

PARLIAMENT OF VICTORIA

Fair Trading (Further Amendment) Act 2003

Act No.

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PARLIAMENT OF VICTORIA

Initiated in Assembly 14 October 2003

A BILL

to amend the **Fair Trading Act 1999** to further regulate telephone marketing agreements and to improve the operation of that Act, to amend the **Fair Trading (Amendment) Act 2003** in relation to implied conditions and warranties and to amend the **Co-operatives Act 1996**, the **Electricity Industry Act 2000**, the **Gas Industry Act 2001** and other Acts and for other purposes.

**Fair Trading (Further Amendment) Act
2003**

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purposes

The main purposes of this Act are—

- (a) to amend the **Fair Trading Act 1999**—

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- (i) to further regulate telephone marketing agreements; and
- (ii) to improve the operation of that Act; and
- (b) to amend the **Fair Trading (Amendment) Act 2003** in relation to implied conditions and warranties; and
- (c) to amend the **Co-operatives Act 1996** to make further provision regarding the powers of the Treasurer to guarantee loans to co-operatives; and
- (d) to amend the **Electricity Industry Act 2000** and the **Gas Industry Act 2001** to exclude certain contracts from the operation of certain of the telephone marketing provisions of the **Fair Trading Act 1999**.

2. Commencement

- (1) This Part and sections 4, 5, 6, 16, 17, 18, 20, 21, 24, 25, 27, 28 and 29 come into operation on the day after the day on which this Act receives the Royal Assent.
- (2) Section 23 is deemed to have come into operation on 27 May 2003.
- (3) Subject to sub-section (4), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (4) If a provision referred to in sub-section (3) does not come into operation before 31 December 2004, it comes into operation on that day.

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PART 2—AMENDMENTS TO THE FAIR TRADING ACT 1999

3. Definitions

(1) In section 3 of the **Fair Trading Act 1999** insert the following definition—

' "**telephone marketing agreement**" has the meaning given by section 67A;'

(2) In section 3 of the **Fair Trading Act 1999**—

(a) in the definition of "cooling-off period" after paragraph (a) **insert**—

"(aa) in the case of a telephone marketing agreement, the period within which the purchaser is entitled under the agreement and section 67H to cancel the agreement; or"; and

(b) in the definition of "related contract or instrument" after "contact sales agreement" **insert** ", telephone marketing agreement".

4. Address to be included in documents

For section 29(3) of the **Fair Trading Act 1999** **substitute**—

"(3) A person, other than a person referred to in sub-section (1)(f)(ii) or (1)(f)(iii), is not required to comply with sub-section (1)(f) if the person has provided to the publisher of the publication in which the document, statement or advertisement is to appear—

(a) the name of the person or the business; and

(b) the full address (not being a post box) of the place of business or residence of the person."

See:
Act No.
16/1999.
Reprint No. 1
as at
9 October
2003 and
amending Act
No. 30/2003.
LawToday:
www.dms.
dpc.vic.
gov.au

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5. Amendment to definitions in Part 2B

In section 32U of the **Fair Trading Act 1999**—

- (a) the definition of "consumer contract" is **repealed**;
- (b) in the definition of "unfair term" **omit** "and includes a prescribed unfair term".

6. Assessment of unfair terms

In section 32X(c) of the **Fair Trading Act 1999**, for "supplier but not the consumer" **substitute** "consumer but not the supplier".

7. New Division 2A inserted in Part 4

After Division 2 of Part 4 of the **Fair Trading Act 1999** insert—

'Division 2A—Telephone Marketing Agreements

67A. What is a telephone marketing agreement?

- (1) An agreement is a telephone marketing agreement if—
 - (a) it is for the supply in trade or commerce of goods or services of a kind ordinarily used for personal, household or domestic use; and
 - (b) the negotiations leading to the making of the agreement (whether or not they are the only negotiations that precede the making of the agreement) take place between the supplier or a person acting on behalf of the supplier and the purchaser over the telephone; and

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- (c) the initial telephone call for the purpose of entering into the negotiations was made by or on behalf of the supplier; and
 - (d) the total consideration payable by the purchaser under the agreement—
 - (i) is not ascertainable at the time of making the agreement; or
 - (ii) is ascertainable at the time of making the agreement and exceeds \$50.
- (2) Despite sub-section (1)(c), an agreement is not a telephone marketing agreement if—
- (a) the purchaser invited the supplier or a person acting on behalf of the supplier to make that initial telephone call (including by a prior written consent of the purchaser for the supplier or a person acting on behalf of the supplier to telephone the purchaser for the purpose of entering into a telephone marketing agreement); or
 - (b) after that initial telephone call, the purchaser telephoned the supplier or a person acting on behalf of the supplier to continue the negotiations; or
 - (c) after that initial telephone call, the negotiations were continued in the physical presence of the purchaser or a person acting on behalf of the purchaser and the supplier or a person acting on behalf of the supplier.

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(3) If—

- (a) 2 or more agreements relate substantially to the same transaction; and
- (b) the transaction could have been effected by a single agreement which would have constituted a telephone marketing agreement—

then—

- (c) each of the agreements that would not, if it stood alone, constitute a telephone marketing agreement becomes a telephone marketing agreement; and
 - (d) for the purpose of ascertaining the cooling-off period in relation to each of the agreements, each agreement is deemed to have been made when the last of the agreements was made.
- (4) If it is alleged in any proceeding in respect of a matter arising under this Act that an agreement is a telephone marketing agreement, it is presumed, unless the contrary intention is established, that the agreement is a telephone marketing agreement.
- (5) Despite sub-section (1), the following are not telephone marketing agreements—
- (a) an agreement solely for the provision of credit;
 - (b) a contract of guarantee;
 - (c) a mortgage;

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- (d) an agreement for the connection of premises to water, sewerage or a telephone service (other than a mobile telephone service) unless, as a result of the agreement, responsibility for the supply of that service is transferred from one supplier to another supplier.

67B. Duty to cease telephone marketing

A supplier or a person acting on behalf of a supplier who is carrying on negotiations on the telephone which may lead to a telephone marketing agreement or for an incidental or related purpose must—

- (a) cease those negotiations immediately on the request of the person with whom the negotiations are being conducted; and
- (b) refrain from contacting that person for 30 days for the purpose of negotiations which may lead to a telephone marketing agreement with that supplier.

Penalty: 60 penalty units, in the case of a natural person.

120 penalty units, in the case of a body corporate.

67C. Permitted hours for telephone marketing

A supplier or a person acting on behalf of a supplier must not contact a person for the purpose of negotiations which may lead to a telephone marketing agreement or for an incidental or related purpose—

- (a) at any time on a public holiday; or

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- (b) on a Saturday or a Sunday—
 - (i) between midnight and 9.00 am; or
 - (ii) between 5.00 pm and midnight; or
- (c) on any other day—
 - (i) between midnight and 9.00 am; or
 - (ii) between 8.00 pm and midnight.

Penalty: 120 penalty units, in the case of a natural person.

240 penalty units, in the case of a body corporate.

67D. Purchaser must give explicit informed consent

- (1) A telephone marketing agreement is void unless the purchaser has, prior to the telephone marketing agreement being made, given explicit informed consent to the supplier or a person acting on behalf of the supplier.

Note: Section 67M sets out the consequences flowing from a purported telephone marketing agreement being void.

- (2) If a telephone marketing agreement is void under sub-section (1) any related contract or instrument is also void.
- (3) Sub-section (2) does not affect the operation of the Consumer Credit (Victoria) Code in its application to a tied loan contract as defined in that Code.
- (4) For the purposes of this section, "**explicit informed consent**" in relation to a telephone marketing agreement means the consent to make the agreement—

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- (a) must be given by the purchaser directly to the supplier or a person acting on behalf of the supplier—
 - (i) in writing signed by the purchaser; or
 - (ii) orally; and
 - (b) if given orally, must be recorded in accordance with sub-section (5); and
 - (c) must be given only after the supplier or a person acting on behalf of the supplier has, clearly, fully and adequately disclosed all matters relevant to the consent of the purchaser, including each specific purpose or use of the consent.
- (5) For the purposes of sub-section (4)(b), the supplier or a person acting on behalf of the supplier must record the consent—
- (a) in writing; or
 - (b) with the prior consent of the purchaser, by means of a recording device.
- (6) The supplier or a person acting on behalf of a supplier must not record (otherwise than in writing) the purchaser's consent to make a telephone marketing agreement, unless the purchaser has given his or her prior consent to the recording.
- Penalty: 60 penalty units, in the case of a natural person.
- 120 penalty units, in the case of a body corporate.

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- (7) The supplier must keep the record of the purchaser's explicit informed consent for 12 months.

Penalty: 60 penalty units, in the case of a natural person.

120 penalty units, in the case of a body corporate.

- (8) The supplier or a person acting on behalf of the supplier must not enter, or purport to enter, into a telephone marketing agreement unless that supplier or person has, during the telephone negotiations which led to the agreement or purported agreement, advised the purchaser of the right to cancel the agreement within the cooling-off period applying to that agreement.

Penalty: 120 penalty units, in the case of a natural person.

240 penalty units, in the case of a body corporate.

67E. Requirements for a telephone marketing agreement

- (1) Within 5 days after making the telephone marketing agreement or any longer period agreed by the parties, the supplier must serve on the purchaser—

(a) a document evidencing the agreement (the "**agreement document**"); and

(b) a notice completed in accordance with Part 2 of Schedule 2 which may be used by the purchaser to cancel the agreement.

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- (2) The agreement document and notice referred to in sub-section (1) may be served on the purchaser—
- (a) personally; or
 - (b) by post; or
 - (c) with the consent of the purchaser, by electronic communication.
- (3) The following requirements must be complied with in relation to a telephone marketing agreement—
- (a) the agreement document must set out in full all the terms of the agreement, including—
 - (i) the total consideration to be paid or provided by the purchaser under the agreement or, if the total consideration is not ascertainable at the time the agreement is made, the manner in which it is to be calculated;
 - (ii) any postal or delivery charges to be paid by the purchaser;
 - (b) the agreement document must—
 - (i) include on its front page a notice which must, in accordance with Part 1 of Schedule 2, advise the purchaser of the right to cancel the agreement; and
 - (ii) set out in full the name and business address (not being a post box) of the supplier; and
 - (iii) be printed clearly or typewritten (apart from any amendments to the printed or typewritten form

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which may be handwritten) and otherwise must comply with section 163; and

- (c) any amendments to the agreement must be signed by both parties to the agreement.
- (4) The information required under sub-sections (3)(a)(i) and (3)(a)(ii), (3)(b)(i) and (3)(b)(ii) must be conspicuous and prominent in the agreement document or notice (as the case may be).
- (5) The Director may approve an agreement or class of agreements or an agreement document or class of agreement documents which do not comply with the requirements of sub-section (1)(b), (3) or (4) if the Director is satisfied that the agreements or agreement documents provide a level of disclosure substantially equivalent to the requirements of that provision.
- (6) An agreement or agreement document approved, or in a class approved, under sub-section (5) is not required to comply with sub-section (1)(b), (3) or (4).

67F. Supplier must comply with requirements

- (1) If section 67E is not complied with in relation to a telephone marketing agreement, the supplier under the agreement and any person entering into the agreement on behalf of the supplier are each guilty of an offence and liable to a penalty of not more than—
 - (a) 120 penalty units, in the case of a natural person; or
 - (b) 240 penalty units, in the case of a body corporate.

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- (2) The supplier under a telephone marketing agreement cannot enforce the agreement against the purchaser if the supplier or a person entering into the agreement on behalf of the supplier fails to comply with section 67E.

67G. When does a telephone marketing agreement commence?

- (1) Subject to this Division, a telephone marketing agreement commences on the day it is made.
- (2) A telephone marketing agreement is made on the day that the purchaser gives explicit informed consent to make the agreement under section 67D.

67H. When and how can the purchaser cancel the agreement?

- (1) Subject to sub-section (2), a purchaser under a telephone marketing agreement may cancel that agreement by giving notice of cancellation to the supplier or a person acting on behalf of the supplier within 10 days from and including the day on which the purchaser receives the agreement document and the notice completed in accordance with Part 2 of Schedule 2 or within such longer period as the agreement may provide.
- (2) In relation to a telephone marketing agreement for the supply of raffle or other lottery tickets, the right of the purchaser to cancel the agreement under sub-section (1) does not apply on or after the date of the drawing of the raffle or other lottery.
- (3) Despite sub-section (1), the purchaser under the telephone marketing agreement may cancel the agreement by giving notice of

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cancellation to the supplier within 6 months from the day on which the agreement was made if the supplier or a person acting on behalf of the supplier does not comply with section 67E(1) or 67E(3)(b)(i).

- (4) A notice of cancellation may be given in the form of the notice in Part 2 of Schedule 2.
- (5) Sub-section (4) does not apply to an agreement or agreement document approved or in a class approved under section 67E(5) if the Director approves a different method of notice of cancellation in the case of that agreement or document.
- (6) A notice of cancellation under this section may be given—
 - (a) if a form of notice of cancellation accompanied the agreement document—
 - (i) by leaving it at or posting it to the business address of the supplier or other address of the supplier shown on that form; or
 - (ii) by faxing it to the facsimile number of the supplier shown on that form; or
 - (b) if the form of notice of cancellation does not accompany the agreement document, by leaving it at or posting it to the last known place of business of the supplier; or
 - (c) by telephoning the supplier or the person acting on behalf of the supplier with whom the negotiations were conducted.

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(7) In this section, "**raffle**", "**lottery**" and "**ticket**" have the same meanings as in section 3 of the **Gaming No. 2 Act 1997**.

67I. What is the effect of cancellation?

- (1) If a telephone marketing agreement is cancelled during the cooling-off period, the agreement is deemed to have been rescinded by mutual consent.
- (2) If a telephone marketing agreement is cancelled during the cooling-off period, any related contract or instrument is void.
- (3) Sub-section (2) does not affect the operation of the Consumer Credit (Victoria) Code in its application to a tied loan contract as defined in that Code.

67J. What must the supplier do on cancellation?

- (1) If a telephone marketing agreement is cancelled within the cooling-off period, the supplier must immediately repay to the purchaser any money paid by the purchaser under the agreement or a related contract or instrument.
- (2) If a telephone marketing agreement is cancelled within the cooling-off period, the supplier must return to the purchaser any goods taken as a trade-in under or in respect of the agreement.
- (3) The goods must be returned within 10 days after the supplier receives the notice of cancellation of the agreement.

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- (4) The goods must be returned in a condition substantially as good as when the goods were taken.
- (5) If the supplier has disposed of the goods taken as a trade-in under or in respect of the agreement before the cancellation of the agreement, the supplier must pay to the purchaser the reasonable cost of replacing the goods.

67K. What can the supplier charge on cancellation?

- (1) The supplier under a telephone marketing agreement may make a reasonable charge for any goods which the purchaser is unable to return on cancellation of the agreement under this Division.
- (2) If a telephone marketing agreement is cancelled under this Division, a supplier is not entitled to charge for services provided under the agreement before it is cancelled, except in accordance with this section.
- (3) If a purchaser cancels a telephone marketing agreement under this Division, the supplier may apply to the Tribunal for an order that the purchaser must pay to the supplier a reasonable amount (to be determined by the Tribunal) for services provided under the agreement before it was cancelled.
- (4) The Tribunal must not make an order under sub-section (3) unless the Tribunal is satisfied that the supplier or a person acting on behalf of the supplier has not contravened this Act in relation to the telephone marketing agreement.

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- (5) The supplier may deduct an amount payable by a purchaser under this section from any money required to be paid to the purchaser under section 67J.

67L. What must the purchaser do on cancellation?

- (1) If the purchaser under a telephone marketing agreement for the supply of goods cancels the agreement during the cooling-off period, the purchaser must immediately—
- (a) return the goods to the supplier; or
 - (b) notify the supplier of the place where the supplier may collect the goods.
- (2) If a purchaser gives a notice to a supplier under sub-section (1) and the supplier does not collect the goods within 30 days after the cancellation of the agreement, the goods become the property of the purchaser free of any other right or interest.
- (3) If the purchaser under a telephone marketing agreement fails to take reasonable care of goods which are returned to a supplier or collected by a supplier under this section, the purchaser is liable to pay compensation to the supplier for any damage to or depreciation in the value of the goods.

67M. What if the telephone marketing agreement is void for lack of explicit informed consent?

- (1) If a telephone marketing agreement and any related contract or instrument ("**the purported agreement**") are void under section 67D—

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- (a) the supplier must repay to the purchaser any money paid by the purchaser under the purported agreement; and

Note: Section 67D(3) operates to ensure that section 67D(2) does not affect the operation of the Consumer Credit (Victoria) Code in its application to a tied loan contract as defined in that Code.

- (b) the supplier must return to the purchaser any goods taken as a trade-in under or in respect of the purported agreement; and
- (c) the goods must be returned in a condition substantially as good as when the goods were taken; and
- (d) if the supplier has disposed of the goods taken as a trade-in under or in respect of the purported agreement, the supplier must pay to the purchaser the reasonable cost of replacing the goods; and
- (e) the supplier under the purported agreement may apply to the Tribunal for an order that—
 - (i) the purchaser must return goods provided to the purchaser by the supplier under the purported agreement;
 - (ii) the purchaser must pay to the supplier a reasonable amount (to be determined by the Tribunal) for goods or services provided by the supplier under the purported agreement;

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(iii) the supplier may keep any money paid by the purchaser for goods or services under the purported agreement.

(2) The Tribunal may only make an order under this section if it is satisfied that, in all the circumstances, it is just to do so.!

8. What is a non-contact sales agreement?

After section 68(2)(c) of the **Fair Trading Act 1999** insert—

"(d) a telephone marketing agreement."

9. New section 68A inserted

After section 68 of the **Fair Trading Act 1999** insert—

"68A. Duty to cease telephone marketing for non-contact sales agreement

A supplier or a person acting on behalf of a supplier who is carrying on negotiations on the telephone which may lead to a non-contact sales agreement or for an incidental or related purpose must—

- (a) cease those negotiations immediately on the request of the person with whom the negotiations are being conducted; and
- (b) refrain from contacting that person for 30 days for the purpose of negotiations which may lead to a non-contact sales agreement with that supplier.

Penalty: 60 penalty units, in the case of a natural person.

120 penalty units, in the case of a body corporate."

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10. Section 78 repealed

Section 78 of the **Fair Trading Act 1999** is
repealed.

11. Trade-in not to be sold during cooling-off period

In section 79 of the **Fair Trading Act 1999**, after
"contact sales agreement" **insert** ", a telephone
marketing agreement".

12. Prohibition on payment for services during cooling-off period

In section 80 of the **Fair Trading Act 1999**, after
"contact sales agreement" **insert** ", a telephone
marketing agreement".

13. Certain provisions in agreements void

In sections 81(1), 81(2) and 81(3) of the **Fair
Trading Act 1999**, after "contact sales
agreement" **insert** ", a telephone marketing
agreement".

14. Recovery of money

In sections 82(1), 82(2) and 82(3) of the **Fair
Trading Act 1999**, after "contact sales
agreement" **insert** ", a telephone marketing
agreement".

15. Amendments to section 118

(1) **Insert** the following heading to section 118 of the
Fair Trading Act 1999—

"Requirement to produce information".

(2) After section 118(1) of the **Fair Trading Act
1999 insert**—

"(1A) For the purpose of monitoring compliance
with section 67D, the Director or an
inspector may require a supplier to produce
to the Director or an inspector the record of a

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purchaser's consent kept by the supplier
under that section."

- (3) In section 118(2) of the **Fair Trading Act 1999**,
for "sub-section (1)" substitute "this section".

16. Entry or search with consent

- (1) In section 119(3) of the **Fair Trading Act 1999**,
omit "in the prescribed form".
- (2) In section 119(3)(b) of the **Fair Trading Act**
1999, for "entry and search" substitute "entry and
search or to the seizure of anything or to the
taking of any sample, copy or extract".

17. Amendment of regulation-making powers

In section 165(1)(aa) of the **Fair Trading Act**
1999 after "contractual term" insert "or a class of
contractual term".

18. Statute law revision

In section 63(2) of the **Fair Trading Act 1999**,
for "section 61(b), (c) and (i)" substitute "sections
61(1)(b), 61(1)(c) and 61(1)(i)".

19. New Schedule 2 substituted

For Schedule 2 to the **Fair Trading Act 1999**
substitute—

'SCHEDULE 2

**CONTACT SALES AGREEMENTS/
TELEPHONE MARKETING AGREEMENTS**

PART 1—NOTICE TO PURCHASER

*The following notice is to appear on the front page of a
contact sales agreement or telephone marketing agreement
document and, in the case of a contact sales agreement,
must be signed by the purchaser:*

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"IMPORTANT NOTICE TO THE PURCHASER

YOU HAVE A RIGHT TO CANCEL THIS AGREEMENT
WITHIN **10 DAYS FROM AND INCLUDING—**

- * **IN THE CASE OF A CONTACT SALES AGREEMENT (for example, a door-to-door sale), THE DAY YOU SIGNED THE AGREEMENT;
OR**
- * **IN THE CASE OF A TELEPHONE MARKETING AGREEMENT (that is, an agreement made over the telephone), THE DAY YOU RECEIVED THE AGREEMENT DOCUMENT.**

*(*Cross out whichever does not apply)*

IMPORTANT DETAILS ABOUT YOUR RIGHTS ARE
SET OUT IN THE CANCELLATION NOTICE
PROVIDED WITH THIS DOCUMENT.

Signed by the Purchaser: _____

Date: _____ "

PART 2—CANCELLATION NOTICE

*A Cancellation Notice in the following form must
accompany a contact sales agreement or a telephone
marketing agreement document:*

'CANCELLATION NOTICE

*(supplier or supplier's agent details and date and details of
agreement must be completed by supplier or supplier's
agent)*

TO THE SUPPLIER or SUPPLIER'S AGENT:

Supplier or supplier's agent's name:

Supplier or supplier's agent's address:

Supplier or supplier's agent's facsimile number (if any):

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Date of Agreement:

Details of goods or services to be supplied under Agreement:

I WISH TO CANCEL THIS AGREEMENT.

If this is an agreement for the supply of goods:

*I RETURN THE GOODS WITH THIS NOTICE or

*THE GOODS CAN BE COLLECTED FROM THE FOLLOWING ADDRESS: _____

(*Cross out whichever does not apply)

Signed by the Purchaser: _____

Date: _____

(The wording below must appear in bold capital print or type, of a size at least as large as the largest print or type appearing on any other part of the notice)

"NOTICE TO THE PURCHASER WANTING TO CANCEL THIS AGREEMENT"

IF YOU WISH TO CANCEL THIS AGREEMENT—

◆ PLEASE SIGN AND DATE THIS NOTICE OF CANCELLATION AND—

- LEAVE THE NOTICE AT THE SUPPLIER'S OR SUPPLIER'S AGENT'S ADDRESS; OR
- POST IT TO THE SUPPLIER OR THE SUPPLIER'S AGENT'S ADDRESS; OR
- FAX IT TO THE FAX NUMBER SET OUT IN THIS NOTICE;

OR

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Part 2—Amendments to the Fair Trading Act 1999

s. 19

- ◆ COMPLY WITH ONE OF THE FOLLOWING OTHER PERMITTED MEANS OF NOTIFYING A CANCELLATION—
 - IN THE CASE OF A CONTACT SALES AGREEMENT, IN ANY MANNER REPRESENTED TO YOU BY THE SUPPLIER OR THE SUPPLIER'S AGENT AT THE TIME OF ENTERING THE AGREEMENT
 - IN THE CASE OF A TELEPHONE MARKETING AGREEMENT, BY TELEPHONING THE SUPPLIER OR THE SUPPLIER'S AGENT.

THIS MUST BE DONE WITHIN 10 DAYS FROM AND INCLUDING THE DAY YOU—

- **SIGNED THE AGREEMENT (IN THE CASE OF A CONTACT SALES AGREEMENT); OR**
- **RECEIVED THE AGREEMENT DOCUMENT (IN THE CASE OF A TELEPHONE MARKETING AGREEMENT)**
("THE COOLING-OFF PERIOD").

YOU MAY STILL BE REQUIRED TO PAY A FAIR PRICE FOR GOODS WHICH CANNOT BE RETURNED TO THE SUPPLIER UNLESS YOU ENTERED INTO THE AGREEMENT BECAUSE THE SUPPLIER OR THE SUPPLIER'S AGENT MADE A FALSE OR MISLEADING REPRESENTATION ABOUT YOUR NEED FOR THE GOODS.

THE SUPPLIER OR THE SUPPLIER'S AGENT MUST NOT REQUIRE YOU TO PAY FOR SERVICES PROVIDED TO YOU DURING THE COOLING-OFF PERIOD.

IF YOU CANCEL THIS AGREEMENT DURING THE COOLING-OFF PERIOD, THE SUPPLIER IS ENTITLED TO APPLY TO THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL ("VCAT") FOR AN ORDER THAT YOU HAVE TO PAY A REASONABLE AMOUNT FOR THE SERVICES YOU RECEIVED BEFORE YOU CANCELLED THE AGREEMENT. YOU WILL NOT BE REQUIRED TO PAY ANYTHING

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IF VCAT DECIDES THAT THE SUPPLIER OR THE
SUPPLIER'S AGENT HAS BREACHED THE **FAIR
TRADING ACT 1999** IN RELATION TO THIS
AGREEMENT, FOR EXAMPLE, BY MAKING A FALSE
OR MISLEADING STATEMENT TO YOU ABOUT
YOUR NEED FOR THE SERVICES."!!

Fair Trading (Further Amendment) Act 2003
Act No.

Part 3—Amendments to Other Acts

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PART 3—AMENDMENTS TO OTHER ACTS

20. Amendments to the Co-operatives Act 1996

(1) In section 59(1) of the **Co-operatives Act 1996**, for "With the approval of the Governor in Council, the Treasurer" **substitute** "The Treasurer".

(2) After section 59(1) of the **Co-operatives Act 1996** **insert**—

"(1A) The Treasurer must obtain the approval of the Governor in Council to execute a guarantee under sub-section (1) if the guarantee would involve the Treasurer in a liability exceeding 5 per cent of the aggregate liability permissible under section 60."

(3) In section 60(1) of the **Co-operatives Act 1996**, for "\$20 000 000" **substitute** "\$30 000 000 (or, if a higher amount is prescribed for the purposes of this section, that amount)".

21. Amendments to the Credit (Administration) Act 1984

(1) In section 26(3) of the **Credit (Administration) Act 1984** **omit** "in the prescribed form".

(2) In section 26(3)(b) of the **Credit (Administration) Act 1984**, for "entry and search" **substitute** "entry and search or to the seizure of anything or to the taking of any sample, copy or extract".

(3) In section 86AB(a), (b) and (c) of the **Credit (Administration) Act 1984** after "organisations" (wherever occurring) **insert** "or the Director".

See:
Act No.
84/1996.
Reprint No. 2
as at
1 July 2002.
LawToday:
www.dms.
dpc.vic.
gov.au

See:
Act No.
10091/1984.
Reprint No. 4
as at
1 September
1999
and
amending
Act No.
35/2000.
LawToday:
www.dms.
dpc.vic.
gov.au

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22. Amendments to the Electricity Industry Act 2000

(1) For section 35(7A) of the **Electricity Industry Act 2000** substitute—

"(7A) If an agreement for the sale and supply of electricity is amended as a result of a variation under sub-section (3) or (4) and—

(a) the agreement is a contact sales agreement within the meaning of the **Fair Trading Act 1999**, section 61(1)(g) of that Act does not apply to that amendment; or

(b) the agreement is a telephone marketing agreement within the meaning of the **Fair Trading Act 1999**, section 67E(3)(c) of that Act does not apply to that amendment.

(7B) Sections 67E(1) and 67I to 67M of the **Fair Trading Act 1999** do not apply to a contract for the supply or sale of electricity to a domestic or small business customer.

(7C) Section 67H of the **Fair Trading Act 1999** does not apply to a contract for the supply or sale of electricity to a domestic or small business customer unless the terms and conditions determined for the purpose of sub-section (1) (in compliance with sub-section (2)) require the inclusion of a cooling-off period in that contract.

(7D) If section 67H(1) of the **Fair Trading Act 1999** applies to a contract for the supply or sale of electricity to a domestic or small business customer then, for the purposes of that sub-section, the domestic or small business customer is deemed to have received the document evidencing the contract and the notice on the day on which

See:
Act No.
68/2000.
Reprint No. 1
as at
13 June 2002
and
amending
Act Nos
10/2002,
30/2003 and
40/2003.
LawToday:
www.dms.
dpc.vic.
gov.au

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the licensee is taken under that contract to have given the document and notice to the customer."

- (2) In section 35(8) of the **Electricity Industry Act 2000** insert the following definition—

' "**cooling-off period**" means a period within which a person is entitled under a contract to cancel the contract;'

- (3) After section 36(5) of the **Electricity Industry Act 2000** insert—

"(5A) Sections 67E(1) and 67I to 67M of the **Fair Trading Act 1999** do not apply to a contract for the supply or sale of electricity to a relevant customer.

(5B) Section 67H of the **Fair Trading Act 1999** does not apply to a contract for the supply or sale of electricity to a relevant customer unless the terms and conditions determined for the purpose of sub-section (1) require the inclusion of a cooling-off period in that contract.

(5C) If section 67H(1) of the **Fair Trading Act 1999** applies to a contract for the supply or sale of electricity to a relevant customer then, for the purposes of that sub-section, the relevant customer is deemed to have received the document evidencing the contract and the notice on the day on which the licensee is taken under that contract to have given the document and notice to the customer."

- (4) In section 36(6) of the **Electricity Industry Act 2000** insert the following definition—

' "**cooling-off period**" means a period within which a person is entitled under a contract to cancel the contract;'

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- (5) In section 39(10) of the **Electricity Industry Act 2000**, in the definition of "cooling-off period" for "63 or 71" **substitute** "63, 67H or 71".

23. Amendment to the Fair Trading (Amendment) Act 2003

In section 78 of the **Fair Trading (Amendment) Act 2003**, for "insert" **substitute** "substitute".

See:
Act No.
30/2003.
LawToday:
www.dms.
dpc.vic.
gov.au

24. Further amendments to the Fair Trading (Amendment) Act 2003

- (1) In section 2(3) of the **Fair Trading (Amendment) Act 2003**, for "31 December 2003" **substitute** "1 July 2004".

- (2) In section 11 of the **Fair Trading (Amendment) Act 2003** in proposed section 32JA(1), after "business" **insert** "(other than services of a professional nature provided by a qualified architect or engineer)".

- (3) In section 11 of the **Fair Trading (Amendment) Act 2003**, after proposed section 32KA(4) **insert**—

"(5) Sub-section (4) does not apply to materials supplied in connection with a supply of services of a professional nature provided by a qualified architect or engineer, other than in relation to the condition of merchantable quality contained in section 32I."

- (4) In section 11 of the **Fair Trading (Amendment) Act 2003**, for proposed section 32N(2)(e) **substitute**—

"(e) the term was brought to the attention of the purchaser prior to the supply of the recreational services."

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(5) In section 11 of the **Fair Trading (Amendment) Act 2003**, in proposed section 32NA(1) omit "or (e)".

25. New section 32KAB inserted in the Fair Trading (Amendment) Act 2003

In section 11 of the **Fair Trading (Amendment) Act 2003**, after proposed section 32KA insert—

"32KAB. Certain agreements excluded

A reference in sections 32J, 32JA, 32K and 32KA(1) to services does not include a reference to services (or any materials supplied in connection with those services) that are, or are to be, provided, granted or conferred under—

- (a) a contract for or in relation to the transportation or storage of goods for the purposes of a business, trade, profession or occupation carried on or engaged in by the person for whom the goods are transported or stored; or
- (b) a contract of insurance."

26. Amendments to the Gas Industry Act 2001

(1) For section 42(7A) of the **Gas Industry Act 2001** substitute—

"(7A) If an agreement for the sale and supply of gas is amended as a result of a variation under sub-section (3) or (4) and—

- (a) the agreement is a contact sales agreement within the meaning of the **Fair Trading Act 1999**, section 61(1)(g) of that Act does not apply to that amendment; or

See:
Act No.
31/2001.
Reprint No. 1
as at
2 July 2002
and
amending
Act Nos
30/2003 and
40/2003.
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dpc.vic.
gov.au

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(b) the agreement is a telephone marketing agreement within the meaning of the **Fair Trading Act 1999**, section 67E(3)(c) of that Act does not apply to that amendment.

(7B) Sections 67E(1) and 67I to 67M of the **Fair Trading Act 1999** do not apply to a contract for the supply or sale of gas to a domestic or small business customer.

(7C) Section 67H of the **Fair Trading Act 1999** does not apply to a contract for the supply or sale of gas to a domestic or small business customer unless the terms and conditions determined for the purpose of sub-section (1) (in compliance with sub-section (2)) require the inclusion of a cooling-off period in that contract.

(7D) If section 67H(1) of the **Fair Trading Act 1999** applies to a contract for the supply or sale of gas to a domestic or small business customer then, for the purposes of that sub-section, the domestic or small business customer is deemed to have received the document evidencing the contract and the notice on the day on which the licensee is taken under that contract to have given the document and notice to the customer."

(2) In section 42(8) of the **Gas Industry Act 2001** insert the following definition—

' "**cooling-off period**" means a period within which a person is entitled under a contract to cancel the contract;'

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(3) After section 43(5) of the **Gas Industry Act 2001** **insert**—

"(5A) Sections 67E(1) and 67I to 67M of the **Fair Trading Act 1999** do not apply to a contract for the supply or sale of gas to a relevant customer.

(5B) Section 67H of the **Fair Trading Act 1999** does not apply to a contract for the supply or sale of gas to a relevant customer unless the terms and conditions determined for the purpose of sub-section (1) require the inclusion of a cooling-off period in that contract.

(5C) If section 67H(1) of the **Fair Trading Act 1999** applies to a contract for the supply or sale of gas to a relevant customer then, for the purposes of that sub-section, the relevant customer is deemed to have received the document evidencing the contract and the notice on the day on which the licensee is taken under that contract to have given the document and notice to the customer."

(4) In section 43(6) of the **Gas Industry Act 2001** **insert** the following definition—

' "**cooling-off period**" means a period within which a person is entitled under a contract to cancel the contract;'

(5) In section 46(10) of the **Gas Industry Act 2001**, in the definition of "cooling-off period" for "63 or 71" **substitute** "63, 67H or 71".

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27. Amendments to the Motor Car Traders Act 1986

- (1) In section 82AG(3) of the **Motor Car Traders Act 1986** omit "in the prescribed form".
- (2) In section 82AG(3)(b) of the **Motor Car Traders Act 1986**, for "entry and search" substitute "entry and search or to the seizure of anything or to the taking of any sample, copy or extract".

See:
Act No.
104/1986.
Reprint No. 4
as at
1 September
1999
and
amending
Act Nos
101/1998,
35/2000,
27/2001,
44/2001,
84/2001 and
8/2003.
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28. Amendments to the Second-Hand Dealers and Pawnbrokers Act 1989

- (1) For section 7(2)(d) of the **Second-Hand Dealers and Pawnbrokers Act 1989** substitute—
 "(d) lodged with the Authority not less than 1 month before the day on which the applicant proposes to commence business as a second-hand dealer."
- (2) In section 8B(3) of the **Second-Hand Dealers and Pawnbrokers Act 1989**, for "a fee of \$150 or any other fee that is prescribed" substitute "the prescribed fee or, if no fee is prescribed, \$150".
- (3) In section 10A(3)(b) of the **Second-Hand Dealers and Pawnbrokers Act 1989**, for "a fee of \$150 or any other fee that is prescribed" substitute "the prescribed fee or, if no fee is prescribed, \$150".

See:
Act No.
54/1989.
Reprint No. 5
as at
1 January
2003.
LawToday:
www.dms.
dpc.vic.
gov.au

Fair Trading (Further Amendment) Act 2003
Act No.

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(4) For section 11AA(1) of the **Second-Hand Dealers and Pawnbrokers Act 1989** **substitute—**

"(1) A person whose registration is endorsed under this Part must pay to the Authority the prescribed annual endorsement fee or, if no fee is prescribed, an annual endorsement fee of \$400.

(1A) The annual endorsement fee must be paid on the same date as the annual registration fee is payable under section 11(1)."

(5) For section 11A(4) of the **Second-Hand Dealers and Pawnbrokers Act 1989** **substitute—**

"(4) The fee for late payment or lodgement is the prescribed fee or, if no fee is prescribed, \$20."

(6) In section 26J(3) of the **Second-Hand Dealers and Pawnbrokers Act 1989** **omit** "in the prescribed form".

(7) In section 26J(3)(b) of the **Second-Hand Dealers and Pawnbrokers Act 1989**, for "entry and search" **substitute** "entry and search or to the seizure of anything or to the taking of any sample, copy or extract".

29. Amendments to the Travel Agents Act 1986

(1) In section 39I(3) of the **Travel Agents Act 1986** **omit** "in the prescribed form".

(2) In section 39I(3)(b) of the **Travel Agents Act 1986**, for "entry and search" **substitute** "entry and search or to the seizure of anything or to the taking of any sample, copy or extract".

See:
Act No.
52/1986.
Reprint No. 3
as at
1 September
1999
and
amending
Act Nos
35/2000,
44/2001 and
8/2003.
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Endnotes

ENDNOTES

By Authority. Government Printer for the State of Victoria.