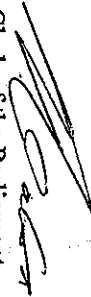


2008

Fair Trading

No. 22

Examined and certified by:


Clerk of the Parliament

In the name and on behalf of Her Majesty Queen Elizabeth the Second I hereby assent to
this Act this 28th day of November 2008



Sir F. Goodwin
Queen's Representative

ANALYSIS

- | | | | |
|--|---|-----|---|
| 1. | Short title and commencement | 17. | Misleading and deceptive conduct generally |
| 2. | Interpretation | 18. | Misleading and deceptive conduct in relation to goods |
| 3. | Application of Act to conduct outside the Cook Islands | 19. | Misleading and deceptive conduct in relation to services |
| 4. | Application of Act to the Crown | 20. | Misleading and deceptive conduct in relation to employment |
| 5. | Application of Act to Crown corporations | | |
| PART I | | | |
| OFFICE AND COMMISSIONER OF CONSUMER AFFAIRS | | | |
| 6. | Office and Commissioner of Consumer Affairs | 21. | <i>False Representations</i> False or misleading representations |
| 7. | Appointment of Commissioner | 22. | False representations and other misleading conduct in relation to land |
| 8. | Commissioner not to hold conflicting office | 23. | Limited application of sections 17 to 22 of this Act to news media |
| 9. | Term of office of Commissioner | | |
| 10. | Vacation, removal or suspension of Commissioner from office | 24. | Certain conduct in relation to trade marks prohibited |
| 11. | Officers and employees | | |
| 12. | Delegation of powers by Commissioner | 25. | <i>Unfair Practices</i> Offering gifts and prizes |
| 13. | Confidentiality | 26. | Trading stamp schemes prohibited |
| 14. | Functions and powers of the Commissioner | 27. | Bait advertising |
| 15. | Money to be appropriated by Parliament for purposes of this Act | 28. | Referral selling |
| | | 29. | Demanding or accepting payment without intending to supply as ordered |
| 16. | Annual report | 30. | Misleading representations about certain business activities |
| PART 2 | | | |
| MISLEADING AND DECEPTIVE CONDUCT, FALSE REPRESENTATIONS, AND UNFAIR PRACTICES | | | |
| | | 31. | Harassment and coercion |
| | | 32. | Pyramid selling schemes |
| | | 33. | Provisions of this Part of this Act not limited by reference to other provisions of this Part of this Act |
- Misleading and Deceptive Conduct*

| | | | |
|-----|--|-----|--|
| 34. | Importation of goods bearing false trade description | 45. | <i>Jurisdiction</i> |
| | <u>PART 3</u> | 46. | Jurisdiction of High Court |
| | <u>CONSUMER INFORMATION</u> | | Jurisdiction of Justices of the Peace |
| 35. | Consumer information standards | 47. | <i>Offences</i> |
| 36. | Compliance with consumer information standards | | Contraventions of provisions of Parts 2, 3, 4 and 5 an offence |
| | <u>PART 4</u> | 48. | <i>Civil Proceedings</i> |
| | <u>PRODUCT SAFETY</u> | | Injunctions may be granted by Court for contravention of Parts 2, 3, 4 and 5 |
| 37. | Product safety standards | 49. | Order to disclose information or publish advertisement |
| 38. | Compliance with product safety standards | 50. | Other orders |
| 39. | Unsafe goods | 51. | Defences |
| 40. | Compulsory product recall | 52. | Conduct by servants or agents |
| 41. | Importation of certain goods prohibited | 53. | Finding in proceedings to be evidence |
| | <u>PART 5</u> | | <u>PART 7</u> |
| | <u>SAFETY OF SERVICES</u> | | <u>MISCELLANEOUS PROVISIONS</u> |
| 42. | Meaning of "services" | 54. | Power to search |
| 43. | Safety standards in respect of services | 55. | Powers conferred by warrant |
| 44. | Compliance with services safety standards | 56. | Duties relating to warrant |
| | <u>PART 6</u> | 57. | Proceedings privileged |
| | <u>ENFORCEMENT AND REMEDIES</u> | 58. | Repeal of Merchandise Marks Act |
| | | 59. | Saving of other laws |

2008, No. 22

An Act to provide for the appointment of a Commissioner of Consumer Affairs, to prohibit certain conduct and practices in trade, to provide for the disclosure of consumer information relating to the supply of goods and services, and to promote safety of products and services

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short title and commencement - (1) This Act may be cited as the Fair Trading Act 2008.

(2) This Act shall come into force on 1st December 2008.

2. Interpretation - (1) In this Act, unless the context otherwise requires -

“acquire” -

- (a) in relation to goods, includes to obtain by way of gift, purchase, or exchange; and also includes to take on lease, hire, or hire purchase;
 - (b) in relation to services, includes accept;
 - (c) in relation to interests in land, includes to obtain by way of gift, purchase, exchange, lease or licence,
- and “acquisition” has a corresponding meaning;

“advertisement” means any form of communication made to the public or a section of the public for the purpose of promoting the supply of goods or services or the sale or granting of an interest in land;

“business” means any undertaking -

- (a) that is carried on whether for gain or reward or not; or
- (b) in the course of which -
 - (i) goods or services are acquired or supplied; or
 - (ii) any interest in land is acquired or disposed of, whether free of charge or not;

“Commissioner” means the Commissioner of Consumer Affairs appointed pursuant to section 7 of this Act;

“Court” means the High Court of the Cook Islands;

“credit instrument” means any agreement (whether in writing or not) acknowledging an obligation to pay a sum or sums of money on demand or at any future time or times;

“document” means a document in any form whether signed or initialled or otherwise authenticated by its maker or not; and includes -

- (a) any writing on any material;
- (b) any information recorded or stored by means of any tape-recorder, computer or other device; and any material subsequently derived from information so recorded or stored;
- (c) any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means;
- (d) any book, map, plan, graph, or drawing;
- (e) any photograph, film, negative, tape, computer drive, disc, or other device (including any electronic device) in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced;

“Goods” include -

- (a) ships, aircraft, and vehicles;
- (b) animals, including fish;
- (c) minerals, trees, and crops, whether on, under, or attached to land or not;
- (d) gas and electricity;

“Local authority” includes every district or island local authority and every public body or other authority created by or pursuant to any Act;

“Minister” means the Minister of the Crown responsible for the Ministry;

“Ministry” means the Ministry of Internal Affairs;

“Officer of the Commissioner” and “Officer” mean -

- (a) any person appointed pursuant to section 11(1) of this Act; and
- (b) any person employed or engaged under section 12(6) of this Act;

“person” includes a local authority, and any association of persons whether incorporated or not;

“place” includes any premises, building, aircraft, ship, carriage, vehicle, box, or receptacle;

“price” includes valuable consideration in any form, whether direct or indirect; and includes any consideration that in effect relates to the acquisition or supply of goods or services or the acquisition or disposition of any interest in land, although ostensibly relating to any other matter or thing;

“services” includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges, or facilities that are or are to be provided, granted, or conferred and, without limiting the generality of the foregoing, also includes the rights, benefits, privileges, or facilities that are or are to be provided, granted, or conferred under any of the following classes of contract -

- (a) a contract for, or in relation to -
 - (i) the performance of work (including work of a professional nature), whether with or without the supply of goods; or
 - (ii) the provision of, or the use or enjoyment of facilities for, accommodation, amusement, the care of persons or animals or things, entertainment, instruction, parking, or recreation; or
 - (iii) the conferring of rights, benefits, or privileges for which remuneration is payable in the form of a royalty, tribute, levy, or similar exaction;

- (b) a contract of insurance, including life assurance, and life reinsurance;
- (c) a contract between a bank and a customer of the bank;
- (d) any contract for, or in relation to, the lending of money or granting of credit, or the making of arrangements for the lending of money or granting of credit, or the buying or discounting of a credit instrument, or the acceptance of deposits,

but does not include rights or benefits in the form of the supply of goods or the performance of work under a contract of service;

“Secretary” means the Secretary of Internal Affairs (being the Head of the Ministry);

“supply” -

- (a) in relation to goods, includes supply (or re-supply) by way of gift, sale, exchange, lease, hire, or hire purchase; and
- (b) in relation to services, includes provide, grant, or confer; and “supply” as a noun, “supplied”, and “supplier” have corresponding meanings;

“trade” means any trade, business, industry, profession, occupation, activity of commerce, or undertaking relating to the supply or acquisition of goods or services or to the disposition or acquisition of any interest in land.

(2) In this Act, a reference to engaging in conduct shall be read as a reference to doing or refusing to do an act, and includes -

- (a) omitting to do an act; or
- (b) making it known that an act will or, as the case may be, will not be done.

(3) In this Act -

- (a) a reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods, in pursuance of a supply of the goods;
- (b) a reference to the supply or acquisition of goods or services includes a reference to agreeing to supply or acquire goods or services;
- (c) a reference to the supply or acquisition of goods includes a reference to the supply or acquisition of goods together with other property or services or both;
- (d) a reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with property or other services or both;
- (e) a reference to the re-supply of goods acquired from a person includes a reference to -
 - (1) a supply of goods to another person in an altered form or condition; and

- (ii) a supply to another person of other goods in which the goods have been incorporated.

3. Application of Act to conduct outside the Cook Islands - This Act extends to the engaging in conduct outside the Cook Islands by any person resident or carrying on business in the Cook Islands to the extent that such conduct relates to the supply of goods or services or the granting of interests in land within the Cook Islands.

4. Application of Act to the Crown - (1) Subject to this section, this Act shall bind the Crown in so far as the Crown engages in trade.

(2) The Crown shall not be liable to be prosecuted for an offence against this Act but in any case where it is alleged that the Crown has contravened any provision of this Act and that contravention constitutes an offence, the Commissioner or the person directly affected by the contravention may apply to the Court for a declaration that the Crown has contravened that provision; and if the Court is satisfied beyond a reasonable doubt that the Crown has contravened that provision, it may make a declaration accordingly.

5. Application of Act to Crown corporations - (1) This Act applies to every body corporate that is an instrument of the Crown in respect of the Government of the Cook Islands engaged in trade.

(2) Notwithstanding any enactment or rule of law, proceedings under Part 6 of this Act may be brought against a body corporate referred to in subsection (1) of this section.

PART 1

OFFICE AND COMMISSIONER OF CONSUMER AFFAIRS

6. Office and Commissioner of Consumer Affairs - There is established a Division of the Ministry to be known as the Office of Consumer Affairs.

7. Appointment of Commissioner - (1) There shall be appointed by the Secretary, a Commissioner for Consumer Affairs. The Commissioner shall be the administrative head of the Office of Consumer Affairs and shall, subject to this Act and any regulations made hereunder, exercise the functions and powers vested in the Commissioner by this and any other Act.

(2) No person shall be appointed as Commissioner other than a person who is of good character, has good communication skills and who has had at least 5 years experience in consumer affairs, commerce or accounting.

8. Commissioner not to hold conflicting office - The Commissioner and any other person appointed under section 11 or section 12(6) shall not be engaged in (whether as principal or agent) or be employed in, any other occupation which is incompatible with or which may give rise to a conflict of interest in the due performance and proper discharge of the Commissioner's functions and powers.

9. Term of office of Commissioner - (1) The Commissioner shall hold office for such term, not exceeding 3 years as the Secretary shall specify in writing but may from time to time be reappointed.

(2) Except where the office of Commissioner becomes vacant or the Commissioner is removed from office under section 10, the Commissioner shall, notwithstanding subsection (1), continue in office until a successor comes into office, notwithstanding that the term of appointment may have expired.

(3) There shall be paid to the Commissioner such remuneration by way of fees, salary, wages, or allowances as may from time to time be determined by the Secretary.

10. Vacation, removal or suspension of Commissioner from office - (1) The Commissioner may at any time resign from office by delivering a notice in writing to that effect to the Secretary.

(2) The Secretary may terminate the appointment of the Commissioner for disability affecting performance of duty, neglect of duty, or misconduct proved to his or her satisfaction.

(3) If the office of Commissioner becomes vacant, the vacancy created shall be filled in accordance with section 7.

11. Officers and employees - (1) The Commissioner shall be responsible for the appointment and termination of appointment of such persons as are necessary for carrying out the functions of the Commissioner.

(2) The remuneration and terms and conditions of any person employed under this section shall be determined by the Commissioner following consultation with the Secretary.

(3) Any person employed under this section shall, in the performance of that person's duties and functions, be responsible to the Commissioner.

12. Delegation of powers by Commissioner - (1) The Commissioner may, from time to time in writing, delegate to any officer or employee of the Office of Consumer Affairs, any of the powers or functions conferred on the Commissioner by this Act or any other Act, except this power of delegation.

(2) Subject to any general or special directions given or conditions imposed by the Commissioner on a person to whom any powers are delegated, that person to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

(3) Every person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

(4) A delegation under this section may be revoked at any time.

(5) The delegation of any power by the Commissioner shall not prevent the exercise of that power by the Commissioner.

(6) The Commissioner may, in addition to delegating his or her powers pursuant to this section, contract out to any other persons or organisations of established competence and reputation, any of the functions to be performed by the Commissioner pursuant to section 14, other than any discretionary power vested in the Commissioner under this or any other Act.

13. Confidentiality - (1) The Commissioner, and any person employed by the Commissioner pursuant to section 11, and any person contracted under section 12(6), who, except where permitted under this Act or any other Act, directly or indirectly discloses or uses or permits the use of any information acquired in the course of the performance of their duties, commits an offence and shall be liable on conviction to a fine of \$5,000.

(2) A person convicted pursuant to this section shall, in addition to such fine also be liable to forfeit to the Crown any personal gain or benefit resulting from the commission of the offence.

14. Functions and powers of the Commissioner - (1) The Commissioner shall exercise the functions and powers vested in the Commissioner by this or any other Act.

(2) The Commissioner shall recommend to the Minister legislative, regulatory, administrative, or other action that will promote fair trading, the disclosure of consumer information relating to the supply of goods and services, and product safety.

(3) The Commissioner shall -

- (a) make available or co-operate in making available -
 - (i) for the guidance of persons engaged in trade and other interested persons, general information with respect to their rights and obligations under this Act; and
 - (ii) for the guidance of consumers, general information with respect to the rights and obligations of persons under this Act affecting the interests of consumers; and
- (b) undertake studies and publish reports and information regarding matters affecting the interests of consumers; and
- (c) consult with and assist any association or body of persons in developing and promoting the observance of standards of conduct for the purpose of ensuring compliance with the provisions of this Act.

15. Money to be appropriated by Parliament for purposes of this Act - All fees, salaries, wages, allowances, expenses, and other expenditure payable or incurred under or in the administration of this Act shall be payable out of money to be appropriated by Parliament for the purpose.

16. Annual report - (1) Within 3 months after the 30th day of June in each year, the Commissioner shall furnish to the Minister a report of the Commissioner's operations under this Act during the 12 months preceding that date.

(2) A copy of the report shall be laid before Parliament by the Minister.

PART 2
MISLEADING AND DECEPTIVE CONDUCT, FALSE REPRESENTATIONS,
AND UNFAIR PRACTICES

Misleading and Deceptive Conduct

17. Misleading and deceptive conduct generally - No person shall, in trade, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.
18. Misleading and deceptive conduct in relation to goods - No person shall, in trade, engage in conduct that is liable to mislead or deceive the public as to the nature, manufacturing process, characteristics, suitability for a purpose, or quantity of goods.
19. Misleading and deceptive conduct in relation to services - No person shall, in trade, engage in conduct that is liable to mislead or deceive the public as to the nature, characteristics, suitability for a purpose, or quantity of services.
20. Misleading and deceptive conduct in relation to employment - No person shall, in relation to employment that is, or is to be, or may be offered by that person or any other person, engage in conduct that is misleading or deceptive, or is likely to mislead or deceive, as to the availability, nature, terms or conditions, or any other matter relating to that employment.

False Representations

21. False or misleading representations - No person shall, in trade, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services, make -
- (a) a false or misleading representation that goods are of a particular kind, standard, quality, grade, quantity, composition, style, or model, or have had a particular history or particular previous use; or
- (b) a false or misleading representation that services are of a particular kind, standard, quality, or quantity, or that they are supplied by any particular person or by any person of a particular trade, qualification, or skill; or
- (c) make a false or misleading representation that a particular person has agreed to acquire goods or services; or
- (d) make a false or misleading representation that goods are new, or that they are reconditioned, or that they were manufactured, produced, processed, or reconditioned at a particular time; or
- (e) make a false or misleading representation that goods or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses, or benefits; or
- (f) make a false or misleading representation that a person has any sponsorship, approval, endorsement, or affiliation; or
- (g) make a false or misleading representation with respect to the price of any goods or services; or

- (h) make a false or misleading representation concerning the need for any goods or services; or
- (i) make a false or misleading representation concerning the existence, exclusion, or effect of any condition, warranty, guarantee, right, or remedy; or
- (j) make a false or misleading representation concerning the place of origin of goods.

22. False representations and other misleading conduct in relation to land -
 (1) No person shall, in trade, in connection with the sale or grant or possible sale or grant of an interest in land or with the promotion by any means of the sale or grant of an interest in land -

- (a) falsely represent that a person has any sponsorship, approval, endorsement, or affiliation; or
- (b) make a false or misleading representation concerning the nature of the interest in the land, the price payable for the land, the location of the land, the characteristics of the land, the use to which the land is capable of being put or may lawfully be put, or the existence or availability of access to and from or any facilities associated with the land.
- (2) No person shall use physical force, harassment, or coercion in connection with the sale or grant or possible sale or grant of an interest in land, or the payment for an interest in land.
- (3) In this section "interest", in relation to land, means a legal or equitable estate or interest in the land, and includes -
 - (a) a right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of shares, or by virtue of a contract to purchase shares, in a company that owns the land or building; or
 - (b) a right, power, or privilege, over, or in connection with, the land.

23. Limited application of sections 17 to 22 of this Act to news media - (1)
 Nothing in sections 17 to 22 of this Act applies to the publication of any information or matter in a newspaper by the publisher of that newspaper, not being -

- (a) the publication of an advertisement; or
- (b) the publication of any information or matter relating to the supply or possible supply or the promotion of the supply or use of goods or services or the sale or grant or the possible sale or grant or the promotion of the sale or grant of an interest in land by -
 - (i) that publisher or, where that publisher is a body corporate, by any interconnected body corporate; or
 - (ii) any person who is a party to any contract, arrangement, or understanding with that publisher relating to the content, nature or tenor of the information or matter.

(2) Nothing in sections 17 to 22 of this Act applies to the broadcasting of any information or matter by a broadcasting body, not being -

- (a) the broadcasting of an advertisement; or
- (b) the broadcasting of any information or matter relating to the supply or possible supply or the promotion of the supply or use of goods or services or the sale or grant or the possible sale or grant or the promotion of the sale or grant of an interest in land by -
 - (i) that broadcasting body, or where that broadcasting body is a body corporate, by any interconnected body corporate; or
 - (ii) any person who is a party to any contract, arrangement, or understanding with that broadcasting body relating to the content, nature or tenor of the information or matter.

(3) For the purposes of this section -

- (a) the expressions "broadcasting" has the same meaning as it has in section 2 of the Broadcasting Act 1989;
- (b) "newspaper" means any periodical publication that is published (whether in the Cook Islands or elsewhere) at intervals not exceeding 40 days, or any copy of any newspaper so defined; and every publication that at any time accompanies and is distributed along with any newspaper shall be deemed to form part of that newspaper;
- (c) "publisher", in relation to a newspaper, means its proprietor;
- (d) any 2 or more bodies corporate are to be treated as interconnected if one of them is a body corporate of which the other is a subsidiary (within the meaning of section 158 of the Companies Act 1955 as applied by the Companies Act 1970-71), or if both of them are subsidiaries (within the meaning of that section) of one and the same body corporate; and "interconnected body corporate" shall be construed accordingly.

24. Certain conduct in relation to trade marks prohibited - (1) No person shall, in trade -

- (a) forge any trade mark; or
- (b) falsely apply to any goods any trade mark or sign so nearly resembling a trade mark as to be likely to mislead or deceive; or
- (c) falsely use in relation to the provision of services any trade mark or sign so nearly resembling a trade mark as to be likely to mislead or deceive.

(2) For the purposes of this section a person shall be deemed to forge a trade mark if that person -

- (a) without the consent of the proprietor of the trade mark, intentionally makes that trade mark or a sign so nearly resembling that trade mark as to be likely to mislead or deceive; or
 - (b) intentionally falsifies any genuine trade mark, whether by alteration, effacement or otherwise.
- (3) For the purposes of this Part of this Act -

“Sign” includes -

- (a) a brand, colour, device, heading, label, letter, name, numeral, signature, smell, sound, taste, ticket, or word; and
- (b) any combination of signs;

“Trade mark” means a trade mark within the meaning of the Trade Marks Act 1953; and includes -

- (a) in the case of goods, any sign used upon or in connection with the goods for the purpose of indicating that they are -
 - (i) goods of the proprietor of the sign by virtue of manufacture, selection, certification, dealing with, or offering to supply; or
 - (ii) goods of a member of a body of persons that is the proprietor of the sign; or
 - (iii) goods certified by the proprietor of the sign in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic; and
- (b) in the case of services, any sign used in connection with the provision of the services for the purpose of indicating that they are -
 - (i) services of the proprietor of the sign; or
 - (ii) services of a member of a body of persons that is the proprietor of the sign.

Unfair Practices

25. Offering gifts and prizes - No person shall, -

- (a) in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services; or
 - (b) in connection with the sale or grant or the possible sale or grant of an interest in land or with the promotion by any means of the sale or grant of an interest in land,
- offer gifts, prizes, or other free items with the intention of not providing them or of not providing them as offered.

26. Trading stamp schemes prohibited - (1) No person shall, in trade, supply or arrange for the supply of any trading stamp, either directly or indirectly to any manufacturer, packer, importer, distributor, or seller of goods or supplier of services.

(2) In this section “trading stamp” means any coupon, stamp, token, cover, package, document or thing -

- (a) that is supplied or intended to be supplied in connection with the sale of goods or services or for the purpose of promoting the sale of goods or services; and
- (b) that is redeemable by a person who is not the manufacturer, packer, importer, or seller of goods or supplier of services in connection with which it is supplied; and
- (c) that entitles the holder on redemption to money, goods or services or qualifies the holder on redemption to receive money, goods or services.

27. Bait advertising - (1) No person shall, in trade, advertise for supply at a specified price goods or services which that person -

- (a) does not intend to offer for supply; or
- (b) does not have reasonable grounds for believing can be supplied by that person at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

(2) Any person who has advertised goods or services for supply at a specified price shall offer such goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

(3) In a prosecution of any person in relation to a failure to offer goods or services to a person (in this subsection referred to as the customer) in accordance with subsection (2), it is a defence if the person proves that -

- (a) he or she offered to supply, or to procure another person to supply, goods or services of the kind advertised to the customer within a reasonable time, in a reasonable quantity, and at the advertised price, and where the offer was accepted by the customer, the person has so supplied or procured another person to supply the goods or services; or
- (b) he or she offered to supply immediately, or to procure another person to supply within a reasonable time, equivalent goods or services to the customer in a reasonable quantity and at the price at which the first-mentioned goods or services were advertised, and, where the offer was accepted by the customer, the person has so supplied, or procured another person to supply, such equivalent goods or services.

28. Referral selling - (1) Subject to subsection (2), no person shall induce another person to acquire goods or services by representing that the person acquiring the goods or services will, after the contract for the acquisition of the goods or services is made, receive a rebate, commission, or other benefit in return for giving that person the names of prospective customers or otherwise assisting that person to supply goods or services to other users or consumers, if receipt of the rebate, commission, or other benefit is contingent on an event occurring after that contract is made.

(2) Nothing in subsection (1) of this section applies to the acquisition of goods for re-supply.

29. Demanding or accepting payment without intending to supply as ordered

- No person shall demand or accept payment or other consideration for goods or services, if at the time of the demand or acceptance that person -

- (a) does not intend to supply the goods or services; or
- (b) intends to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is demanded or accepted; or
- (c) does not have reasonable grounds to believe that that person will be able to supply the goods or services within any specified period; or if no period is specified, within a reasonable time.

30. Misleading representations about certain business activities - (1) No person shall make a representation that is false or misleading in a material particular concerning the profitability or risk or any other material aspect of any business activity that that person represents as one that can be, or can be to a substantial extent, carried on at or from a person's place of residence.

(2) No person who invites, whether by advertisement or otherwise, persons to engage or participate, or to offer or apply to engage or participate, in a business activity requiring -

- (a) the performance by the persons concerned of work; or
- (b) the investment of money by the persons concerned and the performance by them of work associated with the investment.

shall make, with respect to the profitability or risk or any other material aspect of the business activity, a representation that is false or misleading in a material particular.

31. Harassment and coercion - No person shall use physical force or harassment or coercion in connection with the supply or possible supply of goods or services or the payment for goods or services.

32. Pyramid selling schemes - (1) No person shall promote or operate a pyramid selling scheme.

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

- (a) A scheme -
 - (i) that provides for the supply of goods or services or both for reward; and

- (ii) that, to many participants in the scheme, constitutes primarily an opportunity to sell an investment opportunity rather than an opportunity to supply goods or services; and
- (iii) that is or is likely to be unfair to many of the participants in the scheme in that -
 - (A) the financial rewards of many of those participants are dependent on the recruitment of additional participants (whether or not at successively lower levels); and
 - (B) the number of additional participants in the scheme that must be recruited to produce reasonable financial rewards to participants in the scheme is not attainable or is not likely to be attainable by many of the participants in the scheme;
- (b) a scheme of the type commonly known as a chain letter scheme (whether or not it provides for the supply of goods or services or both) that is likely to be unfair to many of the participants in the scheme, in that -
 - (i) the financial rewards of many of those participants are dependent on the recruitment of additional participants; and
 - (ii) the number of additional participants in the scheme that must be recruited to produce reasonable financial rewards to participants in the scheme is not attainable or is not likely to be attainable by many of the participants in the scheme.

33. Provisions of this Part of this Act not limited by reference to other provisions of this Part of this Act - No provision of this Part of this Act limits or affects any other provision of this Part of this Act.

34. Importation of goods bearing false trade description - (1) This section applies to any goods to which a false trade description is applied.

(2) All goods to which this section applies shall not be imported into the Cook Islands, and shall be deemed to be included among goods prohibited to be imported under section 46 of the Customs Act 1913, and the provisions of that Act shall apply to such goods accordingly.

(3) In this section, "false trade description" means any representation which if made in connection with the supply or possible supply of goods or with the promotion by any means of the supply or use of goods would constitute a contravention of section 21(a), (d), or (j) of this Act.

(4) For the purposes of subsection (1) of this section, a false trade description shall be deemed to be applied to goods if -

- (a) it is woven in, impressed on, worked into, or annexed or affixed to the goods; or

- (b) it is applied to a covering, label, reel, or thing in or with which the goods are supplied.
- (5) For the purposes of this section, a trade mark is not a representation.

PART 3 CONSUMER INFORMATION

35. Consumer information standards - (1) The Queen's Representative acting upon the recommendation of the Minister may, from time to time by Order in Executive Council, make regulations prescribing, in respect of goods or services of any description or any class or classes of goods or services, a consumer information standard or two or more consumer information standards relating to all or any of the following matters -

- (a) the disclosure of information relating to the kind, grade, quantity, origin, performance, care, composition, contents, design, construction, use, price, finish, packaging, promotion, or supply of the goods or services;
- (b) the form and manner in which that information must be disclosed on or in relation to, or in connection with, the supply or re-supply, or possible supply or re-supply, or promotion of the supply of the goods or services.
- (2) The Minister must not make a recommendation under this section unless -
 - (a) the Minister has consulted with such persons or representatives of such persons as the Minister considers will be substantially affected by any Order in Executive Council made in accordance with the recommendation and those persons have had a reasonable opportunity to comment to the Minister; and
 - (b) the Minister has considered all such comments.

(3) A failure to comply with subsection (2) does not affect the validity of any Order in Council made under subsection (1).

(4) No Order in Executive Council may be made under this section in respect of any medicine or related product, except in relation to the price of the medicine or related product.

36. Compliance with consumer information standards - (1) If a consumer information standard in respect of goods or services relates to a matter specified in section 35(1), a person must not supply, or offer to supply, or advertise to supply those goods or services unless that person complies with that consumer information standard.

(2) If two or more consumer information standards in respect of goods or services relate to a matter specified in section 35(1), a person must not supply, or offer to supply, or advertise to supply those goods or services unless that person complies with one of those consumer information standards.

(3) Nothing in subsection (1) or subsection (2) applies to goods that are intended for use outside the Cook Islands if there is applied to the goods -

- (a) a statement that the goods are for export only; or
- (b) a statement indicating, by the use of words authorised by regulations made under this section, that the goods are intended to be used outside the Cook Islands,

and it must be presumed for the purposes of this section, unless the contrary is established, that the goods so identified are intended to be so used.

(4) For the purposes of subsection (3), a statement is deemed to be applied to goods if the statement is -

- (a) woven in, impressed on, worked into, or annexed or affixed to the goods; or
- (b) applied to a covering, label, reel, or thing in or with which the goods are supplied.

PART 4 PRODUCT SAFETY

37. Product safety standards - (1) The Queen's Representative on the recommendation of the Minister may from time to time by Order in Executive Council, make regulations in respect of goods of any description or any class or classes of goods, prescribing for the purpose of preventing or reducing the risk of injury to any person, a product safety standard or 2 or more product safety standards relating to all or any of the following matters -

- (a) the performance, composition, content, manufacture, processing, design, construction, finish or packaging of the goods;
- (b) the testing of the goods during or after manufacture or processing;
- (c) the form and content of markings, warnings, or instructions to accompany the goods.

(2) The Minister must not make a recommendation under this section unless -

- (a) the Minister has consulted with such persons or representatives of such persons as the Minister considers will be substantially affected by any Order in Executive Council made in accordance with the recommendation and those persons have had a reasonable opportunity to comment to the Minister; and
- (b) the Minister has considered any such comments.

(3) A failure to comply with subsection (2) does not affect the validity of any Order in Executive Council made under subsection (1).

38. Compliance with product safety standards - (1) If a product safety standard in respect of goods relates to a matter specified in section 37(1), a person must not supply, or offer to supply, or advertise to supply those goods unless that person complies with that product safety standard.

(2) If two or more product safety standards in respect of goods relate to a matter specified in section 37(1), a person must not supply, or offer to supply, or advertise to supply those goods unless that person complies with one of those product safety standards.

(3) Nothing in subsection (1) or subsection (2) applies to goods that are intended for use outside the Cook Islands if there is applied to the goods -

- (a) a statement that the goods are for export only; or

(b) a statement indicating, by the use of words authorised by regulations made under this section, that the goods are intended to be used outside the Cook Islands, and it must be presumed for the purposes of this section, unless the contrary is established, that the goods so identified are intended to be so used.

(4) For the purposes of subsection (3), a statement is deemed to be applied to goods if the statement is -

- (a) woven in, impressed on, worked into, or annexed or affixed to the goods; or
- (b) applied to a covering, label, reel, or thing in or with which the goods are supplied.

39. Unsafe goods - (1) Where it appears to the Minister that goods of any description or any class or classes of goods will or may cause injury to any person, the Minister may, by notice in the Gazette, declare the goods to be unsafe goods.

(2) A notice made pursuant to subsection (1) of this section shall, unless previously revoked by the Minister by notice in the Gazette, remain in force for 18 months after the date of publication of the notice in the Gazette.

(3) Where -

- (a) a period of 18 months has elapsed after the date of publication of a notice in the Gazette pursuant to subsection (1) of this section declaring goods to be unsafe goods; and
 - (b) a product safety standard has not been prescribed pursuant to section 37 in respect of the goods,
- the Minister may, by notice in the Gazette, prohibit the supply of the goods indefinitely or for such period as may be specified in the notice.
- (4) A notice made pursuant to subsection (3) may be amended or revoked at any time by the Minister by notice in the Gazette.
- (5) No person shall supply, or offer to supply, or advertise to supply, goods -

- (a) in respect of which there is in force a notice declaring the goods to be unsafe goods; or
- (b) in respect of which there is in force a notice under subsection (3) of this section.

40. Compulsory product recall - (1) Where a person (in this section referred to as "the supplier") has in trade supplied goods which -

- (a) do not comply with a product safety standard prescribed in respect of the goods; or
- (b) are goods of a kind which will or may cause injury to any person,

and the supplier has not recalled the goods or taken satisfactory action to recall the goods, the Minister may, by notice to the supplier, require the supplier to take the action specified in subsection (3).

(2) Where a person (in this section referred to as "the supplier") has in trade supplied goods which are goods of a kind in relation to which there is in force a notice under sub-section (1) or (3) of section 39, and the supplier has not recalled the goods or taken satisfactory action to recall the goods, the Minister may by notice to the supplier require the supplier to take the action specified in subsection (3).

(3) For the purposes of subsections (1) and (2), the Minister may require the supplier, in a manner and within a period specified and at the supplier's own expense, to do all or any of the following -

- (a) recall the goods;
- (b) disclose to the public information relating to -
 - (i) the characteristics of the goods which render them unsafe; or
 - (ii) the circumstances in which use of the goods is unsafe; or
 - (iii) any other matters relating to the goods or the use of the goods as may be specified;
- (c) repair or replace the goods or refund to any person to whom the goods were supplied or re-supplied the price paid for the goods or any lesser amount as may be reasonable having regard to the use that person has had of the goods.
- (4) Where a notice is given to a supplier under subsection (1) or subsection (2), that supplier shall comply in all respects with the notice.
- (5) Where a notice is given to a supplier under subsection (1) or subsection (2) that supplier shall not, in trade -
 - (a) where the notice identifies a defect in, or a dangerous characteristic of the goods, supply goods of a kind to which the notice relates which contain that defect or have that characteristic; or
 - (b) in any other case, supply goods of a kind to which the notice relates.

41. Importation of certain goods prohibited - All goods the supply of which would constitute a contravention of this Part of this Act shall not be imported into the Cook Islands and shall be deemed to be included among goods prohibited to be imported under section 46 of the Customs Act 1913 and the provisions of that Act shall apply to such goods accordingly.

PART 5 SAFETY OF SERVICES

42. Meaning of "services" - For the purposes of this Part of this Act "services" means the performance of work by way of -

- (a) the maintenance, repair, treatment, processing, installation, assembly, cleaning or alteration of goods;
- (b) the construction, maintenance, repair, cleaning or alteration of any building or other fixture on land or a public or private road;
- (c) the development of land;

- (d) the transportation of goods.

43. Safety standards in respect of services - (1) The Queen's Representative on the recommendation of the Minister may from time to time by Order in Executive Council, make regulations in respect of services of any description or any class or classes of services, prescribing for the purpose of preventing or reducing the risk of injury to any person, a services safety standard or two or more services safety standards relating to the performance of those services.

(2) The Minister must not make a recommendation under this section unless -

- (a) the Minister has consulted with such persons or representatives of such persons as the Minister considers will be substantially affected by any Order in Executive Council made in accordance with the recommendation and those persons have had a reasonable opportunity to comment to the Minister; and
- (b) the Minister has considered any such comments.
- (3) A failure to comply with subsection (2) does not affect the validity of any Order in Executive Council made under this section.

44. Compliance with services safety standards - (1) If a services safety standard in respect of services is prescribed under section 43(1), a person must not supply, or offer to supply, or advertise to supply those services unless that person complies with that services safety standard.

(2) If two or more services safety standards in respect of services are prescribed under section 43(1), a person must not supply, or offer to supply, or advertise to supply those services unless that person complies with 1 of those services safety standards.

PART 6

ENFORCEMENT AND REMEDIES

Jurisdiction

45. Jurisdiction of High Court - In accordance with this Part of this Act, the High Court shall have jurisdiction to hear and determine the following matters -

- (a) criminal proceedings for offences against section 47 of this Act;
- (b) applications for injunctions under section 48 of this Act; and
- (c) applications for orders under sections 49 and 50 of this Act.

46. Jurisdiction of Justices of the Peace - A Justice of the Peace shall have jurisdiction to hear and determine applications for orders under section 50(2)(c) to (f) of this Act.

Offences

47. Contraventions of provisions of Parts 2, 3, 4, and 5 an offence - (1)
Every person who contravenes any of the provisions of Part 2 (except sections 17, 22(2) and 31), or of Parts 3, 4 or 5 of this Act, commits an offence and is liable on conviction
- (a) in the case of a person other than a body corporate, to a fine not exceeding \$10,000; and
 - (b) in the case of a body corporate, to a fine not exceeding \$20,000.
- (2) Proceedings under this section may be commenced at any time within 2 years after the matter giving rise to the contravention arose.

Civil Proceedings

48. Injunctions may be granted by Court for contravention of Parts 2, 3, 4, and 5 - (1) The Court may, on the application of the Commissioner or any other interested person, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute any of the following -
- (a) a contravention of any of the provisions of Parts 2, 3, 4 or 5 of this Act;
 - (b) any attempt to contravene such a provision;
 - (c) aiding, abetting, counselling, or procuring any other person to contravene such a provision;
 - (d) inducing, or attempting to induce, any other person, whether by threats, promises or otherwise, to contravene such a provision;
 - (e) being in any way directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of such a provision;
 - (f) conspiring with any other person to contravene such a provision.
- (2) The Court may at any time rescind or vary an injunction granted under this section.
- (3) Where an application is made to the Court under this section for the grant of an injunction restraining a person from engaging in conduct of a particular kind the Court may -
- (a) if it is satisfied that the person has engaged in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or
 - (b) if in the opinion of the Court it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind,
- whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind.
- (4) Where an application is made to the Court under this section for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the Court may, -

- (a) if it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or
 - (b) if in the opinion of the Court it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind,
- whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

49. Order to disclose information or publish advertisement - Where, on the application of the Commission, the Court is satisfied that a person has engaged in conduct constituting a contravention of any of the provisions of Parts 2 to 5 of this Act, the Court may (whether or not that person has previously engaged in such conduct), make either or both of the following orders -

- (a) an order requiring that person, or any other person involved in the contravention, to disclose, at that person's own expense, to the public, or to a particular person or to persons included in a particular class of persons, in such manner as is specified in the order, such information, or information of such a kind, as is so specified, being information that is in the possession of the person to whom the order is directed or to which that person has access;
- (b) an order requiring that person, or any other person involved in the contravention, to publish, at that person's own expense, in such manner and at such times as are specified in the order, corrective statements the terms of which are specified in, or are to be determined in accordance with, the order.

50. Other orders - (1) Where, in any proceedings under this Part of this Act, or on the application of any person, the Court finds that a person, whether or not that person is a party to the proceedings, has suffered, or is likely to suffer, loss or damage by conduct of any other person that constitutes or would constitute -

- (a) a contravention of any of the provisions of Parts 2 to 5 of this Act; or
- (b) aiding, abetting, counselling, or procuring the contravention of such a provision; or
- (c) inducing by threats, promises, or otherwise the contravention of such a provision; or
- (d) being in any way directly or indirectly knowingly concerned in, or party to, the contravention of such a provision; or
- (e) conspiring with any other person in the contravention of such a provision -

the Court may (whether or not it grants an injunction or makes any other order under this Part of this Act) make all or any of the orders referred to in subsection (2) of this section.

(2) For the purposes of subsection (1) of this section, the Court may make the following orders -

- (a) an order declaring the whole or any part of a contract made between the person who suffered, or is likely to suffer, the loss or damage and the person who engaged in the conduct referred to in subsection (1) of this section or of a collateral arrangement relating to such a contract, to be void and, if the Court thinks fit, to have been void *ab initio* or at all times on and after such date, before the date on which the order is made, as is specified in the order;
 - (b) an order varying such a contract or arrangement in such manner as is specified in the order and, if the Court thinks fit, declaring the contract or arrangement to have had effect as so varied on and after such date, before the date on which the order is made, as is so specified;
 - (c) an order directing the person who engaged in the conduct, referred to in subsection (1) of this section to refund money or return property to the person who suffered the loss or damage;
 - (d) an order directing the person who engaged in the conduct, referred to in subsection (1) of this section to pay to the person who suffered the loss or damage the amount of the loss or damage;
 - (e) an order directing the person who engaged in the conduct, referred to in subsection (1) of this section at that person's own expense, to repair, or provide parts for, goods that had been supplied by the person who engaged in the conduct to the person who suffered, or is likely to suffer, the loss or damage;
 - (f) an order directing the person who engaged in the conduct, referred to in subsection (1) of this section at that person's own expense, to supply specified services to the person who suffered, or is likely to suffer, the loss or damage.
- (3) In the exercise of jurisdiction under this section a Justice of the Peace shall not -
- (a) make an order under subsection (2)(c) of this section directing a person to refund money or return property where the amount of money or the value of the property exceeds \$5,000;
 - (b) make an order under subsection (2)(d) of this section requiring a person to pay an amount exceeding \$5,000;
 - (c) make an order under subsection (2)(e) of this section directing a person to repair goods or provide parts for goods where the value of the work required to repair the goods, or the value of the parts, as the case may be, exceeds \$5,000;

- (d) make an order under subsection (2)(f) of this section directing a person to supply services where the value of the services exceeds \$5,000.
- (4) An application under subsection (1) may be made at any time within 3 years after the date on which the loss or damage, or the likelihood of loss or damage, was discovered or ought reasonably to have been discovered.
- (5) An order made under subsection (2)(a) or (b) of this section shall not prevent proceedings being instituted or commenced under this Part of this Act.
- (6) Nothing in this section limits or affects the Illegal Contracts Act 1987.

51. Defences - (1) Subject to this section, it is a defence to a prosecution for an offence against section 47 of this Act if the defendant proves -

- (a) that the contravention was due to a reasonable mistake; or
- (b) that the contravention was due to reasonable reliance on information supplied by another person; or
- (c) that -
 - (i) the contravention was due to the Act or default of another person, or to an accident or to some other cause beyond the defendant's control; and
 - (ii) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.
- (2) For the purposes of subsection (1)(b) and (c) the term "another person" does not include -

- (a) a servant or agent of the defendant; or
- (b) where the defendant is a body corporate, a director, servant or agent of the defendant.

(3) A defendant is not, without the leave of the High Court, entitled to rely on the defence provided by subsection (1)(b) of this section that the contravention was due to reasonable reliance on information supplied by another person, or by subsection (1)(c)(i) of this section that the contravention was due to the Act or default of another person, unless the defendant has, not later than 14 days before the date on which the hearing of the proceedings commences, served on the informant and filed in the Court, a notice in writing identifying that person.

(4) It is a defence to a prosecution for an offence against section 47, or to any other proceedings under this Part of this Act in relation to a contravention of a provision of this Act committed by the publication of an advertisement, if the defendant proves -

- (a) that the defendant's business is publishing or arranging for the publication of advertisements; and
- (b) that the defendant received the advertisement, or the information contained in the advertisement, as the case may be, in the ordinary course of that business and did not know and had no reason to suspect that the publication of the advertisement or the publication of the advertisement containing that information, as the case may be, would constitute a contravention of the provision.

(5) Subject to subsection (6) of this section, it is a defence to a prosecution for an offence against section 47 of this Act, or to any other proceedings under this Part of this Act, in relation to a contravention of section 35 of this Act, if the defendant proves -

- (a) that the goods to which the proceedings relate were acquired by the defendant for the purpose of re-supply from a person (not being an agent of a person outside the Cook Islands) who carried on in the Cook Islands the business of supplying such goods; and
- (b) that the defendant did not know, and could not with reasonable diligence have ascertained, that the goods did not comply with the consumer information standard or that the defendant had not complied with that standard in relation to the goods, as the case may be, or that the defendant relied in good faith on a representation by the person from whom the defendant acquired the goods that a consumer information standard had not been prescribed for those goods.

(6) A defendant is not, without the leave of the Court, entitled to rely on any defence provided by subsection (5) unless the defendant has, not later than 14 days before the date on which the hearing of the proceedings commences, filed in the Court and served, in the case of proceedings for an offence, on the informant, and in the case of any other proceedings, on the person commencing those proceedings, a notice in writing identifying the person by whom the goods were supplied.

52. Conduct by servants or agents - (1) Where, in proceedings under this Part of this Act in respect of any conduct engaged in by a body corporate, being conduct in relation to which any of the provisions of this Act applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, acting within the scope of that person's actual or apparent authority, had that state of mind.

(2) Any conduct engaged in on behalf of a body corporate -

- (a) by a director, servant, or agent of the body corporate, acting within the scope of that person's actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant, or agent of the body corporate, given within the scope of the actual or apparent authority of the director, servant or agent,

shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.

(3) Where, in a proceeding under this Part of this Act in respect of any conduct engaged in by a person other than a body corporate, being conduct in relation to which a provision of this Act applies, it is necessary to establish the state of mind of the person, it is sufficient to show that a servant or agent of the person, acting within the scope of that person's actual or apparent authority, had that state of mind.

(4) Any conduct engaged in on behalf of a person other than a body corporate -

(a) by a servant or agent of the person acting within the scope of that person's actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, given within the scope of the actual or apparent authority of the servant or agent,

shall be deemed, for the purposes of this Act, to have been engaged in also by the first-mentioned person.

(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for that intention, opinion, belief or purpose.

53. Finding in proceedings to be evidence - In any application for an order against a person under section 50 of this Act, a finding of any fact made in proceedings for an injunction under section 48 of this Act or for an order under section 49 of this Act, or for an offence under section 47 of this Act, being proceedings before the Court in which that person was found to have engaged in conduct of the kind referred to in section 50(1)(a) to (e) of this Act, is *prima facie* evidence of that fact and the finding may be proved by production of a document under the seal of the Court.

PART 7

MISCELLANEOUS PROVISIONS

54. Power to search - (1) The Commissioner may, from time to time, authorise an employee of the Commissioner to search under a warrant issued under subsection (2) of this section, any place named in the warrant for the purpose of ascertaining whether a person has engaged in or is engaging in conduct that constitutes or may constitute a contravention of this Act.

(2) A Judge, who is satisfied on application supported by an affidavit made on oath by a person who is authorised under subsection (1) of this section that there are reasonable grounds to believe that it is necessary for the purpose of ascertaining whether or not a person has engaged in or is engaging in conduct that constitutes or may constitute a contravention of this Act for an employee of the Commissioner to search any place may, by warrant, authorise that employee to search a place specified in the warrant.

(3) A person who applies for a warrant shall, having made reasonable inquiries, disclose -

- (a) details of every previous application for a warrant to search the place that the person knows has been made within the preceding 12 months; and
- (b) the result of the application.

55. Powers conferred by warrant - (1) A warrant issued under section 54 authorises the person named in it -

- (a) to enter and search the place specified in the warrant on one occasion within one month of the date of issue of the warrant at a time that is reasonable in the circumstances;

- (b) to use such assistance as is reasonable in the circumstances;
 - (c) to use such force for gaining entry and for breaking open any article or thing as is reasonable in the circumstances; to search for and remove documents or any article or thing that the person executing the warrant believes on reasonable grounds may be relevant;
 - (e) to search for and remove goods that the person executing the warrant believes on reasonable grounds may be relevant;
 - (f) where necessary, to take copies of documents, or extracts from documents, that the person executing the warrant believes on reasonable grounds may be relevant;
 - (g) where necessary, to require a person to reproduce, or assist any person executing the warrant to reproduce, in useable form, information recorded or stored in a document.
- (2) A person assisting the person executing the warrant also has the powers referred to in paragraphs (c), (d), (e), and (f) of subsection (1) of this section.
- (3) The warrant shall be executed in accordance with such reasonable conditions as may be specified in the warrant when it is issued.
- (4) The Commissioner, or any person authorised in writing by the Commissioner for the purpose, may -
- (a) inspect and take copies of any documents or extracts from documents obtained pursuant to a warrant issued under section 54 of this Act; or
 - (b) inspect any goods obtained under any such warrant.

56. Duties relating to warrant - (1) A person executing a warrant under section 54 of this Act -

- (a) must have the warrant with him or her; and
 - (b) must produce it on initial entry and, if requested, at any subsequent time; and
 - (c) must identify himself or herself to the owner or occupier or person in charge of the place if that person is present; and
 - (d) must produce evidence of his or her identity.
- (2) A person who executes a warrant issued under section 54 of this Act must, before completing the search, leave in a prominent place at the place searched -
- (a) in the case of a search carried out at a time when the owner or occupier was not present, a written notice stating
 - (i) the date and time when the warrant was executed; and
 - (ii) the name of the person who executed the warrant; and
 - (b) in the case of a search where documents or goods were removed from the place being searched, a schedule of documents or goods that were removed during the search.

(3) If it is not practicable to prepare a schedule before completing the search, or if the owner or occupier of the place being searched consents, the person executing the warrant -

- (a) may, instead of leaving a schedule, leave a notice stating that documents or goods have been removed during the search and that, within 3 days of the search, a schedule will be delivered, left, or sent stating what documents or goods have been removed; and
- (b) must, within 3 days of the search -
 - (i) deliver a schedule to the owner or occupier; or
 - (ii) leave a schedule in a prominent position at the place searched; or
 - (iii) send a schedule by facsimile to the owner or occupier of the place searched.
- (4) Every schedule must state -
 - (a) the documents or goods that have been removed; and
 - (b) the location from where they were removed; and
 - (c) the location where they are being held.
- (5) The occupier or person in charge of the place that a person authorised pursuant to a warrant issued under section 54 of this Act enters for the purpose of searching must provide that person with all reasonable facilities and assistance in executing the warrant.
- (6) Every person who resists, obstructs, or delays any authorised person acting pursuant to a warrant issued under section 54 of this Act commits an offence and is liable on conviction to a fine not exceeding \$10,000 in the case of an individual, or \$20,000 in the case of a body corporate.

57. Proceedings privileged - (1) No proceedings, civil or criminal, shall lie against the Commissioner for anything the Commissioner may do or fail to do in the course of the exercise or intended exercise of the Commissioner's functions under this Act unless it is shown that the Commissioner acted without reasonable care or in bad faith.

(2) No proceedings, civil or criminal, shall lie against the Commissioner, or any officer employed by the Commissioner, for anything that person may do or say or fail to do or say in the course of the operations of the Commissioner under this Act, unless it is shown that that person acted in bad faith.

(3) Nothing in subsections (1) and (2) of this section applies in respect of proceedings for -

- (a) an offence against section 80 or section 116 of the Crimes Act 1969; or
- (b) the offence of conspiring to commit an offence against section 80 or section 116 of the Crimes Act 1969; or
- (c) the offence of attempting to commit an offence against section 80 or section 116 of the Crimes Act 1969.

58. Repeal of Merchandise Marks Act - The Merchandise Marks Act 1954 as applied in the Cook Islands by section 635 of the Cook Islands Act 1915, shall cease to have effect in the Cook Islands.