

MARKET COURT BILL

EXPLANATORY NOTES

The purpose of this Bill is to provide for the establishment of a Market Court which is to consider and deal with applications made by the Director of Consumer Affairs for orders in respect of traders who repeatedly engage in unfair conduct.

Clause 1 contains the short title, commencement provision and details of the division of the Bill into Parts and Divisions.

Clause 2 contains interpretations, including interpretations of “consumer” and “trader”.

Clause 3 provides that this Act is not to apply to the provision of services by traders subject to certain statutory licensing schemes.

Clause 4 establishes the Market Court and provides that it is to be constituted by a president and two advisory members. The president shall be a County Court judge and the advisory members shall be selected by the president from panels of trader and consumer representatives.

Clause 5 provides for the appointment of panels of trader and consumer representatives.

Clause 6 sets out the circumstances in which the president or any panel member may be removed from office.

Clause 7 deals with the functions of the president. Sub-clause (1) provides that the president alone shall decide all questions of law and fact. Sub-clause (2) empowers the president to refer questions of law to the Supreme Court for its opinion.

Clause 8 provides that the function of the advisory members is to assist the president and advise him on any matter other than a question of law.

Clause 9 enables parties to appear before the Court personally or by a lawyer or, with leave of the Court, by any other approved person.

Clause 10 provides that the Court may summon any person to appear before it to give evidence and produce documents.

Clause 11 provides for the manner in which evidence may be given to the Court.

Clause 12 prohibits the Court from awarding costs.

Clause 13 provides that, subject to this Act, the Court can determine its own procedure.

Clause 14 provides for the appointment of a registrar and other staff.

Clause 15 enables the Director to apply to the Court for an order or orders in respect of a trader who has repeatedly engaged in unfair conduct. Sub-clause (2) describes the conduct which is deemed to be unfair to consumers.

Clause 16 empowers the Court to make orders prohibiting a trader from engaging in unfair conduct or requiring contracts entered into by a trader to be in a specified form or to comply with specified terms and conditions.

Clause 17 empowers the Court to make orders prohibiting directors etc. from consenting to or conniving at the engaging in unfair conduct by bodies corporates.

Clause 18 provides that contracts shall not be void by reason only that they contravene or do not comply with Court orders but enables any party to such a contract to apply to the Court for an order declaring that contract void.

Clause 19 enables the Court to impose conditions on orders.

Clause 20 allows the Director to apply to the Court at any time for the discharge or variation of a Court order.

Interpretation.	2. In this Act unless inconsistent with the context or subject-matter :—	
“ Business.”	“ Business ” means any undertaking which is carried on for gain or reward and includes a professional practice.	
“ Conduct.”	“ Conduct ” includes the act of offering to enter into or entering into a contract.	5
“ Consumer.”	“ Consumer ” means a person (not being a corporation)— (a) who buys or hires goods otherwise than for re-sale or letting on hire or than in the course of or for the purposes of a business carried on by him or by a partnership of which he is a member ; or (b) for whom services are supplied for fee or reward otherwise than in the course of or for the purposes of a business carried on by him or by a partnership of which he is a member.	10 15
“ Director.”	“ Director ” means the Director of Consumer Affairs appointed for the purposes of the <i>Ministry of Consumer Affairs Act 1973</i> .	
“ Prescribed.”	“ Prescribed ” means prescribed by regulations made under this Act.	20
“ President.”	“ President ” means president of the Court.	
“ Registrar.”	“ Registrar ” means registrar of the Court.	
“ Services.”	“ Services ” includes professional services.	
“ The Court.”	“ The Court ” means the Market Court established by section 4 (1).	25
“ Trader.”	“ Trader ” means a person who carries on a business of supplying goods to or providing services for any person.	
Act not to apply to provision of services by certain traders.	3. The provisions of this Act shall not apply to the provision of services by any trader if— (a) he is entitled to provide those services by virtue of any registration licence or other authority granted or issued to him under or pursuant to any Act by any court authority board committee tribunal or other body ; and (b) a court authority board committee tribunal or other body has power in respect of him under or pursuant to any Act to cancel suspend or withdraw that registration licence or other authority for any reason affecting the conduct of that trader in relation to the provision of such services.	30 35 40

PART I.—MARKET COURT.

DIVISION I.—CONSTITUTION AND PROCEDURE.

4. (1) For the purposes of this Act there shall be a Court to be known as the “Market Court”.

Constitution
of Market
Court.

5 (2) The Court shall have an official seal and all summonses orders and other process issuing out of the Court shall be sealed or stamped with the official seal of the Court.

(3) The Court shall be constituted by a president and two advisory members.

10 (4) The president—

(a) shall be a judge of the County Court ;

(b) shall be appointed by the Governor in Council ;

15 (c) subject to this Act, shall hold office for such period (not exceeding five years) as is specified in the instrument of his appointment but shall be eligible for re-appointment ;

(d) shall be paid such travelling and other allowances as are fixed from time to time by the Governor in Council ; and

20 (e) shall not in respect of his office as president be subject to the provisions of the *Public Service Act 1974*.

(5) Of the advisory members of the Court—

25 (a) one shall be a person selected by the president from the panel of persons appointed by the Governor in Council under section 5 (1) (a) ; and

(b) one shall be a person selected by the president from the panel of persons appointed by the Governor in Council under section 5 (1) (b).

30 (6) The Governor in Council may appoint any other judge of the County Court to be acting president for any period during which the president is absent or unable to act.

(7) A person appointed under sub-section (6) as acting president shall—

35 (a) have all the powers of the president ; and

(b) be paid such travelling and other allowances as are fixed by the Governor in Council.

5. (1) For the purposes of this Act there shall be formed—

(a) a panel of persons appointed by the Governor in Council to represent the interests of traders ; and

Panels of
trader and
consumer
representatives.

(b) a panel

(b) a panel of persons appointed by the Governor in Council to represent the interests of consumers.

(2) The members of such panels—

(a) subject to this Act, shall hold office for such period (not exceeding five years) as is specified in their instruments of appointment but shall be eligible for re-appointment; 5

(b) shall, when acting as members of the Court, be paid—

(i) such remuneration as is fixed from time to time by the Governor in Council ; and

(ii) such travelling and other allowances as are fixed from time to time by the Governor in Council ; and 10

(c) shall not in respect of their office as members of such panels be subject to the provisions of the *Public Service Act 1974*. 15

(3) Subject to this Act, the Governor in Council may in the instruments of appointment of members of such panels specify terms and conditions of appointment.

Removal and resignation.

6. (1) Subject to sub-section (2), the president shall hold office during good behaviour. 20

(2) The Governor in Council may at any time remove the president from office if he becomes incapable of performing or neglects to perform the duties of his office or upon an address praying for such removal being presented to the Governor by both Houses of Parliament. 25

(3) The Governor in Council may at any time remove from office any member of a panel appointed under section 5 (1).

(4) The president or any member of such panel may resign his office by writing signed by him and delivered to the Governor in Council. 30

(5) In this section any reference to the president shall include a reference to any person appointed under section 4 (6) as acting president.

Function of the president.

7. (1) Subject to sub-section (2), the president alone shall decide all questions of law and of fact and shall make all decisions and determinations and give all directions required to be made or given by the Court and any decision determination or direction of the president shall be deemed to be a decision determination or direction of the Court. 35

(2) Where a question of law arises in proceedings before the Court the president may, if he thinks fit (on application made by 40

any

any party to the proceedings or without any such application), reserve the question in the form of a special case for the opinion of the Supreme Court.

8. The advisory members—
- 5 (a) may assist the president in any way he may require in the carrying out of the functions of the Court ; and
- (b) may advise the president on any matter other than a question of law—
- but shall not participate in the making of any decision or
- 10 determination of or the giving of any direction by the Court.
9. A party to any proceedings before the Court may appear and be heard—
- (a) personally ;
- (b) by counsel or a solicitor ; or
- 15 (c) with leave of the Court, by any other person approved by the Court.
10. (1) The Court may summon any person to appear before it to give evidence and to produce such documents (if any) as are referred to in the summons.
- 20 (2) A summons issued by the Court may be served upon the person to whom it is directed by delivering a true copy of the summons to that person himself or by leaving a true copy thereof for him at his last or most usual place of abode or of business with some other person apparently an inmate thereof or employed
- 25 thereat and apparently not less than sixteen years of age.
- (3) A summons issued by the Court under this section shall be signed by the registrar.
11. (1) Evidence material to any proceeding before the Court—
- (a) may be given orally or in writing ; and
- 30 (b) shall, if the Court so requires, be given upon oath or upon affirmation or declaration instead of on oath where the same is permitted by law.
- (2) The president is hereby empowered to administer an oath or, as the case may be, to take and receive an affirmation or
- 35 declaration for the purpose of taking and receiving evidence.
12. Costs shall not be allowed to or against any party to proceedings before the Court.
13. (1) Subject to this Act and the regulations, the procedure of the Court is in its discretion.

Function of
advisory
members.

Appearance.

Power to
take evidence.

Taking of
evidence
before Court.

No costs
allowable.

Procedure of
Court.

(2) In

(2) In the performance of its functions the Court may inform itself in such manner as it thinks fit and is not required to conduct any proceeding in a formal manner.

Registrar.

14. (1) Subject to the *Public Service Act* 1974, there shall be appointed a registrar of the Court and such other staff as are necessary for the purposes of this Act. 5

(2) The registrar shall keep a register in the prescribed form containing the prescribed particulars of all proceedings before the Court and of all determinations and orders made by the Court.

(3) The register kept by the registrar pursuant to sub-section (2) may be inspected free of charge at any reasonable time by any person on demand. 10

DIVISION 2.—JURISDICTION AND POWERS.

Application to
Court by
Director.

15. (1) Where it appears to the Director that a trader has in the course of a business repeatedly engaged in conduct that is unfair to consumers the Director may make application in the prescribed form to the Court for an order under section 16 (1) and, if the Director thinks fit, for an order under section 16 (2) in respect of that trader. 15

(2) For the purposes of this section conduct shall be deemed to be unfair to consumers if— 20

(a) it is misleading ;

(b) by means of it the trader takes advantage of the consumer having regard to the consumer's age experience means or needs ; 25

(c) it consists of offering to enter into or entering into a contract with a consumer the terms or conditions of which (whether as to consideration or otherwise) are such that no reasonable person would regard as just ;

(d) it consists of anything done or omitted to be done in breach of contract, whether or not civil proceedings in respect of such breach have been brought ; or 30

(e) it consists of a contravention of any enactment which imposes duties prohibitions or restrictions in respect of the carrying on of a business, whether or not proceedings in respect of such contravention have been brought. 35

Orders in
respect of
trader.

16. (1) Where the Court is satisfied that a trader has repeatedly engaged in unfair conduct within the meaning of section 15 it may make an order prohibiting the trader from engaging in such conduct. 40

(2) In addition to making an order under sub-section (1) the Court may, if it appears to it desirable to do so, (on application made

made by the Director or without any such application) make an order prohibiting the trader from entering in the course of a business into contracts with consumers unless the contracts are in such form or comply with such terms and conditions as the Court
5 may specify.

(3) Where on the hearing of an application under section 15 (1) for an order under sub-section (1) it appears to the Court desirable to do so, the Court may make an interim order prohibiting the trader from engaging in such conduct as is complained of in the
10 application pending final determination of the application by the Court.

(4) Where on the hearing of an application under section 15 (1) for an order under sub-section (2) it appears to the Court desirable to do so, the Court may make an interim order prohibiting the trader
15 pending final determination of the application by the Court from entering in the course of a business into contracts with consumers unless the contracts are in such form or comply with such terms and conditions as the Court may specify.

17. Where the Director makes an application to the Court under
20 section 15 (1) for an order or orders in respect of a trader who is a body corporate and on the hearing of that application the Court is satisfied—

Provisions as to persons consenting to or conniving at unfair conduct.

(a) that the trader has repeatedly engaged in unfair conduct within the meaning of section 15 ; and

25 (b) that that conduct has been so engaged in with the consent or connivance of a person who is concerned or takes part in the management of that body corporate—

it may, in addition to any other order it may make under section 16, make an order prohibiting that person from consenting to or
30 conniving at the engaging in such conduct by that body corporate or any other body corporate the management of which he is concerned or takes part in.

18. (1) Subject to the provisions of this section, a contract entered into by a trader shall not be illegal void or unenforceable
35 by reason only that it contravenes or does not comply with an order made by the Court.

Provisions as to contracts which contravene or do not comply with Court orders.

(2) A party to any contract that contravenes or does not comply with an order made by the Court may at any time within three months after the date on which the contract was entered into make
40 application in the prescribed form to the Court for an order under sub-section (3) in respect of that contract.

(3) Where on the hearing of an application under sub-section (2) it appears to the Court desirable to do so, the Court may make an order declaring that the contract to which the application relates

is

is void and where the Court makes such an order any goods chattels moneys or other consideration delivered by or on behalf of any party to the contract shall be recoverable in any court of competent jurisdiction.

Power to impose conditions on orders.

19. Where in any proceedings before it the Court makes an order under any provision of this Act, the Court may impose on such order such conditions (whether as to the duration of the order or otherwise) as the Court thinks fit. 5

Application by Director for discharge or variation of order.

20. (1) Where it appears to the Director that the conduct of any person in respect of whom the Court has made an order under section 16 or 17 has been such since the making of that order that it is desirable to have that order discharged or varied, the Director may make application in the prescribed form to the Court for an order under paragraph (a) or paragraph (b) (as the case may be) of sub-section (2). 10 15

(2) Where on the hearing of an application under sub-section (1) it appears to the Court desirable to do so, the Court may make such one of the following orders as is appropriate, that is—

(a) an order discharging the order previously made by the Court ; or 20

(b) an order varying the order previously made by the Court in any specified particular.

(3) In sub-section (2) the reference to orders previously made by the Court includes a reference to such orders as varied by the Court pursuant to this section. 25

Duties of registrar on receipt of application.

21. Where any person makes application to the Court under any provision of this Act the registrar shall—

(a) cause notice of the application and its particulars to be given, as soon as is practicable, to—

(i) in the case of an application made by the Director under section 15 (1), the trader in respect of whom the application is made ; 30

(ii) in the case of an application made by a party to a contract under section 18 (2), the other party or parties to the contract ; and 35

(iii) in the case of an application made by the Director under section 20 (1), the person in respect of whom the Court has previously made the order ; and

(b) arrange a day time and place for the hearing of the application and shall cause notice of that day time and place to be given to the applicant and to any other 40

person

person to whom notice is required to be given under paragraph (a) at least ten clear days before the date of the hearing of the application.

22. (1) Any person who makes application to the Court under any provision of this Act may at any time prior to the final determination by the Court of that application and whether before or after the Court has entered upon a hearing of the application withdraw that application. Withdrawal of application.

(2) Where under sub-section (1) the Director withdraws an application made by him after the Court has entered upon a hearing of that application, any order made by the Court under section 16 (3) or 16 (4) shall cease to have effect and shall be deemed never to have had effect.

23. The Court may, at any time in the course of proceedings before it, make such amendment to the application to which the proceedings relate as it thinks fit, either at the request of the person who made the application or of its own motion with the approval of that person. Amendment of application.

24. (1) The Court may from time to time adjourn the hearing of an application to such times and places and for such purposes as it considers necessary. Adjournment of application.

(2) The registrar shall cause notice of the time and place to which the hearing of an application is adjourned to be given, as soon as is practicable, to any person to whom notice of the application was given by the registrar under section 21 (a) and who was not present or represented at the hearing when the Court directed the adjournment.

25. (1) The Court shall, at all times throughout the hearing of an application made to it, be constituted by the same president and advisory members. Constitution of Court for hearing of application.

(2) If the hearing by the Court of any application is interrupted before the final determination of the application by the death incapacity removal or resignation of the president or any of the advisory members who constitute the Court, the hearing of the application shall, unless the president (of his own motion or on the application of any party to the proceedings) otherwise orders, be re-commenced before a newly-constituted Court.

26. (1) The Supreme Court shall give its opinion on a question of law referred to it under section 7 (2). Determination of questions of law by Supreme Court.

(2) Where a question of law arising in proceedings before the Court has been reserved for the opinion of the Supreme Court under section 7 (2), the Court shall not—

(a) make a decision to which the question is relevant until the Supreme Court has given its opinion on the question of law ; or

(b) proceed

(b) proceed in a manner or make a decision that is inconsistent with the opinion of the Supreme Court on the question of law.

(3) Where a question of law arises in proceedings before the Court and is not reserved for the opinion of the Supreme Court under section 7 (2), a party to the proceedings may, within 28 days after the determination by the Court of the proceedings, appeal to the Supreme Court against the determination of that question of law and if such party does so appeal he shall within that period of 28 days give notice in writing of such appeal and of the grounds thereof to the other party or parties or to any person who appeared for that party or those parties (as the case may be) in the proceedings before the Court. 5 10

(4) The Supreme Court may amend at any time a notice of appeal under sub-section (3). 15

(5) An appeal to the Supreme Court under sub-section (3) shall be heard and determined by the Supreme Court sitting as the Full Court and on the hearing of such appeal the Supreme Court shall make such order as is just and may either dismiss such appeal or reverse or vary the determination appealed from and may direct that the proceedings in which the question of law arose be re-heard or further heard by the Court and may make such order with respect to the costs of such appeal as the Supreme Court may think proper and such orders shall be final and without appeal. 20

(6) Where the Supreme Court orders proceedings to be re-heard or further heard by the Court under sub-section (5), the proceedings shall, unless the Supreme Court otherwise determines, be re-heard or further heard by the Court constituted by the same president and advisory members who heard and determined the proceedings in which the question of law arose. 25 30

(7) An appeal to the Supreme Court under sub-section (3) shall not operate as a stay of proceedings.

(8) Subject to the *Supreme Court Act* 1958, the judges of the Supreme Court may make rules (including rules with respect to costs) for or with respect to special cases reserved for the opinion of the Supreme Court under section 7 (2) and appeals to the Supreme Court under sub-section (3). 35

Determinations
and orders of
Court final.

27. Subject to sections 20 and 26, a determination made by the Court in any proceedings before it and any order made by the Court in such proceedings shall be final and binding on all parties to the proceedings and no appeal shall lie in respect thereof. 40

28. (1) Where

28. (1) Where in any proceedings before it the Court makes an order under section 16 (1) or 16 (2) the registrar shall cause to be published in the *Government Gazette* the prescribed particulars of such order. Publication of orders of Court.

5 (2) Where in any proceedings before it the Court makes an order under section 16 (1) or 16 (2) the Court may, if it considers it desirable to do so, order that such particulars of the order as it may specify shall be published in some newspaper or other publication generally circulating throughout Victoria.

10 29. Any person who fails to comply with an order of the Court shall be guilty of an offence. Failure to comply with orders of the Court.
Penalty : \$5,000.

DIVISION 3.—DEEDS OF ASSURANCE.

15 30. In any case where it appears to the Director that a trader has in the course of a business repeatedly engaged in conduct that is unfair to consumers within the meaning of section 15 the Director may attempt to obtain from that trader a deed of assurance executed by the trader the terms of which are to the satisfaction of the Director and are to the effect that the trader will refrain from
20 engaging in such conduct and where the Director obtains such a deed of assurance he shall not, subject to section 33 (a), make any application to the Court under section 15 (1) for an order or orders against that trader in respect of such conduct as is mentioned in the deed of assurance. Power of Director to obtain deed of assurance from trader.

25 31. (1) Where a trader has given such a deed of assurance as is mentioned in section 30 the Director shall— Deeds of assurance.

(a) cause the original deed of assurance to be given to the registrar ;

(b) cause a copy thereof to be given to the trader ; and

30 (c) himself retain a copy thereof.

(2) The registrar shall file all original deeds of assurance received by him under sub-section (1) (a) in a repository of such deeds to be kept by him and shall register all such deeds and keep a register to be called the Register of Deeds of Assurance which
35 shall be in the prescribed form and contain the prescribed particulars of deeds registered under this sub-section.

(3) The Register of Deeds of Assurance may be inspected free of charge at any reasonable time by any person on demand.

40 (4) A deed of assurance registered under sub-section (2) shall be presumed (until the contrary is shown) to have been executed by the trader by whom it was purportedly given.

32. (1) A trader

Failure to
comply with
deed of
assurance.

32. (1) A trader who fails to comply with a deed of assurance given by him under section 30 shall be guilty of an offence.

Penalty : \$5,000.

(2) A prosecution shall not be instituted in respect of an offence under sub-section (1) except by the Director and with the consent of the Court given on application made to the Court by the Director under section 33 (b). 5

Action by
Director in
respect of
failure to
comply with
deed of
assurance.

33. Where it appears to the Director that a trader has failed to comply with a deed of assurance given by him under section 30, the Director may— 10

(a) make application to the Court under section 15 (1) for an order or orders in respect of that trader ; and

(b) make application in the prescribed form to the Court for consent to the institution of a prosecution against that trader under section 32. 15

Duties of
registrar on
receipt of
application
under section
33 (b).

34. Where the Director makes an application to the Court under section 33 (b), the registrar shall—

(a) cause notice of that application and its particulars to be given, as soon as is practicable, to the trader in respect of whom the application is made ; and 20

(b) arrange for the application to be heard by the Court on the same date as that arranged under section 21 (b) for the hearing of the application by the Director pursuant to section 33 (a) and shall cause notice of that date to be given to the Director and to the trader at the same time as notice of the date of the hearing of the application by the Director pursuant to section 33 (a) is given by the registrar under section 21 (b). 25

Power of
Court on
application
under section
33.

35. (1) Where on the hearing of an application made to it by the Director pursuant to section 33 (a) the Court makes an order in respect of the trader under section 16 (1) the Court may, on the application of the Director under section 33 (b), consent to the institution of a prosecution against that trader under section 32. 30

(2) Where the Court refuses an application made to it by the Director pursuant to section 33 (a) the Court shall, in addition, refuse the application made to it by the Director under section 33 (b). 35

PART II.—MISCELLANEOUS.

Contempt of
Court.

36. (1) If any person—

(a) having been summoned to appear before the Court refuses or fails without reasonable excuse to appear 40

as

as required by the summons or to produce any document that he is required by the summons to produce ;

5 (b) appearing as a witness before the Court refuses or fails to be sworn or to make an affirmation or declaration when required so to do or to answer a question that he is required to answer by the Court ; or

(c) in the opinion of the president is guilty of wilful prevarication—

10 the president may direct the apprehension of any such person and if he thinks fit may commit him to prison for any time not exceeding one month or may impose on him a fine of not more than \$100 for every such offence and may order that in default of payment thereof immediately or within a specified time the offender be
15 committed to prison for a period not exceeding one month unless such fine is sooner paid.

(2) If any person—

20 (a) wilfully insults threatens interferes with or obstructs any member of the Court or the registrar or any member of the other staff assisting the Court in or in the vicinity of the Court or any member of the Court who is going to or returning from Court ;

25 (b) wrongfully influences or attempts to influence any member of the Court or the registrar or any member of the other staff assisting the Court or any witness or any person concerned in any way with the proceedings of the Court in relation to any matter being heard or to be heard by the Court ;

(c) wilfully interrupts proceedings of the Court ; or

30 (d) wilfully misbehaves in Court in any manner—

the president may direct the apprehension of any such person and if he thinks fit may commit him to prison for any time not exceeding six months or may impose on him a fine of not more than \$500 for every such offence and may order that in default of payment
35 thereof immediately or within a specified time the offender be committed to prison for a period not exceeding six months unless such fine is sooner paid.

40 (3) An order in the prescribed form or to the like effect may be issued by the president and shall be good and valid in law without any other order summons or adjudication whatsoever.

(4) Where any person is guilty of misconduct under this section the president may if he thinks fit accept an apology from that person for the misconduct and may remit any penalty or punishment for the same either wholly or in part.

37. (1) For

Provisions as
to proof.

37. (1) For the purposes of this Act—

- (a) the statement of a clerk of a municipality that a person is rated in respect of any land or premises to any general rate for the municipality within the municipal district of which such land or premises are situate ; 5
- (b) the production of the certificate of the Registrar-General or his deputy that any person appears from any memorial of registration of any deed conveyance or other instrument to be the owner or proprietor of any land ; and 10
- (c) the production of a certificate signed by the Registrar of Titles or any assistant registrar and authenticated by the seal of the Office of Titles that any person's name appears in any register book kept under the *Transfer of Land Act* 1958 as owner or proprietor 15
of any land—

shall (until the contrary is proved) be evidence that such person carries on a business of supplying goods or providing services at such land or premises.

(2) For the purposes of this Act the statement of any person 20
that a business name registered under the *Business Names Act* 1962 has been displayed on any premises or vehicle shall (until the contrary is proved) be evidence that the person in relation to whom the business name is registered carries on a business of 25
supplying goods or providing services at such premises or from
such vehicle.

(3) For the purposes of this Act the statement of any person
that the name of any person has been displayed on any premises
or vehicle shall (until the contrary is proved) be evidence that the
person so named carries on a business of supplying goods or 30
providing services at such premises or from such vehicle.

(4) For the purposes of this Act the production of any invoice
receipt or other document given or issued in connexion with the
supply of goods or the provision of services which bears the name
of any person shall (until the contrary is proved) be evidence that 35
such person carries on a business of supplying such goods or
providing such services.

(5) For the purposes of this Act the production of any statement
(being a statement that is likely to promote or made with the
intention of promoting the supply of goods or the provision of 40
services) which bears the name of any person shall (until the
contrary is proved) be evidence that such person carries on a business
of supplying such goods or providing such services.

(6) For the purposes of this Act where any statement (being a
statement that is likely to promote or made with the intention of 45
promoting

promoting the supply of goods or the provision of services) includes a telephone number which is listed in any publication purporting to be a telephone directory then the production of such statement and such telephone directory shall (until the contrary is proved) be evidence that the person whose name appears in such telephone directory in relation to the telephone number included in the statement carries on a business of supplying such goods or providing such services at the address which appears in that telephone directory in relation to that telephone number.

10 (7) In sub-sections (5) and (6) the expression "statement" includes the whole or part of any tag brand mark notice hand-bill newspaper or other publication and any written or spoken matter disseminated by broadcast, telecast or cinematograph or brought to the notice of the public in Victoria in any other manner
15 whatsoever.

38. (1) For the purposes of this Act any conduct engaged in by a servant or agent of a trader or, where the trader is a body corporate, by a director of that body corporate, at the direction of or with the consent knowledge acquiescence or agreement of the trader shall be deemed to have been engaged in by the trader.

Provisions as to conduct of servants, agents, &c. of trader.

(2) For the purposes of sub-section (1) it shall be presumed (until the contrary is shown) that any conduct engaged in by a servant agent or director (as the case may be) of a trader has been so engaged in at the direction of the trader.

25 39. For the purposes of this Act a contract entered into with a consumer by a trader in respect of whom there is in force an order made by the Court under section 16 (2) or 16 (4) which contains a term or condition which is inconsistent with a term or condition specified by the Court in such order as required to be included in
30 any such contract shall be deemed not to comply with the order.

Contracts inconsistent with Court order.

40. Notwithstanding anything to the contrary in any contract entered into in the course of a business by a trader with a consumer which provides for the supply of goods to or the provision of services for that consumer, this Act shall apply to any such contract
35 which is to be wholly or partly performed in Victoria.

Application of Act to contracts.

41. Where a person charged with an offence against this Act or any provision thereof is a body corporate any person who is concerned or takes part in the management of that body corporate may be charged with a like offence and where the body corporate is convicted of the offence a person charged pursuant to this section
40 with the like offence may be convicted of that offence and liable to the penalty for that offence unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

Offences by bodies corporate.

42. (1) All

- Judicial notice.** **42.** (1) All courts shall for the purposes of this Act take judicial notice of—
- (a) the official signature of a person who is or has been the president registrar or Director and of the fact that that person is or was the president registrar or Director, as the case may be ; and 5
 - (b) the official seal of the Court.
- (2) In this section “ court ” includes a person authorized by law or by consent of parties to receive evidence.
- Giving of notices.** **43.** Where under this Act a notice is required to be given to any person, the notice may be given by sending it by post to the person at his usual or last known place of abode or business. 10
- Secrecy.** **44.** A person who is or has been a member of the Court or the registrar or a member of the other staff assisting the Court shall not, either directly or indirectly, except in the performance of a duty under or in connexion with this Act, make a record of, or divulge or communicate to any person, any information concerning the affairs of any person acquired by him by reason of his office or employment under or for the purposes of this Act. 15
- Penalty : \$500. 20
- Protection for things done under Act.** **45.** An action shall not lie against the registrar, any member of the Court or any other person on account of any proceeding taken, any publication made or anything done under the authority of, or *bona fide* purportedly under the authority of, this Act.
- Regulations.** **46.** The Governor in Council may make regulations not inconsistent with this Act for or with respect to prescribing— 25
- (a) forms for the purposes of this Act ;
 - (b) the form of the register to be kept under section 14 (2) and the particulars to be contained therein ;
 - (c) the particulars to be included in notices given under this Act ; 30
 - (d) the form of the Register of Deeds of Assurance and the particulars to be contained therein ;
 - (e) the procedure of the Court ; and
 - (f) any matters or things authorized or permitted to be prescribed or which are necessary to be prescribed for carrying this Act into effect. 35