

Fair Trading Act 1998

CONSOLIDATED ACTS OF SAMOA 2008

FAIR TRADING ACT 1998

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THE FAIR TRADING ACT 1998

1998 No. 6

AN ACT to consolidate the law concerning consumer protection and for related purposes.

(19 June 1998)

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:-

PART 1
PRELIMINARY

1. Short title and commencement-(1) This Act may be cited as the Fair Trading Act 1998.

(2) This Act shall come into force on such date or dates as the Minister may appoint, by notice published in the Gazette or Savali, and any section or Part may be brought into effect at different times.

2. Interpretation-(1) In this Act, unless the context other-wise requires –

"Chief Executive Officer" means the Chief Executive Officer of the Ministry of Commerce, Industry and Labour:

"consumer" means, subject to subsection (2), a person who acquires goods or services other than in the course of, or for the purpose of carrying on a trade or business.

"defect in relation to goods" or **"defective goods"** include goods that –

- (a) Are in the particular circumstances, unfit for use or are dangerous; or
- (b) Do not comply with a product safety or quality standard.

"Division" means the Fair Trading Division of the Ministry established under section 5:

"goods" include –

- (a) Any article or product of any type or class that is intended for sale to any person for use or consumption;
- (b) The supply of gas, electricity, water and tele-communications.

"Inspector" means an officer exercising powers of inspection under the Trade, Commerce and Industry Act 1990:

"Minister" means the Minister responsible for the Ministry of Commerce, Industry and Labour:

"Ministry" means the Ministry of Commerce, Industry and Labour:

"services" include any rights, benefits, privileges and facilities that are, or are to be provided, granted or conferred under a contract for or in relation to –

- (a) The performance of work (including work of a professional nature), whether with or without the supply of goods;
- (b) A contract for, or involving the provision of gas, electricity, water or telecommunications;
- (c) The provision, or making available for use, of facilities for amusement, entertainment, recreation or instruction; or
- (d) The conferring of rights, benefits or privileges for which remuneration is payable in the form of royalty, levy or similar charge.

"trader" includes any person carrying on business as –

- (a) An importer of goods for the purposes of sale or supply;
- (b) A seller of goods in pursuance of a contract of sale or supply, and includes –
 - (i) a person who sells or supplies goods whole-sale to any other traders; and
 - (ii) a person who sells or supplies goods at retail rates to consumers.
- (2) A person who acquires goods or services of a value being less than an amount prescribed for this purpose, for use in a business of primary production is a "consumer"

for the purposes of this Act.

3. Acts binds the State - This Act binds the State in so far as the State carries on a business, whether directly or by an authority of the Government.

4. Objects of the Act-(1) The objects of the Act shall be to protect the rights and interests of consumers and to establish certain standards of conduct by those engaged in the production, sale and distribution of goods and services to consumers.

(2) In the exercise of its functions under this Act, the Ministry shall have regard to the following matters -

(a) The protection of the interests of consumers;

(b) The responsibility of the manufacturer or trader to ensure that goods offered to consumers meet certain reasonable demands of durability, utility and reliability and are suited for the purpose for which they are intended;

(c) The efficient operation of any person or body engaged in the production of goods or the provision of services or in any activity connected with or incidental to the production of goods or the provision of services;

(d) To establish and maintain legal or administrative measures to enable consumers to obtain redress through procedures that are expeditious, fair, inexpensive and accessible;

(e) The need to develop, strengthen and maintain a strong consumer policy for the protection of consumers in accordance with the economic and social circumstances of the country; and

(f) Other objectives of economic and social policy of the Government.

PART II

Administration

5. Establishment of Division and appointment of Officers-(1) There shall be within the Ministry and responsible to the Chief Executive Officer, a division to be known as the Fair Trading Division which shall be comprised of -

(a) A Supervisor; and

(b) Such other officers as may be necessary for the due administration of this Act.

(2) This staff of the Division shall be appointed in accordance with section 9 of the Trade, Commerce and Industry Act.

6. Functions of the Division-(1) The Division may -

(a) Advise any person in relation to the provisions of this Act and of any other legislation administered by the Division and take action for remedying infringements of, or for securing compliance with those provisions, whether on complaint or otherwise;

(b) Make available to consumers, and persons dealing with consumers general information with respect to -

(i) this Act and other legislation administered by the Division; and

(ii) matters affecting the interests of consumers.

(c) Receive complaints from any person or consumer groups on matters (including fraudulent or unfair practices) relating to the supply of goods or services, and deal with

any such complaint (whether or not under paragraph (d)) in such manner as the Division considers appropriate;

(d) Investigate the matter the subject of a complaint received under paragraph (c) or refer the complaint to a public authority, or any other body, that the Division considers to be best able to take necessary action, or provide advice in relation to the complaint;

(e) Make known by publication or otherwise, for the guidance of consumers and persons dealing with consumers, the rights and obligations arising under laws relating to the interests of consumers; and

(f) Take any action and exercise any power required to implement the provisions of this Act.

(2) The Chief Executive Officer shall from time to time report to the Minister on the functions performed by the Division pursuant to subsection (1).

PART III

Consumer Protection

7. Approved Standards-(1) The Minister may by regulation, prescribe product safety or quality standards for any specified kind of goods (hereinafter in this Act referred to as "approved standard").

(2) An approved standard for goods may consist of such requirements as to -

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

- (b) The testing of the goods during, or after the completion of, manufacture or processing;
- (c) The form and content of markings, labelling, warnings or instructions to accompany the goods;
- (d) Equipment or accessories to be supplied with the goods;
- (e) Minimum quality or grade which goods of a specified kind are required to conform to;
- (f) Measures that manufacturers, traders or suppliers should take to ensure that goods do not become hazardous through improper handling or storage; and
- (g) Such other safety standards, measures or specifications, as are reasonably necessary to prevent or reduce risk or injury to person or damage to property or equipment.

8. Prohibition on supply of goods below approved standard-(1) A person shall not supply or trade goods in relation to which there is an approved standard, unless the goods comply with the standard.

(2) If a person supplies goods in contravention of subsection (1) and a consumer suffers loss or damage due to a defect in, or a dangerous characteristic of the goods, or by not having particular information in relation to the goods, the consumer who suffers the loss or damage shall be deemed, for the purposes of this Act to have suffered it due to the goods not having complied with the approved standard.

9. Inquiries regarding sale of goods below approved standard-(1) The Chief Executive Officer may inquire into any matter regarding the manufacture or sale of any

goods which do not conform to the approved standard or specification prescribed by the Minister pursuant to section 7.

(2) At an inquiry held under subsection (1) the Chief Executive Officer shall give the person against whom such an inquiry is directed an opportunity of being heard either in person or by an agent in that behalf.

(3) Where the Chief Executive Officer is of the opinion, after inquiry, that a manufacture or sale has been made of any goods not conforming to the approved standards or specifications prescribed by the Minister, the Chief Executive Officer shall order the manufacturer or trader to make restitution to the consumer, or to replace such goods or to refund the amount paid for such goods.

(4) An order made under subsection (3) shall be made in writing and communicated to such manufacturer or trader by registered post.

10. Failure to comply with an order - Where any manufacturer or trader fails or refuses to comply with an order made under section 9(3) such manufacturer or trader shall be guilty of an offence under this Act.

11. Product recall - The Minister may make an order requiring a manufacturer or trader of defective goods or any person who has supplied goods that are not of an approved standard, to do one or more of the following -

(a) Recall the goods in the manner, and within the time specified in the order;

(b) Disclose to the public, or to a class specified in the order, in the manner and within the period so specified, one or more of the following –

- (i) the nature of any defect in the goods identified in the order;
- (ii) the circumstances in which the use of the goods is dangerous; or
- (iii) the manner for disposing of the goods.

(c) Notify the public or a class of persons so specified in the manner and within the period specified in the order, that the manufacturer or trader undertakes to do whichever of the following the manufacturer or trader thinks is appropriate, except where the order identifies a dangerous characteristic of the goods;

- (i) repair the goods;
- (ii) replace the goods; or
- (iii) refund to the person to whom the goods were supplied, the price of the goods.

12. Offence to refuse to sell goods-(1) No trader who has in his possession or custody or under his control any goods for the purposes of trade shall refuse to sell such goods.

(2) In any prosecution of any trader for the contravention of the provisions of subsection (1), it shall be a sufficient defence for the accused to prove -

(a) That on the occasion in question he supplied a reasonable quantity of the goods or had not a sufficient quantity in his or her possession to supply the quantity required;

(b) That he carried on business in the goods as a wholesale trader only and that the sale of the quantity demanded by the buyer would have been contrary to the normal practice of a wholesale business; or

(c) That the sale of the goods on that occasion in question would have been contrary to any provisions of any written law or any general or special direction issued to him under this Act.

13. Conditional Sales prohibited - No person who has in his possession or custody or under his control any goods for the purposes of trade shall -

(a) Deny the possession of such goods; or

(b) Offer such goods for sale subject to a condition requiring the purchase of any other goods or the making of any payment in respect of any service or to any other condition other than the condition that the buyer shall pay the price of such goods forthwith.

14. Trader to display prices-(1) All traders shall exhibit prices for each good sold by them by affixing or noting that price on the goods or by displaying the price on the shelf or stand on which they are displayed for sale.

(2) The price displayed pursuant to subsection (1) shall be the maximum price that may be charged to any purchaser indicating a willingness to purchase the goods and tendering the amount of the displayed price.

(3) Every trader shall exhibit conspicuously in his or her place of business a notice specifying the maximum price of goods and services available for sale in his or her place of business, in respect of which a general price order or special price order applies by reason of Part VII.

15. Trader to issue receipt - Every trader who sells any goods shall on demand, issue to the purchaser thereof a receipt setting out -

- (a) The date of sale;
- (b) The quantity of goods sold;
- (c) The price paid for such quantity; and
- (d) The nature of the transaction as either a wholesale or a retail sale.

16. Trader to have notice board-(1) Every trader shall provide in a conspicuous place in his or her place of business a notice board for the display of any notice, direction or warning issued by the Chief Executive Officer under this Act.

(2) Every trader shall affix or cause to be affixed on any such notice, direction or warning issued to such trader by the Chief Executive Officer under this Act.

(3) Any person who removes, alters, obliterates, erases or defaces such notice, direction or warning, other than a person acting under the direction or authority of the Chief Executive Officer, shall be guilty of an offence.

17. Misleading or deceptive conduct-(1) No trader or person shall, in the course of a trade or business, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

(2) Nothing in this Act shall be taken as limiting by implication the generality of subsection (1).

18. False representation - Any trader or person who, in the course of a trade or business, in connection with the supply or use of goods or services -

(a) Falsely represents that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model; or

(b) Falsely represents that goods are new; or

(c) Represents that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have; or

(d) Represents that such trader has a sponsorship approval or affiliation he or she does not have; or

(e) Makes false or misleading statements concerning the need for any goods, services, replacements or repairs; or

(f) Makes false or misleading statements concerning the existence or effect of any warranty or guarantee; or

(g) Makes false or misleading statements with respect to the price of goods or services, shall be guilty of an offence under this Act.

19. Exclusive Dealing-(1) No trader shall, in the course of a trade or business except with the written approval of the Chief Executive Officer granted in the interest of the national economy, engage in the practice of exclusive dealing.

(2) A trader engages in the practice of exclusive dealing if such trader -

(a) Supplies any goods or services; and

(b) Charges a price for the supply of any goods or services; or

(c) Gives or allows a discount, allowance, rebate or credit in relation to the supply of any goods or services,

on the condition, or subject to a contract, arrangement or understanding, that the person to whom such trader supplies goods or services -

(i) will not, or will to a limited extent only, acquire goods or services from a competitor of such trader; or

(ii) in the case where such trader supplies goods –

(aa) will not, or will to a limited extent only, supply any of the goods to particular persons or to persons included in a particular class of persons; or

(bb) will not, or will to a limited extent only, in particular places supply any of the goods to other persons; or

(d) Requires, as the condition of the supply to a person of goods or services of a kind that he or she could not lawfully supply but for the issue or grant to the trader of a licence, permit, authority or registration under any written law, that the person acquire all or part of his or her requirements of other goods or services directly or indirectly from such trader; or

(e) Requires, as a condition of the supply to a person of goods or services, that the person acquire all or a part of his or her requirements of other goods or services directly or indirectly from a second person.

20. Price discrimination-(1) A trader shall not, in a trade or business, discriminate between purchasers of goods of like grade and quality in relation to -

(a) The prices charged for the goods;

(b) Any discounts, allowances, rebates or credits given in relation to the supply of the goods;

(c) The provision of services or facilities in respect of the goods; or

(d) The making of payments for services or facilities provided in respect of the goods, if the discrimination is of such magnitude or is of such a recurring or systematic character that is likely to have the effect of substantially lessening competition in a market for goods, being a market in which the trader supplies, or those persons supply, goods.

(2) The provisions of subsection (1) shall not apply in relation to a discrimination if -

(a) The discrimination makes only reasonable allowance for differences in the cost or likely cost of manufacture, distribution, sale or delivery resulting from the different places to which methods by which or quantities in which goods are supplied to the purchasers; or

(b) The discrimination is constituted by the doing of an act in good faith to meet a price or benefit offered by a competitor of the trader.

(3) In any proceeding for the contravention of the provisions of subsection (1), the burden of establishing that the subsection does not apply in relation to a discrimination by reason of subsection (2) is on the party asserting that subsection (1) does not so apply.

(4) A person shall not, in a trade or business -

(a) Knowingly induce or attempt to induce a trader to discriminate in a manner prohibited by subsection (1); or

(b) Enter into any transaction that to his or her knowledge would result in his or her receiving the benefit of a discrimination that is prohibited by that subsection.

(5) In any proceeding against a person for the contravention of subsection (4), it shall be sufficient defence if that person establishes that he reasonably believed that by reason of subsection (2), the discrimination concerned was not prohibited by subsection (1).

(6) The Chief Executive Officer may, where he or she considers it expedient, in the interest of the national economy exempt any trader from the application of the preceding provisions of this section to such trader.

21. Monopolisation-(1) A trader who, either by himself or herself or with any other person, is in a position substantially to control a market for goods or services shall not take advantage of the power in relation to that market that he or she has by virtue of being in that position –

(a) To eliminate or substantially to damage a competitor in that market or in another market;

(b) To prevent the entry of a person into that market or into another market; or

(c) To deter or prevent a person from engaging in competitive behaviour in that market or in another market.

(2) The Chief Executive Officer may, where he or she considers it expedient in the interest of the national economy, exempt any trader from the application of the preceding provisions of this section to such trader.

(3) For the purposes of this section, reference to a trader being in a position substantially to control a market for goods and services includes a reference to a trader who, by reason of his share of the market combined with availability of technical knowledge, raw materials or capital, has power to determine the prices or control the production or distribution of a substantial part of the goods or services in the market.

22. Pyramid selling-(1) It is an offence for any person to promote or participate in a trading scheme which induces a person or persons to make a payment to or for the benefit of a promoter or participant in a trading scheme, by the prospect being held out to that person that he or she will or may receive payments or benefits by the introduction by himself or herself, or by any other person, of persons to the trading scheme.

(2) To assist in determining whether the promotion or participation in any trading scheme constitutes the illegal practice of pyramid selling, reference may be had to the provisions and terminology used in relevant sections dealing with such practices in the fair trading laws in force in New Zealand or any State of Australia.

23. Spares or replacements to be held in stock-(1) Any trader in goods shall ensure that he or she maintains at all reasonable times, a reasonable quantity of spares or replacements for goods supplied by the trader to a consumer.

(2) Subsection (1) will not apply where the trader has, at the time of sale, notified the consumer in writing that spares or replacements will not be available.

(3) An inspector may enter upon and search any premises used or reasonably supposed to be used for the manufacture or storage of spares or replacements and may inspect and take records of any stocks of goods found thereon or therein.

24. Misleading statements about certain business activities-(1) A person shall not, in trade or commerce, 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 the person has represented as one that can be, or can be to a considerable extent, carried on at or from any place of residence.

(2) Where a person in trade or commerce invites, whether by advertisement or otherwise, other persons to engage or participate in a business activity requiring the performance by the persons concerned of work, or the investment of money by the other persons and the performance by them of work associated with the investment, the inviter shall not 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.

25. Misleading conduct about after-sales service - A manufacturer or trader shall not in relation to the sale of any goods engage in conduct that is liable to mislead the consumer into believing that after sales services is available for the particular goods, unless he or she has in place suitable facilities for the provision of such services.

PART IV

Conditions and Warranties in Consumer Transaction

26. Interpretation-(1) In this Part -

(a) A reference to the quality of goods includes a reference to the state or condition of the goods;

(b) A reference to a contract does not include a reference to a contract made before the date on which this Act comes into operation;

(c) A reference to antecedent negotiations in relation to a contract for the supply of goods to a consumer is a reference to any negotiations or arrangements conducted or made with the consumer by another person in the course of a business carried on by the other person whereby the consumer was induced to make the contract or which otherwise promoted the transaction to which the contract relates; and

(d) A reference to the person by whom any antecedent negotiations were conducted is a reference to the person by whom the negotiations or arrangements concerned were conducted or made.

(2) Goods of any kind are of merchantable quality within the meaning of this Part if they are as fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect having regard to any description applied to them, the price (if relevant) and all the other relevant circumstances.

27. This Part not to be excluded from contracts-(1) Any term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term of the contract) that purports to exclude, restrict or modify or has the effect of excluding, restricting or modifying -

(a) The application of all or any of the provisions of this Part;

(b) The exercise of a right conferred by such a provision; or

(c) Any liability of the supplier for breach of a condition or warranty implied by such a provision,

is void.

(2) A term of a contract shall not be taken to exclude, restrict or modify the application of a provision of this Part unless the term does so expressly or is inconsistent with that provision.

28. Limitation of liability for breach of certain conditions or warranties-(1) Subject to this section, a term of a contract for the supply of goods or services other than goods or services of a kind ordinarily acquired for personal, domestic or household use or

consumption is not void under section 27 by reason only that the term limits the liability of the supplier for a breach of a condition or warranty (other than a condition or warranty implied by section 29) to –

(a) In the case of goods, any one or more of the following -

(i) the replacement of the goods or the supply of equivalent goods;

(ii) the repair of the goods;

(iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;

(iv) the payment of the cost of having the goods repaired; or

(b) In the case of services -

(i) the supplying of the services again; or

(ii) the payment of the cost of having the services supplied again.

(2) Subsection (1) does not apply in relation to a term of a contract if the person to whom the goods or services were supplied establishes that it is not fair or reasonable for the supplier to rely on that term of the contract.

(3) In determining for the purposes of subsection (2) whether or not reliance on a term of a contract is fair or reasonable, a court shall have regard to all the circumstances of the case and in particular to the following matter -

(a) The strength of the bargaining positions of the supplier and the person to whom the goods or services were supplied (in this subsection referred to as "the buyer") relative to

each other, taking into account, among other things, the availability of equivalent goods or services and suitable alternative sources of supply;

(b) Whether the buyer received an inducement to agree to the term or, in agreeing to the term, had an opportunity of acquiring the goods or services or equivalent goods or services from any source of supply under a contract that did not include that term;

(c) Whether the buyer knew or ought reasonably to have known of the existence and extent of the term (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties); and

(d) In the case of the supply of goods, whether the goods were manufactured, processed or adapted to the special order of the buyer.

29. Implied undertakings as to title-(1) In every contract for the supply of goods to a consumer, other than a contract to which subsection (3) applies, there is -

(a) An implied condition that, in the case of a supply by way of sale, the supplier has a right to sell the goods, and, in the case of an agreement to sell or a hire-purchase agreement, the supplier will have a right to sell the goods at the time when the property is to pass;

(b) An implied warranty that the consumer will enjoy quiet possession of the goods except so far as it may lawfully be disturbed by the supplier or by another person who is entitled to the benefit of any charge or encumbrance disclosed or known to the consumer before the contract is made; and

(c) In the case of a contract for the supply of goods under which the property is to pass or may pass to the consumer - an implied warranty that the goods are free, and will remain

free until the time when the property passes, from any charge or encumbrance not disclosed or known to the consumer before the contract is made.

(2) A supplier is not, in relation to a contract for the supply of goods, in breach of the implied warranty referred to in subsection (1)(c) by reason only of the existence of a floating charge over assets of the supplier unless and until the charge becomes fixed and enforceable by the person to whom the charge is given.

(3) In a contract for the supply of goods to a consumer in the case of which there appears from the contract or is to be inferred from the circumstances of the contract an intention that the supplier should transfer only such title as he or she or a third person may have, there is -

(a) An implied warranty that all charges or encumbrances known to the supplier and not known to the consumer have been disclosed to the consumer before the contract is made; and

(b) An implied warranty that -

(i) the supplier;

(ii) in a case where the parties to the contract intend that the supplier should transfer only such title as a third person may have - that person; and

(iii) anyone claiming through or under the supplier or that third person otherwise than under a charge or encumbrance disclosed or known to the consumer before the contract is made,

will not disturb the consumer's quiet possession of the goods.

30. Supply by description-(1) Where there is a contract for the supply (otherwise than by way of sale by auction) by a person in the course of a business of goods to a consumer by description, there is an implied condition that the goods will correspond with the description, and, if the supply is by reference to a sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

(2) A supply of goods is not prevented from being a supply by description for the purposes of subsection (1) by reason only that, being exposed for sale or hire, they are selected by the consumer.

31. Implied undertakings as to quality or fitness-(1) Where a person supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business, there is an implied condition that the goods supplied under the contract for the supply of the goods are of merchantable quality, except that there is no such condition by virtue only of this section –

(a) As regards defects specifically drawn to the attention of the consumer before the contract is made; or

(b) If the consumer examines the goods before the contract is made, as regards defects which that examination ought to reveal.

(2) Where a person supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the supplier or to the person by whom any antecedent negotiations are conducted any particular purpose for which the goods are being acquired, there is an implied condition that the goods are supplied under the contract for the supply of the goods are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the consumer does not rely, or that it is unreasonable for him or her to rely, on the skill or judgement of the supplier or of that person.

(3) Subsections (1) and (2) apply to a contract for the supply of goods made by a person who in the course of a business is acting as agent for a supplier as they apply to a contract of a business is acting as agent for a supplier as they apply to a contract for the supply of goods made by a supplier in the course of a business, except where that supplier is not supplying in the course of a business and either the consumer knows that fact or reasonable steps are taken to bring it to the notice of the consumer before the contract is made.

32. Supply by sample - Where in a contract for the supply (otherwise than by way of sale by auction) by a person in the course of a business of goods to a consumer there is a term in the contract, expressed or implied, to the effect that the goods are supplied by reference to a sample –

(a) There is an implied condition that the bulk will correspond with the sample in quality;

(b) There is an implied condition that the consumer will have a reasonable opportunity of comparing the bulk with the sample; and

(c) There is an implied condition that the goods will be free from any defect, rendering them unmerchantable, that would not be apparent on reasonable examination of the sample.

33. Warranties in relation to the supply of services-(1) In every contract for the supply by a trader in the course of a business of services to a consumer there is an implied warranty that the services will be rendered with the due care and skill and that any materials supplied in connection with those services will be reasonably fit for the purpose for which they are supplied.

(2) Where a trader supplies services to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the trader any particular purpose for which the services are required or the results he or she desires the services to achieve, there is an implied warranty that the services supplied under the contract for the supply of the services and any materials supplied in connection with those services will be reasonably fit for that purpose or are of such a nature and quality that they might reasonably be expected to achieve that result, except where circumstances show the consumer does not rely, or that it is unreasonable for him to rely, on the trader's skill or judgement.

(3) In this section, "services" include services by way of –

- (a) The construction, maintenance, repair, treatment, processing, cleaning or alteration of goods; or
- (b) The distribution of goods; or
- (c) The transportation of goods.

34. Rescission of contracts-(1) Where –

- (a) A supplier supplies goods to a consumer in the course of a business; and
- (b) There is a breach of a condition that is, by virtue of a provision of this Part, implied in the contract for the supply of the goods, the consumer is, subject to this section, entitled to rescind the contract by -
- (c) Causing to be served on the supplier a notice in writing signed by him giving particulars of the breach; or
- (d) Causing the goods to be returned to the supplier and giving to the supplier, either orally or in writing, particulars of the breach.

(2) Where a consumer purports to rescind under this section a contract for the supply of goods by a supplier, the purported rescission does not have any effect if -

- (a) The notice is not served or the goods are not returned within a reasonable time after the consumer has had a reasonable opportunity of inspecting the goods;
- (b) In the case of the rescission effected by service of a notice, after the delivery of the goods to the consumer but before the notice is served -
 - (i) the goods were disposed of by the consumer, were lost, or were destroyed other-wise than by reason of a defect in the goods;

- (ii) the consumer caused the goods to become unmerchantable or failed to take reasonable steps to prevent the goods from becoming unmerchantable; or
 - (iii) the goods were damaged by abnormal use; or
- (c) In the case of a rescission effected by return of the goods, while the goods were in the possession of the consumer –
- (i) the consumer caused the goods to become unmerchantable or failed to take reasonable steps to prevent the goods from becoming unmerchantable; or
 - (ii) the goods were damaged by abnormal use.
- (3) Where a contract for the supply of goods to a consumer has been rescinded in accordance with this section -
- (a) If the property in the goods had passed to the consumer before the notice of rescission was served on, or the goods were returned to, the supplier - the property in the goods reverts in the supplier upon the service of the notice or the return of the goods; and
 - (b) The consumer may recover from the supplier, as a debt, the amount or value of any consideration paid or provided by the consumer for the goods.

PART V

Enforcement and Remedies

35. Offences and penalties-(1) Every person who acts in contravention of any provisions of this Act or any regulations made thereunder shall be guilty of any offence under this Act. Every person guilty of an offence under this Act shall on conviction be liable -

(a) In the case of first offence to a fine not exceeding 30 penalty units or to imprisonment for a period not exceeding one year or to both such fine and imprisonment; and

(b) In the case of a second or subsequent offence to a fine not exceeding 70 penalty units or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

(2) The Court which convicts any person of an offence under this Act may order the forfeiture of any goods in respect of which the offence was committed.

(3) The Court which convicts any person of an offence under this Act may make order that such person shall not carry on the business of selling or offering for sale any goods in the course of any trade or business for such period as may be specified in the order.

(4) Any person who contravenes an order of the Court under subsection (3) shall be guilty of an offence.

(5) The Chief Executive Officer shall publish in such manner as he or she thinks fit, the name, address and description of every person in respect of whom an order under subsection (3) has been made by Court.

36. Offences by bodies corporate or unincorporate - Where an offence under this Act is committed by a body of persons –

(a) If the body of persons is a body corporate, every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of that body corporate; or

(b) If the body of person is other than a body corporate, every person who at the time of the commission of the offence was a member of that body,

shall be deemed to be guilty of that offence unless he or she proves that the offence was committed without his or her knowledge and that he or she exercised all such diligence to prevent the commission of the offence as he or she ought to have exercised having regard to the nature of his or her functions and to all the circumstances.

37. Principal liable to offences of agents and servants - Where any offence under this Act is committed by an agent or servant of any manufacturer or trader, such offence shall be deemed to have been committed by such manufacturer or trader unless he or she proves that such offence was committed without his or her knowledge.

38. Indemnity for officers - No action shall be taken against any officer appointed under this Act for any act which is done in good faith or is purported to be done by the officer in the performance of the officer's duties or in the discharge of the officer's functions under this Act.

PART VI

Miscellaneous

39. Right of Appeal - Any manufacturer or trader who is dissatisfied with a decision made by the Minister under section 11 or by the Chief Executive Officer under section 9 (3), may within 21 days, appeal to the Supreme Court to have the decision or order reviewed.

40. Decision of Court to be final-(1) The Court may where an appeal is made pursuant to section 39 confirm, modify or reverse the decision or order appealed against or any part of that decision or order.

(2) The decision of the Court on any under subsection (1) of this section shall final.

41. Application of Sales of Goods Act - The provisions of this Act are in addition to and not in derogation of the provisions of the Sales of Goods Act 1975.

42. Regulations - The Head of State, acting on the advice of Cabinet, may make regulations for giving effect to the principles and provisions of this Act and without prejudice to the generality of the foregoing power, such regulations may provide for -

- (a) The manner in which complaints may be made and investigations conducted;
- (b) Information that a manufacturer or trader is required to provide to a consumer relating to charges made for services provided; or
- (c) Any other thing required by this Act to be prescribed.

PART VII

Amendments, Repeals and Savings

43. Repeal of Acts - The Commerce Act 1978 is repealed.

44. Savings - All existing price orders made under the Commerce Act 1978 prior to the repeal of that Act shall continue in force as if made under this Act, until such time as they are amended or revoked.

45. Amendments to Consumer Information Act - The Consumer Information Act 1988 is amended as follows –

(a) By deleting the definition of "Commerce Officer" from section 2, and by replacing the words "Commerce Officer" with the word "Inspector" wherever they appear in the Act; and

(b) By inserting the following definition in section 2 - " "Inspector" means an officer exercising powers of inspection under the Trade, Commerce and Industry Act 1990"; and

(c) By deleting the definition of "Minister" in section 2 and replacing it with the following –

"Minister" means the Minister of Trade, Commerce and Industry.

PART VIII

Price Control

46. Interpretation - In this Part, unless the contrary intention appears:

"Board" means the Prices Board established under section 47:

"Ex Factory" in relation to a sale of goods, means the same or supply of goods by the manufacturer of those goods to any other person:

"Price" when used in connection with the sale of any goods or the performance of any services, includes every valuable consideration whatsoever, whether direct or indirect:

"Retail" means the sale or supply of goods by any person other than a wholesaler, and in respect of the sale of any goods by a wholesaler, means the sale or supply of goods for any purpose other than resale:

"Wholesale" means the sale or supply of goods to a person for the purpose of resale.

47. Prices Board - For the purposes of this Act there shall be a board, to be known as the Prices Board consisting of –

- (a) The Minister (who shall be Chairperson);
- (b) The Chief Executive Officer;
- (c) The Chief Executive Officer of the Ministry of Finance;
- (d) The Comptroller of Customs;
- (e) The Commissioner of Inland Revenue;
- (f) The President of the Public Service Association;
- (g) 3 other members who shall be appointed by the Head of State, acting on the advice of Cabinet (and a certificate under the hand of the Head of State shall for all purposes be sufficient evidence of that person's appointment or removal from office).

48. Alternate Members - The members referred to in section 47(a) - (f) may be represented by an alternate member nominated by them to attend any meeting of the

Board.

49. General powers and duties of the Board - The general powers and duties of the Board shall be –

- (a) To make General and Special Price Orders for goods and services;
- (b) To investigate any breach of the provisions of this Part;
- (c) To keep under review the prices of goods and services and to institute or cause to be instituted proceedings for offences under this Act and to take all steps as may be necessary including the fixing of regions and districts and the boundaries thereof for the purposes of this Part;
- (d) To direct, supervise, advise and assist any officer in the execution of the officer's duties under this Part;
- (e) To maintain a survey of the prices of goods and services and to publish from time to time the findings of such surveys and the methods and principles in accordance with which any price order has been made.

50. Powers of investigation and inquiry - For the purposes of carrying out its duties and functions the Board shall have the same powers and authority to summon witnesses and receive evidence as are conferred upon Commissions of Inquiry by the [Commissions of Inquiry Act 1964](#) and the provisions of that Act shall apply accordingly.

51. Meetings of Board-(1) Meetings of the Board shall be held at such times and places as the Minister shall from time to time appoint.

- (2) At all meetings of the Board 5 members shall constitute a quorum.
- (3) The chairperson shall preside at all meetings of the Board at which he is present, but in the event of his absence the deputy chairperson shall preside.
- (4) At any meeting of the Board the person presiding shall have a deliberative vote and in the case of an equality of votes he shall also have a casting vote.
- (5) A decision of the majority of the members present at a meeting of the Board shall be a decision of the Board.
- (6) The Board may regulate its procedure in such manner as it thinks fit, and may in its discretion conduct its meetings either in public or in private.
- (7) The Supervisor of the Fair Trading Division shall act as the Chief Executive Officer of the Board.

52. Remuneration of Board members - Members of the Board may be paid out of funds appropriated by Parliament for the purpose such remuneration and other allowances as Cabinet may from time to time determine.

53. Secrecy-(1) Every member of the Board, the Chief Executive Officer, and every

person engaged or employed in connection with the work of the Division under this Part shall –

(a) Maintain and aid in maintaining the secrecy of all matters coming to his or her knowledge, when carrying out his or her functions or duties under this Act, and shall not communicate any such matters to any person except for the purpose of carrying this Part into effect; and

(b) Before he begins to perform any official duty under this Part, take and subscribe to such oath of fidelity and secrecy as may be prescribed, which oath may be administered by any member of the Board or by any barrister or solicitor of the Supreme Court.

(2) Every person who wilfully acts in contravention of the true intent of that oath commits an offence against this Act, and is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding 5 penalty units, or to both.

54. Delegation of powers-(1) With the written consent of the Minister, the Board may from time to time delegate to the Chief Executive Officer all or any of the powers exercisable by it under this Part including the powers to make Price Orders and to institute proceedings.

(2) Any person affected by any order of the Chief Executive Officer acting pursuant to a delegation under this section may at any time appeal therefrom to the Board giving to the Minister a written notice of appeal.

(3) The Board may determine any appeal under this section in such manner as it thinks fit.

55. General Price Orders-(1) If the Board considers it expedient in the public interests to control the prices of any goods or services, it may make General Price Orders fixing the maximum or minimum or actual price of such goods or services, other than crops that have been grown in Samoa either generally throughout Samoa or in any specified part or parts of or place or places in Samoa.

(2) Any General Price Order may relate to the sale of goods at ex-factory, wholesale or retail prices or at any of these prices.

(3) Any General Price Order may contain such incidental and supplementary provisions as are necessary or expedient.

(4) The Board may at any time revoke or amend any General Price Order.

(5) Every General Price Order shall be published in such other manner as the Board shall consider sufficient, and no General Price Order shall come into force before it has been so published.

(6) It shall be the duty of every trader whose business includes the sale of any goods or the performance of any services to which a current General Price Order made under this Act applies, to keep displayed in a prominent position on the premises in which the sale of such goods or the performance of such services are offered, a list showing clearly for the information of the public price fixed in respect of such goods or services.

(7) The Chief Executive Officer or an Inspector may with regard to any specified goods require that any retailer having such goods for sale shall cause the same to be legibly and conspicuously marked with the selling price thereof for the information of the public.

(8) Nothing in this section shall be construed to affect the exercise by any person or authority having statutory powers to fix prices or charges under any other enactment.

56. Special Price Orders-(1) The Board may from time to time make Special Price Orders fixing the maximum of minimum or actual price of any goods or services other than crops that have been grown in Samoa either generally throughout Samoa or in any specified part or parts of or places in Samoa.

(2) Any Special Price Order may relate to the sale of goods at ex-factory, wholesale or retail prices or at all of these prices.

(3) An Special Price Order may contain such incidental and supplementary provisions as are necessary or expedient.

(4) A Special Price Order shall come into force at a date, which may be before or after the date of the Special Price Order, fixed by the Board and incorporated in the Special Price Order.

(5) A Special Price Order shall be deemed to be revoked when a subsequent General Price Order, incorporating the prices fixed by such Special Price Order, comes into force.

(6) The Board may publish any Special Price Order in such manner as it deems fit.

(7) The provisions of section 55 as to General Price Orders, other than the provisions contained in subsection (6), (7) and (8) thereof shall apply with respect to Special Price Orders.

57. Applications for increased prices-(1) Any manufacturer, packer, importer, wholesale, retailer or other trader or seller or supplier of goods or services may, in respect of any goods or services which are sold or supplied by him or her and which are specified in a General Price Order or Special Price Order remaining in force in respect of those goods or services, apply to the Board for an amendment to any such Price Order or as the case may be for a General Price Order or Special Price Order.

(2) Every such application shall be accompanied by such information as the Board may require, and the applicant shall also supply to the Board such additional information as may be required by regulations made under this Act.

(3) The Board may either approve an application in whole or in part, or refuse it.

(4) The Board may, as a condition of the approval of any application, require the applicant to publish or communicate to buyers, in such manner as it thinks fit, such information relating to the decision as it requires.

58. Price stabilisation - The Board shall from time to time, after inquiry and

investigation, make such recommendations to the Minister as it considers necessary in relation to the stabilisation of prices in Samoa.

59. Profiteering-(1) Every person commits an offence against this Act who, whether as principal or agent, and whether by himself or herself, or his or her agent, sells or agrees or offers to sell any goods at a price which is unreasonably high.

(2) For the purposes of this section the price of any goods shall be deemed to be unreasonably high if it produces, or is calculated to produce, more than a fair and reasonable rate of commercial profit to the person selling, or offering to sell, those goods, or to his or her principal:

Provided that no price that has been fixed or approved by the Board shall be deemed for the purpose of this section to be unreasonably high.

(3) In determining, in the course of any proceedings for an offence against this section, whether or not the price of any goods is or was unreasonably high, no account shall be taken of the cost to the seller or, as the case may be, to his or head of other principal, that has been or that would be involved in replacing those goods for the purposes of his or her business, or of the cost price or the selling price of any other goods, sold by the seller or his principal.

(4) Subject to the foregoing provisions of this section, the Court, in any proceedings for

an offence against this section, shall determine as a matter of fact and not of law whether or not any price is or was unreasonably high.

60. Changes in measure or composition - Every person commits an offence against this Act who, whether as principal or agent, and whether by himself or herself, or his or her agent, sells or agrees or offers to sell any goods the measure of which whether by weight or volume or the composition of which has been changed in such a way that -

(a) It would be construed as a breach of a General or Special Price Order in that the Order specifies the price by weight or volume or the price approved was based on a different composition or

(b) An offence against section 59 would have been or would be committed.

61. Sales of goods of which prices are fixed together with other goods - While a General or Special Price Order in respect of any goods remains in force, every person commits an offence against this section who, whether as principal or agent and whether by himself or herself, or his or her agent, sells or agrees or offers to sell any goods to which the Order or approval relates together with any other goods of a different kind or class, unless the price demanded or received for the first mentioned goods is specified separately, whether or not the other goods are subject to the same or any other General or Special Price Order:

Provided that this section shall not apply with respect to any sale or agreement or offer to sell made or entered into with the authority in writing of the Board.

62. Offences and penalties - Any person who sells or offers for sale any goods or services in breach of any relevant Price Order shall be guilty of an offence and liable to the penalty prescribed in section 35.

63. Offers to sell goods - For the purpose of this Part the publication or exhibition of a price list in respect of any goods or the furnishing of a quotation for any goods, or the exposure of any goods with a specification or an indication of the price thereof attached thereto or displayed in the vicinity thereof or in connection therewith, shall be deemed to constitute an offer to sell those goods at the price so specified or indicated.

REVISION NOTES 2008

This law has been reviewed in accordance with the powers provided for in [section 5](#) of the [Revision and Publication of Laws Act 2008](#). Some minor amendments of a non-substantive nature have been made to conform to modern drafting styles. The following general revisions have been made –

- (a) The fines have been amended and are stated as penalty units as provided for by the Fines (Review and Amendment) Act 1998.
- (b) All references to the male gender have been made gender neutral.
- (c) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (d) Amendments have been made to up-date references to offices, officers and statutes.
- (e) Other minor editing has been done in accordance with the lawful powers of the Attorney General.

This law repealed the Commerce Act 1978.

No amendments have been made to this law since its enactment.

Revised and consolidated under the supervision of

Teleiai Lalotoa Sinaalamaimaleula Mulitalo (Parliamentary Counsel)

REVISION NOTES 2008 No. 2

This law has been generally edited as provided for by [section 5](#) of the [Revision and Publication of Laws Act 2008](#). There were no changes made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.

Revised and consolidated by the Legislative Drafting Division under the supervision of Teleiai Lalotoa

Sinaalamaimaleula Mulitalo (Parliamentary Counsel)

**The [Fair Trading Act 1998](#) is administered
in the Ministry of Commerce, Industry and Labour.**