PAPUA NEW GUINEA

Competition and Consumer Protection Act 2026

No. 00 of 2026.

Certified on:

ARRANGEMENT OF SECTIONS.

No 00 of 2026.

AN ACT

entitled

Competition and Consumer Protection Act 2026

Being an Act

(a) to provide for the promotion and protection of the competitive process in markets in Papua New Guinea; and

(b) to provide for the protection of consumers in Papua New Guinea; and

(c) to provide for investigation and enforcement action in cases of anti-competitive conduct or infringement of consumer protection laws, and

(d) to provide for amendment of the ***Independent Consumer and Competition Commission Act 2002*** and other Acts, and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

PART I. – PRELIMINARY.

1 COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts the exercise of a right or freedom referred to in Subdivision [III.3.C] ***(qualified rights)*** of the ***Constitution***, namely:

(e) the right to liberty of the person conferred by Section 42; and

(f) the right to freedom from arbitrary search and entry conferred by Section 44; and

(g) the right to freedom of expression and publication conferred by Section 46; and

(h) the right to freedom of peaceful assembly and association conferred by Section 47; and

(i) the right to freedom of employment conferred by Section 48; and

(j) the right to privacy conferred by Section 49; and

(k) the right to freedom of information conferred by Section 51; and

(l) the right to protection from unjust deprivation of property conferred by Section 53,

is a law that is made (pursuant to Section 38 of the ***Constitution****)*, taking account of the National Goals and Directive Principles and the Basic Social

Obligations, in particular the National Goals and Directive Principles entitled:

(m) national sovereignty and self-reliance; and

(n) natural resources and environment,

for the purpose of giving effect to the public interest in public safety, public order and public welfare.

(2) For the purposes of Section 41 of the ***Organic Law on Provincial Governments and Local-level Governments***, it is declared that this Act relates to a matter of national interest.

2 INTERPRETATION.

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

"*acquire*" includes:

(a) in relation to goods, acquire by purchase or exchange or by taking on lease, on hire, or on hire purchase;

(b) in relation to services, accept;

"*agreement*" includes a contract, covenant, arrangement, or understanding but does not require a commitment, an undertaking, or the assumption of an obligation;

"*approved form*" means a form or format approved under Section 181 or, if none is approved, a prescribed form or format;

"*association*" includes an unincorporated association;

"*breach*" means any of the following:

(c) a competition breach;

(d) a consumer breach;

(e) a fair trading breach;

(f) a standards breach;

(g) an offence under this Act;

"*cartel conduct*" has the meaning given in Section 12 and includes presumed cartel conduct under Sections 13 to 18;

"*code of practice*" means a code of practice issued or approved under Section 83;

"*Commission*" means the Independent Consumer and Competition Commission established under Section 4 of the ***Independent Consumer and Competition Commission Act 2002*** and includes any member of the Commission performing any function of the Commission and any employee of the Commission acting within the scope of his or her authority;

"*Commission Internet site*" means an Internet site maintained by or on behalf of the Commission;

"*competition breach*" means a breach of a competition rule under Part III;

"*competition rule*" means a rule set out in Section 10;

“*computer*” includes cables, power supplies, data storage, and other devices peripheral thereto;

“*consumer*” has the meaning given in Section 86;

“*consumer breach*” means the supply of goods or services in breach of a consumer guarantee under Part VI;

“*consumer information standard*” means a standard prescribed under Section 112(1);

“*Court*” means any court of competent jurisdiction;

“*customer*” means{, in the context of Part V,} a consumer or a small business;

“*document*” includes any of the following:

(a) any form of writing on material;

(b) information recorded, transmitted or stored digitally or electronically, and any material subsequently derived from that information;

(c) any label or mark;

(d) any book, map, plan, graph or drawing;

(e) any photograph, film, negative or device in, on or from which one or more visual images are capable of being stored or reproduced;

“*electronic signature*”, in the case of a document filed with the Commission electronically, means a signature by electronic means that in the Commission’s opinion:

(a) adequately identifies the signatory and adequately indicates the signatory’s approval of the information to which the signature relates; and

(b) is as reliable as is appropriate given the purpose for which, and the circumstances in which, the signature is required;

“*fair trading breach*” means a breach of Part V;

“*file*” means to apply, give, submit, send or lodge, and includes to file by electronic means;

“*form*” includes:

(a) format; and

(b) an electronic form or format;

“*goods*” means personal property of any kind (whether tangible or intangible) excluding money or choses in action, and includes:

(a) goods attached to, or incorporate in, any real or personal property, except a whole building or part of a building that is attached to land and not easily removable;

(b) ships, aircraft and vehicles;

(c) animals and fish;

(d) minerals, trees or crops, whether or not on, under or attached to land;

(e) electricity and gas;

(f) water;

(g) computer software;

"*ICCC Act*" means the ***Independent Consumer and Competition Commission Act 2002***;

"*infringer*" has the meaning given in Section 167;

"*Judge*" means a Judge of the National Court or a Judge or Magistrate of the District Court as the context requires;

"*manufacturer*" has the meaning given in section 86;

"*market*" means a market in Papua New Guinea for goods or services as well as other goods or services that, as a matter of fact and commercial commonsense, are substitutable for them;

"*market power rule*" means the rule set out in Section 19;

"*market share*" means a share of a market measured by turnover, unless the context otherwise requires;

"*merger rule*" means the rule set out in Section 20;

"*Minister*" means the Minister with responsibility for Treasury matters;

"*occupier*", in relation to a place, means a person who appears to be 18 years or older and in charge of the place;

"*official standard*" means [**Q:** to come];

"*prescribed*" means prescribed by regulations made under this Act;

"*product safety standard*" means a standard prescribed under Section 114;

"*regulated body*" means [**Q:** to come];

"*Regulator*" means [**Q:** to come];

"*related body corporate*" has the meaning given in Subsection (3)(b);

"*service*" means a right, benefit or facility provided in trade, and:

(a) includes a right, benefit or facility provided under an agreement for any of the following:

 (i) the performance of work (including work of a professional nature), whether or not with the supply of goods;

 (ii) the provision of facilities for accommodation, amusement, the care of person or things, entertainment, instruction, parking or recreation;

 (iii) insurance;

 (iv) the provision of financial services such as banking, lending money or providing credit;

 (v) the supply of gas, water, electricity or telecommunications or the removal of water, including waste water; but

(h) does not include a right or benefit in the form of:

 (i) the supply of goods; or

 (ii) the performance of work under an employment agreement;

"*share*" means a share in a company or other body corporate, whether or not it carries the right to vote or other rights, and includes:

(a) stock; and

(b) interests in, and rights in relation to, shares:

(i) that directly or indirectly entitle or may entitle the acquirer, or a related body corporate of the acquirer; or

(iii) because of which, directly or indirectly, the acquirer, or a related body corporate of the acquirer, is in a position, to control the disposition of the shares or any voting rights attached to the shares;

"*sign*" includes to sign by means of an electronic signature;

"*small business*" means a business that has fewer than 10 full-time employees or their equivalent (not including any casual employee unless he or she is employed by the business on a regular and systematic basis);

"*standards breach*" means:

(a) the supply of goods or services in breach of Part VII; or

(b) a failure to comply with a product recall notice under Part VII;

"*supplier*" has the meaning given in Section 86;

"*supply*" means:

(a) in the case of goods, supply by way of sale, lease, hire, hire-purchase, exchange or gift;

(b) in the case of services, provide the services;

"*trade*" means any trade, business, industry, profession, occupation, activity of commerce or undertaking relating to the supply or acquisition of goods or services;

"*Village Court*" means a Village Court established under the ***Village Courts Act 1989***;

"*working day*" means a day that is not a Saturday, Sunday or public holiday;

"*writing*" includes writing sent or communicated in electronic form or by electronic means, and "*written*" has a corresponding meaning.

(2) A reference in this Act to any other Act includes:

(a) any regulation made under that Act;

(b) any Act that is substituted for or that replaces that other Act; and

(c) any regulations made under a substitute or replacement Act.

(3) In this Act:

(a) a group consisting of a body corporate and its related bodies corporate is not an association of persons; and

(b) a body corporate is a related body corporate of another body corporate if they are related corporations under Section 2(3) of the ***Companies Act 1997***.

3 PURPOSE OF THIS ACT.

(1) The purpose of this Act is to:

(a) enhance the welfare of the people of Papua New Guinea through the promotion of competition, fair trading and the protection of consumers' interests;

(b) facilitate effective competition and promote competitive market conduct;

(c) deter anti-competitive conduct, abuse of market power and acquisitions that substantially lessen competition;

(d) protect the long term interests of the people of Papua New Guinea with regard to the availability, price, quality and reliability of goods and services; and

(e) promote and encourage fair trading practices and a fair market.

(2) Responsibility for achieving the Act’s purpose lies with the Commission.

4 ACT BINDS THE STATE.

(1) This Act binds the State and any State owned entity, to the extent that either engages in trade.

(2) For the purposes of Subsection (1), “State owned entity” means:

(a) a statutory body established by an Act; or

(b) an entity in relation to which the State, a department or an office of a Department, the trustee or a beneficiary of which is the State, or another State owned entity:

(i) controls the composition of the board of directors of the entity; or

(ii) controls more than 50% of the voting power in the entity; or

(iii) holds more than 50% of the issued share capital of the entity (excluding any part of it that carries no right to participate beyond a specific amount in a distribution of either profits or capital).

(3) A State owned entity may be held liable to a pecuniary penalty or to be prosecuted for an offence.

(4) The State shall not be liable to a pecuniary penalty or to be prosecuted for an offence.

(5) The Commission, or a person who claims to be directly affected by conduct of the State, may apply to the Court for a declaration that the State has contravened this Act.

PART II. – GENERAL.

Division 1. – Competition role.

5 COMMISSION'S COMPETITION FUNCTIONS.

In addition to the functions specified in Section 6 of the ICCC Act, the Commission has the following functions:

(a) to advise the Minister on policies for the development and maintenance of competition in Papua New Guinea;

(b) to consider and examine and, where necessary, advise the Minister on the consolidation or updating of legislation affecting competition in Papua New Guinea;

(c) to liaise with Departments and other agencies of Government on matters relating to competition legislation;

(d) to receive and consider complaints from businesses and consumers on matters relating to competition;

(e) to investigate complaints from businesses and consumers and take appropriate action;

(f) to make available to businesses and consumers information relevant to competition, compliance with competition laws, and enforcement of competition laws;

(g) to liaise with and inform businesses, commercial associations, and professional bodies on their rights and responsibilities under competition laws;

(h) to promote compliance with competition laws;

(i) to enforce competition laws in appropriate cases;

(j) to research issues affecting competition in Papua New Guinea and propose appropriate measures to address those issues;

(k) to encourage the development of competition, and to liaise and consult with businesses, commercial associations, professional bodies, and consumers on the development of competition policy and law;

(l) to liaise with overseas competition authorities and exchange information with them, subject to appropriate safeguards;

(m) to arrange for the representation of consumers in court proceedings relating to competition matters; and

(n) to take all other necessary or expedient steps relating to competition law and its administration and development.

Division 2. – Consumer protection role.

6 DECLARATION OF STATE CONSUMER POLICY.

(1) It is the policy of the State to protect the rights and interests of consumers and to monitor standards for the ethical conduct of those engaged in the production and distribution of goods and services.

(2) The State may, from time to time, publish its policies on consumer matters.

7 CONSUMER RIGHTS.

(1) The State recognises that consumers, in their capacity as consumers, have the following rights:

(a) right to safety;

(b) right to choice;

(c) right to consumer education;

(d) right to information;

(e) right to representation;

(f) right to redress.

(2) The recognition of the rights under Subsection (1) does not confer or imply any liability on the State in respect of those rights or their enforcement.

8 COMMISSION'S CONSUMER PROTECTION FUNCTIONS.

In addition to the functions specified in Section 6 of the ICCC Act, the Commission has the following functions:

(a) to advise the Minister policies in the interests of consumers;

(b) to consider and examine and, where necessary, advise the Minister on the consolidation or updating of legislation providing protection to consumers;

(c) to liaise with Ministries and other agencies of Government on matters relating to consumer protection legislation;

(d) to receive and consider complaints from consumers on matters relating to the supply of goods and services;

(e) to assist consumers to make complaints, when requested to do so;

(f) to investigate complaints from consumers or, where appropriate, refer the complaint to the appropriate authority, and ensure that action is taken by the Commission or by the authority to whom the complaint was referred;

(g) to make available to consumers general information affecting the interests of consumers;

(h) to liaise with and inform businesses, commercial associations, and professional bodies on their responsibilities under consumer laws and in order to establish codes of practice to regulate the activities of their members in their dealings with consumers;

(i) to inform consumers about their rights and responsibilities under laws relating to consumer protection;

(j) to promote and participate in consumer education activities;

(k) to research issues affecting consumers and propose appropriate measures to address those issues;

(l) to encourage the development of organisations and associations established to further the interests of consumers, and to liaise and consult with them on the development of consumer policy and on issues of consumer interest;

(m) to establish appropriate systems for considering and redressing consumer claims;

(n) to liaise with consumer organisations, consumer affairs authorities, and consumer protection groups overseas and to exchange information on consumer affairs with those bodies;

(o) to arrange for the representation of consumers in court proceedings relating to consumer matters; and

(p) to take all other necessary or expedient steps relating to consumer affairs.

Division 3 – Guidelines

9 GUIDELINES

(1) The Commission may issue guidelines in relation to any of its functions or powers under this Act.

(2) Without limiting Subsection (1), guidelines may set out:

(a) the Commission's approach to interpreting and applying this Act;

(b) the Commission's approach to exercising its powers under this Act, including its powers in relation to:

(i) the competition rules under Part III;

(ii) clearance of conduct or acquisitions and authorisation of conduct or acquisitions under Part IV;

(iii) fair trading under Part V;

(iv) consumer guarantees under Part VI;

(v) consumer information and safety under Part VII;

(vi) complaints, investigations and searches under Part VIII;

(vii) enforcement and remedies under Part IX, including undertakings and immunity; and

(viii) the Commission's enforcement priorities; and

(c) the Commission's requirements regarding information to be provided in applications to the Commission.

PART III. – COMPETITION RULES.

Division 1. – Outline.

10 COMPETITION RULES.

(1) The competition rules are:

(a) the rule against cartel conduct;

(b) the rule against abuse of market power; and

(c) the rule against an acquisition that substantially lessens competition.

(2) Exceptions to the competition rules are set out in Division 6.

11 APPLICATION OF THIS PART

(1) This Part extends to conduct engaged in outside Papua New Guinea if that conduct:

(a) would contravene this Act if it occurred in Papua New Guinea; and

(b) has an effect or likely effect on trade or commerce in Papua New Guinea.

(2) For the purposes of this Act, a person engages in conduct in Papua New Guinea if any act or omission forming part of the conduct occurs in Papua New Guinea.

Division 2. – Cartel conduct.

12 RULE AGAINST CARTEL CONDUCT

(1) A person must not engage in cartel conduct.

(2) Cartel conduct is:

(a) making or giving effect to an agreement that is anti-competitive; or

(b) engaging in a concerted practice that is anti-competitive; or

(c) as a member of an association of persons, making or giving effect to a decision of the association that is anti-competitive.

(3) For the purposes of Subsection (2), an agreement, concerted practice, or decision is anti-competitive if it has, or is likely to have, the effect of substantially lessening competition in a market in Papua New Guinea.

(4) It does not matter that the agreement, practice or decision has other effects.

(5) It does not matter where the agreement, decision or practice is made, given effect to or engaged in, whether inside or outside Papua New Guinea.

(6) A person who contravenes Subsection (1) is liable to a pecuniary penalty.

Division 3. – Presumed cartel conduct.

13 PRESUMED CARTEL CONDUCT.

(1) For the purposes of Section 12, the following conduct is presumed to be anti-competitive, unless the contrary is established:

(a) bid rigging;

(b) bid suppression;

(c) price fixing;

(d) market sharing;

(e) collective boycott.

(2) Nothing in Subsection (1) limits Section 12.

14 BID RIGGING.

(1) For the purposes of Section 13, bid rigging occurs when the following conditions are met:

(a) a bidder for the supply or acquisition of goods or services in Papua New Guinea:

(i) is a participant in an agreement, concerted practice, or decision of an association; and

(ii) acting in accordance with that agreement, concerted practice, or decision, submits a bid; and

(b) in relation to the supply or acquisition of the goods or services to which the bid relates, at least two of the participants in the agreement, concerted practice, or decision:

(i) compete with each other; or

(ii) would compete with each other were it not for the agreement, concerted practice, or decision; and

(c) the terms of the bid are specified in or determined under the agreement, concerted practice, or decision; and

(d) the agreement, concerted practice, or decision is not disclosed in writing to the person seeking bids.

(2) In SSubsection (1)(a), "*participant*" includes a related body corporate.

15 BID SUPPRESSION.

(1) For the purposes of Section 13, bid suppression occurs when the following conditions are met:

(a) a prospective bidder for the supply or acquisition of goods or services in Papua New Guinea:

(i) is a participant in an agreement, concerted practice, or decision of an association; and

(ii) acting in accordance with the agreement, concerted practice, or decision:

(A) does not submit, or agrees not to submit, a bid; or

(B) withdraws a bid already submitted; and

(b) in relation to the supply or acquisition of the goods or services to which the prospective bid relates, at least 2 of the participants in the agreement, concerted practice, or decision:

(i) compete with each other; or

(ii) would compete with each other were it not for the agreement, concerted practice, or decision; and

(c) the agreement, concerted practice, or decision is not disclosed in writing to the person seeking bids.

(2) In Subsection (1)(a)(i), "*participant*" includes a related body corporate of a participant.

16 PRICE FIXING.

(1) For the purposes of Section 13, price fixing occurs when:

(a) an agreement, concerted practice, or decision of an association has the effect (or is likely to have the effect) of directly or indirectly fixing, maintaining or controlling the price of goods or services in Papua New Guinea (including because it affects or may affect terms or conditions of trade); and

(b) 2 or more participants in the agreement, concerted practice, or decision:

(i) compete with each other for the supply or acquisition of the goods or services in question; or

(ii) would so compete with each other were it not for the agreement, concerted practice, or decision.

(2) For the purposes of Subsection (1)(b), "*participant*" includes a related body corporate of a participant.

17 MARKET SHARING.

(1) For the purposes of Section 13, market sharing occurs when:

(a) an agreement, concerted practice, or decision of an association has the effect (or is likely to have the effect) of sharing or dividing a market for goods or services in Papua New Guinea (including because it affects or may affect terms or conditions of trade); and

(b) 2 or more participants in the agreement, concerted practice, or decision:

(i) compete with each other for the supply or acquisition of the goods or services in question; or

(ii) would so compete with each other were it not for the agreement, concerted practice, or decision.

(2) In Subsection (1)(b), "*participant*" includes a related body corporate of a participant.

18 COLLECTIVE BOYCOTT.

(1) For the purposes of Section 13, a collective boycott occurs when:

(a) an agreement, concerted practice, or decision of an association has the effect (or is likely to have the effect) of directly or indirectly excluding a competitor, customer, supplier or other person from a market in Papua New Guinea; and

(b) 2 or more participants in the agreement, concerted practice, or decision:

(i) compete with each other for the supply or acquisition of the goods or services in question; or

(ii) would so compete with each other were it not for the agreement, concerted practice, or decision.

(2) In Subsection (1)(b), "*participant*" includes a related body corporate of a participant.

Division 4. – Abuse of market power.

19 RULE AGAINST ABUSE OF MARKET POWER.

(1) A person must not abuse market power.

(2) A person abuses market power if the person:

(a) has a substantial degree of market power in a market; and

(b) engages in conduct that has the effect (or is likely to have the effect) of substantially lessening competition in a market in Papua New Guinea.

(3) For the purposes of this Section, if a person and a related body corporate of that person together have a substantial degree of market power in a market, each of them is taken to have a substantial degree of market power in that market.

(4) This Section:

(a) does not apply to conduct relating to an agreement to the extent that the agreement relates to the acquisition of shares or assets;

(b) applies no matter where the conduct in question occurs.

(5) A person does not abuse market power merely by enforcing an intellectual property right.

(6) A person who contravenes Subsection (1) is liable to a pecuniary penalty.

Division 5. – Acquisition substantially lessening competition.

20 RULE AGAINST ACQUISITION SUBSTANTIALLY LESSENING COMPETITION.

(1) A person must not make an acquisition that substantially lessens competition.

(2) A person makes an acquisition that substantially lessens competition if:

(a) the person acquires shares in a body corporate or any assets of a person; and

(b) the acquisition has the effect (or is likely to have the effect) of substantially lessening competition in a market in Papua New Guinea.

(3) For the purposes of this Section:

(a) it does not matter that an acquisition has other effects;

(b) it does not matter where the acquired shares or assets are located;

(c) it does not matter where the person who acquires the shares or assets is located; and

(d) acquisitions by each of a person and its related body corporate are treated in combination as a single acquisition by each of them separately.

(4) A person who contravenes Subsection (1) is liable to a pecuniary penalty.

21 FACTORS DETERMINING EFFECT OF ACQUISITION.

For the purposes of Section 20 but without limiting that Section, the following factors may be taken into account in determining whether an acquisition substantially lessens competition in a market in Papua New Guinea:

(a) the extent of competition in the market from competitors outside Papua New Guinea;

(b) in the case of the acquisition of shares in, or assets of, a body corporate, whether the body corporate is or is likely to be insolvent;

(c) the extent to which substitutes for the goods or services supplied in the market are available or are likely to be available in the market;

(d) the ease of entry to or exit from the market;

(e) the likelihood that the acquisition would enable the acquirer or its related body corporate to significantly and sustainably increase its prices or profit margins;

(f) whether the acquisition would result in the removal from the market of an effective and vigorous competitor;

(g) the degree of countervailing power in the market;

(h) the nature and extent of change and innovation in the market.

22 MANDATORY NOTIFICATION

(1) A person who proposes to make an acquisition to which Section 23 applies must notify the Commission.

(2) Any notice under Subsection (1) must:

(a) identify the acquirer, the relevant shares or assets, and the person from whom the shares or assets are proposed to be acquired;

(b) describe the business activities of the acquirer and the target company and the market or markets likely to be affected by the proposed transaction;

(c) state the values of:

(i) the acquirer's assets in Papua New Guinea;

(ii) the target company's assets in Papua New Guinea; and

(iii) the acquired assets;

(d) state the method by which the relevant values were determined;

(e) state the acquirer's voting power, if any, in the target company before and after the acquisition;

(f) be given not less than [30] working days before the acquisition is due to be completed; and

(g) set out such further information as the Commission may reasonably require under published guidelines.

23 NOTIFIABLE ACQUISITIONS

(1) An acquisition or proposed acquisition of shares in a body corporate or of any assets of a person is a notifiable acquisition if:

(a) it would meet or exceed one or more of the notification thresholds; and

(b) it is not exempt under Subsection (4).

(2) For the purposes of this Section, the notification thresholds are:

(a) In the case of an acquisition of shares in a body corporate:

(i) the combined assets in Papua New Guinea of the acquirer (and any related company) and the target company (and any company which is a subsidiary of the target company) have a value exceeding [K 5,000,000]; and

(ii) the target company (and any company which is a subsidiary of the target company) owns assets in Papua New Guinea with a value exceeding [K 2,000,000]; and

(iii) the acquirer will increase its voting power in the target company by 5 percent or more; and

(b) in the case of an acquisition of assets:

(i) the assets in Papua New Guinea of the acquirer (and any related company) combined with the acquired assets have a value exceeding [K 5,000,000]; and

(ii) the value of the acquired assets exceeds [K 2,000,000].

(3) The Minister may at any time, by notice published in the *Gazette*, amend the notification thresholds.

(4) An acquisition (or proposed acquisition) of shares in a body corporate or of any assets of a person is not a notifiable acquisition if:

(a) it has received clearance or authorisation under this Act;

(b) it is an acquisition by way of gift or transfer on death;

(c) it is an acquisition of real estate.

(5) For the purposes of this Section, assets are to be valued as follows:

(a) in the case of an asset which is proposed to be acquired, the value of the asset would be the consideration to be received by the vendor for the asset; or

(b) in a case not covered by paragraph (a), where an asset belongs to a company the value of the asset would be the value represented in the company's statutory accounts; or

(c) in any other case, the value of the asset would be the acquirer's good faith appraisal of the value of the asset, calculated in accordance with commercially accepted accounting principles.

(6) A person who fails to notify a notifiable acquisition in accordance with Section 22 commits a breach of this Act and is liable to a pecuniary penalty determined by the Court not exceeding {K000}.

Division 6. – Exceptions to competition rules.

24 EXCEPTIONS TO COMPETITION RULES.

The following exceptions to one or more of the competition rules are available or otherwise apply:

(a) exception for terms of employment (see Section 25);

(b) exception for partnerships of individuals (see Section 26);

(c) exception for vertical agreements (see Section 27);

(d) exception relating to standards (see Section 28);

(e) exception for protection of goodwill (see Section 29);

(f) exception for collaborative activity (see Section 30);

(g) exception for coordination of business conduct of related body corporate (see Section 31);

(h) exception to ensure compliance with international obligations (see Section 32);

(i) exception for conduct pending authorisation (see Section 33);

(j) exception for joint buying and promotion (see Section 34);

(k) exception for conduct specifically authorised by legislation (see Section 35).

25 TERMS OF EMPLOYMENT.

(1) Making or giving effect to an agreement is not cartel conduct in so far as the agreement relates to the remuneration, conditions of employment, hours of work or working conditions of employees.

(2) Conduct is not cartel conduct in so far as:

(a) it relates to a contract of employment or contract for the provision of services; and

(b) under the contract an individual agrees not to engage in specified work during the contract or after it ends.

26 PARTNERSHIPS.

In a partnership of individuals, conduct by the partners is not cartel conduct or an abuse of market power in so far as it relates to:

(a) the terms of the partnership; or

(b) the conduct of the partnership business; or

(c) competition between the partnership and a partner or former partner.

27 AGREEMENTS FOR OTHER PURPOSES.

(1) Entering into or giving effect to an agreement between competitors fixing conditions for the parties' purchase, sale, or on-sale of goods or services in relation to which they are competitors is not cartel conduct if the agreement does not have the dominant purpose of lessening competition between any two or more of the parties to the agreement.

(2) In Subsection (1), "*competitors*" includes likely competitors.

28 STANDARDS.

Entering into or giving effect to an agreement is not cartel conduct or an abuse of market power in so far as the agreement requires a party to it to comply with or apply:

(a) a consumer information standard; or

(b) a product safety standard; or

(c) any other standard as to design, quality, workmanship or performance published by an internationally recognised standards-setting body.

29 PROTECTION OF GOODWILL.

(1) Entering into or enforcing a sale of a business agreement is not cartel conduct, an abuse of market power, or a breach of the merger rule merely because the agreement contains a provision that is solely for the protection of the purchaser in respect of the goodwill of the business.

(2) In Subsection (1), "*sale of business agreement*" means an agreement for the sale of a business, assets used in a business or shares in a body corporate.

30 COLLABORATIVE ACTIVITY.

(1) Conduct by a person who is a participant in a collaborative activity is not cartel conduct if the conduct:

(a) is reasonably necessary for the purpose of the collaborative activity; and

(b) is not carried on for the dominant purpose of lessening competition between any two or more of the participants.

(2) In Subsection (1), "*collaborative activity*" means an enterprise, venture or other activity that:

(a) is carried on in trade; and

(b) is carried on in co-operation between two or more participants.

31 RELATED BODY CORPORATE: CO-ORDINATION OF BUSINESS CONDUCT.

(1) Conduct is not cartel conduct if the object of the conduct is to co-ordinate the business conduct of a related body corporate of a participant in the agreement, practice or decision in question.

(2) Subsection (1) applies despite any presumption under Section 13(1)(c) to (e) (price fixing, market sharing or collaborative boycott) that the conduct is anti-competitive.

32 COMPLIANCE WITH INTERNATIONAL OBLIGATIONS.

(1) The Minister may exempt specified conduct from one or more competition rules only if :

(a) the Commission has advised the Minister that the application of the competition rule or rules to the conduct would breach an international obligation of the State; and

(b) he Minister considers that the application of the competition rule or rules to the conduct would breach an international obligation of the State.

(2) The exemption:

(a) is made by notice in the *National Gazette* after approval by the National Executive Council; and

(b) must identify the particular international obligation that would be breached; and

(c) must be published on a Commission Internet site as soon as practicable after notification.

(3) The exemption:

(a) may be subject to terms and conditions; and

(b) may be varied or revoked in the same way that the exemption is made.

(4) The exemption is automatically revoked if the international obligation ceases to apply to the State.

33 CONDUCT PENDING AUTHORISATION.

Conduct does not breach a competition rule if:

(a) any step that would render the conduct a breach of a competition rule is, under the terms of the agreement, practice or decision in question, suspended until authorised; and

(b) within 15 working days after the conduct, an application is made for authorisation under Section 44.

34 JOINT BUYING AND PROMOTION

Conduct is not cartel conduct to the extent that it:

(1) does not have the dominant purpose of lessening competition between 2 or more parties to the agreement; and

(2) involves agreement on a term:

(a) relating to the price for goods or services to be collectively acquired, whether directly or indirectly, by some or all of the parties to the agreement; or

(b) providing for joint advertising of the price for the resupply of goods or services acquired in accordance with paragraph (a); or

(c) providing for collective negotiation of the price for goods or services followed by individual purchasing at the collectively negotiated price; or

(d) providing for an intermediary to take title to goods and resell or resupply them to another party to the agreement.

35 CONDUCT AUTHORISED BY LEGISLATION

(1) Conduct is not cartel conduct and does not breach the market power rule to the extent that it is engaged in for the purpose of complying with a statutory obligation.

(2) An acquisition does not breach the merger rule to the extent that it is engaged in for the purpose of complying with a statutory obligation.

(3) For the purposes of this Section, a "statutory obligation" means a specific requirement imposed by an Act of Parliament.

(4) An Act does not impose a specific requirement for any act, matter, or thing if it provides in general terms for that act, matter, or thing, notwithstanding that the act, matter, or thing requires or may be subject to approval or authorisation by a Minister, statutory body, or a person holding any particular office, or approval or authorisation by the National Executive Council.

PART IV. – CLEARANCE AND AUTHORISATION.

Division 1. – Clearance of conduct.

36 COMMISSION MAY GIVE CLEARANCE.

(1) If the requirements of Section 37 are met, the Commission must give a clearance of conduct or an acquisition.

(2) The effect of the clearance is that, to the extent of the clearance, the conduct or acquisition does not contravene one or more of the competition rules.

37 REQUIREMENTS FOR CLEARANCE.

(1) The Commission must give a clearance of conduct or an acquisition if:

(a) there is filed with the Commission an application for clearance that complies with Subsection (2); and

(b) the Commission is satisfied that the conduct or the acquisition that is the subject of the application:

(i) does not have the effect or would not be likely to have the effect of substantially lessening competition; or

(ii) does not or would not be likely to contravene a competition rule.

(2) An application for a clearance must be:

(a) in an approved form;

(b) signed by the person submitting the application;

(c) complete; and

(d) accompanied by the prescribed fee.

(3) An application for a clearance is complete if:

(a) it contains or is accompanied by the information and documents required by the form; and

(b) the applicant has furnished any further information or document that the Commission may reasonably require for determining the application.

(4) An application for a clearance may be withdrawn at any time by the person who submitted it, by notice in writing to the Commission.

(5) The Commission may refuse to consider an application if the Commission is satisfied that:

(a) the applicant will not engage in the conduct or will not complete the acquisition that is the subject of the application; or

(b) the application does not involve an unresolved question of wide or public importance in relation to the operation of this Act.

38 STEPS BEFORE DETERMINATION OF APPLICATION FOR CLEARANCE.

(1) Before determining an application for a clearance, the Commission:

(a) must publish the application on the Commission Internet site or, if that is not reasonably practicable, by other means appropriate in the circumstances;

(b) must take any other reasonable steps that the Commission considers necessary to bring the application to the attention of persons who may be affected by a decision on the application;

(c) may a consult any person who the Commission considers can assist it in considering the application;

(d) if the application concerns a regulated body, must consult the Regulator for that body;

(e) must allow a reasonable opportunity for submissions on the application to be made by a Regulator, a member of the public, or any affected person;

(f) must allow the applicant a reasonable opportunity to respond to any submissions received under paragraph (e);

(g) must have regard to all relevant and timely submissions and responses received on the application;

(h) must publish a draft of the Commission's determination of the application and allow a reasonable opportunity for submissions on that draft determination to be made by the applicant, a Regulator, a member of the public, or any affected person; and

(i) must have regard to all relevant and timely submissions and responses received under paragraph (h).

(2) The Commission may, when publishing an application in accordance with paragraph (1)(a), omit confidential information, in which case the relevant publication must indicate that information has been omitted.

39 DETERMINATION OF APPLICATION.

(1) The time for determination of an application that complies with Section 37(2) is:

(a) 30 working days after the filing that completes the application; or

(b) any longer period agreed between the Commission and the applicant.

(2) The Commission must notify the applicant in writing of the determination, giving the reasons for it and a statement of the material facts on which those reasons were based.

(3) The application must be treated as refused if the Commission has not determined it within the time for determination.

40 REVOCATION OF CLEARANCE.

(1) The Commission may revoke a clearance if it is satisfied that:

(a) any information provided or any document filed in support of the application was incomplete, false or misleading in a material particular; or

(b) there has been a material change of circumstances since the clearance was given.

(2) The Commission must not revoke a clearance unless it has first:

(a) notified the clearance holder in writing of its intention to revoke; and

(b) notified any other person who the Commission considers is likely to have an interest;

(c) allowed the clearance holder and any other interested person a reasonable opportunity to make submissions on revocation; and

(d) considered those submissions, if any.

(3) The Commission must notify the revocation of a clearance in writing to:

(a) the clearance holder; and

(b) any other person who made a submission under Subsection (2).

41 NON-MATERIAL AMENDMENT.

(1) A clearance may not be amended except in accordance with Subsections (2) and (3).

(2) The Commission may amend a clearance only:

(a) in a non-material particular;

(b) on application of the clearance holder; and

(c) after following the procedure in Subsection (3).

(3) The Commission may make a non-material amendment to a clearance only where it has:

(a) notified the clearance holder in writing of the proposed non-material amendment; and

(b) notified any other person who the Commission considers is likely to have an interest;

(c) allowed the clearance holder and any other interested person a reasonable opportunity to make submissions on the proposed non-material amendment; and

(d) considered those submissions, if any.

42 EXPIRY OF CLEARANCE.

A clearance expires on the earlier of:

(a) the date of expiry specified in the notice of clearance; or

(b) the date of revocation.

Division 2. – Authorisation of conduct.

43 COMMISSION MAY AUTHORISE CONDUCT.

(1) If the requirements of Section 44 are met, the Commission may grant authorisation in relation to specified conduct or a specified acquisition that contravenes one or more of the competition rules.

(2) The effect of the authorisation is that, to the extent of the authorisation and subject to its terms, the conduct or the acquisition does not contravene one or more of the competition rules.

(3) An authorisation may be subject to conditions.

44 REQUIREMENTS FOR AUTHORISATION.

(1) The Commission may give an authorisation of conduct if:

(a) there is filed with the Commission an application for an authorisation that complies with Subsection (3); and

(b) the Commission is satisfied that the conduct that is the subject of the application will, or is likely to, result in a benefit to the public that outweighs the adverse effects of the lessening in competition that will, or is likely to, result from the conduct.

(2) The Commission may give an authorisation for an acquisition if:

(a) there is filed with the Commission an application for an authorisation that complies with Subsection (3); and

(b) the Commission is satisfied that the acquisition will result, or will be likely to result, in such benefit to the public that it should be permitted.

(3) An application for an authorisation must be:

(a) in an approved form;

(b) signed by the person submitting the application;

(c) complete;

(d) accompanied by the prescribed fee.

(4) An application for an authorisation is complete if:

(a) it contains or is accompanied by the information and documents required by the form; and

(b) the applicant has furnished any further information or document that the Commission may reasonably require for determining the application.

(5) An application for an authorisation may be withdrawn at any time by the person who submitted it, by notice in writing to the Commission.

(6) The Commission may refuse to consider an application if the Commission is satisfied that the applicant will not engage in the conduct or will not complete the acquisition that is the subject of the application.

45 STEPS BEFORE DETERMINATION OF APPLICATION.

(1) Before determining an application for an authorisation, the Commission:

(a) must publish the application on the Commission Internet site;

(b) must take any other reasonable steps that the Commission considers necessary to bring the application to the attention of persons who may be affected by a decision on the application;

(c) may a consult any person who the Commission considers can assist it in considering the application;

(d) if the application concerns a regulated body, must consult the Regulator for that body;

(e) must allow a reasonable opportunity for submissions on the application to be made by a Regulator, a member of the public, or any affected person; and

(f) must allow the applicant a reasonable opportunity to respond to any submissions received under paragraph (e);

(g) must have regard to all relevant and timely submissions and responses received on the application;

(h) must publish a draft of the Commission’s determination of the application and allow a reasonable opportunity for submissions on that draft determination to be made by the applicant, a Regulator, a member of the public, or any affected person; and

(i) must have regard to all relevant and timely submissions and responses received under paragraph (h).

(2) The Commission may, when publishing an application in accordance with paragraph (1)(a), omit confidential information, in which case the relevant publication must indicate that information has been omitted.

46 DETERMINATION OF APPLICATION.

(1) The time for determination of an application that complies with Section 44(3) is:

(a) 70 working days after the filing that completes the application; or

(b) any longer period agreed between the Commission and the applicant.

(2) The Commission must notify the applicant in writing of the determination, giving the reasons for it and a statement of the material facts on which those reasons were based.

(3) The application must be treated as refused if the Commission has not determined it within the time for determination.

47 AMENDMENT OR REVOCATION OF AUTHORISATION.

(1) The Commission may amend or revoke an authorisation if satisfied that:

(a) information or a document filed in support of the application was incomplete, false or misleading in a material particular;

(b) there has been a material change of circumstances since the authorisation was given; or

(c) a condition of the authorisation has not been complied with.

(2) The Commission must not amend or revoke an authorisation unless it has first:

(a) notified the authorisation holder in writing of its intention to amend or revoke; and

(b) notified any other person who the Commission considers is likely to have an interest;

(c) allowed the authorisation holder and any other interested person a reasonable opportunity to make submissions on the amendment or revocation; and

(d) considered those submissions, if any.

(3) The Commission must notify the amendment or revocation of an authorisation in writing to:

(a) the authorisation holder; and

(b) any other person who made a submission under Subsection (2).

48 EXPIRY OF AUTHORISATION.

An authorisation expires on the earlier of:

(a) the date of expiry specified in the notice of authorisation; or

(b) the date of revocation.

49 NON-MATERIAL AMENDMENT.

(1) On the application of the authorisation holder, the Commission may amend an authorisation in a non-material particular.

(2) Section 47 does not apply to an amendment under this Section.

50 CLEARANCE ON APPLICATION FOR AUTHORISATION.

(1) If the Commission considers, on an application for authorisation, that the criteria for the grant of a clearance are satisfied, the Commission may determine the application by granting a clearance.

(2) Sections 36(2) and 40 to 42 apply to a clearance granted under Subsection (1).

PART V. – FAIR TRADING.

Division 1. – Misleading or deceptive conduct.

51 APPLICATION OF THIS PART.

This Part:

(a) applies in addition to any other law;

(b) applies despite any provision to the contrary in any agreement;

(c) [does not apply to goods supplied by auction]; and

(d) does not apply to the supply of goods or services by a charitable organisation for the principal purpose of benefitting the person to whom the supply is made.

52 MISLEADING OR DECEPTIVE CONDUCT PROHIBITED.

(1) A person must not, in trade, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

(2) A person who contravenes Subsection (1) is liable to a pecuniary penalty.

53 MISLEADING CONDUCT IN RELATION TO GOODS.

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

(2) A person who contravenes Subsection (1) is liable to a pecuniary penalty.

54 MISLEADING CONDUCT IN RELATION TO SERVICES.

(1) A person must not, in trade, engage in conduct that is liable to mislead the public as to the nature, characteristics, suitability for a purpose or quantity of services.

(2) A person who contravenes Subsection (1) is liable to a pecuniary penalty.

55 MISLEADING CONDUCT IN RELATION TO EMPLOYMENT.

(1) A person must not, in relation to employment that is, or is to be, or may be offered by that person or any other person, engage in conduct that is misleading or deceptive, or is likely to mislead or deceive, as to the availability, nature, terms or conditions or any other matter relating to that employment.

(2) A person who contravenes Subsection (1) is liable to a pecuniary penalty.

Division 2. – False, misleading or unsubstantiated representation.

56 FALSE OR MISLEADING REPRESENTATION.

(1) A person must not, in trade, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services, make a false or misleading representation:

(a) that goods are of a particular kind, standard, quality, grade, quantity, composition, style or model, or have had a particular history or particular previous use;

(b) that services are of a particular kind, standard, quality or quantity, or that they are supplied by any particular person or by any person of a particular trade, qualification or skill, or by a person who has other particular characteristics;

(c) that a particular person has agreed to acquire goods or services;

(d) that goods are new, or that they are reconditioned, or that they were manufactured, produced, processed or reconditioned at a particular time;

(e) that goods or services are available for supply;

(f) that goods or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses or benefits;

(g) that a person has any sponsorship, approval, endorsement, or affiliation;

(h) with respect to the price of any goods or services;

(i) concerning the need for any goods or services;

(j) concerning the existence, exclusion, or effect of any condition, warranty, guarantee, right, or remedy, including (to avoid doubt) in relation to any guarantee, right, or remedy available under this Act; or

(k) concerning the place of origin of goods or services.

(2) A person who contravenes Subsection (1) is liable to a pecuniary penalty.

57 UNSUBSTANTIATED REPRESENTATION.

(1) A person must not, in trade and in connection with the supply or possible supply of goods or services, make an unsubstantiated representation about those goods or services.

(2) A representation is unsubstantiated if the person making the representation does not, when the representation is made, have reasonable grounds for the representation, irrespective of whether the representation is false or misleading.

(3) This Section does not apply to a representation that a reasonable person would not expect to be substantiated.

(4) In proceedings concerning a contravention of this Section, and in assessing whether a person had reasonable grounds for a representation, a court must have regard to all of the circumstances, including:

(a) the nature of the goods or services in respect of which the representation was made;

(b) the nature of the representation (for example, whether it was a representation about quality or quantity);

(c) any research or other steps taken by or on behalf of the person before making the representation;

(d) the nature and source of any information that the person relied on to make the representation;

(e) the extent to which the person complied with the requirements of any standard, code of practice, or industry practice relating to the grounds on which such a representation may be made, and the nature of those requirements; and

(f) the actual or potential effects of the representation on any person.

(5) A person who contravenes Subsection (1) is liable to a pecuniary penalty.

58 NEWS MEDIA EXCEPTION.

Nothing in Sections 52 to 57 affects the freedom of news media to:

(a) report news and events; and

(b) publish information (other than advertisements), opinion and editorial content.

Division 3. – Dishonest and unfair practices.

59 UNCONSCIONABLE CONDUCT.

(1) A person must not, in trade, engage in unconscionable conduct in connection with:

(a) the supply of goods or services to a customer; or

(b) the acquisition of goods or services from a customer.

(2) Factors that are relevant in determining whether a person has contravened Subsection (1) include:

(a) the relative strengths of the bargaining positions of the parties;

(b) whether the person has imposed conditions that were not reasonably necessary to protect the trader's legitimate interests;

(c) whether the customer was able to understand all of the documents relating to the supply or acquisition; and

(d) whether the person exerted undue influence or pressure on the customer in relation to the supply or acquisition;

(e) the terms on which a different person would have made the supply or acquisition;

(f) how the person's conduct towards the customer compared with the person's conduct in similar transactions between the person and other like customers;

(g) the requirements of any applicable code of practice or industry code;

(h) the requirements of any industry practice, if the customer acted on the reasonable belief that the person would comply with that practice; and

(i) the extent to which the person unreasonably failed to disclose to the customer:

(i) any intended conduct of the person that might affect the customer's interests; or

(ii) any risks arising from the person's intended conduct that the person could not have expected the customer to foresee;

(j) if a contract between the person and the customer results for the supply or acquisition:

(i) the extent to which the person was willing to negotiate the terms and conditions of the contract with the customer;

(ii) the fairness of the terms and conditions of the contract;

(iii) whether the person has a contractual right to vary unilaterally a term or condition of the contract;

(iv) the conduct of the person and the customer in complying with the terms and conditions of the contract; and

(v) any conduct that the person or the customer engaged in, in connection with their commercial relationship, after they entered into the contract; and

(k) the extent to which the person and customer acted in good faith.

(3) A person who contravenes Subsection (1) is liable to a pecuniary penalty.

60 DISHONEST USE OF TRADE MARK.

(1) A person must not, in trade:

(a) forge any trade mark; or

(b) falsely apply or use in supplying goods or services a trade mark or sign that so nearly resembles a trade mark as to be likely to mislead or deceive.

(2) For the purposes of this Section, a person is taken to forge a trade mark if that person:

(a) without the consent of the proprietor of the trade mark, makes that trade mark or a sign so nearly resembling that trade mark as to be likely to mislead or deceive; or

(b) falsifies any genuine trade mark, whether by alteration, effacement or otherwise.

(3) For the purposes of this Section, "*trade mark*" has the meaning given to it in Section 1(1) of the ***Trade Marks Act 1978***.

(4) A person who contravenes Subsection (1) is liable to a pecuniary penalty.

61 DISHONEST OFFER OF GIFTS AND PRIZES.

(1) A person must not, in trade, dishonestly offer gifts, prizes or other free items 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.

(2) A person dishonestly offers a gift, prize or other free item if the person does not intend to provide it or does not intend to provide it as offered.

(3) A person who contravenes Subsection (1) is liable to a pecuniary penalty.

62 BAIT ADVERTISING.

(1) A person who, in trade, advertises goods or services for supply at a specified price must supply those goods or services on demand:

(a) at the advertised price;

(b) for the advertised period or, if no period is stated, for a reasonable period; and

(c) in the advertised quantity or, if no quantity is stated, in reasonable quantities.

(2) A person must not, in trade, advertise goods or services for supply at a specified price unless the trader has reasonable grounds for believing that the trader can comply with Subsection (1).

(3) In proceedings against a trader for a breach of Subsection (1), it is a defence if the trader proves that, in any case of failure to supply a customer:

(a) the trader offered, and the customer accepted, supply at the advertised price by a different supplier or supply at the advertised price of equivalent goods; and

(b) the supply was made within the advertised period or a reasonable period, whichever applies.

(4) A person who contravenes Subsection (1) or (2) is liable to a pecuniary penalty.

63 REFERRAL SELLING.

(1) A person supplying goods or services must not offer an inducement to the recipient for referring the supplier to prospective customers or vice versa if the inducement is contingent on the referral resulting in a concluded transaction.

(2) Nothing in Subsection (1) applies to the acquisition of goods for resupply.

(3) A person who contravenes Subsection (1) is liable to a pecuniary penalty.

64 PREMATURELY DEMANDING OR ACCEPTING PAYMENT.

(1) A person must not demand or accept payment or other consideration for goods or services, if at the time of the demand or acceptance:

- (a) that person does not intend to supply the goods or services;
- (b) that person intends to supply goods or services materially different from the goods or services contracted for; or
- (c) that person does not have reasonable grounds to believe that the goods or services can be supplied within the time contracted for or, if no time is contracted for, within a reasonable time.

(2) A person who contravenes Subsection (1) is liable to a pecuniary penalty.

65 HARASSMENT AND COERCION.

(1) A person must not, in trade, use physical force or harassment or coercion in connection with the supply or possible supply to a customer of goods or services or the payment for goods or services.

(2) A person who contravenes Subsection (1) is liable to a pecuniary penalty.

66 PYRAMID SELLING.

(1) A person must not promote or operate a pyramid selling scheme.

(2) For the purposes of this Section, "*pyramid selling scheme*" means:

- (a) a scheme:
  - (i) that provides for the supply of goods or services or both for reward; and
  - (ii) that, to many participants in the scheme, constitutes primarily an opportunity to buy or sell an investment opportunity, whether personally or through an agent, rather than an opportunity to buy or supply goods or services; and
  - (iii) that is or is likely to be unfair to many of the participants in the scheme in that:
    - (A) the financial rewards of many of those participants are dependent on the recruitment of additional participants (whether or not at successively lower levels); and

(B) the number of additional participants in the scheme that must be recruited to produce reasonable financial rewards to participants in the scheme is not attainable or is not likely to be attainable by many of the participants in the scheme; or

(b) a scheme of the type commonly known as a chain letter scheme (whether or not it provides for the supply of goods or services or both) that is likely to be unfair to many of the participants in the scheme, in that:

(i) the financial rewards of many of those participants are dependent on the recruitment of additional participants; and

(ii) the number of additional participants in the scheme that must be recruited to produce reasonable financial rewards to participants in the scheme is not attainable or is not likely to be attainable by many of the participants in the scheme.

(3) A person who contravenes Subsection (1) is liable to a pecuniary penalty.

Division 4. – Unfair contract terms.

67 UNFAIR CONTRACT TERM VOID.

(1) A term of a consumer contract or a small business 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.

68 CONSUMER CONTRACT.

(1) A consumer contract is a contract for the supply in trade of goods or services to a consumer.

69 SMALL BUSINESS CONTRACT.

(1) A contract is a small business contract if:

(a) the contract is for the supply [in trade] of goods or services;

(b) at the time the contract is entered into, at least one party to the contract is a small business; and

(c) either of the following applies:

(i) the upfront price payable under the contract does not exceed K 000;

(ii) the contract has a duration of more than 12 months and the upfront price payable under the contract does not exceed K 000.

(2) For the purposes of Subsection (1)(c)(i), "*upfront price*":

(a) means the price disclosed at or before the time the contract is entered into; and

(b) does not include any increase in the price payable on the occurrence or non-occurrence of a particular event.

70 STANDARD FORM CONTRACT.

(1) If in a proceeding under this Division it is disputed that a contract is a standard form contract, the contract is presumed to be a standard form contract unless the contrary is established.

(2) For the purpose of determining whether a contract is a standard form contract, the Court must take into account:

(a) whether one of the parties has all or most of the bargaining power relating 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 had no choice in rejecting or accepting the terms of the contract (other than the price) in the form in which they were presented;

(d) whether another party had an effective opportunity to negotiate the terms of the contract (other than the price);

(e) whether the terms of the contract (other than the price) take into account the specific characteristics of another party or the particular transaction;

(f) any other matter that the Court considers relevant; and

(g) any other prescribed matter.

71 WHEN CONTRACT TERM IS UNFAIR.

(1) A term of a consumer contract or a small business contract is unfair if:

(a) it would cause a significant imbalance in the parties' rights and obligations under the contract;

(b) it is not reasonably necessary for protecting the legitimate interests of the party who would be advantaged by the term; and

(c) it would cause financial or other detriment to a party if it were to be applied or relied on.

(2) Despite Subsection (1), a term setting the upfront price must not be determined to be unfair.

(3) In determining whether a term is unfair, the Court must take into account:

(a) the extent to which the term is transparent;

(b) the contract as a whole; and

(c) any other matter that the Court considers relevant.

(4) A term is transparent if it is:

(a) expressed in reasonably plain language;

(b) legible;

(c) presented clearly; and

(d) readily available to any party affected by the term.

(5) For the purposes of Subsection (1)(b), a term of a contract is presumed not to be reasonably necessary for protecting the legitimate interests of the party who would be advantaged by the term, unless that party proves otherwise.

Division 5. – Unsolicited goods and services.

72 LIABILITY FOR UNSOLICITED GOODS.

(1) A recipient of unsolicited goods:

(a) is not liable to pay for the goods; and

(b) is not liable if the goods are unintentionally lost or damaged; but

(c) must make the goods available for collection at a reasonable time during the period of 10 working days after receipt.

(2) If the sender of the goods fails to collect the goods within the 10-day period:

(a) the recipient takes the goods as an unconditional gift;

(b) all interests that any other person had in the goods are extinguished; and

(c) no action may be taken by or on behalf of the sender for the recovery of the goods from the recipient.

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

(a) failed to make the goods reasonably available for collection; or

(b) knew, or ought reasonably to have known, that:

(i) the goods were not intended for the recipient; or

(ii) the receipt of the goods was unauthorised.

(4) In this Section and Section 74, "*unsolicited goods*":

(a) means goods sent or delivered to a recipient without the recipient having requested them; but

(b) does not include reticulated gas or electricity.

73 LIABILITY FOR UNSOLICITED SERVICES.

(1) A recipient of unsolicited services from a person in trade:

(a) is not liable to pay for the services; and

(b) is not liable for any unintentional loss or damage resulting from the provision of those services.

(2) In this Section and Section 74, "*unsolicited services*":

(a) means services provided to a recipient without the recipient having requested them; but

(b) does not include reticulated gas or electricity.

74 NO CLAIM FOR PAYMENT FOR UNSOLICITED GOODS OR SERVICES.

A person in trade must not, as against the recipient of unsolicited goods or unsolicited services, claim a right to payment or demand payment, for those goods or services.

Division 6. – Uninvited direct sales.

75 UNINVITED DIRECT SALE AGREEMENT.

(1) A supplier must ensure that the requirements of Section 76 are complied with when entering into an uninvited direct sale agreement.

(2) An uninvited direct sale agreement is an agreement for the supply, in trade, of goods or services to a consumer when the following criteria are met:

(a) the agreement is entered into as a result of negotiations between the supplier and the consumer that take place over the telephone or at the consumer's home, workplace, place of worship or other place of recreation;

(b) the consumer has not invited the supplier to telephone or come to the consumer's home or other place; and

(c) the price paid or payable under the agreement is more than K 000 or is not fixed or ascertainable.

(3) Regulations may be made prescribing a higher amount for the purposes of Subsection (2)(c).

76 DISCLOSURE REQUIREMENTS.

(1) An uninvited direct sale agreement must be:

(a) in writing;

(b) dated;

(c) expressed in plain language;

(d) expressed in one of the official languages of Papua New Guinea;

(e) legible;

(f) presented clearly as an agreement;

(g) contain the following information set out on the front page of the agreement:

(i) a clear description of the goods or services to be supplied under the agreement;

(ii) the total price payable or the method of determining that price;

(iii) a statement of the consumer's right to cancel the agreement under Section 77(1);

(iv) the supplier's name, street address, telephone number and email address; and

(v) the consumer's name and street address.

(2) A copy of the agreement must be given to the consumer:

(a) at the time the agreement is entered into; or

(b) in the case of an agreement entered into over the telephone, within five working days after the date on which the agreement was entered into.

(3) The supplier must give the consumer oral notice, before the agreement is entered into, of:

(a) the consumer's right to cancel the agreement within five working days after the date on which the consumer receives a copy of the agreement; and

(b) how the consumer may cancel the agreement.

(4) An uninvited direct sale agreement is not enforceable by a supplier if the requirements of this section have not been met (except if non-compliance is minor and does not materially prejudice the consumer).

77 CONSUMER MAY CANCEL AGREEMENT.

(1) A consumer may cancel an uninvited direct sale agreement:

(a) at any time, if the requirements of Section 70 have not been met; and

(b) in any case, within five working days after the date on which the consumer receives a copy of the agreement.

(2) For cancellation, the consumer must give the supplier notice in any form (including oral or written) that shows the intention of the consumer to cancel or withdraw from the agreement.

78 EFFECT OF CANCELLATION.

(1) On cancellation by a consumer under Section 77:

(a) the supplier must repay all money paid by the consumer under the agreement; and

(b) if the supplier has repaid, the consumer must give the supplier a reasonable opportunity to collect any goods supplied under the agreement.

(2) In the period between repayment and collection, the consumer must take reasonable care of the goods but this obligation ends after 10 working days during which the supplier has had a reasonable opportunity to collect.

(3) The consumer must compensate the supplier for any damage to or loss of the goods during the period of reasonable care, except for loss or damage:

(a) arising out of or from the normal use of the goods; or

(b) owing to circumstances beyond the consumer's reasonable control.

(4) A supplier is not entitled to damages, or to enforce any other remedy, in relation to the cancellation of an uninvited direct sale agreement under Section 77, except as provided by this Section.

Division 7. – Regulation of traders.

79 TRADER MUST DISPLAY PRICE.

(1) A trader must display the price of goods for sale in accordance with Subsection (2).

(2) The price must be:

(a) displayed by indicating the price on the goods or on the shelf or stand on which the goods are displayed; and

(b) the total price payable, inclusive of any tax or other charges.

(3) A person who contravenes Subsection (1) is liable to a pecuniary penalty.

80 TRADER MUST ISSUE RECEIPT.

(1) On the request of a person buying goods from a trader, the trader must issue that person with a receipt that complies with Subsection (2).

(2) The receipt must state:

(a) the date of sale;

(b) a description of the goods sold;

(c) the quantity of the goods sold; and

(d) the amount paid for the goods.

(3) A person who contravenes Subsection (1) is liable to a pecuniary penalty.

81 TRADER MUST DISPLAY ENFORCEMENT NOTICE.

(1) A trader must display in accordance with Subsection (2) a notice of each of the following enforcement actions that are in force in respect of the trader:

(a) a warning notice (see section 152);

(b) an enforceable undertaking (see section 153);

(c) a cease and desist order (see section 156);

(d) an injunction (see section 157);

(e) a pecuniary penalty order (see section 162);

(f) an infringement notice (see section 167).

(2) The notice must be displayed at the trader's place of business in a conspicuous position where it can be readily viewed by the public.

(3) A person is liable to a pecuniary penalty who:

(a) contravenes Subsection (1); or

(b) removes from display or otherwise interferes with a notice referred to in Subsection (1).

82 INTERNET DISCLOSURE OF TRADER STATUS.

(1) This section applies when:

(a) goods or services are offered for sale to consumers on the Internet; and

(b) the offer is able to be accepted via the Internet.

(2) If the vendor of the goods or services is in trade, the person making the offer must make it clear to potential purchasers that the vendor is a person in trade.

(3) If the offer and any resulting sale are managed by an intermediary that is not a party to the sale (such as an intermediary that operates an online bidding process), the intermediary must take reasonable steps to ensure that the person offering the goods or services for sale complies with Subsection (2).

(4) A person who contravenes Subsection (2) or (3) is liable to a pecuniary penalty.

Division 8. – Codes of practice.

83 CODES OF PRACTICE.

(1) The Commission may at any time issue, approve, amend, or revoke a code of practice in relation to compliance with Part V or Part VI, either:

- (a) on the Commission's own initiative; or
- (b) on the application of a body that represents the interests of any trade, industry, profession, agency or calling (a **group**), where the code of practice is intended to apply to that group.

(2) Matters for which a code of practice may provide include:

- (a) standards of business conduct;
- (b) standards for goods or services;
- (c) receipt, handling, and resolution of consumers' complaints;
- (d) [other].

84 PROCEDURE REGARDING CODES.

(1) The Commission must not issue, approve, amend, or revoke any code of practice, unless:

- (a) the Commission has published in the *National Gazette* notice of the proposed code (or proposed amendment or revocation) and not less than 40 working days have elapsed following that publication; and
- (b) the Commission has consulted persons likely to be affected by the proposed code (or proposed amendment or revocation) and persons who have advised the Commission in writing that they wish to be consulted, and those persons have had the opportunity to consider its possible effects and to comment on those effects to the Commission; and
- (c) the Commission has considered any relevant comments made to it regarding the proposed code (or proposed amendment or revocation).

(2) The Commission must not issue, approve, amend, or revoke any code of practice, unless the Commission is satisfied that the proposed code (or proposed amendment or revocation):

- (a) is consistent with the requirements of this Act; and
- (b) is in the long-term best interests of consumers in Papua New Guinea.

(3) If the Commission issues, approves, amends, or revokes a code of practice the Commission must:

(a) publish in the *Gazette* notice of that issuance, approval, amendment, or revocation; and

(b) so long as the code of practice remains in force, show on it the date on which it was issued, approved, or amended and promulgate it in such manner as the Commission thinks fit; and

(c) so long as the code of practice remains in force, ensure that copies of the code and any amendments to it are available:

(i) for inspection by members of the public free of charge; and

(ii) for purchase by members of the public at a reasonable price.

85 LEGAL EFFECT OF CODE OF PRACTICE

(1) Contravention of a code of practice is not a breach of this Act unless it also involves some other breach.

(2) A person does not incur any civil or criminal liability only because the person has contravened any code of practice.

(3) Compliance with a code of practice is not a defence in any proceeding under this Act.

(4) A court may have regard to any code of practice in force under Section 83:

(a) if a person is charged with an offence in respect of a failure to comply with Part V or Part VI; or

(b) if an application for an injunction against a person has been made under this Act; or

(c) if an application for a pecuniary penalty against a person has been made under this Act.

PART VI. – CONSUMER GUARANTEES.

Division 1. – Introduction.

86 MEANING OF CONSUMER.

In this Part and Part V:

"*consumer*" means a person who:

(a) acquires from a supplier goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption; and

(b) does not acquire the goods or services, or hold himself or herself out as acquiring the goods or services, for the purpose of:

(i) resupplying them in trade;

(ii) consuming them in the course of a process of production or manufacture; or

(iii) in the case of goods, repairing or treating in trade other goods or fixtures on land;

"*manufacturer*" includes the importer of imported goods if, at the time of import, the manufacturer of the goods did not have a place of business in Papua New Guinea; and

"*supplier*" means a person who, in trade, supplies goods or services to a consumer.

87 APPLICATION OF THIS PART.

This Part:

(a) applies in addition to any other law;

(b) applies despite any provision to the contrary in any agreement;

(c) does not apply to goods supplied by auction;

(d) does not apply to goods on hire or lease; and

(e) does not apply to the supply of goods or services by a charitable organisation for the principal purpose of benefitting the person to whom the supply is made.

88 WHEN GUARANTEE COMMENCES.

For determining when a guarantee under this Part commences to apply:

(a) goods are taken to be supplied when the consumer acquires the right to possession of them; and

(b) services are taken to be supplied when they are provided.

89 CROSS-OVER OF GOODS AND SERVICES.

(1) The guarantees set out in Division 2 in relation to the supply of goods apply whether or not the goods are supplied in connection with a service.

(2) The guarantees set out in Division 4 in relation the supply of a service apply whether or not the service is supplied in conjunction with or in relation to goods.

(3) A consumer must not cancel under this Part an agreement for the supply of a service that is merely incidental to the supply of goods if the consumer has or had the right to reject the goods under this Part.

Division 2. – Supply of goods: guarantees.

90 SUPPLIER'S RIGHT TO SELL.

(1) On the supply of goods to a consumer there is a guarantee that the supplier has a right to sell the goods.

(2) A supplier has the right to sell goods if the supplier has the right to transfer or effect the transfer of the ownership of the goods to the consumer at the time that ownership is due to pass.

(3) This Section does not apply if the goods are only hired or leased.

91 GOODS FREE FROM SECURITY INTEREST.

(1) On the supply of goods to a consumer there is a guarantee that the goods are free from any security interest that is not disclosed.

(2) A security interest is disclosed if:

- (a) it has been disclosed to the consumer in writing before he or she agrees to the supply; or
- (b) it is registered under the Personal Property Securities Act 20123 at the time that the consumer agrees to the supply; or
- (c) it is created by the consumer or with his or her express consent.

(3) This Section does not apply if the goods are only hired or leased.

92 UNDISTURBED POSSESSION.

(1) On the supply of goods to a consumer there is a guarantee that the consumer has the right to undisturbed possession of the goods.

(2) If the goods are only hired or leased, the right to undisturbed possession applies only to the period of hire or lease.

(3) Subsection (1) applies subject to:

- (a) in the case of supply under a hire purchase agreement, express variation of the right by a term of that agreement; or
- (b) express variation of the right by a security or a term of the agreement for supply, provided the variation has been disclosed in accordance with Subsection (4).

(4) A variation is disclosed to a consumer for the purposes of Subsection (3)(b) if:

- (a) the consumer receives oral advice as to the way in which the consumer’s right to undisturbed possession of the goods could be affected;
- (b) the advice is sufficient to enable a reasonable consumer to understand the general nature and effect of the variation;
- (c) the consumer acknowledges in writing having received the advice; and
- (d) the consumer receives a written copy of the agreement for supply or security or a written copy of that part of the document that provides for the variation.

93 ACCEPTABLE QUALITY.

(1) On the supply of goods to a consumer, there is a guarantee that the goods are of acceptable quality.

(2) For the purposes of this section, goods are of acceptable quality if, according to the reasonable consumer standard, the goods are:

- (a) fit for all the purposes for which goods of the type in question are commonly supplied;
- (b) acceptable in appearance and finish;

(c) free from minor defects;

(d) safe; and

(e) durable.

(3) In Subsection (2), the reasonable consumer standard means the standard that would be applied by a reasonable consumer fully acquainted with the state and condition of the goods, including any hidden defects, having regard to:

(a) the nature of the goods;

(b) the price (where relevant);

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

(d) the nature of the supplier and the context in which the supplier supplies the goods;

(e) any representation made about the goods by the supplier or the manufacturer; and

(f) all other relevant circumstances of the supply of the goods.

94 EXCEPTIONS TO GUARANTEE OF ACCEPTABLE QUALITY.

(1) The guarantee of acceptable quality does not apply:

(a) to the extent that a defect has been specifically drawn to the consumer's attention before he or she agreed to the supply; or

(b) if the goods (which would otherwise have complied with the guarantee) have been used in a manner, or to an extent, that is inconsistent with the manner or extent of use that a reasonable consumer would expect to obtain from the goods.

(2) If goods are displayed for sale or hire, a defect is treated as having been specifically drawn to the consumer's attention for the purposes of Subsection (1)(a) if it is disclosed on a written notice displayed with the goods.

(3) A reference in Subsections (1) and (2) to a defect means any failure of the goods to comply with the guarantee of acceptable quality.

95 FITNESS FOR PARTICULAR PURPOSE.

(1) On the supply of goods to a consumer, there is a guarantee that:

(a) the goods are reasonably fit for any particular purpose that the consumer makes known, expressly or by implication, to the supplier as the purpose for which the goods are being acquired by the consumer; and

(b) the goods are reasonably fit for any particular purpose for which the supplier represents that they are or will be fit.

(2) The guarantee does not apply if the circumstances show that:

(a) the consumer does not rely on the supplier's skill or judgment; or

(b) it is unreasonable for the consumer to rely on the supplier's skill or judgment.

(3) This Section applies whether or not the purpose is a purpose for which the goods are commonly supplied.

96 COMPLIANCE WITH DESCRIPTION.

(1) On the supply of goods by description to a consumer, 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 by reason only that, being exposed for sale or hire, they are selected by a consumer.

97 COMPLIANCE WITH SAMPLE.

On the supply of goods to a consumer by reference to a sample or demonstration model, there is a guarantee that:

(a) the goods correspond with the sample or demonstration model in quality; and

(b) the consumer will have a reasonable opportunity to compare the goods with the sample.

98 PRICE.

(1) On the supply of goods to a consumer, there is a guarantee that the consumer is not liable to pay to the supplier more than a reasonable price for the goods.

(2) Subsection (1) does not apply if the price for the goods is:

(a) fixed by the contract;

(b) left to be fixed in a manner agreed by the contract; or

(c) left to be determined by the course of dealing between the parties.

(3) The consumer's right of redress for breach of a guarantee under Subsection (1) is to refuse to pay more than a reasonable price.

(4) Division 3 of this Part does not apply to breach of a guarantee under this section.

99 REPAIRS AND SPARE PARTS.

On the first supply of goods to a consumer in Papua New Guinea (whether or not that supply is the first-ever supply of the goods), there is a guarantee that the supplier will either:

(a) take reasonable action to ensure that facilities for repair of the goods and supply of parts for the goods are reasonably available for a reasonable period after the goods are so supplied; or

(b) notify consumers that facilities for repair of the goods and supply of parts for the goods are not assured.

100 EXPRESS GUARANTEES.

(1) Where goods are supplied to a consumer, this Act applies to any express guarantee by a manufacturer of the goods that is expressed to be binding on the manufacturer.

(2) A manufacturer's express guarantee contained in a document relating to goods binds the [importer / supplier] of those goods if the document is given to the consumer:

- (a) with the [importer's / supplier's] actual or apparent authority; and
- (b) in connection with the supply of those goods to the consumer.

(3) Unless the contrary is shown, authority for the purpose of Subsection (2)(a) is presumed if the document was given to the consumer in connection with the supply of the goods.

(4) Nothing in Subsection (2) limits other ways in which a manufacturer's express guarantee is binding.

Division 3. – Supply of goods: remedy for breach of guarantee.

101 NOTICE TO REMEDY.

(1) If a guarantee under Division 2 of this Part (excluding Section 98) is breached, the consumer may give the supplier notice to remedy the breach.

(2) Notice to remedy:

- (a) may be oral or written;
- (b) must sufficiently describe the nature of the breach; and
- (c) must be given within 28 days after the consumer becomes aware of the breach or ought reasonably to have become aware of it.

(3) On receiving notice under Subsection (1), the supplier must remedy the breach by doing one of the following, at the supplier's election:

- (a) repairing the goods;
- (b) reimbursing the consumer the reasonable costs of procuring the repair of the goods by a third party;
- (c) if the breach relates to a defect in title to the goods, remedying that defect;
- (d) replacing the goods with goods of an identical type;
- (e) refunding the money paid and any other value given by the consumer as the purchase price of the goods.

(4) A consumer may not give notice to remedy if:

- (a) the consumer has disposed of the goods;
- (b) the goods have been lost or destroyed while in the possession of a person other than the supplier or the supplier's agent;
- (c) the breach occurred after delivery of the goods to the consumer for reasons not related to their state or condition at the time of supply; or

(d) the goods have been attached to or incorporated in other property and cannot be detached or isolated without damage to the goods or the other property.

(5) Nothing in this Section limits any other remedy that a consumer may have under the general law for breach of a guarantee (including a right to damages).

102 ACT APPLIES TO REPLACEMENT GOODS.

(1) This Section applies if a supplier remedies a breach of a guarantee by replacing the goods.

(2) For the purposes of this Act, the replacement goods are treated as supplied by the supplier and the Act applies to the replacement goods as if they were the first supply of the goods to the consumer.

103 NOTICE OF REJECTION.

(1) A consumer may reject goods by giving the supplier notice of rejection if:

(a) the consumer has given notice to remedy under Section 101; and

(b) the supplier has failed to remedy the breach:

(i) within 28 days after the notice to remedy is given; or

(ii) if the consumer and supplier agree on a longer period for remedying the breach, within the agreed period.

(2) Notice of rejection:

(a) may be oral or in writing; and

(b) must be given within 28 days after the period for remedying the breach has expired.

(3) A consumer who gives notice of rejection must return the goods to the supplier unless:

(a) the goods are already in the supplier's possession; or

(b) the return of the goods is impractical or involves the consumer in unreasonable expense.

(4) If the consumer has already acquired ownership of the goods, ownership re-vests in the supplier on notice of rejection.

104 SUPPLIER MUST REFUND PURCHASE PRICE.

(1) On the exercise by a consumer of the right of rejection, the supplier must refund the money paid and any other value given by the consumer as the purchase price of the goods.

(2) The supplier must refund:

(a) within 28 days after the consumer returns the goods; or

(b) if Section 103(3)(a) or (b) applies, within 28 days after the date on which notice of rejection is given.

(3) A refund must be paid in cash, by deposit to a bank account or by credit to a credit card or other bank card.

(4) A supplier does not comply with the obligation to refund by:

(a) permitting the consumer to acquire goods from the supplier; or

(b) crediting a payment card issued by or on behalf of the supplier.

Division 4. – Supply of services: guarantees.

105 REASONABLE CARE AND SKILL.

On the supply of services to a consumer, there is a guarantee that the service will be carried out with reasonable care and skill.

106 FITNESS FOR PARTICULAR PURPOSE.

(1) On the supply of services to a consumer, there is a guarantee that the service, and any product resulting from the service, will be:

(a) reasonably fit for any known particular purpose; and

(b) of such a nature and quality that it can reasonably be expected to achieve any known particular result.

(2) A particular purpose or result is known to the supplier if it is made known to the supplier by the consumer, before or at the time of the making of the contract for the supply of the service, as the particular purpose for which the service is required or the particular result that the consumer desires to achieve, as the case may be.

(3) Subsection (1) does not apply if:

(a) the consumer does not rely on the supplier's skill or judgment; or

(b) it is unreasonable for the consumer to rely on the supplier's skill or judgment.

107 COMPLETION IN REASONABLE TIME.

(1) On the supply of services to a consumer, there is a guarantee that the service will be completed within a reasonable time.

(2) Subsection (1) does not apply if the time for the service to be carried out is:

(a) fixed by the contract;

(b) left to be fixed in a manner agreed by the contract; or

(c) left to be determined by the course of dealing between the parties.

108 PRICE.

(1) On the supply of services to a consumer, there is a guarantee that the consumer is not liable to pay to the supplier more than a reasonable price for the service.

(2) Subsection (1) does not apply if the price for the service is:

(a) fixed by the contract;

(b) left to be fixed in a manner agreed by the contract; or

(c) left to be determined by the course of dealing between the parties.

(3) The consumer's right of redress for breach of a guarantee under Subsection (1) is to refuse to pay more than a reasonable price.

(4) Division 5 of this Part does not apply to breach of a guarantee under this section.

Division 5. – Supply of services: remedy for breach of guarantee.

109 NOTICE TO REMEDY.

(1) If a guarantee under Division 4 of this Part (excluding Section 108) is breached but is capable of remedy, the consumer may give the supplier notice to remedy.

(2) Notice to remedy:

(a) may be oral or written;

(b) must sufficiently describe the nature of the breach; and

(c) must be given within 28 days after the consumer becomes aware of the breach or ought reasonably to have become aware of it.

(3) On receiving notice under Subsection (1), the supplier must remedy the breach by doing one of the following:

(a) re-supplying the service to the extent necessary; or

(b) refunding the money paid and any other value given by the consumer as the price of the service.

(4) For the purposes of this Act, re-supplied services are treated as supplied by the supplier and the Act applies to the re-supplied services as if they were the first supply of the services to the consumer.

(5) Nothing in this section limits any other remedy that a consumer may have under the general law for breach of a guarantee (including a right to damages).

110 CANCELLATION.

(1) A consumer may cancel an agreement for the supply of services by giving the supplier notice of cancellation if:

(a) the consumer has given the supplier a notice to remedy under Section 109 and the supplier has failed to remedy the breach within 28 days after the notice is given; or

(b) a guarantee under Division 4 of this Part (excluding Section 108) is breached and the breach is not capable of remedy or is substantial.

(2) Notice of cancellation:

(a) may be oral or in writing; and

(b) must be given:

(i) if Subsection (1)(a) applies, within 28 days after the period for remedying the breach has expired; or

(ii) if Subsection (1)(b) applies, within 28 days after the consumer becomes aware of the breach or ought reasonably to have become aware of it.

(3) For the purposes of Subsection (1)(b), breach of a guarantee is substantial if:

(a) a reasonable person in the position of the consumer would not have contracted for the service had the nature and extent of the breach been foreseen; or

(b) the product of the service is unsafe.

111 EFFECT OF CANCELLATION.

(1) On cancellation under Section 110 of an agreement for the supply of a service:

(a) the supplier must refund the money paid and any other value given by the consumer as the price of the service; and

(b) without affecting the supplier's liability to refund:

(i) each party retains any money or property already paid or transferred under the agreement; and

(ii) neither party is obliged or entitled to take any further step in performance of the agreement.

(2) Nothing in this section limits any other remedy that a consumer may have under the general law for breach of a guarantee (including a right to damages).

(3) The effect of cancellation under Subsection (1) may be adjusted by a Court if it considers that in a particular case the outcome under Subsection (1) is disproportionately unfair to a party.

PART VII. – CONSUMER INFORMATION AND SAFETY.

Division 1. – Consumer information.

112 CONSUMER INFORMATION STANDARD.

(1) Regulations may be made by the Head of State acting on the advice of the Minister, prescribing a consumer information standard that complies with Subsection (2).

(2) A consumer information standard may:

(a) require the disclosure of information relating to the kind, grade, quantity, origin, performance, care, composition, contents, design, construction, use, price, finish, packaging, promotion or supply of goods or services;

(b) specify how that information must be obtained or verified before it is disclosed;

(c) specify that information must be disclosed in any or all of the official languages of Papua New Guinea;

(d) specify the form and manner in which that information must be disclosed on or in relation to:

(i) the supply or possible supply of the goods or services;

(ii) the resupply or possible resupply of the goods or services; or

(iii) the promotion by any means of one or more of the matters described in subparagraphs (i) and (ii); and

(e) incorporate, by reference or otherwise and with any additions or variations as are specified, part or all of an official standard or two or more official standards.

(3) Before recommending regulations under Subsection (1), the Minister must:

(a) consult with persons (or their representatives) who the Minister considers will be substantially affected by the regulations; and

(b) consider any comments those persons may make in relation to the proposed regulations.

(4) A failure to comply with Subsection (3) does not affect the validity of the regulations.

113 BREACH OF CONSUMER INFORMATION STANDARD.

(1) A person must not in trade supply goods or services in Papua New Guinea if the supply does not comply with an applicable consumer information standard.

(2) A person who breaches Subsection (1) commits an offence and is liable on conviction:

(a) in the case of an individual, to a fine not exceeding K 000 or imprisonment for a term not exceeding 00 years or both; or

(b) in the case of a body corporate, to a fine not exceeding K 000.

(3) It is a defence to a prosecution under Subsection (2) if the defendant:

(a) made all reasonable inquiries to determine whether the supply complied with the applicable consumer information standard; and

(b) believed on reasonable grounds that the supply did comply.

Division 2. – Product safety.

114 PRODUCT SAFETY STANDARD FOR GOODS.

(1) Regulations may be made by the Head of State, acting on the advice of the Minister, prescribing for the supply of specified goods or a specified class of goods a product safety standard (or two or more product safety standards) that has the purpose of preventing or reducing the risk of injury to any person and complies with Subsection (2).

(2) A product safety standard may provide for any of the following:

(a) the performance, composition, contents, manufacture, processing, design, construction, finish or packaging of the goods;

(b) the testing of the goods during or after manufacture or processing

(c) the form and content of markings, warnings or instructions to accompany the goods.

(3) A product safety standard may incorporate, by reference or otherwise and with any additions or variations as are specified, part or all of an official standard or two or more official standards.

(4) Before recommending regulations under Subsection (1), the Minister must:

(a) consult with persons (or their representatives) who the Minister considers will be substantially affected by the regulations; and

(b) consider any comments those persons may make in relation to the proposed regulations.

(5) A failure to comply with Subsection (4) does not affect the validity of the regulations.

115 BREACH OF PRODUCT SAFETY STANDARD.

(1) A person must not in trade supply goods in Papua New Guinea if the supply does not comply with an applicable product safety standard.

(2) A person who breaches Subsection (1) commits an offence and is liable on conviction:

(a) in the case of an individual, to a fine not exceeding K 000 or imprisonment for a term not exceeding 00 years or both; or

(b) in the case of a body corporate, to a fine not exceeding K 000.

(3) It is a defence to a prosecution under Subsection (2) if the defendant:

(a) made all reasonable inquiries to determine whether the supply complied with the applicable product safety standard; and

(b) believed on reasonable grounds that the supply did comply.

116 UNSAFE GOODS.

(1) The Commission may, by notice in the National Gazette, declare goods (or a class or classes of goods) to be unsafe goods if:

(a) there is no product safety standard in force for the goods; and

(b) the Commission considers that:

(i) the goods will or may cause injury to any person; or

(ii) a reasonably foreseeable use (including misuse) of the goods will or may cause injury to any person.

(2) In deciding whether to make a declaration under Subsection (1)(b)(ii), the Commission must have regard to all the circumstances, including the following:

(a) the likelihood of an injury occurring to a person as a result of the reasonably foreseeable use or misuse of the goods;

(b) the seriousness of the injury likely to be suffered by the user of the goods or any other person;

(c) whether such injury is likely to recur;

(d) any steps that the supplier or manufacturer of the goods has taken to mitigate the risk of injury;

(e) whether, taking into account the ordinary and intended use of the goods, the public interest favours making a declaration.

(3) Unless previously revoked, a notice under Subsection (1) remains in force for 18 months after the date of publication of the notice in the *National Gazette*.

117 OFFENCE OF SUPPLYING UNSAFE GOODS.

(1) A person must not in trade supply goods in Papua New Guinea if the goods are the subject of an unsafe goods notice under section 116.

(2) A person who breaches Subsection (1) commits an offence and is liable on conviction:

(a) in the case of an individual, to a fine not exceeding K 000 or imprisonment for a term not exceeding 00 years or both; or

(b) in the case of a body corporate, to a fine not exceeding K 000.

118 COMPULSORY PRODUCT RECALL.

(1) This Commission may issue a notice under Subsection (2) if satisfied that:

(a) a person has, in trade, supplied in Papua New Guinea any of the following:

(i) goods that do not comply with a product safety standard prescribed for the supply of the goods; or

(ii) goods that have been declared to be unsafe goods under Section 116; and

(b) the supplier has not recalled the goods or taken satisfactory action to recall the goods.

(2) The Commission may by notice to the supplier require the supplier, in a manner and within a period specified and at the supplier's own expense, to do one or more of the following:

(a) recall the goods:

(b) disclose to the public information relating to:

(i) the characteristics of the goods which render them unsafe;

(ii) the circumstances in which use of the goods is unsafe; or

(iii) any other matters relating to the goods or the use of the goods as may be specified:

(c) repair or replace the goods:

(d) refund to any person to whom the goods were supplied or resupplied:

(i) the price paid for the goods; or

(ii) any lesser amount as may be reasonable having regard to the use that person has had of the goods.

(3) A person who fails to comply with a requirement of a notice under Subsection (2) commits an offence and is liable on conviction:

(a) in the case of an individual, to a fine not exceeding K 000 or imprisonment for a term not exceeding 00 years or both; or

(b) in the case of a body corporate, to a fine not exceeding K 000.

Division 3. – Safety of services.

119 MEANING OF SERVICES.

In this Division, "*services*" means the performance of work by way of:

(a) the maintenance, repair, treatment, processing, installation, assembly, cleaning or alteration of goods;

(b) the construction, maintenance, repair, cleaning or alteration of any building or other fixture on land;

(c) the development of land; or

(d) the transportation of goods.

120 SERVICES SAFETY STANDARD.

(1) Regulations may be made by the Head of State, acting on the advice of the Minister, prescribing for the supply of specified services or a class of services a services safety standard (or two or more services safety standards) that has the purpose of preventing or reducing the risk of injury to any person.

(2) A services safety standard may incorporate, by reference or otherwise and with any additions or variations as are specified, part or all of an official standard or two or more official standards.

(3) Before recommending regulations under Subsection (1), the Minister must:

(a) consult with persons (or their representatives) who the Minister considers will be substantially affected by the regulations; and

(b) consider any comments those persons may make in relation to the proposed regulations.

(4) A failure to comply with Subsection (3) does not affect the validity of the regulations.

121 BREACH OF SERVICES SAFETY STANDARD.

(1) A person must not in trade supply services in Papua New Guinea if the supply does not comply with an applicable services safety standard.

(2) A person who breaches Subsection (1) commits an offence and is liable on conviction:

(a) in the case of an individual, to a fine not exceeding K 000 or imprisonment for a term not exceeding 00 years or both; or

(b) in the case of a body corporate, to a fine not exceeding K 000.

(3) It is a defence to a prosecution under Subsection (2) if the defendant:

(a) made all reasonable inquiries to determine whether the supply complied with the applicable services safety standard; and

(b) believed on reasonable grounds that the supply did comply.

PART VIII. – COMPLAINTS, INVESTIGATIONS AND SEARCHES.

Division 1. – Complaints.

122 COMPLAINTS.

(1) Any person may complain to the Commission about a breach (or alleged breach) or an offence (or alleged offence) under this Act.

(2) A complaint may be made formally or informally, in writing or orally, but must contain sufficient detail for the Commission to assess it.

(3) If requested to do so, the Commission must assist a person to make a complaint.

Division 2. – Investigations.

123 COMMISSION MAY INVESTIGATE.

(1) The Commission may investigate any conduct that it considers constitutes, or may constitute, a breach of, or an offence under, this Act.

(2) In the case of an acquisition, the Commission must commence the investigation not later than six months after the date on which the Commission became aware, or ought to have become aware, that the acquisition has taken place.

124 INVESTIGATION FOLLOWING COMPLAINT.

(1) The Commission must, subject to Subsection (2), investigate conduct that is the subject of a complaint to the Commission.

(2) The Commission need not investigate following a complaint if it considers that an investigation is not warranted, is impractical or for some other reason is a poor use of its resources.

(3) Without limiting Subsection (2), the Commission may decline to investigate if it considers that the complaint:

(a) is trivial, frivolous or vexatious;

(b) is misconceived or lacking in substance; or

(c) contains insufficient detail for assessment.

(4) The Commission may, having received a complaint, refer that complaint to another statutory body or government agency if it considers it is appropriate in the circumstances to do so and regardless of whether the Commission has commenced an investigation into it.

125 INVESTIGATION FOLLOWING MINISTER'S REFERENCE.

(1) The Commission must, subject to Subsection (2), investigate conduct that is referred to it by the Minister and must provide a report of the outcome of the investigation to the Minister.

(2) If the Commission considers on reasonable grounds that it lacks the resources required to investigate conduct that is referred to it by the Minister:

(a) the Commission is not obliged to investigate the conduct; and

(b) the Commission must inform the Minister accordingly.

126 WARNING BEFORE QUESTIONING.

(1) The Commission must not question a person without having first administered a warning in accordance with Subsection (2) in any case where the Commission suspects or ought reasonably to suspect that the person is or may be liable to prosecution for an offence or the imposition of a pecuniary penalty under this Act.

(2) For the purposes of Subsection (1), a warning must warn the person that:

(a) the person does not have to answer a question;

(b) the person does not have to do anything in response to a question; but

(c) anything the person does say or do in response to the question may be used in evidence against that person.

(3) Where a warning is required under Subsection (1) but such warning is not given, evidence of what a person says or does in response to a question is not admissible in a proceeding against that person in a criminal proceeding or a proceeding for a pecuniary penalty.

(4) This section does not apply where a person is questioned under section 130.

127 COMMISSION MAY OBTAIN DOCUMENT, ETC.

(1) The Commission may, by notice in writing, require a person to produce any document or thing that the Commission considers is or may be relevant to an investigation.

(2) The notice must:

(a) indicate the subject matter and purpose of the investigation;

(b) specify the time and place for production of the document or thing; and

(c) draw attention to the penalties under this Act for:

(i) failure to comply with the notice;

(ii) providing false or misleading documents; and

(iii) falsifying or destroying documents.

(3) A person who fails to comply with a notice under Subsection (1) commits an offence and is liable on conviction:

(a) in the case of an individual, to a fine not exceeding K 00 or imprisonment for a term not exceeding 00 years, or both; or

(b) in the case of a body corporate, to a fine not exceeding K 00.

(4) It is a defence to an offence under Subsection (3) that the person had a reasonable excuse for failing to comply.

128 COMMISSION MAY REQUIRE EXPLANATION OF DOCUMENT, ETC.

(1) The Commission may by a notice in writing require:

(a) a person who produces a document or thing under section 127 to give an explanation of, or provide further information about, the document or thing; and

(b) the explanation or further information be in writing.

(2) A person who fails to comply with a notice under Subsection (1) commits an offence and is liable on conviction:

(a) in the case of an individual, to a fine not exceeding K 00 or imprisonment for a term not exceeding 00 years, or both; or

(b) in the case of a body corporate, to a fine not exceeding K 00.

(3) It is a defence to an offence under Subsection (3) that the person had a reasonable excuse for failing to comply.

129 COMMISSION MAY COPY DOCUMENT, ETC.

The Commission may copy a document produced under section 127 and take an extract or sample from a thing produced under that section.

130 COMMISSION MAY QUESTION PERSON.

(1) The Commission may by a notice in writing require a person:

(a) to appear before the Commission, at a time and place specified in the notice, and answer questions relevant to an investigation; or

(b) to provide written responses to questions set out in the notice that are relevant to the investigation.

(2) The notice must:

(a) indicate the subject matter and purpose of the investigation;

(b) draw attention to the penalties under this Act for:

(i) failure to comply with the notice; and

(ii) making a false or misleading statement.

(3) A person may appear before the Commission under Subsection (1)(a) by audio link or audio-visual link if the Commission and the person agree.

(4) A person who fails to comply with a requirement under Subsection (1) commits an offence and is liable on conviction:

(a) in the case of an individual, to a fine not exceeding K 00 or imprisonment for a term not exceeding 00 years, or both; or

(b) in the case of a body corporate, to a fine not exceeding K 00.

(5) It is a defence to an offence under Subsection (4) that the person had a reasonable excuse for failing to comply.

131 SELF-INCRIMINATION NO EXCUSE.

(1) A person is not excused from complying with a requirement under section 127, 128 or 130 on the ground that to do so might tend to incriminate that person.

(2) A statement made by a person in answer to a question put by or before the Commission is not admissible against that person in a criminal proceeding or a proceeding for a pecuniary penalty.

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

(a) a body corporate; or

(b) a prosecution for perjury; or

(c) a prosecution under section 133 or134.

132 COMMISSION MAY REQUIRE OATH OR AFFIRMATION.

(1) The Commission may require an individual who provides answers under section 130(1)(a), whether in the individual's own capacity or as the representative of a body corporate, to verify the answers on oath or by affirmation.

(2) Any member of the Commission or a duly authorised employee of the Commission may administer the oath or affirmation.

(3) A person who fails to comply with a requirement under Subsection (1) commits an offence and is liable on conviction to a fine not exceeding K 00 or imprisonment for a term not exceeding 00 years.

133 FALSE OR MISLEADING STATEMENT, ETC.

(1) A person commits an offence who, in relation to an investigation under this Division makes a statement, provides information or produces a document to the Commission that is false or misleading in a material particular.

(2) A person who commits an offence under Subsection (1) is liable on conviction:

(a) in the case of an individual, to a fine not exceeding K 00 or imprisonment for a term not exceeding 00 years, or both; or

(b) in the case of a body corporate, to a fine not exceeding K 00.

(3) It is a defence to an offence under Subsection (1) that the person did not know, and could not reasonably be expected to have known, that the statement, information or document was false or misleading.

134 KNOWLEDGE OFFENCE OF FALSE OR MISLEADING STATEMENT, ETC.

(1) A person commits an offence who, in relation to an investigation under this Division:

(a) makes a statement, provides information or produces a document to the Commission that is false or misleading in a material particular; and

(b) knew or believed at the time of making the statement, providing the information or producing the document that it was false or misleading in a material particular.

(2) A person who commits an offence under Subsection (1) is liable on conviction:

(a) in the case of an individual, to a fine not exceeding K 00 or imprisonment for a term not exceeding 00 years, or both; or

(b) in the case of a body corporate, to a fine not exceeding K 00.

Division 3. – Search.

135 COMMISSION MAY SEARCH.

(1) For the purposes of conducting an investigation, the Commission may authorise an employee of the Commission to enter and search a specified place.

(2) The Commission may enter and search only:

(a) with the consent of the occupier of the place;

(b) under a warrant issued under section 139; or

(c) where the Commission believes on reasonable grounds that it is necessary to enter the place urgently to prevent the loss or destruction of a document or other thing that may afford evidence of a breach of or an offence under this Act.

(3) The Commission may authorise an employee to search in a public place if the Commission believes on reasonable grounds that the search is urgently necessary for preventing the loss or destruction of a document or other thing that may afford evidence of a breach of, or offence under, this Act.

136 CONDUCT OF SEARCH.

(1) For the purposes of a search under section 135, and subject to the terms of any warrant in force, the Commission:

(a) may use reasonable force to enter the place and conduct the search;

(b) must be given full and free access to the place to conduct the search;

(c) may do whatever is reasonably necessary to conduct the search;

(d) may examine any document or thing found during the search; and

(e) may, for a purpose that is incidental to the search or with the consent of the occupier of the premises, take photographs, or make video recordings, of the premises or anything at the premises.

(2) A person who obstructs or interferes with a search under section 135 commits an offence and is liable on conviction:

(a) in the case of an individual, to a fine not exceeding K 00 or imprisonment for a term not exceeding 00 years, or both; or

(b) in the case of a body corporate, to a fine not exceeding K 00.

137 USE OF COMPUTERS, ETC IN SEARCH.

(1) For the purposes of a search under section 135, the Commission may use any tool or device, including a computer, that it believes on reasonable grounds is necessary for the search.

(2) In the search for or examination of a document, the Commission may operate a computer found at the place, if the Commission believes on reasonable grounds that:

(a) it is necessary to operate the computer in order to:

(i) search for or examine a document;

(ii) put a document into readable form;

(iii) copy a document to some other document for examining it or putting it in readable form;

(b) the computer is suitable for the search or examination; and

(c) the search or examination can be carried out without damage to the computer or a document.

(3) A computer that is found at the place may be used to access any document that the computer may lawfully access, including a document held at another place.

138 COMMISSION MAY COPY AND SEIZE DOCUMENTS AND THINGS.

(1) On finding a document or thing in the course of a search under section 135, the Commission may:

(a) require the person in possession of it or the occupier of the place where it is found to give an explanation of or further information about the document or thing;

(b) in the case of a computer, also require the person in possession of it to operate the computer at the direction of the Commission, including any algorithm or similar software, for the purpose of accessing information within the scope of the warrant;

(c) make copies of the document or take an extract or sample from the thing; and

(d) seize the document or thing and remove it for examination.

(2) The Commission must on request provide as soon as reasonably practicable a copy of any document seized on request by the person in possession of it or the occupier of the place where it is found.

(3) A person from whom an explanation or further information is required under Subsection (1)(a) commits an offence if the person:

(a) gives an explanation or further information that is inaccurate or incomplete; and

(b) knows that the explanation is inaccurate or incomplete or is reckless as to whether it is.

(4) A person who commits an offence under Subsection (3) is liable on conviction to a fine not exceeding K 00 or imprisonment for a term not exceeding 00 years, or both.

Division 4. – Search warrants.

139 ISSUE OF WARRANT.

(1) A Judge may issue a warrant under this Act authorising entry to and search of any premises, place, vehicle, vessel, aircraft, or thing on the application of a duly authorised employee of the Commission but not otherwise.

(2) A warrant:

(a) must not be issued for more than seven days; and

(b) must specify the day when it ceases to be in force.

(3) Another warrant may be issued before or after a warrant has ceased to be in force.

140 FORM OF APPLICATION AND PROCEDURE.

(1) An application for the issue of a warrant must be:

(a) in writing; and

(b) accompanied by a written statement setting out information in support of the application.

(2) A Judge may require further information.

(3) The written statement accompanying the application and any further information in support, whether written or oral, must be made or given on oath or by affirmation.

(4) The application must be made:

(a) if practical, in person; or

(b) otherwise, by email, telephone or other appropriate means, but in that case a warrant may only be issued if the Judge is satisfied that an application in person is impractical.

(5) Matters that are relevant to determining whether an appearance in person is not practical include the following:

(a) the period for doing what the warrant authorises;

(b) the delay in making an application in person;

(c) the length of time that would be required for the applicant to appear in person; and

(d) such other matters as the Judge in his or her discretion considers relevant.

141 PROCEDURE WHEN APPLICATION MADE FROM DISTANCE.

(1) If a Judge issues a warrant on an application that is not made in person:

(a) the Judge must prepare and sign the warrant, and tell the applicant what its terms are; and

(b) the applicant must prepare a duplicate warrant in the same terms as the warrant and write on it the name of the Judge and the time and date of signature of the warrant; and

(c) the applicant must give the Judge, within 24 hours after he or she signed the warrant, the application and the duplicate warrant.

(2) The duplicate warrant may be used in place of the warrant for as long as the warrant remains in force.

(3) In any proceeding, a Court must not find that anything was done in accordance with a warrant issued under Subsection (1) unless the duplicate warrant completed in accordance with Subsection (1)(b) is admitted in evidence in the proceeding.

142 EXECUTION OF WARRANT.

(1) A warrant to enter or search any premises, place, vehicle, vessel, aircraft, or thing may be executed at any time of the day or night unless the warrant specifies otherwise.

(2) A warrant to enter or search any premises, place, vehicle, vessel, aircraft, or thing authorises the employee of the Commission named in the warrant, and any other duly authorised employee of the Commission, to execute the warrant with such assistance as is necessary.

(3) A warrant to enter or search any premises, place, vehicle, vessel, aircraft, or thing must not be taken as having been discharged merely because the person executing the warrant leaves the place where it is being executed:

(a) for no more than 1 hour between 8am and 6pm;

(b) between 6pm and 8am; or

(c) with the written consent of the occupier of the premises, place, vehicle, vessel, aircraft, or thing.

PART IX. – ENFORCEMENT AND REMEDIES.

Division 1. – Preliminary.

143 CATEGORIES OF BREACH.

In this Part:

"*competition breach*" means a breach of a competition rule under Part III;

"*consumer breach*" means the supply of goods or services in breach of a consumer guarantee under Part VI;

"*fair trading breach*" means a breach of Part V;

"*standards breach*" means:

(i) the supply of goods or services in breach of Part VII; or

(ii) a failure to comply with a product recall notice under Part VII.

144 JURISDICTION OF NATIONAL COURT.

(1) The National Court must hear and determine the following matters:

(a) [**Q:** to be determined in consultation with State Solicitor].

(2) Nothing in Subsection (1) affects or limits the jurisdiction of the National Court in relation to a prosecution for an offence.

145 JURISDICTION OF DISTRICT COURT.

(1) A District Court must hear and determine the following matters:

(a) [**Q:** to be determined in consultation with State Solicitor].

(2) A District Court has jurisdiction to hear and determine any dispute between a consumer and a trader where:

(a) the consumer claims redress:

(i) for a fair trading breach;

(ii) for a consumer breach; or

(iii) under Division 4, 5 or 6 of Part VI; and

(b) the value of the goods or services that are the subject of the claim for redress does not exceed the financial limit of the jurisdiction of the District Court.

(3) The parties to a dispute that falls within Subsection (2)(a) but not Subsection (2)(b) may agree that the dispute be heard and determined by a District Court.

146 JURISDICTION OF VILLAGE COURT IN CONSUMER DISPUTES.

(1) A Village Court has jurisdiction to hear and determine any dispute between a consumer and a trader where:

(a) the consumer claims redress:

(i) for a fair trading breach;

(ii) for a consumer breach; or

(iii) under Division 4, 5 or 6 of Part VI; and

(b) the value of the goods or services that are the subject of the claim for redress does not exceed K 000.

(2) The parties to a dispute that falls within Subsection (1) may agree that the dispute be heard and determined by a District Court.

(3) In a case to which Subsection (2) applies, the District Court hearing the dispute may adopt the procedure of a Village Court with any necessary modifications.

Division 2. – Compensation.

147 COMPENSATION FOR BREACH.

(1) A person who suffers loss or damage as a result of a competition breach by another person may recover the amount of the loss or damage from:

(a) that other person; and

(b) a person who was knowingly involved in the breach.

(2) A person who suffers loss or damage as a result of a fair trading breach by a trader may recover the amount of the loss or damage from:

(a) the trader; and

(b) a person who was knowingly involved in the breach.

(3) A person who suffers loss or damage as a result of a consumer breach may recover the amount of the loss or damage from:

(a) in the case of the supply of goods, the supplier or the manufacturer or both; and

(b) in the case of the supply of services, the supplier.

(4) A person who suffers loss or damage as a result of a standards breach may recover the amount of the loss or damage from the supplier.

(5) Nothing in this section limits or affects any other remedy that a person may have under this Act or any other law.

148 FINDINGS OF CONTRAVENTION OF COMPETITION RULES.

(1) Subject to Subsection (2), in proceedings before the Court under Subsection 147(1) in which a contravention, or involvement in a contravention, of a competition rule is alleged in relation to a particular act, the Court is bound by an earlier decision of the Court that the act in question is a contravention, or involvement in a contravention, of a competition rule.

(2) Subsection (1) does not apply in relation to any earlier decision until the later of:

(a) the expiry of the period during which any appeals may be made; and

(b) if any appeal has been made, the determination of that appeal.

149 REPRESENTATIVE PROCEEDING BY COMMISSION.

(1) The Commission may bring a compensation proceeding under Section 147 as the representative of one or more persons who claim or could claim to have suffered loss or damage as the result of a breach of this Act.

(2) The Court may make any appropriate order for the conduct of the proceeding, including orders for:

(a) advertising the proceeding;

(b) locating and identifying claimants;

(c) notifying claimants of the right to be excluded from the proceeding; and

(d) excluding a claimant from the proceeding.

(3) The Court must exclude a claimant if:

(a) the claimant does not wish to pursue the claim through the representative proceeding; or

(b) the claimant commences or has commenced a separate compensation proceeding for the same breach.

150 CONDUCT OF REPRESENTATIVE PROCEEDING.

(1) The Commission:

(a) controls and undertakes the conduct of a representative proceeding to the exclusion of the claimants; and

(b) may withdraw, discontinue, or compromise the proceeding, but the Court must approve withdrawal, abandonment or compromise.

(2) The Court's judgment in a representative proceeding binds all claimants other than those excluded under Section 149(3).

(3) The Court may make such orders for the conduct and outcome of the proceeding as it considers necessary or expedient, including orders as to:

(a) the distribution to claimants of any recovery under the proceeding;

(b) reimbursement out of any recovery of the costs of the Commission in bringing the proceeding; or

(c) [**Q:** to come].

151 TIME FOR BRINGING COMPENSATION PROCEEDING.

(1) A proceeding under Section 147 or 149 must be commenced within six years after the day on which the cause of action that relates to the breach accrued.

(2) The Court may, on application, extend the period of six years, and may do so after that period has ended.

Division 3. – Warning notice.

152 WARNING NOTICE.

(1) The Commission may issue a warning notice to a person if the Commission believes on reasonable grounds that the person has engaged, is engaging, or proposes to engage, in conduct that constitutes or would constitute a breach of a kind referred to in Section 143.

(2) A warning notice must:

- (a) identify the conduct;
- (b) state the material facts that the Commission relies on;
- (c) require the person to cease the conduct and not to repeat it;
- (d) specify a reasonable warning period for ceasing to engage in the conduct;
- (e) state that, if the person does not comply with the notice, the Commission may bring proceedings against the person in respect of the conduct.

(3) The Commission may extend a warning period and may do so after the period has ended.

(4) The Commission must not bring proceedings against the person for the conduct before the end of the warning period unless the Commission believes on reasonable grounds that to do so is necessary for public safety.

Division 4. – Enforceable undertaking.

153 COMMISSION MAY ACCEPT ENFORCEABLE UNDERTAKING.

(1) The Commission may accept a written undertaking from a person in connection with any matter relating to the enforcement of this Act.

(2) The person may withdraw or vary the undertaking with the Commission’s consent.

154 CONTENT OF UNDERTAKING.

(1) An undertaking under Section 153 may, without limitation, include any or all of the following:

- (a) an undertaking to pay compensation to any person;
- (b) an undertaking to take action to avoid, remedy or mitigate any actual or likely adverse effects arising from a breach, or possible breach, of this Act;
- (c) an undertaking to pay to the Commission all or part of the Commission’s costs incurred in investigating, or bringing proceedings in relation to, a breach, or possible breach, of this Act.

(2) The Commission may accept an undertaking relating to the enforcement of Section 20 only if the undertaking is to dispose of assets or shares specified in the undertaking.

(3) If the Commission accepts an undertaking that involves payment of compensation to any person, or payment of the Commission's costs, the Commission must make the following information publicly available:

(a) the amount of the compensation, or of the Commission's costs, that has been undertaken to be paid; and

(b) a brief description of the circumstances and nature of the contravention or possible contravention of this Act to which the undertaking relates.

(4) In this section, "*breach*" means any of the following:

(a) an actual breach:

(b) aiding, abetting, counselling, or procuring a breach:

(c) inducing a breach, whether by threats, promises or otherwise:

(d) being in any way, directly or indirectly, knowingly concerned in, or party to, a breach:

(e) conspiring with any other person in a breach.

155 ENFORCEMENT OF UNDERTAKING.

(1) If the Commission considers that the person has breached an undertaking accepted by the Commission, the Commission may apply to the Court for an order under Subsection (2).

(2) The Court may make any one or more of the following orders if it is satisfied that the person has breached a term of the undertaking:

(a) an order directing the person to comply with the term;

(b) an order directing the person to pay to the State an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach of the undertaking;

(c) an order that the person compensate, as specified in the order, any person who has suffered loss or damage as a result of the breach of the undertaking;

(d) an order directing the person to do a specified act, or refrain from doing a specified act, for one or both of the following purposes:

(i) to remedy the effects of the breach of the Act or the undertaking;

(ii) to ensure that the person does not breach the undertaking again; and

(e) any other incidental order.

Division 5. – Cease and desist notice.

156 CEASE AND DESIST NOTICE.

(1) The Commission may, if satisfied that a person has engaged, is engaging or is proposing to engage in conduct that constitutes or would constitute a breach of or an offence under this Act, by notice in writing, require the person to cease and desist from engaging in the conduct.

(2) The Commission must not give a cease and desist notice unless it has given the person a reasonable opportunity to make submissions to it on the matter.

(3) Breach of a requirement in a cease and desist notice is not an offence, but may be a ground for an injunction under Section 157.

Division 6. – Injunction.

157 INJUNCTION.

(1) The Court may order an injunction if it is satisfied that a person has engaged, is engaging or is proposing to engage in conduct that breaches or is likely to breach this Act.

(2) The Commission or any other person may apply for an injunction.

(3) The Court may order an injunction restraining a person from engaging in conduct:

- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind;
- (b) whether or not the person has previously engaged in conduct of that kind; and
- (c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.

(4) Nothing in Sections 159(1), 160, or 161 limits this section.

158 INTERIM INJUNCTION.

On an application for an injunction under Section 157, the Court:

- (a) may order an interim injunction pending the determination of the application; and
- (b) if the application is made by the Commission, must not require an undertaking as to damages as a condition of granting an interim injunction.

159 COURT ORDERS FOR BREACH OF CARTEL, MARKET POWER RULES.

(1) In granting an injunction for a breach or possible breach of Section 12 (Rule against cartel conduct) or Section 19 (Rule against abuse of market power), the Court may impose requirements to prevent, or to assist in preventing:

- (a) the continuance or inception of the breach; and
- (b) future recurrence of the breach.

(2) Examples of the kinds of requirements include:

- (a) requirements (including limitations, conditions and restrictions) as to the way any relevant business is conducted in Papua New Guinea; and
- (b) requirements as to the implementation or improvement of compliance measures.

160 COURT ORDERS FOR BREACH OF ACQUISITIONS RULE.

(1) In granting an injunction for a breach or possible breach of Section 20 (Rule against acquisition substantially lessening competition) or Section 21 (Notifiable acquisitions), the Court may impose requirements to prevent, or to assist in preventing, the continuance or inception of the breach.

(2) Examples of the kinds of requirements include:

- (a) requirements (including limitations, conditions and restrictions) as to the way any relevant business is conducted in Papua New Guinea;
- (b) requirements for restructuring any relevant business in Papua New Guinea, including the following:
  - (i) requirements in relation to the transfer or disposal of relevant assets or shares;
  - (ii) requirements for the creation, allocation, surrender or cancellation of shares;
  - (iii) requirements as to the exercise of rights or powers by any person in respect of any relevant assets or shares;
  - (iv) requirements as to the creation, vesting, transfer or extinguishment of property rights, liabilities or obligations in respect of any relevant assets or shares;
  - (v) requirements as to the amendment of the constitution of a company;
  - (vi) requirements as to the adjustment of relevant agreements (whether by discharge or reduction of any liability or obligation or otherwise).

161 COURT ORDERS FOR CONSUMER BREACH OR STANDARDS BREACH.

In granting an injunction for a consumer breach or standards breach (or possible breach), the Court may:

- (a) impose requirements for any of the following:
  - (i) the provision of corrective information or other information to the public, or to classes of persons, about relevant goods or services;
  - (ii) the refunding of money paid by purchasers of relevant goods or services;
  - (iii) the return of property;
  - (iv) the repair or replacement of goods, the re-provision of services or the provision of corrective services; or
- (b) declare any relevant agreement in relation to relevant goods or services:
  - (i) void;
  - (ii) voidable at the election of the person who has been supplied relevant goods or services; or

(iii) to have terminated at a specified time; or

(c) vary the agreement.

Division 7. – Pecuniary penalty.

162 PECUNIARY PENALTY.

(1) The Commission may apply to the Court for a pecuniary penalty for a breach of or an offence under this Act.

(2) The Court may impose a pecuniary penalty:

(a) in the case of a competition breach, on the person who commits the breach and any other person knowingly concerned in the breach;

(b) in the case of a fair trading breach, on the trader and any other person knowingly concerned in the breach;

(c) in the case of a consumer breach relating to the supply of goods, on the supplier and the manufacturer;

(d) in the case of a consumer breach relating to the supply of services, on the supplier;

(e) in the case of a standards breach, on the supplier.

(3) A person is not liable to both a pecuniary penalty and prosecution for the same offence.

163 PROCEDURE FOR PECUNIARY PENALTY.

(1) An application under Section 162 must be made:

(a) in the case of a consumer, fair trading or standards breach, within three years after the breach occurred;

(b) in the case of a breach of Section 20 (Rule against acquisition substantially lessening competition), within one year after completion of the acquisition or the Commission becoming aware of the breach, whichever is later; and

(c) in any other case, within six years after the breach or the offence occurred.

(2) In a proceeding for a pecuniary penalty:

(a) the standard of proof is the standard of proof applying in civil proceedings; and

(b) the rules of court and rules of evidence and procedure for civil proceedings apply.

(3) A person on whom a pecuniary penalty is imposed must not be convicted of an offence under this Act in respect of the same conduct.

(4) An application for a pecuniary penalty must be stayed if a criminal proceeding in respect of the same conduct is commenced or has already commenced before the application is determined.

164 FACTORS IN DETERMINING AMOUNT OF PECUNIARY PENALTY.

(1) This section applies when a court imposes a fine or pecuniary penalty under this Act.

(2) In determining an appropriate fine or pecuniary penalty, the Court must have regard to all relevant matters, including:

- (a) the purposes of this Act;
- (b) the nature and extent of the offence or breach;
- (c) the nature and extent of the defendant's involvement in the offence or breach;
- (d) the nature and extent of any loss or damage suffered by any person;
- (e) the extent to which the breach enabled the defendant to make a gain or avoid a loss;
- (f) whether or not the defendant has paid an amount of compensation, reparation or restitution, or taken other steps to avoid or mitigate any actual or potential adverse effects of the breach;
- (g) the circumstances in which the breach, or involvement in the breach, took place; and
- (h) whether or not the defendant has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct.

(3) If the defendant is a body corporate, the court must also have regard to the following:

- (a) the size and financial position of the defendant;
- (b) the degree of market power possessed by the defendant;
- (c) whether or not the offence or breach was intentional;
- (d) the duration of the offence or breach;
- (e) the conduct of senior management of the defendant;
- (f) the extent to which compliance precautions were taken by the defendant;
- (g) the extent to which disciplinary action has been taken by the defendant against individuals implicated in the offence or breach;
- (h) the extent to which enforcement proceedings have been taken by the Commission against individuals implicated in the offence or breach;
- (i) the extent to which the fine or pecuniary penalty is likely to have an impact on individuals implicated in the offence or breach; and
- (j) the extent to which the fine or pecuniary penalty is likely to be passed on to customers or shareholders of the defendant.

165 MAXIMUM AMOUNT OF PECUNIARY PENALTY.

(1) For a breach to which this Part applies, the maximum pecuniary penalty is:

- (a) in the case of a penalty imposed on an individual, K 000;

(b) in the case of a penalty imposed on a body corporate, the greater of:

(i) K 000; and

(ii) 15% of turnover calculated under Subsection (3).

(2) For an offence under this Act, the maximum pecuniary penalty is 50% of the maximum penalty for the offence.

(3) For the purposes of Subsection (1)(b)(ii), turnover is the aggregate of the revenue that:

(a) is received by the body corporate and its related bodies corporate in the financial year immediately preceding the financial year in which the breach occurs; and

(b) is attributable to their business activities in Papua New Guinea.

(4) A Court in imposing a fine or pecuniary penalty for a breach of this Act or an offence under this Act may also order the defendant to pay all or part of the costs incurred by the Commission in investigating the breach or offence and in bringing the prosecution or other proceeding.

166 NO INDEMNITY FOR LIABILITY TO PAY PECUNIARY PENALTY.

(1) A person must not indemnify or agree to indemnify another person for liability to pay a pecuniary penalty or for costs and expenses incurred in defending or settling that liability.

(2) A person who contravenes Subsection (1) commits an offence and is liable on conviction to a fine not exceeding K 000.

(3) An indemnity in contravention of Subsection (1) is void and of no effect.

Division 8. – Infringement fine.

167 COMMISSION MAY ISSUE INFRINGEMENT NOTICE.

The Commission may issue an infringement notice to a person ("*the infringer*") if the Commission believes on reasonable grounds that the person has:

(a) committed a breach to which this Part applies; or

(b) committed an offence under this Act.

168 REQUIREMENTS FOR INFRINGEMENT NOTICE.

(1) Each infringement notice must relate to one infringement only.

(2) An infringement notice must not be issued more than 12 months after the infringement.

(3) An infringement notice must:

(a) be identified by a unique number;

(b) state the date of issue;

(c) state the name and address of the infringer;

(d) identify the Commission;

(e) give details of the infringement including:

  (i) the date of the infringement; and

  (ii) the breach or offence believed to have been committed;

(f) in the case of a breach to which this Part applies, state the maximum pecuniary penalty that the Court could order the infringer to pay under section 165 for the breach;

(g) in the case of an offence under this Act, state the maximum penalty for the offence;

(h) state the fine that is payable in relation to the infringement;

(i) state the deadline for paying the fine;

(j) explain how payment of the fine can be made; and

(k) explain the effect of sections 169 to 171.

169 DEADLINE FOR PAYMENT OF INFRINGEMENT FINE.

(1) The deadline for payment of an infringement fine is 28 days after the date of the issue of the infringement notice.

(2) The Commission may, if it considers it appropriate to do so, extend the deadline by a maximum period of 28 days.

(3) An extension under Subsection (2):

  (a) must be made by notice in writing to the infringer; and

  (b) must not be made more than once.

170 COMMISSION MAY WITHDRAW INFRINGEMENT NOTICE.

(1) On application by the infringer, the Commission may, if it considers it appropriate to do so, withdraw an infringement notice by notice in writing to the infringer.

(2) The infringer may make written representations to the Commission in support of the application.

(3) Any evidence or information included in representations made under Subsection (2) is not admissible in evidence in proceedings against the infringer (other than a proceeding for an offence relating to the provision of false or misleading information).

(4) The Commission may withdraw an infringement notice whether or not the infringer has made representations under Subsection (2).

171 COMPLIANCE WITH INFRINGEMENT NOTICE.

(1) If an infringer complies with an infringement notice, the Commission must not bring an enforcement proceeding under this Act against the infringer for the conduct that is the subject of the notice.

(2) If an infringer fails to comply with an infringement notice, the Commission may bring an enforcement proceeding under this Act against the infringer for the conduct that is the subject of the notice.

Division 9. – Immunity.

172 IMMUNITY AGREEMENT.

(1) If the Commission considers on reasonable grounds that a person's co-operation is necessary or expedient for the conduct of an investigation or proceeding by the Commission in relation to a breach of or an offence under (or possible breach of or offence under) this Act, the Commission may grant that person immunity in relation to specified conduct of that person from:

- (a) prosecution under this Act; or
- (b) being cited or joined by the Commission as a defendant in a proceeding brought by the Commission under this Act.

(2) It is a condition of any grant of immunity that the person provides full cooperation to the Commission in the conduct of the relevant investigation or proceeding.

(3) Immunity granted to a person under this section may be expressed to apply also to:

- (a) specified employees or agents of the person;
- (b) if the person is a body corporate, specified officers of the person; and
- (c) if the person is a partner in a partnership, specified partners of the person.

173 TERMINATION OF IMMUNITY

(1) The Commission may at any time withdraw immunity from any person, if:

- (a) that person agrees to the withdrawal of immunity;
- (b) that person has been convicted of an offence against Sections [**Q**. insert];
- (c) the Commission has reasonable grounds to suspect that the information on which it based its decision to grant immunity to that person was incomplete, false, or misleading in a material particular; or
- (d) the Commission is satisfied that person has failed to comply with any condition attached to the grant of immunity.

(2) The Commission may not withdraw immunity from any person, unless the Commission has:

- (a) notified that person of the Commission's intention to withdraw the immunity and its reasons for doing so;
- (b) given that person a reasonable period, not less than 10 working days, to make representations about the matter; and
- (c) taken into account any representations made by or for that person.

174 ORDERS MADE BY CONSENT

(1) If the Commission and any other person have agreed on the terms of an order to be made by the Court in any proceedings under this Act, the agreed terms, signed by or on behalf of both parties, may be submitted to the Court for approval.

(2) The Court may make an order by consent in those proceedings with or without a hearing, having regard to:

- (a) the agreed terms; and
- (b) any information submitted by the parties in support of those terms.

(3) For the purposes of this section, "order" includes any finding, determination, or decision.

Division 10. – Management banning order.

175 MANAGEMENT BANNING ORDER.

(1) On the application of the Commission, the Court may make a management banning order against an individual if:

- (a) the defendant:
  - (i) has engaged in qualifying conduct;
  - (ii) is subject to a qualifying foreign order; or
  - (iii) in the five-year period before the application is determined, has been convicted of an offence under this Act; and
- (b) the Court is satisfied that the banning order is necessary having regard to the risk of a breach to which this Part applies or the commission of an offence under this Act by any corporate or unincorporated body in which the defendant has or might have a management function or role.

(2) For the purposes of Subsection (1)(a), a defendant has engaged in qualifying conduct if the defendant:

- (a) has engaged in conduct that is a breach to which this Part applies; and
- (b) has engaged in the same or substantially similar conduct on two or more separate occasions in the five-year period before the application is determined.

(3) For the purposes of Subsection (1)(a)(ii), a defendant is subject to a qualifying foreign order if the defendant:

- (a) is the subject of an order made under the law of a foreign country that corresponds to a competition or consumer law; and
- (b) is prevented by the order from being involved in the management of corporate or an unincorporated body.

176 SCOPE OF MANAGEMENT BANNING ORDER.

(1) A person who is the subject of a management banning order must not, without the leave of the Court, and for the period specified in the order, be a

director of, or otherwise involved in the management of, a corporate or unincorporated body carrying on business in Papua New Guinea.

(2) The period specified in the order must not exceed five years.

(3) A person who breaches a management banning order commits an offence and is liable on conviction to a fine not exceeding K 000 or imprisonment for a term not exceeding 00 years, or both.

PART X. – OFFENCES.

177 IMPUTED CONDUCT AND STATE OF MIND.

(1) For the purposes of this Act, if the conduct of an individual is within the individual's actual or apparent authority as a director, employee or agent of the body corporate, then there is imputed to the body corporate:

(a) the individual's conduct; and

(b) the individual's state of mind in relation to that conduct.

(2) For the purposes of this Act, if the conduct of an employee or agent of an individual is within the employee or agent's actual or apparent authority, then there is imputed to the individual:

(a) the conduct of the employee or agent;

(b) the state of mind of the employee or agent in relation to that conduct.

(3) There is no imputation under Subsection (1) or (2) if the body corporate or individual, as the case may be, establishes that the body corporate or individual took reasonable precautions and exercised due diligence to avoid the conduct.

178 PERSON KNOWINGLY CONCERNED IN OFFENCE.

If a person commits an offence under this Act, each person who is knowingly concerned in the offence also commits the offence.

179 COMMISSION MAY BRING PROCEEDING.

The Commission may commence and continue any proceeding for or in relation to:

(a) a breach to which Part IX applies; or

(b) any offence under this Act.

PART XI. – MISCELLANEOUS.

180 NO CONTRACTING OUT.

(1) The provisions of this Act have effect despite anything to the contrary in any agreement.

(2) A provision of an agreement that has the effect of overriding a provision of this Act (whether directly or indirectly) is unenforceable.

(3) Nothing in Subsection (1) or (2) applies in respect of a provision that:

- (a) imposes a stricter duty on the supplier than would be imposed under this Act; or
- (b) provides a more advantageous remedy against a supplier than would be provided under this Act.

181 APPROVED FORMS.

The Commission may approve forms for use under this Act.

182 REGISTERS.

(1) The Commission must establish and maintain:

- (a) in relation to clearances, a register of applications, decisions, variations and revocations;
- (b) in relation to authorisations, a register of applications, decisions, variations and revocations; and
- (c) a separate register of each of the following;
  - (i) consumer information standards;
  - (ii) product recall notices;
  - (iii) product safety notices;
  - (iv) product safety standards;
  - (v) services safety standards;
  - (vi) warning notices;
  - (vii) cease and desist notices;
  - (viii) enforceable undertakings;
  - (ix) immunity agreements;
  - (x) management banning orders.

(2) A register required by Subsection (1):

- (a) may be kept in any way that the Commission thinks appropriate, including, either wholly or partly, in electronic form; and
- (b) may omit confidential information, in which case the relevant entry must indicate that information has been omitted.

183 ACCESS TO REGISTERS.

(1) A register required by Section 182(1) is a public record and any member of the public may:

- (a) access the register;
- (b) search the register; or
- (c) obtain a hard copy of an entry in the register.

(2) Access to a register under Subsection (1) is subject to:

(a) payment of the prescribed fee or fees (if any); and

(b) regulations governing the availability of the register, including restrictions on hours of access.

184 CONFIDENTIALITY ORDERS.

(1) The Commission may make an order prohibiting or restricting the disclosure of information received by the Commission in connection with:

(a) an application for a clearance or an authorisation;

(b) an investigation under Part VIII; or

(c) the performance of a function of the Commission.

(2) The Commission:

(a) may make the order on its own initiative or on the application of a person; and

(b) may vary or revoke the order.

(3) A person who contravenes an order under this section commits an offence and is liable on conviction:

(a) in the case of an individual, to a fine not exceeding K 00 or imprisonment for a term not exceeding 00 years, or both; or

(b) in the case of a body corporate, to a fine not exceeding K 00.

(4) It is a defence to an offence under Subsection (3) that the defendant did not know, and could not reasonably have known, that the disclosure of information was contrary to the order.

185 NOTICES BY COMMISSION.

A notice given by the Commission under this Act is sufficiently given if it is:

(a) signed by the Chair of the Commission, a member of the Commission or any person purporting to act by direction of the Commission; and

(b) it is served in accordance with Section 186 on the person or persons primarily concerned or on any person or organisation considered by the Commission to represent the person or persons primarily concerned.

186 SERVICE OF NOTICES BY COMMISSION.

(1) A notice by the Commission may be served on or given to an individual by:

(a) delivering it to that person; or

(b) leaving it at or posting it to:

(i) the person's usual or last known place of residence or business; or

(ii) at the address specified by the person in any notice, application, correspondence or other document filed with the Commission under this Act; or

(c) emailing it to the person at an email address that is used by the person.

(2) A notice by the Commission may be served on or given to a body corporate or other association of persons by:

(a) delivering it to any of the following persons: a director, the secretary, an executive officer, a manager or other officer holding a similar position in the body corporate or association;

(b) leaving it at or posting it to the address specified by the body corporate or association in any notice, application, correspondence or other document filed with the Commission under this Act;

(c) if the body corporate or association has a registered office or an agent in Papua New Guinea, by posting it to or leaving it at that registered office or office of the agent;

(d) if the body corporate or association has a place of business in Papua New Guinea by posting it to or leaving it at that place of business; or

(e) emailing it to the body corporate or association at an email address that is used by the body corporate or association.

(3) In the absence of proof to the contrary, a notice that is emailed to a person must be treated as received by the person on the next working day after the date on which it is emailed, and, in proving that the notice was emailed, it is sufficient to prove that the notice was properly addressed and sent to the email address.

187 ASSESSORS

(1) In any proceedings under this Act, the Court may appoint one or more specially qualified assessors and may dispose of the proceedings, wholly or in part, with the assistance of such assessor or assessors, but the decision of the Court is that of the Judge or Judges only.

(2) The Court may determine the remuneration, if any, to be paid to an assessor appointed under this section, but no remuneration may be paid to an assessor who is a public servant.

(3) An assessor is not personally liable for anything done or omitted to be done by the assessor in good faith in the performance of his or her functions or purported performance of his or her functions under this Act.

188 REGULATIONS.

(1) The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are permitted or required to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the purposes of this Act.

(2) Without limiting Subsection (1), regulations may be made:

(a) prescribing an amount for the purposes of section 75(3);

(b) prescribing a consumer information standard (see section 112(1));

(c) prescribing a product safety standard (see section 114(1));

(d) prescribing a services safety standard (see section 120(1));

(e) prescribing fees payable for the purposes of this Act;

(f) prescribing circumstances in which fees are payable for the purposes of this Act;

(g) prescribing the manner of filing an application or other document with the Commission;

(h) prescribing forms for use under this Act;

(i) prescribing additional documents or information that must be filed with an application or other document;

(j) making provision for the filing of an application or other document in electronic form or by electronic means, including provision for the approval by the Commission of electronic signature or other verification by electronic means in place of a physical signature;

(k) making provision for the maintenance of a register required by Section 182 and its availability for access by members of the public.

(l) [**Q:** to come].

189 TRANSITIONAL PROVISIONS.

[**Q:** to be determined, in consultation with State Solicitor and ICCC.]

190 TRANSITIONAL REGULATIONS.

The Minister with the approval of the National Executive Council may, by notice in the *National Gazette*, make regulations:

(a) providing transitional provisions relating to public enterprises, which may be in addition to, or in place of, or which may amend, the provisions of section 189;

(b) to facilitate the bringing into force of any regulations under this Act;

(c) providing that subject to such conditions as are specified in the regulations, during a specified transitional period, specified provisions of this Act (including definitions) do not apply; or

(d) providing for any other matters necessary for facilitating or ensuring an orderly transition from any enactments replaced or amended by this Act to the provisions of this Act.

191 AMENDMENTS TO ICCC ACT.

The ICCC Act is amended as set out in Schedule 1.

192 AMENDMENTS TO OTHER ACTS.

(1) The Acts listed in Schedule 2 are amended as set out in that Schedule.

193 ACTS REPEALED.

(1) The following Acts are repealed:

(a) ***Commercial Advertisement (Protection of the Public) Act 1976***;

(b) ***Trading Act 1949***; and

[**Q**: to be determined]

SCHEDULE 1

1. PRINCIPAL ACT

In this Schedule "*Principal Act*" means the ***Independent Consumer and Competition Commission Act 2002***.

2. PARTS VI AND VII REPEALED

The Principal Act is amended by repealing Part VI and Part VII.

3. PART VIII REPEALED AND REPLACED

[NOTE: Only if the *Independent Consumer and Competition Commission (Amendment) Bill 2022* is not proceeding.]

4. SECTION 5 AMENDED

The Principal Act is amended in Subsection 5(2), by:

(a) deleting the full stop at the end of paragraph (g) and replacing it with "; and"; and

(b) by inserting immediately after paragraph (g) the following new paragraphs:

"(h) to facilitate access by women, members of disadvantaged groups, and small enterprises to remedies for infringement of this Act; and

(i) to assist Parliament and officials to consider the effects on competition of decisions that are likely to affect markets in Papua New Guinea."

5. SECTION 6 AMENDED

The Principal Act is amended in section 6, by:

(a) renumbering paragraph (i) as "(l)"; and

(b) inserting immediately after subparagraph (h) the following new paragraphs:

"(i) to advise and make recommendations to the Minister in relation to enhancing the participation of women and small enterprises in public procurement and markets for goods and services; and

(j) to advise and make recommendations to the Minister in relation to the reduction or removal of impediments to competition in markets in Papua New Guinea; and

(k) to investigate and report to the Minister on advantages conferred by the State on State owned entities; and".

6. SECTION 32 REPLACED

The Principal Act is amended by repealing Section 32 and substituting the following new section—

"32. ICCC inquiry into declaration of regulated entity

(1) The Commission must hold an inquiry if required to do so by the Minister by notice in writing; and may hold an inquiry on its own initiative.

(2) In conducting an inquiry, the Commission must consider—

(a) whether the regulatory threshold is satisfied in relation to the entity; and

(b) if the regulatory threshold is satisfied, whether declaration is appropriate, having regard to the Commission's objectives set out in Section 5; and

(c) if so, how the entity should be regulated, including—

(i) the type or types of regulation to which the entity should be subject; and

(ii) how that type or those types of regulation should apply to the entity.

(3) The regulatory threshold is met for the purposes of this Section and Section 33 only if—

(a) the entity concerned has a substantial degree of market power in a relevant market; and

(b) it is not likely that the market power of the entity concerned will lessen significantly in the next 3 years.

(4) The Commission may recommend that a declaration made under Section 33 be varied or revoked where—

(c) the Commission considers that the entity concerned no longer has a substantial degree of power in a relevant market; or

(d) the Commission no longer considers that declaration is appropriate, having regard to the Commission's objectives set out in Section 5; or

(e) the Commission considers that the entity should be subject to a different type or types of regulation."

7. NEW SECTIONS 32A, 32B

The Principal Act is amended by inserting, immediately after Section 32, the following new Sections—

"32A. Conduct of Inquiry

(1) An inquiry under Section 32 may be conducted in any manner the Commission considers appropriate and may (but need not) involve public hearings.

(2) The Commission is not bound by the rules of evidence in the conduct of an inquiry.

(3) The Commission may exercise any of its powers under Part IX (General Powers of Commission, Etc.) in conducting an inquiry.

32B. Inquiry reports

(1) The Commission must deliver a copy of its report on an inquiry to the Minister as soon as reasonably practicable after the completion of the inquiry.

(2) The Commission must identify in a report any information that the Commission considers is confidential information.

(3) If confidential information is excluded from a report, a note to that effect must be included in the report at the relevant place.

(4) The Minister must cause a copy of the report (excluding any confidential information) —

   (a) to be tabled in Parliament within 10 sitting days after receiving the report, if Parliament is sitting; and

   (b) to be made available to the public by means of the Internet and in any other manner the Minister considers appropriate—

      (i) within 14 days after tabling it in Parliament, if Parliament is sitting; or

      (ii) within 28 days after receiving it from the Commission, if Parliament is not sitting.

(5) If the report is made available to the public when Parliament is not sitting, the Minister must cause a copy of the report to be tabled in Parliament as soon as reasonably practicable after Parliament resumes sitting."

7. SECTION 33 REPLACED

The Principal Act is amended by repealing Section 33 and substituting the following new section—

33. Declaration of regulated entity by Minister

(1) Subject to Subsection (2), the Minister may, by notice published in the National Gazette, declare an entity to be a regulated entity.

(2) The Minister may make a declaration under Subsection (1) only if—

(a) the Commission has completed an inquiry under Section 32 and recommended in its report to the Minister that the entity should be a regulated entity; and

(b) the Minister is satisfied that the threshold condition is met.

(3) The Minister may vary or revoke a declaration made under this section only if the Commission has held an inquiry under Section 32 and recommended in its report to the Minister that the declaration should be varied or revoked.

(4) Before the Minister takes an action referred to in Subsection (1) or (3) the Minister must—

(a) publish notice of the proposed action by means of the Internet and in any other manner the Minister considers appropriate; and

(b) send a copy of the notice to the entity concerned; and

(c) have regard to any representations made to the Minister in response to the notice.

7. NEW SECTION 34A

The Principal Act is amended by inserting, immediately after Section 34, the following new Section—

34A. Commission's regulatory contract costs

(1) The Commission's costs in assessing a proposal for, and setting or reconsidering, a regulatory contract must be met by

the person who makes the proposal for a customised price-quality path.

(2) If the amount paid by a person in respect of a proposal for a regulatory contract exceeds the Commission's costs in assessing the proposal and (if applicable) setting or reconsidering the regulatory contract, the Commission may refund the excess to the person who paid it.

(3) The costs may be recovered in whatever manner the Commission determines.

X. SECTION 35 AMENDED

Section 35 of the Principal Act is amended by repealing Paragraph (e) of Subsection (3).

X. SECTION 36 AMENDED

Section 36 of the Principal Act is amended by repealing Subsection (6) and substituting the following Subsection—

"(6) If the Commission has not issued a replacement regulatory contract in accordance with Subsection (5), the regulatory contract in force immediately prior to the date of its expiry shall be deemed to continue to apply until such time as the Commission issues a new regulatory contract under Subsection 35(1)."

8. SECTION 43 AMENDED

Section 43 of the Principal Act is amended by deleting the words "six weeks" and substituting the words "twelve weeks" in Subsection (6).

9. COMMISSION'S ADVISORY FUNCTION

The Principal Act is amended in Part 8, by inserting immediately after the part heading "PART 8 – INQUIRIES AND REPORTS":

(c) the following new subdivision heading:

"***Subdivision 1 — Regard to Effects on Competition***"; and

(b) the following new sections:

"**121A. DECISIONS AFFECTING COMPETITION**

(1) In relation to any governmental decision in which the Minister participates:

(a) the Minister may, if the Minister considers it relevant, inform the decision makers regarding the likely effects of the proposed decision on competition in markets in Papua New Guinea; and

(b) the decision makers shall have regard to information provided under paragraph (a).

(2) Failure to comply with Subsection (1) does not make a decision invalid.

121B. PROVISION OF REPORT

(1) The Commission:

(a) must, upon request by the Minister, provide a report to the Minister about the likely effects on competition in markets in Papua New Guinea of any proposal being considered by the Minister or Government; and

(b) must provide the report as soon as reasonably practicable, unless the Commission considers that it is unable to do so; and

(c) if it is unable to do so, must notify the Minister of the reasons why it is unable to do so.

(2) The Commission may, on its own initiative, provide a report to the Minister about the likely effects on competition in markets in Papua New Guinea of any proposal being considered by the Minister or the Government."; and

(d) the following new subdivision heading:

"***Subdivision 2 — Public Inquiries into Competition Matters***".

10. COMPETITIVE NEUTRALITY

The Principal Act is amended in Part 8, by inserting immediately after section 126:

(a) the following new subdivision heading:

"***Subdivision 3 — Competitive Neutrality and Removal of Barriers***"; and

(b) the following new sections:

“126A. COMPETITIVE NEUTRALITY

The Minister may, by notice in writing, require any State owned entity to report to the Commission specified information regarding its business, which may include:

(c) the rate of return on assets achieved by the State owned entity; and

(d) taxes and duties the State owned entity is required to pay and any exemptions, immunities or waivers of taxes or duties; and

(e) regulations with which the State owned entity is required to comply and exemptions, immunities or waivers of regulations; and

(f) debts incurred by the State owned entity, guarantees of its debts, interest payable on its debts, and any waivers of interest; and

(g) such other information as may be set out in the notice.

The Commission must receive, investigate, and report to the Minister on any report under Subsection (1) provided to it by a State owned entity.

The Commission may, in reporting under Subsection (2), recommend changes to the business of a State owned entity.

126B. REMOVAL OF IMPEDIMENTS TO COMPETITION

(1) The Commission may, on request by the Minister or on its own initiative, investigate and report to the Minister on:

(h) means of enhancing the participation of women and small enterprises in public procurement;

(i) the collection of data regarding the participation of women and small enterprises in public procurement;

(j) the reduction or removal of barriers to competition in a market for any goods or services in Papua New Guinea; and

(k) the repeal or amendment of any Act or Regulation that affects competition in a market in Papua New Guinea.

(2) The Commission may publish any report made under this section.”

11. SECTION 132 AMENDED

Section 132 of the Principal Act is amended by deleting the words “in consultation with and with the approval of the Public Prosecutor”.

SCHEDULE 2

1. FAIRNESS OF TRANSACTIONS ACT, NEW DEFINITION

The ***Fairness of Transactions Act 1993*** is amended by inserting, immediately after the definition of "government body" in Subsection 3(1) the following new definition—

> "Commission" means the Independent Consumer and Competition Commission established under the ***Independent Consumer and Competition Commission Act 2002***.

2. FAIRNESS OF TRANSACTIONS ACT, NEW SECTION 7A

The ***Fairness of Transactions Act 1993*** is amended by inserting, immediately after Section 7, the following new Section—

7A. Mediation

(1) The Commission, or a person appointed by the Commission for the purpose ("mediator"), may mediate resolution of a dispute submitted to the Commission under section XX.

(2) The Commission must have regard to, but is not bound by, any agreement between the parties regarding—

- (a) the selection of a mediator or mediators; and
- (b) the terms of engagement of a mediator or mediators; and
- (c) the time and place of any mediation meetings; and
- (d) any procedural matters for the mediation.

(3) The mediator may assist resolution of the dispute submitted under section XX by any or all of:

- (a) consulting with the parties separately or together to facilitate communication between them:
- (b) assisting the parties to understand their respective objectives and constraints:
- (c) facilitating negotiation toward agreement on a mutually acceptable resolution.

(4) The mediator may refer the dispute to adjudication if at any time the mediator considers that it is unlikely the dispute can be resolved by agreement between the parties.

3. FAIRNESS OF TRANSACTIONS ACT, NEW SECTIONS 10A AND 10B

The ***Fairness of Transactions Act 1993*** is amended by inserting, immediately after Section 10, the following new Sections—

10A. Representative Proceeding by Commission

(5) The Commission may bring a proceeding under Section XX as the representative of one or more persons who claim or could claim to have suffered loss or damage as the result of a breach.

(6) The Court may make any appropriate order for the conduct of the proceeding, including orders for:
advertising the proceeding;
   - (e) locating and identifying claimants;
   - (f) notifying claimants of the right to be excluded from the proceeding; and
   - (l) excluding a claimant from the proceeding.

(7) The Court must exclude a claimant if:
   - (g) the claimant does not wish to pursue the claim through the representative proceeding; or
   - (h) the claimant commences or has commenced a separate compensation proceeding for the same breach.

10B. Conduct of representative proceeding

(1) The Commission:
   - (a) controls and undertakes the conduct of a representative proceeding to the exclusion of the claimants; and
   - (b) may withdraw, abandon or compromise the proceeding, but the Court must approve withdrawal, abandonment or compromise.

(2) The Court's judgment in a representative proceeding binds all claimants other than those excluded under Section XX.

(3) The Court may make such orders for the conduct and outcome of the proceeding as it considers necessary or expedient, including orders as to:
   - (a) the distribution to claimants of any recovery under the proceeding;
   - (b) reimbursement out of any recovery of the costs of the Commission in bringing the proceeding; or
   - (c) […].

4. PACKAGING ACT

The ***Packaging Act 1974*** is amended by inserting, immediately after Section 21, the following new section—

21A. Product labelling

(1) The Minister may, by notice publish in the National Gazette, determine goods or classes or kinds of goods to which this section applies.

(2) The Minister must cause any notice made under Subsection (1) to be made available to the public on the website of the Independent Consumer and Competition Commission.

(3) Any good to which this section applies must, when offered for sale by a trader, either:

(a) have attached to it a label that sets out the material information in relation to the good; or

(b) be displayed adjacent to a written notice that sets out the material information in relation to the good.

(4) For the purposes of this section, “material information” means:

(a) such information as is set out in a notice made under Subsection (1); or

(b) if information is not set out in the relevant notice, the kind, quantity, and expiry date (if any) of the goods.

(5) The material information must be given in one of the official languages of Papua New Guinea.

5. PRICES REGULATION ACT, NEW SECTION 10

The ***Prices Regulation Act 1949*** is amended by repealing Section 10 and inserting the following new Sections—

10. Price control reports

(1) The Commission must prepare a report under this Section on request by the Minister.

(2) A report under this Section must:

(a) identify the goods, and the relevant markets; and

(b) analyse the degree of competition in those markets; and

(c) assess the likely future state of the competition; and

(d) assess the impact on consumers or customers of prices and pricing behaviour in those markets; and

(e) make recommendations as to measures, if any, that would or might improve competition in the relevant markets; and

(f) make recommendations whether any further price inquiries should be carried out in the future and, if so, when; and

(g) make recommendations whether a price control order should be made and, if so, the terms of the order.

(3) The Commission must give notice of its report by means of the Internet and in any other manner it considers appropriate to bring the report to the attention of those it considers likely to be affected by it.

10A. Price control orders

(l) Subject to this section, the Minister, acting on the advice of the Commission, may make a “price control order specifying—

(a) the maximum price that a supplier may charge for the supply of specified goods; or

(b) how the maximum price that a supplier may charge for the supply of specified goods is to be calculated.

(2) A price control order:

(a) may apply to the supply of goods generally, or in a particular area, or in any area; and

(b) comes into force on publication in the National Gazette.

(3) The Minister must not make a price control order in respect of specified goods unless a report of the Commission—

(a) states that the market for the goods is not workably competitive; and

(b) states that it is not likely that the market for the goods will become workably competitive within the next 2 years; and

(c) recommends that the order be made.

(4) Unless sooner repealed, a price control order ceases to have effect after two (2) years from the date it comes into force.