

PARLIAMENT OF VICTORIA

**Fair Trading and Consumer Acts Further
Amendment Bill 2007**

TABLE OF PROVISIONS

<i>Clause</i>		<i>Page</i>
PART 1—PRELIMINARY		1
1	Purposes	1
2	Commencement	3
PART 2—FAIR TRADING ACT 1999		4
3	Definitions	4
4	New Part 2C inserted	5
PART 2C—FRUSTRATED CONTRACTS		5
Division 1—Introductory		5
32ZE	Definitions	5
32ZF	Contracts to which this Part applies	5
Division 2—Consequences of frustration of contract		6
32ZG	Adjustment of amounts paid or payable to parties to discharged contracts	6
32ZH	Court may allow amounts paid or payable to be recovered or paid	6
32ZI	Parties to pay an amount for valuable benefits obtained	7
32ZJ	Calculation of expenses incurred	8
32ZK	Circumstances in which amounts payable under contract of insurance excluded	8
Division 3—General		9
32ZL	Circumstances in which contract provisions continue to have effect despite frustration	9
32ZM	Performed part of contract not frustrated	9
32ZN	Nature of action	10
32ZO	Limitation period	10
5	Functions and powers of the Director	10
6	New section 152A inserted	10
152A	Powers of court if requirement of Director or inspector not complied with	10

<i>Clause</i>	<i>Page</i>
7 Defences	11
8 Consumer documents to be clear	11
9 New section 163A inserted	12
163A Complaints etc. are privileged	12
10 New clause 12 inserted in Schedule 3	12
12 Continuation of existing hire-purchase agreements	12
11 New clause 13 inserted in Schedule 3	13
13 Transitional—references to the Frustrated Contracts Act 1959	13
 PART 3—OWNERS CORPORATIONS ACT 2006	 14
12 Powers of owners corporations	14
13 Audit of accounts	14
14 Insurance for lots in multi-level dwellings	14
15 New section 79 substituted	15
79 Who chairs the general meeting?	15
16 Proxies	15
17 Secretary of committee	15
18 Owners corporation certificate	15
19 Application for registration	15
20 Proposed Part 5 of the Subdivision Act 1988	16
21 Functions of Business Licensing Authority	17
22 Consequential amendment	17
 PART 4—PARTNERSHIP ACT 1958	 19
23 Who may apply for registration?	19
24 How an application is made?	19
25 Winding up on Director's certificate	19
26 Lodgment of certain documents with the Director	19
 PART 5—SHOP TRADING REFORM ACT 1996	 20
27 Definitions	20
28 Special local shop closing times	20
29 Restraining orders	20
30 Regulations	20
31 Schedule 2	21
 PART 6—SUBDIVISION ACT 1988	 22
32 New section 42A of the Subdivision Act 1988 inserted	22
42A Registrar may approve forms	22
33 Regulations	22

<i>Clause</i>	<i>Page</i>
PART 7—TRADE MEASUREMENT ACT 1995	23
34 Definitions	23
35 Measuring instruments used for trade must be marked	24
36 Use of class 4 measuring instruments	24
37 Use of measuring instruments for pre-packed articles	24
38 Unjust measurement	24
39 Supplying incorrect measuring instrument	25
40 Section 23 substituted	25
23 Incorrect measurement or price calculation	25
41 New section 25A inserted	26
25A Special provision for sale of firewood by volume	26
42 Application for licence	26
43 Grounds for refusal	27
44 Conditions on all public weighbridge licences	27
45 New sections 52A and 52B inserted	28
52A Continuation of weighbridge suitability statement in particular circumstances	28
52B If weighbridge no longer suitable for use as a public weighbridge	29
46 Surrender of licence	30
47 New sections 54A, 54B, 54C and 54D inserted	30
54A Effect of relocation of licensed weighbridge	30
54B Application to change licence holders due to change of partnership	31
54C Effect on licence of application under section 54B	32
54D Application to amend condition of licence	33
48 Grounds for disciplinary action	33
49 Rights of appeal	33
50 Regulations	34
51 New Part 9 inserted	34
PART 9—TRANSITIONAL PROVISIONS	34
82 Certificates of suitability	34
83 Existing licensed public weighbridges	35
PART 8—TRADE MEASUREMENT (ADMINISTRATION) ACT 1995	36
52 Other fees and charges may be prescribed	36
PART 9—AMENDMENTS AND REPEALS	37
Division 1—Repeals	37
53 Repeal of Frustrated Contracts Act 1959	37
54 Repeal of Hire-Purchase Act 1959	37

<i>Clause</i>	<i>Page</i>
Division 2—Consequential and other amendments	37
55 Chattel Securities Act 1987	37
56 Credit Act 1984	38
57 Local Government Act 1989	38
58 Public Transport Competition Act 1995	39
59 Road Safety Act 1986	39
60 Amendments to Consumer Acts	39
Division 3—Repeal of Amending Act	39
61 Repeal of amending Act	39
<hr/>	
SCHEDULE—Amendments to Consumer Acts	40
1 Associations Incorporation Act 1981	40
2 Business Names Act 1962	40
3 Domestic Building Contracts Act 1995	40
4 Estate Agents Act 1980	41
70WA Powers of court if requirement to produce information not complied with	41
5 Fundraising Appeals Act 1998	42
6 Introduction Agents Act 1997	42
7 Motor Car Traders Act 1986	42
82ATA Powers of court if requirement to produce information not complied with	42
8 Petroleum Products (Terminal Gate Pricing) Act 2000	43
9 Prostitution Control Act 1994	44
61WA Powers of court if requirement to produce information not complied with	44
10 Residential Tenancies Act 1997	45
11 Retirement Villages Act 1986	45
12 Sale of Land Act 1962	45
13 Second-Hand Dealers and Pawnbrokers Act 1989	45
26WA Powers of court if requirement to produce information not complied with	45
14 Travel Agents Act 1986	46
39VA Powers of court if requirement to produce information not complied with	46
15 Utility Meters (Metrological Controls) Act 2002	47
<hr/> <hr/>	
ENDNOTES	48

PARLIAMENT OF VICTORIA

Introduced in the Assembly

Fair Trading and Consumer Acts Further Amendment Bill 2007

A Bill for an Act to amend the **Fair Trading Act 1999**, the **Owners Corporations Act 2006**, the **Partnership Act 1958**, the **Shop Trading Reform Act 1996**, the **Subdivision Act 1988**, the **Trade Measurement Act 1995**, the **Trade Measurement (Administration) Act 1995** and other Acts and to repeal the **Frustrated Contracts Act 1959** and the **Hire-Purchase Act 1959** and for other purposes.

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

- (a) to amend the **Fair Trading Act 1999**—
 - (i) to re-enact in it the provisions of the **Frustrated Contracts Act 1959**;

5

Part 1—Preliminary

s. 1

-
- 5
- 10
- 15
- 20
- 25
- 30
- (ii) to include provisions consequent on the repeal of the **Hire-Purchase Act 1959**;
 - (iii) to expand the powers of the Director to bring proceedings;
 - (iv) to provide for certain matters to be privileged;
 - (v) to provide power to seek a court order to enforce compliance with certain requirements of the Director or an inspector;
 - (vi) to improve generally the operation of that Act;
 - (b) to amend various Consumer Acts to provide power to seek a court order to enforce compliance with certain requirements of the Director or an inspector;
 - (c) to amend the **Owners Corporations Act 2006** to improve the operation of that Act;
 - (d) to amend the **Partnership Act 1958** to enable Early Stage Venture Capital Limited Partnerships to be registered and recognised in Victoria;
 - (e) to amend the **Shop Trading Reform Act 1996** to repeal provisions relating to special local shop closing times that regulate Sunday trading;
 - (f) to amend the **Subdivision Act 1988** to improve the operation of that Act;
 - (g) to amend the **Trade Measurement Act 1995** and the **Trade Measurement (Administration) Act 1995** to reflect changes to the national model legislation;
-

(h) to repeal—

(i) the **Frustrated Contracts Act 1959**;
and

(ii) the **Hire-Purchase Act 1959**.

5

2 Commencement

(1) This Act (except sections 3, 4, 10, 11, 53 to 56, 58 and 59 and Parts 7 and 8) comes into operation on the day after the day on which it receives the Royal Assent.

10

(2) Parts 7 and 8 come into operation on 1 July 2008.

(3) Subject to subsection (4), sections 3, 4, 10, 11, 53 to 56, 58 and 59 come into operation on a day or days to be proclaimed.

15

(4) If a provision referred to in subsection (3) does not come into operation before 1 December 2008, it comes into operation on that day.

PART 2—FAIR TRADING ACT 1999

3 Definitions

5 See:
Act No.
16/1999.
Reprint No. 3
as at
23 February
2007
and
amending
Act Nos
69/2006,
10 75/2006,
77/2006 and
17/2007.
Law Today:
www.
legislation.
vic.gov.au

In section 3 of the **Fair Trading Act 1999** for the definition of *hire-purchase agreement* substitute—

"hire-purchase agreement includes a letting of goods with an option to purchase and an agreement for the purchase of goods by instalments (whether that agreement describes the instalments as rent or hire or otherwise) but does not include any agreement—

- 15 (a) by which the property in the goods in the agreement passes at the time of the agreement or on or at any time before delivery of the goods; or
- 20 (b) under which the person by whom the goods are being hired or purchased is a person who is engaged in the trade or business of selling goods of the same nature or description as the goods comprised in the agreement; or
- (c) that is a regulated contract within the meaning of the **Credit Act 1984**; or
- 25 (d) that is a credit contract within the meaning of the Consumer Credit (Victoria) Code;"

4 New Part 2C inserted

After Part 2B of the **Fair Trading Act 1999**
insert—

"PART 2C—FRUSTRATED CONTRACTS

Division 1—Introductory

32ZE Definitions

In this Part—

court, in relation to any matter, means the
court or arbitrator by or before whom
the matter falls to be determined;

discharged contract means a contract to
which this Part applies;

time of discharge, in relation to any contract,
means the time at which—

(a) performance of the contract
becomes impossible; or

(b) the contract is otherwise
frustrated; or

(c) the contract is avoided by the
operation of section 12 of the
Goods Act 1958.

32ZF Contracts to which this Part applies

(1) This Part applies to a contract if the parties to
the contract are discharged from the further
performance of the contract because—

(a) performance of the contract becomes
impossible; or

(b) the contract is otherwise frustrated; or

(c) the contract is avoided by the operation
of section 12 of the **Goods Act 1958**.

(2) This Part applies to contracts made before or after the commencement of section 4 of the **Fair Trading and Consumer Acts Further Amendment Act 2007** if the time of discharge of the contract is after 29 September 1959.

- (3) This Part does not apply to—
- (a) any charter-party, except a time charter-party or a charter-party by way of demise; or
 - (b) any contract (other than a charter-party) for the carriage of goods by sea; or
 - (c) any contract of insurance except as provided for in section 32ZK.

Division 2—Consequences of frustration of contract

32ZG Adjustment of amounts paid or payable to parties to discharged contracts

- (1) All amounts paid to any party under a discharged contract before the time of discharge are recoverable.
- (2) All amounts payable to any party under a discharged contract before the time of discharge cease to be payable.

32ZH Court may allow amounts paid or payable to be recovered or paid

Despite section 32ZG, the court may, if it considers it just to do so having regard to all the circumstances of the case, allow a party to a discharged contract—

- (a) to whom amounts were paid or are payable under that contract before the time of discharge; and

(b) who has incurred expenses before the time of discharge in or for the purpose of the performance of that contract—

to retain or recover (as the case may be) the whole or any part of the amounts paid or payable to that party under the contract in an amount not exceeding the expenses incurred.

32ZI Parties to pay an amount for valuable benefits obtained

(1) This section applies if a party to a discharged contract obtained a valuable benefit (other than a payment of money to which section 32ZG or 32ZH applies) before the time of discharge because of anything done by another party in or for the purpose of the performance of the contract.

(2) Despite section 32ZG, the benefited party is liable to pay to that other party any amount (not exceeding the value of the benefit obtained) that the court considers just having regard to all the circumstances of the case.

(3) For the purpose of subsection (2), the Court may have regard in particular to—

(a) the amount of any expenses the benefited party incurred before the time of discharge in or for the purpose of the performance of the contract, including any amount paid or payable by the benefited party to any other party under the contract and retained or recoverable by that party under section 32ZG or 32ZH; or

(b) the effect, in relation to the benefit obtained, of the circumstances giving rise to the frustration or avoidance of the contract.

5 (4) For the purpose of this section, if a party to
the contract has assumed obligations under
the contract in consideration of the conferral
of a benefit by another party to the contract
on any other person (whether or not that
person is a party to the contract), the court
may, if in all the circumstances of the case it
considers it just to do so, treat any benefit
conferred on that other person as a benefit
10 obtained by the party who has assumed those
obligations.

32ZJ Calculation of expenses incurred

15 In estimating, for the purposes of this
Division, the amount of any expenses
incurred by any party to a discharged
contract, the court may include an amount
that appears reasonable for—

- (a) overhead expenses; and
- (b) work or services performed personally
20 by the party.

**32ZK Circumstances in which amounts payable
under contract of insurance excluded**

25 In considering whether any amount is to be
retained or recovered by any party to a
discharged contract, the court must not take
into account any amounts payable to a party
under a contract of insurance because of the
circumstances giving rise to the frustration or
avoidance of the contract unless an
obligation to insure is imposed—

- (a) by an express provision in the frustrated
or avoided contract; or
- (b) by or under any enactment.

Division 3—General

32ZL Circumstances in which contract provisions continue to have effect despite frustration

5 If any contract to which this Part applies contains a provision that on the true construction of the contract—

- 10 (a) is intended to continue to have effect in circumstances that operate or would, but for that provision, operate to frustrate or avoid the contract; or
- 15 (b) is intended to have effect whether or not circumstances that operate or would, but for that provision, operate to frustrate or avoid the contract arise—

the court must give effect to that provision and must only give effect to Division 2 to the extent that the court is satisfied that it is consistent with the provision of the contract.

20 **32ZM Performed part of contract not frustrated**

If it appears to the court that part of a contract to which this Part applies—

- 25 (a) is wholly performed before the time of discharge; or
- (b) is wholly performed before the time of discharge except for payment in respect of that part of the contract of amounts that are or can be ascertained under the contract—

30 the court must treat that part of the contract as if it were a separate contract that had not been frustrated or avoided and Division 2 will only apply to the remainder of that contract.

32ZN Nature of action

All actions and proceedings to recover amounts under this Part are taken to be founded on simple contract.

32ZO Limitation period

Subject to Part II of the **Limitation of Actions Act 1958**, a cause of action under this Part is taken to have first accrued at the time of discharge.

_____".

5 Functions and powers of the Director

In section 100(1)(e) of the **Fair Trading Act 1999** for "in accordance with this Act or with a Consumer Act" **substitute** "to achieve the purposes of this Act or the purposes of a Consumer Act".

6 New section 152A inserted

After section 152 of the **Fair Trading Act 1999** insert—

"152A Powers of court if requirement of Director or inspector not complied with

- (1) Subject to subsection (3), if the Director is satisfied that a person has, without reasonable excuse, failed to comply with a requirement under section 106HA, 106I or 118, the Director may certify that failure to a court.
- (2) Subject to subsection (3), if an inspector is satisfied that a person has, without reasonable excuse, failed to comply with a requirement of the inspector under section 118 or 131, the inspector may certify that failure to a court.

- 5
- (3) The Director or an inspector cannot certify a failure to a court under subsection (1) or (2) if the person to whom the failure relates has been charged with an offence against section 106HA(2), 106I(3) or 132 (as applicable).
- 10
- (4) If the Director or an inspector so certifies under subsection (1) or (2), the court may inquire into the case and may order the person to comply with the requirement within the period specified by the court.
- 15
- (5) If a proceeding is brought under this section in relation to a failure to comply with a requirement, a person to whom the failure relates cannot be charged with an offence under section 106HA(2), 106I(3) or 132 (as applicable) in respect of that failure."

7 Defences

In section 155(5) of the **Fair Trading Act 1999** for "section 32ZA" **substitute** "section 32ZB(5)".

20

8 Consumer documents to be clear

- (1) In section 163(3)(b) of the **Fair Trading Act 1999** for "10 point font" **substitute** "10 point Times New Roman font, or a minimum font of an equivalent size".
- 25
- (2) In section 163(4) of the **Fair Trading Act 1999** for—
- (a) "contract" **substitute** "document";
- (b) "contracts" **substitute** "documents".

9 New section 163A inserted

After section 163 of the **Fair Trading Act 1999** insert the following—

"163A Complaints etc. are privileged

If a person in good faith—

- (a) makes a complaint to the Director under section 103; or
- (b) produces or gives a document or any information or evidence to the Director, an inspector or the Tribunal in relation to a matter that constitutes or may constitute a contravention of this Act or another Consumer Act—

the person is not liable in any way for any loss, damage or injury suffered by another person by reason only of the making of that complaint or the production or giving of that document, information or evidence."

10 New clause 12 inserted in Schedule 3

After clause 11 of Schedule 3 to the **Fair Trading Act 1999** insert—

"12 Continuation of existing hire-purchase agreements

- (1) Despite the repeal of the **Hire-Purchase Act 1959**, that Act continues to apply to any hire-purchase agreement and any agreement made in connection with a hire-purchase agreement entered into and in operation immediately before 1 April 1998 and existing before the commencement day.
- (2) Despite the repeal of the **Hire-Purchase Act 1959**, sections 1(4B), 1(4C) and 1(6) of that Act continue to apply in respect of agreements to which they applied

immediately before the commencement day
as if that Act had not been repealed.

- (3) In this clause *commencement day* means the
date of commencement of section 54 of the
**Fair Trading and Consumer Acts Further
Amendment Act 2007**."

11 New clause 13 inserted in Schedule 3

At the end of Schedule 3 to the **Fair Trading Act
1999** insert—

**"13 Transitional—references to the Frustrated
Contracts Act 1959**

On and from the commencement of
section 53 of the **Fair Trading and
Consumer Acts Further Amendment Act
2007**, in any Act (other than this Act) or in
any instrument made under any Act or in any
other document of any kind a reference to
the **Frustrated Contracts Act 1959** is
deemed to be a reference to Part 2C so far as
it relates to any period after that
commencement, unless the context otherwise
requires."

PART 3—OWNERS CORPORATIONS ACT 2006

12 Powers of owners corporations

See:
Act No.
69/2006.
Statute Book:
www.
legislation.
vic.gov.au

(1) In section 3 of the **Owners Corporations Act 2006** insert the following definition—

"*ordinary resolution* means a resolution other than a special resolution or a unanimous resolution;"

(2) In sections 25(1), 43 and 52(a)(i) of the **Owners Corporations Act 2006** omit "at a general meeting".

(3) In section 62 of the **Owners Corporations Act 2006** for "At a general meeting, the owners corporation" substitute "An owners corporation".

13 Audit of accounts

In sections 35(1)(c) and 35(2)(c) of the **Owners Corporations Act 2006**, after "CPA Australia" insert ", the National Institute of Accountants".

14 Insurance for lots in multi-level dwellings

For section 61(2) of the **Owners Corporations Act 2006** substitute—

"(2) Subsection (1) does not apply to—

(a) a single-storey building; or

(b) a plan of subdivision that was registered under the **Cluster Titles Act 1974** or the **Strata Titles Act 1967** unless one or more lots in the plan is located above another lot in the plan."

15 New section 79 substituted

For section 79 of the **Owners Corporations Act 2006 substitute—**

"79 Who chairs the general meeting?

- 5 (1) The lot owners present at a general meeting may elect one of their number or the manager of the owners corporation to chair the meeting.
- 10 (2) If the chairperson of the owners corporation is present at a general meeting and an election under subsection (1) has not been made, the chairperson chairs the meeting."

16 Proxies

15 In section 87(3) of the **Owners Corporations Act 2006** for "subregulation (1)" **substitute** "subsection (1)".

17 Secretary of committee

20 In section 107 of the **Owners Corporations Act 2006** after "committee" (where secondly occurring) **insert** "or the manager of the owners corporation".

18 Owners corporation certificate

25 In section 151(2) of the **Owners Corporations Act 2006** after "by" **insert** "the fee determined by the owners corporation, which must not exceed".

19 Application for registration

In section 180(2)(a) of the **Owners Corporations Act 2006 omit** "and must be verified by statutory declaration".

20 Proposed Part 5 of the Subdivision Act 1988

(1) In section 211 of the **Owners Corporations Act 2006**, in proposed section 27E(1) of the **Subdivision Act 1988**, after "accompanied by" insert "a document specifying".

(2) In section 211 of the **Owners Corporations Act 2006**, in proposed section 27H of the **Subdivision Act 1988**, for "The Registrar" substitute—

"(1) The Registrar".

(3) In section 211 of the **Owners Corporations Act 2006**, at the end of proposed section 27H of the **Subdivision Act 1988**, insert—

"(2) Without limiting subsection (1), if there is a special resolution of the members, an owners corporation may apply to the Registrar to alter the purposes of the owners corporation.

(3) Without limiting subsection (1), if there is a special resolution of the members of an unlimited owners corporation and a special resolution of the members of a limited owners corporation, the owners corporations may apply to the Registrar to alter the functions or obligations of the limited owners corporation that are to be carried out or complied with by the unlimited owners corporation.

Note

See section 27C.

(4) On the Registrar altering the purposes of the owners corporation, the altered purposes become the purposes of the owners corporation.

5 (5) On the Registrar altering the functions or obligations of the limited owners corporation that are to be carried out or complied with by the unlimited owners corporation, section 27C(5) applies as if the alteration were the registration of the plan and that subsection referred to the functions or obligations as so altered."

10 (4) In section 211 of the **Owners Corporations Act 2006**, in proposed section 32AI(1)(c) of the **Subdivision Act 1988**, for "the registered plan" substitute "the lot or lots to be consolidated, subdivided or altered".

21 Functions of Business Licensing Authority

15 At the end of section 220 of the **Owners Corporations Act 2006** insert—

'(2) After section 6(a)(iv) of the **Business Licensing Act 1998** insert—

20 "(iva) the **Owners Corporations Act 2006**";'.

22 Consequential amendment

(1) In Schedule 3 to the **Owners Corporations Act 2006**, for item 10.2(b) substitute—

25 '(b) in subsection (2) for "body corporate" (wherever occurring) substitute "owners corporation";'.

(2) In Schedule 3 to the **Owners Corporations Act 2006**, after item 10.2 insert—

'10.3 After section 98CA(2)(c) insert—

30 "(ca) be accompanied by the relevant owners corporation documents; and".

10.4 After section 98CA(2) **insert**—

"(3) In this section and section 98CB
owners corporation documents means
the documents required under Part 5 of
the **Subdivision Act 1988** to
accompany a plan of subdivision."

10.5 In section 98CB—

- (a) in subsection (2) for "and the plan of
subdivision" **substitute** ", the plan of
subdivision and the owners corporation
documents";
- (b) in subsection (4) after "plan of
subdivision" **insert** "and owners
corporation documents".
-

PART 4—PARTNERSHIP ACT 1958

23 Who may apply for registration?

After section 87(2)(a)(ii) of the **Partnership Act 1958** insert—

5

"(iii) an ESVCLP within the meaning of that Act; or".

See:
Act No.
6330.
Reprint No. 7
as at
3 December
2003
and
amending
Act No.
108/2004.
Law Today:
www.
legislation.
vic.gov.au

24 How an application is made?

In section 88(2)(h) of the **Partnership Act 1958** for "or an AFOF" (wherever occurring) **substitute** ", an AFOF or an ESVCLP".

10

25 Winding up on Director's certificate

In section 108(1)(b)(i) of the **Partnership Act 1958** for "or an AFOF" **substitute** ", an AFOF or an ESVCLP".

15

26 Lodgment of certain documents with the Director

In section 120(1) and 120(3) of the **Partnership Act 1958** for "or an AFOF" (wherever occurring) **substitute** ", an AFOF or an ESVCLP".

PART 5—SHOP TRADING REFORM ACT 1996

27 Definitions

5 See:
Act No.
38/1996.
Reprint No. 3
as at
10 December
2003
and
amending
Act No.
108/2004.
10 Law Today:
www.
legislation.
vic.gov.au

- (1) In section 3(1) of the **Shop Trading Reform Act 1996**, in the definition of *shop* for "occasions;" **substitute** "occasions."
- (2) In section 3(1) of the **Shop Trading Reform Act 1996**, the definition of *special local shop closing times* is **repealed**.
- (3) Section 3(2) of the **Shop Trading Reform Act 1996** is **repealed**.

28 Special local shop closing times

Section 6 of the **Shop Trading Reform Act 1996** is **repealed**.

29 Restraining orders

15 In section 9 of the **Shop Trading Reform Act 1996**—

- (a) in subsection (1), **omit** "or against a local law referred to in section 6(2)";
- (b) subsection (2)(b) is **repealed**;
- 20 (c) in subsection (2)(c) **omit** "or the local law";
- (d) in subsection (4) **omit** "or the local law, as the case requires".

30 Regulations

- (1) For section 11(1) of the **Shop Trading Reform Act 1996** **substitute**—

25 "(1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act."
30

(2) Section 11(2)(b) of the **Shop Trading Reform Act 1996** is **repealed**.

31 Schedule 2

Schedule 2 to the **Shop Trading Reform Act 1996** is **repealed**.

5

PART 6—SUBDIVISION ACT 1988

32 New section 42A of the Subdivision Act 1988 inserted

After section 42 of the **Subdivision Act 1988** insert—

"42A Registrar may approve forms

- (1) Subject to this Act and the regulations, the Registrar may from time to time approve forms for use under this Act.
- (2) The Registrar must publish a copy of each approved form on the Internet site for the Office of Titles.
- (3) If the Registrar approves a form for use under this Act, any form in or to the like effect of that form is sufficient in law."

33 Regulations

After section 43(1)(j) of the **Subdivision Act 1988** insert—

"(ja) prescribing forms for the purposes of this Act; and".

See:
Act No.
53/1988.
Reprint No. 5
as at
1 January
1999
and
amending
Act Nos
28/2000,
74/2000,
44/2001,
47/2004,
81/2004,
35/2006 and
47/2007.
Law Today:
www.
legislation.
vic.gov.au

5

10

15

20

PART 7—TRADE MEASUREMENT ACT 1995

34 Definitions

(1) In section 3(1) of the **Trade Measurement Act 1995** insert the following definitions—

firewood means any wood, including dockings, edgings, mill ends, offcuts and timber products, that—

- (a) is intended for use as firewood; and
- (b) is in billets or lengths of not more than 2.4 m;

pack, for the purpose of deciding who packs or has packed an article as a prepacked article, includes authorise, direct, cause or permit a person to pack an article as a prepacked article;

use, in relation to the use of a measuring instrument for trade, includes—

- (a) have the measuring instrument in possession for use; and
- (b) make the measuring instrument available for use; and
- (c) authorise, direct, cause or permit a person to do an act mentioned in paragraph (a) or (b) or anything else that is the use of the measuring instrument for trade;

weighbridge suitability statement, for a public weighbridge licence, means a statement, signed by the administering authority, that the weighbridge mentioned in the licence is suitable for use as a public weighbridge."

See:
Act No.
59/1995.
Reprint No. 1
as at
1 September
1999
and
amending
Act No.
17/2000.
Law Today:
www.
legislation.
vic.gov.au

(2) In section 3(1) of the **Trade Measurement Act 1995**, in the definition of *class 4 measuring instrument*—

(a) for "pattern that" **substitute** "pattern that, in accordance with the approved pattern";

(b) for "is marked with a symbol" **substitute** "has a symbol on it".

(3) In section 3(1) of the **Trade Measurement Act 1995**, in paragraph (e) of the definition of *sell*, for "paragraph (a), (b), (c) or (d)" **substitute** "paragraphs (a) to (d) or anything else that is a sale".

35 Measuring instruments used for trade must be marked

In section 7(4) of the **Trade Measurement Act 1995** for "is taken not to have committed" **substitute** "may not be prosecuted for".

36 Use of class 4 measuring instruments

For section 7A(b) of the **Trade Measurement Act 1995 substitute**—

"(b) for weighing a thing to decide freight or haulage charges for the thing; or".

37 Use of measuring instruments for pre-packed articles

In section 7B of the **Trade Measurement Act 1995** for "approved for trade use under the National Measurement Act" **substitute** "of an approved pattern".

38 Unjust measurement

In section 8(5) of the **Trade Measurement Act 1995** for "is taken not to have committed" **substitute** "may not be prosecuted for".

39 Supplying incorrect measuring instrument

(1) In section 9(2) of the **Trade Measurement Act 1995** omit "for trade" (where thirdly occurring).

(2) After section 9(2) of the **Trade Measurement Act 1995** insert—

"(2A) Subject to subsection (3)(b), it does not matter whether the person who used the measuring instrument purchased it or took it on lease, hire or loan for trade."

40 Section 23 substituted

For section 23 of the **Trade Measurement Act 1995** substitute—

"23 Incorrect measurement or price calculation

(1) This section applies to a person who, for the purpose of the sale of an article at a price determined by reference to the measurement of the article, operates a measuring instrument to measure the article or decides the measurement of the article.

(2) For this section—

(a) a reference to the person's measurement of the article is a reference to the person's operation of the measuring instrument or measurement of the article as mentioned in subsection (1); and

(b) it does not matter whether the person's measurement of the article is for the article's sale by the person or by anyone else at any time.

(3) For any sale of the article at any time, the person commits an offence if, because of the person's measurement of the article—

(a) the person directly or indirectly misleads any party to the sale as to the measurement of the article or the calculation of the price, to the party's detriment; or

(b) the price paid or required to be paid is not the price correctly determined by reference to the correct measurement of the article and as a result any party to the sale suffers or would suffer detriment.

Penalty: 200 penalty units."

41 New section 25A inserted

After section 25 of the **Trade Measurement Act 1995** insert—

"25A Special provision for sale of firewood by volume

To apply section 23 to a sale of firewood by volume, the volume stated for the sale of the firewood (the *stated volume*) is taken to comply with that section if, when the firewood is stacked with as few gaps as practicable, the volume worked out using the stack's dimensions is at least the stated volume."

42 Application for licence

(1) In section 44(1)(b) of the **Trade Measurement Act 1995** after "licence" insert "for a single weighbridge".

(2) After section 44(2) of the **Trade Measurement Act 1995** insert—

"(2A) If the licensing authority grants a licence to a partnership, the licence must state—

- (a) the names of all the partners; and
- (b) if the partnership has a registered business name, the registered business name.

(2B) Each partner stated in the licence, including the licence as amended under section 54B, is taken to be a holder of the licence."

(3) In section 44(3) of the **Trade Measurement Act 1995** for "The application" substitute "An application under this section".

43 Grounds for refusal

After section 45(1) of the **Trade Measurement Act 1995** insert—

"(1A) If the applicant is a partnership, subsection (1) applies to each member of the partnership.

(1B) Also, for a public weighbridge licence application for a weighbridge, the licensing authority must refuse the application if the administering authority considers the weighbridge is not suitable for use as a public weighbridge."

44 Conditions on all public weighbridge licences

(1) For section 50(1)(a) of the **Trade Measurement Act 1995** substitute—

"(a) a condition that the licensee must not operate the weighbridge mentioned in the licence unless the licence or a copy of the licence has a weighbridge suitability statement written on it that is in force;

(aa) a condition that the weighbridge suitability statement is in force only until the end of—

(i) the period for which the fee payable in relation to the statement has been paid; or

(ii) the period as extended under section 52A;

(ab) a condition that the weighbridge mentioned in the licence is to be located at the place stated in the licence;"

(2) In section 50(1)(b) of the **Trade Measurement Act 1995** for "a weighbridge operated pursuant to the licence" **substitute** "the weighbridge mentioned in the licence".

45 New sections 52A and 52B inserted

After section 52 of the **Trade Measurement Act 1995** insert—

"52A Continuation of weighbridge suitability statement in particular circumstances

(1) This section applies if—

(a) before the end of the period for which a weighbridge suitability statement is in force for a particular weighbridge, a licensee pays the fee for a new weighbridge suitability statement; and

(b) the administering authority has not caused the weighbridge to be examined for the purpose of providing a new weighbridge suitability statement.

(2) The licensee may continue to operate the weighbridge under the licence until the administering authority—

5

(a) issues to the licensee a copy of the public weighbridge licence for the weighbridge with a weighbridge suitability statement on it in force for the period for which the fee payable in relation to the statement has been paid; or

10

(b) decides the weighbridge is no longer suitable for use as a public weighbridge and gives written notice of the decision to the licensee under section 52B(2).

52B If weighbridge no longer suitable for use as a public weighbridge

15

(1) This section applies if the administering authority decides a public weighbridge is no longer suitable for use as a public weighbridge.

20

(2) The administering authority may give the licensee a notice stating—

25

(a) why the administering authority considers the public weighbridge is no longer suitable for use as a public weighbridge; and

(b) that the licensee may make written representations to the administering authority within 28 days stating why the licensee considers the public weighbridge licence for the public weighbridge should not be cancelled.

30

(3) After considering any representations made to the administering authority, the administering authority may—

(a) decide to take no further action against the licensee; or

(b) recommend to the licensing authority that the public weighbridge licence for the public weighbridge be cancelled.

(4) The licensing authority may cancel the licence on the recommendation of the administering authority under subsection (3)(b).

(5) The administering authority must give the licensee a written notice stating—

(a) the decision and the reason for the decision; and

(b) that if the licensing authority cancels the licensee's licence, the licensee may appeal against the decision to the appeals tribunal under the Administration Act.

(6) This section does not limit section 7."

46 Surrender of licence

In section 54(2) of the **Trade Measurement Act 1995** for "A licence" substitute "Subject to section 54B, a licence".

47 New sections 54A, 54B, 54C and 54D inserted

After section 54 of the **Trade Measurement Act 1995** insert—

"54A Effect of relocation of licensed weighbridge

(1) This section applies if a licensee moves a weighbridge from the location at which it was inspected before the issue of the weighbridge suitability statement for the weighbridge to another location at the place stated in the licence.

- (2) The public weighbridge licence for the weighbridge is taken to have been surrendered under section 54.

54B Application to change licence holders due to change of partnership

- (1) This section applies if—
- (a) a partnership is the holder of a licence; and
 - (b) there is or is proposed to be a change to the membership of the partnership (the *change*) with at least 1 partner before the change continuing as a partner after the change.
- (2) The partnership may apply to the licensing authority to amend the licence to state the partners who are or will be the partners after the change.
- (3) To the extent the change consists of a person ceasing to be a partner, the licensing authority must grant the application and amend the licence to remove the name of the partner from the licence.
- (4) To the extent that the change involves a new partner being admitted to the partnership—
- (a) the application must include the information about the new partner that the new partner would have to give to the licensing authority when applying for a licence of that kind; and
 - (b) after considering the application, the licensing authority must—
 - (i) grant the application and amend the licence to include the name of the new partner; or

(ii) refuse the application under subsection (5).

5 (5) The licensing authority must refuse an application to which subsection (4) applies if it would be refused under section 45 were it an application by the new partner for the licence.

10 (6) If the licensing authority refuses the application, the licensing authority must notify the partnership of the grounds for the refusal and the right of appeal against the refusal under section 59.

15 (7) If an application is granted relating to a change that is to happen at a later time, the licensing authority must amend the licence in accordance with the application from the later time.

20 (8) To amend a licence under this section, the licensing authority may endorse the amendment on the licence held by the partnership, or replace the licence with a licence stating the membership of the partnership after the change.

25 (9) An application must be accompanied by the application fee prescribed under the Administration Act.

54C Effect on licence of application under section 54B

30 (1) This section applies if a change within the meaning of section 54B happens—

(a) not more than 28 days before an application under the section is made; or

(b) after the application is made but before it is decided.

5

10

15

20

25

30

35

(2) From the day of the change, the relevant licence is taken to be held by the partnership as it exists after the change, and each partner is taken to be a holder of the licence, until—

- (a) the application is granted; or
- (b) if the application is refused—the end of the period allowed under section 59(2) for appeal against the refusal, and, if the partnership appeals, the end of the appeal.

54D Application to amend condition of licence

- (1) A licensee under a servicing licence may apply to the licensing authority for an amendment to a condition of the licence of a kind mentioned in section 48(2).
- (2) The licensing authority may amend or refuse to amend the licence.
- (3) An application must be accompanied by the application fee prescribed under the Administration Act."

48 Grounds for disciplinary action

At the end of section 56 of the **Trade Measurement Act 1995** insert—

- "(2) A ground for disciplinary action under subsection (1) exists in relation to a licensee who is a partnership if the ground exists in relation to any 1 or more of the members of the partnership."

49 Rights of appeal

- (1) In section 59(1)(a) of the **Trade Measurement Act 1995** after "licence" insert "or an amendment of a licence".

(2) After section 59(1)(e) of the **Trade Measurement Act 1995** insert—

"(ea) to cancel a public weighbridge licence because the public weighbridge mentioned in the licence is no longer suitable for use as a public weighbridge; or".

50 Regulations

(1) For section 80(2)(n) of the **Trade Measurement Act 1995** substitute—

"(n) weighbridge suitability statements;".

(2) In section 80(2)(u) of the **Trade Measurement Act 1995** for "instruments." substitute "instruments;".

(3) After section 80(2)(u) of the **Trade Measurement Act 1995** insert—

"(v) the approval of forms for use under this Act.".

51 New Part 9 inserted

After Part 8 of the **Trade Measurement Act 1995** insert—

" _____

PART 9—TRANSITIONAL PROVISIONS

82 Certificates of suitability

A certificate of suitability for a public weighbridge that is in force immediately before the commencement of section 44 of the **Fair Trading and Consumer Acts Further Amendment Act 2007**, is taken to be a weighbridge suitability statement for the weighbridge's public weighbridge licence expiring when the certificate of suitability would otherwise have expired.

83 Existing licensed public weighbridges

(1) This section applies if, immediately before the commencement of section 44 of the **Fair Trading and Consumer Acts Further Amendment Act 2007**, a licensee operates more than 1 public weighbridge under a public weighbridge licence.

(2) On the commencement—

(a) each public weighbridge is taken to be licensed under a separate public weighbridge licence; and

(b) a separate periodic licence fee is not payable because of paragraph (a) until the day the periodic licence fee is payable under section 52 after the commencement.

(3) Also, if, after the commencement—

(a) a licence for a public weighbridge that is taken under subsection (2)(a) to be licensed under a separate public weighbridge licence pays a separate periodic licence fee for the public weighbridge; and

(b) the administering authority decides the weighbridge is still suitable for use as a public weighbridge—

the licensing authority must issue to the licensee a separate public weighbridge licence for the weighbridge with a weighbridge suitability statement on it in force for the period for which the fee payable in relation to the statement has been paid."

**PART 8—TRADE MEASUREMENT (ADMINISTRATION)
ACT 1995**

52 Other fees and charges may be prescribed

5 See:
Act No.
60/1995.
Reprint No. 1
as at
12 August
1999
and
amending
Act Nos
17/2000,
44/2001,
108/2004 and
32/2006.
Law Today:
www.
legislation.
vic.gov.au

(1) After section 11(1)(c) of the **Trade Measurement (Administration) Act 1995** insert—

"(ca) fees payable for providing weighbridge suitability statements or duplicates of weighbridge suitability statements;"

10 (2) After section 11(3) of the **Trade Measurement (Administration) Act 1995** insert—

"(4) For this section, it does not matter whether the fee prescribed for a public weighbridge licence and a weighbridge suitability statement is a combined fee for the same period."

15

PART 9—AMENDMENTS AND REPEALS

Division 1—Repeals

53 Repeal of Frustrated Contracts Act 1959

The **Frustrated Contracts Act 1959** is repealed.

See:
Act No.
6539.
Law Today:
www.
legislation.
vic.gov.au

54 Repeal of Hire-Purchase Act 1959

The **Hire-Purchase Act 1959** is repealed.

See:
Act No.
6531.
Reprint No. 4
as at
22 April 1999
and
amending
Act Nos
3/2000 and
79/2000.
Law Today:
www.
legislation.
vic.gov.au

Division 2—Consequential and other amendments

55 Chattel Securities Act 1987

In section 3(1) of the **Chattel Securities Act 1987**—

- (a) for the definition of *hire-purchase agreement substitute*—

"hire-purchase agreement has the same meaning as in the **Fair Trading Act 1999**";

- (b) for the definition of *hirer substitute*—

"hirer means the person to whom goods are let, hired or agreed to be sold under a hire-purchase agreement and includes a

See:
Act No.
15/1987.
Reprint No. 3
as at
10 May 2007.
Law Today:
www.
legislation.
vic.gov.au

person to whom the hirer's rights or liabilities under the agreement have passed by assignment or by operation of law;";

5

(c) for the definition of *owner substitute*—

"*owner* means the person letting, hiring or agreeing to sell goods under a hire-purchase agreement and includes a person to whom the owner's property in the goods or any of the owner's rights or liabilities under the agreement have passed by assignment or operation of law;".

10

See:
Act No.
10097.
Reprint No. 4
as at
23 February
2007
and
amending
Act Nos
34/1991 and
69/2006.
Law Today:
www.
legislation.
vic.gov.au

15

56 Credit Act 1984

In section 5(1) of the **Credit Act 1984**, in the definition of *security interest* for "**Hire-Purchase Act 1959**" substitute "**Fair Trading Act 1999**".

See:
Act No.
11/1989.
Reprint No. 9
as at
1 April 2007
and
amending
Act No.
26/2007.
Law Today:
www.
legislation.
vic.gov.au

20

57 Local Government Act 1989

Section 111A of the **Local Government Act 1989** is repealed.

58 Public Transport Competition Act 1995

In section 3(1) of the **Public Transport Competition Act 1995**, in the definition of *hire and drive service* for "**Hire-Purchase Act 1959**" substitute "**Fair Trading Act 1999**".

5

See:
Act No.
68/1995.
Reprint No. 2
as at
17 June 2004
and
amending
Act Nos
95/2005,
9/2006 and
47/2006.
Law Today:
www.
legislation.
vic.gov.au

59 Road Safety Act 1986

In section 3(1) of the **Road Safety Act 1986** in the definition of *hire-purchase agreement* for "**Hire-Purchase Act 1959**" substitute "**Fair Trading Act 1999**".

10

See:
Act No.
127/1986.
Reprint No. 10
as at
9 November
2006
and
amending
Act Nos
19/1991,
97/2005,
48/2006,
81/2006,
14/2007 and
30/2007.
Law Today:
www.
legislation.
vic.gov.au

60 Amendments to Consumer Acts

On the coming into operation of an item in the Schedule, the Act specified in the heading to that item is amended as set out in that item.

15

Division 3—Repeal of Amending Act

61 Repeal of amending Act

This Act is **repealed** on 1 December 2009.

Sch.

SCHEDULE

AMENDMENTS TO CONSUMER ACTS

1 Associations Incorporation Act 1981

After section 50C(1) **insert—**

5 "(1AA) For the purposes of subsection (1),
 section 152A of the **Fair Trading Act 1999**
 applies as if—

10 (a) a reference in that section to any
 section of the **Fair Trading Act 1999**
 were a reference to section 106HA of
 that Act (as applied by subsection (1));
 and

 (b) section 152A(2) did not apply."

2 Business Names Act 1962

15 After section 29(1) **insert—**

 "(1AA) For the purposes of subsection (1),
 section 152A of the **Fair Trading Act 1999**
 applies as if—

20 (a) a reference in that section to any
 section of the **Fair Trading Act 1999**
 were a reference to section 106HA of
 that Act (as applied by subsection (1));
 and

 (b) section 152A(2) did not apply."

25 **3 Domestic Building Contracts Act 1995**

 After section 124A(2) **insert—**

30 "(2AA) For the purposes of subsection (2), section
 152A of the **Fair Trading Act 1999** applies
 as if a reference in that section to any section
 of that Act were a reference to that section as
 applied by subsection (1) or (2)."

4 Estate Agents Act 1980

4.1 After section 70W **insert**—

"70WA Powers of court if requirement to produce information not complied with

- 5 (1) If the Director is satisfied that a person has, without reasonable excuse, failed to comply with a requirement under section 70F, the Director may certify that failure to a court.
- 10 (2) Subject to subsection (3), if an inspector is satisfied that a person has, without reasonable excuse, failed to comply with a requirement of the inspector under section 70C, 70D, 70F or 70S, the inspector may certify that failure to a court.
- 15 (3) The inspector cannot certify a failure to a court under subsection (2) if the person to whom the failure relates has been charged with an offence against section 70T.
- 20 (4) If the Director or an inspector so certifies under subsection (1) or (2), the court may inquire into the case and may order the person to comply with the requirement within the period specified by the court.
- 25 (5) If a proceeding is brought under this section in relation to a failure to comply with a requirement, a person to whom the failure relates cannot be charged with an offence against section 70T in respect of that failure."

30 4.2 In section 93A(1) for "section 155" **substitute** "sections 152A and 155".

Sch.

5 Fundraising Appeals Act 1998

After section 68(1) insert—

"(1AA) For the purposes of subsection (1),
section 152A of the **Fair Trading Act 1999**
applies as if—

(a) a reference in that section to any
section of the **Fair Trading Act 1999**
were a reference to section 106HA of
that Act (as applied by subsection (1));
and

(b) section 152A(2) did not apply."

6 Introduction Agents Act 1997

After section 69(1) insert—

"(1AA) For the purposes of subsection (1),
section 152A of the **Fair Trading Act 1999**
applies as if—

(a) a reference in that section to any
section of the **Fair Trading Act 1999**
were a reference to section 106HA of
that Act (as applied by subsection (1));
and

(b) section 152A(2) did not apply."

7 Motor Car Traders Act 1986

7.1 After section 82AT insert—

**"82ATA Powers of court if requirement to produce
information not complied with**

(1) If the Director is satisfied that a person has,
without reasonable excuse, failed to comply
with a requirement under section 82AD, the
Director may certify that failure to a court.

5

(2) Subject to subsection (3), if an inspector is satisfied that a person has, without reasonable excuse, failed to comply with a requirement of the inspector under section 82AA, 82AB, 82AD or 82AQ, the inspector may certify that failure to a court.

10

(3) The inspector cannot certify a failure to a court under subsection (1) if the person to whom the failure relates has been charged with an offence against section 82AR.

15

(4) If the Director or an inspector so certifies under subsection (1) or (2), the court may inquire into the case and may order the person to comply with the requirement within the period specified by the court.

20

(5) If a proceeding is brought under this section in relation to a failure to comply with a requirement, a person to whom the failure relates cannot be charged with an offence against section 82AR in respect of that failure."

7.2 In section 82I(1) for "section 155" substitute "sections 152A and 155".

25

8 Petroleum Products (Terminal Gate Pricing) Act 2000

After section 11(2) insert—

30

"(2AA) For the purposes of subsection (2), section 152A of the **Fair Trading Act 1999** applies as if a reference in that section to any section of that Act were a reference to that section as applied by subsection (1) or (2)."

Sch.

9 Prostitution Control Act 1994

9.1 After section 61W **insert**—

"61WA Powers of court if requirement to produce information not complied with

- 5 (1) Subject to subsection (3), if the Director is satisfied that a person has, without reasonable excuse, failed to comply with a requirement under section 61G, the Director may certify that failure to a court.
- 10 (2) Subject to subsection (3), if an inspector is satisfied that a person has, without reasonable excuse, failed to comply with a requirement of the inspector under section 61D, 61E, 61G or 61T, the inspector may certify that failure to a court.
- 15 (3) The Director or an inspector cannot certify a failure to a court under subsection (1) or (2) if the person to whom the failure relates has been charged with an offence against section 61U.
- 20 (4) If the Director or an inspector so certifies under subsection (1) or (2), the court may inquire into the case and may order the person to comply with the requirement within the period specified by the court.
- 25 (5) If a proceeding is brought under this section in relation to a failure to comply with a requirement, a person to whom the failure relates cannot be charged with an offence against section 61U in respect of that failure."
- 30

9.2 In section 86A(1) for "section 155" **substitute** "sections 152A and 155".

10 Residential Tenancies Act 1997

After section 507A(2) **insert**—

5 "(2AA) For the purposes of subsection (2), section 152A of the **Fair Trading Act 1999** applies as if a reference in that section to any section of that Act were a reference to that section as applied by subsection (1) or (2)."

11 Retirement Villages Act 1986

After section 40(2) **insert**—

10 "(2A) For the purposes of subsection (2), section 152A of the **Fair Trading Act 1999** applies as if a reference in that section to any section of that Act were a reference to that section as applied by subsection (1) or (2)."

12 Sale of Land Act 1962

After section 48A(1) **insert**—

15 "(1AA) For the purposes of subsection (1), section 152A of the **Fair Trading Act 1999** applies as if—

20 (a) a reference in that section to any section of the **Fair Trading Act 1999** were a reference to section 106HA of that Act (as applied by subsection (1)); and

25 (b) section 152A(2) did not apply."

13 Second-Hand Dealers and Pawnbrokers Act 1989

13.1 After section 26W **insert**—

"26WA Powers of court if requirement to produce information not complied with

30 (1) If the Director is satisfied that a person has, without reasonable excuse, failed to comply with a requirement under section 26G, the Director may certify that failure to a court.

Sch.

- 5
- 10
- 15
- 20
- (2) Subject to subsection (3), if an inspector is satisfied that a person has, without reasonable excuse, failed to comply with a requirement of the inspector under section 26D, 26E, 26G or 26T, the inspector may certify that failure to a court.
 - (3) The inspector cannot certify a failure to a court under subsection (2) if the person to whom the failure relates has been charged with an offence against section 26U.
 - (4) If the Director or an inspector so certifies under subsection (1) or (2), the court may inquire into the case and may order the person to comply with the requirement within the period specified by the court.
 - (5) If a proceeding is brought under this section in relation to a failure to comply with a requirement, a person to whom the failure relates cannot be charged with an offence against section 26U in respect of that failure."

13.2 In section 30(1) for "section 155" substitute "sections 152A and 155".

14 Travel Agents Act 1986

25 14.1 After section 39V insert—

"39VA Powers of court if requirement to produce information not complied with

- 30
- 35
- (1) Subject to subsection (3), if the Director is satisfied that a person has, without reasonable excuse, failed to comply with a requirement under section 39F, the Director may certify that failure to a court.
 - (2) Subject to subsection (3), if an inspector is satisfied that a person has, without reasonable excuse, failed to comply with a

requirement of the inspector under section 39C, 39D, 39F or 39S, the inspector may certify that failure to a court.

5 (3) The Director or an inspector cannot certify a failure to a court under subsection (1) or (2) if the person to whom the failure relates has been charged with an offence against section 39T.

10 (4) If the Director or an inspector so certifies under subsection (1) or (2), the court may inquire into the case and may order the person to comply with the requirement within the period specified by the court.

15 (5) If a proceeding is brought under this section in relation to a failure to comply with a requirement, a person to whom the failure relates cannot be charged with an offence against section 39T in respect of that failure."

20 14.2 In section 44(1) for "section 155" substitute "sections 152A and 155".

15 Utility Meters (Metrological Controls) Act 2002

After section 63(1) insert—

25 "(1AA) For the purposes of subsection (1), section 152A of the **Fair Trading Act 1999** applies as if—

30 (a) a reference in that section to any section of the **Fair Trading Act 1999** were a reference to section 106HA of that Act (as applied by subsection (1)); and

(b) section 152A(2) did not apply."

ENDNOTES

By Authority. Government Printer for the State of Victoria.
