred to in Article 2(5) and (6), the information provided to the consumer in accordance with paragraph 1 of this Article shall also include:
 - (a) the amount, number and frequency of payments to be made by the consumer and, where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purposes of reimbursement; and
 - (b) the right of early repayment, and, where applicable, information concerning the creditor's right to compensation and the way in which that compensation will be determined.

However, if the credit agreement falls within the scope of Article 2(3), only the provisions of paragraph 1 of this Article shall apply.
4. However, in the case of voice telephony communications and where the consumer requests that the overdraft facility be made available with immediate effect, the description of the main characteristics of the financial service shall include at least the items referred to in points (c), (e), (f) and (h) of paragraph 1. In addition, in credit agreements of the kind referred to in paragraph 3, the description of the main characteristics shall include a

5. 儘管排除第2條（2）（e），會員國應至少適用本條第4項第1句，對於透支及一個月內清償之貸款要求之形式。

6. 消費者應取得第1項至第4項之資訊以外，亦應被提供，基於第10條適用範圍內，包含契約資訊的信貸契約副本。但借貸人不願與消費者成立契約時則不適用。

7. 若契約係依消費者要求以遠距通訊方式成立，而無法提供第1項與第3項之資訊，或有包括第4項之情形，借貸人應立即於契約成立後，履行第1項與第3項之義務提供符合第10條適用範圍之契約資訊。

第七條 契約前之資訊要求之免除

第5條與第6條不適用於商品或服務提供者提供額外貸款資訊仲介之情形。此並不影響借貸人依前述條文確保消費者取得

specification of the duration of the credit agreement.

5. Notwithstanding the exclusion provided for in Article 2(2)(e), the Member States shall apply at least the requirements of the first sentence of paragraph 4 of this Article to credit agreements in the form of an overdraft facility and where the credit has to be repaid within one month.
6. Upon request, the consumer shall, in addition to receiving the information referred to in paragraphs 1 to 4, be supplied free of charge with a copy of the draft credit agreement containing the contractual information provided for by Article 10 insofar as that Article is applicable. This provision shall not apply if the creditor is at the time of the request unwilling to proceed to the conclusion of the credit agreement with the consumer.
7. If the agreement has been concluded at the consumer's request using a means of distance communication which does not enable the information to be provided in accordance with paragraphs 1 and 3, including in the cases referred to in paragraph 4, the creditor shall immediately after the conclusion of the credit agreement fulfil his obligations under paragraphs 1 and 3 by providing the contractual information pursuant to Article 10 insofar as that Article is applicable.

Article 7 Exemptions from the pre-contractual information requirements

Articles 5 and 6 shall not apply to suppliers of goods or services acting as credit intermediaries in an ancillary capacity. This is without

訂約前資訊之義務。

第八條 評估消費者信用之義務

1. 會員國應確保於契約成立前，借貸人基於從消費者處取得，及必要時參考重要資料庫取得有效資訊以評估消費者信用。會員國之立法應保留要求借貸人基於參考資料庫評估消費者信用之規定。
2. 會員國應確保，當事人於信貸契約成立後變更契約貸款金額，借貸人得於貸款總額增加前，更新廢棄之財務資料並評估消費者信用。

第三章 資料庫評估

第九條 資料庫評估

1. 每個會員國應確保在跨國貸款時，借貸人得從其他會員國進行消費者信用資料庫評估。其條件應無差別待遇。

prejudice to the creditor's obligation to ensure that the consumer receives the pre-contractual information referred to in those Articles.

Article 8 Obligation to assess the creditworthiness of the consumer

1. Member States shall ensure that, before the conclusion of the credit agreement, the creditor assesses the consumer's creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database. Member States whose legislation requires creditors to assess the creditworthiness of consumers on the basis of a consultation of the relevant database may retain this requirement.
2. Member States shall ensure that, if the parties agree to change the total amount of credit after the conclusion of the credit agreement, the creditor updates the financial information at his disposal concerning the consumer and assesses the consumer's creditworthiness before any significant increase in the total amount of credit.

CHAPTER III DATABASE ACCESS

Article 9 Database access

1. Each Member State shall in the case of cross-border credit ensure access for creditors from other Member States to databases

2. 若貸款申請因資訊資料庫結果而被拒絕，借貸人應立即告知消費者，且不得收取資訊資料庫之費用。
3. 除非依共同體法有禁止提供資訊的規定或，有違反公共政策或公共安全，否則應提供資訊。
4. 本條應不影響指令95/46/EC個人資料保護指令有關傳輸及流通個人資料規定之適用。

第四章 信貸契約之資訊與權利

第十條 信貸契約應包含之資訊

1. 信貸契約應制訂於書面或耐久之媒介。所有契約當事人均應取得信貸契約副本。本條不影響內國法關於共同體法核准之信貸契約成立效力。

used in that Member State for assessing the creditworthiness of consumers. The conditions for access shall be non-discriminatory.

2. If the credit application is rejected on the basis of consultation of a database, the creditor shall inform the consumer immediately and without charge of the result of such consultation and of the particulars of the database consulted.
3. The information shall be provided unless the provision of such information is prohibited by other Community legislation or is contrary to objectives of public policy or public security.
4. This Article shall be without prejudice to the application of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾.

CHAPTER IV INFORMATION AND RIGHTS CONCERNING CREDIT AGREEMENTS

Article 10 Information to be included in credit agreements

1. Credit agreements shall be drawn up on paper or on another durable medium.

⁽¹⁾ OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

2. 信貸契約應明確與簡要敘明：
- (a) 貸款的類型；
 - (b) 借貸人或貸款仲介的身分與實體住址；

 - (c) 信貸契約的持續期間；
 - (d) 全部貸款總額與撥款條件；

 - (e) 關於購買特定商品或服務，其價格，及其連結貸款契約貸款延期清償的形式；

 - (f) 借貸利率，借貸利率的條件，與任何相對於原始利率之其他參考利率，包含期間、條件與變更貸款利率之程序；若有借款利率適用不同的情形時，則其上述全部適用之利率；

 - (g) 以契約成立時計算之費用年平均利率及消費者全部應負總額；係所有計算利率的假設；

 - (h) 金額、數字與消費者清償次數，基於償付票款之目的，

All the contracting parties shall receive a copy of the credit agreement. This Article shall be without prejudice to any national rules regarding the validity of the conclusion of credit agreements which are in conformity with Community law.

2. The credit agreement shall specify in a clear and concise manner:
 - (a) the type of credit;
 - (b) the identities and geographical addresses of the contracting parties as well as, if applicable, the identity and geographical address of the credit intermediary involved;
 - (c) the duration of the credit agreement;
 - (d) the total amount of credit and the conditions governing the drawdown;
 - (e) in case of a credit in the form of deferred payment for a specific good or service or in the case of linked credit agreements, that good or service and its cash price;
 - (f) the borrowing rate, the conditions governing the application of that rate and, where available, any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedures for changing the borrowing rate and, if different borrowing rates apply in different circumstances, the abovementioned information in respect of all the applicable rates;
 - (g) the annual percentage rate of charge and the total amount payable by the consumer, calculated at the time the credit agreement is concluded; all the assumptions used in order to calculate that rate shall be mentioned;
 - (h) the amount, number and frequency of payments to be made

不同借款利率之未償貸款清償次序分配；

- (i) 固定期間分期償還信貸契約本金，消費者得在信貸契約期間，取得、請求及分期帳戶之說明；

分期帳戶必須表示未付款及付款期間與情形；該帳戶必須包括每筆本金償還的分析、依貸款利率計算的利息及其他費用；利率不能在貸款契約外附加計算；分期帳戶必須明白清楚表示其帳戶內的資料在依貸款契約所為之貸款利率或額外費用之變更前是持續有效的。

- (j) 若費用與利息非以分期為償還，有關清償的條件與利息，以及週期與非週期性的費用；

- (k) 記錄付款與撥款之一或數個帳戶的維持費用，除非得隨意公開一帳戶作為付款與撥款使用，任何衍生自信貸契約及前述費用的條款均得變更；

by the consumer and, where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purposes of reimbursement;

- (i) where capital amortisation of a credit agreement with a fixed duration is involved, the right of the consumer to receive, on request and free of charge, at any time throughout the duration of the credit agreement, a statement of account in the form of an amortisation table.

The amortisation table shall indicate the payments owing and the periods and conditions relating to the payment of such amounts; the table shall contain a breakdown of each repayment showing capital amortisation, the interest calculated on the basis of the borrowing rate and, where applicable, any additional costs; where the interest rate is not fixed or the additional costs may be changed under the credit agreement, the amortisation table shall indicate, clearly and concisely, that the data contained in the table will remain valid only until such time as the borrowing rate or the additional costs are changed in accordance with the credit agreement;

- (j) if charges and interest are to be paid without capital amortisation, a statement showing the periods and conditions for the payment of the interest and of any associated recurrent and non-recurrent charges;
- (k) where applicable, the charges for maintaining one or several accounts recording both payment transactions and drawdowns, unless the opening of an account is optional, together with

- (l) 契約成立後之遲延清償利率與金額計算協商，以及違約的支付費用；
- (m) 有關未清償結果之警告；
- (n) 應支付的公證費用；
- (o) 被請求之擔保或保險；
- (p) 撤銷權的存在與欠缺，權利的行使期間及行使之要件，包含第14條（3）（b）消費者清償本金及利息之義務；
- (q) 有關第15條所生之權利要件與行使之資訊；
- (r) 提前清償權，提前清償程序與借貸人之賠償請求權及決定賠償方式之資訊；
- (s) 行使信貸契約終止權之程序；
- (t) 消費者法庭外的申訴或救濟機制及利用方式；

the charges for using a means of payment for both payment transactions and drawdowns, and any other charges deriving from the credit agreement and the conditions under which those charges may be changed;

- (l) the interest rate applicable in the case of late payments as applicable at the time of the conclusion of the credit agreement and the arrangements for its adjustment and, where applicable, any charges payable for default;
- (m) a warning regarding the consequences of missing payments;
- (n) where applicable, a statement, that notarial fees will be payable;
- (o) the sureties and insurance required, if any;
- (p) the existence or absence of a right of withdrawal, the period during which that right may be exercised and other conditions governing the exercise thereof, including information concerning the obligation of the consumer to pay the capital drawn down and the interest in accordance with Article 14(3) (b) and the amount of interest payable per day;
- (q) information concerning the rights resulting from Article 15 as well as the conditions for the exercise of those rights;
- (r) the right of early repayment, the procedure for early repayment, as well as, where applicable, information concerning the creditor's right to compensation and the way in which that compensation will be determined;
- (s) the procedure to be followed in exercising the right of termination of the credit agreement;
- (t) whether or not there is an out-of-court complaint and redress

- (u) 其他契約條款及要件；
 - (v) 法定監理機關的名稱與住址。
3. 第二項(i)適用於以分期付款形式之帳戶說明，借貸人免除消費者於信貸契約期間任何時期之費用。
4. 基於消費者清償之信貸契約，若無法產生與全部貸款金額之立即相對應的分期償還，但被用於一定期間及基於信貸契約條款之資金，或附加契約，則第2項之訂約前資訊，除非有提供保證，否則應包含對於無法保證清償貸款總額之明確與簡要的說明。
5. 第2條(3)之透支類型之信貸契約，下列資訊應以明確與簡明方式提供：
- (a) 貸款的類型；
 - (b) 借貸人或貸款仲介的身分與實體住址；
 - (c) 信貸契約的持續期間；
 - (d) 全部貸款總額與撥款條件；

mechanism for the consumer and, if so, the methods for having access to it;

- (u) where applicable, other contractual terms and conditions;
 - (v) where applicable, the name and address of the competent supervisory authority.
3. Where paragraph 2(i) applies, the creditor shall make available to the consumer, free of charge and at any time throughout the duration of the credit agreement, a statement of account in the form of an amortisation table.
 4. In the case of a credit agreement under which payments made by the consumer do not give rise to an immediate corresponding amortisation of the total amount of credit, but are used to constitute capital during periods and under conditions laid down in the credit agreement or in an ancillary agreement, the information required under paragraph 2 shall include a clear and concise statement that such credit agreements do not provide for a guarantee of repayment of the total amount of credit drawn down under the credit agreement, unless such a guarantee is given.
 5. In the case of credit agreements in the form of overdraft facilities as referred to in Article 2(3), the following shall be specified in a clear and concise manner:
 - (a) the type of credit;
 - (b) the identities and geographical addresses of the contracting parties as well as, if applicable, the identity and geographical address of the credit intermediary involved;
 - (c) the duration of the credit agreement;
 - (d) the total amount of the credit and the conditions governing the

- (e) 借貸利率，借貸利率的條件，與任何相對於原始利率之其他參考利率，包含期間、條件與變更貸款利率之程序；若有借款利率適用不同的情形時，則其上述全部適用之利率；
- (f) 以契約成立時計算之費用年平均利率及消費者全部應負總額；係參酌第19條（2）及相關之第三條（g）（i）提及之所有計算利率的假設；會員國得決定費用年平均利率是否需要提供；
- (g) 要求消費者清償全部貸款之指示；
- (h) 契約撤銷權行使的要件；
- (i) 自契約成立時的費用資訊。及費用變更的情形。

第十一條 關於借款利率之資訊

1. 任何借款利率的變更均應在變生效前，以書面或其他耐久的媒介通知消費者。資訊中應說明在新借款利率生效後之借款總額，以及因此導致之清償次數之變更。

drawdown;

- (e) the borrowing rate, the conditions governing the application of the borrowing rate and, where available, any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedure for changing the borrowing rate and, if different borrowing rates apply in different circumstances, the abovementioned information in respect of all the applicable rates;
- (f) the annual percentage rate of charge and the total cost of the credit to the consumer, calculated at the time the credit agreement is concluded; all the assumptions used in order to calculate that rate as referred to in Article 19(2) in conjunction with Article 3(g) and (i) shall be mentioned; Member States may decide that the annual percentage rate of charge need not be provided;
- (g) an indication that the consumer may be requested to repay the amount of credit in full on demand at any time;
- (h) conditions governing the exercise of the right of withdrawal from the credit agreement; and
- (i) information concerning the charges applicable from the time such agreements are concluded and, if applicable, the conditions under which those charges may be changed.

Article 11 Information concerning the borrowing rate

1. Where applicable, the consumer shall be informed of any change in the borrowing rate, on paper or another durable medium, before the change enters into force. The information shall state

2. 雙方當事人得於信貸契約中同意，前項因參考利率週期性變更提供予消費者借款利率資訊，其新參考利率應以適當方式公開並得借貸人所在處取得。

第十二條 與透支信貸相關之義務

1. 關於包含透支類型的信貸契約，消費者應被以定期書面或以其他耐久媒介方式告知帳戶之說明，特別是包含以下資訊：
 - (a) 帳戶相關說明之確切期間；
 - (b) 撥款的金額與日期；
 - (c) 先前結餘及日期；
 - (d) 新的結餘；
 - (e) 消費者清償的日期與金額；
 - (f) 適用之借款利率；
 - (g) 任何適用之費用；
 - (h) 若有的話，最低應繳額；

the amount of the payments to be made after the entry into force of the new borrowing rate and, if the number or frequency of the payments changes, particulars thereof.

2. However, the parties may agree in the credit agreement that the information referred to in paragraph 1 is to be given to the consumer periodically in cases where the change in the borrowing rate is caused by a change in a reference rate, the new reference rate is made publicly available by appropriate means and the information concerning the new reference rate is also kept available in the premises of the creditor.

Article 12 Obligations in connection with credit agreement in the form of an overdraft facility

1. Where a credit agreement covers credit in the form of an overdraft facility, the consumer shall be kept regularly informed by means of a statement of account, on paper or on another durable medium, containing the following particulars:
 - (a) the precise period to which the statement of account relates;
 - (b) the amounts and dates of drawdowns;
 - (c) the balance from the previous statement, and the date thereof;
 - (d) the new balance;
 - (e) the dates and amounts of payments made by the consumer;
 - (f) the borrowing rate applied;
 - (g) any charges that have been applied;
 - (h) where applicable, the minimum amount to be paid.

2. 另外，消費者應於借款利率調升或到期的費用生效前，被以書面或以耐久媒介通知。

雙方當事人得於信貸契約中同意，前項因參考利率週期性變更提供予消費者借款利率資訊，其新參考利率應以適當方式公開並在借貸人營業處所地揭露。

第十三條 開放式信貸契約

1. 除非雙方當事人約定事先為一定期間之通知，消費者得無須付費用而有效終止開放式信貸契約。

若於信貸契約中事先約定，借貸人提供消費者至少二個月之書面或以耐久媒介之通知，借貸人得有效終止開放式信貸契約。

2. 若於契約中事先約定，基於正當理由，借貸人得終止開放式信貸契約之消費者提領之權利。借貸人應儘可能在終止前或終止後立即以書面或以耐久媒介告知終止其權利與原因，除非提供前述資訊係為共同體法所禁止，或有違公共政策或公共安全之考量。

2. In addition, the consumer shall be informed on paper or another durable medium of increases in the borrowing rate, or in any charges payable, before the change in question enters into force. However, the parties may agree in the credit agreement that information concerning changes in the borrowing rate is to be given in the manner provided for in paragraph 1 in cases where the change in the borrowing rate is caused by a change in a reference rate, the new reference rate is made publicly available by appropriate means and the information concerning the new reference rate is also kept available in the premises of the creditor.

Article 13 Open-end credit agreements

1. The consumer may effect standard termination of an open-end credit agreement free of charge at any time unless the parties have agreed on a period of notice. Such a period may not exceed one month.
If agreed in the credit agreement, the creditor may effect standard termination of an open-end credit agreement by giving the consumer at least two months' notice drawn up on paper or on another durable medium.
2. If agreed in the credit agreement, the creditor may, for objectively justified reasons, terminate the consumer's right to draw down on an open-end credit agreement. The creditor shall inform the consumer of the termination and the reasons for it on paper or on another durable medium, where possible before the termination and at the latest immediately thereafter, unless the provision of

第十四條 撤銷權

1. 消費者應有14日曆天的時間得不附理由撤銷契約。

撤銷期間應始於：

(a) 自契約成立之日；

(b) 自消費者接獲條款與依據第10條所提供之資訊，若該日期比(a)延遲；

2. 第三條(n)所稱之信貸連結契約，內國法於指令生效時，在特定期間到期前已經無法提供資金，會員國得例外地依本條第1項規定縮短消費者請求之期間。

3. 若消費者行使其撤銷權，其應：

(a) 為使撤銷權於第一項之有效期限到期前生效，以符合第10條(2)(p)借貸人提供資訊的方式，以內國法所定之方式通知借貸人。若通知以書面或以耐久媒介方式，有效期限前到達借貸人，該期限視為滿足。

such information is prohibited by other Community legislation or is contrary to objectives of public policy or public security.

Article 14 Right of withdrawal

1. The consumer shall have a period of 14 calendar days in which to withdraw from the credit agreement without giving any reason. That period of withdrawal shall begin
 - (a) either from the day of the conclusion of the credit agreement,
or
 - (b) from the day on which the consumer receives the contractual terms and conditions and information in accordance with Article 10, if that day is later than the date referred to in point (a) of this subparagraph.
2. Where in the case of a linked credit agreement, as defined in Article 3(n), national legislation at the time of the entry into force of this Directive already provides that funds cannot be made available to the consumer before the expiry of a specific period, Member States may exceptionally provide that the period referred to in paragraph 1 of this Article may be reduced to this specific period at the explicit request of the consumer.
3. If the consumer exercises his right of withdrawal, he shall:
 - (a) in order to give effect to the withdrawal before the expiry of the deadline referred to in paragraph 1, notify this to the creditor in line with the information given by the creditor pursuant to Article 10(2)(p) by means which can be proven in accordance with national law. The deadline shall be deemed to have been met if that notification, if it is on

(b) 給付借貸人資金及從貸款撥款日起至清償日之利息作為清償，未有不當遲延與未逾發出撤銷通知30天。此項利息應以當初協議之利率計算。借貸人不應因契約撤銷而對消費者有請求補償之權利，除非該補償係基於借貸人向行政機關給付之無法返還之費用。

4. 若由借貸人或由與借貸人有契約關係之第三人提供之信貸契約相關附加服務，消費者依據本條行使信貸契約撤銷權時，不受附加服務契約之拘束。
5. 若消費者之契約撤銷權基於本條第1、3、4項、指令2002/65/EC第6條與第7條，以及理事會指令85/577/EEC第5條保護消費者非商業協商之契約，不應適用前述規定。
6. 會員國所提供的法律如是透過公證人依第5條及第10條規定所賦予消費者的權利下，所做成的公證，即可不適用本條第1至第4項規定，

paper or on another durable medium that is available and accessible to the creditor, is dispatched before the deadline expires; and

- (b) pay to the creditor the capital and the interest accrued thereon from the date the credit was drawn down until the date the capital is repaid, without any undue delay and no later than 30 calendar days after the despatch by him to the creditor of notification of the withdrawal. The interest shall be calculated on the basis of the agreed borrowing rate. The creditor shall not be entitled to any other compensation from the consumer in the event of withdrawal, except compensation for any non-returnable charges paid by the creditor to any public administrative body.
4. If an ancillary service relating to the credit agreement is provided by the creditor or by a third party on the basis of an agreement between the third party and the creditor, the consumer shall no longer be bound by the ancillary service contract if the consumer exercises his right of withdrawal from the credit agreement in accordance with this Article.
5. If the consumer has a right of withdrawal under paragraphs 1, 3 and 4, Articles 6 and 7 of Directive 2002/65/ EC and Article 5 of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises ⁽¹⁾ shall not apply.
6. Member States may provide that paragraphs 1 to 4 of this Article

(1) OJ L 372, 31.12.1985, p. 31.

7. 本條不影響任何內國法對於契約履行期間起始之規定。

第十五條 信貸連結契約

1. 消費者依共同體法律行使商品或服務契約撤銷權時，不受信貸連結契約的拘束。
2. 信貸連結契約包含之商品或服務僅被部分提供，或未依契約供應，消費者有權以其未依法或依契約履行，向供應商請求賠償。會員國應決定賠償的條件與範圍。
3. 本條不影響內國法中對於因信貸契約融資購買商品或服務供應商產生之賠償請求，而借貸人償還之共同或連帶責任之規定。

shall not apply to credit agreements which by law are required to be concluded through the services of a notary, provided that the notary confirms that the consumer is guaranteed the rights provided for under Articles 5 and 10.

7. This Article shall be without prejudice to any rule of national law establishing a period of time during which the performance of the contract may not begin.

Article 15 Linked credit agreements

1. Where the consumer has exercised a right of withdrawal, based on Community law, concerning a contract for the supply of goods or services, he shall no longer be bound by a linked credit agreement.
2. Where the goods or services covered by a linked credit agreement are not supplied, or are supplied only in part, or are not in conformity with the contract for the supply thereof, the consumer shall have the right to pursue remedies against the creditor if the consumer has pursued his remedies against the supplier but has failed to obtain the satisfaction to which he is entitled according to the law or the contract for the supply of goods or services. Member States shall determine to what extent and under what conditions those remedies shall be exercisable.
3. This Article shall be without prejudice to any national rules rendering the creditor jointly and severally liable in respect of any claim which the consumer may have against the supplier where the purchase of goods or services from the supplier has been

第十六條 提前清償

1. 消費者應得於任何時間完全或部分清償其信貸契約之義務。於此種情形，其應得因貸款總成本降低，而減少其利息與相同契約存續期間之成本。

2. 在信貸契約提前清償的情形，借貸人應對採固定借貸利率與提前清償的可能直接成本，獲得到公平及客觀的補償。

若提前清償與當初協議的信貸契約終期之期間超過一年，此項補償不超過提前清償貸款金的1%。但若未超過一年，補償則不超過提前清償金額的0.5%。

3. 以下情形之提前清償不得請求補償：
 - (a) 基於貸款清償保證之保險契約所為之清償；

 - (b) 透支貸款；

 - (c) 在固定借款利率之期間內之清償；

4. 會員國得制訂：
 - (a) 借貸人僅得於超過內國法所定義的提前清償金額的條件門檻請求補償。該門檻不應超過12個月內10000歐元；

financed by a credit agreement.

Article 16 Early repayment

1. The consumer shall be entitled at any time to discharge fully or partially his obligations under a credit agreement. In such cases, he shall be entitled to a reduction in the total cost of the credit, such reduction consisting of the interest and the costs for the remaining duration of the contract.
2. In the event of early repayment of credit the creditor shall be entitled to fair and objectively justified compensation for possible costs directly linked to early repayment of credit provided that the early repayment falls within a period for which the borrowing rate is fixed.

Such compensation may not exceed 1 % of the amount of credit repaid early, if the period of time between the early repayment and the agreed termination of the credit agreement exceeds one year. If the period does not exceed one year, the compensation may not exceed 0,5 % of the amount of credit repaid early.

3. Compensation for early repayment shall not be claimed:
 - (a) if the repayment has been made under an insurance contract intended to provide a credit repayment guarantee;
 - (b) in the case of overdraft facilities; or
 - (c) if the repayment falls within a period for which the borrowing rate is not fixed.
4. Member States may provide that:
 - (a) such compensation may be claimed by the creditor only on condition that the amount of the early repayment exceeds the threshold defined by national law. That threshold shall not

- (b) 能證明因提前清償所導致的損失超過第2項之情形，借貸人得例外請求較高的補償。

若借貸人所請求之補償超過實際遭受之損失，消費者得請求酌減。

前述情形之損失係因當初協議之利率與市場借貸利率因提前清償產生之差異所致，以及因提前清償產生的行政費用。

5. 任何補償不應超過消費者提前清償與當初協議的信貸契約終期之間的利息總額。

第十七條 權利的轉讓

1. 借貸人將信貸契約的權利轉讓予第三人或轉讓契約，消費者對於原借貸人有效之主張，在會員國容許下，亦得對轉讓人進行抗辯。
2. 前項之轉讓應通知消費者，除非前借貸人在進行轉讓協議時，亦繼續對消費者提供貸款服務。

exceed EUR 10 000 within any period of 12 months;

- (b) the creditor may exceptionally claim higher compensation if he can prove that the loss he suffered from early repayment exceeds the amount determined under paragraph 2.

If the compensation claimed by the creditor exceeds the loss actually suffered, the consumer may claim a corresponding reduction.

In this case, the loss shall consist of the difference between the initially agreed interest rate and the interest rate at which the creditor can lend out the amount repaid early on the market at the time of early repayment, and shall take into account the impact of early repayment on administrative costs.

5. Any compensation shall not exceed the amount of interest the consumer would have paid during the period between the early repayment and the agreed date of termination of the credit agreement.

Article 17 Assignment of rights

1. In the event of assignment to a third party of the creditor's rights under a credit agreement or the agreement itself, the consumer shall be entitled to plead against the assignee any defence which was available to him against the original creditor, including set-off where the latter is permitted in the Member State concerned.
2. The consumer shall be informed of the assignment referred to in paragraph 1 except where the original creditor, by agreement with the assignee, continues to service the credit vis-à-vis the

第十八條 超額

1. 消費者有可能允許超額而開放現有帳戶之契約，應另外包含第六條（1）（e）之資訊。借貸人應以書面或其他耐久媒介方式提供資訊。

2. 在重大超額超過一個月之貸款，借貸人應以書面或其他耐久媒介方式不得遲延通知消費者：
 - （a）超額；
 - （b）相關金額；
 - （c）借貸利率
 - （d）罰款、費用或拖欠利息。
3. 本條不影響內國法借貸人於重大超額時提供其他貸款商品之規定。

第五章 費用年平均利率

第十九條 費用年平均利率的計算

1. 費用年平均利率即，借貸人與消費者對現在與將來合意，將所有有關現有協議（撥款、清償及費用）的價值，以年為基

consumer.

Article 18 Overrunning

1. In the case of an agreement to open a current account, where there is a possibility that the consumer is allowed an overrun, the agreement shall contain in addition the information referred to in Article 6(1)(e). The creditor shall in any case provide that information on paper or another durable medium on a regular basis.
2. In the event of a significant overrunning exceeding a period of one month, the creditor shall inform the consumer without delay, on paper or on another durable medium,
 - (a) of the overrunning;
 - (b) of the amount involved;
 - (c) of the borrowing rate;
 - (d) of any penalties, charges or interest on arrears applicable.
3. This Article shall be without prejudice to any rule of national law requiring the creditor to offer another kind of credit product when the duration of the overrunning is significant.

CHAPTER V ANNUAL PERCENTAGE RATE OF CHARGE

Article 19 Calculation of the annual percentage rate of charge

1. The annual percentage rate of charge, equating, on an annual basis, to the present value of all commitments (drawdowns,

礎，基於第一部份附件一的數學方程式所計算之利率。

2. 基於計算費用年平均利率之目的，應決定消費者的貸款總成本，並排除任何消費者在信貸契約中不接受之費用，及付現或以信用卡方式購買商品或服務價格以外之費用。

維持記錄付款交易與撥款帳戶的成本，使用付款交易與撥款帳戶的成本，以及其他付款交易的成本，應包含在消費者選擇開放帳戶的貸款全部成本中，且帳戶成本在契約成立時即已明確與個別列出。

3. 費用年平均利率的計算應基於假設，借貸人與消費者於期間內均有效履行其信貸契約義務信貸契約。
4. 含變動借貸利率條款之信貸契約，及包含以費用年平均利率計算但不可計量之費用，其費用年平均利率應以借貸利率及與其他初始固定費用及信貸契約到期之假設為計算。

repayments and charges), future or existing, agreed by the creditor and the consumer, shall be calculated in accordance with the mathematical formula set out in Part I of Annex I.

2. For the purpose of calculating the annual percentage rate of charge, the total cost of the credit to the consumer shall be determined, with the exception of any charges payable by the consumer for non-compliance with any of his commitments laid down in the credit agreement and charges other than the purchase price which, for purchases of goods or services, he is obliged to pay whether the transaction is effected in cash or on credit. The costs of maintaining an account recording both payment transactions and drawdowns, the costs of using a means of payment for both payment transactions and drawdowns, and other costs relating to payment transactions shall be included in the total cost of credit to the consumer unless the opening of the account is optional and the costs of the account have been clearly and separately shown in the credit agreement or in any other agreement concluded with the consumer.
3. The calculation of the annual percentage rate of charge shall be based on the assumption that the credit agreement is to remain valid for the period agreed and that the creditor and the consumer will fulfil their obligations under the terms and by the dates specified in the credit agreement.
4. In the case of credit agreements containing clauses allowing variations in the borrowing rate and, where applicable, charges contained in the annual percentage rate of charge but unquantifiable at the time of calculation, the annual percentage

5. 若有必要，附件一的假設亦可使用於費用年平均利率之計算

若本條與第二部份附件之假設無法有效計算費用年平均利率，或無法為商業市場所接受，執委會得決定必要的費用年平均利率計算之其他假設，或更新既有假設。此項本指令非必要因素之修正，應依據第22條（2）的規範程序通過。

第六章 借貸人與借貸仲介

第二十條 借貸人之規範

會員國應確保獨立之金融監管機關及規範得監督借貸人。本條不影響2006/48/EC之適用。

第二十一條 與消費者面對面貸款仲介之義務

rate of charge shall be calculated on the assumption that the borrowing rate and other charges will remain fixed in relation to the initial level and will remain applicable until the end of the credit agreement.

5. Where necessary, the additional assumptions set out in Annex I may be used in calculating the annual percentage rate of charge. If the assumptions set out in this Article and in Part II of Annex I do not suffice to calculate the annual percentage rate of charge in a uniform manner or are not adapted any more to the commercial situation at the market, the Commission may determine the necessary additional assumptions for the calculation of the annual percentage rate of charge, or modify existing ones. These measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(2).

CHAPTER VI CREDITORS AND CREDIT INTERMEDIARIES

Article 20 Regulation of creditors

Member States shall ensure that creditors are supervised by a body or authority independent from financial institutions, or regulated. This shall be without prejudice to Directive 2006/48/EC.

Article 21 Certain obligations of credit intermediaries vis-à-vis consumers

會員國應確保

- (a) 貸款仲介於提供給消費者之廣告與文件中，特別表示其權限並與一或數借貸人合作或為貸款捐客；

- (b) 揭露任何消費者提供給貸款仲介之服務費用，並同意消費者與貸款仲介以書面或耐久媒介方式成立契約；

- (c) 揭露因計算費用年平均利率產生之消費者提供給貸款仲介與借貸人聯繫之費用。

第七章 執行措施

第二十二條 本指令的調和與不可避免之情形

1. 在指令調和規範的範圍內，會員國得不保留或提出與本指令相悖之內國法規定。

2. 會員國應確保消費者不放棄其內國法上或與指令相關之權利。

Member States shall ensure that:

- (a) a credit intermediary indicates in advertising and documentation intended for consumers the extent of his powers, in particular whether he works exclusively with one or more creditors or as an independent broker;
- (b) the fee, if any, payable by the consumer to the credit intermediary for his services is disclosed to the consumer, and agreed between the consumer and the credit intermediary on paper or another durable medium before the conclusion of the credit agreement;
- (c) the fee, if any, payable by the consumer to the credit intermediary for his services is communicated to the creditor by the credit intermediary, for the purpose of calculation of the annual percentage rate of charge.

CHAPTER VII IMPLEMENTING MEASURES

Article 22 Harmonisation and imperative nature of this Directive

1. Insofar as this Directive contains harmonised provisions, Member States may not maintain or introduce in their national law provisions diverging from those laid down in this Directive.
2. Member States shall ensure that consumers may not waive the rights conferred on them by the provisions of national law implementing or corresponding to this Directive.

3. 會員國應進一步確保本指令通過之規範不被以契約格式規避適用，特別是整併撥款或本指令範圍內之信貸契約時之規避。

4. 若信貸契約一或多會員國會員之境內有緊密連結，會員國應採取必要措施以確保消費者不因本指令以選擇第三國信貸契約之法律而喪失保護。

第二十三條 罰則

會員國應遵循以通過之指令，制訂內國法官關於侵權之處罰規定，並採去所有必要措施以確保執行。處罰規定必須具有有效性、符合比例原則及嚇阻性。

第二十四條 訴訟外之爭端解決

1. 會員國應確保適當及有效之訴訟外爭端解決程序，儘可能利用現行機制，以利消費者提交處理因信貸契約產生之爭端。

2. 會員國應鼓勵前述機制共同合作以解決跨國信貸契約之爭

3. Member States shall further ensure that the provisions they adopt in implementation of this Directive cannot be circumvented as a result of the way in which agreements are formulated, in particular by integrating drawdowns or credit agreements falling within the scope of this Directive into credit agreements the character or purpose of which would make it possible to avoid its application.
4. Member States shall take the necessary measures to ensure that consumers do not lose the protection granted by this Directive by virtue of the choice of the law of a third country as the law applicable to the credit agreement, if the credit agreement has a close link with the territory of one or more Member States.

Article 23 Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Article 24 Out-of-court dispute resolution

1. Member States shall ensure that adequate and effective out-of-court dispute resolution procedures for the settlement of consumer disputes concerning credit agreements are put in place, using existing bodies where appropriate.
2. Member States shall encourage those bodies to cooperate in

端。

第二十五條 委員會程序

1. 委員會應協助執委會。
2. 其程序應考量第8條之規定，並依據之法律為第五條a(1)到(4)，及決定1999/468/EC第7條。

第二十六條 提供執委會之資訊

會員國為有關第2條（5）、第2條（6）、第4條（1）、第4條（2）（c）、第6條（2）、第10條（1）、第10條（5）（f）、第14條（2）、第16條（4）之規範選擇及調整，其變更應通知執委會。執委會應網頁或其他公開方式公布該項訊息。會員國應採取適當措施告知借貸人與消費者該項訊息。

第二十七條 轉換

1. 2010年6月11日前，會員國應通過並公布適用本指令之必要規定。並應立即通知執委會。

會員國應自2010年6月11日起適用前述所稱之規定。
當會員國通過前述規定時，應依會員國所規定之方式，應包

order to also resolve cross-border disputes concerning credit agreements.

Article 25 Committee procedure

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 26 Information to be supplied to the Commission

Where a Member State makes use of any of the regulatory choices referred to in Article 2(5) and 2(6), Article 4(1), Article 4(2)(c), Article 6(2), Article 10(1), Article 10(5)(f), Article 14(2) and Article 16(4), it shall inform the Commission thereof as well as of any subsequent changes. The Commission shall make that information public on a website or in another easily accessible way. Member States shall take the appropriate measures to diffuse that information amongst national creditors and consumers.

Article 27 Transposition

1. Before 11 June 2010 Member States shall adopt and publish the provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.
They shall apply those provisions from 11 June 2010.
When Member States adopt these provisions, they shall contain a

含參照本指令或附加官方發佈。

2. 執委會應承擔每五年，即第一次於2013年6月11日，依據共同體的經濟趨勢及市場現況，針對本指令中有關門檻規定、附件及計算提早清償補償之計算百分比進行檢討。執委會應監控境內市場與消費者關於第2條（5）、第2條（6）、第4條（1）、第4條（2）（c）、第6條（2）、第10條（1）、第10條（2）（f）、第14條（2）、第16條（4）之調整情況。其結果與有關門檻及百分比與前述提及之規範選擇的調整草案應向歐洲議會與理事會報告。

第二十八條 歐元與內國貨幣之兌換

1. 基於本指令之目的，會員國以歐元兌換為本國貨幣，應採本指令通過時之匯兌匯率。
2. 對於金額未超過10歐元的部分，會員國得捨尾數計算。

reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. The Commission shall undertake, every five years and for the first time 11 June 2013, a review of the thresholds laid down in this Directive and its annexes and the percentages used to calculate the compensation payable in the event of early repayment, assessing them in the light of economic trends in the Community and the situation of the market concerned. The Commission shall also monitor the effect of the existence of the regulatory choices referred to in Article 2(5) and 2(6), Article 4(1), Article 4(2)(c), Article 6(2), Article 10(1), Article 10(2)(f), Article 14(2) and Article 16(4) on the internal market and consumers. The results shall be made known to the European Parliament and the Council, accompanied where appropriate by a proposal to modify the thresholds and percentages as well as the abovementioned regulatory choices accordingly.

Article 28 Conversion of amounts expressed in euro into national currency

1. For the purposes of this Directive, those Member States who convert the amounts expressed in euro into their national currency shall initially use in the conversion the exchange rate prevailing on the date of adoption of this Directive.
2. Member States may round off the amounts resulting from the conversion provided that such rounding off does not exceed EUR 10.

第八章 過渡及最後規定

第二十九條 廢除

指令87/102/EEC自2010年6月11日起廢除。

第三十條 過渡時期措施

1. 本指令不適用於依內國措施已生效之信貸契約。
2. 會員國應確保第11、12、17及第18條（1）第二句與第18條（2）依內國措施已生效之開放型信貸契約。

第三十一條 生效

本指令於公布歐盟官方期刊後二十天生效。

第三十二條 送達

本指令已送達各會員國

2008年4月23日於史特拉斯堡

致 歐盟議會 主席

致 理事會 主席

CHAPTER VIII TRANSITIONAL AND FINAL PROVISIONS

Article 29 Repeal

Directive 87/102/EEC shall be repealed with effect from 11 June 2010.

Article 30 Transitional measures

1. This Directive shall not apply to credit agreements existing on the date when the national implementing measures enter into force.
2. However, Member States shall ensure that Articles 11, 12, 13 and 17, the second sentence of Article 18(1), and Article 18(2) are applied also to open-end credit agreements existing on the date when the national implementing measures enter into force.

Article 31 Entry into force

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

Article 32 Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 23 April 2008.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

J. LENARČIČ

加拿大消費者產品安全法

統一官方版

2009年6月1日生效之立法校訂及統一合併法第31條（1）與（2）規定如下：

31(1)部長基於本法公布之所有書面或電子形式的統一法規之副本，除非有相反的內容，否則應視為法令正式公布。

31(2)部長基於本法公布統一法規與國會基於法規公布法認可之原始法規或修正並不一致，爰依該原始法規或修正之。

S.C. 2010, c.21

一部以消費者產品安全為重點之法律（2010年12月15日同意）加拿大國會認可本法係以保護公眾避免因消費產品而導致之人類健康威脅或安全；

但也承認因全球市場成長所產生跨國消費產品的流通造成的客觀挑戰；

Canada Consumer Product Safety Act

OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

31. (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.
- (2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

S.C. 2010, c. 21

An Act respecting the safety of consumer products [Assented to 15th December 2010] Whereas the Parliament of Canada recognizes the objective of protecting the public by addressing dangers to human health or safety that are posed by consumer products;

Whereas the Parliament of Canada recognizes that the growing number of consumer products that flow across the borders of an increasingly global marketplace make the realization of that objective

基於消費產品安全，政府、個人與消費產品供應者在人類健康與安全的議題均扮演重要角色；

因此加拿大國會希望能促進加拿大政府與外國政府及國際組織的合作，分享資訊並有效遏制危險；

並且應採取具影響力活動，建立環境中的消費產品之規範管理系統；

但也必須承認缺乏完全科學的確定依據，將可能導致可避免人類健康受害的措施產生嚴重或不可逆的後果；

有效措施的施行可鼓勵遵循與消費者產品相關聯邦法規系統，而成為解決因產品發生人類健康威脅或安全之關鍵。

基於此，上議院謹向首相閣下建議以下法律：

a challenge;

Whereas the Parliament of Canada recognizes that along with the Government of Canada, individuals and suppliers of consumer products have an important role to play in addressing dangers to human health or safety that are posed by consumer products;

Whereas the Parliament of Canada wishes to foster cooperation within the Government of Canada, between the governments in this country and with foreign governments and international organizations, in particular by sharing information, in order to effectively address those dangers;

Whereas the Parliament of Canada recognizes that, given the impact activities with respect to consumer products may have on the environment, there is a need to create a regulatory system regarding consumer products that is complementary to the regulatory system regarding the environment;

Whereas the Parliament of Canada recognizes that a lack of full scientific certainty is not to be used as a reason for postponing measures that prevent adverse effects on human health if those effects could be serious or irreversible;

And whereas the Parliament of Canada recognizes that the application of effective measures to encourage compliance with the federal regulatory system for consumer products is key to addressing the dangers to human health or safety posed by those products;

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. 本法稱為加拿大消費者產品安全法。

2. 以下定義適用於本法

「廣告」包含以直接或間接方式促銷消費產品銷售之表達方式。

「分析師」係指第二十九條或食品藥品法第二十八條之為分析師之個人。

「本法或規範適用條文」係指

(a) 消費者產品；

(b) 任何使用於消費者產品製造、進口、包裝、儲存、廣告、販售、貼標籤、測試、或運輸之物；

(c) 與前述活動或消費者相關之文件。

「機密商業資訊」係指當事人對其業務或事務之相關資訊，即商業資訊

(a) 無法公開取得；

(b) 當事人得在合理情形下採取措施以確保其不被公開取得；

(c) 因未公開而對當事人或競爭者有事實或潛在經濟價

SHORT TITLE

1. This Act may be cited as the *Canada Consumer Product Safety Act*.

INTERPRETATION

2. The following definitions apply in this Act.

“advertisement” includes a representation by any means for the purpose of promoting directly or indirectly the sale of a consumer product.

“analyst” means an individual designated as an analyst under section 29 or under section 28 of the *Food and Drugs Act*.

“article to which this Act or the regulations apply” means

- (a) a consumer product;
- (b) anything used in the manufacturing, importation, packaging, storing, advertising, selling, labelling, testing or transportation of a consumer product; or
- (c) a document that is related to any of those activities or a consumer product.

“confidential business information” — in respect of a person to whose business or affairs the information relates — means business information

- (a) that is not publicly available;
- (b) in respect of which the person has taken measures that are reasonable in the circumstances to ensure that it remains not publicly available; and
- (c) that has actual or potential economic value to the person or

值，且其揭露將會導致當事人或其競爭者實質上財務損失。

「消費者產品」係指一項產品，包含構成元素、附件的部分得合理被人期待獲得並使用於非商業之目的，包括國內、休閒與運動目的，及其包裝。

「人類健康與安全之危險」係指消費者產品因普通或可預見之使用所導致任何不合理已存在或潛在的，可能導致死亡或對於健康有影響之危險，無論是否立即產生危險之結果，且包括任何消費者產品的陳列或暴露合理被認為導致慢性健康損害。

「文件」係指任何為人所理解或透過電腦或其他載具讀取而記錄或標記之物。

「政府」係指下列機構：

- (a) 聯邦政府；
- (b) 在金融行政法附件三之組織；

- (c) 基於省法令成立之省政府或公共機構；

their competitors because it is not publicly available and its disclosure would result in a material financial loss to the person or a material financial gain to their competitors.

“consumer product” means a product, including its components, parts or accessories, that may reasonably be expected to be obtained by an individual to be used for non-commercial purposes, including for domestic, recreational and sports purposes, and includes its packaging.

“danger to human health or safety” means any unreasonable hazard — existing or potential — that is posed by a consumer product during or as a result of its normal or foreseeable use and that may reasonably be expected to cause the death of an individual exposed to it or have an adverse effect on that individual’s health — including an injury — whether or not the death or adverse effect occurs immediately after the exposure to the hazard, and includes any exposure to a consumer product that may reasonably be expected to have a chronic adverse effect on human health.

“document” means anything on which information that is capable of being understood by a person, or read by a computer or other device, is recorded or marked.

“government” means any of the following or their institutions:

- (a) the federal government;
- (b) a corporation named in Schedule III to the *Financial Administration Act*;
- (c) a provincial government or a public body established under an Act of the legislature of a province;

（d）資訊取得法第13條（3）定義之原住民政府；

（e）外國政府或外國地方政府；

（f）國組成之國際組織。

「進口」係指進口至加拿大。

「督察」係指依第19條（2）任命之督察員。

「製造」係指為銷售而生產、組合、包裝及準備或修理。

「部長」係指健康部長。

「當事人」係指刑法第二章所定義之個人或組織。

「個人資料」與私法第三章相同意義。

「指定」係指規範所定。

「檢討官」係指第34條所任命之檢討官。

「出售」包含出售供應、陳列出售、佔有出售，或無論是否有散意佈而提供給一或多人，與出租、提供出租、陳列出租或佔有出租。

「儲存」不包括基於個人使用之儲存。

目的

(d) an aboriginal government as defined in subsection 13(3) of the Access to Information Act;

(e) a government of a foreign state or of a subdivision of a foreign state; or

(f) an international organization of states.

“import” means to import into Canada.

“inspector” means an individual designated as an inspector under subsection 19(2).

“manufacture” includes produce, formulate, repackage and prepare, as well as recondition for sale.

“Minister” means the Minister of Health.

“person” means an individual or an organization as defined in section 2 of the *Criminal Code*.

“personal information” has the same meaning as in section 3 of the *Privacy Act*.

“prescribed” means prescribed by regulation.

“review officer” means an individual designated as a review officer under section 34.

“sell” includes offer for sale, expose for sale or have in possession for sale — or distribute to one or more persons, whether or not the distribution is made for consideration — and includes lease, offer for lease, expose for lease or have in possession for lease.

“storing” does not include the storing of a consumer product by an individual for their personal use.

PURPOSE

3. 本法的目的係為保護公眾採取或避免，因加拿大境內消費者產品所導致之健康或安全之危險，包括在加拿大境內流通或進口之產品。

適用

4. (1) 本法適用於附件一表列以外之消費者商品。
 - (2) 本法適用於煙草法第二節所定義之引燃性煙草商品。
 - (3) 本法不適用於基於食品藥物法制訂之自然保健產品規範第一條定義之自然保健產品。

禁止

5. 任何人不應製造、進口、廣告或販售附件二之消費者產品。
6. 任何人不應製造、進口、廣告或販售不符規範要求之消費者產品。
7. 任何製造商或進口商不應製造、進口、廣告或販賣以下消費者產品：
 - (a) 對人類健康或安全具危險；
 - (b) 在加拿大境內，因產品對人類健康或安全具危險，基於第三十一或依第三十五條召回命令或自願召回者；

3. The purpose of this Act is to protect the public by addressing or preventing dangers to human health or safety that are posed by consumer products in Canada, including those that circulate within Canada and those that are imported.

APPLICATION

4. (1) This Act applies to consumer products with the exception of those listed in Schedule 1.
(2) This Act applies to tobacco products as defined in section 2 of the Tobacco Act but only in respect of their ignition propensity.
(3) For greater certainty, this Act does not apply to natural health products as defined in subsection 1(1) of the *Natural Health Products Regulations* made under the *Food and Drugs Act*.

PROHIBITIONS

5. No person shall manufacture, import, advertise or sell a consumer product listed in Schedule 2.
6. No person shall manufacture, import, advertise or sell a consumer product that does not meet the requirements set out in the regulations.
7. No manufacturer or importer shall manufacture, import, advertise or sell a consumer product that
 - (a) is a danger to human health or safety;
 - (b) is the subject of a recall order made under section 31 or such an order that is reviewed under section 35 or is the subject of a voluntary recall in Canada because the product is a danger

(c) 製造商或進口商未採取依第三十二條應為之措施或第三十五條之檢查。

8. 任何人不應在明知以下情形廣告或販售消費者產品：

(a) 對人類健康或安全具危險；

(b) 在加拿大境內，因產品對人類健康或安全具危險，基於第三十一或依第三十五條召回命令或自願召回者；

(c) 製造商或進口商未採取依第三十二條應為之措施或第三十五條之檢查。

9. 任何人不應對消費者者產品包裝或貼標籤：

(a) 其中之錯誤、誤導或欺騙，得合理認為會對影響人類健康或安全之危險事實產生錯誤印象；

(b) 關於產品安全或依安全標準規定之作為所形成的保證，涉有錯誤、誤導或欺騙。

10. 任何人不應廣告或販售明知為第九條之消費者產品。

11. 任何人不應故意提供部長錯誤或誤導，基於本法或規範應提

- to human health or safety; or
- (c) is the subject of a measure that the manufacturer or importer has not carried out but is required to carry out under an order made under section 32 or such an order that is reviewed under section 35.
8. No person shall advertise or sell a consumer product that they know
- (a) is a danger to human health or safety;
- (b) is the subject of a recall order made under section 31 or such an order that is reviewed under section 35 or is the subject of a voluntary recall in Canada because the product is a danger to human health or safety; or
- (c) is the subject of a measure that has not been carried out but is required to be carried out under an order made under section 32 or such an order that is reviewed under section 35.
9. No person shall package or label a consumer product
- (a) in a manner — including one that is false, misleading or deceptive — that may reasonably be expected to create an erroneous impression regarding the fact that it is not a danger to human health or safety; or
- (b) in a manner that is false, misleading or deceptive regarding its certification related to its safety or its compliance with a safety standard or the regulations.
10. No person shall advertise or sell a consumer product that they know is advertised, packaged or labelled in a manner referred to in section 9.
11. No person shall knowingly provide the Minister with false or

供之資訊。

測試、研究與資訊的編輯

12. 主管機關得以書面通知方式，命令任何基於商業目的製造或進口消費者產品，

(a) 進行產品測試或研究以獲得主管機關認為必要證明是否有遵循或違反本法或其規範之資訊；

(b) 編輯主管機關認為必要證明是否有遵循或違反本法或其規範之資訊；

(c) 在指定時間內提供主管機關指定方式之包含上述資訊文件及測試或研究結果。

準備與保存文件

13. (1) 任何基於商業目的生產、進口、廣告、販售或測試消費者品者應準備與保存：

(a) 指定的文件

(i) 產品零售商之姓名與住址、所在位置及販售產

misleading information in relation to a matter under this Act or the regulations.

TESTS, STUDIES AND COMPILATION OF INFORMATION

12. The Minister may, by written notice, order any person who manufactures or imports a consumer product for commercial purposes to
- (a) conduct tests or studies on the product in order to obtain the information that the Minister considers necessary to verify compliance or prevent non-compliance with this Act or the regulations;
 - (b) compile any information that the Minister considers necessary to verify compliance or prevent non-compliance with this Act or the regulations; and
 - (c) provide him or her with the documents that contain that information and the results of the tests or studies in the time and manner that the Minister specifies.

PREPARING AND MAINTAINING DOCUMENTS

13. (1) Any person who manufactures, imports, advertises, sells or tests a consumer product for commercial purposes shall prepare and maintain
- (a) documents that indicate
 - (i) in the case of a retailer, the name and address of the

品期間；

(ii)其他獲得或販售該商品者或二者兼有之人，其姓名與住址

(b) 規定之文件。

(2)在相關期間結束後，該文件應被保存六年。

(3)該文件應基於主管機關書面要求，於加拿大之商業處所或規定之地點保存。

(4)主管機關若認為無必要或無實益，得指定或豁免受管制對象在加拿大境內保存文件。

(5)基於商業目的進口消費產品於產品進口時，應提供主管機關本條第一項(b)所指定之文件。

事件之責任

14. (1)在本條中，事件係指消費者產品，

person from whom they obtained the product and the location where and the period during which they sold the product, and

(ii) in the case of any other person, the name and address of the person from whom they obtained the product or to whom they sold it, or both, as applicable; and

(b) the prescribed documents.

- (2) The person shall keep the documents until the expiry of six years after the end of the year to which they relate or for any other period that may be prescribed.
- (3) The person shall keep the documents at their place of business in Canada or at any prescribed place and shall, on written request, provide the Minister with them.
- (4) The Minister may, subject to any terms and conditions that he or she may specify, exempt a person from the requirement to keep documents in Canada if the Minister considers it unnecessary or impractical for the person to keep them in Canada.
- (5) A person who imports a consumer product for commercial purposes shall, no later than at the time of the product's importation, provide the Minister with those documents referred to in paragraph (1)(b) that are specified in the regulations.

DUTIES IN THE EVENT OF AN INCIDENT

14. (1) In this section, “incident” means, with respect to a consumer

- (a) 在加拿大境內或別處發生事件，並導致或合理認為導致個人的死亡或健康重大影響，包括嚴重的傷害；
- (b) 合理認為導致個人的死亡或健康重大影響，包括嚴重的傷害之瑕疵或特徵；
- (c) 標籤或說明不正確或無效用，或缺乏標籤或說明，且其合理認為導致個人的死亡或健康重大影響
- (d) 係由以下，基於人類健康或安全為由之召回或措施，
 - (i) 外國政府；
 - (ii) 地方政府；
 - (iii) 基於省法令成立之省政府或公共機構。
 - (iv) 資訊取得法第13條（3）定義之原住民政府；
 - (v) 基於前五款之機構實體。
- (2) 基於商業目的製造、進口或銷售者，應於事件發生後二日內，提供主管機關及取得消費者產品之人有關產品之事件控制之資訊。

product,

- (a) an occurrence in Canada or elsewhere that resulted or may reasonably have been expected to result in an individual's death or in serious adverse effects on their health, including a serious injury;
- (b) a defect or characteristic that may reasonably be expected to result in an individual's death or in serious adverse effects on their health, including a serious injury;
- (c) incorrect or insufficient information on a label or in instructions — or the lack of a label or instructions — that may reasonably be expected to result in an individual's death or in serious adverse effects on their health, including a serious injury; or
- (d) a recall or measure that is initiated for human health or safety reasons by
 - (i) a foreign entity,
 - (ii) a provincial government,
 - (iii) a public body that is established under an Act of the legislature of a province,
 - (iv) an aboriginal government as defined in subsection 13(3) of the Access to Information Act, or
 - (v) an institution of an entity referred to in subparagraphs (ii) to (iv).

(2) A person who manufactures, imports or sells a consumer product for commercial purposes shall provide the Minister and, if applicable, the person from whom they received the consumer product with all the information in their control

- (3)消費者產品製造商、經營加拿大境外之製造或進口商，應於被通知事件後十日內或主管機關書面通知指定的期限內，提供主管機關書面報告，其應包含事件、事件相關的產品、所製造或進口的任何商品，視個案提供對於相似事件的認知與預計的解決措施。

主管機關的資訊揭露

15. (1)主管機關基於落實保護人類健康與安全，若確認身份與住址對於嚴重人類健康與安全危險確屬必要，無須事先取得同意，得向個人或政府揭露個人資訊。

- (2)本條不影響隱私法之規定。

16. 因消費者產品之原因，基於保護人類健康及安全或保護環境之效果，主管機關得揭露企業機密資訊予個人或政府，被揭露企業或業務資訊之個人主管機關無需取得個人同意，亦無

regarding any incident related to the product within two days after the day on which they become aware of the incident.

- (3) The manufacturer of the consumer product, or if the manufacturer carries on business outside Canada, the importer, shall provide the Minister with a written report — containing information about the incident, the product involved in the incident, any products that they manufacture or import, as the case may be, that to their knowledge could be involved in a similar incident and any measures they propose be taken with respect to those products — within 10 days after the day on which they become aware of the incident or within the period that the Minister specifies by written notice.

DISCLOSURE OF INFORMATION BY THE MINISTER

15. (1) The Minister may disclose personal information to a person or a government that carries out functions relating to the protection of human health or safety without the consent of the individual to whom the personal information relates if the disclosure is necessary to identify or address a serious danger to human health or safety.
- (2) For greater certainty, nothing in this section affects the provisions of the *Privacy Act*.
16. The Minister may disclose confidential business information to a person or a government that carries out functions relating to the protection of human health or safety or the environment

須通知對於揭露資訊同意為書面保密協定之個人。

17. (1) 主管機關無需取得與企業或業務機密資訊相關之個人同意，亦無須事前通知個人，即得揭露關於消費者產品對人類健康及安全或環境即將造成嚴重危險之機密商業資訊，若該資訊揭露對於遏止危險係屬必要。

(2) 若主管機關基於第一項揭露機密商業資訊，應於揭露後次非工作日通知與該資訊相關之個人。

(3) 本條之工作日係指非星期六及假日。

18. 主管機關得更確切公開揭露有關消費者產品對人健康或安全危險之資訊。

督察員

19. (1) 主管機關應基於行政與執行本法及相關規範之目的，決定督察員之人數。

— in relation to a consumer product — without the consent of the person to whose business or affairs the information relates and without notifying that person if the person to whom or government to which the information may be disclosed agrees in writing to maintain the confidentiality of the information and to use it only for the purpose of carrying out those functions.

17. (1) The Minister may, without the consent of the person to whose business or affairs the information relates and without notifying that person beforehand, disclose confidential business information about a consumer product that is a serious and imminent danger to human health or safety or the environment, if the disclosure of the information is essential to address the danger.
 - (2) If the Minister discloses confidential business information under subsection (1), he or she shall, not later than the next business day following the disclosure, notify the person to whose business or affairs the information relates.
 - (3) In this section, “business day” means a day other than a Saturday or a holiday.
18. For greater certainty, the Minister may disclose to the public information about a danger to human health or safety that a consumer product poses.

INSPECTORS

19. (1) The Minister shall decide on the number of inspectors sufficient for the purpose of the administration and

- (2) 主管機關基於行政與執行本法及相關規範之目的得指派個人擔任督察員。
- (3) 督察員應被授與主管機關指派之認證證明，在督察員進入場所時，應基於要求，向場所負責人出示證件。

20. 任何人於督察員執行任務時，不得故意阻止、阻礙督察員，或以錯誤或誤導之口頭或書面向督察員陳述。

督察

21. (1) 基於第22條(1)，督察員得基於查核是否有遵循本法或其他規範，得於任何合理之時間進入處所，包括進入交通工具查核，以有合理理由確信消費者產品被製造、進口、包裝、儲存、廣告、販售、貼標籤、測試或運送，或有本法或相關規範之行政文件。

(2) 督察員基於前項得，

(a) 依本法針對查核地取得之樣品進行檢驗或測試；

enforcement of this Act and the regulations.

- (2) The Minister may designate an individual as an inspector for the purpose of the administration and enforcement of this Act and the regulations.
- (3) An inspector shall be given a certificate in a form established by the Minister attesting to the inspector's designation and, on entering a place under subsection 21(1), the inspector shall, on request, produce the certificate to the person in charge of that place.

20. No person shall knowingly obstruct, hinder or make a false or misleading statement either orally or in writing to an inspector who is carrying out their functions.

INSPECTION

21. (1) Subject to subsection 22(1), an inspector may, for the purpose of verifying compliance or preventing non-compliance with this Act or the regulations, at any reasonable time enter a place, including a conveyance, in which they have reasonable grounds to believe that a consumer product is manufactured, imported, packaged, stored, advertised, sold, labelled, tested or transported, or a document relating to the administration of this Act or the regulations is located.
- (2) The inspector may, for the purpose referred to in subsection (1),
 - (a) examine or test anything — and take samples free of charge of an article to which this Act or the regulations

- (b) 打開在查核地發現之容器或包裝；
- (c) 檢查查核地所發現之文件並製作副本及摘要；
- (d) 任何時間有必要沒收或扣留
 - (i) 依本法於查核地發現之物品，或為
 - (ii) 運送；
- (e) 命令所有人保管於查核地發現之物品或移轉、不得運送或限制移轉。
- (f) 使用該處所之電腦或其他載具，以檢驗電腦系統裡之文件或印出複製或可理解的輸出並基於檢查移除該輸出。
- (g) 使用複製設備並基於檢查移除該複製。
- (h) 攝影、製作記錄及素描。
- (i) 命令所有人或該處所負責人或於該處所為製造、進口、包裝、儲存、廣告、販售、貼標籤、測試或運送消費者產品之人，於督察員執行職務時需向其時表明身份、或停止或開始其業務活動。

- apply — that is found in the place;
- (b) open a receptacle or package that is found in the place;
- (c) examine a document that is found in the place, make a copy of it or take an extract from it;
- (d) seize and detain for any time that may be necessary
 - (i) an article to which this Act or the regulations apply that is found in the place, or
 - (ii) the conveyance;
- (e) order the owner or person having possession, care or control of an article to which this Act or the regulations apply that is found in the place — or of the conveyance — to move it or, for any time that may be necessary, not to move it or to restrict its movement;
- (f) use or cause to be used a computer or other device that is at the place to examine a document that is contained in or available to a computer system or reproduce it or cause it to be reproduced in the form of a printout or other intelligible output and remove the output for examination or copying;
- (g) use or cause to be used copying equipment that is at the place and remove the copies for examination;
- (h) take photographs and make recordings and sketches; and
- (i) order the owner or person in charge of the place or a person who manufactures, imports, packages, stores, advertises, sells, labels, tests or transports a consumer product at the place to establish their identity to the inspector's satisfaction or to stop or start the activity.

- (3) 基於運送之目的，督察員得命令所有人或所有權人，注意或控制其運送至督察員得進入之處所。
- (4) 督察員執行職務且有他人陪同的情形下，得進入或通行私有財產。
- (5) 所有人或該處所負責人與發現處所之每個人應提供督察人執行職務之必要協助，並提供任何合理要求之資訊。

22. (1) 若第二十一條(1)提及之處所為住宅，未取得居住者同意，督察員不得進入，但有主管機關依第二項所簽署的搜查令時，則不在此限。

(2) 治安法官得單方面簽署授權搜查令，容許在特定條件下，搜查令上列舉之人得進入住宅，若治安法官依宣示過的資訊確信，

(a) 該住宅係第二十一條(1)所稱之處所；

(b) 進入該處所對第二十一條(1)之目的係屬必要；

(c) 進入該處所曾遭拒絕，或有合理的理由相信無法取得居住者同意進入。

- (3) For the purpose of entering the conveyance, an inspector may order the owner or person having possession, care or control of the conveyance to stop it or move it to a place where the inspector can enter it.
 - (4) An inspector who is carrying out their functions and any person accompanying them may enter on or pass through or over private property.
 - (5) The owner or person in charge of the place and every person found in the place shall give an inspector who is carrying out their functions all reasonable assistance and provide them with any information that they may reasonably require.
22. (1) If the place mentioned in subsection 21(1) is a dwelling-house, an inspector may not enter it without the consent of the occupant except under the authority of a warrant issued under subsection (2).
- (2) A justice of the peace may, on *ex parte* application, issue a warrant authorizing, subject to the conditions specified in the warrant, the person who is named in it to enter a dwelling-house if the justice of the peace is satisfied by information on oath that
- (a) the dwelling-house is a place described in subsection 21(1);
 - (b) entry to the dwelling-house is necessary for the purposes referred to in subsection 21(1); and
 - (c) entry to the dwelling-house was refused or there are reasonable grounds to believe that it will be refused or to believe that consent to entry cannot be obtained from the

- (3) 基於執行第二項之搜查令，督察員除非在治安警察陪同下，不採取強行進入，強行進入需搜查令所授權。
- (4) 若督察員認為親自為第二項之搜查令申請並不符合實際需要，得依刑法第487.1，適用情事變更，採電話或其他電信通訊方式申請並簽發搜查令。

沒收程序

- 23. 除督察員授權外，任何人不得移除、改變、或妨礙基於本法之沒收處分。
- 24. 督察員為本法之沒收，得
 - (a) 通知，並且由所有人或佔有人承擔損失，為沒收、儲存或移到其他處所時之注意或控制；
 - (b) 命令所有人或佔有人為沒收、儲存或移到其他處所時之注意或控制承擔損失。
- 25. 基於本法為沒收之督察員，於滿足並符合本法及規範之規定，應釋回沒收物。
- 26. (1) 沒收物在加拿大法規喪失權利，若

occupant.

- (3) In executing a warrant issued under subsection (2), the inspector may not use force unless they are accompanied by a peace officer and the use of force is authorized in the warrant.
- (4) If an inspector believes that it would not be practical to appear personally to make an application for a warrant under subsection (2), a warrant may be issued by telephone or other means of telecommunication on application submitted by telephone or other means of telecommunication and section 487.1 of the *Criminal Code* applies for that purpose with any necessary modifications.

PROCEDURES FOLLOWING SEIZURE

23. Except with the authority of an inspector, no person shall remove, alter or interfere in any way with anything seized under this Act.
24. An inspector who seizes a thing under this Act may
 - (a) on notice to and at the expense of its owner or the person having possession, care or control of it at the time of its seizure, store it or move it to another place; or
 - (b) order its owner or the person having possession, care or control of it at the time of its seizure to store it or move it to another place at their expense.
25. An inspector who seizes a thing under this Act shall release it if they are satisfied that the provisions of this Act and the regulations with respect to it have been complied with.
26. (1) A seized thing is, at Her election, forfeited to Her Majesty in right of Canada if

(a)在沒收後60日內無法確認所有人或占有人；

(b)所有人或占有人在督察員為釋出沒收物通知後60日內未提出認領。

(2)第一項規定不適用於因沒收犯罪物之訴訟情形。

(3)喪失權利之沒收物，得因所有人或占有人承擔損失，於沒收時處分。

27. (1)若有人因觸犯本法而被判決有罪，法院得命令沒入屬犯罪工具或與犯罪相關之沒收物。

(2)被沒入之沒收物，得因所有人或占有人承擔損失，於沒收時進行處分。

28. 若沒收物之所有人同意被沒收，則該沒收物依加拿大法沒入，並得因所有人承擔損失而處分。

分析

29. 主管機關基於本法行政及施行，得指定任何個人或同類型之數人為分析員。

30. (1)督察員得聽從分析員對沒收物、樣品或督察員所取得樣品的分析或檢驗。

- (a) within 60 days after the seizure, no person is identified as its owner or as a person who is entitled to possess it; or
 - (b) the owner or person who is entitled to possess it, within 60 days after the day on which they are notified that the inspector has released the seized thing, does not claim it.
- (2) Subsection (1) does not apply if proceedings are instituted in respect of an offence that relates to the thing that was seized.
- (3) A seized thing that is forfeited may be disposed of at the expense of its owner or the person who was entitled to possess it at the time of its seizure.
27. (1) If a person is convicted of an offence under this Act, the court may order that a seized thing by means of or in relation to which the offence was committed be forfeited to Her Majesty in right of Canada.
- (2) A seized thing that is forfeited may be disposed of at the expense of its owner or the person who was entitled to possess it at the time of its seizure.
28. If the owner of a seized thing consents to its forfeiture, the seized thing is forfeited to Her Majesty in right of Canada and may be disposed of at the expense of the owner.

ANALYSIS

29. The Minister may designate any individual or class of individuals as analysts for the administration and enforcement of this Act and the regulations.
30. (1) An inspector may submit to an analyst, for analysis or

- (2) 進行分析或檢驗之分析員於分析或檢驗報告上簽署證明。

回收及採取措施的命令

31. (1) 若主管機關有合理理由相信消費者產品對人類健康或安全產生危險，即得命令基於商業目的為製造、進口、販售該產品之人進行召回。
- (2) 此項命令應以書面通知方式為之，且需包括
- (a) 有關召回之說明；
 - (b) 實施召回的時間及方式。
32. (1) 主管機關得命令製造、進口、廣告或販售消費者產品之人依第二項採取措施，若
- (a) 當事人未遵守依第十二條所為之命令；
 - (b) 主管機關已依第三十一條做出命令；
 - (c) 主管機關合理相信該產品應採取措施或由製造或進口之業者召回；

examination, anything seized by the inspector, or any sample of it, or any samples taken by the inspector.

- (2) An analyst who has made an analysis or examination may issue a certificate or report setting out the results of the analysis or examination.

ORDERS FOR RECALLS AND TAKING MEASURES

31. (1) If the Minister believes on reasonable grounds that a consumer product is a danger to human health or safety, he or she may order a person who manufactures, imports or sells the product for commercial purposes to recall it.
- (2) The order shall be provided in the form of a written notice and must include
- (a) a statement of the reasons for the recall; and
 - (b) the time and manner in which the recall is to be carried out.
32. (1) The Minister may order a person who manufactures, imports, advertises or sells a consumer product to take any measure referred to in subsection (2) if
- (a) that person does not comply with an order made under section 12 with respect to the product;
 - (b) the Minister has made an order under section 31 with respect to the product;
 - (c) the Minister believes on reasonable grounds that the product is the subject of a measure or recall undertaken

(d)主管機關合理相信關於該產品有違反本法之情事。

(2)此項措施包括

(a)停止製造、進口、包裝、儲存、廣告、販售、貼標籤、測試或運送消費者產品或引起上述活動之行為；

(b)任何主管機關認為必要之，因未遵守法律所生之補償，包括主管機關認為應對產品採必要措施以符合法令要求，避免對人類健康或安全發生危險之規定。

(3)命令應以書面方式表示，且應包括

(a)採取措施理由之陳述；

(b)措施採取之時點與方式。

33. 若未於指定時間遵循第三十一條與第三十二條所為之命令，主管機關得主動逕行實施召回或進行必須措施，並由當事人自行承擔損失。

- voluntarily by the manufacturer or importer; or
- (d) the Minister believes on reasonable grounds that there is a contravention of this Act or the regulations in relation to the product.
- (2) The measures include
- (a) stopping the manufacturing, importation, packaging, storing, advertising, selling, labelling, testing or transportation of the consumer product or causing any of those activities to be stopped; and
- (b) any measure that the Minister considers necessary to remedy a non-compliance with this Act or the regulations, including any measure that relates to the product that the Minister considers necessary in order for the product to meet the requirements of the regulations or to address or prevent a danger to human health or safety that the product poses.
- (3) The order shall be provided in the form of a written notice and must include
- (a) a statement of the reasons for the measure; and
- (b) the time and manner in which the measure is to be carried out.
33. If a person does not comply with an order made under section 31 or 32 within the time specified, the Minister may, on his or her own initiative and at that person's expense, carry out the recall or measure required.

召回及採行措施命令之檢討

34. 主管機關得指定符合資格之個人或同類型之多人擔任官員，以檢討基於第三十五條所為之命令。
35. (1) 本條其他規定之管制，基於第三十一條與三十二條所為，書面要求召回消費者產品或採行其他措施之命令，僅得以涉及事實問題或有法規或實質競合為由，由非發命令之其他官員進行檢討。
- (2) 該書面要求書中應陳述檢視之理由及提出證據，包含發命令之人未考量之證據，以支持探討為該命令及決定之理由。該文件應於命令發出後七日內提交主管機關，倘若有重大或即將發生之人類健康或安全之危險，得於命令中特別縮短該期間。
- (3) 若該要求書係未依第二項規定或無足輕重或令人困擾，或係惡意，則無需檢討。
- (4) 製作要求書之人應無遲延，以書面公布不進行檢討之原因。
- (5) 與發命令者非同一人之進行檢討之官員，無論是否有第

REVIEW OF ORDERS FOR RECALLS AND TAKING MEASURES

34. The Minister may designate any individual or class of individuals that are qualified as review officers for the purpose of reviewing orders under section 35.
35. (1) Subject to any other provision of this section, an order that is made under section 31 or 32 shall be reviewed on the written request of the person who was ordered to recall a consumer product or to take another measure — but only on grounds that involve questions of fact alone or questions of mixed law and fact — by a review officer other than the individual who made the order.
- (2) The written request must state the grounds for review and set out the evidence — including evidence that was not considered by the individual who made the order — that supports those grounds and the decision that is sought. It shall be provided to the Minister within seven days after the day on which the order was provided or, in the event of a serious and imminent danger to human health or safety, any shorter period that may be specified in the order.
- (3) The review is not to be done if the request does not comply with subsection (2) or is frivolous, vexatious or not made in good faith.
- (4) The person who made the request shall, without delay, be notified in writing of the reasons for not doing the review.
- (5) A review officer — other than the individual who made the

一項之請求書，得進行檢討命令。

- (6) 依命令得於檢討進行期間持續進行，除非檢討官員為不同之決定。
- (7) 檢討官員最遲應於請求書交予主管機關後30日完成檢討。
- (8) 檢討官員基於需要更長時間完成檢討為由，得延長檢討期間不得逾30日，但得延長不止一次。
- (9) 若以延長檢討期間，為請求書之人應無延遲以書面方式通知延長之理由。
- (10) 完成檢討時，檢討官員應為確認、修正、終止或撤銷該命令。
- (11) 基於第十項之檢討決定，應無遲延通知為請求書之人，或若無請求書而被命令召回消費者產品或採取其他措施之人。
- (12) 命令基於本條之檢討進行修正。

禁制令

36. (1) 基於主管機關的請求，有管轄權之法院對已經違法、進行違法或可能違法之行為人，法院得簽署禁制令，命令

order — may review an order, whether or not a request is made under subsection (1).

- (6) An order continues to apply during a review unless the review officer decides otherwise.
- (7) A review officer shall complete the review no later than 30 days after the day on which the request is provided to the Minister.
- (8) The review officer may extend the review period by no more than 30 days if they are of the opinion that more time is required to complete the review. They may extend the review period more than once.
- (9) If the review period is extended, the person who made the request shall, without delay, be notified in writing of the reasons for extending it.
- (10) On completion of a review, the review officer shall confirm, amend, terminate or cancel the order.
- (11) The person who made the request or, if there is no request, the person who was ordered to recall the consumer product or to take another measure shall, without delay, be notified in writing of the reasons for the review officer's decision under subsection (10).
- (12) An order that is amended is subject to review under this section.

INJUNCTION

36. (1) If, on the application of the Minister, it appears to a court of

申請書指定之當事人，

(a) 節制不為法院所指示之犯本罪之行為；

(b) 為法院所指定之避免犯本法之罪之行為。

(2) 第一項之禁制令不應簽發，除非在48小時通知送達當事人或申請書之當事人或通知無關公共利益之緊急情形。

規範

37. (1) 總督得制訂實行本法目的之規範，包含

(a) 附條件或無條件豁免消費者產品適用本法或與消費者產品之相關規範，包括豁免消費者產品基於出口於加拿大製造，或基於出口目的之進口；

(b) 附條件或無條件豁免當事人適用本法或與消費者產品

competent jurisdiction that a person has done or is about to do or is likely to do an act or thing that constitutes or is directed toward the commission of an offence under this Act, the court may issue an injunction ordering the person who is named in the application to

- (a) refrain from doing an act or thing that it appears to the court may constitute or be directed toward the commission of an offence under this Act; or
- (b) do an act or thing that it appears to the court may prevent the commission of an offence under this Act.

(2) No injunction shall be issued under subsection (1) unless 48 hours' notice is served to the party or parties who are named in the application or the urgency of the situation is such that service of notice would not be in the public interest.

REGULATIONS

37. (1) The Governor in Council may make regulations for carrying out the purposes and provisions of this Act, including regulations

- (a) exempting, with or without conditions, a consumer product or class of consumer products from the application of this Act or the regulations or a provision of this Act or the regulations, including exempting consumer products manufactured in Canada for the purpose of export or imported solely for the purpose of export;
- (b) exempting, with or without conditions, a class of persons

相關規範；

- (c)修正附錄一或二增加或刪除消費者產品項目或類別；
- (d)有關文件的準備與保存，包括指定文件的準備與保存的地點與期間；
- (e)基於第十三條(5)指定進口商應提供給主管機關之文件；
- (f)有關製造、進口、包裝、儲存、販售、廣告、貼標籤、測試或運送特定消費者產品或種類；
- (g)禁止製造、進口、包裝、儲存、販售、廣告、貼標籤、測試或運送特定消費者產品或種類；
- (h)有關為製造、進口、包裝、儲存、販售、廣告、貼標籤、測試或運送特定消費者產品或種類之人；
- (i)有關基於本法應提供資訊、通知及文件的時間與方式；
- (j)有關指定或認可得授權認證消費者產品符合適用要求

- from the application of this Act or the regulations or a provision of this Act or the regulations in relation to a consumer product or class of consumer products;
- (c) amending Schedule 1 or 2 by adding or deleting a consumer product or class of consumer products;
 - (d) respecting the preparation and maintenance of documents, including by specifying the documents to be prepared and maintained, where they may be kept and for how long;
 - (e) specifying the documents that an importer shall provide the Minister with under subsection 13(5);
 - (f) respecting the manufacturing, importation, packaging, storing, sale, advertising, labelling, testing or transportation of a consumer product or class of consumer products;
 - (g) prohibiting the manufacturing, importation, packaging, storing, sale, advertising, labelling, testing or transportation of a consumer product or class of consumer products;
 - (h) respecting the communication of warnings or other health or safety information to the public by a person who manufactures, imports, advertises or sells a consumer product or class of consumer products, including by way of a product's label or instructions;
 - (i) respecting the time and manner in which information, notices and documents are to be provided or served under this Act;
 - (j) respecting the designation or recognition of persons or

之人，及認證效果；

(k)有關督察員、分析員或檢討官員功能之實施，及督察員或檢討官員行使權力之事項；

(l)有關本法之採樣、沒收、扣押、沒入或留置；

(m)有關消費者產品或同類產品之召回；

(n)有關第三十二條所為之措施；

(o)有關第三十五條所為命令之檢視；

(p)規定本法失效之事項。

(2)基於本法制訂之規範得合併個人或非主管機關之參考文件，包括由

(a)加拿大標準協會認定之書寫標準組織；

(b)工業或貿易組織；

(c)政府。

(3)基於本法制訂之規範，得合併主管機關複製或翻譯個人或團體之參考文件

(a)以任何得簡化合併規範之已通過之格式與參考文獻；

- classes of persons who would be authorized to certify that a consumer product or class of consumer products meets the applicable requirements and respecting their functions in relation to that certification;
- (k) respecting the performance of an inspector's, analyst's or review officer's functions and the circumstances in which an inspector or a review officer may exercise their powers;
 - (l) respecting the taking of samples or the seizure, detention, forfeiture or disposal of anything under this Act;
 - (m) respecting the recall of a consumer product or class of consumer products;
 - (n) respecting the measures referred to in section 32;
 - (o) respecting the review of orders under section 35; and
 - (p) prescribing anything that by this Act is to be prescribed.
- (2) A regulation made under this Act may incorporate by reference documents produced by a person or body other than the Minister including by
- (a) an organization established for the purpose of writing standards, including an organization accredited by the Standards Council of Canada;
 - (b) an industrial or trade organization; or
 - (c) a government.
- (3) A regulation made under this Act may incorporate by reference documents that the Minister reproduces or translates from documents produced by a body or person other than the Minister
- (a) with any adaptations of form and reference that will

- (b)以說明部分適用於規範目的之格式。
 - (4)基於本法制訂之規範，得合併主管機關與其他政府為調和規範與其他法律之參考文件。
 - (5)基於本法制訂之規範，得合併主管機關產出之技術或說明參考文件，包括
 - (a)說明書、分類、圖示、圖解或其他技術性質之資訊；
 - (b)測試方法、程序、操作標準、安全標準或性能標準之技術性質文件
 - (6)合併參考文件得隨時間進行修正；
 - (7)第二項至第六項未限制授權制訂本條以外之合併參考資料。
38. (1)於第三十七條(1)(a)、(b)或(c)之規範制訂前，主管機關應事先草擬規範並送至國會。
- (2)規範草案得以適當方式提交參議院，並依其規定檢視規範並向參議院提交研究報告。
 - (3)規範草案應交付國會之健康常設委員會，或其他適當之

- facilitate their incorporation into the regulation; or
- (b) in a form that sets out only the parts of them that apply for the purposes of the regulation.
- (4) A regulation made under this Act may incorporate by reference documents that the Minister produces jointly with another government for the purpose of harmonizing the regulation with other laws.
- (5) A regulation made under this Act may incorporate by reference technical or explanatory documents that the Minister produces, including
- (a) specifications, classifications, illustrations, graphs or other information of a technical nature; and
- (b) test methods, procedures, operational standards, safety standards or performance standards of a technical nature.
- (6) Documents may be incorporated by reference as amended from time to time.
- (7) Subsections (2) to (6) are for greater certainty and do not limit any authority to make regulations incorporating material by reference that exists apart from those subsections.
38. (1) Before a regulation is made under paragraph 37(1)(a), (b) or (c), the Minister shall cause the proposed regulation to be laid before each House of Parliament.
- (2) The proposed regulation may be referred to an appropriate committee of the Senate, as determined by its rules, which may review the proposed regulation and report its findings to the Senate.
- (3) The proposed regulation shall be referred to the Standing

國會下設委員會，並依其規定檢視規範並向國會提交研究報告。

(4) 規範制訂不得早於

(a) 草案提交二個議會30個會期日後；

(b) 草案提交二個議會60個日曆日後；

(c) 向適當的委員會進行草案之研究報告後。

(5) 若規範未合併任一國會委員會之建議，主管機關應考量委員會之報告，提交未採納合併之理由。

(6) 已經送交國會之草案，無論是否有修正，無須再次提交。

(7) 第四項之會期日係指議會開會期間之日。

39. (1) 主管機關有以下意見時，規範制訂無須送交議會，

(a) 規範係對現有規範的變更並非重要或無實質適用第三十八條之情形；

Committee on Health of the House of Commons or, if there is not a Standing Committee on Health, the appropriate committee of the House of Commons, as determined by its rules, which may review the proposed regulation and report its findings to the House of Commons.

- (4) A regulation may not be made before the earliest of
 - (a) 30 sitting days after the proposed regulation is laid before both Houses of Parliament,
 - (b) 90 calendar days after the proposed regulation is laid before both Houses of Parliament, and
 - (c) the day after each appropriate committee has reported its findings with respect to the proposed regulation.
 - (5) The Minister shall take into account any report of the committee of either House. If a regulation does not incorporate a recommendation of the committee of either House, the Minister shall cause to be laid before that House a statement of the reasons for not incorporating it.
 - (6) A proposed regulation that has been laid before both Houses of Parliament need not again be so laid prior to the making of the regulation, whether it has been altered or not.
 - (7) For the purpose of subsection (4), “sitting day” means a day on which either House of Parliament sits.
39. (1) A regulation may be made without being laid before either House of Parliament if the Minister is of the opinion that
- (a) the changes made by the regulation to an existing regulation are so immaterial or insubstantial that section 38 should not apply in the circumstances; or

(b) 規範有迫切保護任何人健康或安全之必要。

(2) 若規範制訂無須送交國會，主管機關應於規範制訂後30會期日內，向國會敘明理由。

臨時命令

40. (1) 主管機關為因應人類健康或安全之直接或間接重大危險，有立即採取行動之必要，得制訂包含本法規範之臨時命令。

(2) 臨時命令自制訂起生效，但可最早終止於

(a) 制訂後14日，除總督通過外；

(b) 臨時命令廢除日；

(c) 基於本法所制訂之，與命令具相同效力之規範生效日；

(d) 臨時命令制訂後一年，或較短指定期間屆滿。

(3) 臨時命令豁免法定文書法第三條與第九條之適用。

(4) 基於本條以外其他規定之目的，任何基於本法制訂之規

- (b) the regulation must be made immediately in order to protect the health or safety of any person.
- (2) If a regulation is made without being laid before both Houses of Parliament, the Minister shall cause a statement of his or her reasons to be laid before each House of Parliament within the first 30 days on which that House is sitting after the regulation is made.

INTERIM ORDERS

- 40. (1) The Minister may make an interim order that contains any provision that may be contained in a regulation made under this Act if he or she believes that immediate action is required to deal with a significant danger — direct or indirect — to human health or safety.
- (2) An interim order has effect from the time that it is made but ceases to have effect on the earliest of
 - (a) 14 days after it is made, unless it is approved by the Governor in Council,
 - (b) the day on which it is repealed,
 - (c) the day on which a regulation made under this Act that has the same effect as the interim order comes into force, and
 - (d) one year after the interim order is made or any shorter period that may be specified in the interim order.
- (3) An interim order is exempt from the application of sections 3 and 9 of the *Statutory Instruments Act*.
- (4) For the purpose of any provision of this Act other than this

範視為包含臨時命令，且基於本法特定規定制訂之規範，亦被視為包含部分臨時命令。

(5)臨時命令之副本必須於制訂後15日內提交國會。

(6)為遵循本條第五項規定，臨時命令得於國會休會期間送交國會秘書辦公室。

違法行為

41. (1)抵觸本法第八條、第十條、第十一條或第二十條或違犯基於本法之相關規定或命令者規定者，視為犯罪並應負以下責任，

(a)依訴訟程序定罪，科五百萬以下罰鍰或處二年以下有期徒刑或併科；或

(b)初次犯本法之罪，科二十五萬以下罰鍰，或處六個月以下徒刑或併科，繼續犯則科五十萬元以下罰鍰，或處十八個月以下有期徒刑或併科。

(2)犯前項之罪之訴，被告得主張善盡合理義務作為抗辯。

section, any reference to regulations made under this Act is deemed to include interim orders, and any reference to a regulation made under a specified provision of this Act is deemed to include a reference to the portion of an interim order containing any provision that may be contained in a regulation made under the specified provision.

- (5) A copy of each interim order must be tabled in each House of Parliament within 15 days after it is made.
- (6) In order to comply with subsection (5), the interim order may be sent to the Clerk of the House if the House is not sitting.

OFFENCES

- 41. (1) A person who contravenes a provision of this Act, other than section 8, 10, 11 or 20, a provision of the regulations or an order made under this Act is guilty of an offence and is liable
 - (a) on conviction on indictment, to a fine of not more than \$5,000,000 or to imprisonment for a term of not more than two years or to both; or
 - (b) on summary conviction, for a first offence, to a fine of not more than \$250,000 or to imprisonment for a term of not more than six months or to both and, for a subsequent offence, to a fine of not more than \$500,000 or to imprisonment for a term of not more than 18 months or to both.
- (2) Due diligence is a defence in a prosecution for an offence

(3)故意犯本法第八條、第十條、第十一條或第二十條，或任意違反本法其他規定者，視為犯罪並應負以下責任，

(a)依訴訟程序定罪，由法院酌量罰鍰或五年以下刑責或併科；

(b)初次犯本法之罪，科五十萬元以下罰鍰，或處十八個月以下徒刑或併科，繼續犯則科一百萬元以下罰鍰，或處二年以下有期徒刑或併科。

(4)法院得依該犯行導致或可能導致個人因使用消費者產品之風險之其他原則進行考量，以及法律的可非難性斟酌刑期或處罰。

42. 犯本法之罪者以外之上級主管、相關公務員、代理商、受託人等為指示、授權、同意、默許或參與犯罪之人均屬犯罪當事人，即使未被起訴，亦需因該犯罪而受處罰。

43. 於犯本法之訴訟，即使受僱人、代理商、受託人並非訴訟當事人，但得為本案有效證人。

under subsection (1).

(3) A person who contravenes section 8, 10, 11 or 20 or who knowingly or recklessly contravenes another provision of this Act, a provision of the regulations or an order made under this Act is guilty of an offence and is liable

(a) on conviction on indictment, to a fine in an amount that is at the discretion of the court or to imprisonment for a term of not more than five years or to both; or

(b) on summary conviction, for a first offence, to a fine of not more than \$500,000 or to imprisonment for a term of not more than 18 months or to both and, for a subsequent offence, to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than two years or to both.

(4) A court that imposes a sentence shall take into account, in addition to any other principles that it is required to consider, the harm or risk of harm caused by the commission of the offence and the vulnerability of individuals who use the consumer product.

42. If a person other than an individual commits an offence under this Act, any of the person's directors, officers, agents or mandataries who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to the offence and is liable on conviction to the punishment provided for by this Act, even if the person is not prosecuted for the offence.
43. In a prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by any employee,

44. 超過一日以上之個別犯罪或繼續犯本法之罪，視為不同犯罪。
45. 基於本法之訴得於以下法院審理、聽審及判決：
- (a) 犯罪發生地或事件發生地；
 - (b) 逮捕被告地；
 - (c) 被提告訴之地或經營業務之地。
46. 提起因本法犯罪之訴訟應於主管機關知悉犯罪行為或事件後二年內提起訴訟。
47. (1) 觸犯本法之訴訟，原告主張、證明、報告，或其他主管機關或督察員、分析員或檢討官等有行政權限者簽名之文件，無須證明簽名或公務員身份，即得做為證據；反之僅有宣稱，不得視為證據。
- (2) 觸犯本法之訴訟，經公證人認證簽名之主管機關、督察員、分析員或檢討官文件之摘錄影本，得視為與正本相同或可被視為證據無須證明簽名或公務員身份，反之，以一般方式證明作為與原本相同證據力之方式，不得視為證據。

- agent or mandatory of the accused, even if the employee, agent or mandatory is not identified or is not prosecuted for the offence.
44. If an offence under this Act is committed or continued on more than one day, it constitutes a separate offence for each day on which it is committed or continued.
45. A prosecution for an offence under this Act may be instituted, heard and determined
- (a) in the place where the offence was committed or the subject-matter of the prosecution arose;
 - (b) where the accused was apprehended; or
 - (c) where the accused happens to be or is carrying on business.
46. Proceedings by way of summary conviction in respect of an offence under this Act may be instituted at any time within two years after the time the Minister becomes aware of the acts or omissions that constitute the alleged offence.
47. (1) In proceedings for an offence under this Act, a declaration, certificate, report or other document of the Minister or an inspector, analyst or review officer purporting to have been signed by that person is admissible in evidence without proof of the signature or official character of the person appearing to have signed it and, in the absence of evidence to the contrary, is proof of the matters asserted in it.
- (2) In proceedings for an offence under this Act, a copy of or an extract from any document that is made by the Minister or an inspector, analyst or review officer that appears to have been certified under the signature of that person as a true copy or extract is admissible in evidence without proof of the

(3)本條文件簽署若未押印日期，不得視為證據。

(4)若當事人故意未提供合理通知予相對人相同文件，該文件不得納為本條之證據。

48. 基於第十二條之命令而提供之資訊與文件之效果，得不使用或採納作為訴訟上可歸責違反本法之罪當事人之事由。

行政罰金

49. 任何人違反基於第三十一條或第三十二條所做之命令或違反第三十五條，應依規定受處罰。

總督與主管機關之權力

signature or official character of the person appearing to have signed it and, in the absence of evidence to the contrary, has the same probative force as the original would have if it were proved in the ordinary way.

(3) A document referred to in this section is, in the absence of evidence to the contrary, presumed to have been issued on the date that it bears.

(4) No document referred to in this section may be received in evidence unless the party intending to produce it has provided reasonable notice of that intention on the party against whom it is intended to be produced together with a duplicate of the document.

48. The information and results contained in the documents that a person provides under an order made under section 12 may not be used or received to incriminate the person in any proceeding against them in respect of an offence under this Act.

ADMINISTRATIVE MONETARY PENALTIES VIOLATION

49. Every person who contravenes an order that is made under section 31 or 32 or reviewed under section 35 commits a violation and is liable to the penalty established in accordance with the regulations.

POWERS OF THE GOVERNOR IN COUNCIL AND MINISTER

50. (1) 總督應制訂規範以

(a) 對每一違反行為確定處罰或處罰範圍；

(b) 將違反行為依情節輕重為分級；

(c) 視情節輕重考量加重或減輕處罰；

(d) 對於已於指定期間與方式之給付，得訂較低金額履行義務。

(2) 非營利組織或非基於商業目的之人，違反規定之罰鍰不得逾5000元，其他情形則不得逾2500元。

51. 主管機關得

(a) 指定個人或同類型之數人，授權其簽署違規通知；且

(b) 於通知內容進行簡短違規內容之敘述。

52. (1) 第五十一條(a)被指定之人若合理相信確有違規事實，該被指定之人得簽署，並應進行違規通知，該通知應記載

50. (1) The Governor in Council may make regulations
- (a) fixing a penalty, or a range of penalties, in respect of each violation;
 - (b) classifying each violation as a minor violation, a serious violation or a very serious violation;
 - (c) respecting the circumstances under which, the criteria by which and the manner in which a penalty may be increased or reduced, including a reduction in the amount that is provided for in a compliance agreement; and
 - (d) respecting the determination of a lesser amount that may be paid as complete satisfaction of a penalty if paid in the prescribed time and manner.
- (2) The maximum penalty for a violation is \$5,000 in the case of a violation committed by a non-profit organization — or by any other person for non-commercial purposes — and \$25,000 in any other case.
51. The Minister may
- (a) designate individuals, or classes of individuals, who are authorized to issue notices of violation; and
 - (b) establish, in respect of each violation, a short-form description to be used in notices of violation.

PROCEEDINGS

52. (1) If a person designated under paragraph 51(a) believes on reasonable grounds that a person has committed a violation, the designated person may issue, and shall provide the person with, a notice of violation that

- (a) 當事人姓名；
- (b) 確認違規事實；
- (c) 當事人因違規需負擔之罰金；

(d) 罰金給付時間及方式；

(e) 依規定，對於已於指定時間與方式之給付，決定以較低金額履行義務。

- (2) 違規通知必須以平實語言明確向被處罰對象說明本條及第五十三條到六十六條之權利與義務，包括與違規相關之作為或不作為之權利或罰金覆核及其程序之權利。

53. (1) 若通知單上登載之人於指定期間與方式給付，依規定記載於違規通知得繳交之較少罰款金額，得以繳交罰款方式取代處罰，

(a) 其給付視為認罪；

(b) 主管機關應接受其罰款金額之完全履行；

(c) 依第五十二條開始之違規程序結束。

- (a) sets out the person's name;
 - (b) identifies the alleged violation;
 - (c) sets out the penalty for the violation that the person is liable to pay;
 - (d) sets out the particulars concerning the time and manner of payment; and
 - (e) subject to the regulations, sets out a lesser amount that may be paid as complete satisfaction of the penalty if paid in the prescribed time and manner.
- (2) A notice of violation must clearly summarize, in plain language, the rights and obligations under this section and sections 53 to 66 of the person named in it, including the right to have the acts or omissions that constitute the alleged violation or the amount of the penalty reviewed and the procedure for requesting that review.

PENALTIES

53. (1) If the person named in the notice pays, in the prescribed time and manner, the amount of the penalty or, subject to the regulations, the lesser amount set out in a notice of violation that may be paid in lieu of the penalty,
- (a) they are deemed to have committed the violation in respect of which the amount is paid;
 - (b) the Minister shall accept that amount as complete satisfaction of the penalty; and
 - (c) the proceedings commenced in respect of the violation

(2) 替代記載於違規通知之罰金給付，依規定記載於違規通知得繳交之較少罰款金額，通知單上登載之人於指定期間與方式給付，

(a) 罰金為5000元或以上時，要求當事人需與主管機關簽訂遵守協議以確保當事人遵守與違規之相關命令；

(b) 要求主管機關覆核與違規相關之作為或不作為或罰金。

(3) 若通知單上登載之人未於指定期間與方式給付，或未於指定期間與以指定中行使第二項之權利，視為確認通知書上之違規行為。

遵從契約

54. (1) 經考量第五十三條(2)(a)之要件，主管機關得將該款規定之要件及對主管機關之履行義務納入遵從協議，其要件包括，

(a) 包含向主管機關提出合理的一定格式與金額之保險證

under section 52 are ended.

- (2) Instead of paying the penalty set out in a notice of violation or, if applicable, the lesser amount that may be paid in lieu of the penalty, the person named in the notice may, in the prescribed time and manner,
- (a) if the penalty is \$5,000 or more, request to enter into a compliance agreement with the Minister that ensures the person's compliance with the order to which the violation relates; or
 - (b) request a review by the Minister of the acts or omissions that constitute the alleged violation or the amount of the penalty.
- (3) If the person named in the notice of violation does not pay the penalty in the prescribed time and manner or, if applicable, the lesser amount that may be paid in lieu of the penalty, and does not exercise any right referred to in subsection (2) in the prescribed time and manner, they are deemed to have committed the violation identified in the notice.

COMPLIANCE AGREEMENTS

54. (1) After considering a request under paragraph 53(2)(a), the Minister may enter into a compliance agreement, as described in that paragraph, with the person making the request on any terms and conditions that are satisfactory to the Minister, which terms and conditions may
- (a) include a provision for the giving of reasonable security,

明，以保證當事人會確實遵守遵從契約；

(b)減免或減少一部之罰金。

(2)與主管機關簽訂遵從協議者，亦即視為已違反遵從協議之規定。

(3)通知主管機關認為對於遵從協議之當事人行為符合遵守規定，主管機關應向當事人進行通知以下期日，

(a)因第五十二條發動之程序終結；

(b)歸還因遵從協議而提繳之保證金予當事人。

(4)若主管機關認為當事人並未遵守遵從協議，主管機關應向當事人為未履行之通知，

(a)取消先前遵從協議中所列之罰金，當事人必須於指定時間與以指定方式繳納雙倍罰金，不受第五十條(2)金額之限制；

- in a form and in an amount satisfactory to the Minister, as a guarantee that the person will comply with the compliance agreement; and
- (b) provide for the reduction, in whole or in part, of the penalty for the violation.
- (2) A person who enters into a compliance agreement with the Minister is, on doing so, deemed to have committed the violation in respect of which the compliance agreement was entered into.
- (3) If the Minister is satisfied that a person who has entered into a compliance agreement has complied with it, the Minister shall cause a notice to that effect to be provided to the person, at which time
- (a) the proceedings commenced in respect of the violation under section 52 are ended; and
- (b) any security given by the person under the compliance agreement shall be returned to the person.
- (4) If the Minister is of the opinion that a person who has entered into a compliance agreement has not complied with it, the Minister shall cause a notice of default to be provided to the person to the effect that
- (a) instead of the penalty set out in the notice of violation in respect of which the compliance agreement was entered into, the person is liable to pay, in the prescribed time and manner, twice the amount of that penalty and, for greater certainty, subsection 50(2) does not apply in respect of that amount; or

(b)沒收當事人因遵從協議所提繳之保證金。

(5)進行未履行通知後，當事人不得自通知書之金額扣除因遵從協議或使用之費用及，

(a)必須給付通知書中所列舉之費用；

(b)若通知沒收當事人因遵從協議所提繳之保證金並納入國庫，且終止因違反第五十二條規定所發動之程序。

(6)若當事人於指定時間與以指定方式繳納第四項之未履行通知中所列舉之費用，

(a)主管機關應收取該金額並視為履行處罰；

(b)終止因違反第五十二條規定所發動之程序。

55. (1)若主管機關依第五十三條(2)(a)為由，拒絕遵從協議，當事人應於指定時間以指定方式繳納罰金。

(2)若當事人依前項定繳納罰金，

(a)視為違反規定而繳納罰金；

(b)主管機關應收取該金額並視為履行處罰；

- (b) the security, if any, given by the person under the compliance agreement shall be forfeited to Her Majesty in right of Canada.
 - (5) Once provided with the notice of default, the person may not deduct from the amount set out in the notice any amount they spent under the compliance agreement and
 - (a) is liable to pay the amount set out in the notice; or
 - (b) if the notice provides for the forfeiture of the security given under the compliance agreement, that security is forfeited to Her Majesty in right of Canada and the proceedings commenced in respect of the violation under section 52 are ended.
 - (6) If a person pays the amount set out in a notice of default under subsection (4) in the prescribed time and manner,
 - (a) the Minister shall accept the amount as complete satisfaction of the amount owing; and
 - (b) the proceedings commenced in respect of the violation under section 52 are ended.
55. (1) If the Minister refuses to enter into a compliance agreement pursuant to a request under paragraph 53(2)(a), the person who made the request is liable to pay the amount of the penalty in the prescribed time and manner.
- (2) If a person pays the amount referred to in subsection (1),
 - (a) they are deemed to have committed the violation in respect of which the payment is made;
 - (b) the Minister shall accept the amount as complete satisfaction of the penalty; and

(c)終止因違反第五十二條規定所發動之程序。

(3)若當事人未依第一項規定，於指定時間以指定方式繳納罰金，將視為確實違反通知書所記載之違規事項。

主管機關覆核

56. (1)當事人依第五十三條(2)(b)請求關於違規作為或不作為之覆核，主管機關應裁決覆核結果。若主管機關覆核後裁定違規，但罰金金額並非依規定核定，主管機關得依本條規定，於覆核決定通知書中更正罰金金額。

(2)當事人依第五十三條(2)(b)請求關於罰金金額之覆核，若主管機關覆核後認為罰金金額非依規定核定，主管機關得依本條規定，於覆核決定通知書中更正罰金金額。

- (c) the proceedings commenced in respect of the violation under section 52 are ended.
- (3) If a person does not pay the amount referred to in subsection (1) in the prescribed time and manner, they are deemed to have committed the violation identified in the notice of violation.

REVIEW BY THE MINISTER

56. (1) On completion of a review requested under paragraph 53(2) (b) with respect to the acts or omissions that constitute the alleged violation, the Minister shall determine whether the person requesting the review committed the violation. If the Minister determines that the person committed the violation but that the amount of the penalty was not established in accordance with the regulations, the Minister shall correct the amount and cause a notice of any decision under this subsection to be provided to the person who requested the review.
- (2) On completion of a review requested under paragraph 53(2) (b), with respect to the amount of the penalty, if the Minister determines that the amount of the penalty was not established in accordance with the regulations, the Minister shall correct the amount and cause a notice of any decision under this subsection to be provided to the person who requested the review.

- (3)若主管機關基於第一項裁定當事人違規，該當事人應於指定時間以指定方式繳納確認或更正後之罰金。

- (4)若當事人繳納第三項之罰金，
 - (a)主管機關應收取該金額並視為履行處罰；

 - (b) 終止因違反第五十二條規定所發動之程序。

- (5)主管機關應只考量書面證據與書面同意，裁決當事人是否違反規定或罰金是否依規定核定。

執行

57. (1)下列款項為聯邦法院裁定需繳交予加拿大政府之債務

- (a)自做成違規通知時起之罰金金額；

- (b)自依第五十四條(1)與主管機關之遵從契約時，該通知所載之金額；

- (c)自依第五十四條(4) 送達之未履行之通知時，該通知所載之金額；

- (3) If the Minister determines under subsection (1) that a person committed a violation, the person is liable to pay the amount of the penalty confirmed or corrected in that decision in the prescribed time and manner.
- (4) If a person pays the amount referred to in subsection (3),
 - (a) the Minister shall accept the amount as complete satisfaction of the penalty; and
 - (b) the proceedings commenced in respect of the violation under section 52 are ended.
- (5) The Minister is to consider only written evidence and written submissions in determining whether a person committed a violation or whether a penalty was established in accordance with the regulations.

ENFORCEMENT

57. (1) The following amounts constitute debts due to Her Majesty in right of Canada that may be recovered as such in the Federal Court:
- (a) the amount of a penalty, from the time the notice of violation setting out the penalty is provided;
 - (b) every amount set out in a compliance agreement entered into with the Minister under subsection 54(1), from the time the compliance agreement is entered into;
 - (c) the amount set out in a notice of default referred to in subsection 54(4), from the time the notice is provided;
 - (d) the amount of a penalty as set out in a decision of the

(d)自主管機關依第五十六條(1)或(2)所做決定書時，該決定書中所載之罰金金額；

(e)自發生第六十四條事由時起，所產生之費用。

(2)債務到期五年後，不得提起第一項之收回債務之程序。

(3)除於第五十三至第五十六條之範圍或所規定之方式，否則本條第一項之債務為不得更改、覆核、限制、禁止、移交、撤銷或交易。

58. (1)任何第五十七條(1)因不履行給付或未完全給付所生之債，得由主管機關舉證。

(2)基於提交聯邦法院，舉證需經法院註冊，方具有訴訟上之證據力或效力，等同在法庭對經註冊公證之特定債務金額及所有成本與費用之判決。

有關違反之法律規則

59. (1)違規通知單上登載之人在以下情形為未抗辯，

(a)行使實質審查以避免違法情事；

(b)合理與誠實地相信既存事實為真正，並證明當事人無

Minister under subsection 56(1) or (2), from the time the notice under that subsection is provided; and

(e) the amount of any reasonable expenses incurred under section 64, from the date they are incurred.

(2) No proceedings to recover a debt referred to in subsection (1) may be commenced later than five years after the debt became payable.

(3) A debt referred to in subsection (1) is final and not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by sections 53 to 56.

58. (1) Any debt referred to in subsection 57(1) in respect of which there is a default of payment, or the part of any such debt that has not been paid, may be certified by the Minister.

(2) On production to the Federal Court, the certificate shall be registered in that Court and, when registered, has the same force and effect, and all proceedings may be taken on the certificate, as if it were a judgment obtained in that Court for a debt of the amount specified in it and all reasonable costs and charges associated with the registration of the certificate.

RULES OF LAW ABOUT VIOLATIONS

59. (1) A person named in a notice of violation does not have a defence by reason that the person

(a) exercised due diligence to prevent the violation; or

(b) reasonably and honestly believed in the existence of facts

罪。

(2)在本法之本法正當理由或關於主張犯罪的理由，得適用所有普通法之規定與原則，並不與本法相悖。

60. 主管機關應審酌每件案例之事實，並基於公平，裁決違規通知書上所載之人是否確實違反規定。
61. 若個人違反本法之規定，任何當事人之上級主管、相關公務員、代理商、受託人等為指示、授權、同意、默許或參與犯罪之人亦為當事人，並應對犯罪負責，無論其是否真正為本法訴訟之參與犯罪當事人。
62. 當事人對於受僱人、或當事人之代理人或受託人之因代理範圍或授權而生之違法行為應負責任，無論該受僱人、或當事人之代理人或受託人是否為真正本法訴訟之參與犯罪當事人。
63. 持續或超過一日以上之違規，持續每日犯罪狀態，構成個別違規行為。
64. 依本法為犯罪物之扣押，加拿大政府應立即沒收並為處置，因扣押而損失之所有人或具有支配權之當事人，

that, if true, would exonerate the person.

(2) Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence under this Act applies in respect of a violation to the extent that it is not inconsistent with this Act.

60. In every case where the facts of a violation are reviewed by the Minister, he or she must determine, on a balance of probabilities, whether the person named in the notice of violation committed the violation identified in the notice.
61. If a person other than an individual commits a violation under this Act, any of the person's directors, officers, agents or mandataries who directed, authorized, assented to, acquiesced in or participated in the commission of the violation is a party to and liable for the violation whether or not the person who actually committed the violation is proceeded against in accordance with this Act.
62. A person is liable for a violation that is committed by any employee, agent or mandatary of the person acting in the course of the employee's employment or the scope of the agent or mandatary's authority, whether or not the employee, agent or mandatary who actually committed the violation is identified or proceeded against in accordance with this Act.
63. A violation that is continued on more than one day constitutes a separate violation in respect of each day on which it is continued.
64. Anything seized under this Act that is the subject of a violation is, at Her election, immediately forfeited to Her Majesty in right of Canada and may be disposed of, at the expense of its owner or

(a) 依法視為已違反規定；

(b) 主管機關基於本法檢視，得裁決當事人違反規定。

65. 在所有違反本法規定之訴訟，依本法簽發之違規通知得接受做為證據，無須簽發通知之公務員證明其身份。

66. 訴訟程序之發動，不得逾通知主管機關判斷有違規事實起六個月為之。

通則

67. (1) 主管機關應設立委員會以提供外界有關本法有關之行政事項諮詢，包含消費者產品之標籤。

(2) 委員會得將提供給主管機關之資訊公布於眾。

(3) 由總督指定給予委員會成員固定酬勞，並且有資格因履行任務，而從住居地進行合理之出差及支領費用。

the person who was entitled to possess it at the time of its seizure, if

- (a) the person is deemed by this Act to have committed the violation; or
- (b) the Minister, on the basis of a review under this Act, has determined that the person has committed the violation.

OTHER PROVISIONS

- 65. In any proceeding for a violation or for a prosecution for an offence, a notice of violation purporting to be issued pursuant to this Act is admissible in evidence without proof of the signature or official character of the person appearing to have signed the notice of violation.
- 66. No proceedings in respect of a violation may be commenced later than six months after the Minister becomes aware of the acts or omissions that constitute the alleged violation.

GENERAL PROVISIONS

- 67. (1) The Minister shall establish a committee to provide him or her with advice on matters in connection with the administration of this Act, including the labelling of consumer products.
- (2) The committee shall make available to the public the advice it provided to the Minister.
- (3) Committee members may be paid remuneration up to the amount that is fixed by the Governor in Council and are

68. 除第四十條以外，基於本法所做之命令，並非文書中所稱之文書。
69. 若一作為或不作為能導致違反規定或犯罪，其訴訟程序將會排除另一訴訟程序進行。
70. 主管機關已簽署之文件，證明主管機關知悉作為或不作為而導致犯罪之日期，得接受做為證據，無須簽發通知之公務員證明其身份，但不得做為主管機關被告知該作為或不作為的日期之證據。
71. 主管機關得公布任何觸犯本法或其相關規定之資訊，或任何違反第四十九條之情形，以達鼓勵遵守本法及相關規範之目的。

因危險產品法所做之修正

72. 修正
73. 修正
74. 修正

entitled to the reasonable travel and living expenses that they incur while performing their duties away from their ordinary place of residence.

68. For greater certainty, orders made under this Act, except under section 40, are not statutory instruments within the meaning of the *Statutory Instruments Act*.
69. If an act or omission can be proceeded with either as a violation or as an offence, proceeding in one manner precludes proceeding in the other.
70. A document appearing to have been issued by the Minister, certifying the day on which the acts or omissions that constitute the alleged offence or violation became known to the Minister, is admissible in evidence without proof of the signature or official character of the person appearing to have signed the document and, in the absence of evidence to the contrary, is proof that the Minister became aware of the acts or omissions on that day.
71. The Minister may publish information about any contravention of this Act or the regulations, or any violation referred to in section 49, for the purpose of encouraging compliance with this Act and the regulations.

CONSEQUENTIAL AMENDMENTS TO THE HAZARDOUS PRODUCTS ACT

72. [Amendments]
73. [Amendment]
74. [Amendment]

75. 修正

生效

76. 本法規定之生效日期須待國會決定。

[注意：本法尚未生效]

75. [Amendment]

COMING INTO FORCE

76. The provisions of this Act come into force on a day or days to be fixed by order of the Governor in Council.

[Note: Act not in force.]

附錄一

（第四條(1)與第三十七條(1)(c)）

1. 爆裂物法第二條所稱之爆裂物。
2. 食品藥物法第二條所稱之化妝品。
3. 食品藥物法第二條所稱之設備。
4. 食品藥物法第二條所稱之藥物。
5. 食品藥物法第二條所稱之食物。
6. 傳染管制法第二條(1)之有害物管制。
7. 車輛安全法第二條所稱之車輛及車輛零件-為第一次零售購買而販售之組裝或修理零件，包括車輛可替代或組裝之部分。
8. 飼料法第二條所稱之飼料。
9. 肥料法第二條所稱之肥料。
10. 運輸法所稱之船艦。
11. 刑法第二條所稱之火器。
12. 刑法第八十四條(1)條所稱之彈藥。
13. 刑法第八十四條(1)條所稱之彈藥筒。
14. 刑法第八十四條(1)條所稱之彈藥筒弓弩。

SCHEDULE 1

(Subsection 4(1) and paragraph 37(1)(c))

1. Explosives within the meaning of section 2 of the *Explosives Act*.
2. Cosmetics within the meaning of section 2 of the *Food and Drugs Act*.
3. Devices within the meaning of section 2 of the *Food and Drugs Act*.
4. Drugs within the meaning of section 2 of the *Food and Drugs Act*.
5. Food within the meaning of section 2 of the *Food and Drugs Act*.
6. Pest control products within the meaning of subsection 2(1) of the *Pest Control Products Act*.
7. Vehicles within the meaning of section 2 of the *Motor Vehicle Safety Act* and a part of a vehicle that is integral to it — as it is assembled or altered before its sale to the first retail purchaser — including a part of a vehicle that replaces or alters such a part.
8. Feeds within the meaning of section 2 of the *Feeds Act*.
9. Fertilizers within the meaning of section 2 of the *Fertilizers Act*.
10. Vessels within the meaning of section 2 of the *Canada Shipping Act, 2001*.
11. Firearms within the meaning of section 2 of the *Criminal Code*.
12. Ammunition within the meaning of subsection 84(1) of the *Criminal Code*.
13. Cartridge magazines within the meaning of subsection 84(1) of the *Criminal Code*.
14. Cross-bows within the meaning of subsection 84(1) of the

15. 刑法第八十四條(1)條(a)到(d)所稱之禁止設備。
16. 植物保護法第三條所稱除相思豆以外之植物。
17. 種苗法第二條所稱除相思豆以外之種子。
18. 毒品與藥物管制法第二條(1)所稱之藥物。
19. 航空法第三條(1)所稱之飛航產品。
20. 動物健康法第二條(1)所稱之動物。

Criminal Code.

15. Prohibited devices within the meaning of paragraphs (a) to (d) of the definition “prohibited device” in subsection 84(1) of the *Criminal Code*.
16. Plants within the meaning of section 3 of the *Plant Protection Act*, except for Jequirity beans (*abrus precatorius*).
17. Seeds within the meaning of section 2 of the *Seeds Act*, except for Jequirity beans (*abrus precatorius*).
18. Controlled substances within the meaning of subsection 2(1) of the *Controlled Drugs and Substances Act*.
19. Aeronautical products within the meaning of subsection 3(1) of the *Aeronautics Act*.
20. Animals within the meaning of subsection 2(1) of the *Health of Animals Act*.

附錄二

（第五條與三十七條(1)(c)）

1. 相思豆或其他全部或部分含有相思豆成分之產品。
2. 全部或部分結構含有細胞硝酸鹽。
3. 鑲嵌輪子或有附有其他移動設備，以及讓幼兒的腳可以接觸地面，水平移動，坐或站立支撐的隔離位置的幼兒學步車。
4. 嬰兒固齒器、橡皮奶嘴、奶瓶等需放在嬰兒口中使用且包含會滋長微生物內填物。
5. 放置奶瓶以利嬰兒在無人照顧時自行餵食之設備。
6. 含有全部或部分乙烯基氯化物壓力液體的拋棄型的金屬容器，以及設計用來人工操作活栓之釋出壓力物體的金屬容器。
7. 使用於顯微鏡之含多氯聯苯液體之浸製油，但不包含折射率匹配油。
8. 有區隔傳導與非傳導區部分超過之50毫米之非絕緣金屬製之風箏。

SCHEDULE 2

(Section 5 and paragraph 37(1)(c))

1. Jequirity beans (*abrus precatorius*) or any substance or article that is made from or that includes jequirity beans in whole or in part.
2. Spectacle frames that, in whole or in part, are made of or contain cellulose nitrate.
3. Baby walkers that are mounted on wheels or on any other device permitting movement of the walker and that have an enclosed area supporting the baby in a sitting or standing position so that their feet touch the floor, thereby enabling the horizontal movement of the walker.
4. Products for babies, including teethers, pacifiers and baby bottle nipples, that are put in the mouth when used and that contain a filling that has in it a viable micro-organism.
5. Structural devices that position feeding bottles to allow babies to feed themselves from the bottle while unattended.
6. Disposable metal containers that contain a pressurizing fluid composed in whole or in part of vinyl chloride and that are designed to release pressurized contents by the use of a manually operated valve that forms an integral part of the container.
7. Liquids that contain polychlorinated biphenyls for use in microscopy, including immersion oils but not including refractive index oils.
8. Kites any part of which is made of uninsulated metal that is separated from adjacent conductive areas by a non-conductive

9. 會導電材質的風箏線。
10. 經溴化物磷酸鹽處理過之衣服用纖維之產品。

11. 任何會誘發噴嚏之物質，無論是否為噴體粉，含有
 - (a) 3,3'-二甲氧基联苯胺或任何其鹽類；
 - (b) 以黑藜蘆、白藜蘆或肥皂草為成分之植物產品；
 - (c) 原藜蘆鹼或嚏根草；或
 - (d) 任何硝基苯甲醛之同質異構物；
12. 用在機械操作潤滑或冷卻切削面之含50微克硝酸鹽之切削油或切削液，當有使用氨基乙醇、二乙醇胺或三乙醇胺時。

13. 尿素甲醛基底熱隔絕，使用於隔絕建築物。

14. 有長尖端的草地飛鏢。
15. 聚碳酸酯的含雙酚A之嬰兒奶瓶。

area of less than 50 mm and that either

- (a) has a maximum linear dimension in excess of 150 mm, or
- (b) is plated or otherwise coated with a conductive film whose maximum linear dimension exceeds 150 mm.

9. Kite strings made of a material that conducts electricity.
10. Products made in whole or in part of textile fibres, intended for use as wearing apparel, that are treated with or contain tris (2,3 dibromopropyl) phosphate as a single substance or as part of a chemical compound.
11. Any substance that is used to induce sneezing, whether or not called “sneezing powder”, and that contains
 - (a) 3,3'-dimethoxybenzidine (4,4'-diamino-3,3'-dimethoxybiphenyl) or any of its salts;
 - (b) a plant product derived from the genera *Helleborus* (hellebore), *Veratrum album* (white hellebore) or *Quillaia* (Panama Wood);
 - (c) protoveratrine or veratrine; or
 - (d) any isomer of nitrobenzaldehyde.
12. Cutting oils and cutting fluids, that are for use in lubricating and cooling the cutting area in machining operations, and that contain more than 50 µg/g of any nitrite, when monoetha-nolamine, diethanolamine or triethanolamine is also present.
13. Urea formaldehyde-based thermal insulation, foamed in place, used to insulate buildings.
14. Lawn darts with elongated tips.
15. Polycarbonate baby bottles that contain 4,4'-isopropylidenediphenol (bisphenol A).

2010年競爭與消費者法

依據1974年第51號法律修正

本彙編於2011年1月1日參酌2010年第148號法律修正編撰完成

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法令目錄

法令注釋

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注釋二與注釋三

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已納入修正規定之實施可能因注釋章節的適用規定而受影響

Competition and Consumer Act 2010

Act No. 51 of 1974 as amended

This compilation was prepared on 1 January 2011 taking into account amendments up to Act No. 148 of 2010

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第二之三部分 不公平的契約條款

23 不公平的消費者契約條款

(1)有以下情形之消費者契約條款無效

(a)條款有不公平之情形；

(b)契約為定型化契約。

(2)沒有不公平的條款之持續拘束當事人之契約。

(3)消費契約係為取得商品、服務或權利之個人

(a)提供商品或服務；或，

(b)出售或轉讓土地權利；

而完全或大部分為個人、國內或家庭使用或消費目的之契約。

24 不公平的定義

(1)消費契約有以下條款，視為不公平條款：

(a)契約產生導致雙方當事人權利與義務重大失衡；及

(b)在契約條款中保障具有優勢當事人合法利益並不具合理之必要性；

(c)若適用或信賴該條款將對一方當事人導致損害（財務或其他）。

(2)法院得於決定消費契約條款是否有前項不公平時，就以下重要或必要情形進行審酌：

Part 2-3—Unfair contract terms

23 Unfair terms of consumer contracts

- (1) A term of a consumer contract is void if:
 - (a) the term is unfair; and
 - (b) the contract is a standard form contract.
- (2) The contract continues to bind the parties if it is capable of operating without the unfair term.
- (3) A consumer contract is a contract for:
 - (a) a supply of goods or services; or
 - (b) a sale or grant of an interest in land;to an individual whose acquisition of the goods, services or interest is wholly or predominantly for personal, domestic or household use or consumption.

24 Meaning of unfair

- (1) A term of a consumer contract is unfair if:
 - (a) it would cause a significant imbalance in the parties' rights and obligations arising under the contract; and
 - (b) it is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term; and
 - (c) it would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.
- (2) In determining whether a term of a consumer contract is unfair under subsection (1), a court may take into account such matters as it thinks relevant, but must take into account the following:

- (a) 條款透明化的程度；
 - (b) 契約整體情形。
- (3) 透明化的條款係指
- (a) 以合理平實之語言表達；及
 - (b) 清楚明白；
 - (c) 表示明確；及
 - (d) 任何受該條款影響之當事人均容易取得。
- (4) 基於第1條(b)之目的，消費契約推定保障具有優勢當事人合法利益並不具合理之必要性，除非該當事人得證明之。

25 不公平條款之例示

(1) 不限於第24條，以下為不公平消費契約條款的例舉：

- (a) 容許，或有容許一方當事人（而不是另一方）避免或限制契約履行效果之條款；
- (b) 容許，或有容許一方當事人（而不是另一方）終止契約效果之條款；
- (c) 懲罰，或有懲罰違反或終止契約的一方（而不是另一方）效果之條款；
- (d) 容許，或有容許一方（而不是另一方）變更契約條款效果之條款；

- (a) the extent to which the term is transparent;
 - (b) the contract as a whole.
- (3) A term is transparent if the term is:
- (a) expressed in reasonably plain language; and
 - (b) legible; and
 - (c) presented clearly; and
 - (d) readily available to any party affected by the term.
- (4) For the purposes of subsection (1)(b), a term of a consumer contract is presumed not to be reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term, unless that party proves otherwise.

25 Examples of unfair terms

- (1) Without limiting section 24, the following are examples of the kinds of terms of a consumer contract that may be unfair:
- (a) a term that permits, or has the effect of permitting, one party (but not another party) to avoid or limit performance of the contract;
 - (b) a term that permits, or has the effect of permitting, one party (but not another party) to terminate the contract;
 - (c) a term that penalises, or has the effect of penalising, one party (but not another party) for a breach or termination of the contract;
 - (d) a term that permits, or has the effect of permitting, one party (but not another party) to vary the terms of

- (e)容許，或有容許一方（而不是另一方）更新或不更新契約效果之條款；
- (f)容許，或有容許一方（而不是另一方）未經另一方有權變更前期的價格，而另一方當事人無權終止契約；
- (g)容許，或有容許一方（而不是另一方）單方面改變的商品或提供服務的，或依據契約，出售或轉讓土地權益的內容；
- (h)容許，或有容許一方（而不是另一方）單方面決定契約是否已違反或解釋其含義；
- (i)限制，或有或限制一方當事人及其代理人的代理責任效果之條款；
- (j)容許，或有容許一方（而不是另一方）未經另一方同意分配另一方契約損害效果之條款；
- (k)限制，或有限制一方的起訴另一方權利效果之條款；
- (l)限制，或有限制一方於訴訟提出與契約有關證據效果之條款；
- (m)強加一方在訴訟中與契約有關舉證責任效果之條款；

- the contract;
- (e) a term that permits, or has the effect of permitting, one party (but not another party) to renew or not renew the contract;
 - (f) a term that permits, or has the effect of permitting, one party to vary the upfront price payable under the contract without the right of another party to terminate the contract;
 - (g) a term that permits, or has the effect of permitting, one party unilaterally to vary the characteristics of the goods or services to be supplied, or the interest in land to be sold or granted, under the contract;
 - (h) a term that permits, or has the effect of permitting, one party unilaterally to determine whether the contract has been breached or to interpret its meaning;
 - (i) a term that limits, or has the effect of limiting, one party's vicarious liability for its agents;
 - (j) a term that permits, or has the effect of permitting, one party to assign the contract to the detriment of another party without that other party's consent;
 - (k) a term that limits, or has the effect of limiting, one party's right to sue another party;
 - (l) a term that limits, or has the effect of limiting, the evidence one party can adduce in proceedings relating to the contract;
 - (m) a term that imposes, or has the effect of imposing, the evidential burden on one party in proceedings

(n)排除法律效力之條款或有類似效果之條款。

(2)在總理依第(1)(n)款排除條款或有類似效果之條款之目的制訂規範前，部長必須考慮：

(a)條款可能對消費者造成的損害；

(b)排除條款對企業的一般影響或效果；

(c)公眾利益。

26 不受影響之消費契約內容條款定義

(1)第23條並不適用於消費契約條款之範疇，但適用於以下條款：

(a)定義契約主要標的；

(b)訂定依契約支付之前期價格；

(c)基於要求，明文容許或國家或地區的法律明確允許之條款。

(2)根據消費契約支付的前期價格考慮：

(a)提供或提供契約之供應，出售或授予；

(b)是在契約簽訂當時或之前披露；

但不包括任何其他關於特定事件發生與否之附帶條件考慮。

relating to the contract;

(n) a term of a kind, or a term that has an effect of a kind, prescribed by the regulations.

(2) Before the Governor-General makes a regulation for the purposes of subsection (1)(n) prescribing a kind of term, or a kind of effect that a term has, the Minister must take into consideration:

(a) the detriment that a term of that kind would cause to consumers; and

(b) the impact on business generally of prescribing that kind of term or effect; and

(c) the public interest.

26 Terms that define main subject matter of consumer contracts etc. are unaffected

(1) Section 23 does not apply to a term of a consumer contract to the extent, but only to the extent, that the term:

(a) defines the main subject matter of the contract; or

(b) sets the upfront price payable under the contract; or

(c) is a term required, or expressly permitted, by a law of the Commonwealth, a State or a Territory.

(2) The upfront price payable under a consumer contract is the consideration that:

(a) is provided, or is to be provided, for the supply, sale or grant under the contract; and

(b) is disclosed at or before the time the contract is entered into;

but does not include any other consideration that is

27 定型化契約

(1)若一方當事人於訴訟中主張契約屬定型化契約，除非訴訟的另一方證明，否則推定為定型化契約。

(2)在決定契約是否為定型化契約，法院得考慮相關事項，但必須考慮以下幾點：

(a)是否其中一方擁有全部或大部分交易談判的權力；

(b)任何雙方有關交易的討論前，是否契約係由一方當事人所準備；

(c)其呈現方式為，另一方被要求是否接受或拒絕契約的條款（在第26（1）條所指的條款除外）；

(d)另一方是否給予有效的機會，協商非第26（1）條所指之契約條款；

(e)契約的條款（在第26（1）條所指的條款除外）是否考慮另一方或特定交易的具體特點；

(f)任何由法規規定的其他事項。

contingent on the occurrence or non-occurrence of a particular event.

27 Standard form contracts

- (1) If a party to a proceeding alleges that a contract is a standard form contract, it is presumed to be a standard form contract unless another party to the proceeding proves otherwise.
- (2) In determining whether a contract is a standard form contract, a court may take into account such matters as it thinks relevant, but must take into account the following:
 - (a) whether one of the parties has all or most of the bargaining power relating to the transaction;
 - (b) whether the contract was prepared by one party before any discussion relating to the transaction occurred between the parties;
 - (c) whether another party was, in effect, required either to accept or reject the terms of the contract (other than the terms referred to in section 26(1)) in the form in which they were presented;
 - (d) whether another party was given an effective opportunity to negotiate the terms of the contract that were not the terms referred to in section 26(1);
 - (e) whether the terms of the contract (other than the terms referred to in section 26(1)) take into account the specific characteristics of another party or the particular transaction;
 - (f) any other matter prescribed by the regulations.

28 本部分不適用之契約

(1)本部分規定不適用於：

- (a)在海上救助或拖船合約；
- (b)租船契約；
- (c)貨物航運契約。

(2) 不限制第(1)(c)款，參酌依據參酌海上貨物運送法第7

(1) 修正之海牙規則中對於任何契約中有關航運文件所指之貨物海運契約之定義。

(3)本部分不適用（在2001年法“法人法”第9條的意旨）
的公司結構、管理投資計劃或他種類的實體。

第三章 特別保護

第三之一部分 不公平行為

第一分部 虛偽或誤導陳述等

29 有關商品或服務的虛偽或誤導陳述

(1)任何人不得於貿易或商業，供應或可能供應商品或服務，或於推廣任何商品或服務的供應，使用以下手段：

- (a)對商品特定的標準，品質，價值，等級，成分，形式或模型，或有一個特定的歷程或特定先前使用為

28 Contracts to which this Part does not apply

- (1) This Part does not apply to:
 - (a) a contract of marine salvage or towage; or
 - (b) a charterparty of a ship; or
 - (c) a contract for the carriage of goods by ship.
- (2) Without limiting subsection (1)(c), the reference in that subsection to a contract for the carriage of goods by ship includes a reference to any contract covered by a sea carriage document within the meaning of the amended Hague Rules referred to in section 7(1) of the Carriage of Goods by Sea Act 1991.
- (3) This Part does not apply to a contract that is the constitution (within the meaning of section 9 of the Corporations Act 2001) of a company, managed investment scheme or other kind of body.

Chapter 3—Specific protections

Part 3-1—Unfair practices

Division 1—False or misleading representations etc.

29 False or misleading representations about goods or services

- (1) A person must not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services:
 - (a) make a false or misleading representation that goods are of a particular standard, quality, value, grade,

虛偽或誤導性陳述；或

- (b)對服務是特定的標準，質量，價值或等級為虛偽或誤導性陳述；或
- (c)對新的商品為虛偽或誤導性陳述；或
- (d)為特定人已同意收購商品或服務的虛偽或誤導性陳述；或
- (e)對商品或服務的證明為虛偽或誤導性陳述；或
- (f)對商品或服務之以下事項為虛偽或誤導性陳述：
 - (i)任何人的一項證明；
 - (ii)看似一個證明；
- (g)對商品或服務的贊助，認可，性能特點，配件，用途或利益為虛偽或誤導性陳述；
- (h)陳述人對贊助，認可或隸屬關係為虛偽或誤導性陳述；或
- (i)對商品或服務的價格為虛偽或誤導性陳述；
- (j)對有關的設施提供的商品或貨物的備件維修條件為虛偽或誤導性陳述；

- composition, style or model or have had a particular history or particular previous use; or
- (b) make a false or misleading representation that services are of a particular standard, quality, value or grade; or
 - (c) make a false or misleading representation that goods are new; or
 - (d) make a false or misleading representation that a particular person has agreed to acquire goods or services; or
 - (e) make a false or misleading representation that purports to be a testimonial by any person relating to goods or services; or
 - (f) make a false or misleading representation concerning:
 - (i) a testimonial by any person; or
 - (ii) a representation that purports to be such a testimonial; relating to goods or services; or
 - (g) make a false or misleading representation that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits; or
 - (h) make a false or misleading representation that the person making the representation has a sponsorship, approval or affiliation; or
 - (i) make a false or misleading representation with respect to the price of goods or services; or
 - (j) make a false or misleading representation concerning the availability of facilities for the repair of goods or

- (k)對有關的商標的原產地為虛偽或誤導性陳述；
- (l)對有關的任何商品或服務的需求為虛偽或誤導性陳述；
- (m)對保證，擔保，權利或補救措施（包括3-2部分第1分部下的保證）存在、排除或任何條件的影響為虛偽或誤導性陳述；
- (n)對有關請求支付的契約權利，為虛偽或誤導性陳述：
 - (i)全部或部分相當於任何條件，擔保，保證，權利或補救措施（包括3-2部1分部下的保證）；
 - (ii)基於政治實體，國家或地區（一個不成文的法律以外的）的法律。

註1：一個罰款可能違反本款規定。

註2：有關貨物原產地的國家的申述的規則，見第二部分5-3。

- (2)基於提起第(1)訴訟之目的，其以第(1)(e)(f)為由者，其陳述需有誤導之事實，除非援引與此相反之證據。
- (3)為免生疑義，第二項不得有：
 - (a)僅僅因為是援引，在缺乏相反證據下而主張誤導效果；或

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

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

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

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

(b)向任何人表示證明配售之陳述並非誤導的效果。

30 有關出售土地等虛偽或誤導陳述

(1)任何人不得在貿易或商業，出售或授予或可能出售或授予土地權益，或任何出售或授予利益的手段促銷土地：

(a)對陳述人表示，有贊助，認可或隸屬關係為虛偽或誤導性陳述；

(b)關於土地權益的性質為虛偽或誤導性陳述；

(c)有關土地支付的價格，為虛偽或誤導性陳述；

(d)有關土地的位置，為虛偽或誤導性陳述；

(e)有關土地的特點，為虛偽或誤導性陳述；

(f)關於該土地的使用合法，為虛偽或誤導性陳述；

(g)有關的存在或與土地相關設施的可用性，為虛偽或誤導性陳述。

註：罰款可能違反本款規定。

misleading; or

- (b) have the effect of placing on any person an onus of proving that the representation is not misleading.

30 False or misleading representations about sale etc. of land

- (1) A person must not, in trade or commerce, in connection with the sale or grant, or the possible sale or grant, of an interest in land or in connection with the promotion by any means of the sale or grant of an interest in land:
 - (a) make a false or misleading representation that the person making the representation has a sponsorship, approval or affiliation; or
 - (b) make a false or misleading representation concerning the nature of the interest in the land; or
 - (c) make a false or misleading representation concerning the price payable for the land; or
 - (d) make a false or misleading representation concerning the location of the land; or
 - (e) make a false or misleading representation concerning the characteristics of the land; or
 - (f) make a false or misleading representation concerning the use to which the land is capable of being put or may lawfully be put; or
 - (g) make a false or misleading representation concerning the existence or availability of facilities associated with the land.

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

- (2)本條並不影響第2-1部分的其他任何條文或本部分關於供應或收購規定之適用，或可能供應或收購的土地權益等規定之適用。

31 與僱用相關的誤導

在提供或可能由他人提供之有關就業上，任何人在以下情形不得誤導尋求僱用之人承擔責任：

(a)工作之獲得、性質、條款或條件；

(b)任何相關僱用之其他事項。

註：罰金可能會視為違反本條規定。

32 提供回扣，贈品，獎品等

- (1)任何人不得在貿易或商業，提供任何無意提供，或不提供與下列相關之回扣，饋贈，獎金或其他免費項目：

(a)提供或可能提供商品或服務；

(b)推廣任何商品或服務的供應或使用的手段；

(c)出售或轉讓或可能出售或轉讓土地權益；

(d)促銷任何出售或轉讓土地權益的手段。

註：罰款可能視為違反本款規定。

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

31 Misleading conduct relating to employment

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

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

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

32 Offering rebates, gifts, prizes etc.

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

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

Note: A pecuniary penalty may be imposed for a

(2)若有人提供與下列相關之任何回扣，禮品，獎品或其他免費項目：

- (a)提供或可能提供商品或服務；
- (b)促銷任何商品或服務或使用之手段；

- (c)出售或轉讓或可能出售或轉讓土地權益；

- (d)任何促銷出售或轉讓土地權益的手段；

必須於作出要約後的合理期限內（若無此類指定之期限）指定的時間內，提供回扣，饋贈，按照提供獎金或其他免費項目。

註：罰款可能視為違反本款規定。

(3)第(2)不適用於：

(a)無法履行提供回扣，禮品，獎品或其他免費項目，是因為他人，控制之外的其他原因之行為或過失；

(b)該人已採取合理的預防措施，並已盡力避免無法履行。

(4)第(2)項不適用要約人對他人之要約，若：

(a)要約人提供他人不同的回扣，禮品，獎品或其他免費項目作為替代；

contravention of this subsection.

(2) If a person offers any rebate, gift, prize or other free item in connection with:

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

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

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

(3) Subsection (2) does not apply if:

- (a) the person's failure to provide the rebate, gift, prize or other free item in accordance with the offer was due to the act or omission of another person, or to some other cause beyond the person's control; and
- (b) the person took reasonable precautions and exercised due diligence to avoid the failure.

(4) Subsection (2) does not apply to an offer that the person makes to another person if:

- (a) the person offers to the other person a different rebate, gift, prize or other free item as a replacement; and

(b)他人同意接受不同的回扣，禮品，獎品或其他免費項目。

(5)本條並不影響任何其他條文的第2-1部分或提供或收購，或可能提供或收購的土地權益規定之適用。

33 商品的性質等誤導行為

任何人不得於貿易或商業上，對於商品之性質、特色，商品的適用目的及數量誤導公眾。

註：罰款可能會視為違反本條規定。

34 服務的性質等誤導

任何人不得在貿易或商業，對於服務之性質、特色，商品的適用目的及數量誤導公眾。

註：罰款可能會視為違反本條規定。

35 誘餌廣告

(1)任何人不得在貿易或商業，廣告以特定價格提供商品或服務，若

(a)有合理理由相信該時期無法提供該價格或數量之商品服務，係因：

(b) the other person agrees to receive the different rebate, gift, prize or other free item.

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

33 Misleading conduct as to the nature etc. of goods

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

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

34 Misleading conduct as to the nature etc. of services

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

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

35 Bait advertising

(1) A person must not, in trade or commerce, advertise goods or services for supply at a specified price if:

(a) there are reasonable grounds for believing that the person will not be able to offer for supply those goods or services at that price for a period that is, and in quantities that are, reasonable, having regard to:

(i)市場運作商業之特性；

(ii)廣告之性質；

(b)明知有上述情形之理由。

註：罰款可能視為違反本款規定。

(2)任何人於貿易或商業，若有何考慮以下情形，而廣告指定商品或服務之價格，則必須於特定時期以該價格提供該數量之商品或服務：

(a)市場運作商業之特性；

(b)廣告之性質；

註：罰款可能違反本項規定。

36 錯收付款

(1)若於接受付款時，並無意提供的商品或服務，不得於貿易或商業，接受商品或服務的付款或其他報酬。

註：罰款可能違反本項規定。

(2)如果在接受付款時，意圖以不同商品或服務替代，不得於貿易或商業，接受付款的商品或服務或其他報酬。

- (i) the nature of the market in which the person carries on business; and
 - (ii) the nature of the advertisement; and
- (b) the person is aware or ought reasonably to be aware of those grounds.

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

- (2) A person who, in trade or commerce, advertises goods or services for supply at a specified price must offer such goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to:
- (a) the nature of the market in which the person carries on business; and
 - (b) the nature of the advertisement.

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

36 Wrongly accepting payment

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

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

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

(3)如果在接受付款時，有以下情形，不得於貿易或商業，接受商品或服務之付款或其他報酬：

(a)有合理理由相信無法提供的商品或服務：

(i)在指定期限內，於接受付款或其他報酬前；

(ii)未指定期限或合理期日前；

(b)明知或合理情形下應知前述理由。

註：罰款可能違反本款規定。

(4)在貿易或商業，接受的商品或服務的付款或其他報酬，必須提供所有的商品或服務：

(a)指定的期限或接受付款前；

(b)未指定期限或合理期日前；

in respect of which the payment or other consideration is accepted.

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

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

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

- (4) A person who, in trade or commerce, accepts payment or other consideration for goods or services must supply all the goods or services:
- (a) within the period specified by or on behalf of the person at or before the time the payment or other consideration was accepted; or
 - (b) if no period is specified at or before that time—within a reasonable time.

註：罰款可能違反本款規定。

(5)第(4)不適用於：

(a)期限內未能提供所有的商品或服務，或在合理時間內，由於他人的行為或過失，或其他無法控制之原因；

(b)已採取合理的預防措施，並已善盡努力避免無法履行。

(6)第(4)不適用於：

(a)提供顧客不同的商品或服務作為替代原本提供之商品或服務；

(b)顧客同意接受不同的商品或服務。

(7)無論接受商品或服務的付款或其他報酬，係全額或半額付款，均適用於第(1)、(2)、(3)及(4)。

37 對某些商業活動的誤導性陳述

(1)任何人不得在貿易或商業，為以下表示：

(a)提供虛偽或誤導的資訊；

(b)於從個人居住地進行宣稱個人得於商業活動的獲利能力、風險或實質利益之程度或範圍。

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

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

37 Misleading representations about certain business activities

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

註：罰款可能違反本款規定。

(2)任何人不得在貿易或商業表示：

(a)虛偽或誤導的資訊；

(b)獲利能力，風險或任何商業活動的任何其他實質利益：

(i)邀請（無論是通過廣告或其他方式）從事或參與，或提供或適用於從事或參與的機會；

(ii)需仰賴其他人勞務之履行或他人投資之結果。

註：罰款可能違反本款規定。

38 本節規定對於資訊提供者的適用

(1)29，30，33，34和37不適用資訊提供者公開的出版物，若：

(a)在任何情形 - 資訊提供者例行之商業出版物；

(b)若資訊提供者為澳大利亞廣播公司，特別廣播服務公司或依「1992年廣播服務法」取得執照人 - 出版為資訊提供者以電台或電視台播出方式公開。

place of residence.

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

(2) A person must not, in trade or commerce, make a representation that:

(a) is false or misleading in a material particular; and

(b) concerns the profitability, risk or any other material aspect of any business activity:

(i) that the person invites (whether by advertisement or otherwise) other persons to engage or participate in, or to offer or apply to engage or participate in; and

(ii) that requires the performance of work by other persons, or the investment of money by other persons and the performance by them of work associated with the investment.

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

38 Application of provisions of this Division to information providers

(1) Sections 29, 30, 33, 34 and 37 do not apply to a publication of matter by an information provider if:

(a) in any case—the information provider made the publication in the course of carrying on a business of providing information; or

(b) if the information provider is the Australian Broadcasting Corporation, the Special Broadcasting Service Corporation or the holder of a licence granted

- (2)第(1)項不適用於廣告的公佈。
- (3)第(1)項不適用於供應或可能供應，或以任何方式促銷商品或服務的使用（宣傳的商品或服務），若：
- (a)宣傳的商品或服務為資訊提供者以前所提供之商品或服務，或，若資訊提供者為法人團體或與資訊提供者有關係之合作的法人團體。
 - (b)出版物被安排或理解為代表契約或之後成為契約之內容，並提供與宣傳之商品或服務相同之內容；
 - (c)出版物被安排或理解為代表契約或之後成為契約之內容，並由法人團體或與資訊提供者有關係之合作的法人團體提供與宣傳之商品或服務相同之內容。
- (4)第(1)項規定不適用於販售或保證或可能涉及販售或保證，或推廣任何土地或權益的（公示土地權益）的販售或保證，若：

under the Broadcasting Services Act 1992—the publication was by way of a radio or television broadcast by the information provider.

- (2) Subsection (1) does not apply to a publication of an advertisement.
- (3) Subsection (1) does not apply to a publication of matter in connection with the supply or possible supply of, or the promotion by any means of the supply or use of, goods or services (the publicised goods or services), if:
 - (a) the publicised goods or services were goods or services of a kind supplied by the information provider or, if the information provider is a body corporate, by a body corporate that is related to the information provider; or
 - (b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who supplies goods or services of the same kind as the publicised goods or services; or
 - (c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that supplies goods or services of the same kind as the publicised goods or services.
- (4) Subsection (1) does not apply to a publication of matter in connection with the sale or grant, or possible sale or grant, of, or the promotion by any means of the sale or grant of, interests in land (the publicised interests in land), if:

- (a) 宣傳出售或保證土地的利益，若資訊提供係由與資訊提供者有關之法人團體；

- (b) 出版物被安排或理解為代表契約或之後成為契約之內容，並提供與宣傳之內容相符之土地出售或保證利益；

- (c) 出版物被安排或理解為代表契約或之後成為契約之內容，並由法人團體或與資訊提供者有關係之合作的法人團體提供與宣傳內容相符之土地出售或保證利益。

第二分部 未經邀約之供應

39 未經要約的卡片等

- (1) 任何人不得發送信用卡或簽帳卡，或可具信用卡和簽帳卡功能之物件予他人，除非：
 - (a) 基於使用卡片之目的，向有責任簽署卡片之人為書面要求發出卡片或卡或物件；

 - (b) 在續期或更換，或代替：
 - (i) 係基於使用卡片之目的，向有責任簽署卡片之人為依先前發送卡片之書面請求，發送相同種類的卡片或物件；或

- (a) the publicised interests in land were interests of a kind sold or granted by the information provider or, if the information provider is a body corporate, by a body corporate that is related to the information provider; or
- (b) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a person who sells or grants interests of the same kind as the publicised interests in land; or
- (c) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with, a body corporate that is related to a body corporate that sells or grants interests of the same kind as the publicised interests in land.

Division 2—Unsolicited supplies

39 Unsolicited cards etc.

- (1) A person must not send a credit card or a debit card, or an article that may be used as a credit card and a debit card, to another person except:
 - (a) pursuant to a written request by the person who will be under a liability to the person who issued the card or article in respect of the use of the card or article; or
 - (b) in renewal or replacement of, or in substitution for:
 - (i) a card or article of the same kind previously sent to the other person pursuant to a written request by the person who was under a liability, to the

(ii)與先前寄送予他人並被使用之相同種類的卡片或物件。

註：罰款可能違反本項規定。

- (2)除非該卡或物件是由代表簽署之人發出，否則不適用第(1)。
- (3)除了依書面請求，任何人不得使他人信用卡作為簽帳卡使用。

註：罰款可能違反本款規定。

- (4)除了依書面請求，任何人不得使簽帳卡作為信用卡使用。

註：罰款可能違反本項規定。

- (5)信用卡為具有以下特性之物：
 - (a)通稱信用卡的物；
 - (b)類似以借貸方式獲得現金，貨物或服務的使用之物；
 - (c)發行並用於一般商業提供給客戶或預期客戶，以信

person who issued the card previously so sent, in respect of the use of that card; or

- (ii) a card or article of the same kind previously sent to the other person and used for a purpose for which it was intended to be used.

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

- (2) Subsection (1) does not apply unless the card or article is sent by or on behalf of the person who issued it.
- (3) A person must not take any action that enables another person who has a credit card to use the card as a debit card, except in accordance with the other person's written request.

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

- (4) A person must not take any action that enables another person who has a debit card to use the card as a credit card, except in accordance with the other person's written request.

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

- (5) A credit card is an article that is one or more of the following:
 - (a) an article of a kind commonly known as a credit card;
 - (b) a similar article intended for use in obtaining cash, goods or services on credit;
 - (c) an article of a kind that persons carrying on business

貸方式使用，並獲得商品或服務；

且包含得使用作為(a)(b)(c)之物件。

(6)簽帳卡係：

(a)以使用他人之提領或存入現金之帳戶以獲得商品或服務之用途；

(b)可能用來作為(a)用途之物。

40 對未經邀約商品或服務的支付得主張之權利

(1)任何人不得於貿易或商業，主張要求未經邀約之商品的人付款的權利，除非有理由確信有請求付款的權利。

註：罰款可能違反本項規定。

(2)任何人不得於貿易或商業，主張要求未經邀約之服務的人付款的權利，除非有理由確信有請求付款的權利。

註：罰款可能違反本項規定。

(3)任何人不得於貿易或商業，發送下列內容之發票或其他文件予他人：

commonly issue to their customers, or prospective customers, for use in obtaining goods or services from those persons on credit;

and includes an article that may be used as an article referred to in paragraph (a), (b) or (c).

(6) A debit card is:

(a) an article intended for use by a person in obtaining access to an account that is held by the person for the purpose of withdrawing or depositing cash or obtaining goods or services; or

(b) an article that may be used as an article referred to in paragraph (a).

40 Assertion of right to payment for unsolicited goods or services

(1) A person must not, in trade or commerce, assert a right to payment from another person for unsolicited goods unless the person has reasonable cause to believe that there is a right to the payment.

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

(2) A person must not, in trade or commerce, assert a right to payment from another person for unsolicited services unless the person has reasonable cause to believe that there is a right to the payment.

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

(3) A person must not, in trade or commerce, send to another person an invoice or other document that:

(a)說明因提供未經邀約的商品或服務的付款金額，或收取之費用；

(b)未包含符合法規的要求之警告聲明；

除非有合理理由確信有支付或收取的權利。

註：罰款可能違反本項規定。

(4)在違反本條的訴訟，當事人承擔舉證責任，證明該人有合理理由相信，有以支付或收取的權利。

41 對未經邀約之商品的收受人之責任

(1)若於貿易或商業，提供他人未經邀約之商品，他人：

(a)不承擔給付貨款之責任；

(b)對於商品之滅失或損壞，及他人的故意和非法的行為，對商品造成的損失或損害不負承擔責任。

(2)若於貿易或商業，寄送未經邀約的商品：

(a)發件人或任何人不得以回復原狀期間結束而採取行動，請求回復原狀；

(a) states the amount of a payment, or sets out the charge, for supplying unsolicited goods or unsolicited services; and

(b) does not contain a warning statement that complies with the requirements set out in the regulations; unless the person has reasonable cause to believe that there is a right to the payment or charge.

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

(4) In a proceeding against a person in relation to a contravention of this section, the person bears the onus of proving that the person had reasonable cause to believe that there was a right to the payment or charge.

41 Liability etc. of recipient for unsolicited goods

(1) If a person, in trade or commerce, supplies unsolicited goods to another person, the other person:

(a) is not liable to make any payment for the goods; and

(b) is not liable for loss of or damage to the goods, other than loss or damage resulting from the other person doing a wilful and unlawful act in relation to the goods during the recovery period.

(2) If a person sends, in trade or commerce, unsolicited goods to another person:

(a) neither the sender nor any person claiming under the sender is entitled, after the end of the recovery period, to take action for the recovery of the goods from the other person; and

- (b) 回復原狀期間結束時，本節規定生效，該商品將成為他人財產而無須給付費用成為商品，而解除留置權及費用。
- (3) 若發送未經邀約之商品，有以下情形時，不適用第(2)項之規定：
 - (a) 該人在回復原狀期間之任何時間，無合理理由拒絕同意發送者或商品所有人佔有該商品；
 - (b) 發件人或貨主在回復原狀期間內佔有該商品；
 - (c) 商品收受人在明知或可得而知的情況，該商品並非為其提供。
- (4) 回復原狀期間下列情形視為到期：
 - (a) 收受日次日起算為期 3個月；
 - (b) 若收到未經邀約商品之人依據第(5)項向供應商或發件人為通知-則自通知後一個月到期。
- (5) 根據第(4)(b)之通知：
 - (a) 必須以書面形式；

- (b) at the end of the recovery period, the goods become, by force of this section, the property of the other person freed and discharged from all liens and charges of any description.
- (3) However, subsection (2) does not apply to or in relation to unsolicited goods sent to a person if:
 - (a) the person has, at any time during the recovery period, unreasonably refused to permit the sender or the owner of the goods to take possession of the goods; or
 - (b) the sender or the owner of the goods has within the recovery period taken possession of the goods; or
 - (c) the goods were received by the person in circumstances in which the person knew, or might reasonably be expected to have known, that the goods were not intended for him or her.
- (4) The recovery period is whichever of the following periods ends first:
 - (a) the period of 3 months starting on the day after the day on which the person received the goods;
 - (b) if the person who receives the unsolicited goods gives notice with respect to the goods to the supplier or sender in accordance with subsection (5)—the period of one month starting on the day after the day on which the notice is given.
- (5) A notice under subsection (4)(b):
 - (a) must be in writing; and

(b)必須敘明收受收到貨物的名稱和地址；

(c)若非該收受人之地址，必須敘明貨物存放之地址；

(d)必須聲明商品係未經邀約之商品。

42 收件人對未經邀約的服務之責任

於貿易或商業，對於提供他人未經邀約之服務，他人：

(a)不承擔任何付款責任；

(b)不對服務的損失或損害承擔責任。

43 對未經授權的訂單或廣告主張付款的權利

(1)任何人不得就對發出下列之訂單或廣告向第三人主張付款之權利：

(a)與他人相關；

(b)他人的專業，商業，貿易或職業；

除非明知或有合理理由相信，他人授權發出訂單或廣告。

註：罰款可能違反本項規定。

- (b) must state the name and address of the person who received the goods; and
- (c) must state the address at which possession may be taken of the goods, if it is not the address of the person; and
- (d) must contain a statement to the effect that the goods are unsolicited goods.

42 Liability of recipient for unsolicited services

If a person, in trade or commerce, supplies unsolicited services to another person, the other person:

- (a) is not liable to make any payment for the services; and
- (b) is not liable for loss or damage as a result of the supply of the services.

43 Assertion of right to payment for unauthorised entries or advertisements

(1) A person must not assert a right to payment from another person of a charge for placing, in a publication, an entry or advertisement relating to:

- (a) the other person; or
- (b) the other person's profession, business, trade or occupation;

unless the person knows, or has reasonable cause to believe, that the other person authorised the placing of the entry or advertisement.

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

(2)任何人不得寄送下列發票或其他文件給他人：

(a)敘明與下列相關之付款金額、費用或發出訂單或廣告：

- (i)他人的費用；
- (ii)他人的專業，商業，貿易或職業所生之費用；

(b) 未包含符合法規的要求之警告聲明；

除非明知或有合理理由相信，其他人授權發出訂單或廣告。

註：罰款可能違反本項規定。

(3)第(1)和(2)不適用於以下出版物之訂單或廣告：

(a)由特定法人依規定最近期稽核確認，統計發行人量超過每週 10,000份的流通出版物；

(b)法人團體有關的出版商；

(c)國家，省或地區，或者，由國家或地區所授權；

(d)規範所指定之個人。

- (2) A person must not send to another person an invoice or other document that:
- (a) states the amount of a payment, or sets out the charge, for placing, in a publication, an entry or advertisement relating to:
 - (i) the other person; or
 - (ii) the other person's profession, business, trade or occupation; and
 - (b) does not contain a warning statement that complies with the requirements set out in the regulations; unless the person knows, or has reasonable cause to believe, that the other person authorised the placing of the entry or advertisement.

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

- (3) Subsections (1) and (2) do not apply to an entry or advertisement that is placed in a publication published by a person who is:
- (a) the publisher of a publication that has an audited circulation of 10,000 copies or more per week, as confirmed by the most recent audit of the publication by a body specified in the regulations; or
 - (b) a body corporate related to such a publisher; or
 - (c) the Commonwealth, a State or a Territory, or an authority of the Commonwealth, a State or a Territory; or
 - (d) a person specified in the regulations.

(4)一個人：他人

(a)不負擔向他人支付任何費用之責任；

(b)得透過訴訟向他人收回付款；

除非授權發出訂單或廣告，方得對訂單或廣告負責配售收取全部或部分費用。

(5)任何人不得以本條之目的授權發送訂單或廣告，除非有以下情形：

(a)有權限之人或被授權之人已簽署授權發送訂單或廣告之文件；

(b)主張在該檔的副本於發送訂單或廣告已提供予該人；

(c)該文件規定：

(i) 訂單或廣告主之名稱與地址；

(ii) 訂單或廣告的詳細內容；

(iii) 發出訂單或廣告中的收費金額，或費用計算基礎。

(6)在違反本條的訴訟，當事人承擔舉證責任，證明該人有合理理由相信，有取得發送訂單或廣告之授權。

- (4) A person:
- (a) is not liable to make any payment to another person; and
 - (b) is entitled to recover by action in a court against another person any payment made by the person to the other person;
- in full or part satisfaction of a charge for placing, in a publication, an entry or advertisement, unless the person authorised the placing of the entry or advertisement.
- (5) A person is not taken for the purposes of this section to have authorised the placing of the entry or advertisement, unless:
- (a) a document authorising the placing of the entry or advertisement has been signed by the person or by another person authorised by him or her; and
 - (b) a copy of the document has been given to the person before the right to payment of a charge for the placing of the entry or advertisement is asserted; and
 - (c) the document specifies:
 - (i) the name and address of the person publishing the entry or advertisement; and
 - (ii) particulars of the entry or advertisement; and
 - (iii) the amount of the charge for the placing of the entry or advertisement, or the basis on which the charge is, or is to be, calculated.
- (6) In a proceeding against a person in relation to a contravention of this section, the person bears the onus of

第三分部- 多層次傳銷

44 參與傳銷

(1) 任何人不得參與傳銷。

註：罰款可能違反本項規定。

(2) 任何人不得引誘，或企圖引誘他人參加傳銷。

註：罰款可能違反本項規定。

(3) 參與傳銷係指：

(a) 建立或推廣傳銷（不論單獨或與他人一起）；或

(b) 採取以任何身份（不論是否以受僱人或代理人身份建立或推廣傳銷，或其他為部分參與傳銷之人）參與傳銷之一部分。

45 多層次傳銷的含義

(1) 多層次傳銷具有以下特點：

(a) 參與傳銷，部分或全部的新參與者給其他參與人（參與金）：

proving that the person knew or had reasonable cause to believe that the person against whom a right to payment was asserted had authorised the placing of the entry or advertisement.

Division 3—Pyramid schemes

44 Participation in pyramid schemes

- (1) A person must not participate in a pyramid scheme.

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

- (2) A person must not induce, or attempt to induce, another person to participate in a pyramid scheme.

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

- (3) To participate in a pyramid scheme is:

- (a) to establish or promote the scheme (whether alone or together with another person); or
- (b) to take part in the scheme in any capacity (whether or not as an employee or agent of a person who establishes or promotes the scheme, or who otherwise takes part in the scheme).

45 Meaning of pyramid scheme

- (1) A pyramid scheme is a scheme with both of the following characteristics:

- (a) to take part in the scheme, some or all new participants must provide, to another participant or participants in the scheme, either of the following (a

- (i) 金錢或非金錢之利益，或給其他參與者或參與者利益；
 - (ii) 部分金融或非金融的利益，或給其他參與者或參與者其他利益，或其他人士的利益；
- (b) 參與款項是完全或在相當程度上用於吸引新的參與者，進一步以提供下列（招募報償）吸引新的參與者加入傳銷：
- (i) 金錢或非金錢的利益，或給予新參與者利益；
 - (ii) 部分金錢或非金錢的利益，或給予新的參與者部分利益。
- (2) 新的參與者包括已申請，或者已被邀請參與傳銷之人。
- (3) 有以下情形時可能構成多層次傳銷：
- (a) 給予新參與者招募報償權利的期待；
 - (b) 支付招募報償給新參與者；
 - (c) 製作相關介紹以進一步吸引新參與者加入傳銷。
- (4) 即使有任一或所有以下特點，仍可能構成多層次傳銷：

- participation payment):
- (i) a financial or non-financial benefit to, or for the benefit of, the other participant or participants;
 - (ii) a financial or non-financial benefit partly to, or for the benefit of, the other participant or participants and partly to, or for the benefit of, other persons;
- (b) the participation payments are entirely or substantially induced by the prospect held out to new participants that they will be entitled, in relation to the introduction to the scheme of further new participants, to be provided with either of the following (a recruitment payment):
- (i) a financial or non-financial benefit to, or for the benefit of, new participants;
 - (ii) a financial or non-financial benefit partly to, or for the benefit of, new participants and partly to, or for the benefit of, other persons.
- (2) A new participant includes a person who has applied, or been invited, to participate in the scheme.
- (3) A scheme may be a pyramid scheme:
- (a) no matter who holds out to new participants the prospect of entitlement to recruitment payments; and
 - (b) no matter who is to make recruitment payments to new participants; and
 - (c) no matter who is to make introductions to the scheme of further new participants.
- (4) A scheme may be a pyramid scheme even if it has any or

- (a)可能（或必須）後作出的新參與者開始參加傳銷後，方可取得參與報償；
- (b)參與報償並非唯一參與傳銷之要件；
- (c)招募報償權利的前景未提供任何新參與者法律上得執行的權利；
- (d)該傳銷的安排未以書面方式記錄（無論是全部或部分）；
- (e)該傳銷涉及的商品或服務（或兩者）的行銷。

46 多層次傳銷的行銷手段

- (1)未達本附錄之目的，判斷涉及的商品或服務（或兩者）的行銷是否屬多層次傳銷，法院必須就下列對於以傳銷之參與報償之願景是否有完全或在相當程度上引新參與者加入以獲得招募報償：

- (a)是否參與者報償與被供應傳銷的商品或服務的價值間具有合理的關連性（評估若同類商品或提供的服務在其他地方的價格，如果合適，合理的關係）服務的價值；

all of the following characteristics:

- (a) the participation payments may (or must) be made after the new participants begin to take part in the scheme;
- (b) making a participation payment is not the only requirement for taking part in the scheme;
- (c) the holding out of the prospect of entitlement to recruitment payments does not give any new participant a legally enforceable right;
- (d) arrangements for the scheme are not recorded in writing (whether entirely or partly);
- (e) the scheme involves the marketing of goods or services (or both).

46 Marketing schemes as pyramid schemes

(1) To decide, for the purpose of this Schedule, whether a scheme that involves the marketing of goods or services (or both) is a pyramid scheme, a court must have regard to the following matters in working out whether participation payments under the scheme are entirely or substantially induced by the prospect held out to new participants of entitlement to recruitment payments:

- (a) whether the participation payments bear a reasonable relationship to the value of the goods or services that participants are entitled to be supplied with under the scheme (as assessed, if appropriate, by reference to the price of comparable goods or services available elsewhere);

(b)與給予他們應有的權利招聘付款的重視相比，應更重視供應傳銷參與者商品或服務的權利。

(2)第(1)未限制法院可能審酌是否參與報償的前景全部或部分，有吸引新的參與者之其他事項。

第四分部 訂價

47 多種訂價

(1)任何人不得在貿易或商業供應商品時，有以下行為：

(a)貨物有多個顯示的價格；

(b)供給的價格是並非較低或最低的价格顯示。

註：罰款可能違反本項規定。

(2)商品展示價格係商品的價格，或任何可合理推斷為代表貨物的價格：

(a)附或貼，或書寫，印刷，蓋章或位於，或以任何覆蓋物，標籤，捲筒或其他物件與商品連結；

(b)使用於連結商品或任何顯示商品供應之物件；

- (b) the emphasis given in the promotion of the scheme to the entitlement of participants to the supply of goods or services by comparison with the emphasis given to their entitlement to recruitment payments.
- (2) Subsection (1) does not limit the matters to which the court may have regard in working out whether participation payments are entirely or substantially induced by the prospect held out to new participants of entitlement to recruitment payments.

Division 4—Pricing

47 Multiple pricing

- (1) A person must not, in trade or commerce, supply goods if:
 - (a) the goods have more than one displayed price; and
 - (b) the supply takes place for a price that is not the lower, or lowest, of the displayed prices.

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

- (2) A displayed price for goods is a price for the goods, or any representation that may reasonably be inferred to be a representation of a price for the goods:
 - (a) that is annexed or affixed to, or is written, printed, stamped or located on, or otherwise applied to, the goods or any covering, label, reel or thing used in connection with the goods; or
 - (b) that is used in connection with the goods or anything on which the goods are mounted for display or

(c)用以確認任何有關貨品或編碼；

(d)刊登有關於公開之目錄：

(i)目錄指定之時間，該時間之後將不會再以該價格出售商品，且該時限尚未過期；

(ii)在任何其他情況下 - 該目錄得被合理認為尚未過期；

(e)由其他方式之表示，得合理地推定，該價格或該表示適用於該商品；

並包括該價格或表示係被其他書寫方式、蓋章或遮蓋於原價格而部分隱匿之情形。

(3)倘若：

(a)價格或陳述中係包含於目錄；且

(b)目錄表示只適用於指定的地點或區域所提供的貨物；

為達第(2)之目的所採取的價格或表示，並非用於不同地點或地區的商品供應，而是視情況而定。

exposed for supply; or

(c) that is determined on the basis of anything encoded on or in relation to the goods; or

(d) that is published in relation to the goods in a catalogue available to the public if:

(i) a time is specified in the catalogue as the time after which the goods will not be sold at that price and that time has not passed; or

(ii) in any other case—the catalogue may reasonably be regarded as not out-of-date; or

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

and includes such a price or representation that is partly obscured by another such price or representation that is written, stamped or located partly over that price or representation.

(3) If:

(a) a price or representation is included in a catalogue; and

(b) the catalogue is expressed to apply only to goods supplied at a specified location, or in a specified region;

the price or representation is taken, for the purposes of subsection (2)(d), not to have been made in relation to supply of the goods at a different location, or in a different region, as the case may be.

(4) 儘管符合第(2)，但以下情形之價格或表示並非展示價格：

(a) 價格或表示被用書寫或蓋章方式全部遮蔽，寫入另外一個價格；

(b) 價格或表示：

(i) 是表示為每單位的質量，體積，長度或其他單位的措施價格；

(ii) 作為顯示商品供應價格的另一種手段。

(c) 表示澳幣以外之貨幣價格或表示；

(d) 價格或表示的方式，不可能被解釋為澳大利亞貨幣量。

(5) 儘管有第(2)，商品的展示價格，因已被公佈在目錄或廣告之展示價格得在以下情形終止其展示價格，若：

(a) 展示價格被撤銷；

(b) 以至少有一個類似的循環或產品目錄或廣告方式對公眾撤銷。

48 在特定情況下之單一指定價格

(1) 任何人不得在貿易或商業，在與：

- (4) Despite subsection (2), a price or representation is not a displayed price for goods if:
- (a) the price or representation is wholly obscured by another such price or representation that is written, stamped or located wholly over that price or representation; or
 - (b) the price or representation:
 - (i) is expressed as a price per unit of mass, volume, length or other unit of measure; and
 - (ii) is presented as an alternative means of expressing the price for supply of the goods that is a displayed price for the goods; or
 - (c) the price or representation is expressed as an amount in a currency other than Australian currency; or
 - (d) the price or representation is expressed in a way that is unlikely to be interpreted as an amount of Australian currency.
- (5) Despite subsection (2), a displayed price for goods that is a displayed price because it has been published in a catalogue or advertisement ceases to be a displayed price for the goods if:
- (a) the displayed price is retracted; and
 - (b) the retraction is published in a manner that has at least a similar circulation or audience as the catalogue or advertisement.

48 Single price to be specified in certain circumstances

- (1) A person must not, in trade or commerce, in connection

(a)供應，或可能供應他人為個人或家庭使用或國內消費的商品或服務；

(b)任何促銷供應給他人為個人或家庭使用或國內消費的商品或服務的手段；

除非有特定情形，得考量數量商品或服務之數量，以明顯的方式定一個數量的商品或服務之應付的單一指定價格之付款金額。

註：罰款可能違反本項規定。

(2)任何人不得要求在商品的單一價格中包含供應商寄送商品給他人之費用。

(3)但若：

(a)單一價格並未算入供應商發送商品給他人所支付的費用；以及

(b)明知於所指示之時間，他人因被寄送商品而需支付之最少費用；

with:

- (a) the supply, or possible supply, to another person of goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption; or
- (b) the promotion by any means of the supply to another person, or of the use by another person, of goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption;

make a representation with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services unless the person also specifies, in a prominent way and as a single figure, the single price for the goods or services.

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

- (2) A person is not required to include, in the single price for goods, a charge that is payable in relation to sending the goods from the supplier to the other person.
- (3) However, if:
 - (a) the person does not include in the single price a charge that is payable in relation to sending the goods from the supplier to the other person; and
 - (b) the person knows, at the time of the representation, the minimum amount of a charge in relation to sending the goods from the supplier to the other person that must be paid by the other person;

任何人不得援引第(1)的規定，除非該人也指定最低金額。

註：罰款可能違反本項規定。

- (4)若該表示係由法人團體所為，則不適用第(1)。
- (5)為達第(1)項之目的，除非考量單一價格以明顯為部分供應，否則不應以明顯方式指定商品或服務單一價格。
- (6)若契約提供的服務有以下情形，不適用第(5)之規定：
- (a)契約規定提供服務係於契約期限供應；
 - (b)契約規定，在契約有效期間內提供定期服務給付；
 - (c)若契約規定提供商品 - 與商品直接相關的服務供應。
- (7)單一的價格是在商品或服務供應，最低量化供應的考量，包括以下金額（如有），而於當時得為量化考慮：
- (a)他人支付任何種類的應付費（一個是在他人的選

the person must not make the representation referred to in subsection (1) unless the person also specifies that minimum amount.

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

- (4) Subsection (1) does not apply if the representation is made exclusively to a body corporate.
- (5) For the purposes of subsection (1), the person is taken not to have specified a single price for the goods or services in a prominent way unless the single price is at least as prominent as the most prominent of the parts of the consideration for the supply.
- (6) Subsection (5) does not apply in relation to services to be supplied under a contract if:
 - (a) the contract provides for the supply of the services for the term of the contract; and
 - (b) the contract provides for periodic payments for the services to be made during the term of the contract; and
 - (c) if the contract also provides for the supply of goods—the goods are directly related to the supply of the services.
- (7) The single price is the minimum quantifiable consideration for the supply of the goods or services at the time of the representation, including each of the following amounts (if any) that is quantifiable at that time:
 - (a) a charge of any description payable to the person

擇支付的費用以外）的表示；

(b)反映任何消費稅、關稅、費用、規費或與供應的相關之費用；

(c)支付或應付之任何消費稅、關稅、費用、規費或是與供應相關的任何款項：

(i)依國家，州或地區法律之協議支付的金額；

(ii)由他人支付與供應相關之消費稅，關稅，規費，費用。

例1：一個人出售一套西裝時，有支付織物保護的選項。織物保護費，並不因排除(a)段規定而為單一價格的一部分。

例2：商品及服務稅可能是一個例子 (b) 段所涵蓋的金額。

例3：根據「1978年出入境費用收取法」實施的出入境費可能是 (c) 所涵蓋的一個金額的例子。根據1978年出入境費用收取法第10條，航空公司可能會支付相同於離開澳大利亞的旅客支付之金額。

making the representation by another person (other than a charge that is payable at the option of the other person);

- (b) the amount which reflects any tax, duty, fee, levy or charge imposed on the person making the representation in relation to the supply;
- (c) any amount paid or payable by the person making the representation in relation to the supply with respect to any tax, duty, fee, levy or charge if:
 - (i) the amount is paid or payable under an agreement or arrangement made under a law of the Commonwealth, a State or a Territory; and
 - (ii) the tax, duty, fee, levy or charge would have otherwise been payable by another person in relation to the supply.

Example 1: A person advertises lounge suites for sale.

Persons have the option of paying for fabric protection. The fabric protection charge does not form part of the single price because of the exception in paragraph (a).

Example 2: The GST may be an example of an amount covered by paragraph (b).

Example 3: The passenger movement charge imposed under the Passenger Movement Charge Act 1978 may be an example of an amount covered by paragraph (c). Under an arrangement under section 10 of the Passenger Movement

第五分部 - 其他不公平的行為

49 轉介銷售

任何人不得在貿易或商業，引誘消費者購買商品或服務之意願，於消費者將收購的商品或服務契約後，以下列理由收取以下回扣，傭金或其他利益：

(a) 提供潛在客戶的名稱或姓名；

(b) 以其他方式協助提供商品或服務予消費者；

收到的回扣，傭金或其他利益，是來自於契約做成之附帶條件成就。

註：罰金可能會違反本條規定。

50 騷擾和脅迫

(1) 任何人不得為以下目的使用武力，或不當騷擾或脅迫：

(a) 供應或可能供應商品或服務；

(b) 商品或服務的支付；

(c) 出售或轉讓或可能出售或轉讓土地權益；

Charge Collection Act 1978, airlines may pay an amount equal to the charge that would otherwise be payable by passengers departing Australia.

Division 5—Other unfair practices

49 Referral selling

A person must not, in trade or commerce, induce a consumer to acquire goods or services by representing that the consumer will, after the contract for the acquisition of the goods or services is made, receive a rebate, commission or other benefit in return for:

- (a) giving the person the names of prospective customers; or
- (b) otherwise assisting the person to supply goods or services to other consumers;

if receipt of the rebate, commission or other benefit is contingent on an event occurring after that contract is made.

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

50 Harassment and coercion

(1) A person must not use physical force, or undue harassment or coercion, in connection with:

- (a) the supply or possible supply of goods or services; or
- (b) the payment for goods or services; or
- (c) the sale or grant, or the possible sale or grant, of an interest in land; or

(d) 支付土地權益。

註：罰款可能違反本項規定。

- (2) 在供應或收購的土地權益，或可能供應或收購的土地權益事項，第(1)(c)和(d)不影響任何其他2-1或本部其他條文的適用。

第三之二部分 消費者交易

第一分部 消費者的保障

細分A 關於商品的供應保證

51 保證

(1) 若（供應商）提供給消費者的商品，當所有權移轉給消費者，有保證來有權處置商品。

(2) 第(1)項不適用於意圖將商品供應移轉與其他供應商（限量供應），或可能有以下情形之他人：

(a) 出現供貨契約；

(b) 從該契約的情況下推斷。

(3) 本條不適用出租或租賃的方式供應。

52 保證不受干擾的佔有

(1) 倘若：

(d) the payment for an interest in land.

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

- (2) Subsections (1)(c) and (d) do not affect the application of any other provision of Part 2-1 or this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

Part 3-2—Consumer transactions

Division 1—Consumer guarantees

Subdivision A—Guarantees relating to the supply of goods

51 Guarantee as to title

- (1) If a person (the supplier) supplies goods to a consumer, there is a guarantee that the supplier will have a right to dispose of the property in the goods when that property is to pass to the consumer.
- (2) Subsection (1) does not apply to a supply (a supply of limited title) if an intention that the supplier of the goods should transfer only such title as the supplier, or another person, may have:
- (a) appears from the contract for the supply; or
 - (b) is to be inferred from the circumstances of that contract.
- (3) This section does not apply if the supply is a supply by way of hire or lease.

52 Guarantee as to undisturbed possession

- (1) If:

(a)任何人（供應商）提供貨物予消費者；

(b)為無限制的供應；

即有保證消費者不受干擾的佔有商品的權利。

(2)第（1）消費者的貨物不受干擾的佔有規定，不適用於得合法並有保全、或抵押權利益之人，向消費者於同意被供應前揭露的情形。

(3)若：

(a)任何人（供應商）提供商品予消費者；

(b)為有限的的供應時；

則保證，下列人士不會干擾消費者對商品的佔有：

(c)供應商；

(d)如果供貨契約的當事人有意讓供應商移轉權利與他人，-之該他人；

(e)任何透過或從供應商或其他人士為聲稱之人（並非得合法並有保全、或抵押權利益之人，向消費者於同意被供應前揭露的情形）。

(4)本條適用於租用或租賃，或一定期間之租賃或出租之方式供應。

53 未公開的證券等之保證

- (a) a person (the supplier) supplies goods to a consumer;
and
 - (b) the supply is not a supply of limited title;
there is a guarantee that the consumer has the right to
undisturbed possession of the goods.
- (2) Subsection (1) does not apply to the extent that the
consumer's undisturbed possession of the goods may be
lawfully disturbed by a person who is entitled to the benefit
of any security, charge or encumbrance disclosed to the
consumer before the consumer agreed to the supply.
- (3) If:
- (a) a person (the supplier) supplies goods to a consumer;
and
 - (b) the supply is a supply of limited title;
there is a guarantee that the following persons will not
disturb the consumer's possession of the goods:
 - (c) the supplier;
 - (d) if the parties to the contract for the supply intend that
the supplier should transfer only such title as another
person may have—that other person;
 - (e) anyone claiming through or under the supplier or that
other person (otherwise than under a security, charge
or encumbrance disclosed to the consumer before the
consumer agreed to the supply).
- (4) This section applies to a supply by way of hire or lease
only for the period of the hire or lease.

53 Guarantee as to undisclosed securities etc.

(1)若：

(a)任何人（供應商）提供商品予消費者；

(b)為有限的的供應時；

則或得以下保證：

(c)商品免除任何保全，負擔或抵押：

(i)未以書面形式，於消費者同意供應前向消費者揭露；

(ii)消費者未明示同意；以及

(d)直到商品的所有權移轉消費者，商品維持免除保全，負擔或抵押。

(2)只有在對供應商的資產為浮動抵押之原因，除非該抵押變固定和強制執行，否則供應商不得怠於遵守保證責任。

註：2009年個人財產保全法第339條，影響本條浮動抵押和固定收費之含義。

(3)若：

(a)任何人（供應商）提供商品予消費者；

(b)為有限的供應；

則保證所有供應者得知但消費者並未知悉之保全，負擔或抵押，向消費者於同意被供應前揭露。

- (1) If:
- (a) a person (the supplier) supplies goods to a consumer;
and
 - (b) the supply is not a supply of limited title;
there is a guarantee that:
 - (c) the goods are free from any security, charge or encumbrance:
 - (i) that was not disclosed to the consumer, in writing, before the consumer agreed to the supply; or
 - (ii) that was not created by or with the express consent of the consumer; and
 - (d) the goods will remain free from such a security, charge or encumbrance until the time when the property in the goods passes to the consumer.
- (2) A supplier does not fail to comply with the guarantee only because of the existence of a floating charge over the supplier's assets unless and until the charge becomes fixed and enforceable by the person to whom the charge is given.
Note: Section 339 of the Personal Property Securities Act 2009 affects the meaning of the references in this subsection to a floating charge and a fixed charge.
- (3) If:
- (a) a person (the supplier) supplies goods to a consumer;
and
 - (b) the supply is a supply of limited title;
there is a guarantee that all securities, charges or encumbrances known to the supplier, and not known to

（4）本條不適用出租或租賃的方式供應。

54 可接受的品質保證

（1）若：

（a）個人，在貿易或商業，提供商品予消費者；

（b）並非以拍賣的方式供應；

則商品具有合格之品質保證。

（2）若以下商品是視為商品品質合格的：

（a）適用於所有這類商品通常提供的目的；

（b）在外觀上和成品為合格；

（c）無缺陷；

（d）安全；及

（e）耐用；

消費者合理充分瞭解商品（包括商品的任何隱藏的缺陷）的狀態和條件，將視為接受考慮到在第（3）款的事項。

（3）為達第（2）項的目的的要件有：

（a）商品的性質；

（b）商品的價格（如果相關）；

（c）包裝或標籤上任何關於商品的聲明；

（d）任何關於商品供應商或製造商的聲明；

the consumer, were disclosed to the consumer before the consumer agreed to the supply.

- (4) This section does not apply if the supply is a supply by way of hire or lease.

54 Guarantee as to acceptable quality

(1) If:

(a) a person supplies, in trade or commerce, goods to a consumer; and

(b) the supply does not occur by way of sale by auction; there is a guarantee that the goods are of acceptable quality.

(2) Goods are of acceptable quality if they are as:

(a) fit for all the purposes for which goods of that kind are commonly supplied; and

(b) acceptable in appearance and finish; and

(c) free from defects; and

(d) safe; and

(e) durable;

as a reasonable consumer fully acquainted with the state and condition of the goods (including any hidden defects of the goods), would regard as acceptable having regard to the matters in subsection (3).

(3) The matters for the purposes of subsection (2) are:

(a) the nature of the goods; and

(b) the price of the goods (if relevant); and

(c) any statements made about the goods on any packaging or label on the goods; and

(d) any representation made about the goods by the

(e)任何其他有關商品的供應的情況。

(4)若：

(a)向消費者提供的商品品質並不合格；且

(b)唯一原因或理由是，對於不合格之商品已於消費者購買前，特別提請消費者的注意；

商品將被視為品質合格。

(5)若：

(a)商品作為出售或出租展示；且

(b)提供給消費者，商品視為品質不合格；

若這些原因在展示商品時，以公開書面通知提醒消費者的注意，被視為不具第(4)項合格商品之原因或理由。

(6)商品並不視為不合格，若：

(a)因消費者之因素導致品質不合格，或未能採取合理步驟，以避免品質不合格；

(b)非正常使用損壞。

(7)商品並非品質不合格，若：

- supplier or manufacturer of the goods; and
- (e) any other relevant circumstances relating to the supply of the goods.

(4) If:

- (a) goods supplied to a consumer are not of acceptable quality; and
- (b) the only reason or reasons why they are not of acceptable quality were specifically drawn to the consumer's attention before the consumer agreed to the supply;

the goods are taken to be of acceptable quality.

(5) If:

- (a) goods are displayed for sale or hire; and
- (b) the goods would not be of acceptable quality if they were supplied to a consumer;

the reason or reasons why they are not of acceptable quality are taken, for the purposes of subsection (4), to have been specifically drawn to a consumer's attention if those reasons were disclosed on a written notice that was displayed with the goods and that was transparent.

(6) Goods do not fail to be of acceptable quality if:

- (a) the consumer to whom they are supplied causes them to become of unacceptable quality, or fails to take reasonable steps to prevent them from becoming of unacceptable quality; and
- (b) they are damaged by abnormal use.

(7) Goods do not fail to be of acceptable quality if:

(a)在消費者同意商品供應前，消費者進行商品檢查；

(b)應顯示該批貨物經檢查合格。

55 適合任何揭露的目的等之保證

(1)若：

(a)一個人（供應商）於貿易或商業，供應消費者商品；且

(b)該供給並非以拍賣方式為之；

將會獲得合理的且適合任何揭露的目的且適用於供應商之任何目的之商品保證。

(2)揭露的目的為商品為消費者所購買之特別目的（不論該商品是否基於一般供應之目的），以及：

(a)以明示或暗示方式，使消費者知悉：

(i)供應商；

(ii)任何事先協議或安排關於商品購買事宜之人；
或

(b)消費者直接或透過供應商知悉商品製造人或在(a)
(ii)所指之人。

(3)本條不適用於，消費者未依賴，或消費者不合理依賴供

- (a) the consumer acquiring the goods examines them before the consumer agrees to the supply of the goods; and
- (b) the examination ought reasonably to have revealed that the goods were not of acceptable quality.

55 Guarantee as to fitness for any disclosed purpose etc.

(1) If:

- (a) a person (the supplier) supplies, in trade or commerce, goods to a consumer; and
- (b) the supply does not occur by way of sale by auction; there is a guarantee that the goods are reasonably fit for any disclosed purpose, and for any purpose for which the supplier represents that they are reasonably fit.

(2) A disclosed purpose is a particular purpose (whether or not that purpose is a purpose for which the goods are commonly supplied) for which the goods are being acquired by the consumer and that:

- (a) the consumer makes known, expressly or by implication, to:
 - (i) the supplier; or
 - (ii) a person by whom any prior negotiations or arrangements in relation to the acquisition of the goods were conducted or made; or
- (b) the consumer makes known to the manufacturer of the goods either directly or through the supplier or the person referred to in paragraph (a)(ii).

(3) This section does not apply if the circumstances show that

應商或第(2)(a)(ii)或製造商之技術或判斷之情形。

56 有關供應的商品說明之保證

(1)若：

(a)於貿易或商業，透過說明而提供商品給消費者；

(b)該供應並非以拍賣方式提供；
則保證將與說明相符。

(2)商品的供應並未以說明方式供應，僅因為係由消費者所挑選之供販售或租用之展示。

(3)若貨物商品說明及提供參考樣本或示範，亦適用本條與第57條的保證規定。

57 以樣本或示範模式供應商品之保證

(1)若：

(a)於貿易或商業，以提供樣品或示範模式提供商品給消費者；

(b)並非以拍賣方式供應；
則保證：

(c)商品品質之狀態或條件與樣品相符；

the consumer did not rely on, or that it was unreasonable for the consumer to rely on, the skill or judgment of the supplier, the person referred to in subsection (2)(a)(ii) or the manufacturer, as the case may be.

56 Guarantee relating to the supply of goods by description

(1) If:

(a) a person supplies, in trade or commerce, goods by description to a consumer; and

(b) the supply does not occur by way of sale by auction; there is a guarantee that the goods correspond with the description.

(2) A supply of goods is not prevented from being a supply by description only because, having been exposed for sale or hire, they are selected by the consumer.

(3) If goods are supplied by description as well as by reference to a sample or demonstration model, the guarantees in this section and in section 57 both apply.

57 Guarantees relating to the supply of goods by sample or demonstration model

(1) If:

(a) a person supplies, in trade or commerce, goods to a consumer by reference to a sample or demonstration model; and

(b) the supply does not occur by way of sale by auction; there is a guarantee that:

(c) the goods correspond with the sample or demonstration model in quality, state or condition;

(d)若商品提供參考樣品 - 消費者將有合理的機會與樣本作比較；

(e)商品無任何缺陷：

(i)未就樣品為外觀或示範為明顯合理的檢驗；且

(ii)將導致貨物不合格。

(2)如果商品以提供樣本或示範模式提供，與說明一樣，同時適用第56條和本條的保證規定。

58 保證維修和備件

(1)若：

(a)於貿易或商業，提供商品予消費者；且

(b)並未以拍賣方式供應商品；

則保證商品製造商將採取合理的措施，於商品提供後之合理的期間，以確保全部或部分商品修理之設施。

(2)當消費者同意供應貨物的時間或之前，若製造商採取了合理的措施，以確保提供消費者書面通知，不適用本條規定；

(a)部分商品修理設施，並未提供或在特定期間後不再

and

- (d) if the goods are supplied by reference to a sample—
the consumer will have a reasonable opportunity to
compare the goods with the sample; and
- (e) the goods are free from any defect that:
 - (i) would not be apparent on reasonable examination
of the sample or demonstration model; and
 - (ii) would cause the goods not to be of acceptable
quality.

- (2) If goods are supplied by reference to a sample or
demonstration model as well as by description, the
guarantees in section 56 and in this section both apply.

58 Guarantee as to repairs and spare parts

- (1) If:
 - (a) a person supplies, in trade or commerce, goods to a
consumer; and
 - (b) the supply does not occur by way of sale by auction;
there is a guarantee that the manufacturer of the goods
will take reasonable action to ensure that facilities for the
repair of the goods, and parts for the goods, are reasonably
available for a reasonable period after the goods are
supplied.
- (2) This section does not apply if the manufacturer took
reasonable action to ensure that the consumer would
be given written notice, at or before the time when the
consumer agrees to the supply of the goods, that:
 - (a) facilities for the repair of the goods would not be

提供；

(b)部分商品未提供或於指定的時間後不再提供。

59 明示擔保之保證

(1)若：

(a)於貿易或商業，提供商品予消費者；

(b)並未以拍賣方式供應商品；

則保證的商品的製造商將遵守有關商品任何明示擔保。

(2)：

(a)於貿易或商業，提供商品予消費者；

(b)並未以拍賣方式供應商品；

則保證的供應商將遵守有關商品任何明示擔保。

細分B 關於服務供應之保證

60 適當注意與技能之保證

於在貿易或商業，提供消費者服務，則有適當之注意及技能提供之服務保證。

61 適合特別目的等之保證

(1)若：

available or would not be available after a specified period; or

- (b) parts for the goods would not be available or would not be available after a specified period.

59 Guarantee as to express warranties

(1) If:

- (a) a person supplies, in trade or commerce, goods to a consumer; and

(b) the supply does not occur by way of sale by auction; there is a guarantee that the manufacturer of the goods will comply with any express warranty given or made by the manufacturer in relation to the goods.

(2) If:

- (a) a person supplies, in trade or commerce, goods to a consumer; and

(b) the supply does not occur by way of sale by auction; there is a guarantee that the supplier will comply with any express warranty given or made by the supplier in relation to the goods.

Subdivision B—Guarantees relating to the supply of services

60 Guarantee as to due care and skill

If a person supplies, in trade or commerce, services to a consumer, there is a guarantee that the services will be rendered with due care and skill.

61 Guarantees as to fitness for a particular purpose etc.

(1) If:

(a)於貿易或商業，提供服務予消費者；且；

(b)消費者以明示或暗示，使供貨商知悉消費者取得任何特定用途的服務；

則有保證適用於此目的的服務，並從服務而產生之任何產品。

(2)若：

(a)於貿易或商業，提供服務予消費者；且；

(b)消費者以明示或暗示：

(i)供應商；

(ii)任何事先協議或安排關於服務購買事宜之人；

產生消費者期待獲得服務之結果；則有對於該服務或服務所生之產品之特性、品質、說明或要件得保證有合理期待之結果。

(3)本條不適用於，消費者未依賴，或為消費者不合理依賴供應商的技能或判斷之情形。

- (a) a person (the supplier) supplies, in trade or commerce, services to a consumer; and
- (b) the consumer, expressly or by implication, makes known to the supplier any particular purpose for which the services are being acquired by the consumer;

there is a guarantee that the services, and any product resulting from the services, will be reasonably fit for that purpose.

(2) If:

- (a) a person (the supplier) supplies, in trade or commerce, services to a consumer; and
- (b) the consumer makes known, expressly or by implication, to:
 - (i) the supplier; or
 - (ii) a person by whom any prior negotiations or arrangements in relation to the acquisition of the services were conducted or made;

the result that the consumer wishes the services to achieve; there is a guarantee that the services, and any product resulting from the services, will be of such a nature, and quality, state or condition, that they might reasonably be expected to achieve that result.

(3) This section does not apply if the circumstances show that the consumer did not rely on, or that it was unreasonable for the consumer to rely on, the skill or judgment of the supplier.

(4)本條不適用於具資格之建築師或工程師提供的專業服務。

62 保證供應的合理時間

若：

(a)於貿易或商業，提供服務予消費者；

(b)於提供服務的時間內：

(i)非固定之服務供應契約；

(ii)消費者與供應商並未確定同意的方式；

該服務合理期間內獲得保證。

63 本細分項不適用之服務

本分項不適用之服務為，或為，供應商基於：

(a)基於貿易、商業或職業目的之運輸或商品倉儲業務之契約；

(b)保險契約。

細分 C 不能以契約排除之保證

64 不能以契約排除的保證

(1)契約條款（包括未列明在契約，但與另一個契約連結之條款）係為在排除，限制或修改，或有具排除，限制或

- (4) This section does not apply to a supply of services of a professional nature by a qualified architect or engineer.

62 Guarantee as to reasonable time for supply

If:

- (a) a person (the supplier) supplies, in trade or commerce, services to a consumer; and
- (b) the time within which the services are to be supplied:
 - (i) is not fixed by the contract for the supply of the services; or
 - (ii) is not to be determined in a manner agreed to by the consumer and supplier;

there is a guarantee that the services will be supplied within a reasonable time.

63 Services to which this Subdivision does not apply

This Subdivision does not apply to services that are, or are to be, supplied under:

- (a) a contract for or in relation to the transportation or storage of goods for the purposes of a business, trade, profession or occupation carried on or engaged in by the person for whom the goods are transported or stored; or
- (b) a contract of insurance.

Subdivision C—Guarantees not to be excluded etc. by contract

64 Guarantees not to be excluded etc. by contract

- (1) A term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another

修改以下之效果，無效：

(a)本分項規定之適用；

(b)行使此類規定之權利；

(c)任何人未能遵守根據本分項適用於供應商品或服務與保證之責任。

(2)契約期限條款非用以排除，限制或修改本分項規定之適用，除非該期限明示或不符合規定。

64A 未遵守保證之責任限制

(1)由他人供應，用於個人、國內、家庭使用或消費之商品之契約條款，基於第64條僅不會因為該其限制他人無法履行下列一或多個保證而無效（第51條，52或53以外之保證）：

(a)更換貨物或提供同等商品；

(b)部分商品修理；

(c)支付更換商品或購買同等商品的成本；

term of the contract) is void to the extent that the term purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying:

- (a) the application of all or any of the provisions of this Division; or
 - (b) the exercise of a right conferred by such a provision; or
 - (c) any liability of a person for a failure to comply with a guarantee that applies under this Division to a supply of goods or services.
- (2) A term of a contract is not taken, for the purposes of this section, to exclude, restrict or modify the application of a provision of this Division unless the term does so expressly or is inconsistent with the provision.

64A Limitation of liability for failures to comply with guarantees

- (1) A term of a contract for the supply by a person of goods other than goods of a kind ordinarily acquired for personal, domestic or household use or consumption is not void under section 64 merely because the term limits the person's liability for failure to comply with a guarantee (other than a guarantee under section 51, 52 or 53) to one or more of the following:
- (a) the replacement of the goods or the supply of equivalent goods;
 - (b) the repair of the goods;
 - (c) the payment of the cost of replacing the goods or of acquiring equivalent goods;

- (d) 支付商品的修理成本。
- (2) 由他人供應，用於個人、國內、家庭使用或消費之服務之契約條款，基於第64條僅不會因為該其限制他人無法履行下列一或多個保證而無效：
 - (a) 再次提供服務；
 - (b) 再次提供服務的費用的支付。
- (3) 本條不適用於建立在不公平或合理之商品供應契約條款。
- (4) 在確定第(3)契約條款之目的為公平合理，法院得審酌個案之所有情形，特別是下列事項：
 - (a) 商品或服務供應商及買方彼此間之談判地位之程度，並考量相同商品或服務供應合適之替代來源；
 - (b) 買方是否收到同意契約條款的引誘，並是否有機會獲得相同商品或服務供應，且未包含該條款之任何供應來源；

- (d) the payment of the cost of having the goods repaired.
- (2) A term of a contract for the supply by a person of services other than services of a kind ordinarily acquired for personal, domestic or household use or consumption is not void under section 64 merely because the term limits the person's liability for failure to comply with a guarantee to:
 - (a) the supplying of the services again; or
 - (b) the payment of the cost of having the services supplied again.
- (3) This section does not apply in relation to a term of a contract if the person to whom the goods or services were supplied establishes that it is not fair or reasonable for the person who supplied the goods or services to rely on that term of the contract.
- (4) In determining for the purposes of subsection (3) whether or not reliance on a term of a contract is fair or reasonable, a court is to have regard to all the circumstances of the case, and in particular to the following matters:
 - (a) the strength of the bargaining positions of the person who supplied the goods or services and the person to whom the goods or services were supplied (the buyer) relative to each other, taking into account, among other things, the availability of equivalent goods or services and suitable alternative sources of supply;
 - (b) whether the buyer received an inducement to agree to the term or, in agreeing to the term, had an opportunity of acquiring the goods or services

(c)買方是否已知或理應知悉該條款之存在與範圍（考量交易習慣及先前當事人間的交易情形）；

(d)在商品供應的情況下，貨物是否因應買方特別指定而製造，加工或改製。

細分 D 雜項

65 本分項適用於天然氣，電力和電信服務供應

(1)本分部並不適用於以下供應：

(a)規範所指定之服務類型；

(b)是天然氣，電力或電信服務之供應。

(2)電信服務是一種引導或非引導電磁能量或兩者進行通信的服務。

66 顯示通知

(1)大英國協的部長可以書面方式裁定，供應商為供應，或供應指定類型，依本分部規定，其保證應依裁定內容，以顯示方式通知以符合裁定之要求。

- or equivalent goods or services from any source of supply under a contract that did not include that term;
- (c) whether the buyer knew or ought reasonably to have known of the existence and extent of the term (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties);
 - (d) in the case of the supply of goods, whether the goods were manufactured, processed or adapted to the special order of the buyer.

Subdivision D—Miscellaneous

65 Application of this Division to supplies of gas, electricity and telecommunications

- (1) This Division does not apply to a supply if the supply:
 - (a) is a supply of a kind specified in the regulations; and
 - (b) is a supply of gas, electricity or a telecommunications service.
- (2) A telecommunications service is a service for carrying communications by means of guided or unguided electromagnetic energy or both.

66 Display notices

- (1) The Commonwealth Minister may determine, in writing, that persons (the suppliers) who make supplies, or supplies of a specified kind, to which guarantees apply under this Division are required to display, in accordance with the determination, a notice that meets the requirements of the

(2) 供應消費者之供應商，基於本分部之規定，其與裁定有關之保證，需確保通知符合裁定要求；

(a) 若消費者需要交付的商品或服務在供應商的處所⁻，則顯示該等處所；

(b) 否則 - 於消費者同意商品供應前，吸引消費者的關注。

註：罰款可能違反本項規定。

(3) 在不限第(1)項，根據該款的裁定得為以下全部或任一作為：

(a) 需要通知包括本分部和部分5-4規定的全部或任何規定適用之特定資訊；

(b) 指明該通知必須以顯示方式為之；

(c) 指定通知必須吸引消費者的注意之方式；

(d) 通知的形式要求。

67 法律衝突

若：

(a) 有關商品或服務供應契約之適當法律為澳洲法律之一部，法律對契約條款另有規定；

determination.

(2) A supplier who makes a supply to a consumer to which a guarantee applies under this Division, and to which such a determination relates, must ensure that a notice that meets those requirements is, in accordance with the determination:

- (a) if the consumer takes delivery of the goods or services at the supplier's premises—displayed at those premises; or
- (b) otherwise—drawn to the consumer's attention before the consumer agrees to the supply of the goods.

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

(3) Without limiting subsection (1), a determination under that subsection may do all or any of the following:

- (a) require the notice to include specified information about the application of all or any of the provisions of this Division and Part 5-4;
- (b) specify where the notice must be displayed;
- (c) specify how the notice must be drawn to the attention of consumers;
- (d) specify requirements as to the form of the notice.

67 Conflict of laws

If:

- (a) the proper law of a contract for the supply of goods or services to a consumer would be the law of any part of Australia but for a term of the contract that

(b)提供消費者商品或服務的契約含有意圖來取代，或有替代的效果之條款，下列規定得適用於本分部所有之規定：

(i)澳大利亞以外的國家的法律規定；

(ii)州或地區的法律規定；

儘管有契約條款，本分部的條文適用於有關契約的供應。

68 國際貨物銷售契約公約

聯合國國際貨物銷售契約公約於 1980年4月11日於維也納簽署，該規定修訂對澳大利亞生效，若有與本分部條文不一致，則優先適用該公約。

註：公約已收編至澳大利亞條約彙編1988年第32號（[1988] 32安非他命類興奮劑）。在2010年，公約內容可透過AustLII網站（www.austlii.edu.au）至澳大利亞條約圖書館的澳大利亞條約系列公約進行瀏覽。

第二分部 未經邀約之消費協議

細分A 介紹

69 未經邀約的消費協議的含義

(1)若有以下情形，其協議屬未經邀約之消費協議：

provides otherwise; or

(b) a contract for the supply of goods or services to a consumer contains a term that purports to substitute, or has the effect of substituting, the following provisions for all or any of the provisions of this Division:

(i) the provisions of the law of a country other than Australia;

(ii) the provisions of the law of a State or a Territory;

the provisions of this Division apply in relation to the supply under the contract despite that term.

68 Convention on Contracts for the International Sale of Goods

The provisions of the United Nations Convention on Contracts for the International Sale of Goods, done at Vienna on 11 April 1980, as amended and in force for Australia from time to time, prevail over the provisions of this Division to the extent of any inconsistency.

Note: The text of the Convention is set out in Australian Treaty Series 1988 No. 32 ([1988] ATS 32). In 2010, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Division 2—Unsolicited consumer agreements

Subdivision A—Introduction

69 Meaning of unsolicited consumer agreement

(1) An agreement is an unsolicited consumer agreement if:

(a)於貿易或商業，提供商品或服務予消費者；

(b)係由業者和消費者之間談判的結果所做成：

(i)在對方的所在，而非商品或服務供應商的商業貿易處所；

(ii)通過電話；
無論其是否為契約成立前之唯一協商；

(c)消費者未基於商品或服務之供應，邀請業者來該地，或打電話（不論消費者是否有提出關於不同供應的邀請）；

(d)消費者根據該協議支付或應支付的全部價格：

(i)係當時無法於契約確定；

(ii)當時金額確定- 但金額超過 100元或法規規定的其他金額。

(1A)消費者並未基於(1)(c)的目的，邀請業者來該地或打電話，僅因消費者：

(a)並非以第(1)(c)協商供應商品或服務之目的提供其

- (a) it is for the supply, in trade or commerce, of goods or services to a consumer; and
- (b) it is made as a result of negotiations between a dealer and the consumer:
 - (i) in each other's presence at a place other than the business or trade premises of the supplier of the goods or services; or
 - (ii) by telephone;

whether or not they are the only negotiations that precede the making of the agreement; and

- (c) the consumer did not invite the dealer to come to that place, or to make a telephone call, for the purposes of entering into negotiations relating to the supply of those goods or services (whether or not the consumer made such an invitation in relation to a different supply); and
 - (d) the total price paid or payable by the consumer under the agreement:
 - (i) is not ascertainable at the time the agreement is made; or
 - (ii) if it is ascertainable at that time—is more than \$100 or such other amount prescribed by the regulations.
- (1A) The consumer is not taken, for the purposes of subsection (1)(c), to have invited the dealer to come to that place, or to make a telephone call, merely because the consumer has:
- (a) given his or her name or contact details other than for

姓名或聯繫方式；

(b)曾嘗試與業者聯繫但未成功。

(2)不只是邀請為供應價格之報價，基於(1)(c)之目的，邀請進行供應的協商。

(3)若其係法令所定之未經邀約之協議，該協議為未經邀約的消費協議。

(4)若該協議類型並非規定所稱之未經邀約之協議，儘管依第(1)和(3)規定，該協議仍非未經邀約之消費協議。

70 推定之協議屬未經邀約之消費協議

(1)在有關違反或可能違反分部之訴訟（刑事程式以外的），若有以下情形，協議將被推定為未經邀約的消費協議：

(a)訴訟的一方聲稱，該協議為未經邀約的消費協議；

(b)沒有他方訴訟證明，該協議並非未經邀約之消費協議。

(2)在有關違反或可能違反分部之訴訟（刑事程式以外的），若協議成立時有以下情形，協議將被推定為未經

the predominant purpose of entering into negotiations relating to the supply of the goods or services referred to in subsection (1)(c); or

(b) contacted the dealer in connection with an unsuccessful attempt by the dealer to contact the consumer.

- (2) An invitation merely to quote a price for a supply is not taken, for the purposes of subsection (1)(c), to be an invitation to enter into negotiations for a supply.
- (3) An agreement is also an unsolicited consumer agreement if it is an agreement of a kind that the regulations provide are unsolicited consumer agreements.
- (4) However, despite subsections (1) and (3), an agreement is not an unsolicited consumer agreement if it is an agreement of a kind that the regulations provide are not unsolicited consumer agreements.

70 Presumption that agreements are unsolicited consumer agreements

- (1) In a proceeding relating to a contravention or possible contravention of this Division (other than a criminal proceeding), an agreement is presumed to be an unsolicited consumer agreement if:
 - (a) a party to the proceeding alleges that the agreement is an unsolicited consumer agreement; and
 - (b) no other party to the proceeding proves that the agreement is not an unsolicited consumer agreement.
- (2) In a proceeding relating to a contravention or possible contravention of this Division (other than a criminal

邀約的消費協議：

- (a) 訴訟的一方聲稱，擬議的協議將是未經邀約的消費協議；且
- (b) 沒有對方訴訟證明，擬議的協議是未經邀約的消費協議。

71 業者的含義

業者係指於貿易或商業中，

- (a) 與消費者進協商，以便使向消費者提供商品或服務的協議之人；
- (b) 利用電話使消費者進入此類談判的目的；

不論該人是否為商品或服務的供應商。

72 協商的含義

協商，有關協議或建議的協議，包括任何討論或處理針對協議或建議的協議（不論該協議或建議的協議的條款是開放任何討論或處理）的決策。

細分 B 未經邀約消費者協議協商

73 未經邀約消費者協議協商的容許時間

proceeding), it is presumed that a proposed agreement would be an unsolicited consumer agreement if it were made if:

- (a) a party to the proceeding alleges that the proposed agreement would be an unsolicited consumer agreement if it were made; and
- (b) no other party to the proceeding proves that the proposed agreement would not be an unsolicited consumer agreement if it were made.

71 Meaning of dealer

A dealer is a person who, in trade or commerce:

- (a) enters into negotiations with a consumer with a view to making an agreement for the supply of goods or services to the consumer; or
- (b) calls on, or telephones, a consumer for the purpose of entering into such negotiations;

whether or not that person is, or is to be, the supplier of the goods or services.

72 Meaning of negotiation

A negotiation, in relation to an agreement or a proposed agreement, includes any discussion or dealing directed towards the making of the agreement or proposed agreement (whether or not the terms of the agreement or proposed agreement are open to any discussion or dealing).

Subdivision B—Negotiating unsolicited consumer agreements

73 Permitted hours for negotiating an unsolicited consumer

(1)業者不得以協商未經邀約消費協議或附帶相關事件，於下列時間進行電話聯繫：

- (a)在星期日或公眾假期的任何時間；
- (b)其他日上午9點之前，其他任何一天；
- (c)在其他日的下午六點以後（或是星期六下午5點以後）。

註：罰款可能違反本項規定。

(2)若業者電話聯繫當事人係根據以下內容，則不適用第(1)之規定：

- (a)該內容係當事人提供給業者或代表業者之人；且
- (b)並未於業者或代表業者之人在場時提供。

註：「2006年不打電話註冊法」得適用於未經邀約的消費協議協商。

74 披露的目的和身份

業者以協商未經邀約消費協議或附帶相關事件之目的，進行電話聯繫，需儘速在開始協商前：

- (a)明確告知，業者的目的是尋求有關貨物或服務的供應相關協議之同意；

agreement

- (1) A dealer must not call on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose:
- (a) at any time on a Sunday or a public holiday; or
 - (b) before 9 am on any other day; or
 - (c) after 6 pm on any other day (or after 5 pm if the other day is a Saturday).

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

- (2) Subsection (1) does not apply if the dealer calls on the person in accordance with consent that:
- (a) was given by the person to the dealer or a person acting on the dealer's behalf; and
 - (b) was not given in the presence of the dealer or a person acting on the dealer's behalf.

Note: The Do Not Call Register Act 2006 may apply to a telephone call made for the purpose of negotiating an unsolicited consumer agreement.

74 Disclosing purpose and identity

A dealer who calls on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose, must, as soon as practicable and in any event before starting to negotiate:

- (a) clearly advise the person that the dealer's purpose is to seek the person's agreement to a supply of the goods or services concerned; and

(b)明確告知，業者有義務依其要求立即離開處所；

(c)依規定提供業者的身份資訊。

註：罰款可能會違反本條規定。

75 要求停止協商

(1)業者以協商未經邀約消費協議或附帶相關事件之目的，進行電話聯繫，需儘速基於以下人士要求離開該處所：

(a)佔用的處所，或該處所之實際佔有人或被授權之人之要求；或

(b)該人（準消費者）正與其進行協商。

註：罰款可能違反本項規定。

(2)如果準消費者提出此項請求，業者必須不再聯繫準消費者為未經邀約消費協議目的之協商至少30天（或附帶或相關用途）。

註：罰款可能違反本項規定。

(3)如果業者並非協商所涉之商品或服務之供應商：

- (b) clearly advise the person that the dealer is obliged to leave the premises immediately on request; and
- (c) provide to the person such information relating to the dealer's identity as is prescribed by the regulations.

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

75 Ceasing to negotiate on request

- (1) A dealer who calls on a person at any premises for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose, must leave the premises immediately on the request of:
 - (a) the occupier of the premises, or any person acting with the actual or apparent authority of the occupier; or
 - (b) the person (the prospective consumer) with whom the negotiations are being conducted.

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

- (2) If the prospective consumer makes such a request, the dealer must not contact the prospective consumer for the purpose of negotiating an unsolicited consumer agreement (or for an incidental or related purpose) for at least 30 days after the prospective consumer makes the request.

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

- (3) If the dealer is not, or is not to be, the supplier of the goods or services to which the negotiations relate:

- (a)第(2)項適用於供應商或代表供應商之規定，也同樣適用於業者，但
- (b)第(2)項不適用於業者所聯繫之準消費者，係由其他供應商供應之情形。

76 通知終止期間的人

業者不得與他人訂定未經邀約之消費協議，除非：

- (a)協議之前，他人有提供下列資訊：
 - (i)該人於終止期間終止協商協議的權利；
 - (ii)他人行使該項權利的方式；
 - (iii)其他法律規定事項；及
- (b)如果該協議係業者與當事人當場所訂定 - 當事人被給予書面資料；且
- (c)若該協議是通過電話訂定 - 當事人係以電話方式被提供資料，並隨後附上書面資料；
- (d)以法律所規定之提供資料的方式提供資料。

注意：罰金可能會違反本條規定。

- (a) subsection (2) applies to that supplier, and any person acting on behalf of that supplier, in the same way that it applies to the dealer; but
- (b) subsection (2) does not apply to the dealer contacting the prospective customer in relation to a supply by another supplier.

76 Informing person of termination period etc.

A dealer must not make an unsolicited consumer agreement with a person unless:

- (a) before the agreement is made, the person is given information as to the following:
 - (i) the person's right to terminate the agreement during the termination period;
 - (ii) the way in which the person may exercise that right;
 - (iii) such other matters as are prescribed by the regulations; and
- (b) if the agreement is made in the presence of both the dealer and the person—the person is given the information in writing; and
- (c) if the agreement is made by telephone—the person is given the information by telephone, and is subsequently given the information in writing; and
- (d) the form in which, and the way in which, the person is given the information complies with any other requirements prescribed by the regulations.

Note: A pecuniary penalty may be imposed for a

77 業者違規之供應商法律責任

若：

(a)業者違反本細分的未經邀約消費協議之規定；且

(b)如果業者協商所涉之商品或服務之供應商；

商品或服務的供應商也視同違反協議之規定。

細分 C 不請自來的消費協議等要求

78 提供消費者文件的要求

(1)若未經邀約消費者協議並未透過電話協商達成協議，為協商之業者必須在消費者完成簽署協議後，根據協議提供協議副本。

註：罰款可能違反本項規定。

(2)若未經邀約的消費協議係通過電話協商達成的協議，為協商之業者必須於協議作成後5個工作日內或雙方同意之較長期間內，根據該協議，用以下方式：

(a)面交；

(b)用郵遞；

contravention of this section.

77 Liability of suppliers for contraventions by dealers

If:

- (a) a dealer contravenes a provision of this Subdivision in relation to an unsolicited consumer agreement; and
- (b) the dealer is not, or is not to be, the supplier of the goods or services to which the agreement relates; the supplier of the goods or services is also taken to have contravened that provision in relation to the agreement.

Subdivision C—Requirements for unsolicited consumer agreements etc.

78 Requirement to give document to the consumer

- (1) If an unsolicited consumer agreement was not negotiated by telephone, the dealer who negotiated the agreement must give a copy of the agreement to the consumer under the agreement immediately after the consumer signs the agreement.

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

- (2) If an unsolicited consumer agreement was negotiated by telephone, the dealer who negotiated the agreement must, within 5 business days after the agreement was made or such longer period agreed by the parties, give to the consumer under the agreement:
 - (a) personally; or
 - (b) by post; or

(c)消費者的同意以電子通訊方式；

提供證明該協議之檔。

註：罰金可能違反本項規定。

(3)未經邀約的消費者協議，通過電話協商，則為電話協商之協議（無論協商是否導致協議之結果）。

79 所有未經邀約的消費協議等之要求

未經邀約的消費協議之供應商必須確保協議，或（如果是通過電話談判協議）的協議檔，以符合下列要求：

(a)必須列出所有協議的條款，包括：

(i)依據協議消費者支付或提供的條件，若所有的條件並非於協議時確定，則以何種方式計算；

(ii)任何由消費者支付之郵寄或遞送費用；

(b)協議的前頁必須包含以下通知；

(i)以顯著方式通知消費者關於消費者終止該協議的權利；

(c) with the consumer's consent—by electronic communication;

a document (the agreement document) evidencing the agreement.

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

(3) An unsolicited consumer agreement was negotiated by telephone if the negotiations that resulted in the making of the agreement took place by telephone (whether or not other negotiations preceded the making of the agreement).

79 Requirements for all unsolicited consumer agreements etc.

The supplier under an unsolicited consumer agreement must ensure that the agreement, or (if the agreement was negotiated by telephone) the agreement document, complies with the following requirements:

(a) it must set out in full all the terms of the agreement, including:

(i) the total consideration to be paid or provided by the consumer under the agreement or, if the total consideration is not ascertainable at the time the agreement is made, the way in which it is to be calculated; and

(ii) any postal or delivery charges to be paid by the consumer;

(b) its front page must include a notice that:

(i) conspicuously and prominently informs the consumer of the consumer's right to terminate the

- (ii)以顯著方式列出規範所規定的資訊；
- (iii)符合法規規定的其他要求；
- (c)必須伴隨的通知：
 - (i)消費者可用於終止該協議；
 - (ii)符合規範所訂明的任何要求；
- (d)必須明顯和突出方式列出：
 - (i)供應商的名稱；
 - (ii)若供應商有ABN（企業識別碼）－則列出供應商的ABN；
 - (iii)若供應商沒有ABN，但有ACN（公司名稱）－則列出供應商的ACN；
 - (iv)供應商的營業地址（不得是郵政信箱），或者，如果供應商沒有營業地址，則列出供應商的住址；
 - (v)若供應商有電子郵件地址－則列出供應商的電子郵件地址；
 - (vi)若供應商有傳真號碼－則列出供應商的傳真號碼；
- (e)必須印刷清晰或列印（除印刷或列印的形式外，有可能為手寫的任何修訂）；
- (f)通知必須是透明的。

- agreement; and
- (ii) conspicuously and prominently sets out any other information prescribed by the regulations; and
- (iii) complies with any other requirements prescribed by the regulations;
- (c) it must be accompanied by a notice that:
 - (i) may be used by the consumer to terminate the agreement; and
 - (ii) complies with any requirements prescribed by the regulations;
- (d) it must conspicuously and prominently set out in full:
 - (i) the supplier's name; and
 - (ii) if the supplier has an ABN—the supplier's ABN; and
 - (iii) if the supplier does not have an ABN but has an ACN—the supplier's ACN; and
 - (iv) the supplier's business address (not being a post box) or, if the supplier does not have a business address, the supplier's residential address; and
 - (v) if the supplier has an email address—the supplier's email address; and
 - (vi) if the supplier has a fax number—the supplier's fax number;
- (e) it must be printed clearly or typewritten (apart from any amendments to the printed or typewritten form, which may be handwritten);
- (f) it must be transparent.

註：罰金可能會違反本條規定。

80 對非透過電話協商之未經邀約消費者協議之附加要求

透過電話協商的未經邀約消費協議之供應商必須確保，除符合第79條的要求，該協議符合下列要求：

- (a) 必須由消費者依據該協議為簽署；
- (b) 若該協議係由代表供應商之人簽署 - 該協議必須註明該人是對供應商的代表，且必須完整列出：
 - (i) 該人的名字；
 - (ii) 該人的營業地址（非郵政信箱），若無營業地址，則列出該人之住址；
 - (iii) 若該人有電子郵件地址 - 則列出電子郵件地址。

註：罰金可能會違反本條規定。

81 未經邀約消費協議的修改的要求

透過電話協商的未經邀約消費協議之供應商必須確保，該協議的任何修訂均應由雙方簽署。

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

80 Additional requirements for unsolicited consumer agreements not negotiated by telephone

The supplier under an unsolicited consumer agreement that was not negotiated by telephone must ensure that, in addition to complying with the requirements of section 79, the agreement complies with the following requirements:

- (a) the agreement must be signed by the consumer under the agreement;
- (b) if the agreement is signed by a person on the supplier's behalf—the agreement must state that the person is acting on the supplier's behalf, and must set out in full:
 - (i) the person's name; and
 - (ii) the person's business address (not being a post box) or, if the person does not have a business address, the person's residential address; and
 - (iii) if the person has an email address—the person's email address.

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

81 Requirements for amendments of unsolicited consumer agreements

The supplier under an unsolicited consumer agreement must ensure that any amendments to the agreement are signed by both parties to the agreement.

註：罰金可能會違反本條規定。

細分 D 終止未經邀約消費協議

82 未經邀約消費協議終止期間之終止

- (1) 未經邀約的消費協議之消費者得於第(3)規定之終止期間，按指示終止協議，並以口頭或書面通知供應商，根據協議，為終止協議之意思表示。

- (2) 根據本條可行使終止權：
 - (a) 儘管消費者證實該協議；

 - (b) 即使該協議充分執行。
- (3) 消費者得終止協議之期間，以下列期間為最長期間：
 - (a) 若為未經電話協商之協議 - 以協議後之日起的第一個工作日開始起10天為期間；

 - (b) 若為經電話協商之協議 - 於提供給消費者契約文件後的第一個工作日開始起10個營業天為期間；

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

Subdivision D—Terminating unsolicited consumer agreements

82 Terminating an unsolicited consumer agreement during the termination period

- (1) The consumer under an unsolicited consumer agreement may, during the period provided under subsection (3), terminate the agreement by indicating, in an oral or written notice to the supplier under the agreement, an intention to terminate the agreement.
- (2) A right of termination under this section may be exercised:
 - (a) despite affirmation of the agreement by the consumer; and
 - (b) even though the agreement has been fully executed.
- (3) The period during which the consumer may terminate the agreement is whichever of the following periods is the longest:
 - (a) if the agreement was not negotiated by telephone—the period of 10 business days starting at the start of the first business day after the day on which the agreement was made;
 - (b) if the agreement was negotiated by telephone—the period of 10 business days starting at the start of the first business day after the day on which the consumer was given the agreement document relating to the agreement;

(c)若有一個以上違反協議之下列情形：

(i)第73條之情形（允許數小時協商未經邀約的消費協議）；

(ii)第74條之情形（揭露目的和身份）；

(iii)第75條之情形（要求停止協商）；

若為經電話協商之協議，自協議文件完成日後第一日起3個月內為終止期間；

(d)如果一個以上違反協議之下列情形：

(i)第76條之情形（通知消費者終止期間）；

(ii)細分C（未經邀約消費協議的要求）之規定；

(iii)第86條之情形（禁止供應超過 10個工作日）；

若為經電話協商之協議，自協議文件完成日後第一日起6個月內為終止期間；

(e)該協議所定之其他期間。

(4)若第(1)項之通知為書面，則得以下方式提供：

(a)面交供應商；

(b)遞送或郵寄，以信封方式寄送至第79(d)(iv)供應

- (c) if one or more of the following were contravened in relation to the agreement:
 - (i) section 73 (permitted hours for negotiating an unsolicited consumer agreement);
 - (ii) section 74 (disclosing purpose and identity);
 - (iii) section 75 (ceasing to negotiate on request);
the period of 3 months starting at the start of the first day after the day on which the agreement was made or, if the agreement was negotiated by telephone, the agreement document was given;
 - (d) if one or more of the following were contravened in relation to the agreement:
 - (i) section 76 (informing consumer of termination period);
 - (ii) a provision of Subdivision C (requirements for unsolicited consumer agreements);
 - (iii) section 86 (prohibition on supplies for 10 business days);
the period of 6 months starting at the start of the first day after the day on which the agreement was made or, if the agreement was negotiated by telephone, the agreement document was given;
 - (e) such other period as the agreement provides.
- (4) If the notice under subsection (1) is written, it may be given:
- (a) by delivering it personally to the supplier; or
 - (b) by delivering it, or sending it by post, in an envelope

商的地址；或

(c)若供應商有電子郵件地址 - 發送至在第79(d)(vi)供應商的電子郵件地址；

(d)若供應商有傳真號碼 - 傳真第79(d)(vi)之供應商的傳真號碼。

(5)依據第(1)款的通知以郵遞方式寄往供應商，於郵寄時視為已到達。

(6)第(1)通知的形式或內容，並未有格式或內容之規定。

83 終止的效果

(1)依據第82條：若終止未經邀約的消費協議：

(a)該協議視為雙方同意已撤銷；

(b)任何相關之契約或文件均無效。

(2)與未經邀約消費協議相關的契約或文件，是：

(a)任何相關協議的擔保或補償契約；

(b)對契約供應商或與契約相關之業者有費用上之利益之任何文件（或由供應商或經銷商所指定之人）；

(c)為抵押或相關協議有關之任何合約或文書（(b)中

- addressed to the supplier, to the supplier's address referred to in section 79(d)(iv); or
 - (c) if the supplier has an email address—by sending it to the supplier's email address referred to in section 79(d)(v); or
 - (d) if the supplier has a fax number—by faxing it to the supplier's fax number referred to in section 79(d)(vi).
- (5) A notice under subsection (1) sent by post to a supplier is taken to have been given to the supplier at the time of posting.
- (6) There are no requirements relating to the form or content of a notice under subsection (1).

83 Effect of termination

- (1) If an unsolicited consumer agreement is terminated in accordance with section 82:
- (a) the agreement is taken to have been rescinded by mutual consent; and
 - (b) any related contract or instrument is void.
- (2) A related contract or instrument, in relation to an unsolicited consumer agreement, is:
- (a) any contract of guarantee or indemnity that is related to the agreement; or
 - (b) any instrument related to the agreement that creates a mortgage or charge in favour of the supplier under the contract or the dealer in relation to the contract (or a person nominated by the supplier or dealer); or
 - (c) any contract or instrument (other than an instrument

所提及的文書以外）；

但不包括已拘束的持續信貸契約（2009年全國消費者信用保護法第127（2）附表1內之含義），或已拘束之貸款契約（附表第127（3）的含義）。

(3) 未經邀約消費協議的終止具有第82條與本條的目的之效果：

(a) 該協議的供應商收到終止通知；

(b) 依據協議提供的商品或服務已全部或部分消費或使用。

84 供應商於終止之義務

若未經邀約消費協議依據第82條規定終止後，需立即通知協議之供應商終止，並返還消費者先前因協議或相關契約或文件所給之補償（或等同補償之價值）。

註：罰金可能會違反本條規定。

85 消費者終止的義務和權利

(1) 若依據第82條規定終止未經邀約的消費協議，消費者根據該協議，必須在合理時間內：

of a kind referred to in paragraph (b)) that is collateral or related to the agreement;

but does not include a tied continuing credit contract (within the meaning of section 127(2) of Schedule 1 to the National Consumer Credit Protection Act 2009), or a tied loan contract (within the meaning of section 127(3) of that Schedule).

(3) The termination of an unsolicited consumer agreement has effect for the purposes of section 82 and this section even if:

(a) the supplier under the agreement has not received the notice of termination; or

(b) the goods or services supplied under the agreement have been wholly or partly consumed or used.

84 Obligations of suppliers on termination

If an unsolicited consumer agreement is terminated in accordance with section 82, the supplier under the agreement must, immediately upon being notified of the termination, return or refund to the consumer under the agreement any consideration (or the value of any consideration) that the consumer gave under the agreement or a related contract or instrument.

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

85 Obligations and rights of consumers on termination

(1) If an unsolicited consumer agreement is terminated in accordance with section 82, the consumer under the

- (a) 根據該協議返還供應商：
 - (i) 根據協議，從供應商處收受之商品；且
 - (ii) 消費者已經消費之商品；或
 - (b) 通知供應商得收取商品之地點。
- (2) 商品成為消費者的財產，免除承擔所有有留置權和費用，若：
- (a) 消費者根據第(1)(b)發出通知給供應商；
 - (b) 供應商沒有在契約終止後30天之內收回商品。
- (3) 若：
- (a) 依據第82條規定終止協議，終止期間的起算係自以下情形結束後起算10個營業：
 - (i) 若該協議並非透過電話協商- 則於協議之日起的第一個工作日開始算；
 - (ii) 如果協議是通過電話協商- 則自提供消費者給予該協議有關的文件的次日的第一個工作日開始起算；
 - (b) 根據本條，消費者返還商品給供應商，或供應商收回商品；

agreement must, within a reasonable time:

- (a) return to the supplier under the agreement any goods:
 - (i) that have been received from the supplier under the agreement; and
 - (ii) that the consumer has not already consumed; or
 - (b) notify the supplier of the place where the supplier may collect the goods.
- (2) The goods become the property of the consumer, freed and discharged from all liens and charges of any description, if:
- (a) the consumer gives notice to the supplier under subsection (1)(b); and
 - (b) the supplier does not collect the goods within 30 days after the termination of the contract.
- (3) If:
- (a) the agreement is terminated in accordance with section 82 after the end of the period of 10 business days starting:
 - (i) if the agreement was not negotiated by telephone—at the start of the first business day after the day on which the agreement was made; or
 - (ii) if the agreement was negotiated by telephone—at the start of the first business day after the day on which the consumer was given the agreement document relating to the agreement; and
 - (b) the consumer returns the goods to the supplier, or the supplier collects the goods, under this section; and

(c)消費者對商品未善盡注意；

導致供應商之商品有價值減損時，消費者負損害賠償責任。

(4)賠償得透過有管轄權的法院進行請求。

(5)然而，若歸因於正常使用的商品或消費者的控制範圍以外的情況，消費者對損害或貶值不負責任。

(6)若：

(a)依第82條終止未經邀約消費者協議，其自以下起算之10個營業日結束後：

(i)若該協議並未透過電話協商 - 則於協議之日起的第一個工作日起算；或

(ii)若該協議是透過電話協商 - 則自提供消費者給予該協議有關的文件的次日的第一個工作日開始起算；

(b)根據該協議提供之服務係於終止前，但於此期間結束後；

該終止並不影響消費者基於協議提供服務報酬之責任。

(c) the consumer has failed to take reasonable care of the goods;

the consumer is liable to pay compensation to the supplier for the damage to, or depreciation in the value of, the goods.

- (4) The compensation is recoverable in a court of competent jurisdiction.
- (5) However, the consumer is not liable for any such damage or depreciation attributable to normal use of the goods or to circumstances beyond the consumer's control.
- (6) If:
- (a) an unsolicited consumer agreement is terminated in accordance with section 82 after the end of the period of 10 business days starting:
 - (i) if the agreement was not negotiated by telephone—at the start of the first business day after the day on which the agreement was made; or
 - (ii) if the agreement was negotiated by telephone—at the start of the first business day after the day on which the consumer was given the agreement document relating to the agreement; and
 - (b) prior to the termination, but after the end of that period, a service was supplied under the agreement; the termination does not affect any liability of the consumer under the agreement to provide consideration for the service.

86 供應十個營業日之禁止

(1) 未經邀約消費協議之供應商不得：

(a) 向消費者提供根據協議之商品或服務；

(b) 接受任何與這些商品或服務有關之付款，或任何其他報酬；

(c) 要求任何與這些商品或服務有關之付款，或任何其他報酬；

在以下起算之10天期間內：

(d) 若該協議並未透過電話協商 - 則於協議之日起的第一個工作日起算；或

(e) 若該協議是透過電話協商 - 則自提供消費者給予該協議有關的文件的次日的第一個工作日開始起算。

註：罰款可能違反本款規定。

(2) 若供應商違反本條規定提供消費者商品，消費者對該商品有相同於未經邀約商品之權利。

註：第41條涉及未經邀約的商品。

(3) 若供應商違反本條規定提供消費者服務，消費者對該服務有相同於未經邀約商品之權利。

86 Prohibition on supplies etc. for 10 business days

(1) The supplier under an unsolicited consumer agreement must not:

- (a) supply to the consumer under the agreement the goods or services to be supplied under the agreement; or
- (b) accept any payment, or any other consideration, in connection with those goods or services; or
- (c) require any payment, or any other consideration, in connection with those goods or services;

during the period of 10 business days starting:

- (d) if the agreement was not negotiated by telephone—at the start of the first business day after the day on which the agreement was made; or
- (e) if the agreement was negotiated by telephone—at the start of the first business day after the day on which the consumer was given the agreement document relating to the agreement.

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

(2) If the supplier supplies goods to the consumer in contravention of this section, the consumer has the same rights in relation to the goods as if the goods were unsolicited goods.

Note: Section 41 deals with unsolicited goods.

(3) If the supplier supplies services to the consumer in contravention of this section, the consumer has the same

註：第42條涉及未經邀約之服務。

87 終止後退還付款

若依第82條終止未經邀約消費者協議，根據該協議，供應商必須立即退還消費者根據協議所支付之以下任何款項：

- (a) 消費者，或代表消費者之人，對終止後的供應商給付；
- (b) 依協議或相關之契約或文件給付。

註：罰金可能會違反本條規定。

88 終止後收回金額之禁止

(1) 若依第82條終止未經邀約消費者協議，任何人不得：

- (a) 意圖引起或聲明對消費者之法律訴訟；
- (b) 意圖採取，或打算，對消費者採取任何其他行動；

相關之費用由消費者根據該協議或相關契約或文件為給付。

註：罰金可能違反本款規定。

rights in relation to the services as if the services were unsolicited services.

Note: Section 42 deals with unsolicited services.

87 Repayment of payments received after termination

If an unsolicited consumer agreement is terminated in accordance with section 82, the supplier under the agreement must immediately refund to the consumer under the agreement any payment:

- (a) that the consumer, or a person acting on the consumer's behalf, makes to the supplier after the termination; and
- (b) that purports to be made under the agreement or a related contract or instrument.

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

88 Prohibition on recovering amounts after termination

(1) If an unsolicited consumer agreement is terminated in accordance with section 82, a person must not:

- (a) bring, or assert an intention to bring, legal proceedings against the consumer; or
- (b) take, or assert an intention to take, any other action against the consumer;

in relation to an amount alleged to be payable, under the agreement or a related contract or instrument, by the consumer under the agreement.

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

(1A)第（1）項不適用於：

(a)意圖引起或聲明對消費者提起法律訴訟；

(b)意圖採取，或打算，對消費者採取任何其他行動；

執行第85條（3）之責任，或第85（6）其一類型的責任。

(2)若依第82條終止未經邀約消費者協議，任何人不得，以收回，消費者根據該協議或相關合同或文件之契約款項目的：

(a)將消費者的姓名，或導致消費者的姓名被列在欠款人或債務人名單；

(b)意圖把消費者的名稱，或導致消費者的姓名被放置在前述清單。

註：罰金可能違反本項規定。

(3)不限於5-2部分的第2分部，根據該份所授權之命令，得要求一個人負責將誤植之消費者姓名從債務人名單中移除。

- (1A) Subsection (1) does not apply to:
- (a) bringing, or asserting an intention to bring, legal proceedings against the consumer; or
 - (b) taking, or asserting an intention to take, any other action against the consumer;
- to enforce a liability under section 85(3), or a liability of a kind referred to in section 85(6).
- (2) If an unsolicited consumer agreement is terminated in accordance with section 82, a person must not, for the purpose of recovering an amount alleged to be payable, under the agreement or a related contract or instrument, by the consumer under the agreement:
- (a) place the consumer's name, or cause the consumer's name to be placed, on a list of defaulters or debtors; or
 - (b) assert an intention to place the consumer's name, or cause the consumer's name to be placed, on such a list.

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

- (3) Without limiting Division 2 of Part 5-2, an injunction granted under that Division may require a person responsible for keeping a list of defaulters or debtors on which the consumer's name has been wrongly placed to remove the name from that list.

細分 E 雜項

89 未經邀約消費協議的無效條文

(1) 未經邀約的消費協議中之規定，若其效果，或宣稱效果有以下情形，無效：

(a) 排除，限制，修改或根據該協議限制消費者的權利以終止本分部之協議；

(b) 以其他方式排除，限制，修改或限制本分部規定的效果或運作；

(c) 針對協議或與該協議有關之供應提起應由法院審理之爭端，但規避法院審理。

(2) 未經邀約的消費協議之供應商必須確保該協議不包括，或聲稱包括以下規定（不論如何描述）因為第(1)項而無效。

註：罰金可能違反本項規定。

(3) 未經邀約的消費協議之供應商不得嘗試執行或主張依第(1)無效之條文（不論如何描述）。

註：罰金可能違反本項規定。

90 放棄權利

(1) 未經邀約的消費協議之消費者不得放棄本分部賦予的任

Subdivision E—Miscellaneous

89 Certain provisions of unsolicited consumer agreements void

- (1) A provision (however described) of an unsolicited consumer agreement is void if it has the effect of, or purports to have the effect of:
 - (a) excluding, limiting, modifying or restricting a right of the consumer under the agreement to terminate the agreement under this Division; or
 - (b) otherwise excluding, limiting, modifying or restricting the effect or operation of this Division; or
 - (c) making a dispute relating to the agreement, or to a supply to which the agreement relates, justiciable by a court by which the dispute would not otherwise be justiciable.
- (2) The supplier under an unsolicited consumer agreement must ensure that the agreement does not include, or purport to include, a provision (however described) that is, or would be, void because of subsection (1).

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

- (3) The supplier under an unsolicited consumer agreement must not attempt to enforce or rely on a provision (however described) that is void because of subsection (1).

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

90 Waiver of rights

- (1) The consumer under an unsolicited consumer agreement

何權利。

- (2) 未經邀約的消費協議之供應商不得誘導，或企圖誘使消費者放棄本分部賦予的任何權利。

註：罰金可能違反本款規定。

91 本分部消費者與供應權利分配對象之適用

- (1) 本分部適用於基於契約取得商品或服務的消費者（原始消費者），透過法律實施而將指定或轉讓之他人（無論是從原來的消費者或其他人），猶如該人即為原始消費者。
- (2) 本分部適用於基於契約供應商品或服務的供應商（原始供應商），透過法律實施而將權利指定或轉讓之他人（無論是從原來的供應商或其他人），猶如該人即為原始供應商。

92 本分部對供應予第三方之適用

本分部適用於基於第三人之訂購而供應給消費者（原始消費者）商品或服務之契約，該第三人亦等同消費者。

93 違反本分部之效果

is not competent to waive any right conferred by this Division.

- (2) The supplier under the unsolicited consumer agreement must not induce, or attempt to induce, the consumer to waive any right conferred by this Division.

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

91 Application of this Division to persons to whom rights of consumers and suppliers are assigned etc.

- (1) This Division applies in relation to a person to whom the rights of a consumer (the original consumer) under a contract for the supply of goods or services are assigned or transferred, or pass by operation of law, (whether from the original consumer or from another person) as if the person were the original consumer.
- (2) This Division applies in relation to a person to whom the rights of a supplier (the original supplier) under a contract for the supply of goods or services are assigned or transferred, or pass by operation of law, (whether from the original supplier or from another person) as if the person were the original supplier.

92 Application of this Division to supplies to third parties

This Division applies in relation to a contract for the supply of goods or services to a consumer (the original consumer) on the order of another person as if the other person were also the consumer.

93 Effect of contravening this Division

(1) 未經邀約消費協議供應商不能根據該協議向消費者執行，若已違反本分部的條文（第85條除外）。

(2) 本條並不妨礙根據本附表採取的違反有關的任何訴訟。

94 法規得限制本分部的適用

本分部（第73條除外）不適用，或本分部的條文（第73條除外），法規規定不適用於：

(a) 規範中所特定之情形；

(b) 規範中所特定之協議類型；

(c) 規範中所特定之企業行為類型。

95 本分部對於公司法所涵蓋之特定行為之適用

本分部不適用有關2001年公司法第736，992A或992AA之行為。

註：2001年公司法736條禁止證券販售。該法第992A禁止某些金融商品的販售。該法第992AA禁止散佈關於投資管理的商品。

(1) The supplier under an unsolicited consumer agreement cannot enforce the agreement against the consumer under the agreement if a provision of this Division (other than section 85) has been contravened in relation to the agreement.

(2) This section does not prevent any action being taken under this Schedule in relation to the contravention.

94 Regulations may limit the application of this Division

This Division (other than section 73) does not apply, or provisions of this Division (other than section 73) that are specified in the regulations do not apply, to or in relation to:

- (a) circumstances of a kind specified in the regulations;
or
- (b) agreements of a kind specified in the regulations; or
- (c) the conduct of businesses of a kind specified in the regulations.

95 Application of this Division to certain conduct covered by the Corporations Act

This Division does not apply in relation to conduct to which section 736, 992A or 992AA of the Corporations Act 2001 applies.

Note: Section 736 of the Corporations Act 2001 prohibits hawking of securities. Section 992A of that Act prohibits hawking of certain financial products. Section 992AA of that Act prohibits hawking of managed investment products.

第三分部 分期協議

96 分期協議必須採書面形式

(1)為分期協議當事人之消費品供應商，必須確保：

- (a)書面協議；
- (b)協議的副本是給消費者貨物，或將要提供的。

註：罰款可能違反本項規定。

(2)分期協議當事人之消費品供應商，必須確保該協議是透明的。

(3)分期協議為供應商與消費者間，基於貿易或商業，基於契約條款（不論明示或暗示）提供商品之契約：

(a)商品總價已支付前，商品將不能交付給消費者；

(b)商品的價格以下列方式支付：

- (i)3個或更多的分期付款；
- (ii)若協議規定為分期協議 - 2個或更多分期。

(4)基於第(3)(b)之目的，任何消費者為消費商品支付押金視為採取分期付款。

97 消費者終止分期協議

(1)分期協議當事人之消費者於遞送與協議有關之商品前，得於任何時候終止協議。

Division 3—Lay-by agreements

96 Lay-by agreements must be in writing etc.

- (1) A supplier of consumer goods who is a party to a lay-by agreement must ensure that:
 - (a) the agreement is in writing; and
 - (b) a copy of the agreement is given to the consumer to whom the goods are, or are to be, supplied.

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

- (2) A supplier of consumer goods who is a party to a lay-by agreement must ensure that the agreement is transparent.
- (3) A lay-by agreement is an agreement between a supplier of consumer goods and a consumer for the supply, in trade or commerce, of the consumer goods on terms (whether express or implied) which provide that:
 - (a) the goods will not be delivered to the consumer until the total price of the goods has been paid; and
 - (b) the price of the goods is to be paid by:
 - (i) 3 or more instalments; or
 - (ii) if the agreement specifies that it is a lay-by agreement— 2 or more instalments.
- (4) For the purposes of subsection (3)(b), any deposit paid by the consumer for the consumer goods is taken to be an instalment.

97 Termination of lay-by agreements by consumers

- (1) A consumer who is party to a lay-by agreement may terminate the agreement at any time before the consumer

(2) 分期協議當事人之消費商品的供應商，必須確保該協議不得因終止契約而要求消費者支付費用（終止費用），除非：

(a) 該協議是由消費者終止；

(b) 供應商並沒有違反協議。

註：罰款可能違反本項規定。

(3) 分期協議當事人之消費商品的供應商，必須確保，若協議中明訂需給付終止費用，則該費用金額不得超過供應商有關協議的合理成本。

註：罰款可能違反本項規定。

98 供應商終止分期協議

分期協議當事人之消費商品的供應商不得終止協議，除非：

(a) 該協議的一方的消費者違反協議條款；

(b) 供應商不再是從事經營；

(c) 與該協議有關的消費品將不再提供。

註：罰款可能會違反本條規定。

goods to which the agreement relates are delivered to the consumer under the agreement.

- (2) A supplier of consumer goods who is a party to a lay-by agreement must ensure that the agreement does not require the consumer to pay a charge (a termination charge) for the termination of the agreement unless:
- (a) the agreement is terminated by the consumer; and
 - (b) the supplier has not breached the agreement.

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

- (3) A supplier of consumer goods who is a party to a lay-by agreement must ensure that, if the agreement provides that a termination charge is payable, the amount of the charge is not more than the supplier's reasonable costs in relation to the agreement.

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

98 Termination of lay-by agreements by suppliers

A supplier of consumer goods who is a party to a lay-by agreement must not terminate the agreement unless:

- (a) the consumer who is a party to the agreement breached a term of the agreement; or
- (b) the supplier is no longer engaged in trade or commerce; or
- (c) the consumer goods to which the agreement relates are no longer available.

Note: A pecuniary penalty may be imposed for a

99 終止的效果

- (1)若分期協議係由該協議的一方終止，供應商必須退還消費者，消費者根據該協議所支付之，除任何終止費以外之所有金額。

註：罰款可能違反本項規定。

- (2)供應商有權收回的債務從消費者的任何未付終止費用，如果分期協議下由消費者支付的金額是不夠的覆蓋費用。
- (3)若分期協議由該協議的一方終止，除非本條規定，供應商無權就終止請求損害或實行任何其他補救措施。

第四分部 雜項

100 供應商必須提供交易證明

(1)若：

- (a)任何人（供應商）在貿易或商業，提供消費者商品或服務；
- (b)商品或服務總價格（不含消費稅）為75元或以上；

供應商必須盡快於商品或服務提供後給消費者交易證明。

contravention of this section.

99 Effect of termination

- (1) If a lay-by agreement is terminated by a party to the agreement, the supplier must refund to the consumer all the amounts paid by the consumer under the agreement other than any termination charge that is payable under the agreement.

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

- (2) The supplier is entitled to recover any unpaid termination charge from the consumer as a debt if the amounts paid by the consumer under the lay-by agreement are not enough to cover the charge.
- (3) If a lay-by agreement is terminated by a party to the agreement, the supplier is not entitled to damages, or to enforce any other remedy, in relation to that termination except as provided for by this section.

Division 4—Miscellaneous

100 Supplier must provide proof of transaction etc.

- (1) If:

- (a) a person (the supplier), in trade or commerce, supplies goods or services to a consumer; and
- (b) the total price (excluding GST) of the goods or services is \$75 or more;

the supplier must give the consumer a proof of transaction as soon as practicable after the goods or services are so

註：罰款可能違反本項規定。

(2)若：

(a)任何人（供應商）在貿易或商業，提供消費者商品或服務；

(b)商品或服務總價格（不含消費稅）為75元或以上；

消費者可要求供應商於提供商品或服務後，盡快提供交易證明。

(3)若該請求是根據第(2)，供應商必須於請求後7日內提供交易證明。

註：罰款可能違反本項規定。

(4)提供消費者商品或服務的交易證明是含有以下內容之文件：

(a)商品或服務的供應商身份；

(b)如果供應商有企業識別碼（ABN） - 則列出企業識別碼；

(c)如果供應商不具有ABN的，但有公司名稱（ACN） -則列出公司名稱；

(d)列出供應的日期；

(e)列出提供給消費者的商品或服務；

(f)列出商品或服務的價格。

supplied.

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

(2) If:

- (a) a person (the supplier), in trade or commerce, supplies goods or services to a consumer; and
- (b) the total price (excluding GST) of the goods or services is less than \$75;

the consumer may request a proof of transaction from the supplier as soon as practicable after the goods or services are so supplied.

(3) If a request is made under subsection (2), the supplier must give the proof of transaction within 7 days after the request is made.

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

(4) A proof of transaction for a supply of goods or services to a consumer is a document that:

- (a) identifies the supplier of the goods or services; and
- (b) if the supplier has an ABN—states the supplier's ABN; and
- (c) if the supplier does not have an ABN but has an ACN—states the supplier's ACN; and
- (d) states the date of the supply; and
- (e) states the goods or services supplied to the consumer; and
- (f) states the price of the goods or services.

註：下面的交易證明的例子：

- (a) 依1999年新稅收制度（商品及服務稅）法含義的稅務發票；
- (b) 收銀機收據；
- (c) 信用卡或簽帳卡的證明；
- (d) 手寫的收據；
- (e) 分期協議；
- (f) 提供電話或網上交易確認或收據號碼。

(5) 供應商必須確保依據第(1)或(3)交易證明是透明的。

101 消費者得要求逐項帳單

(1) 若供應商於貿易或商業，提供服務給消費者，消費者可以要求供應商給消費者逐項帳單，其內容為：

- (a) 指定服務的價格的計算方式；
- (b) 包括，勞動時間，相關服務的供應和勞工的每小時收費的數目；
- (c) 包括用於提供服務所使用之材料之材料清單和收取的金額。

(2) 根據第(1)款的要求後必須於30天內完成：

- (a) 提供的服務；
- (b) 消費者收到從供應商服務供應的帳單或帳戶；

Note: The following are examples of a proof of transaction:

- (a) a tax invoice within the meaning of the A New Tax System (Goods and Services Tax) Act 1999;
- (b) a cash register receipt;
- (c) a credit card or debit card statement;
- (d) a handwritten receipt;
- (e) a lay-by agreement;
- (f) a confirmation or receipt number provided for a telephone or internet transaction.

- (5) The supplier must ensure that the proof of transaction given under subsection (1) or (3) is transparent.

101 Consumer may request an itemised bill

- (1) If a person (the supplier), in trade or commerce, supplies services to a consumer, the consumer may request that the supplier give the consumer an itemised bill that:
 - (a) specifies how the price of the services was calculated; and
 - (b) includes, if applicable, the number of hours of labour that related to the supply of the services and the hourly rate for that labour; and
 - (c) includes, if applicable, a list of the materials used to supply the services and the amount charged for those materials.
- (2) The request under subsection (1) must be made within 30 days after:
 - (a) the services are supplied; or
 - (b) the consumer receives a bill or account from the

以後到為準。

- (3) 供應商必須於消費者提出要求後的7天內提供逐項帳單。

註：罰金可能違反本項規定。

- (4) 供應商不得對逐項帳單向消費者收取費用。

註：罰款可能違反本項規定。

- (5) 供應商必須確保逐項帳單是透明的。

102 瑕疵擔保的規定

- (1) 法律得規定有關瑕疵擔保的形式與內容。

- (2) 任何人不得於貿易或商業，供應消費者商品或服務：

(a) 給消費易者不符第(1)項關於瑕疵擔保的證據文件；或

(b) 直接向消費者表示對於商品或服務的瑕疵擔保。

註：罰金可能違反本項規定。

- (3) 瑕疵擔保為一種向提供商品或服務之消費者，於供應

supplier for the supply of the services;
whichever occurs later.

- (3) The supplier must give the consumer the itemised bill within 7 days after the request is made.

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

- (4) The supplier must not charge the consumer for the itemised bill.

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

- (5) The supplier must ensure that the itemised bill is transparent.

102 Prescribed requirements for warranties against defects

- (1) The regulations may prescribe requirements relating to the form and content of warranties against defects.

- (2) A person must not, in connection with the supply, in trade or commerce, of goods or services to a consumer:

(a) give to the consumer a document that evidences a warranty against defects that does not comply with the requirements prescribed for the purposes of subsection (1); or

(b) represent directly to the consumer that the goods or services are goods or services to which such a warranty against defects relates.

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

- (3) A warranty against defects is a representation

之時，為達以下效果表示（無條件或指定的條件）將會：

- (a) 修理或更換商品或其中的一部分；
- (b) 提供或改善服務或其中的一部分；

(c) 對消費者為全部或部分補償；
若商品或服務或其中的一部分是有缺陷的，與包括任何此類表示證明文件。

103 維修人必須符合規定的要求

- (1) 法律得規定有關消費商品之維修通知書的形式與內容。
- (2) 維修人不得於貿易或商業，接受他人以消費者名義收購之商品，若維修人：

- (a) 以維修之目的接受商品；且
- (b) 並未給其他人符合(1)項目的定所要求的通知。

註：罰款可能違反本項規定。

communicated to a consumer in connection with the supply of goods or services, at or about the time of supply, to the effect that a person will (unconditionally or on specified conditions):

- (a) repair or replace the goods or part of them; or
 - (b) provide again or rectify the services or part of them;
- or

(c) wholly or partly recompense the consumer; if the goods or services or part of them are defective, and includes any document by which such a representation is evidenced.

103 Repairers must comply with prescribed requirements

- (1) The regulations may prescribe requirements relating to the form and content of notices to be given relating to the repair of consumer goods.
- (2) A person (the repairer) must not, in trade or commerce, accept from another person goods that the other person acquired as a consumer if the repairer:
 - (a) accepts the goods for the purpose of repairing them; and
 - (b) does not give to the other person a notice that complies with the requirements prescribed for the purposes of subsection (1).

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

第三之三部分 消費品的安全和產品相關的服務

第一分部 安全標準

104 建立消費品和產品相關的服務的安全標準

- (1) 澳洲總理得於網際網路以書面通知建立一個或兩個下列之安全標準：
 - (a) 特定種類的消費品；
 - (b) 特定產品的相關服務。
- (2) 對特定種類消費品的安全標準可能包括下列合理的必要措施之要求，以防止或減少任何人受傷的風險：
 - (a) 性能，成分，內容，製造或加工，設計，施工，完成或包裝該類消費品的方法；
 - (b) 該類消費品於製造或加工完成後的測試；
 - (c) 該類消費品之標誌，警告或指示的形式和內容。
- (3) 特定種類服務的安全標準可能包括有關下列事項的要求以作為合理的必要措施，防止或減少任何人受傷的危險：
 - (a) 此類服務提供方式（包括但不限於供應的方

Part 3-3—Safety of consumer goods and product related services

Division 1—Safety standards

104 Making safety standards for consumer goods and product related services

- (1) The Commonwealth Minister may, by written notice published on the internet, make a safety standard for one or both of the following:
 - (a) consumer goods of a particular kind;
 - (b) product related services of a particular kind.
- (2) A safety standard for consumer goods of a particular kind may consist of such requirements about the following matters as are reasonably necessary to prevent or reduce risk of injury to any person:
 - (a) the performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of consumer goods of that kind;
 - (b) the testing of consumer goods of that kind during, or after the completion of, manufacture or processing;
 - (c) the form and content of markings, warnings or instructions to accompany consumer goods of that kind.
- (3) A safety standard for product related services of a particular kind may consist of such requirements about the following matters as are reasonably necessary to prevent or reduce risk of injury to any person:
 - (a) the manner in which services of that kind are supplied

法）；

(b)技能或提供此類服務的人士的資格；

(c)提供這種服務所用的材料；

(d)此類服務的測試；

(e)此類服務的警告，指示或有關此類服務的其他資訊的形式和內容。

105 聲明消費品和產品相關的服務的安全標準

(1)澳洲總理得於網際網路以書面通知建立一個或兩個消費商品，或產品相關服務之下列安全標準：

(a)由澳大利亞標準國際有限公司，或由規範所訂明的協會批准的特定標準，或標準的特定部分；

(b)於通知中額外指定此項標準，或者此類標準之一部。

(2)聯邦部長不得基於第(1)聲明標準，或標準的一部分，為該條之安全標準：

(a)某一種類的消費商品；

(b)某類產品相關的服務；

若該標準或部分與安全標準的商品或服務，係依第104(1)並已經生效。

- (including, but not limited to, the method of supply);
- (b) the skills or qualifications of persons who supply such services;
- (c) the materials used in supplying such services;
- (d) the testing of such services;
- (e) the form and content of warnings, instructions or other information about such services.

105 Declaring safety standards for consumer goods and product related services

- (1) The Commonwealth Minister may, by written notice published on the internet, declare that the following is a safety standard for consumer goods, or product related services, of a kind specified in the instrument:
 - (a) a particular standard, or a particular part of a standard, prepared or approved by Standards Australia International Limited or by an association prescribed by the regulations;
 - (b) such a standard, or such a part of a standard, with additions or variations specified in the notice.
- (2) The Commonwealth Minister must not declare under subsection (1) that a standard, or a part of a standard, referred to in that subsection is a safety standard for:
 - (a) consumer goods of a particular kind; or
 - (b) product related services of a particular kind;if that standard or part is inconsistent with a safety standard for those goods or services that is in force and that was made under section 104(1).

106 供應不符合安全標準的消費商品

(1) 任何人不得於貿易或商業，提供消費品某類商品，若：

(a) 消費者商品的安全標準生效；且

(b) 該商品不符合標準。

註：罰款可能違反本項規定。

(2) 任何人不得於貿易或商業，供應第(1)禁止提供給消費者之商品（出口除外），這是禁止。

註：罰款可能違反本項規定。

(3) 任何人不得，於貿易或商業，製造，擁有或控制第(1)禁止的消費商品之供應。

註：罰款可能違反本項規定。

(4) 因違反第(3)而根據第5-2部分之訴訟，若被告證明被告的製造，管理有控制貨物並非基於提供貨物的目的（除出口外），則構成防禦的理由。

(5) 任何人不得於貿易或商業，出口第(1)禁止供應的消費商品，除非：

106 Supplying etc. consumer goods that do not comply with safety standards

(1) A person must not, in trade or commerce, supply consumer goods of a particular kind if:

(a) a safety standard for consumer goods of that kind is in force; and

(b) those goods do not comply with the standard.

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

(2) A person must not, in trade or commerce, offer for supply (other than for export) consumer goods the supply of which is prohibited by subsection (1).

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

(3) A person must not, in or for the purposes of trade or commerce, manufacture, possess or have control of consumer goods the supply of which is prohibited by subsection (1).

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

(4) In a proceeding under Part 5-2 in relation to a contravention of subsection (3), it is a defence if the defendant proves that the defendant's manufacture, possession or control of the goods was not for the purpose of supplying the goods (other than for export).

(5) A person must not, in trade or commerce, export consumer goods the supply of which is prohibited by subsection (1)

- (a) 該人適用於，部長批准出口這些貨物之書面文件；
- (b) 總理給該人的書面批准通知。

註：罰款可能違反本項規定。

- (6) 若總理根據第（5）批准，該人必須於7天內提交每個聯邦議會眾議院有關列明批准的詳細聲明。

(7) 若：

- (a) 任何人在違反本條規定提供消費商品；且
- (b) 他人遭受損失或損害：
 - (i) 係由於缺陷，或者是商品之危險特性所致；
或
 - (ii) 因商品可合理預見的使用所致（包括濫用）；
或
 - (iii) 因所提供之商品違反安全標準的，但有關之特定資訊並未被提供；且
- (c) 若商品符合安全標準，他人不會遭受的損失或損害；

他人因為本附表之目的之供應而遭受損失或損害。

unless:

- (a) the person applies, in writing, to the Commonwealth Minister for an approval to export those goods; and
- (b) the Commonwealth Minister gives such an approval by written notice given to the person.

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

(6) If the Commonwealth Minister gives an approval under subsection (5), he or she must cause a statement setting out particulars of the approval to be tabled in each House of the Parliament of the Commonwealth within 7 sitting days of that House after the approval is given.

(7) If:

- (a) a person supplies consumer goods in contravention of this section; and
- (b) another person suffers loss or damage:
 - (i) because of a defect in, or a dangerous characteristic of, the goods; or
 - (ii) because of a reasonably foreseeable use (including a misuse) of the goods; or
 - (iii) because, contrary to the safety standard, he or she was not provided with particular information in relation to the goods; and
- (c) the other person would not have suffered the loss or damage if the goods had complied with the safety standard;

the other person is taken, for the purposes of this Schedule,

107 供應不符合安全標準之產品相關服務

(1) 任何人不得於貿易或商業，供應某類產品的相關服務，若：

(a) 這類服務的安全標準是有效的；且

(b) 該服務不符合標準。

註：罰款可能違反本項規定。

(2) 任何人不得於貿易或商業，提供（1）所禁止的相關服務供應產品供應。

註：罰款可能違反本項規定。

(3) 若：

(a) 任何人違反本條提供產品相關的服務；且

(b) 他人遭受損失或損害：

(i) 係由於缺陷，或者是商品相關服務之危險特性所致；或

(ii) 因商品所提供相關服務可合理預見的使用所致（包括濫用）；或

(iii) 因所提供的服務違反安全標準的，但有關之特定資訊並未被提供；且

to have suffered the loss or damage because of that supply.
107 Supplying etc. product related services that do not comply with safety standards

(1) A person must not, in trade or commerce, supply product related services of particular kind if:

(a) a safety standard for services of that kind is in force; and

(b) those services do not comply with the standard.

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

(2) A person must not, in trade or commerce, offer for supply product related services the supply of which is prohibited by subsection (1).

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

(3) If:

(a) a person supplies product related services in contravention of this section; and

(b) another person suffers loss or damage:

(i) because of defect in, or a dangerous characteristic of, consumer goods that results from the services being supplied; or

(ii) because of a reasonably foreseeable use (including a misuse) of consumer goods that results from the services being supplied; or

(iii) because, contrary to the safety standard, he or she was not provided with particular information in

(c)若服務符合安全標準，他人不會遭受的損失或損害；

他人因為本附表之目的之供應而遭受損失或損害。

108 提名安全標準的要求

若：

(a)特定類型消費者商品的安全標準有效；

(b)該標準指定2個或更多的符合標準（或標準的一部）之這類商品規定相關的替代方法；

(c)主管機關構以書面請求商品之供應商提出符合標準的商品供應方法；

供應商必須於請求中指定的期限內，給主管機關書面通知，並指定供應商會遵守之供應商的符合標準的方法。

relation to the services; and

- (c) the other person would not have suffered the loss or damage if the services had complied with the safety standard;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

108 Requirement to nominate a safety standard

If:

- (a) a safety standard for consumer goods of a particular kind is in force; and
- (b) the standard specifies, as alternative methods of complying with the standard (or part of the standard), 2 or more sets of requirements relating to goods of that kind; and
- (c) the regulator gives to a supplier of goods of that kind a written request that the supplier nominate which of those sets of requirements the supplier intends to comply with as the supplier's method of complying with the standard;

the supplier must, within the period specified in the request, give to the regulator a written notice specifying which of those sets of requirements the supplier intends to comply with as the supplier's method of complying with the standard.

第二分部 對消費品和相關服務產品的禁令

細分A 臨時禁令

109 對於可能導致傷害任何人之消費品或產品相關的服務之臨時禁制令

(1)部長基於職權，得於網際網路對於特定消費商品發布臨時禁制令之書面通知，若：

(a)部長基於職權發現：

(i)消費品可能會導致任何人受到傷害；

(ii)可合理預見的使用此種類型的消費品（包括濫用）將會或可能會導致任何人受到傷害；

(b)其他部長基於職權得基於本項（a）發佈臨時禁制令：

(i)同類消費品；或

(ii)一種包括這些商品類型之商品；

該禁令仍然有效。

(2)部長基於職權，得於網際網路對於特定商品的服務發布臨時禁制令之書面通知，若：

(a)部長基於職權發現：

(i)消費品所產生之服務可能會導致任何人受到傷害；

Division 2—Bans on consumer goods and product related services

Subdivision A—Interim bans

109 Interim bans on consumer goods or product related services that will or may cause injury to any person etc.

(1) A responsible Minister may, by written notice published on the internet, impose an interim ban on consumer goods of a particular kind if:

(a) it appears to the responsible Minister that:

(i) consumer goods of that kind will or may cause injury to any person; or

(ii) a reasonably foreseeable use (including a misuse) of consumer goods of that kind will or may cause injury to any person; or

(b) another responsible Minister has imposed, under paragraph (a), an interim ban:

(i) on consumer goods of the same kind; or

(ii) on consumer goods of a kind that includes those goods;

and that ban is still in force.

(2) A responsible Minister may, by written notice published on the internet, impose an interim ban on product related services of a particular kind if:

(a) it appears to the responsible Minister that:

(i) as a result of services of that kind being supplied, consumer goods of a particular kind will or may cause injury to any person; or

(i)可合理預見的使用此種類型的消費品相關服務（包括濫用）將會或可能會導致任何人受到傷害；

(b)其他部長基於職權得基於本項（a）發佈臨時禁制令：

(i)同類消費品相關服務；或

(ii)包括這些服務類型之服務；

該禁令仍然有效。

110 臨時禁令適用地點

(1)邦總理發佈之臨時禁制令適用於所有省和地區。

(2)部長基於職權發布之臨時禁制令適用於省。

(3)地區部長基於職權發佈之臨時禁制令適用於該地區。

111 臨時禁制的期間

(1)部長基於職權發布之臨時禁制令於該期間禁制令為有效（解禁期）：

(a)開始實施禁令的通知中指明的日期（開始日期）；

(b)依本細分之規定，於禁制令開始後60年結束；

(2)在禁制令期限到期前，部長基於職權，得以網際網路公布書面通知，延長禁制令期限最多達30日。

- (ii) a reasonably foreseeable use (including a misuse) of consumer goods of a particular kind, to which such services relate, will or may cause injury to any person as a result of such services being supplied; or
- (b) another responsible Minister has imposed, under paragraph (a), an interim ban:
 - (i) on product related services of the same kind; or
 - (ii) on product related services that include those services;and that ban is still in force.

110 Places in which interim bans apply

- (1) An interim ban imposed by the Commonwealth Minister applies in all States and Territories.
- (2) An interim ban imposed by a responsible Minister who is Minister of a State applies in the State.
- (3) An interim ban imposed by a responsible Minister who is a Minister of a Territory applies in the Territory.

111 Ban period for interim bans

- (1) An interim ban imposed by a responsible Minister is in force during the period (the ban period) that:
 - (a) starts on the day (the start day) specified in the notice imposing the ban; and
 - (b) subject to this Subdivision, ends at the end of 60 days after the start day.
- (2) Before the ban period for the interim ban ends, the responsible Minister may, by written notice published on

(3)若：

(a)禁制令依據第(2)被延長；且

(b)延長之禁制令尚未終止；且

(c)該臨時禁制令並非由總理發佈；

部長得基於職權以書面請求總理延長禁制令的期限。

(4)若請求是根據第(3)，總理得於網際網路發佈書面通知，進一步延長臨時禁制令達30天。

(5)若：

(a)請求是根據第(3)；

(b)總理並未基於要求於延展的臨時禁制令到期前立即決定；

總理得決定延長禁令再30天。

(6)若：

(a)臨時禁制令根據第(2)延長期限；

the internet, extend the ban period for the ban by a period of up to 30 days.

(3) If:

- (a) the ban period for the interim ban is extended under subsection (2); and
- (b) the extended ban period for the ban has not ended; and
- (c) the interim ban was not imposed by the Commonwealth Minister;

the responsible Minister may, in writing, request the Commonwealth Minister to extend the extended ban period for the ban.

(4) If a request is made under subsection (3), the Commonwealth Minister may, by written notice published on the internet, extend the extended ban period for the interim ban by a further period of up to 30 days.

(5) If:

- (a) a request is made under subsection (3); and
- (b) the Commonwealth Minister has not made a decision on the request immediately before the extended ban period for the interim ban is to end;

the Commonwealth Minister is taken to have decided to extend the extended ban period for the ban by a further period of 30 days.

(6) If:

- (a) the ban period for the interim ban is extended under subsection (2); and

(b)延長禁制令的禁止期尚未結束；

(c)臨時禁制令係由總理發佈；

總理得於網際網路發佈書面通知，進一步延長臨時禁制令達 30 天。

112 多個臨時禁制令的相互作用

(1)若：

(a)部長或總理，基於職權針對某類消費品（被禁止的商品）（原禁止）施加臨時禁制令；且

(b)原來的禁制令生效後，總理對以下施加臨時禁制令（聯邦禁制令）：

(i)被禁止的商品；或

(ii)包括禁止商品類型的消費商品；

在聯邦禁制令生效前，原禁止商品之禁制令立即失效。

(2)：

(a)部長或總理其一，基於職權對某類產品相關的服務（禁止服務）施加臨時禁制令；且

- (b) the extended ban period for the ban has not ended;
and
- (c) the interim ban was imposed by the Commonwealth
Minister;

the Commonwealth Minister may, by written notice published on the internet, extend the extended ban period for the interim ban by a further period of up to 30 days.

112 Interaction of multiple interim bans

(1) If:

- (a) an interim ban (the original ban) on consumer goods of a particular kind (the banned goods) is imposed by a responsible Minister other than the Commonwealth Minister; and
- (b) while the original ban is in force, the Commonwealth Minister imposes an interim ban (the Commonwealth ban):
 - (i) on the banned goods; or
 - (ii) on consumer goods of a kind that includes the banned goods;

the original ban, to the extent that it is a ban on the banned goods, ceases to be in force immediately before the Commonwealth ban comes into force.

(2) If:

- (a) an interim ban (the original ban) on product related services of a particular kind (the banned services) is imposed by a responsible Minister other than the Commonwealth Minister; and

(b)原來的禁制令生效後，總理對以下施加臨時禁令
（英聯邦禁令）：

- (i)被禁止的服務；
- (ii)包括禁止服務類型之產品服務；

在聯邦禁制令生效前，原禁止服務之禁制令立即失效。

113 撤銷臨時禁制令

部長基於職權對一項臨時禁制令：

(a)得於網際網路發佈書面通知，隨時撤銷該禁令；

(b)依據部長指定之日期該禁制令失其效力。

細分 B 永久禁制令

114 永久禁止消費品或產品相關的服務

(1)總理得於網際網路發佈書面通知，發佈特定或特定種類消費商品永久禁制令：

(a)該特定（被禁止的商品）消費品之一個或多個臨時禁令生效；或

(b)聯邦總理知悉：

(i)該種消費商品可能會導致任何人受傷；

(b) while the original ban is in force, the Commonwealth Minister imposes an interim ban (the Commonwealth ban):

(i) on the banned services; or

(ii) on product related services of a kind that includes the banned services;

the original ban, to the extent that it is a ban on the banned services, ceases to be in force immediately before the Commonwealth ban comes into force.

113 Revocation of interim bans

If a responsible Minister imposes an interim ban:

(a) the responsible Minister may, by written notice published on the internet, revoke the ban at any time; and

(b) the ban ceases to be in force on the day specified by the responsible Minister in the notice.

Subdivision B—Permanent bans

114 Permanent bans on consumer goods or product related services

(1) The Commonwealth Minister may, by written notice published on the internet, impose a permanent ban on consumer goods of a particular kind if:

(a) one or more interim bans on consumer goods of that kind (the banned goods), or on consumer goods of a kind that include the banned goods, are in force; or

(b) it appears to the Commonwealth Minister that:

(i) consumer goods of that kind will or may cause

(ii)可合理預見的使用這種類型的消費品（包括濫用）或可能導致任何人受傷。

(2)總理得於網際網路發佈書面通知，發佈特定或特定種類產品相關服務之永久禁制令：

(a)該特定（被禁止的服務）產品相關服務之一個或多個臨時禁令生效；或

(b)聯邦總理知悉：

(i)所提供的特定消費者產品相關服務，可能導致任何人受傷；

(ii)可合理預見的使用某類消費者產品相關服務（包括濫用），其結果將會或可能會導致任何人受傷。

115 永久禁制令適用於地點

永久性的禁制令適用於所有州省和地區。

116 永久禁制令生效時點

永久性的禁制令於聯邦總理實施禁制令的文書指定日期生效。

117 撤銷永久禁制令

- injury to any person; or
- (ii) a reasonably foreseeable use (including a misuse) of consumer goods of that kind will or may cause injury to any person.
- (2) The Commonwealth Minister may, by written notice published on the internet, impose a permanent ban on product related services of a particular kind if:
- (a) one or more interim bans on product related services of that kind (the banned services), or on product related services of a kind that include the banned services, are in force; or
- (b) it appears to the Commonwealth Minister that:
- (i) as a result of services of that kind being supplied, consumer goods of a particular kind will or may cause injury to any person; or
- (ii) a reasonably foreseeable use (including a misuse) of consumer goods of a particular kind, to which such services relate, will or may cause injury to any person as a result of such services being supplied.

115 Places in which permanent bans apply

A permanent ban applies in all States and Territories.

116 When permanent bans come into force

A permanent ban comes into force on the day specified by the Commonwealth Minister in the instrument imposing the ban.

117 Revocation of permanent bans

若聯邦總理發佈之永久禁制令：

- (a) 聯邦總理得隨時於網際網路發佈書面通知，撤銷該禁令；且
- (b) 該禁制令於聯邦總理通知書指定的日期失其效力。

細分 C 遵守臨時禁制令和永久禁制令

118 供應禁止之消費品

- (1) 任何人不得於貿易或商業，供應消費者下列種類之商品：
 - (a) 消費商品供應地有該消費商品之有效臨時禁制令；
 - (b) 對這類消費商品之禁制令為有效。

註：罰款可能違反本項規定。

- (2) 任何人不得在貿易或商業，供應提供第(1)禁止（出口除外）消費商品。

註：罰款可能違反本項規定。

- (3) 任何人不得，或為貿易或商業之目的，製造，擁有或控制第(1)禁止消費商品的供應。

If the Commonwealth Minister imposes a permanent ban:

- (a) the Commonwealth Minister may, by written notice published on the internet, revoke the ban at any time; and
- (b) the ban ceases to be in force on the day specified by the Commonwealth Minister in the notice.

Subdivision C—Compliance with interim bans and permanent bans

118 Supplying etc. consumer goods covered by a ban

(1) A person must not, in trade or commerce, supply consumer goods of a particular kind if:

- (a) an interim ban on consumer goods of that kind is in force in the place where the supply occurs; or
- (b) a permanent ban on consumer goods of that kind is in force.

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

(2) A person must not, in trade or commerce, offer for supply (other than for export) consumer goods the supply of which is prohibited by subsection (1).

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

(3) A person must not, in or for the purposes of trade or commerce, manufacture, possess or have control of consumer goods the supply of which is prohibited by subsection (1).

註：罰款可能違反本項規定。

(4) 在第5-2部分有關違反第(3)之訴訟，若如果被告證明被告的製造，占有或控制商品提供貨物的目的（除出口外）並非為供應之目的，則構成防禦。

(5) 任何人不得於貿易或商業，出口第(1)禁止的消費商品，除非：

(a) 申請總理批准出口書面文件；且

(b) 聯邦總理給予批准之書面通知。

註：罰款可能違反本項規定。

(6) 若聯邦總理根據第(5)批准，申請人必須在取得批准後7日內提交每個聯邦議會眾議院一份列明批准的內容聲明。

(7) 若：

(a) 任何人違反第(1)提供消費商品；且

(b) 他人遭受損失或損害：

(i) 係由於商品缺陷，或是商品的危險特性；或

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

- (4) In a proceeding under Part 5-2 in relation to a contravention of subsection (3), it is a defence if the defendant proves that the defendant's manufacture, possession or control of the goods was not for the purpose of supplying the goods (other than for export).
- (5) A person must not, in trade or commerce, export consumer goods the supply of which is prohibited by subsection (1) unless:
- (a) the person applies, in writing, to the Commonwealth Minister for an approval to export those goods; and
 - (b) the Commonwealth Minister gives such an approval by written notice given to the person.

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

- (6) If the Commonwealth Minister gives an approval under subsection (5), he or she must cause a statement setting out particulars of the approval to be tabled in each House of the Parliament of the Commonwealth within 7 sitting days of that House after the approval is given.
- (7) If:
- (a) a person supplies consumer goods in contravention of subsection (1); and
 - (b) another person suffers loss or damage:
 - (i) because of a defect in, or a dangerous characteristic of, the goods; or

(ii)係因可合理預見的使用的商品（包括濫用）所致；

該他人，基於本附表之目的，視為因該供應遭受的損失或損害。

119 供應禁制令所涵蓋的產品相關服務

(1)任何人不得於貿易或商業，供應特定種類產品相關服務，若：

(a)特定類型服務的臨時禁令於供應發生地生效；

(b)對這類服務的永久禁制令是生效。

註：罰款可能違反本項規定。

(2)任何人不得於貿易或商業，提供第(1)項所禁止的供應產品相關服務。

註：罰款可能違反本項規定。

(3)若：

(a)任何人違反第(1)提供產品相關的服務；且

(b)他人遭受損失或損害：

(i)係由於有缺陷或危險特性的消費品的特性因被提供服務的結果；

(ii)係因合理可預見的使用（包括濫用）被提供之消費者商品服務所致；

- (ii) because of a reasonably foreseeable use
(including a misuse) of the goods;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

119 Supplying etc. product related services covered by a ban

- (1) A person must not, in trade or commerce, supply product related services of a particular kind if:

- (a) an interim ban on services of that kind is in force in the place where the supply occurs; or
- (b) a permanent ban on services of that kind is in force.

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

- (2) A person must not, in trade or commerce, offer for supply product related services the supply of which is prohibited by subsection (1).

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

- (3) If:

- (a) a person supplies product related services in contravention of subsection (1); and
- (b) another person suffers loss or damage:
 - (i) because of a defect in, or a dangerous characteristic of, consumer goods that results from the services being supplied; or
 - (ii) because of a reasonably foreseeable use (including a misuse) of consumer goods that results from the services being supplied;

該他人，基於本附表之目的，視為因該供應遭受的損失或損害。

細分 D 相互承認原則的暫時豁免

120 1997年跨塔斯曼相互承認法的臨時豁免

(1)若：

(a)對特定種類消費商品的臨時禁制令生效；

(b)對特定種類的消費商品的永久禁制令生效；

依跨1997年塔斯曼相互承認法第46條的目的，被依該法第46條(2)公布的商品，得豁免該法效力。

(2)本條並不影響，第46條(4)豁免規定之適用。

121 1992年相互承認法的臨時豁免

(1)若：

(a)對特定種類消費商品的臨時禁制令生效；且

(b)並非由總理頒佈臨時禁制令；

依跨1992年相互承認法，被依該法第15條公布的商品，得適用之。

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

Subdivision D—Temporary exemption from mutual recognition principles

120 Temporary exemption under the Trans-Tasman Mutual Recognition Act 1997

(1) If:

- (a) an interim ban on consumer goods of a particular kind is in force; or
- (b) a permanent ban on consumer goods of a particular kind is in force;

the goods are taken, for the purposes of section 46 of the Trans-Tasman Mutual Recognition Act 1997, to be goods of a kind that are declared, in the manner provided by section 46(2) of that Act, to be exempt from the operation of that Act.

(2) This section does not affect the application of section 46(4) of that Act in relation to such an exemption.

121 Temporary exemption under the Mutual Recognition Act 1992

(1) If:

- (a) an interim ban on consumer goods of a particular kind is in force; and
- (b) the interim ban was not imposed by the Commonwealth Minister;

the goods are taken, for the purposes of section 15 of the Mutual Recognition Act 1992, to be goods of a kind that

(2)本條並不影響，第15條(3)豁免規定之適用。

第三分部 消費品召回

細分A 消費者品的強制召回

122 強制召回的消費商品

(1)部長基於職權得簽署特定種類消費者商品之召回通知，若：

(a)任何人於貿易或商業，提供消費者該特定種類之商品；

(b)下列任何適用於：

(i)部長基於職權發現，該商品將要或可能導致任何人受傷；

(ii)部長基於職權發現，可合理預見的使用（包括濫用）此類商品或可能導致任何人受傷；

(iii)此類商品的安全標準已經生效，該商品不符合標準；

(iv)生效之臨時或永久禁制令；

(c)部長基於職權發現，一個或多個此類商品的供應商未採取令人適當作為，以避免商品導致任何人受傷。

are declared, in the manner provided by section 15(1) of that Act, to be goods to which that section applies.

- (2) This section does not affect the application of section 15(3) of that Act in relation to such an exemption.

Division 3—Recall of consumer goods

Subdivision A—Compulsory recall of consumer goods

122 Compulsory recall of consumer goods

- (1) A responsible Minister may, by written notice published on the internet, issue a recall notice for consumer goods of a particular kind if:

(a) a person, in trade or commerce, supplies consumer goods of that kind; and

(b) any of the following applies:

(i) it appears to the responsible Minister that such goods will or may cause injury to any person;

(ii) it appears to the responsible Minister that a reasonably foreseeable use (including a misuse) of such goods will or may cause injury to any person;

(iii) a safety standard for such goods is in force and the goods do not comply with the standard;

(iv) an interim ban, or a permanent ban, on such goods is in force; and

(c) it appears to the responsible Minister that one or more suppliers of such goods have not taken satisfactory action to prevent those goods causing injury to any person.

- (2)基於第(1)(c)職權之目的，並非知悉該種消費商品的供應商的身份。
- (3)即使消費品自提供後已成為固定裝置，仍得發出根據第(1)簽署之消費商品行召回通知。

123 召回通知的內容

- (1)消費品的召回通知得要求一或多個商品供應商，或（若無部長簽署通知中所指之供應商）管理者，採取一或多個以下作為：
 - (a)召回商品；
 - (b)向公眾，或通知所指定之人，為一或數個以下揭露：
 - (i)通知中所確認之缺陷性質，或一個危險特徵；
 - (ii)通知中所確認之，可合理預見的使用或濫用的貨物之危險；
 - (iii)通知中所指定之在處理商品的程序；
 - (c)部長依職權知悉些供應商的身份-告知公眾，或通知所指定之人，供應商承諾為以下供應商認為適當之作為：

- (2) It is not necessary for the purposes of subsection (1)(c) for the responsible Minister to know the identities of any of the suppliers of the consumer goods of that kind.
- (3) A recall notice for consumer goods may be issued under subsection (1) even if the consumer goods have become fixtures since the time they were supplied.

123 Contents of a recall notice

- (1) A recall notice for the consumer goods may require one or more suppliers of the goods, or (if no such supplier is known to the responsible Minister who issued the notice) the regulator, to take one or more of the following actions:
 - (a) recall the goods;
 - (b) disclose to the public, or to a class of persons specified in the notice, one or more of the following:
 - (i) the nature of a defect in, or a dangerous characteristic of, the goods as identified in the notice;
 - (ii) the circumstances as identified in the notice in which a reasonably foreseeable use or misuse of the goods is dangerous;
 - (iii) procedures as specified in the notice for disposing of the goods;
 - (c) if the identities of any of those suppliers are known to the responsible Minister—inform the public, or a class of persons specified in the notice, that the supplier undertakes to do whichever of the following the supplier thinks is appropriate:

- (i) 除非該通知確定的貨物的危險特性 - 修理的商品；
 - (ii) 更換商品；
 - (iii) 返還提供商品（無論是由供應商或由另一人）的價格。
- (2) 召回通知得指定：
- (a) 通知要求採取作為的方式；
 - (b) 必須採取作為的期限。
- (3) 若召回通知要求管理人採取召回消費商品之作為，部長依職權得於通知中指定，管理人必須保留，銷毀或以其他方式處置商品。
- (4) 若召回通知要求第(1)(c)款所指的消費品供應商採取作為，部長依職權得於通知中指定，若：
- (a) 供應商承諾退還商品的價格；
 - (b) 自消費者向供應商（不論是否作出退款的人）購買商品超過 12 個月的期限；
- 藉由通知所指定對已使用貨物的計算出之金額，供應商得酌減退款金額。

- (i) unless the notice identifies a dangerous characteristic of the goods—repair the goods;
 - (ii) replace the goods;
 - (iii) refund to a person to whom the goods were supplied (whether by the supplier or by another person) the price of the goods.
- (2) The recall notice may specify:
 - (a) the manner in which the action required to be taken by the notice must be taken; and
 - (b) the period within which the action must be taken.
- (3) If the recall notice requires the regulator to take action to recall the consumer goods, the responsible Minister may specify in the notice that the regulator must retain, destroy or otherwise dispose of the goods.
- (4) If the recall notice requires a supplier of the consumer goods to take action of a kind referred to in subsection (1) (c), the responsible Minister may specify in the notice that, if:
 - (a) the supplier undertakes to refund the price of the goods; and
 - (b) a period of more than 12 months has elapsed since a person (whether or not the person to whom the refund is to be made) acquired the goods from the supplier;the amount of a refund may be reduced by the supplier by an amount calculated in a manner specified in the notice that is attributable to the use which a person has had of the goods.

124 召回通知之供應商的義務

(1) 本條適用於依第123(1)(c)消費品的召回通知中要求供應商採取之作為。

(2) 若供應商承諾維修的消費商品，供應商需對貨物進行修復，使：

(a) 在召回通知中確定的商品之任何缺陷得到補救；

(b) 若商品的安全標準生效 - 且商品符合該標準。

(3) 若供應商的承諾替換消費商品，供應商必須更換與消費商品類似的商品，該商品：

(a) 若因商品的缺陷或危險特性於召回通知中確定被替換的 - 不包含缺陷或有此特性；

(b) 若商品的安全標準替換 - 符合該標準。

(4) 若供應商承諾：

(a) 修理該消費商品；

(b) 替換消費商品；

修理或更換，包括任何必要的運送成本的費用，須由供應商支付。

125 澳大利亞境外提供的消費品之強制召回通知

(1) 澳大利亞以外的人提供或用品的消費品，如果某類消

124 Obligations of a supplier in relation to a recall notice

- (1) This section applies if a recall notice for consumer goods requires a supplier to take action of a kind referred to in section 123(1)(c).
- (2) If the supplier undertakes to repair the consumer goods, the supplier must cause the goods to be repaired so that:
 - (a) any defect in the goods identified in the recall notice is remedied; and
 - (b) if a safety standard for the goods is in force—the goods comply with that standard.
- (3) If the supplier undertakes to replace the consumer goods, the supplier must replace the goods with similar consumer goods which:
 - (a) if a defect in, or a dangerous characteristic of, the goods to be replaced was identified in the recall notice—do not contain that defect or have that characteristic; and
 - (b) if a safety standard for the goods to be replaced is in force—comply with that standard.
- (4) If the supplier undertakes:
 - (a) to repair the consumer goods; or
 - (b) to replace the consumer goods;the cost of the repair or replacement, including any necessary transportation costs, must be paid by the supplier.

125 Notification by persons who supply consumer goods outside Australia if there is compulsory recall

- (1) If consumer goods of a particular kind are recalled as

費品被召回通知要求，必須向澳大利亞以外的人提供符合第(2)書面通知。

(2)根據第（1）項發出的通知必須：

(a)說明受到召回的消費品；且

(b)若消費商品中含有缺陷或有危險－列出該缺陷的性質或特徵；且

(c)若可合理預見消費商品的使用或濫用－列出使用或誤用的情況；且

(d)若消費品不符合生效的安全標準－列出不符合的性質；且

(e)若消費商品的臨時或永久禁制令生效－陳述事實。

(3)根據第(1)項的通知，必須盡快給予澳大利亞以外的消費者商品之人。

(4)須根據第(1)發通知之人，必須於發出通之後10日內，提供通知副本給依職權簽署召回通知的部長。

註：罰款可能違反本項規定。

required by a recall notice, a person who has supplied or supplies those consumer goods to a person outside Australia must give the person outside Australia a written notice that complies with subsection (2).

- (2) The notice given under subsection (1) must:
 - (a) state that the consumer goods are subject to recall; and
 - (b) if the consumer goods contain a defect or have a dangerous characteristic—set out the nature of that defect or characteristic; and
 - (c) if a reasonably foreseeable use or misuse of the consumer goods is dangerous—set out the circumstances of that use or misuse; and
 - (d) if the consumer goods do not comply with a safety standard for such goods that is in force—set out the nature of the non-compliance; and
 - (e) if an interim ban, or a permanent ban, on the consumer goods is in force—state that fact.
- (3) The notice under subsection (1) must be given as soon as practicable after the supply of the consumer goods to the person outside Australia.
- (4) A person who is required to give a notice under subsection (1) must, within 10 days after giving the notice, give a copy of the notice to the responsible Minister who issued the recall notice.

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

126 多個召回通知的相互作用

若：

(a) 某類消費品（被召回的商品）的召回通知（原召回通知）係由總理以外之職權部長簽署；

(b) 原來的召回通知生效時，總理發出以下召回通知（聯邦召回通知）：

- (i) 召回的商品；
- (ii) 包括被召回的商品種類之消費商品；

原來的召回通知的範圍內，所涉及到召回的產品，在發出聯邦召回前通知失其效力。

127 遵守召回通知

(1) 若：

- (a) 對消費品的召回通知生效；且
- (b) 通知要求該人（管理人）做一或更多的事情；

該人必須遵從該通知。

註：罰款可能違反本項規定。

(2) 若消費品的召回通知生效，任何人不得於貿易或商業領域：

- (a) 若該通知確認缺陷，或危險特徵，消費品 - 供應消費者具有該類通知所列之缺陷或特徵之商

126 Interaction of multiple recall notices

If:

- (a) a recall notice (the original recall notice) for consumer goods of a particular kind (the recalled goods) is issued by a responsible Minister other than the Commonwealth Minister; and
- (b) while the original recall notice is in force, the Commonwealth Minister issues a recall notice (the Commonwealth recall notice):
 - (i) for the recalled goods; or
 - (ii) for consumer goods of a kind that includes the recalled goods;

the original recall notice, to the extent that it relates to the recalled goods, ceases to be in force immediately before the Commonwealth recall notice is issued.

127 Compliance with recall notices

(1) If:

- (a) a recall notice for consumer goods is in force; and
- (b) the notice requires a person (other than the regulator) to do one or more things;

the person must comply with the notice.

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

(2) If a recall notice for consumer goods is in force, a person must not, in trade or commerce:

- (a) if the notice identifies a defect in, or a dangerous characteristic of, the consumer goods—supply

品；

(b)在任何其他情況下-供應該通知所涉及該類消費商品。

註：罰款可能違反本項規定。

(3)若：

(a)任何人違反第(1)或(2)與消費商品相關之規定；
且

(b)他人遭受損失或損害；

(i)係因商品之缺陷，或危險特徵；或

(ii)因可合理預見的商品使用（包括濫用）；或

(iii)因違反召回通知，並未提供他人有關商品的
特定資訊；

他人，本附表而言，因為違反規定而遭受損失或損害。

細分 B 自願召回消費品

128 自願性召回消費商品通知要求

(1)本條適用於主動採取行動召回特定種類消費商品（包括消費商品供應以來，已成為固定設備），因為：

consumer goods of the kind to which the notice relates which contain that defect or have that characteristic; or

- (b) in any other case—supply consumer goods of the kind to which the notice relates.

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

(3) If:

- (a) a person contravenes subsection (1) or (2) in relation to consumer goods; and

- (b) another person suffers loss or damage:

(i) because of a defect in, or a dangerous characteristic of, the goods; or

(ii) because of a reasonably foreseeable use (including a misuse) of the goods; or

(iii) because, contrary to the recall notice, the other person was not provided with particular information in relation to the goods;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of the contravention.

Subdivision B—Voluntary recall of consumer goods

128 Notification requirements for a voluntary recall of consumer goods

- (1) This section applies if a person voluntarily takes action to recall consumer goods of a particular kind (including

- (a) 消費商品或可能傷害任何其他人；
 - (b) 可合理預見的消費商品的使用（包括濫用）會或可能傷害任何其他人；
 - (c) 消費商品安全標準已生效，但他們並未或可能未符合標準；
 - (d) 消費商品的臨時或永久禁制令，是有效的。
- (2) 該人，必須於作為後2天內向總理進行符合第(7)之書面通知。
- 註：罰款可能違反本項規定。
- (3) 總理得於網際網路公布通知副本。
- (4) 供應澳大利亞以外的他人消費商品之人，必須向其他人發出符合第(7)之書面通知。
- (5) 根據第(4)的規定，必須於提供商品後儘速通知該澳大利亞以外之人。
- (6) 根據第(4)而被要求提供通知之人，必須於發出通知後

consumer goods that have become fixtures since being supplied) because:

- (a) the consumer goods will or may cause injury to any other person; or
 - (b) a reasonably foreseeable use (including a misuse) of the consumer goods will or may cause injury to any other person; or
 - (c) a safety standard for the consumer goods is in force and they do not, or it is likely that they do not, comply with the standard; or
 - (d) an interim ban, or a permanent ban, on the consumer goods is in force.
- (2) The person must, within 2 days after taking the action, give the Commonwealth Minister a written notice that complies with subsection (7).
- Note: A pecuniary penalty may be imposed for a contravention of this subsection.
- (3) The Commonwealth Minister may publish a copy of the notice on the internet.
- (4) A person who has supplied or supplies consumer goods of that kind to another person outside Australia must give the other person a written notice that complies with subsection (7).
- (5) The notice under subsection (4) must be given as soon as practicable after the supply of the consumer goods to the person outside Australia.
- (6) A person who is required to give a notice under subsection

10日內，給予總理該通知的副本。

註：罰款可能違反本項規定。

(7)根據第（2）或（4）的通知必須：

(a)陳述消費品受召回；

(b)若消費商品中含有缺陷或有危險的特徵 - 列出該缺陷的性質或特徵；

(c)可合理預見的消費商品的使用品（包括濫用）會或可能傷害任何其他人；

(d)消費商品安全標準已生效，但他們並未或可能未符合標準；

(e)消費商品的臨時或永久禁制令，是有效的-說明該事實。

第四分部 安全警告通知

129 安全有關消費品和產品相關的服務的警告告示

(1)部長基於職權，得於網際網路發佈書面通知，包含或一或二件下列說明：

(a)說明通知中該特定種類之消費商品正在調查，是否：

(4) must, within 10 days after giving the notice, give a copy of the notice to the Commonwealth Minister.

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

- (7) A notice given under subsection (2) or (4) must:
- (a) state that the consumer goods are subject to recall; and
 - (b) if the consumer goods contain a defect or have a dangerous characteristic—set out the nature of that defect or characteristic; and
 - (c) if a reasonably foreseeable use or misuse of the consumer goods is dangerous—set out the circumstances of that use or misuse; and
 - (d) if the consumer goods do not, or it is likely that they do not, comply with a safety standard for the goods that is in force— set out the nature of the non-compliance or likely non-compliance; and
 - (e) if an interim ban, or a permanent ban, on the consumer goods is in force—state that fact.

Division 4—Safety warning notices

129 Safety warning notices about consumer goods and product related services

- (1) A responsible Minister may publish on the internet a written notice containing one or both of the following:
- (a) a statement that consumer goods of a kind specified in the notice are under investigation to determine

(i)該等商品會或可能導致任何人受傷；

(ii)可合理預見的消費商品的使用（包括濫用）會或可能傷害任何其他人；

(b)警告使用該消費商品可能導致的風險。

(2)部長基於職權，得於網際網路發佈書面通知，包含或一或二件下列說明：

(a)說明通知中該特定種類之產品相關服務正在調查，是否：

(i)該等商品會或可能因其相關服務導致任何人受傷；

(ii)可合理預見的消費商品因其相關服務的使用（包括濫用）會或可能傷害任何其他人；

(b)警告使用該商品相關服務可能導致的風險。

130 公佈調查的結果

(1)若：

(a)根據第129(1)或(2)通知指定之消費商品，或產

whether:

- (i) those goods will or may cause injury to any person; or
- (ii) a reasonably foreseeable use (including a misuse) of those goods will or may cause injury to any person;

(b) a warning of possible risks involved in the use of consumer goods of a kind specified in the notice.

(2) A responsible Minister may publish on the internet a written notice containing one or both of the following:

(a) a statement that product related services of a kind specified in the notice are under investigation to determine whether:

(i) consumer goods of a particular kind will or may cause injury to any person as a result of services of that kind being supplied; or

(ii) a reasonably foreseeable use (including a misuse) of consumer goods of a particular kind, to which such services relate, will or may cause injury to any person as a result of such services being supplied;

(b) a warning of possible risks involved in the supply of product related services of a kind specified in the notice.

130 Announcement of the results of an investigation etc.

(1) If:

(a) an investigation of consumer goods, or product

品相關的服務的調查已經完成；

(b)以下相關商品或服務不公布或不簽署：

(i)根據競爭和消費者法第132條的禁止通知建議；

(ii)根據該法第132A的建議召回通知；

(iii)根據該法第132J(1)(2)之通知；

部長基於職權根據第129(1)(2)簽署通知，必須儘速於調查完成後，以書面方式於網際網路上公布調查之結果。

(2)部長基於職權，可根據本條第(1)項刊登的公告中宣布：

(a)是否基於本部分規定作為之建議，視為消費品或產品相關的服務有關；

(b)若建議採取任何此類作為 - 建議應採取什麼作為。

第五分部 因消費商品或與產品相關的服務，導致死亡或嚴重傷害或疾病

131 供應商報告因消費商品導致有人死亡、嚴重傷害或生病

(1)若：

(a)一個人（供應商）於貿易或商業供應消費商品；

- related services, specified in a notice under section 129(1) or (2) has been completed; and
- (b) none of the following have been published or issued in relation to those goods or services:
- (i) a proposed ban notice under section 132 of the Competition and Consumer Act;
 - (ii) a proposed recall notice under section 132A of that Act;
 - (iii) a notice under section 132J(1) or (2) of that Act;
- the responsible Minister who issued the notice under section 129(1) or (2) must, as soon as practicable after the completion of the investigation, announce, by written notice published on the internet, the results of the investigation.
- (2) The responsible Minister may announce in a notice published under subsection (1) of this section:
- (a) whether any action under this Part is proposed to be taken in relation to the consumer goods or product related services; and
 - (b) if it is proposed to take any such action—what action is proposed to be taken.

Division 5—Consumer goods, or product related services, associated with death or serious injury or illness

131 Suppliers to report consumer goods associated with the death or serious injury or illness of any person

- (1) If:
- (a) a person (the supplier), in trade or commerce,

(b) 供應商獲知有人死亡或嚴重傷害或疾病：

(i) 認為係因消費品之使用或可預見的誤用導致死亡或嚴重受傷或生病；

(ii) 供應商以外之人認為，係因消費品使用或可預見的誤用導致死亡或嚴重受傷或生病；

供應商必須於知悉後在2日內書面通知總理，以符合第(5)之規定。

註：罰款可能違反本項規定。

(2) 第(1)不適用：

(a) 確實並非由消費品使用或可預見的誤用導致死亡或嚴重受傷或生病；或

(b) 消費品使用或可預見的誤用不太可能導致死亡或嚴重受傷或生病；或

(c) 供應商或他人被要求依國家、省或地區法律通知，發生死亡或嚴重受傷或生病情事；或

supplies consumer goods; and

(b) the supplier becomes aware of the death or serious injury or illness of any person and:

(i) considers that the death or serious injury or illness was caused, or may have been caused, by the use or foreseeable misuse of the consumer goods; or

(ii) becomes aware that a person other than the supplier considers that the death or serious injury or illness was caused, or may have been caused, by the use or foreseeable misuse of the consumer goods;

the supplier must, within 2 days of becoming so aware, give the Commonwealth Minister a written notice that complies with subsection (5).

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

(2) Subsection (1) does not apply if:

(a) it is clear that the death or serious injury or illness was not caused by the use or foreseeable misuse of the consumer goods; or

(b) it is very unlikely that the death or serious injury or illness was caused by the use or foreseeable misuse of the consumer goods; or

(c) the supplier, or another person, is required to notify the death or serious injury or illness in accordance with a law of the Commonwealth, a State or a Territory that is a law specified in the regulations; or

(d) 供應商，或他人須通知有死亡或嚴重受傷或生病之情事，係依以下行業規範：

(i) 適用於供應商或其他人之行業規範；

(ii) 規範所指定之行業規範。

(3) 無論消費商品是否於發生死亡或嚴重受傷或生病之前或使用，均適用第(1)。

(4) 在不限第(1)，供應商可能藉由以下管道知悉在第(1)(b)款所述任何相關資訊：

(a) 消費者；

(b) 重新供應的消費商品之人；

(c) 商品的保險人或修理人；

(d) 行業組織或者消費者組織。

(5) 通知必須有：

(a) 確定的消費商品；

(b) 由供應商告知的資訊應包括下列事項：

(i) 在澳大利亞製造的消費品，在澳大利亞提供，進入澳大利亞進口或出口來自澳大利亞的時間與數量；

(ii) 在何種情況下發生的死亡或嚴重受傷或生病；

- (d) the supplier, or another person, is required to notify the death or serious injury or illness in accordance with an industry code of practice that:
 - (i) applies to the supplier or other person; and
 - (ii) is specified in the regulations.
- (3) Subsection (1) applies whether or not the consumer goods were being used before or at the time the death or serious injury or illness occurred.
- (4) Without limiting subsection (1), the ways in which the supplier may become aware as mentioned in subsection (1) include receiving the relevant information from any of the following:
 - (a) a consumer;
 - (b) a person who re-supplies the consumer goods;
 - (c) a repairer or insurer of the goods;
 - (d) an industry organisation or consumer organisation.
- (5) The notice must:
 - (a) identify the consumer goods; and
 - (b) include information about the following matters to the extent that it is known by the supplier at the time the notice is given:
 - (i) when, and in what quantities, the consumer goods were manufactured in Australia, supplied in Australia, imported into Australia or exported from Australia;
 - (ii) the circumstances in which the death or serious injury or illness occurred;

(iii) 遭受嚴重傷害或生病的性質；

(iv) 任何供應商打算向有關的消費品採取措施或作為。

(6) 根據第(1)款所做的通知，不視為供應商承認應為以下情事負有責任：

(a) 消費品；

(b) 任何人死亡或嚴重傷害或生病。

132 供應商報告因商品相關服務導致有人死亡、嚴重傷害或生病

(1) 若：

(a) 一個人（供應商）於貿易或商業，提供商品相關的服務；且

(b) 供應商獲知有人死亡或嚴重傷害或疾病：

(i) 認為係因可預見消費商品相關服務之使用致死亡或嚴重受傷或生病；

(ii) 供應商以外之人認為，係因商品相關服務使用或可預見的誤用導致死亡或嚴重受傷或生病；

供應商必須於知悉後在2日內書面通知總理，以符合

- (iii) the nature of any serious injury or illness suffered by any person;
- (iv) any action that the supplier has taken, or is intending to take, in relation to the consumer goods.

(6) The giving of the notice under subsection (1) is not to be taken for any purpose to be an admission by the supplier of any liability in relation to:

- (a) the consumer goods; or
- (b) the death or serious injury or illness of any person.

132 Suppliers to report product related services associated with the death or serious injury or illness of any person

(1) If:

- (a) a person (the supplier), in trade or commerce, supplies product related services; and
- (b) the supplier becomes aware of the death or serious injury or illness of any person and:
 - (i) considers that the death or serious injury or illness was caused, or may have been caused, by the use or foreseeable misuse of the consumer goods to which the services relate; or
 - (ii) becomes aware that a person other than the supplier considers that the death or serious injury or illness was caused, or may have been caused, by the use or foreseeable misuse of the consumer goods to which the services relate;

the supplier must, within 2 days of becoming so aware, give

第(5)之規定。

註：罰款可能違反本項規定。

(2)第(1)不適用：

(a)確實並非因商品相關服務使用或可預見的誤用導致死亡或嚴重受傷或生病；或

(b)商品相關服務使用或可預見的誤用不太可能導致死亡或嚴重受傷或生病；或

(c)供應商或他人被要求依國家、省或地區法律通知，發生死亡或嚴重受傷或生病情事；或

(d)供應商，或他人須通知有死亡或嚴重受傷或生病之情事，係依以下行業規範：

(i)適用於供應商或其他人之行業規範；

(ii)規範所指定之行業規範。

(3)無論商品相關服務是否於發生死亡或嚴重受傷或生病之前或使用，均適用(1)。

(4)在不限制第(1)，供應商可能藉由以下管道知悉在第(1)(b)款所述任何相關資訊：

the Commonwealth Minister a written notice that complies with subsection (5).

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

- (2) Subsection (1) does not apply if:
 - (a) it is clear that the death or serious injury or illness was not caused by the use or foreseeable misuse of the consumer goods to which the services relate; or
 - (b) it is very unlikely that the death or serious injury or illness was caused by the use or foreseeable misuse of the consumer goods to which the services relate; or
 - (c) the supplier, or another person, is required to notify the death or serious injury or illness in accordance with a law of the Commonwealth, a State or a Territory that is a law specified in the regulations; or
 - (d) the supplier, or another person, has notified the death or serious injury or illness in accordance with an industry code of practice that:
 - (i) applies to the supplier or other person; and
 - (ii) is specified in the regulations.
- (3) Subsection (1) applies whether or not consumer goods to which the product related services relate were being used before or at the time the death or serious injury or illness occurred.
- (4) Without limiting subsection (1), the ways in which the supplier may become aware as mentioned in subsection (1) (b) include receiving the relevant information from any of

- (a)消費者；
 - (b)重新供應的商品相關服務之人；
 - (c)商品相關服務的保險人或修理人；
 - (d)行業組織或者消費者組織。
- (5)通知必須有：
- (a)確定的消費商品相關服務；
 - (b)由供應商告知的資訊應包括下列事項：
 - (i)提供該服務之時間；
 - (ii)在何種情況下發生的死亡或嚴重受傷或生病；
 - (iii)遭受嚴重傷害或生病的性質；
 - (iv)任何供應商打算向有關的商品服務採取措施或作為。
- (6)根據第(1)款所做的通知，不視為供應商承認應為以下情事負有責任：
- (a)商品相關服務；
 - (b)與服務相關之商品；
 - (c)任何人死亡或嚴重傷害或生病。

132A 根據本分部之通知保密

- (1)任何人不得透露根據本分部所發出的通知或通知中的

the following:

- (a) a consumer;
- (b) a person who re-supplies the product related services;
- (c) an insurer of the services;
- (d) an industry organisation or consumer organisation.

(5) The notice must:

- (a) identify the product related services and the consumer goods to which the services relate; and
- (b) include information about the following matters to the extent that it is known by the supplier at the time the notice is given:
 - (i) when the services have been supplied;
 - (ii) the circumstances in which the death or serious injury or illness occurred;
 - (iii) the nature of any serious injury or illness suffered by any person;
 - (iv) any action that the supplier has taken, or is intending to take, in relation to the services.

(6) The giving of the notice under subsection (1) is not to be taken for any purpose to be an admission by the supplier of any liability in relation to:

- (a) the product related services; or
- (b) the consumer goods to which the services relate; or
- (c) the death or serious injury or illness of any person.

132A Confidentiality of notices given under this Division

(1) A person must not disclose to any other person a notice given under this Division, or any part of or information

任何資訊給他人，除非為通知之人已同意該項通知，或部分資訊不被視為機密。

(2)本條不適用：

(a)由聯邦總理所做之揭露：

(i)其他具有職權之部長；或

(ii)管理人；或

(iii)聯合管理人；或

(b)聯邦總理和聯邦部長認為披露是符合公眾利益；或

(c)該項披露是由管理機構成員，或聯合管理機構成員的工作人員，依其工作職責為之，並列出：

(i)管理機構或聯合管理機構的另一名成員；

(ii)若為管理機構成員之工作人員揭露 - 列出聯合管理機構；或

(iii)若為聯合管理機構成員之工作人員揭露 - 列出管理機構或其他聯合管理機構；

(d)基於法律授權所為之揭露或請求揭露；

(e)揭露對執行刑法或徵收罰款的法律是合理必要的。

contained in such a notice, unless the person who gave the notice has consented to the notice, or that part or information, not being treated as confidential.

(2) This section does not apply if:

- (a) the disclosure is made by the Commonwealth Minister to:
 - (i) another responsible Minister; or
 - (ii) the regulator; or
 - (iii) an associate regulator; or
- (b) the disclosure is made by the Commonwealth Minister and the Commonwealth Minister considers that the disclosure is in the public interest; or
- (c) the disclosure is made by a member of the staff of the regulator, or an associate regulator, in the performance of his or her duties as such a member of staff, and is made:
 - (i) to another member of the staff of the regulator or associate regulator; or
 - (ii) if the person making the disclosure is a member of the staff of the regulator—to an associate regulator; or
 - (iii) if the person making the disclosure is a member of the staff of an associate regulator—to the regulator or another associate regulator; or
- (d) the disclosure is required or authorised by or under law; or
- (e) the disclosure is reasonably necessary for the

第六分部 - 雜項

133 根據保險契約之責任

若：

(a) 保險人與當事人之保險契約涉及：

(i) 由當事人供應或當事人建議供應之消費商品
被召回；或

(ii) 該當事人因該商品可能存在缺陷之責任；且

(b) 該當事人提供任何這類消費品的資訊予：

(i) 具有職權之部長；

(ii) 管理人；或

(iii) 基於1999年從事公共服務法或州或地區相對
應之法律所委任之個人；或

(iv) 聯邦或州或地區主管機關之官員；

保險人根據契約之責任，不因為該當事人提供資訊而
受影響。

第三之四部分 - 資訊標準

134 訂定商品和服務的資訊標準

enforcement of the criminal law or of a law imposing a pecuniary penalty.

Division 6—Miscellaneous

133 Liability under a contract of insurance

If:

- (a) a contract of insurance between an insurer and a person relates to:
 - (i) the recall of consumer goods that are supplied by the person, or which the person proposes to supply; or
 - (ii) the liability of the person with respect to possible defects in such consumer goods; and
- (b) the person gives information relating to any such consumer goods to:
 - (i) a responsible Minister; or
 - (ii) the regulator; or
 - (iii) a person appointed or engaged under the Public Service Act 1999, or under a corresponding law of a State or a Territory; or
 - (iv) an officer of an authority of the Commonwealth or of a State or Territory;

the liability of the insurer under the contract is not affected only because the person gave the information.

Part 3-4—Information standards

134 Making information standards for goods and services

- (1) 總理得於網際網路上發佈書面通知，就以下事物制訂一個或兩個資訊標準：
 - (a) 特別種類之商品；
 - (b) 特別種類的服務。
- (2) 不限於第(1)之規定，特別種類之商品或服務的資訊標準得：
 - (a) 訂定特別種類商品或服務的資訊內容的規定；
 - (b) 要求提供特別種類商品或服務的資訊內容；
 - (c) 提供這些資訊的方式或形式；
 - (d) 並非以特定方式提供資訊；
 - (e) 提供未被提供之特定種類的資訊；
 - (f) 指示關於商品或服務的特定資訊之含義。

135 對商品和服務資訊標準的聲明

- (1) 總理得於網際網路上發佈書面通知，聲明以下制訂商品或服務之資訊標準為指定之標準：
 - (a) 一特定的標準，或標準的特定部分，係由澳大利亞標準國際有限公司，或由規範所認可的協會批准；

- (1) The Commonwealth Minister may, by written notice published on the internet, make an information standard for one or both of the following:
 - (a) goods of a particular kind;
 - (b) services of a particular kind.
- (2) Without limiting subsection (1), an information standard for goods or services of a particular kind may:
 - (a) make provision in relation to the content of information about goods or services of that kind; or
 - (b) require the provision of specified information about goods or services of that kind; or
 - (c) provide for the manner or form in which such information is to be provided; or
 - (d) provide that such information is not to be provided in a specified manner or form; or
 - (e) provide that information of a specified kind is not to be provided about goods or services of that kind; or
 - (f) assign a meaning to specified information about goods or services.

135 Declaring information standards for goods and services

- (1) The Commonwealth Minister may, by written notice published on the internet, declare that the following is an information standard for goods or services of a kind specified in the instrument:
 - (a) a particular standard, or a particular part of a standard, prepared or approved by Standards Australia International Limited or by an association prescribed

(b)此類標準，或標準的一部分，於通知中為額外或指明變更。

(2)總理不得宣布依據第(1)之標準，或標準之一部，為以下之資訊標準：

(a)特別種類的商品；

(b)特別種類的服務；

若該標準或部分與，生效並且係依且根據第134(1)條作出的商品或服務的資訊標準不一致時。

136 供應等商品不符合資訊標準

(1)任何人不得於貿易或商業，供應特別種類之商品，若：

(a)該種商品的資訊標準為有效；

(b)該當事人未遵守該標準。

註：罰款可能違反本項規定。

(2)任何人不得於貿易或商業，提供第(1)所禁止之商品。

註：罰款可能違反本項規定。

(3)任何人不得於貿易或商業，製造的，擁有或控制第(1)項禁止之供應之商品。

by the regulations;

(b) such a standard, or such a part of a standard, with additions or variations specified in the notice.

(2) The Commonwealth Minister must not declare under subsection (1) that a standard, or a part of a standard, referred to in that subsection is an information standard for:

(a) goods of a particular kind; or

(b) services of a particular kind;

if that standard or part is inconsistent with an information standard for those goods or services that is in force and was made under section 134(1).

136 Supplying etc. goods that do not comply with information standards

(1) A person must not, in trade or commerce, supply goods of a particular kind if:

(a) an information standard for goods of that kind is in force; and

(b) the person has not complied with that standard.

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

(2) A person must not, in trade or commerce, offer for supply goods the supply of which is prohibited by subsection (1).

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

(3) A person must not, in or for the purposes of trade or commerce, manufacture, possess or have control of goods the supply of which is prohibited by subsection (1).

註：罰款可能違反本項規定。

- (4)於根據第5-2違犯第(3)規定之訴訟，若被告證明被告的製造，占有或控制貨物並非基於提供商品之目的，則構成一項防禦。
- (5)第(1)、(2)和(3)不適用於澳大利亞境外使用的商品。
- (6)除非成立違反，基於本條的目的，若有下列關於商品之陳述，推定有在澳大利亞境外使用之意思：
 - (a)陳述商品僅供出口；
 - (b)聲明中表示，以法規授權使用之文字聲明指陳該商品於澳大利亞境外使用之意思。
- (7)不限於第(6)，聲明得陳述，基於該項之目的，得適用藉由以下處理之商品：
 - (a)編造、壓印，黏貼標籤或說明於商品；
 - (b)於商品提供時為覆蓋，標籤，捲筒或其他處理。
- (8)若：
 - (a)供應商違反第(1)，(2)，或(3)提供商品；且
 - (b)另一人因違反資訊標準，未提供商品之特定資訊

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

- (4) In a proceeding under Part 5-2 in relation to a contravention of subsection (3), it is a defence if the defendant proves that the defendant's manufacture, possession or control of the goods was not for the purpose of supplying the goods.
- (5) Subsections (1), (2) and (3) do not apply to goods that are intended to be used outside Australia.
- (6) Unless the contrary is established, it is presumed, for the purposes of this section, that goods are intended to be used outside Australia if either of the following is applied to the goods:
 - (a) a statement that the goods are for export only;
 - (b) a statement indicating, by the use of words authorised by the regulations to be used for the purposes of this subsection, that the goods are intended to be used outside Australia.
- (7) Without limiting subsection (6), a statement may, for the purposes of that subsection, be applied to goods by being:
 - (a) woven in, impressed on, worked into or annexed or affixed to the goods; or
 - (b) applied to a covering, label, reel or thing in or with which the goods are supplied.
- (8) If:
 - (a) a person (the supplier) supplies goods in contravention of subsection (1), (2) or (3); and
 - (b) another person suffers loss or damage because,

而遭受損失或損害；且

(c)若供應商遵守資訊標準，他人不會遭受損失或損害；

其他人因為該供應，依本附表之意旨，視為遭受損失或損害。

137 服務供應不符資訊標準

(1)任何人不得於貿易或商業，提供特別種類的服務，若：

(a)此類服務的信息標準是有效的；且

(b)該人沒有遵守該標準。

註：罰款可能違反本項規定。

(2)任何人不得於貿易或商業，提供第(1)項禁止之服務供應。

註：罰款可能違反本項規定。

(3)若：

(a)一個人（供應商）違反第(1)項或(2)規定提供服務；且

(b)另一人因違反資訊標準，未提供特定資訊而遭受損失或損害；且

contrary to the information standard, he or she was not provided with particular information in relation to the goods; and

- (c) the other person would not have suffered the loss or damage if the supplier had complied with the information standard;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

137 Supplying etc. services that do not comply with information standards

- (1) A person must not, in trade or commerce, supply services of a particular kind if:

- (a) an information standard for services of that kind is in force; and
- (b) the person has not complied with that standard.

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

- (2) A person must not, in trade or commerce, offer for supply services the supply of which is prohibited by subsection (1).

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

- (3) If:

- (a) a person (the supplier) supplies services in contravention of subsection (1) or (2); and
- (b) another person suffers loss or damage because, contrary to the information standard, he or she was

(c)若供應商遵守該資訊標準，其他人將不會遭受損失或損害；

其他人，依本附表之目的，視為該供應而遭受的損失或損害。

第三之五部分 商品製造商的安全缺陷責任

第一分部 對抗製造商的安全缺陷商品之作為

138 因受傷而遭受的損失或損害的賠償責任

(1)製造商對個人就下列負有賠償責任：

- (a)製造商於貿易或商業提供商品；且
- (b)商品有安全缺陷；且
- (c)個人因為安全缺陷而遭受傷害。

(2)個人得對製造商採取訴訟以補償受到損失或損害的金額。

(3)若個人因受傷而死亡，有關死亡責任的州或地區法律適用於：

- (a)係因州或地區有關損害的法律而起提起之訴訟；

not provided with particular information in relation to the services; and

- (c) the other person would not have suffered the loss or damage if the supplier had complied with the information standard;

the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

Part 3-5—Liability of manufacturers for goods with safety defects

Division 1—Actions against manufacturers for goods with safety defects

138 Liability for loss or damage suffered by an injured individual

- (1) A manufacturer of goods is liable to compensate an individual if:
 - (a) the manufacturer supplies the goods in trade or commerce; and
 - (b) the goods have a safety defect; and
 - (c) the individual suffers injuries because of the safety defect.
- (2) The individual may recover, by action against the manufacturer, the amount of the loss or damage suffered by the individual.
- (3) If the individual dies because of the injuries, a law of a State or a Territory about liability in respect of the death of individuals applies as if:
 - (a) the action were an action under the law of the State or

(b)安全缺陷為製造商的不法行為，疏忽或過失所致。

139 受傷以外之個人遭受損失或損害的賠償責任

(1)商品的製造商對個人負有賠償責任，若：

(a)製造商於貿易或商業提供商品；且

(b)商品有安全缺陷；且

(c)個人因遭受損失或損害；且

(d)個人因遭受損失或損害係由於；

(i)受傷；或

(ii)個人因受傷而導致死亡-該個人之死亡；且

(e)該損失或損害不因為企業或個人和個人之間的專業關係而發生。

(2)個人得對製造商採取訴訟以補償受到損失或損害的金額。

140 因商品毀損所遭受損失或損害的賠償責任

(1)商品製造商在以下情形對他人負有賠償之責任，若：

(a)製造商於貿易或商業商品；且

- Territory for damages in respect of the injuries; and
- (b) the safety defect were the manufacturer's wrongful act, neglect or default.

139 Liability for loss or damage suffered by a person other than an injured individual

(1) A manufacturer of goods is liable to compensate a person if:

- (a) the manufacturer supplies the goods in trade or commerce; and
- (b) the goods have a safety defect; and
- (c) an individual (other than the person) suffers injuries because of the safety defect; and
- (d) the person suffers loss or damage because of:
 - (i) the injuries; or
 - (ii) if the individual dies because of the injuries—the individual's death; and
- (e) the loss or damage does not come about because of a business or professional relationship between the person and the individual.

(2) The person may recover, by action against the manufacturer, the amount of the loss or damage suffered by the person.

140 Liability for loss or damage suffered by a person if other goods are destroyed or damaged

(1) A manufacturer of goods is liable to compensate a person if:

- (a) the manufacturer supplies the goods in trade or

- (b)商品有安全缺陷；且
- (c)為一般個人或家庭使用或消費之某類商品因為安全缺陷被摧毀或損壞；且

(d)為個人使用或消費，或有意為個人使用或消費之個人、家庭使用或消費的商品被毀壞或受損；

(e)該人遭受損壞，毀壞或損害的結果。

(2)個人得對製造商採取訴訟以補償受到損失或損害的金額。

141 因土地，建築物或設備被毀或受損之損害賠償責任

(1)商品的製造商有損害賠償責任，若：

(a)製造商於貿易或商業提供商品；且

(b)商品有安全缺陷；且

(c)土地、建築物或附著設備因為安全缺陷而遭受損害；且

(d)土地，建築物或附著設備係因一般私人使用而購買；且

(e)該人有私人使用土地，建築物或附著設備之意

commerce; and

(b) the goods have a safety defect; and

(c) other goods of a kind ordinarily acquired for personal, domestic or household use or consumption are destroyed or damaged because of the safety defect; and

(d) the person used or consumed, or intended to use or consume, the destroyed or damaged goods for personal, domestic or household use or consumption; and

(e) the person suffers loss or damage as a result of the destruction or damage.

(2) The person may recover, by action against the manufacturer, the amount of the loss or damage suffered by the person.

141 Liability for loss or damage suffered by a person if land, buildings or fixtures are destroyed or damaged

(1) A manufacturer of goods is liable to compensate a person if:

(a) the manufacturer supplies the goods in trade or commerce; and

(b) the goods have a safety defect; and

(c) land, buildings or fixtures are destroyed or damaged because of the safety defect; and

(d) the land, buildings or fixtures are ordinarily acquired for private use; and

(e) the person used, or intended to use, the land, buildings

思；

(f) 該人因毀壞或損害的結果而遭受損失。

(2) 個人得對製造商採取訴訟以補償受到損失或損害的金額。

142 瑕疵商品訴訟之抗辯

在瑕疵商品訴訟，以下理由之防禦成立：

(a) 被指造成的損失或損害的商品安全瑕疵不存在：

(i) 電力之情形 - 電力的生成、發送或分佈的時間；或

(ii) 在任何其他情況下 - 實際製造商提供的商品的時間；

(b) 商品的安全缺陷，係因遵守強制性標準；

(c) 以當時科學或技術知識，於製造商提供商品時還無法發現之安全缺陷；

(d) 若商品的安全缺陷係包含在其他商品 - 該安全缺陷歸責於：

(i) 其他商品之設計；或

or fixtures for private use; and

(f) the person suffers loss or damage as a result of the destruction or damage.

(2) The person may recover, by action against the manufacturer, the amount of the loss or damage suffered by the person.

142 Defences to defective goods actions

In a defective goods action, it is a defence if it is established that:

- (a) the safety defect in the goods that is alleged to have caused the loss or damage did not exist:
 - (i) in the case of electricity—at the time at which the electricity was generated, being a time before it was transmitted or distributed; or
 - (ii) in any other case—at the time when the goods were supplied by their actual manufacturer; or
- (b) the goods had that safety defect only because there was compliance with a mandatory standard for them; or
- (c) the state of scientific or technical knowledge at the time when the goods were supplied by their manufacturer was not such as to enable that safety defect to be discovered; or
- (d) if the goods that had that safety defect were comprised in other goods—that safety defect is attributable only to:
 - (i) the design of the other goods; or

- (ii) 伴隨其他商品的標記；或
- (iii) 其他商品製造商的指示或警告。

第二分部 瑕疵品訴訟

143 瑕疵品訴訟的起始時間

(1) 依第（2）項之規定，個人得於知悉或應合理知悉下列情事3年內的任何時間提起瑕疵品訴訟：

- (a) 所稱損失或損害；
- (b) 商品的安全缺陷；
- (c) 製造商品之人的身份。

(2) 瑕疵品訴訟必須該訴訟所涉之製造商為供應後10年內提起。

144 連帶責任

若2個或更多的人基於第一分部，應對相同的損失或損害負責，而應負連帶責任。

145 生存訴訟

有關生存訴訟的州或地區法律，因死亡結果的發生得適用分部一之訴訟。

146 工人賠償法適用無瑕疵商品

有以下情形時，分部一不適用於國家、州或地區法律

- (ii) the markings on or accompanying the other goods; or
- (iii) the instructions or warnings given by the manufacturer of the other goods.

Division 2—Defective goods actions

143 Time for commencing defective goods actions

- (1) Subject to subsection (2), a person may commence a defective goods action at any time within 3 years after the time the person became aware, or ought reasonably to have become aware, of all of the following:
 - (a) the alleged loss or damage;
 - (b) the safety defect of the goods;
 - (c) the identity of the person who manufactured the goods.
- (2) A defective goods action must be commenced within 10 years of the supply by the manufacturer of the goods to which the action relates.

144 Liability joint and several

If 2 or more persons are liable under Division 1 for the same loss or damage, they are jointly and severally liable.

145 Survival of actions

A law of a State or a Territory about the survival of causes of action vested in persons who die applies to actions under Division 1.

146 No defective goods action where workers' compensation law etc. applies

Division 1 does not apply to a loss or damage in respect of

關於損失或損壞之救濟之規定：

- (a) 涉及到工人的賠償；或
- (b) 生效之國際協議。

147 身分不明的製造商

(1) 有人：

- (a) 期望提起瑕疵品訴訟；但；
- (b) 無法得知所涉商品製造商之身分；

得向得知身分之供應商或每個供應商進行書面通知，要求供應商或供應商提供製造商人的資料，以確定商品製造商，或提供商品之供應商。

(2) 若於提出的要求或請求後 30 天內，仍然無法得知商品製造商身份，每個供應商：

- (a) 被要求提供；且
- (b) 不符合的要求；

基於瑕疵品責任訴訟之目的（非基於第 142 條 (C) ），視供應商為商品製造人。

148 因遵守聯邦強制性標準之瑕疵商品國家責任

(1) 若個人（不論如何描述），對有缺陷的商品提起訴訟，商品被指控的安全缺陷，係因聯邦商品強制性標準規定所致，該人必須盡速提出防禦，給予聯邦：

which an amount has been, or could be, recovered under a law of the Commonwealth, a State or a Territory that:

- (a) relates to workers' compensation; or
- (b) gives effect to an international agreement.

147 Unidentified manufacturer

(1) A person who:

- (a) wishes to institute a defective goods action; but
- (b) does not know who is the manufacturer of the goods to which the action would relate;

may, by written notice given to a supplier, or each supplier, of the goods who is known to the person, request the supplier or suppliers to give the person particulars identifying the manufacturer of the goods, or the supplier of the goods to the supplier requested.

(2) If, 30 days after the person made the request or requests, the person still does not know who is the manufacturer of the goods, then each supplier:

- (a) to whom the request was made; and
- (b) who did not comply with the request;

is taken, for the purposes of the defective goods liability action (but not for the purposes of section 142(c)), to be the manufacturer of the goods.

148 Commonwealth liability for goods that are defective only because of compliance with Commonwealth mandatory standard

(1) If a person (however described) against whom a defective goods action is brought raises the defence that the goods had the alleged safety defect only because there was

- (a) 依規定之訴訟通知及抗辯；
 - (b) 訴訟抗辯文件之副本。
- (2) 所發出的通知與抗辯構成聯邦為訴訟之被告。
- (3) 若於訴訟中，法院認定提起訴訟的人（原告），但
- (1) 項所指的防禦得於訴訟中成功地對人（聯邦以外的其他）構成防禦：
 - (a) 聯邦，而不是人（英聯邦以外的其他），針對其訴訟結果，有責任支付原告因安全缺陷造成的損失或損害的數額；
 - (b) 法院得進入聯邦賠償金額之判斷；
 - (c) 法院可提出訴訟審理費用之命令。

149 管理機構的代表訴訟

- (1) 管理人得代表一或多遭收損失或損害之人提起瑕疵品訴訟。
- (2) 管理人需取得該人或每個人同意其作為訴訟代表的書

compliance with a Commonwealth mandatory standard for the goods, the person must, as soon as practicable after raising that defence, give the Commonwealth:

(a) a prescribed notice of the action and of that defence;
and

(b) a copy of the person's defence in the action.

(2) The giving of the notice and defence makes the Commonwealth a defendant in the action.

(3) If, in the action, the court finds that the person (the plaintiff) by whom the action is brought would, but for the defence referred to in subsection (1), have succeeded against the person (other than the Commonwealth) against which the action is brought, then:

(a) the Commonwealth, and not the person (other than the Commonwealth) against which the action is brought, is liable to pay the plaintiff for the amount of the loss or damage caused by the safety defect; and

(b) the court is to enter judgment against the Commonwealth for that amount; and

(c) the court may make such orders for costs as the court considers just.

149 Representative actions by the regulator

(1) The regulator may, by application, commence a defective goods action on behalf of one or more persons identified in the application who have suffered the loss or damage in relation to which the action is commenced.

(2) The regulator may only make the application if it has

面同意。

第三分部 雜項

150 本部的所有或任何條文的適用，不得被排除或修改

(1) 契約（包括未列明在契約中，但在由另一個長期的契約中的條款），排除、限制或修改，或具有排除，限制或修改效力之任何條款，無效：

(a) 適用全部或任何本部分的規定；

(b) 行使任何該等條文所賦予的權利；

(c) 任何基於這些規定的任何責任。

(2) 契約條款不得排除，限制或修改本部分的適用，除非該條款不明確，或者是與規定不一致。

obtained the written consent of the person, or each of the persons, on whose behalf the application is being made.

Division 3—Miscellaneous

150 Application of all or any provisions of this Part etc. not to be excluded or modified

- (1) Any term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term) that purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying, any of the following is void:
 - (a) the application of all or any of the provisions of this Part;
 - (b) the exercise of a right conferred by any of those provisions;
 - (c) any liability under any of those provisions.
- (2) A term of a contract is not taken 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.

外國消費者保護法規翻譯叢書索引

（第1輯至第19輯）

壹、亞太地區

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日本	製造物責任法	第3輯	2-9
日本	東京都消費生活條例	第2輯	44-95
日本	關於訪問販賣等之法律 訪問販賣に関する法律	第2輯	96-131
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日本	日本有關高爾夫球場等會員契約適正化之法律 ゴルフ場等に係る會員契約の適正化に関する法律	第8輯	332-359
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日本	美容業標準營業約款暨施行細則 美容業に関する標準營業約款、 美容業に関する標準營業約款施行細則	第13輯	170-189
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澳 洲	1997年9月消費者保護法第2次檢討報告 Audit of Consumer Protection Law-Second Report 1997	第8輯	360-541
澳 洲	消費者申訴仲裁庭條例（1987第206號） Consumer Tribunals Act 1987 No.206	第9輯	1-122
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澳 洲	1974年貿易業務法(摘錄) Trade Practices Act 1974	第13輯	50-81
澳 洲	2010年競爭與消費者法—關於不公平契約條款(Part 2-3—Unfair Contract Terms)與特別保護章節(Chapter 3—Specific protections)	第19輯	216-491
紐西蘭	1993年消費者擔保法 Consumer Guarantees Act 1993	第7輯	7-113
紐西蘭	1988年爭議法庭法（合併並修正1976年小額請求法庭之法） Disputes Tribunals Act 1988 (An Act to consolidate and amend the Small Claims Tribunals Act)	第7輯	114-295

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丹麥	1994年聯合付帳卡法 Consolidated Payment Cards etc. Act 1994	第8輯	64-109
丹麥	1995年安全玩具及誤食似物之玩具法 Order on safety requirements for toys and products which due to their outward Appearance may be mistaken for food 1995	第8輯	110-175
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比利時	1992年誤導性職業廣告法 Misleading Professional Advertising Act 1992	第7輯	608-631
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巴 西	法律編號第8078號 消費者防禦法規—提供消費者保護及其解決之道 Consumer Defense Code Provides for Consumer's Protection and Makes Other Arrangements	第14輯	170-245

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外國消費者保護法. 第十九輯 / 行政院消費者保護處編. -- 一版. -- 臺北市：行政院, 民101. 10
面；公分 -- (消費者法規翻譯叢書；19)
中英對照
ISBN 978-986-03-3571-2 (平裝)

1.消費者保護法規
548.390.23

101017664

外國消費者保護法第十九輯

編者：行政院消費者保護處
出版者：行政院
地址：台北市中正區忠孝東路1段1號
網址：<http://www.ey.gov.tw>
電話：(02) 33566500
版次：一版

本書同時登載於行政院網站，網址為<http://www.ey.gov.tw>/資訊與服務/消費者保護/出版品

定價：新臺幣250元
台北展售處：國家書店松江門市
地址：104台北市松江路209號1樓
電話：(02) 2518-0207(代表號)
網址：<http://www.govbooks.com.tw>
台中展售處：五南文化廣場
地址：400台中市中山路6號
電話：(04) 04-22260330(代表號)
網址：<http://www.wunanbooks.com.tw>
中華民國 101 年 10 月

GPN：1010101857

ISBN：978-986-03-3571-2

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