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### TRADE PRACTICES ACT 1974 - SECT 65F

#### Compulsory product recall

(1) Subject to [section 65J](#), where:

(a) a [corporation](#) (in this section referred to as the *supplier*), in trade or commerce, supplies on or after 1 July 1986 [goods](#) that are intended to be used, or are of a kind likely to be used, by a [consumer](#);

(b) one of the following subparagraphs applies:

(i) it appears to the Minister that the [goods](#) are [goods](#) of a kind which will or may cause injury to any [person](#);

(ii) the [goods](#) are [goods](#) of a kind in respect of which there is a prescribed [consumer](#) product safety standard and the [goods](#) do not comply with that standard;

(iii) the [goods](#) are [goods](#) of a kind in relation to which there is in force a notice under subsection 65C(5) or (7); and

(c) it appears to the Minister that the supplier has not taken satisfactory action to prevent the [goods](#) causing injury to any [person](#);

the Minister may, by notice in writing published in the *Gazette*, [require](#) the supplier to do one or more of the following:

(d) take action within the period specified in the notice to recall the [goods](#);

(e) disclose to the public, or to a class of [persons](#) specified in the notice, in the manner and within the period specified in the notice, one or more of the following:

(i) the nature of a defect in, or a dangerous characteristic of, the [goods](#) identified in the notice;

(ii) the circumstances, being circumstances identified in the notice, in which the use of the [goods](#) is dangerous; or

(iii) procedures for disposing of the [goods](#) specified in the notice;

(f) inform the public, or a class of [persons](#) specified in the notice, in the manner and within the period specified in the notice, that the supplier undertakes to do whichever of the following the supplier thinks is appropriate:

(i) except where the notice identifies a dangerous characteristic of the goods--repair the goods;

(ii) replace the goods;

(iii) refund to a person to whom the goods were supplied (whether by the supplier or by another person) the price of the goods;

within the period specified in the notice.

(2) Notwithstanding subparagraph (1)(f)(iii), where the Minister, in a notice under subsection (1), requires the supplier to take action under paragraph (1)(f), the Minister may specify in the notice that, where:

(a) the supplier chooses to refund the price of the goods; and

(b) a period of more than 12 months has elapsed since a person (whether or not the person to whom the refund is to be made) acquired the goods from the supplier;

the amount of a refund may be reduced by the supplier by an amount attributable to the use which a person has had of the goods, being an amount calculated in a manner specified in the notice.

(3) The Minister may, by notice in writing published in the *Gazette*, give directions as to the manner in which the supplier is to carry out a recall of goods required under subsection (1).

(4) Where the supplier, under subsection (1), undertakes to repair goods, the supplier shall cause the goods to be repaired so that:

(a) any defect in the goods identified in the notice under subsection (1) is remedied; and

(b) if there is a prescribed consumer product safety standard in respect of the goods--the goods comply with that standard.

(5) Where the supplier, under subsection (1), undertakes to replace goods, the supplier shall replace the goods with like goods which:

(a) if a defect in, or a dangerous characteristic of, the first-mentioned goods was identified in the notice under subsection (1)--do not contain that defect or have that characteristic; and

(b) if there is a prescribed consumer product safety standard in respect of goods of that kind--comply with that standard.

(6) Where the supplier, under subsection (1), undertakes to repair goods or replace goods, the cost of the repair or replacement, including any necessary transportation costs, shall be borne by the supplier.

(7) Where goods are recalled, whether voluntarily or in accordance with a requirement made by the Minister under paragraph (1)(d), a person who has supplied or supplies any of the recalled goods to another person outside Australia shall, as soon as practicable after the supply of those goods, give a notice in writing to that other person:

(a) stating that the goods are subject to recall;

(b) if the goods contain a defect or have a dangerous characteristic--setting out the nature of that defect or characteristic; and

(c) if the goods do not comply with a prescribed consumer product safety standard in respect of the goods--setting out the nature of the non-compliance.

(8) Where a person is required under subsection (7) to give a notice in writing to another person, the first-mentioned person shall, within 10 days after giving that notice, provide the Minister with a copy of that notice.

(9) A person who contravenes subsection (8) is guilty of an offence punishable on conviction by a fine not exceeding 30 penalty units.

Note: Penalty units are defined in section 4AA of the *Crimes Act 1914*. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount not greater than 5 times the maximum fine that the court could impose on an individual convicted of the same offence.

(11) For the purposes of this section, things that are goods at the time they are supplied are taken to be goods at all times after the supply, even if they become fixtures.

(10) Subsection (9) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

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### TRADE PRACTICES ACT 1974 - SECT 65J

#### Opportunity for conference to be afforded before certain powers exercised

(1) Subject to [section 65L](#), where the Minister proposes to publish a notice under subsection 65C(5) or (7) or 65F(1) in relation to [goods](#) of a particular kind, the Minister shall prepare:

- (a) a draft of the notice proposed to be published; and
- (b) a summary of the reasons for the proposed publication of the notice;

and shall, by notice in writing published in the *Gazette*, invite any [person](#) (in this section referred to as a *supplier*) who supplied or proposes to [supply goods](#) of that kind to notify the [Commission](#), within the period (in this section referred to as the *relevant period*) of 10 days commencing on the day specified in the last-mentioned notice, being not earlier than the day on which that notice is published in the *Gazette*, whether the supplier wishes the [Commission](#) to hold a [conference](#) in relation to the proposed publication of the first-mentioned notice.

(2) A notice published under subsection (1) shall set out a copy of the draft notice under subsection 65C(5) or (7) or 65F(1) and a copy of the summary of the reasons for the proposed publication of the notice.

(3) If no supplier notifies the [Commission](#) in writing within the relevant period or within such longer period as the [Commission](#) allows that the supplier wishes the [Commission](#) to hold a [conference](#) in relation to the proposed publication of the notice under subsection 65C(5) or (7) or 65(1), the [Commission](#) shall notify the Minister accordingly.

(4) If a supplier notifies the [Commission](#) in writing within the relevant period or within such longer period as the [Commission](#) allows that the supplier wishes the [Commission](#) to hold a [conference](#) in relation to the proposed publication of a notice under subsection 65C(5) or (7) or 65F(1), the [Commission](#) shall appoint a day (being not later than 14 days after the end of that period), time and place for the holding of the [conference](#), and give notice of the day, time and place so appointed to the Minister and to each supplier who so notified the [Commission](#).

(5) At a [conference](#) under this section:

- (a) the [Commission](#) shall be represented by a member or members nominated by the [Chairperson](#);
- (b) each supplier who notified the [Commission](#) in accordance with subsection (4) is entitled to be present or to be represented;
- (c) any other [person](#) whose presence at the [conference](#) is considered by the [Commission](#) to be appropriate is entitled to be present or to be represented;

(d) the Minister or a person or persons nominated in writing by the Minister is or are entitled to be present; and

(e) the procedure to be followed shall be as determined by the Commission.

(6) The Commission shall cause a record of proceedings at a conference under this section to be kept.

(7) The Commission shall, as far as is practicable, ensure that each person who, in accordance with subsection (5), is entitled to be present or who is representing such a person at a conference is given a reasonable opportunity at the conference to present his or her case and, in particular, to inspect any documents which the Commission proposes to consider for the purpose of making a recommendation after the conclusion of the conference, other than any document that contains particulars of a secret formula or process, and to make submissions in relation to those documents.

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### TRADE PRACTICES ACT 1974 - SECT 65L

#### Exception in case of danger to public

(1) Where it appears to the Minister that goods of a particular kind create an imminent risk of death, serious illness or serious injury, the Minister may, by notice in writing published in the *Gazette*, certify that a notice in relation to the goods under subsection 65C(5) or 65F(1) should be published without delay.

(2) Where the Minister publishes a notice in the *Gazette* under subsection (1):

(a) in a case where the notice is published before the Minister takes any action under subsection 65J(1) in relation to goods of a particular kind--section 65J does not apply in relation to the action that the Minister may take under subsection 65C(5) or 65F(1) in relation to goods of that kind; or

(b) in any other case--any action taken by the Minister under subsection 65J(1) in relation to goods of a particular kind ceases to have effect and, if a conference had, under section 65J, been arranged or such a conference had commenced or been completed without the Commission making a recommendation under section 65K, the Minister may publish the notice under subsection 65C(5) or 65F(1) without regard to the action taken under subsection 65J(1).

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### TRADE PRACTICES ACT 1974 - SECT 65C

#### Product safety standards and unsafe goods

(1) A corporation shall not, in trade or commerce, supply goods that are intended to be used, or are of a kind likely to be used, by a consumer if the goods are of a kind:

(a) in respect of which there is a prescribed consumer product safety standard and which do not comply with that standard;

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

(c) in respect of which there is in force a notice under this section imposing a permanent ban on the goods.

(2) The regulations may, in respect of goods of a particular kind, prescribe a consumer product safety standard consisting of such requirements as to:

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

(b) testing of the goods during, or after the completion of, manufacture or processing; and

(c) the form and content of markings, warnings or instructions to accompany the goods;

as are reasonably necessary to prevent or reduce risk of injury to any person.

(3) A corporation shall not export goods the supply in Australia of which is prohibited by subsection (1) unless the Minister has, by notice in writing given to the corporation, approved the export of those goods.

(4) Where the Minister approves the export of goods under subsection (3), the Minister shall cause a statement setting out particulars of the approval to be laid before each House of the Parliament within 7 sitting days of that House after the approval is given.

(5) Subject to section 65J, where it appears to the Minister that goods of a particular kind will or may cause injury to any person, the Minister may, by notice in writing published in the *Gazette*, declare the goods to be unsafe goods.

(6) A notice under subsection (5) remains in force until the end of 18 months after the date of publication of the notice in the *Gazette* unless it is revoked before the end of that period.

(7) Subject to section 65J, where:

(a) a period of 18 months has elapsed after the date of publication of a notice in the *Gazette* declaring goods to be unsafe goods; and

(b) there is not a prescribed consumer product safety standard in respect of the goods;

the Minister may, by notice in writing published in the *Gazette*, impose a permanent ban on the goods.

(8) Where:

(a) the supplying of goods by a corporation constitutes a contravention of this section by reason that the goods do not comply with a prescribed consumer product safety standard;

(b) a person suffers loss or damage by reason of a defect in, or a dangerous characteristic of, the goods or by reason of not having particular information in relation to the goods; and

(c) the person would not have suffered the loss or damage if the goods had complied with that standard;

the person shall be deemed for the purposes of this Act to have suffered the loss or damage by the supplying of the goods.

(9) Where:

(a) the supplying of goods by a corporation constitutes a contravention of this section by reason that there is in force a notice under this section declaring the goods to be unsafe goods or imposing a permanent ban on the goods; and

(b) a person suffers loss or damage by reason of a defect in, or a dangerous characteristic of, the goods or by reason of not having particular information as to a characteristic of the goods;

the person shall be deemed for the purposes of this Act to have suffered the loss or damage by the supplying of the goods.

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### TRADE PRACTICES ACT 1974 - SECT 65F

#### Compulsory product recall

(1) Subject to [section 65J](#), where:

(a) a [corporation](#) (in this section referred to as the *supplier*), in [trade or commerce](#), supplies on or after 1 July 1986 [goods](#) that are intended to be used, or are of a kind likely to be used, by a [consumer](#);

(b) one of the following subparagraphs applies:

(i) it appears to the Minister that the [goods](#) are [goods](#) of a kind which will or may cause injury to any [person](#);

(ii) the [goods](#) are [goods](#) of a kind in respect of which there is a prescribed [consumer](#) product safety standard and the [goods](#) do not comply with that standard;

(iii) the [goods](#) are [goods](#) of a kind in relation to which there is in force a notice under subsection 65C(5) or (7); and

(c) it appears to the Minister that the supplier has not taken satisfactory action to prevent the [goods](#) causing injury to any [person](#);

the Minister may, by notice in writing published in the *Gazette*, [require](#) the supplier to do one or more of the following:

(d) take action within the period specified in the notice to recall the [goods](#);

(e) disclose to the public, or to a class of [persons](#) specified in the notice, in the manner and within the period specified in the notice, one or more of the following:

(i) the nature of a defect in, or a dangerous characteristic of, the [goods](#) identified in the notice;

(ii) the circumstances, being circumstances identified in the notice, in which the use of the [goods](#) is dangerous; or

(iii) procedures for disposing of the [goods](#) specified in the notice;

(f) inform the public, or a class of [persons](#) specified in the notice, in the manner and within the period specified in the notice, that the supplier undertakes to do whichever of the following the supplier thinks is appropriate:

(i) except where the notice identifies a dangerous characteristic of the goods--repair the goods;

(ii) replace the goods;

(iii) refund to a person to whom the goods were supplied (whether by the supplier or by another person) the price of the goods;

within the period specified in the notice.

(2) Notwithstanding subparagraph (1)(f)(iii), where the Minister, in a notice under subsection (1), requires the supplier to take action under paragraph (1)(f), the Minister may specify in the notice that, where:

(a) the supplier chooses to refund the price of the goods; and

(b) a period of more than 12 months has elapsed since a person (whether or not the person to whom the refund is to be made) acquired the goods from the supplier;

the amount of a refund may be reduced by the supplier by an amount attributable to the use which a person has had of the goods, being an amount calculated in a manner specified in the notice.

(3) The Minister may, by notice in writing published in the *Gazette*, give directions as to the manner in which the supplier is to carry out a recall of goods required under subsection (1).

(4) Where the supplier, under subsection (1), undertakes to repair goods, the supplier shall cause the goods to be repaired so that:

(a) any defect in the goods identified in the notice under subsection (1) is remedied; and

(b) if there is a prescribed consumer product safety standard in respect of the goods--the goods comply with that standard.

(5) Where the supplier, under subsection (1), undertakes to replace goods, the supplier shall replace the goods with like goods which:

(a) if a defect in, or a dangerous characteristic of, the first-mentioned goods was identified in the notice under subsection (1)--do not contain that defect or have that characteristic; and

(b) if there is a prescribed consumer product safety standard in respect of goods of that kind--comply with that standard.

(6) Where the supplier, under subsection (1), undertakes to repair goods or replace goods, the cost of the repair or replacement, including any necessary transportation costs, shall be borne by the supplier.

(7) Where goods are recalled, whether voluntarily or in accordance with a requirement made by the Minister under paragraph (1)(d), a person who has supplied or supplies any of the recalled goods to another person outside Australia shall, as soon as practicable after the supply of those goods, give a notice in writing to that other person:

(a) stating that the goods are subject to recall;

(b) if the goods contain a defect or have a dangerous characteristic--setting out the nature of that defect or characteristic; and

(c) if the goods do not comply with a prescribed consumer product safety standard in respect of the goods--setting out the nature of the non-compliance.

(8) Where a person is required under subsection (7) to give a notice in writing to another person, the first-mentioned person shall, within 10 days after giving that notice, provide the Minister with a copy of that notice.

(9) A person who contravenes subsection (8) is guilty of an offence punishable on conviction by a fine not exceeding 30 penalty units.

Note: Penalty units are defined in section 4AA of the *Crimes Act 1914*. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount not greater than 5 times the maximum fine that the court could impose on an individual convicted of the same offence.

(11) For the purposes of this section, things that are goods at the time they are supplied are taken to be goods at all times after the supply, even if they become fixtures.

(10) Subsection (9) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

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