

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney 26 November, 1975.*

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. , 1975.

An Act to require certain goods to be labelled with instructions for care; to empower the Minister to make orders prohibiting or restricting the supply of certain goods supplied or likely to be supplied to consumers; to empower the Commissioner for Consumer Affairs to grant assistance to persons who wish to bring, or who are parties to, legal proceedings arising out of the supply of goods or services; and for these and other purposes to

amend

Commercial Law (Miscellaneous Provisions).

amend the Consumer Protection Act, 1969, the Credit-sale Agreements Act, 1957, the Lay-by Sales Act, 1943, the Moneylending Act, 1941, and the Commercial Transactions (Miscellaneous Provisions) Act, 1974.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Commercial Law (Miscellaneous Provisions) Act, 1975". Short title.

2. (1) Except as provided in subsections (2) and (3), this Act shall commence on the date of assent to this Act. Commencement.

10 (2) Sections 3 (a) (vi) and (vii), 7 (f), 7 (g), 9 (d) (i) and 12 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(3) Section 13 (2) shall be deemed to have 15 commenced on 1st January, 1975.

3. The Consumer Protection Act, 1969, is amended—

Amendment
of Act No.
28, 1969.

(a) (i) by omitting from section 2 the matter relating to Division 1 of Part II;

Sec. 2.
(Division
of Act.)

(ii)

Commercial Law (Miscellaneous Provisions).

- (ii) by inserting in section 2 after the matter relating to Division 3 of Part II the following matter :—

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DIVISION 3A.—*Legal Assistance to Consumers*—ss. 16G–16L.

- (iii) by omitting from section 2 the matter relating to Division 3 of Part III and by inserting instead the following matter :—

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DIVISION 3.—*Control of Advertisements*—ss. 32, 32A.

- (iv) by inserting in section 2 after the matter relating to Division 4 of Part III the following matter :—

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PART IIIA.—*INSTRUCTIONS FOR CARE OF GOODS*—ss. 34A–34C.

- (v) by omitting from section 2 the matter relating to Division 1 of Part IV;

- (vi) by inserting in section 2 after the matter relating to Division 2 of Part IV the following matter :—

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DIVISION 2A.—*Prohibition or Restriction on Supply of Dangerous Goods to Consumers*—ss. 39A–39H.

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- (vii) by omitting from section 2 the matter relating to Division 3 of Part IV;

(b)

Commercial Law (Miscellaneous Provisions).

(b) by omitting section 5 and by inserting instead the Sec. 5. following section :—

5. (1) In this Act, except so far as the context or subject-matter otherwise indicates or requires—^{Interpre-}
^{tation.}

5 “Bureau” means the Consumer Affairs Bureau established under Part II;

 “Commissioner” means the Commissioner for Consumer Affairs appointed under Part II;

10 “component part”, in relation to any goods, includes an accessory to those goods;

 “consumer” means a person—

15 (a) to whom goods are or are offered to be supplied in the course of a business carried on by the person supplying or offering to supply them; or

20 (b) to whom services are or are offered to be supplied in the course of a business carried on by the person supplying or offering to supply them,

 and who does not receive or seek to receive the goods or services in the course of a business carried on by him;

25 “Council” means the Consumer Affairs Council constituted under Part II;

30 “credit-sale agreement” means an agreement for the sale of goods under which the whole or any part of the purchase price is payable by instalments;

 “Department”

Commercial Law (Miscellaneous Provisions).

“Department” means a Department, Ministry or other authority that under the Minister is concerned with the administration of this Act;

5 “goods” includes any chattel or other thing that is the subject of trade or manufacture;

“hire-purchase agreement” has the meaning ascribed to that expression by section 2 of the Hire-Purchase Act, 1960;

10 “inspector” means an inspector appointed under section 55;

“regulations” means regulations under this Act;

“services” includes the rights and benefits that are or are to be supplied under—

15 (a) a contract for or involving—

(i) the performance of work (including work of a professional nature);

20 (ii) the provision of, or the use or enjoyment of, facilities for amusement, entertainment, recreation or instruction; or

25 (iii) the provision of gas or electricity or other forms of energy;

(b) a contract of insurance (including life assurance); or

(c)

Commercial Law (Miscellaneous Provisions).

5 (c) a contract between a banker and client entered into in the course of the carrying on by the banker of the business of banking, or any other contract (whether between a banker and client or otherwise) for or involving the loan of money or the provision of credit facilities,

10 whether the contract is express or implied and, if it is express, whether it is oral or in writing, and also includes both services supplied to order and services supplied by making them available to potential users, but does not include services supplied under a contract of employment or of apprenticeship;

15 “supplier” means a person who in the course of a business supplies goods or services;

“supply”—

20 (a) in relation to goods, includes supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase, and also includes exhibit, expose or have in possession for the purpose of sale, exchange, lease, hire or hire-purchase or for any purpose of advertisement, manufacture or trade; and

25 (b) in relation to services, includes provide, grant or render.

30 (2) For the purposes of this Act—

(a) a reference to the supply or acquisition of goods includes a reference to agreeing to supply or acquire goods;

(b)

Commercial Law (Miscellaneous Provisions).

- (b) a reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods in pursuance of a supply of the goods;
- 5 (c) a reference to the supply or acquisition of services includes a reference to agreeing to supply or acquire services;
- 10 (d) a reference to the supply or acquisition of goods includes a reference to the supply or acquisition of goods together with services; and
- 15 (e) a reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with goods.

4. The Consumer Protection Act, 1969, is further amended— Further amendment of Act No. 28, 1969.

- (a) by omitting Division 1 of Part II; Part II, Division 1. (Interpretation.)
- 20 (b) by omitting from section 7 (2) (a) the words "of Labour and Industry"; Sec. 7. (Constitution of Council.)
- (c) by omitting from section 8 (1) the words "of Labour and Industry"; Sec. 8. (Chairman of Council.)
- (iii) (d)

Commercial Law (Miscellaneous Provisions).

- (d) (i) by inserting after section 11 (7) the following subsections :—
- Sec. 11.
(Provisions
applying
to the
Council.)
- 5 (7A) The Chairman ceases to hold office as such and there is a casual vacancy in his office—
- (a) if he dies;
- (b) if he ceases to be an officer of the Department; or
- 10 (c) if he is removed from office by the Governor.
- (7B) On the occurrence of a casual vacancy in the office of Chairman, the Governor may appoint an officer of the Department to fill the vacant office.
- 15 (ii) by omitting from section 11 (8) the word “Governor” and by inserting instead the word “Minister”;
- (e) by omitting from section 14 the words “of Labour and Industry”;
- Sec. 14.
(Acting
Com-
missioner.)
- 20 (f) by omitting from section 15 the words “within the Department of Labour and Industry”;
- Sec. 15.
(Consumer
Affairs
Bureau.)
- (g) (i) by omitting from section 16 (1) (a) the words “Department of Labour and Industry” and by inserting instead the word “Minister”;
- Sec. 16.
(Functions
of Consumer
Affairs
Bureau.)
- 25 (ii) by omitting from section 16 (1) (b) (ii) the word “and” where secondly occurring;
- (iii)

Commercial Law (Miscellaneous Provisions).

- (iii) by omitting from section 16 (1) (b) (iii) the word "work." and by inserting instead the word "work;" ;
- 5 (iv) by inserting after section 16 (1) (b) (iii) the following subparagraphs :—
- (iv) to act as a secretariat to the Council; and
- 10 (v) to provide the Council with such information as it may reasonably require relating to goods or services supplied to consumers and to consumer affairs, and to carry out such research as may be necessary for the purpose of enabling that information to be
- 15 provided.
- (h) by omitting section 16B (a) and by inserting instead the following paragraph :—
- 20 (a) enter any place at which goods are manufactured, prepared or supplied, or services are supplied, or any place at which he has reason to believe that goods are manufactured, prepared or supplied, or services are supplied ;
- (i) by inserting after section 16c (7) the following subsections :—
- 25 (8) A written warning or a notice may be given under subsection (2)—
- (a) to a person, not being a corporation—
- (i) by delivering it to him personally ;
- (ii)

Sec. 16B.
(Power of
investigating
officer to
enter, etc.)

Sec. 16c.
(Investigat-
ing officer
may require
furnishing
of informa-
tion and
production
of docu-
ments.)

Commercial Law (Miscellaneous Provisions).

5 (ii) by leaving it at his place of residence with someone who apparently resides there or at his place of business or employment with someone who is apparently employed there, being in either case a person who has or apparently has attained 16 years of age; or

10 (iii) by posting it in a letter addressed to him at the address last known to the Commissioner of his place of residence, business or employment; or

(b) to a person, being a corporation—

15 (i) by delivering it to the secretary of the corporation, or any other person concerned in the management of the corporation, personally;

20 (ii) by leaving it at the corporation's only or principal place of business with a person apparently employed there, being a person who has or apparently has attained 16 years of age; or

25 (iii) by posting it in a letter addressed to the corporation at the address last known to the Commissioner of its only or principal place of business.

30 (9) Subsection (8) (b) is in addition to section 362 of the Companies Act, 1961.

(ii)

(j)

Commercial Law (Miscellaneous Provisions).

(j) by inserting after Division 3 of Part II the following Division :— Part II,
Division 3A.

DIVISION 3A.—Legal Assistance to Consumers.

5 16G. (1) Where any person, being a person claiming or alleged to be a consumer— Applications
for legal
assistance
by persons
claiming or
alleged to
be con-
sumers.

(a) wishes to bring legal proceedings arising out of the supply to him of goods or services ; or

(b) is a party to any legal proceedings arising out of any such supply,

10 that person may apply to the Commissioner for the grant of assistance in relation to the conduct of his case in those proceedings.

(2) Every such application shall—

(a) be in or to the effect of the prescribed form ;

15 (b) include the particulars required by the form ;
and

(c) be verified in the prescribed manner.

20 16H. (1) The Commissioner may grant an application made under section 16G if— Power of
Commis-
sioner to
grant appli-
cations for
assistance.

(a) he is satisfied that the person who made the application has reasonable grounds for bringing, or being a party to, the proceedings ;

25 (b) he is of the opinion that it is desirable, in the interests of consumers in general or of any class of consumers (including the person who made the application), that he should grant the assistance applied for ;

(c)

Commercial Law (Miscellaneous Provisions).

5 (c) the proceedings are for the recovery of a liquidated amount not exceeding the amount prescribed for the purposes of this paragraph, or are for the recovery of an unliquidated amount which, in the opinion of the Commissioner, will not exceed the amount so prescribed; and

10 (d) the Minister has authorised in writing the Commissioner to grant the assistance applied for.

(2) Where the Commissioner grants or refuses any such application, he shall notify the person who made the application in writing of that grant or refusal.

15 (3) Where any such application is granted and the person who made the application is so notified—

(a) that person shall not—

20 (i) without the agreement of the Commissioner, withdraw from the proceedings or discharge any solicitor to whom his case is assigned under section 161 or any barrister or solicitor acting for him in the proceedings; or

25 (ii) except to the extent required or authorised by the Commissioner, interfere or involve himself in the conduct of the case; and

(b)

Commercial Law (Miscellaneous Provisions).

5 (b) the Commissioner, or any person authorised by the Commissioner, shall have the same control over, and the same rights in respect of the case (including the right to settle or compromise any claim arising in the proceedings) as he would have had if he were that person.

10 (4) All expenses incurred in connection with the granting of assistance to a person under this Division (including the cost of employing any barrister or solicitor, any court fees incurred on behalf of the person and any costs required to be met by the Commissioner by virtue of section 16K
15 (3) in relation to that person's case) shall be met by the Commissioner out of money appropriated by Parliament for the purpose.

16i. (1) On granting assistance to a person under section 16H, the Commissioner shall—

Assignment of cases of assisted persons to solicitors.

- (a) assign the case of that person to—
- 20 (i) the Public Solicitor or any solicitor employed in the office of the Public Solicitor, but only if the Public Solicitor has agreed to the case being so assigned;
- 25 (ii) any solicitor employed in the Department;
- 30 (iii) any solicitor employed in any other government department, but only if the permanent head of that department has agreed to the case being so assigned; or

(iv)

Commercial Law (Miscellaneous Provisions).

5 (iv) any solicitor practising on his own account who has indicated to the Commissioner his willingness to undertake the conduct of cases of persons who are granted assistance under section 16H; and

(b) notify to that person in writing particulars of the solicitor to whom the case has been assigned.

10 (2) Where a person's case is assigned to a solicitor under subsection (1), that solicitor may, on behalf of that person, appear, and conduct any matter or proceeding relating to the case, in any court either personally or, with the concurrence of
15 the Commissioner, by any barrister or solicitor.

(3) A solicitor assigned under this section to act for a person shall not discontinue his assistance without the leave of the Commissioner.

20 16J. (1) Before taking any other step in the proceedings (being proceedings that have already been brought), a solicitor to whom a case has been assigned under section 16I shall, as soon as practicable after the case is assigned to him, serve on the other party or parties to the proceedings, and file in the office of the court in which the proceedings are pending, a notice to the effect that he is undertaking the conduct of the case.

Provisions relating to court proceedings to which an assisted person is a party.

25 (2) Subject to subsection (3), where any such notice is filed, then, unless otherwise ordered
30 by the court in which the proceedings are pending, the proceedings shall, by virtue of this section, be

stayed

Commercial Law (Miscellaneous Provisions).

5 stayed for a period of 14 days and, during that period, unless otherwise ordered by the court, time fixed by or under any Act for the doing of any act or the taking of any step in the proceedings shall not run.

(3) The filing of a notice under subsection (1) shall not prevent—

10 (a) the making of any interlocutory order which, in the opinion of the court in which the proceedings are pending, is necessary to prevent injustice; or

15 (b) unless otherwise ordered by the court, the institution or continuance of proceedings to obtain, enforce or otherwise carry into effect any such order.

(4) The period during which proceedings are stayed by virtue of this section may be reduced or extended by order of the court in which the proceedings are pending.

20 (5) No fee shall be charged in respect of the filing of any notice under subsection (1).

25 (6) Where, in any proceedings to which a person granted assistance under section 16H is a party, any party makes a counterclaim, or pleads a set-off, and that counterclaim or set-off does not relate to the supply of goods or services to that person, the court in which the proceedings are brought may, on application being made in that behalf by or on behalf of the Commissioner, order
30 that the counterclaim or set-off be dealt with separately, and may make such other orders or give such directions in that behalf as it thinks fit.

Commercial Law (Miscellaneous Provisions).

16K. (1) Where proceedings are brought to which a person granted assistance under section 16H is a party, the court in which those proceedings are brought shall make—

Costs and expenses, etc., relating to proceedings to which an assisted person is a party.

- 5 (a) in favour of that person, the same order for costs (except against another person granted assistance under section 16H) as the court would have made in favour of that person if he had not been granted assistance; or
- 10 (b) if the case so requires, against that person, the same order for costs (except in favour of another person granted assistance under section 16H) as the court would have made against that person if he had not been
- 15 granted assistance.

(2) Where any order for costs is made to which subsection (1) (a) relates, those costs shall not be payable to the person in whose favour the order was made but shall be payable to and may be recovered by the Commissioner, and on being so recovered shall be paid into the Consolidated Revenue Fund.

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(3) Where any order for costs is made to which subsection (1) (b) relates, those costs shall be met by the Commissioner.

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(4) Subject to subsection (2), where in proceedings to which a person granted assistance under section 16H is a party any money is awarded in favour of that person, that money shall be paid to him without deduction.

30

Commercial Law (Miscellaneous Provisions).

- 5 16L. The same privileges as those which arise from the relationship of client and solicitor acting in his professional capacity and in the course of his professional employment shall arise from the relationship between a person who has applied for assistance under section 16G or who has been granted that assistance under section 16H and the Commissioner and the solicitor (if any) to whom that person's case is assigned under section 16I. Privilege attaching to certain relationships.
- 10 5. The Consumer Protection Act, 1969, is further amended— Further amendment of Act No. 28, 1969.
- (a) (i) by omitting the definition of "services" in section 19; Sec. 19. (Definitions.)
- 15 (ii) by inserting at the end of section 19 the following subsection :—
- (2) This Part does not apply to or in respect of a supply of goods under a lease, hiring agreement or hire-purchase agreement where the lease, hiring agreement or, as the case may be, hire-purchase agreement took effect before the commencement of the Commercial Law (Miscellaneous Provisions) Act, 1975.
- 20
- 25 (b) (i) by omitting from section 21 (1) the word "sell" and by inserting instead the word "supply"; Sec. 21. (Trade description to be appended to certain goods.)
- (ii) by omitting from section 21 (3) the word "vendor" and by inserting instead the word "supplier";
- 30 (iii) by omitting from section 21 (3) the word "purchaser" and by inserting instead the word "consumer";
- 549—B (iv)

Commercial Law (Miscellaneous Provisions).

- (iv) by omitting from section 21 (3) the word "sale" and by inserting instead the word "supply";
- 5 (v) by omitting from section 21 (4) the word "purchaser" and by inserting instead the word "consumer";
- (vi) by omitting from section 21 (4) the word "vendor" and by inserting instead the word "supplier";
- 10 (vii) by inserting after section 21 (4) the following subsections :—
- (5) This section does not apply to a person—
- 15 (a) who, in the case of prescribed goods supplied under a credit-sale agreement or a hire-purchase agreement, did not have possession of the goods before the goods were supplied and only became their owner at the time at which or
- 20 after which the agreement was entered into;
- (b) who supplies prescribed goods as scrap, that is to say, for the value of the materials of which they are composed and not for use as finished goods;
- 25 (c) who, in the case of prescribed goods that are damaged, whether the damage was caused by fire or flood or other cause, supplies the goods to another person who carries on a business of
- 30 acquiring damaged goods or, where the goods have been insured against damage, to the insurer of those goods; or
- 35 (d) who supplies prescribed goods in connection with the sale or lease of premises.

(6)

Commercial Law (Miscellaneous Provisions).

(6) Regulations made under section 20 may contain such other exemptions from the operation of this section, applicable in such cases, as may be prescribed.

- 5 (c) (i) by omitting from section 22 (a) the word "purchaser" and by inserting instead the word "consumer"; Sec. 22.
(Evidence in prosecutions under this Division.)
- 10 (ii) by omitting from section 22 (a) the word "sale" and by inserting instead the word "supply";
- (iii) by omitting from section 22 the word "sold" wherever occurring and by inserting instead the word "supplied"; 01
- 15 (iv) by omitting from section 22 (b) the word "vendor" and by inserting instead the word "supplier"; 21
- (d) by omitting from section 23 (2) the word "sells" and by inserting instead the word "supplies"; Sec. 23.
(False trade descriptions.) 02
- 20 (e) by omitting from section 24 (2) the word "sells" and by inserting instead the word "supplies"; Sec. 24.
(Alteration of trade description.) 03
- (f) by omitting from section 25 (c) the word "sale" and by inserting instead the word "supply"; Sec. 25.
(Offence in the ordinary course of business.) 04
- (g)

Commercial Law (Miscellaneous Provisions).

- (g) by omitting from section 26 (1) (b) (ii) the word "sale" and by inserting instead the word "supply"; (Appending trade description.) Sec. 26.
- 5 (h) by omitting from section 28 (2) the words "the provisions of Schedule 2, and those provisions as from time to time so amended shall be deemed to be"; Sec. 28.
(Marking of furniture.)
- (i) (i) by omitting from section 29 (1) the word "sale" and by inserting instead the word "supply"; Sec. 29.
(Powers of Court on conviction under this Division.)
- 10 (ii) by omitting from section 29 (1) (a) the word "purchaser" and by inserting instead the word "consumer";
- 15 (iii) by omitting from section 29 (1) (b) the words "supply to the purchaser" and by inserting instead the words "provide the consumer with";
- (iv) by omitting from section 29 (1) (b) the words "supply such goods" and by inserting instead the words "provide those goods";
- 20 (v) by omitting section 29 (2) and by inserting instead the following subsections :—
- 25 (2) Where an order under subsection (1) is for the refund of an amount not exceeding the amount specified in section 12 (1) of the Courts of Petty Sessions (Civil Claims) Act, 1970, the order may be enforced in a court of petty sessions specified in the order or, if no such court is specified, in any court of petty

sessions

Commercial Law (Miscellaneous Provisions).

sessions, and Part V of the Courts of Petty Sessions (Civil Claims) Act, 1970, shall apply in respect of the order as if—

- 5 (a) the order were a judgment of the court of petty sessions specified in the order or, if no such court is specified, the court of petty sessions in which enforcement of the order is sought;
- 10 (b) the amount ordered to be refunded were a judgment debt referred to in that Part;
- (c) the defendant against whom the order was made were a judgment debtor referred to in that Part; and
- 15 (d) the person in favour of whom the order was made were a judgment creditor referred to in that Part.

20 (3) Where an order under subsection (1) is for the refund of an amount exceeding the amount specified in section 12 (1) of the Courts of Petty Sessions (Civil Claims) Act, 1970, but not exceeding that specified in section 44 (1) (a) of the District Court Act, 1973, the order may be enforced in the

25 District Court, and Division 4 of Part IV of the District Court Act, 1973, shall apply in respect of the order as if—

- (a) the order were a judgment of the District Court;
- 30 (b) the amount ordered to be refunded were a judgment debt referred to in that Division;
- (c)

Commercial Law (Miscellaneous Provisions).

- (c) the defendant against whom the order was made were a judgment debtor referred to in that Division; and
- (d) the person in favour of whom the order was made were a judgment creditor referred to in that Division.
- (4) Where an order under subsection (1) is for the refund of an amount exceeding the amount specified in section 44 (1) (a) of the District Court Act, 1973, the order may be enforced in the Supreme Court, in accordance with the Supreme Court Rules as if—
- (a) the order were a judgment of the Supreme Court for the payment of money; and
- (b) the defendant against whom the order was made were a person bound by such a judgment.
- (j) by omitting from the heading to Division 3 of Part III the words "*False or Misleading Advertisements*" and by inserting instead the words "*Control of Advertisements*";
- (k) (i) by omitting from section 32 (1) (a) the words "sale, disposal or letting on hire" and by inserting instead the word "supply";
- (ii) by omitting from section 32 (2) (b) (i) the words "vehicle or" and by inserting instead the words "vehicle, aircraft or ship or in any other";
- (iii)
- Part III, Division 3. Heading.
- Sec. 32. (Penalty for publishing or causing to be published any false advertisement to promote the supply of goods.)

Commercial Law (Miscellaneous Provisions).

(iii) by inserting in section 32 (2) (c) after the word "upon" the words "or at";

(1) by inserting after section 32 the following Sec. 32A. section :—

5 32A. (1) A person shall not, without the prior consent in writing of the Minister or of a person authorised by him, publish or cause to be published any statement which—

10 (a) is intended or apparently intended by that person to promote the business of supplying goods or services to consumers carried on by him or by another person; and

(b) makes reference to—

(i) the Bureau;

15 (ii) the Commissioner;

(iii) the Council;

20 (iv) a person appointed, or an organisation constituted, under an Act of the Commonwealth or of any State or Territory of the Commonwealth, and having functions relating to the protection of consumers (being a person or an organisation prescribed for the purposes of this subpara-

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Statements including references to certain organisations, etc., not to be published without Minister's consent.

(v)

Commercial Law (Miscellaneous Provisions).

(v) a person employed in the Bureau or by a person, or by or in an organisation, referred to in subparagraph (iv).

5 Penalty: \$2,000 or imprisonment for three months, or both.

(2) A statement shall be deemed to be published for the purposes of subsection (1) if it is—

10 (a) inserted in a newspaper or other publication printed or published in New South Wales;

(b) publicly exhibited—

15 (i) in, on, over or under any building, vehicle, aircraft or ship or in any other place (whether or not a public place and whether on land or water); or

20 (ii) in the air in view of persons being or passing in or on any street or public place;

(c) contained in any document gratuitously sent or delivered to any person or thrown or left upon or at premises in the occupation of any person;

25

(d) broadcast by wireless transmission or by television; or

(e) made verbally.

(v)

(m)

Commercial Law (Miscellaneous Provisions).

(m) by omitting from section 33 (a) the words "prepared, or sold, or offered for hire" wherever occurring and by inserting instead the words "prepared or supplied".

Sec. 33.
(Powers of inspectors.)

5 6. The Consumer Protection Act, 1969, is further amended by inserting after Part III the following Part :—

Further amendment of Act No. 28, 1969. Part IIIA.

PART IIIA.

INSTRUCTIONS FOR CARE OF GOODS.

- 10 34A. (1) The Governor may make regulations for or with respect to—
- (a) instructions for the care of goods of a prescribed class or description;
 - (b) specifying whether the instructions are required to be marked on the goods or are required to accompany them;
 - (c) the manner in which the instructions are required to be marked on or to accompany the goods;
 - (d) standards with which the instructions are required to comply; and
 - 20 (e) the matters with which the instructions are required to deal.

Regulations requiring goods to be marked with or accompanied by instructions for care.

(2) The regulations made under subsection (1) may apply either generally or in prescribed circumstances or subject to prescribed conditions.

(3)

Commercial Law (Miscellaneous Provisions).

5 (3) A class or description of goods may be prescribed in regulations made under subsection (1) notwithstanding that the goods are for use only as component parts of other goods (whether or not those other goods are of a class or description so prescribed).

10 34B. (1) Any supplier who supplies goods in respect of which regulations made under section 34A are in force is guilty of an offence against this Act if any requirement of the regulations relating to those goods is contravened or not complied with. Offence to supply certain goods in contravention of regulations made under section 34A.

(2) Subsection (1) does not apply to a supplier—

- 15 (a) who believes on reasonable grounds that the goods will not be used in New South Wales;
- (b) who, in the case of goods supplied under a credit-sale agreement or a hire-purchase agreement, did not have possession of the goods before the goods were supplied and only became their owner at the time at which or after which the agreement was entered into;
- 20 (c) who supplies the goods as scrap, that is to say, for the value of the materials of which they are composed and not for use as finished goods;
- 25 (d) who, in the case of goods that are damaged, whether the damage was caused by fire or flood or other cause, supplies the goods to another person who carries on a business of acquiring damaged goods or, where the goods have been insured against damage, to the insurer of the goods;
- 30

(e)

Commercial Law (Miscellaneous Provisions).

(e) who supplies the goods in connection with the sale or lease of premises; or

5 (f) where the goods are supplied under a lease, hiring agreement or hire-purchase agreement, if the supply did not contravene any regulation made under section 34A when the lease, hiring agreement or, as the case may be, hire-purchase agreement took effect.

10 (3) It is a defence to a prosecution for an offence under subsection (1) if the defendant proves that the goods referred to in the information for the offence were manufactured in or imported into New South Wales before the regulations applicable to those goods (being regulations made under section 34A) took effect, but, if the defendant has failed to give reasonable notice of the defence to the informant before the hearing of the information is commenced, he shall, if the court so directs, pay such of the costs of the informant as have resulted from that failure.

20 (4) Regulations made under section 34A may contain such other exemptions from the operation of subsection (1), applicable in such cases, as may be prescribed.

34c. An inspector may at any reasonable time—

25 (a) enter any place where goods (being goods of a class or description that are subject to regulations made under section 34A) are supplied, or where he has reasonable cause to believe that any such goods are supplied;

30 (b) inspect any such goods in that place;

(c)

Powers of
inspectors
under this
Part.

Commercial Law (Miscellaneous Provisions).

- (c) take any such goods, after paying a just price for them;
- 5 (d) examine with respect to matters under this Part any person employed or engaged in any such place; and
- (e) make such examinations and inquiries as he thinks necessary to ascertain whether the requirements of this Part are being complied with.

7. The Consumer Protection Act, 1969, is further
10 amended—

- (a) by omitting Division 1 of Part IV;
- (b) by omitting section 36 (2) and by inserting instead the following subsection :—
 - 15 (2) Regulations made under subsection (1) may apply either generally or in prescribed circumstances or subject to prescribed conditions.
- (c) (i) by omitting from section 37 (1) the word "sell" and by inserting instead the word "supply";
- 20 (ii) by omitting from section 37 (2) the word "sell" and by inserting instead the word "supply";
- (iii) by omitting from section 37 (3) (b) the words "a sale" and by inserting instead the words "a supply of goods or component parts";
- 25 (iv) by omitting from section 37 (3) (b) the words "a letting";

Further amendment of Act No. 28, 1969.

Part IV, Division 1. (Interpretation.)

Sec. 36. (Safety requirements and instructions.)

Sec. 37. (Prohibition on supply of goods not complying with regulations under s. 36.)

(v)

Commercial Law (Miscellaneous Provisions).

- (v) by omitting from section 37 (3) (c) the word “selling” and by inserting instead the word “supplying”;
- 5 (vi) by omitting from section 37 (3) (d) the words “by, or in consequence of, fire or flooding, where he is selling” and by inserting instead the words “, whether the damage was caused by fire or flood or other cause, where he supplies”;
- 10 (d) by omitting from section 38 (1) the word “sell” and by inserting instead the word “supply”;
- Sec. 38.
(Enforcement of s. 37.)
- (e) (i) by omitting from section 39 (a) the words “belonging to a class or description in respect of which regulations have been made under section 36 or component parts of any such goods are sold or kept for any purpose of advertisement or trade” and by inserting instead the words “(being goods of a class or description that are subject to regulations made under section 36), or component parts of any such goods, are supplied”;
- 15
- 20 (ii) by omitting from section 39 (a) the words “sold or so kept” and by inserting instead the word “supplied”;
- (f) by inserting after Division 2 of Part IV the following
- 25 Division :—
- Part IV,
Division
2A.
- DIVISION 2A.—*Prohibition or Restriction on Supply of Dangerous Goods to Consumers.*
- 30 39A. In this Division and in Schedule 3—
- Definitions for the purposes of this Division.
- “Committee” means the Products Safety Committee established under section 39B;
- “dangerous” means likely to cause the death, or injury to the body or health, of any person, whether directly or indirectly.

Commercial Law (Miscellaneous Provisions).

39B. (1) There shall be established a committee to be known as the Products Safety Committee for the purpose of performing the functions assigned to the Committee under this Division. Constitution
of Products
Safety
Committee.

5 (2) The Committee shall consist of such number of members appointed by the Minister as the Minister may determine.

(3) Of the members—

10 (a) one shall be an officer of the Department who shall be the chairman of the Committee; and

(b) the remainder shall be persons who, in the opinion of the Minister, have expertise in product safety.

15 (4) The provisions of Schedule 3 shall have effect with respect to the Committee.

20 39c. (1) The Minister, or the Commissioner with the approval of the Minister, may refer to the Committee the question as to whether the supply of goods of a class or description specified in the reference or of any particular goods so specified (being goods which, in the opinion of the Minister or the Commissioner, as the case may be, are or are likely to be supplied to consumers in New South Wales, but not being goods the supply of which is prohibited or regulated by or under an enactment specified in Schedule 4) ought, by reason of the goods being dangerous, to be prohibited or to be allowed only subject to conditions or restrictions. References
to the
Committee.

25 30 (2) Whenever the Minister or the Commissioner refers a question under subsection (1), he shall cause particulars of the question to be notified to the public in the prescribed manner.

(3)

Commercial Law (Miscellaneous Provisions).

5 (3) The Committee shall, on the reference of any question under subsection (1), fully consider the question and determine what recommendations it should make with respect to the question and shall then prepare a report containing those recommendations and submit that report to the Minister.

10 (4) Where, on the reference of any question under subsection (1), the Committee is of the opinion that the supply of goods of a class or description, or, as the case may be, the particular goods, to which the question relates ought, in the interests of the safety of the public, to be prohibited immediately, the Committee may, notwithstanding that it has not fully considered the question as
15 required by subsection (3), make a recommendation to the Minister that he make an interim order with respect to those goods in accordance with section 39E (3).

20 (5) The Commissioner shall, if he is requested to do so by the Committee, give to the Committee to enable it to consider the question—

- (a) any information in his possession which relates to the question; and
- 25 (b) any other assistance which the Committee may require, and which it is within his power to give, in relation to the question.

30 (6) If a member of the Committee dissents from a decision of the Committee in respect of the question, the chairman of the Committee shall record in the report a note of that dissent and of the reasons for it (if any).

(7)

Commercial Law (Miscellaneous Provisions).

(7) The Committee, in considering the question—

- 5 (a) may make such investigations as it considers necessary to enable it to make a recommendation with respect to the question;
- 10 (b) shall take into account any representations made to it by any person who, in its opinion, has a substantial interest in the subject-matter of the question or by any body which, in its opinion, represents a substantial number of persons who have such an interest; and
- 15 (c) unless in all the circumstances the Committee does not consider that it is reasonably practicable to do so, shall permit any such person or body to be heard orally by the Committee, or by a member of the Committee nominated by the Committee for
- 20 the purpose.

(8) Subject to subsection (7) and clause 5 of Schedule 3, the Committee may determine its own procedure for considering the question, and in particular may determine—

- 25 (a) the extent, if any, to which persons interested or claiming to be interested in the question are allowed to be present or to be heard, either by themselves or by their representatives, or to cross-examine witnesses or
- 30 otherwise participate in the consideration of the question; and
- (b) the extent, if any, to which the Committee shall hold its proceedings in public.

(9)

Commercial Law (Miscellaneous Provisions).

(9) In determining its procedure under subsection (8), the Committee shall act in accordance with any general directions which may be given it by the Minister.

5 (10) The regulations may amend
Schedule 4 by omitting the reference to any enact-
ment specified in that Schedule or by inserting in
that Schedule a reference to any enactment which
10 prohibits or regulates the supply of any class or
description of goods.

39D. (1) For the purposes of any investigation of a question referred to it under section 39C (1), the Committee may, by notice in writing signed by the chairman or by a member of the Committee on his behalf—

15

Attendance
of witnesses
and produc-
tion of
documents.

(a) require any person to attend at a time and place specified in the notice and to give evidence to the Committee or to a member of the Committee nominated by it for the purpose;

20

(b) require any person to produce, at a time and place specified in the notice, to the Committee or to a member of the Committee nominated by it for the purpose, any goods or documents which are specified or described in the notice and which are goods or documents in his custody or under his control and are relevant to the investigation; and

25

(c) take goods so produced, after paying a just price for them, and cause to be conducted such tests and examinations with respect to them as it considers necessary for the purpose of determining whether or not they may be dangerous.

30

35

Commercial Law (Miscellaneous Provisions).

(2) For the purposes of any such investigation the Committee, or a member of the Committee nominated by it for the purpose, may take evidence on oath, and for that purpose may administer oaths.

5 (3) A person shall not be compelled, for the purposes of any such investigation, to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the Supreme Court or, in obedience
10 to a notice under subsection (1), to attend any such investigation unless the reasonable expenses of his attendance are paid or tendered to him.

(4) Any person who—

15 (a) without reasonable excuse, refuses or fails to do anything required of him by a notice under subsection (1); or

(b) alters, suppresses or destroys any document which he is required by any such notice to produce,

20 is guilty of an offence against this Act.

25 39E. (1) Where a report submitted to the Minister under section 39C (3) contains a recommendation that the supply of goods of any class or description specified in the report, or of any particular goods so specified, ought to be prohibited, or ought to be allowed only subject to conditions or restrictions so specified, the Minister may, if he agrees with the recommendation, make an order giving effect to the recommendation.

Power of Minister to make orders prohibiting or restricting the supply of dangerous goods.

30 (2) Section 41 of the Interpretation Act, 1897, shall apply to an order made under subsection (1) as if the order were a regulation to which that section applies.

(3)

Commercial Law (Miscellaneous Provisions).

5 (3) Where the Committee makes a recommendation under section 39c (4), the Minister may, if he agrees with the recommendation, make an interim order prohibiting the supply of goods of the class or description specified in the recommendation, or of any particular goods so specified, for a period not exceeding 28 days from the date on which the order is published under subsection (4).

10 (4) If the Minister makes an interim order under subsection (3), he shall cause the order to be published in the Gazette.

39F. Any person who supplies goods in contravention of an order made under section 39E (1) or (3) is guilty of an offence against this Act. Offence to contravene an order under section 39E.

15 39G. Where any supplier supplies goods in contravention of an order made under section 39E (1) or (3), that contravention is a breach of duty that, subject to the defences and other incidents applying to actions for breach of statutory duty, is actionable Action for breach of statutory duty.
20 at the suit of any person, whether he is the person to whom the goods were supplied or not, who has sustained loss or damage in consequence of that breach.

39H. An inspector may at any reasonable time— Powers of inspectors.
25 (a) enter any place at which any goods (being goods that are the subject of a question referred to the Committee under section 39c (1) or goods that are the subject of an order made under section 39E (1) or (3)) are manufactured,

Commercial Law (Miscellaneous Provisions).

manufactured, prepared or supplied, or at which he has reasonable cause to believe that any such goods are manufactured, prepared or supplied;

- 5 (b) inspect any such goods in that place;
- (c) take any such goods, after paying a just price for them;
- (d) examine with respect to matters under this Division any person employed or engaged in that place; and
- 10 (e) make such examination and inquiries as he thinks necessary for the purposes of this Division.

(g) by omitting Division 3 of Part IV.

Part IV,
Division 3.
(Refrigerators, Ice-Chests, Ice-Boxes and Freezers.)

15 **8.** The Consumer Protection Act, 1969, is further amended—

Further amendment of Act No. 28, 1969.

- (a) (i) by omitting the definitions of “services” and “supply” in section 42 (1);
- (ii) by omitting section 42 (2) (g), (h), (i) and
- 20 (j);

Sec. 42.
(Definitions.)

(b) by omitting from section 46 the words “of Labour and Industry”;

Sec. 46.
(Acting Commissioner for Trade Practices.)

(c)

Commercial Law (Miscellaneous Provisions).

(c) by omitting section 53 (1) and by inserting instead the following subsection :—
Sec. 53.
(Proceedings for offences under this Part.)

(1) Proceedings for an offence arising under this Part shall—

5 (a) be disposed of before the Industrial Commission; and

10 (b) be commenced by information laid in the office of the Industrial Registrar within 12 months after the time when the offence is alleged to have been committed.

9. The Consumer Protection Act, 1969, is further amended—
Further amendment of Act No. 28, 1969.

15 (a) by omitting from section 55 (5) the words “one hundred dollars” and by inserting instead the matter “\$300”;
Sec. 55.
(Inspectors.)

(b) (i) by omitting section 56 (3) and by inserting instead the following subsection :—
Sec. 56.
(Proceedings for offences against this Act.)

20 (3) Proceedings for an offence against this Act (other than an offence arising under Part V) shall—

(a) be disposed of summarily before a stipendiary magistrate, or before an industrial magistrate appointed under the Industrial Arbitration Act, 1940; and

(b)

Commercial Law (Miscellaneous Provisions).

(b) be commenced by information laid within 12 months after the time when the offence is alleged to have been committed.

5 (ii) by omitting section 56 (5);

(c) by omitting section 57 (1) and by inserting instead ^{Sec. 57.}
the following subsection :— (Penalty.)

10 (1) A person who is guilty of an offence against this Act for which no penalty is otherwise provided is liable to a penalty not exceeding \$2,000 or imprisonment for a term not exceeding 12 months, or both.

15 (d) (i) by omitting from section 58 (1) the words ^{Sec. 58.}
“Under Secretary” and by inserting instead ^(Evidentiary provisions.)
the words “prescribed officer of the Department”;

(ii) by inserting after section 58 (2) the following subsections :—

20 (3) In proceedings for an offence against this Act, a printed document which is or purports to be a standard, rule, code or specification of an association or body referred to in, or prescribed for the purposes of, section 52
25 (3) (b) or section 59 (1A) (a) and which has been or purports to have been published or issued by or on behalf of that association or body is admissible as evidence in those proceedings and, in the absence of evidence to the contrary, is proof of that standard, rule,
30 code or specification.

(4)

Commercial Law (Miscellaneous Provisions).

5 (4) In proceedings for an offence against
this Act, a certificate purporting to be signed
by the Government Analyst or by one of his
officers and certifying the result of an analysis
is, unless the defendant requires the Govern-
ment Analyst or officer to be called as a
witness in the proceedings, admissible as
evidence of the facts certified and, in the
10 absence of evidence to the contrary, is proof
of those facts.

(e) (i) by inserting after section 59 (1) the following subsection :—

Sec. 59.
(Regula-
tions.)

(1A) A regulation made under this Act—

15 (a) may adopt, either in whole or in part,
or by reference, any standards, rules,
codes or specifications of the Stan-
dards Association of Australia, the
British Standards Institution or any
20 other association or body prescribed
for the purposes of this paragraph;
and

(b) may include provisions which differ in
their application according to circum-
stances or factors specified in the
25 regulation.

(ii) by omitting section 59 (2) and (3) and by
inserting instead the following subsection :—

30 (2) Section 41 of the Interpretation Act,
1897, applies in respect of a regulation made
under this Act as if this Act had been passed
after the commencement of the Interpretation
(Amendment) Act, 1969.

(f)

Commercial Law (Miscellaneous Provisions).

(f) by inserting after Schedule 2 the following Schedules 3 and 4.
Schedules :—

SCHEDULE 3.

Sec. 39B (4).

PROVISIONS APPLICABLE TO PRODUCTS SAFETY COMMITTEE.

5 1. (1) Subject to subclauses (3), (4) and (5), a member of the Committee shall hold and vacate office in accordance with the terms of his appointment or reappointment. Appointment and tenure of office of members.

10 (2) On the expiration of any period of appointment or reappointment, a member of the Committee may be reappointed for a further period.

(3) A member of the Committee may at any time resign his membership by notice in writing addressed to the Minister.

15 (4) The Minister may at any time remove from office a member of the Committee by notice in writing addressed and delivered to that member.

(5) The chairman of the Committee shall be deemed to have vacated his office as a member of the Committee if he ceases to be a member of the Department.

20 2. (1) If the member referred to in section 39B (3) (a) is unable to carry out his duties as a member of the Committee for any period, the Minister may appoint another officer of the Department to act in his place for that period, and that officer shall, during that period, have and may exercise the duties and powers of chairman of the Committee. Deputies of members.

25 (2) If any of the members referred to in section 39B (3) (b) is unable to carry out his duties as a member of the Committee for any period, the Minister may appoint another person who, in his opinion, has expertise in product safety to act in his place for that period, and a person so appointed shall, during that period, be deemed to be a member of the Committee.

30 3. There shall be paid to members of the Committee such remuneration, and such travelling and other allowances, as in the case of any of those members the Minister may determine. Remuneration and allowances.

35 4. At any meeting of the Committee the decision of a majority of its members present and voting shall be the decision of the Committee. Decisions of Committee.

40

Commercial Law (Miscellaneous Provisions).

5. (1) The Committee, with the prior approval of the Co-opted Minister, may co-opt any person who, in its opinion, has members. expertise in relation to any question referred to it under section 39c (1).

5

(2) A person co-opted under subclause (1) shall, when attending a meeting of the Committee, be deemed to be a member of the Committee and shall have a right to vote and participate in the Committee's proceedings.

SCHEDULE 4.

Sec. 39c (1).

10

ENACTMENTS PROHIBITING OR REGULATING THE SUPPLY OF GOODS.

The following enactments are specified for the purpose of section 39c (1) :—

15

1. Agricultural Seeds Act, 1921.

2. Dairy Industry Act, 1915.

3. Explosives Act, 1905.

4. Fertilizers Act, 1934.

5. Inflammable Liquid Act, 1915.

6. Pest Destroyers Act, 1945.

20

7. Plant Diseases Act, 1924.

8. Poisons Act, 1966.

9. Pure Food Act, 1908.

10. Radioactive Substances Act, 1957.

11. Stock Foods and Medicines Act, 1940.

25 10. The Credit-sale Agreements Act, 1957, is amended— Amendment of Act No. 29, 1957.

(a) by omitting from section 8 (2) (b) (iv) the words Sec. 8. "which are goods of any of the descriptions referred (Requirements relating to credit-sale agreements.) to in paragraphs (a), (b) and (c) of subsection (2)

of

Commercial Law (Miscellaneous Provisions).

- of section 11 or a television-set or prescribed goods”
and by inserting instead the words “, being goods
of the following descriptions, namely, industrial
machinery, farm equipment, a motor vehicle, a
television-set or prescribed goods”;
- 5
- (b) by omitting from the Schedule the matter “P Schedule.
represents the difference between the purchase-price
of the goods and the amount of the deposit provided
by the buyer in connection with the agreement” and
10 by inserting instead the following matter :—
- P represents the total of the amounts referred to
in section 8 (2) (b) (i), (ii), (iii) and (iv)
and any amount representing the whole or
any part of the stamp duty chargeable on the
15 agreement under the Stamp Duties Act,
1920, less the amount of the deposit
provided by the buyer in connection with
the agreement.
11. The Lay-by Sales Act, 1943, is amended—
- Amendment
of Act No.
36, 1943.
- 20 (a) by omitting section 4 (8) (b) and by inserting
instead the following paragraph :—
- Sec. 4. 00
(Register.)
- (b) Any member of the police force holding a
rank not below sergeant, and any inspector
appointed under the Consumer Protection Act,
25 1969, may at all reasonable times inspect the
register and take copies of or extracts from it.
- (b) by omitting section 6 (2) (b) and by inserting
instead the following paragraph :—
- Sec. 6. 20
(Goods
sold or
agreed to
be sold
on lay-by
to be set
aside.)
- 30 (b) Any member of the police force holding a
rank not below sergeant, and any inspector
appointed under the Consumer Protection Act,

Commercial Law (Miscellaneous Provisions).

1969, may at all reasonable times inspect any goods set aside in accordance with this section and may examine the entries in the register relating to them.

12. The Moneylending Act, 1941, is amended—

Amendment
of Act No.
67, 1941.

- 5 (a) (i) by inserting in section 45 (1) after the words “Commissioner of Police,” where secondly occurring the words “or any inspector appointed under the Consumer Protection Act, 1969,”; Sec. 45.
(Inspection
of docu-
ments, etc.)
- 10 (ii) by inserting in section 45 (2) (a) after the words “authorized as aforesaid” the words “; or any inspector appointed under the Consumer Protection Act, 1969,”;
- 15 (b) (i) by inserting in the definition of “finance broker” in section 60 after the words “loans or credits” where firstly occurring the words “(including home finance loans)”;
Sec. 60.
(Interpre-
tation.)
- (ii) by omitting paragraph (c) of the definition of “finance broker” in section 60;
- 20 (iii) by inserting after the definition of “finance broker” in section 60 the following definitions :—
- 25 “home finance loan” means a loan the whole or any part of which is or is intended to be applied for the purpose of—
- (a) enabling the borrower to acquire a private dwelling-house or land for the erection of such a house; or

(b)

Commercial Law (Miscellaneous Provisions).

5 (b) providing the borrower with funds for the erection of a private dwelling-house or for the carrying out of structural improvements or additions to a private dwelling-house,

but does not include a loan to a person—

10 (c) who carries on a business as a building contractor;

15 (d) whose business involves or includes the erection of private dwelling-houses or the carrying out of structural improvements or additions to private dwelling-houses; or

(e) whose business involves or includes the acquisition or disposal of land,

20 if the loan is or is intended to be used for the purpose of that business or in the course of carrying on that business;

“private dwelling-house” means—

25 (a) a building that is designed, or is designed principally, as a separate residence for one family or person; or

30 (b) an apartment, flat or other part of a building that is so designed;

(iv)

Commercial Law (Miscellaneous Provisions).

(iv) by inserting at the end of section 60 the following subsection :—

5 (2) Where a person, in the course of carrying on a business, negotiates or acts as an intermediary to obtain, or advertises or announces or holds himself out in any way as being willing to negotiate or act as an intermediary to obtain—

(a) any loan or credit for or on behalf of a company;

10 (b) any loan (not being a home finance loan) or any credit if the loan or credit is or would if made or provided be for an amount exceeding that prescribed for the purposes of this paragraph;

15 (c) any loan (not being a home finance loan) pursuant to an agreement to finance the erection of a building by a series of advances made or to be made during the erection of the building and secured or to be secured
20 on the land on which the building is being or is to be erected if the aggregate of those advances exceeds or would if made exceed the amount prescribed for the purposes of this paragraph;

25 (d) any loan or credit where the rate of any interest in respect of the loan or credit does not exceed, or would not exceed if the loan or credit were made or provided, the prescribed rate; or

30 (e) any loan made, offered or made available, or any credit provided, offered or made available, by a corporation that, by virtue

of

Commercial Law (Miscellaneous Provisions).

of section 38 (7) (c) (i) of the Companies Act, 1961, is a prescribed corporation as defined in section 38 (7) of that Act,

5 that person shall be deemed not to be a finance broker in respect of that loan or credit, as the case may be.

(c) by inserting after section 71 the following section :—

10 71A. For the purpose of any proceedings in respect of an offence against this Part, or of proceedings under section 72, a loan which, but for this section, would be a home finance loan shall be deemed not to be a home finance loan if—

Defence in proceedings involving the negotiation, etc., of home finance loans.

15 (a) the defendant in the case of proceedings for an offence, or the finance broker in the case of proceedings under section 72, proves that he did not know and had no reason to believe that the loan was, or would if made be, a home finance loan and that he had made reasonable inquiries as to how the loan was to be applied; and

20 (b) the loan would have been of a class referred to in section 60 (2) (b) or (c) if it had not been a home finance loan.

25 13. (1) Each Act referred to in column 1 of Schedule 1 is amended in the manner specified opposite that reference in column 2 of that Schedule.

Amendment of Acts by way of Statute Law Revision.

30 (2) The Commercial Transactions (Miscellaneous Provisions) Act, 1974, is amended by inserting in section 3 (c) (iii) after the words "the total" the words "where firstly occurring".

Amendment of Act No. 105, 1974. Sec. 3. (Amendment of Act No. 33, 1960.)

SCHEDULE

Commercial Law (Miscellaneous Provisions).

SCHEDULE 1.

Sec. 13 (1).

AMENDMENT OF ACTS BY WAY OF STATUTE LAW REVISION.

| Column 1. | | Column 2. |
|-----------|-------------------------|---|
| 5 | Year and number of Act. | Short title of Act. |
| 10 | 15 | 20 |
| 25 | 30 | 35 |
| 40 | 45 | 50 |
| | 1941, No. 67.. | Moneylending Act, 1941. |
| | | Section 3 (1)— Omit paragraph (b) of the definition of "Money-lender" and insert instead the following paragraph:— (b) any society registered under the Friendly Societies Act, 1912, or under the Co-operation Act, 1923; or. Omit from paragraph (b1) of the same definition " , or any Act amending that Act". Omit from paragraph (b2) of the same definition " , or any Act amending or replacing that Act". Omit the definition of "Schedule". Section 7 (3) (b) and (c)— Omit " , as amended by subsequent Acts" wherever occurring. Section 8 (1) (c)— Omit " , as amended by subsequent Acts". Section 9 (1) (b)— Omit "as amended by subsequent Acts,". Section 23 (6)— Omit "1898-1938" and insert instead "1898". Section 34 (3)— Omit "as amended by subsequent Acts,". Section 39 (8) and (9)— Omit "1898-1938" wherever occurring and insert instead "1898". Section 50 (1) (a)— Omit "Small Debts Recovery Act, 1912, as amended by subsequent Acts" and insert instead "Courts of Petty Sessions (Civil Claims) Act, 1970". |
| | 1943, No. 36.. | Lay-by Sales Act, 1943. |
| | | Section 1 (3)— Omit "1923-1937" and insert instead "1923". Section 5 (4)— Omit "Factories and Shops Act, 1912-1943" and insert instead "Consumer Protection Act, 1969". Section 7 (3)— Omit "Factories and Shops Act, 1912-1943" and insert instead "Consumer Protection Act, 1969". |

SCHEDULE

*Commercial Law (Miscellaneous Provisions).*SCHEDULE 1—*continued.*AMENDMENT OF ACTS BY WAY OF STATUTE LAW REVISION—
continued.

| Column 1. | | Column 2. |
|-----------|------------------------------------|--|
| 5 | Year and number of Act. | Amendment. |
| 10 | 1943, No. 36— <i>continued.</i> | Lay-by Sales Act, 1943— <i>continued.</i> Section 7 (6)— Omit "1902-1940" and insert instead "1902". Section 13 (1) and (2)— Omit "holden before a stipendiary magistrate or a police magistrate" wherever occurring and insert instead "held before a stipendiary magistrate". Section 13 (4)— Omit "Small Debts Recovery Act, 1912, as amended by subsequent Acts, and be enforceable as such under the provisions of that Act as so amended" and insert instead "Courts of Petty Sessions (Civil Claims) Act, 1970, and be enforceable under that Act". Section 17 (6)— Omit "purchaser" from the definition of "vendor" and insert instead "vendor". Section 19 (2)— Omit "holden before a stipendiary or a police magistrate" and insert instead "held before a stipendiary magistrate". Section 22— Omit subsection (4) and insert instead the following subsection:— (4) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation made under this Act as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969. Section 2 (1)— Omit "as amended by subsequent Acts" from the definition of "Credit-sale agreement". Section 8 (2) (b)— Omit "as amended by subsequent Acts" wherever occurring. Omit "as subsequently amended". Section 12 (2)— Omit "the provisions of section 26D of the Hire-purchase Agreements Act, 1941, as amended by subsequent Acts" and insert instead "section 23 of the Hire-Purchase Act, 1960". |
| 15 | | |
| 20 | | |
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| 40 | 1957, No. 29.. | |
| 45 | Credit-sale Agreements Act, 1957. | |
| 50 | | |

SCHEDULE

*Commercial Law (Miscellaneous Provisions).*SCHEDULE 1—*continued.*AMENDMENT OF ACTS BY WAY OF STATUTE LAW REVISION—
continued.

| Column 1. | | Column 2. |
|-----------|------------------------------------|--|
| 5 | Year and number of Act. | Short title of Act. |
| | | Amendment. |
| 10 | 1957, No. 29— <i>continued.</i> | Credit-sale Agreements Act, 1957— <i>continued.</i> |
| 15 | | Section 14— Omit subsection (2) and insert instead the following subsection:— (2) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation made under this Act as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969. |
| 20 | 1969, No. 28.. | Consumer Protection Act, 1969. |
| 25 | | Section 3 (2)— Omit “, as subsequently amended” wherever occurring. Omit “as so amended,”. Omit “Part IV, and shall be deemed to have been made under this Act.” and insert instead:— Part IV, and shall be deemed to have been made under this Act. |
| 30 | | Section 4 (2)— Omit “, or any Act amending or replacing any such Act”. |
| 35 | | Section 11 (6)— Omit paragraph (b) and insert instead the following paragraph:— (b) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act; |
| 40 | | Omit paragraph (d) and insert instead the following paragraph:— (d) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration, or estate, for their benefit; |
| 45 | | Section 13— Omit “, as subsequently amended”. |
| 50 | | Section 42 (2) (f)— Omit “, as subsequently amended”. |
| | | Section 45— Omit “, as subsequently amended”. |

*Commercial Law (Miscellaneous Provisions).*SCHEDULE 1—*continued.*AMENDMENT OF ACTS BY WAY OF STATUTE LAW REVISION—
continued.

| Column 1. | | Column 2. |
|-----------|------------------------------------|--|
| 5 | Year and number of Act. | Short title of Act. |
| | | Amendment. |
| 10 | 1969, No. 28— <i>continued.</i> | Consumer Protection Act, 1969— <i>continued.</i> |
| 15 | | Section 53 (2)— Omit “, as subsequently amended”. |
| | | Section 54 (2)— Omit “, as subsequently amended”. |
| | | Section 56 (1)— Omit “, as subsequently amended”. |
| | | Section 56 (4)— Omit “, as subsequently amended”. |
| 20 | | Section 58 (1)— Omit “, as subsequently amended” wherever occurring. |
| | | Schedule 2— Clause 3— Omit “as subsequently amended,”. |
| 25 | | Clause 13— Omit “1912–1960,” and insert instead “1912,”. |
| | | Omit “as subsequently amended,”. |
| | | Clause 14— Omit “1912–1960,” and insert instead “1912,”. |
| 30 | | Omit “as subsequently amended,”. |
| | | Clause 15— Omit “, as subsequently amended”. |

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1975
[56c]

No. , 1975.

A BILL

To require certain goods to be labelled with instructions for care; to empower the Minister to make orders prohibiting or restricting the supply of certain goods supplied or likely to be supplied to consumers; to empower the Commissioner for Consumer Affairs to grant assistance to persons who wish to bring, or who are parties to, legal proceedings arising out of the supply of goods or services; and for these and other purposes to

amend

Commercial Law (Miscellaneous Provisions).

amend the Consumer Protection Act, 1969, the Credit-sale Agreements Act, 1957, the Lay-by Sales Act, 1943, the Moneylending Act, 1941, and the Commercial Transactions (Miscellaneous Provisions) Act, 1974.

5 [SIR ERIC WILLIS—25 November, 1975.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Commercial Law (Miscellaneous Provisions) Act, 1975". Short title.

2. (1) Except as provided in subsections (2) and (3), this Act shall commence on the date of assent to this Act. Commencement.

15 (2) Sections 3 (a) (vi) and (vii), 7 (f), 7 (g), 9 (d) (i) and 12 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(3) Section 13 (2) shall be deemed to have 20 commenced on 1st January, 1975.

3. The Consumer Protection Act, 1969, is amended— Amendment of Act No. 28, 1969.

(a) (i) by omitting from section 2 the matter relating to Division 1 of Part II; Sec. 2. (Division of Act.)

(ii)

Commercial Law (Miscellaneous Provisions).

- (ii) by inserting in section 2 after the matter relating to Division 3 of Part II the following matter :—

5

DIVISION 3A.—*Legal Assistance to Consumers*—ss. 16G–16L.

- (iii) by omitting from section 2 the matter relating to Division 3 of Part III and by inserting instead the following matter :—

10

DIVISION 3.—*Control of Advertisements*—ss. 32, 32A.

- (iv) by inserting in section 2 after the matter relating to Division 4 of Part III the following matter :—

15

PART IIIA.—*INSTRUCTIONS FOR CARE OF GOODS*—ss. 34A–34C.

- (v) by omitting from section 2 the matter relating to Division 1 of Part IV;

- (vi) by inserting in section 2 after the matter relating to Division 2 of Part IV the following matter :—

20

DIVISION 2A.—*Prohibition or Restriction on Supply of Dangerous Goods to Consumers*—ss. 39A–39H.

- (vii) by omitting from section 2 the matter relating to Division 3 of Part IV;

25

(b)

Commercial Law (Miscellaneous Provisions).

(b) by omitting section 5 and by inserting instead the Sec. 5. following section :—

5. (1) In this Act, except so far as the context ^{Interpre-} or subject-matter otherwise indicates or requires— ^{tation.}

5 “Bureau” means the Consumer Affairs Bureau established under Part II;

 “Commissioner” means the Commissioner for Consumer Affairs appointed under Part II;

10 “component part”, in relation to any goods, includes an accessory to those goods;

 “consumer” means a person—

15 (a) to whom goods are or are offered to be supplied in the course of a business carried on by the person supplying or offering to supply them; or

20 (b) to whom services are or are offered to be supplied in the course of a business carried on by the person supplying or offering to supply them,

 and who does not receive or seek to receive the goods or services in the course of a business carried on by him;

25 “Council” means the Consumer Affairs Council constituted under Part II;

30 “credit-sale agreement” means an agreement for the sale of goods under which the whole or any part of the purchase price is payable by instalments;

 “Department”

Commercial Law (Miscellaneous Provisions).

“Department” means a Department, Ministry or other authority that under the Minister is concerned with the administration of this Act;

5 “goods” includes any chattel or other thing that is the subject of trade or manufacture;

“hire-purchase agreement” has the meaning ascribed to that expression by section 2 of the Hire-Purchase Act, 1960;

10 “inspector” means an inspector appointed under section 55;

“regulations” means regulations under this Act;

“services” includes the rights and benefits that are or are to be supplied under—

15 (a) a contract for or involving—

(i) the performance of work (including work of a professional nature);

20 (ii) the provision of, or the use or enjoyment of, facilities for amusement, entertainment, recreation or instruction; or

25 (iii) the provision of gas or electricity or other forms of energy;

(b) a contract of insurance (including life assurance); or

(c)

Commercial Law (Miscellaneous Provisions).

5 (c) a contract between a banker and client entered into in the course of the carrying on by the banker of the business of banking, or any other contract (whether between a banker and client or otherwise) for or involving the loan of money or the provision of credit facilities,

10 whether the contract is express or implied and, if it is express, whether it is oral or in writing, and also includes both services supplied to order and services supplied by making them available to potential users, but does not include services supplied under a contract of employment or of apprenticeship;

15 "supplier" means a person who in the course of a business supplies goods or services;

"supply"—

20 (a) in relation to goods, includes supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase, and also includes exhibit, expose or have in possession for the purpose of sale, exchange, lease, hire or hire-purchase or for any purpose of advertisement, manufacture or trade; and

25 (b) in relation to services, includes provide, grant or render.

30 (2) For the purposes of this Act—

(a) a reference to the supply or acquisition of goods includes a reference to agreeing to supply or acquire goods;

(b)

Commercial Law (Miscellaneous Provisions).

- (b) a reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods in pursuance of a supply of the goods;
- 5 (c) a reference to the supply or acquisition of services includes a reference to agreeing to supply or acquire services;
- (d) a reference to the supply or acquisition of goods includes a reference to the supply or
10 acquisition of goods together with services; and
- (e) a reference to the supply or acquisition of services includes a reference to the supply
15 or acquisition of services together with goods.

4. The Consumer Protection Act, 1969, is further amended— Further amendment of Act No. 28, 1969.

- (a) by omitting Division 1 of Part II; Part II, Division 1. (Interpretation.)
- 20 (b) by omitting from section 7 (2) (a) the words "of Labour and Industry"; Sec. 7. (Constitution of Council.)
- (c) by omitting from section 8 (1) the words "of Labour and Industry"; Sec. 8. (Chairman of Council.)
- (d)

Commercial Law (Miscellaneous Provisions).

- (d) (i) by inserting after section 11 (7) the following subsections :—
- Sec. 11.
(Provisions
applying
to the
Council.)
- 5 (7A) The Chairman ceases to hold office as such and there is a casual vacancy in his office—
- (a) if he dies;
- (b) if he ceases to be an officer of the Department; or
- 10 (c) if he is removed from office by the Governor.
- (7B) On the occurrence of a casual vacancy in the office of Chairman, the Governor may appoint an officer of the Department to fill the vacant office.
- 15 (ii) by omitting from section 11 (8) the word “Governor” and by inserting instead the word “Minister”;
- (e) by omitting from section 14 the words “of Labour and Industry”;
- Sec. 14.
(Acting
Com-
missioner.)
- 20 (f) by omitting from section 15 the words “within the Department of Labour and Industry”;
- Sec. 15.
(Consumer
Affairs
Bureau.)
- (g) (i) by omitting from section 16 (1) (a) the words “Department of Labour and Industry” and by inserting instead the word “Minister”;
- Sec. 16.
(Functions
of Consumer
Affairs
Bureau.)
- 25 (ii) by omitting from section 16 (1) (b) (ii) the word “and” where secondly occurring;
- (iii)

Commercial Law (Miscellaneous Provisions).

(iii) by omitting from section 16 (1) (b) (iii) the word "work." and by inserting instead the word "work ;";

5

(iv) by inserting after section 16 (1) (b) (iii) the following subparagraphs :—

(iv) to act as a secretariat to the Council; and

10

(v) to provide the Council with such information as it may reasonably require relating to goods or services supplied to consumers and to consumer affairs, and to carry out such research as may be necessary for the purpose of enabling that information to be provided.

15

(h) by omitting section 16B (a) and by inserting instead the following paragraph :—

Sec. 16B.
(Power of investigating officer to enter, etc.)

20

(a) enter any place at which goods are manufactured, prepared or supplied, or services are supplied, or any place at which he has reason to believe that goods are manufactured, prepared or supplied, or services are supplied;

25

(i) by inserting after section 16c (7) the following subsections :—

Sec. 16c.
(Investigating officer may require furnishing of information and production of documents.)

(8) A written warning or a notice may be given under subsection (2)—

(a) to a person, not being a corporation—

(i) by delivering it to him personally;

(ii)

Commercial Law (Miscellaneous Provisions).

5 (ii) by leaving it at his place of residence with someone who apparently resides there or at his place of business or employment with someone who is apparently employed there, being in either case a person who has or apparently has attained 16 years of age; or

10 (iii) by posting it in a letter addressed to him at the address last known to the Commissioner of his place of residence, business or employment; or

(b) to a person, being a corporation—

15 (i) by delivering it to the secretary of the corporation, or any other person concerned in the management of the corporation, personally;

20 (ii) by leaving it at the corporation's only or principal place of business with a person apparently employed there, being a person who has or apparently has attained 16 years of age; or

25 (iii) by posting it in a letter addressed to the corporation at the address last known to the Commissioner of its only or principal place of business.

30 (9) Subsection (8) (b) is in addition to section 362 of the Companies Act, 1961.

(j)

Commercial Law (Miscellaneous Provisions).

(j) by inserting after Division 3 of Part II the following Division :— Part II,
Division 3A.

DIVISION 3A.—*Legal Assistance to Consumers.*

5 16G. (1) Where any person, being a person claiming or alleged to be a consumer— Applications
for legal
assistance
by persons
claiming or
alleged to
be con-
sumers.

(a) wishes to bring legal proceedings arising out of the supply to him of goods or services ; or

(b) is a party to any legal proceedings arising out of any such supply,

10 that person may apply to the Commissioner for the grant of assistance in relation to the conduct of his case in those proceedings.

(2) Every such application shall—

(a) be in or to the effect of the prescribed form ;

15 (b) include the particulars required by the form ;
and

(c) be verified in the prescribed manner.

16H. (1) The Commissioner may grant an application made under section 16G if— Power of
Commis-
sioner to
grant appli-
cations for
assistance.

20 (a) he is satisfied that the person who made the application has reasonable grounds for bringing, or being a party to, the proceedings ;

25 (b) he is of the opinion that it is desirable, in the interests of consumers in general or of any class of consumers (including the person who made the application), that he should grant the assistance applied for ;

(c)

Commercial Law (Miscellaneous Provisions).

5 (c) the proceedings are for the recovery of a liquidated amount not exceeding the amount prescribed for the purposes of this paragraph, or are for the recovery of an unliquidated amount which, in the opinion of the Commissioner, will not exceed the amount so prescribed ; and

10 (d) the Minister has authorised in writing the Commissioner to grant the assistance applied for.

(2) Where the Commissioner grants or refuses any such application, he shall notify the person who made the application in writing of that grant or refusal.

15 (3) Where any such application is granted and the person who made the application is so notified—

(a) that person shall not—

20 (i) without the agreement of the Commissioner, withdraw from the proceedings or discharge any solicitor to whom his case is assigned under section 161 or any barrister or solicitor acting for him in the proceedings ; or

25 (ii) except to the extent required or authorised by the Commissioner, interfere or involve himself in the conduct of the case; and

(b)

Commercial Law (Miscellaneous Provisions).

5 (b) the Commissioner, or any person authorised by the Commissioner, shall have the same control over, and the same rights in respect of the case (including the right to settle or compromise any claim arising in the proceedings) as he would have had if he were that person.

10 (4) All expenses incurred in connection with the granting of assistance to a person under this Division (including the cost of employing any barrister or solicitor, any court fees incurred on behalf of the person and any costs required to be met by the Commissioner by virtue of section 16K (3) in relation to that person's case) shall be met by the Commissioner out of money appropriated by Parliament for the purpose.

16I. (1) On granting assistance to a person under section 16H, the Commissioner shall—

Assignment of cases of assisted persons to solicitors.

(a) assign the case of that person to—

20 (i) the Public Solicitor or any solicitor employed in the office of the Public Solicitor, but only if the Public Solicitor has agreed to the case being so assigned;

25 (ii) any solicitor employed in the Department;

30 (iii) any solicitor employed in any other government department, but only if the permanent head of that department has agreed to the case being so assigned; or

(iv)

Commercial Law (Miscellaneous Provisions).

5 (iv) any solicitor practising on his own account who has indicated to the Commissioner his willingness to undertake the conduct of cases of persons who are granted assistance under section 16H; and

(b) notify to that person in writing particulars of the solicitor to whom the case has been assigned.

10 (2) Where a person's case is assigned to a solicitor under subsection (1), that solicitor may, on behalf of that person, appear, and conduct any matter or proceeding relating to the case, in any court either personally or, with the concurrence of
15 the Commissioner, by any barrister or solicitor.

(3) A solicitor assigned under this section to act for a person shall not discontinue his assistance without the leave of the Commissioner.

20 16J. (1) Before taking any other step in the proceedings (being proceedings that have already been brought), a solicitor to whom a case has been assigned under section 16I shall, as soon as practicable after the case is assigned to him, serve on the other party or parties to the proceedings, and file in the office of the court in which the proceedings are pending, a notice to the effect that he is undertaking the conduct of the case.

Provisions relating to court proceedings to which an assisted person is a party.

25 (2) Subject to subsection (3), where any such notice is filed, then, unless otherwise ordered
30 by the court in which the proceedings are pending, the proceedings shall, by virtue of this section, be

stayed

Commercial Law (Miscellaneous Provisions).

5 stayed for a period of 14 days and, during that period, unless otherwise ordered by the court, time fixed by or under any Act for the doing of any act or the taking of any step in the proceedings shall not run.

(3) The filing of a notice under subsection (1) shall not prevent—

- 10 (a) the making of any interlocutory order which, in the opinion of the court in which the proceedings are pending, is necessary to prevent injustice; or
- 15 (b) unless otherwise ordered by the court, the institution or continuance of proceedings to obtain, enforce or otherwise carry into effect any such order.

(4) The period during which proceedings are stayed by virtue of this section may be reduced or extended by order of the court in which the proceedings are pending.

20 (5) No fee shall be charged in respect of the filing of any notice under subsection (1).

25 (6) Where, in any proceedings to which a person granted assistance under section 16H is a party, any party makes a counterclaim, or pleads a set-off, and that counterclaim or set-off does not relate to the supply of goods or services to that person, the court in which the proceedings are brought may, on application being made in that behalf by or on behalf of the Commissioner, order

30 that the counterclaim or set-off be dealt with separately, and may make such other orders or give such directions in that behalf as it thinks fit.

Commercial Law (Miscellaneous Provisions).

16K. (1) Where proceedings are brought to which a person granted assistance under section 16H is a party, the court in which those proceedings are brought shall make—

Costs and expenses, etc., relating to proceedings to which an assisted person is a party.

- 5 (a) in favour of that person, the same order for costs (except against another person granted assistance under section 16H) as the court would have made in favour of that person if he had not been granted assistance; or
- 10 (b) if the case so requires, against that person, the same order for costs (except in favour of another person granted assistance under section 16H) as the court would have made against that person if he had not been
- 15 granted assistance.

20 (2) Where any order for costs is made to which subsection (1) (a) relates, those costs shall not be payable to the person in whose favour the order was made but shall be payable to and may be recovered by the Commissioner, and on being so recovered shall be paid into the Consolidated Revenue Fund.

25 (3) Where any order for costs is made to which subsection (1) (b) relates, those costs shall be met by the Commissioner.

30 (4) Subject to subsection (2), where in proceedings to which a person granted assistance under section 16H is a party any money is awarded in favour of that person, that money shall be paid to him without deduction.

Commercial Law (Miscellaneous Provisions).

16L. The same privileges as those which arise from the relationship of client and solicitor acting in his professional capacity and in the course of his professional employment shall arise from the relationship between a person who has applied for assistance under section 16G or who has been granted that assistance under section 16H and the Commissioner and the solicitor (if any) to whom that person's case is assigned under section 16L.

Privilege attaching to certain relationships.

5. The Consumer Protection Act, 1969, is further amended—

Further amendment of Act No. 28, 1969.

(a) (i) by omitting the definition of "services" in section 19;

Sec. 19. (Definitions.)

(ii) by inserting at the end of section 19 the following subsection :—

(2) This Part does not apply to or in respect of a supply of goods under a lease, hiring agreement or hire-purchase agreement where the lease, hiring agreement or, as the case may be, hire-purchase agreement took effect before the commencement of the Commercial Law (Miscellaneous Provisions) Act, 1975.

(b) (i) by omitting from section 21 (1) the word "sell" and by inserting instead the word "supply";

Sec. 21. (Trade description to be appended to certain goods.)

(ii) by omitting from section 21 (3) the word "vendor" and by inserting instead the word "supplier";

(iii) by omitting from section 21 (3) the word "purchaser" and by inserting instead the word "consumer";

Commercial Law (Miscellaneous Provisions).

- (iv) by omitting from section 21 (3) the word "sale" and by inserting instead the word "supply";
- 5 (v) by omitting from section 21 (4) the word "purchaser" and by inserting instead the word "consumer";
- (vi) by omitting from section 21 (4) the word "vendor" and by inserting instead the word "supplier";
- 10 (vii) by inserting after section 21 (4) the following subsections :—
- (5) This section does not apply to a person—
- 15 (a) who, in the case of prescribed goods supplied under a credit-sale agreement or a hire-purchase agreement, did not have possession of the goods before the goods were supplied and only became their owner at the time at which or
- 20 after which the agreement was entered into;
- (b) who supplies prescribed goods as scrap, that is to say, for the value of the materials of which they are composed and not for use as finished goods;
- 25 (c) who, in the case of prescribed goods that are damaged, whether the damage was caused by fire or flood or other cause, supplies the goods to another person who carries on a business of acquiring damaged goods or, where the goods have been insured against
- 30 damage, to the insurer of those goods; or
- 35 (d) who supplies prescribed goods in connection with the sale or lease of premises.

(6)

Commercial Law (Miscellaneous Provisions).

(6) Regulations made under section 20 may contain such other exemptions from the operation of this section, applicable in such cases, as may be prescribed.

- 5 (c) (i) by omitting from section 22 (a) the word "purchaser" and by inserting instead the word "consumer"; Sec. 22. (Evidence in prosecutions under this Division.)
- 10 (ii) by omitting from section 22 (a) the word "sale" and by inserting instead the word "supply";
- (iii) by omitting from section 22 the word "sold" wherever occurring and by inserting instead the word "supplied";
- 15 (iv) by omitting from section 22 (b) the word "vendor" and by inserting instead the word "supplier";
- (d) by omitting from section 23 (2) the word "sells" and by inserting instead the word "supplies"; Sec. 23. (False trade descriptions.)
- 20 (e) by omitting from section 24 (2) the word "sells" and by inserting instead the word "supplies"; Sec. 24. (Alteration of trade description.)
- (f) by omitting from section 25 (c) the word "sale" and by inserting instead the word "supply"; Sec. 25. (Offence in the ordinary course of business.)
- (g)

Commercial Law (Miscellaneous Provisions).

- (g) by omitting from section 26 (1) (b) (ii) the word "sale" and by inserting instead the word "supply"; (Appending trade description.) Sec. 26.
- 5 (h) by omitting from section 28 (2) the words "the provisions of Schedule 2, and those provisions as from time to time so amended shall be deemed to be"; (Marking of furniture.) Sec. 28.
- (i) (i) by omitting from section 29 (1) the word "sale" and by inserting instead the word "supply"; (Powers of Court on conviction under this Division.) Sec. 29.
- 10 (ii) by omitting from section 29 (1) (a) the word "purchaser" and by inserting instead the word "consumer";
- (iii) by omitting from section 29 (1) (b) the words "supply to the purchaser" and by inserting instead the words "provide the consumer with"; 21
- 15 (iv) by omitting from section 29 (1) (b) the words "supply such goods" and by inserting instead the words "provide those goods";
- 20 (v) by omitting section 29 (2) and by inserting instead the following subsections :—
- (2) Where an order under subsection (1) is for the refund of an amount not exceeding the amount specified in section 12 (1) of the Courts of Petty Sessions (Civil Claims) Act, 1970, the order may be enforced in a court of petty sessions specified in the order or, if no such court is specified, in any court of petty

sessions

Commercial Law (Miscellaneous Provisions).

sessions, and Part V of the Courts of Petty Sessions (Civil Claims) Act, 1970, shall apply in respect of the order as if—

- 5 (a) the order were a judgment of the court of petty sessions specified in the order or, if no such court is specified, the court of petty sessions in which enforcement of the order is sought;
- 10 (b) the amount ordered to be refunded were a judgment debt referred to in that Part;
- (c) the defendant against whom the order was made were a judgment debtor referred to in that Part; and
- 15 (d) the person in favour of whom the order was made were a judgment creditor referred to in that Part.

20 (3) Where an order under subsection (1) is for the refund of an amount exceeding the amount specified in section 12 (1) of the Courts of Petty Sessions (Civil Claims) Act, 1970, but not exceeding that specified in section 44 (1) (a) of the District Court Act, 1973, the order may be enforced in the

25 District Court, and Division 4 of Part IV of the District Court Act, 1973, shall apply in respect of the order as if—

- (a) the order were a judgment of the District Court;
- 30 (b) the amount ordered to be refunded were a judgment debt referred to in that Division;
- (c)

Commercial Law (Miscellaneous Provisions).

(c) the defendant against whom the order was made were a judgment debtor referred to in that Division; and

5 (d) the person in favour of whom the order was made were a judgment creditor referred to in that Division.

10 (4) Where an order under subsection (1) is for the refund of an amount exceeding the amount specified in section 44 (1) (a) of the District Court Act, 1973, the order may be enforced in the Supreme Court, in accordance with the Supreme Court Rules as if—

15 (a) the order were a judgment of the Supreme Court for the payment of money; and

(b) the defendant against whom the order was made were a person bound by such a judgment.

20 (j) by omitting from the heading to Division 3 of Part III the words "*False or Misleading Advertisements*" and by inserting instead the words "*Control of Advertisements*"; Part III, Division 3. Heading.

25 (k) (i) by omitting from section 32 (1) (a) the words "sale, disposal or letting on hire" and by inserting instead the word "supply"; Sec. 32. (Penalty for publishing or causing to be published any false advertisement to promote the supply of goods.)

(ii) by omitting from section 32 (2) (b) (i) the words "vehicle or" and by inserting instead the words "vehicle, aircraft or ship or in any other";

(iii)

Commercial Law (Miscellaneous Provisions).

(iii) by inserting in section 32 (2) (c) after the word "upon" the words "or at";

(1) by inserting after section 32 the following Sec. 32A. section :—

5 32A. (1) A person shall not, without the prior consent in writing of the Minister or of a person authorised by him, publish or cause to be published any statement which—

Statements including references to certain organisations, etc., not to be published without Minister's consent.

10 (a) is intended or apparently intended by that person to promote the business of supplying goods or services to consumers carried on by him or by another person; and

(b) makes reference to—

- 15 (i) the Bureau;
- (ii) the Commissioner;
- (iii) the Council;
- 20 (iv) a person appointed, or an organisation constituted, under an Act of the Commonwealth or of any State or Territory of the Commonwealth, and having functions relating to the protection of consumers (being a person or an organisation prescribed for the purposes of this subpara-
- 25 graph); or

(v)

Commercial Law (Miscellaneous Provisions).

(v) a person employed in the Bureau or by a person, or by or in an organisation, referred to in subparagraph (iv).

5 Penalty: \$2,000 or imprisonment for three months, or both.

(2) A statement shall be deemed to be published for the purposes of subsection (1) if it is—

10 (a) inserted in a newspaper or other publication printed or published in New South Wales;

(b) publicly exhibited—

15 (i) in, on, over or under any building, vehicle, aircraft or ship or in any other place (whether or not a public place and whether on land or water); or

20 (ii) in the air in view of persons being or passing in or on any street or public place;

25 (c) contained in any document gratuitously sent or delivered to any person or thrown or left upon or at premises in the occupation of any person;

(d) broadcast by wireless transmission or by television; or

(e) made verbally.

(v)

(m)

Commercial Law (Miscellaneous Provisions).

(m) by omitting from section 33 (a) the words "prepared, or sold, or offered for hire" wherever occurring and by inserting instead the words "prepared or supplied".

Sec. 33.
(Powers of inspectors.)

5 6. The Consumer Protection Act, 1969, is further amended by inserting after Part III the following Part :—

Further amendment of Act No. 28, 1969. Part IIIA.

PART IIIA.

INSTRUCTIONS FOR CARE OF GOODS.

- 10 34A. (1) The Governor may make regulations for or with respect to—
- (a) instructions for the care of goods of a prescribed class or description;
- (b) specifying whether the instructions are required to be marked on the goods or are required to accompany them;
- 15 (c) the manner in which the instructions are required to be marked on or to accompany the goods;
- (d) standards with which the instructions are required to comply; and
- 20 (e) the matters with which the instructions are required to deal.

Regulations requiring goods to be marked with or accompanied by instructions for care.

(2) The regulations made under subsection (1) may apply either generally or in prescribed circumstances or subject to prescribed conditions.

(3)

Commercial Law (Miscellaneous Provisions).

5 (3) A class or description of goods may be prescribed in regulations made under subsection (1) notwithstanding that the goods are for use only as component parts of other goods (whether or not those other goods are of a class or description so prescribed).

10 34B. (1) Any supplier who supplies goods in respect of which regulations made under section 34A are in force is guilty of an offence against this Act if any requirement of the regulations relating to those goods is contravened or not complied with.

Offence to supply certain goods in contravention of regulations made under section 34A.

(2) Subsection (1) does not apply to a supplier—

- 15 (a) who believes on reasonable grounds that the goods will not be used in New South Wales;
- 20 (b) who, in the case of goods supplied under a credit-sale agreement or a hire-purchase agreement, did not have possession of the goods before the goods were supplied and only became their owner at the time at which or after which the agreement was entered into;
- (c) who supplies the goods as scrap, that is to say, for the value of the materials of which they are composed and not for use as finished goods;
- 25 (d) who, in the case of goods that are damaged, whether the damage was caused by fire or flood or other cause, supplies the goods to another person who carries on a business of acquiring damaged goods or, where the goods have been insured against damage, to the insurer of the goods;
- 30

(e)

Commercial Law (Miscellaneous Provisions).

(e) who supplies the goods in connection with the sale or lease of premises ; or

5 (f) where the goods are supplied under a lease, hiring agreement or hire-purchase agreement, if the supply did not contravene any regulation made under section 34A when the lease, hiring agreement or, as the case may be, hire-purchase agreement took effect.

10 (3) It is a defence to a prosecution for an offence under subsection (1) if the defendant proves that the goods referred to in the information for the offence were manufactured in or imported into New South Wales before the regulations applicable to those goods (being regulations made under section 34A) took effect, but, if the defendant has failed to give reasonable notice of the defence to the informant before the hearing of the information is commenced, he shall, if the court so directs, pay such of the costs of the informant as have resulted from that failure.

20 (4) Regulations made under section 34A may contain such other exemptions from the operation of subsection (1), applicable in such cases, as may be prescribed.

34c. An inspector may at any reasonable time—

25 (a) enter any place where goods (being goods of a class or description that are subject to regulations made under section 34A) are supplied, or where he has reasonable cause to believe that any such goods are supplied;

30 (b) inspect any such goods in that place ;

(c)

Powers of inspectors under this Part.

Commercial Law (Miscellaneous Provisions).

- (c) take any such goods, after paying a just price for them;
- 5 (d) examine with respect to matters under this Part any person employed or engaged in any such place; and
- (e) make such examinations and inquiries as he thinks necessary to ascertain whether the requirements of this Part are being complied with.

7. The Consumer Protection Act, 1969, is further
10 amended—

Further amendment of Act No. 28, 1969.

- (a) by omitting Division 1 of Part IV;
- (b) by omitting section 36 (2) and by inserting instead the following subsection :—
- 15 (2) Regulations made under subsection (1) may apply either generally or in prescribed circumstances or subject to prescribed conditions.
- (c) (i) by omitting from section 37 (1) the word "sell" and by inserting instead the word "supply";
- 20 (ii) by omitting from section 37 (2) the word "sell" and by inserting instead the word "supply";
- (iii) by omitting from section 37 (3) (b) the words "a sale" and by inserting instead the words "a supply of goods or component parts";
- 25 (iv) by omitting from section 37 (3) (b) the words "a letting";

Part IV, Division 1. (Interpretation.)

Sec. 36. (Safety requirements and instructions.)

Sec. 37. (Prohibition on supply of goods not complying with regulations under s. 36.)

(v)

Commercial Law (Miscellaneous Provisions).

- (v) by omitting from section 37 (3) (c) the word "selling" and by inserting instead the word "supplying";
- 5 (vi) by omitting from section 37 (3) (d) the words "by, or in consequence of, fire or flooding, where he is selling" and by inserting instead the words " , whether the damage was caused by fire or flood or other cause, where he supplies";
- 10 (d) by omitting from section 38 (1) the word "sell" and by inserting instead the word "supply";
- Sec. 38.
(Enforcement of s. 37.)
- (e) (i) by omitting from section 39 (a) the words "belonging to a class or description in respect of which regulations have been made under section 36 or component parts of any such goods are sold or kept for any purpose of advertisement or trade" and by inserting instead the words "(being goods of a class or description that are subject to regulations made under section 36), or component parts of any such goods, are supplied";
- 15
- 20 (ii) by omitting from section 39 (a) the words "sold or so kept" and by inserting instead the word "supplied";
- (f) by inserting after Division 2 of Part IV the following
- 25 Division :—
- Part IV,
Division 2A.
- DIVISION 2A.—*Prohibition or Restriction on Supply of Dangerous Goods to Consumers.*
- 39A. In this Division and in Schedule 3—
- 30 "Committee" means the Products Safety Committee established under section 39B;
- Definitions for the purposes of this Division.
- "dangerous" means likely to cause the death, or injury to the body or health, of any person, whether directly or indirectly.

Commercial Law (Miscellaneous Provisions).

39B. (1) There shall be established a committee to be known as the Products Safety Committee for the purpose of performing the functions assigned to the Committee under this Division. Constitution of Products Safety Committee.

5 (2) The Committee shall consist of such number of members appointed by the Minister as the Minister may determine.

(3) Of the members—

10 (a) one shall be an officer of the Department who shall be the chairman of the Committee; and

(b) the remainder shall be persons who, in the opinion of the Minister, have expertise in product safety.

15 (4) The provisions of Schedule 3 shall have effect with respect to the Committee.

20 39c. (1) The Minister, or the Commissioner with the approval of the Minister, may refer to the Committee the question as to whether the supply of goods of a class or description specified in the reference or of any particular goods so specified (being goods which, in the opinion of the Minister or the Commissioner, as the case may be, are or are likely to be supplied to consumers in New South Wales, but not being goods the supply of which is prohibited or regulated by or under an enactment specified in Schedule 4) ought, by reason of the goods being dangerous, to be prohibited or to be allowed only subject to conditions or restrictions. References to the Committee.

25 (2) Whenever the Minister or the Commissioner refers a question under subsection (1), he shall cause particulars of the question to be notified to the public in the prescribed manner.

(3)

Commercial Law (Miscellaneous Provisions).

5 (3) The Committee shall, on the reference of any question under subsection (1), fully consider the question and determine what recommendations it should make with respect to the question and shall then prepare a report containing those recommendations and submit that report to the Minister.

10 (4) Where, on the reference of any question under subsection (1), the Committee is of the opinion that the supply of goods of a class or description, or, as the case may be, the particular goods, to which the question relates ought, in the interests of the safety of the public, to be prohibited immediately, the Committee may, notwithstanding that it has not fully considered the question as
15 required by subsection (3), make a recommendation to the Minister that he make an interim order with respect to those goods in accordance with section 39E (3).

20 (5) The Commissioner shall, if he is requested to do so by the Committee, give to the Committee to enable it to consider the question—

- (a) any information in his possession which relates to the question; and
- 25 (b) any other assistance which the Committee may require, and which it is within his power to give, in relation to the question.

30 (6) If a member of the Committee dissents from a decision of the Committee in respect of the question, the chairman of the Committee shall record in the report a note of that dissent and of the reasons for it (if any).

(7)

Commercial Law (Miscellaneous Provisions).

(7) The Committee, in considering the question—

- 5 (a) may make such investigations as it considers necessary to enable it to make a recommendation with respect to the question;
- 10 (b) shall take into account any representations made to it by any person who, in its opinion, has a substantial interest in the subject-matter of the question or by any body which, in its opinion, represents a substantial number of persons who have such an interest; and
- 15 (c) unless in all the circumstances the Committee does not consider that it is reasonably practicable to do so, shall permit any such person or body to be heard orally by the Committee, or by a member of the Committee nominated by the Committee for
- 20 the purpose.

(8) Subject to subsection (7) and clause 5 of Schedule 3, the Committee may determine its own procedure for considering the question, and in particular may determine—

- 25 (a) the extent, if any, to which persons interested or claiming to be interested in the question are allowed to be present or to be heard, either by themselves or by their representatives, or to cross-examine witnesses or
- 30 otherwise participate in the consideration of the question; and
- (b) the extent, if any, to which the Committee shall hold its proceedings in public.

(9)

Commercial Law (Miscellaneous Provisions).

(9) In determining its procedure under subsection (8), the Committee shall act in accordance with any general directions which may be given it by the Minister.

5 (10) The regulations may amend
Schedule 4 by omitting the reference to any enact-
ment specified in that Schedule or by inserting in
that Schedule a reference to any enactment which
10 prohibits or regulates the supply of any class or
description of goods.

39D. (1) For the purposes of any investigation Attendance
of a question referred to it under section 39C (1), of witnesses
the Committee may, by notice in writing signed by and produc-
the chairman or by a member of the Committee tion of
15 on his behalf— documents.

(a) require any person to attend at a time and
place specified in the notice and to give
evidence to the Committee or to a member
of the Committee nominated by it for the
20 purpose;

(b) require any person to produce, at a time
and place specified in the notice, to the
Committee or to a member of the Com-
mittee nominated by it for the purpose, any
25 goods or documents which are specified or
described in the notice and which are goods
or documents in his custody or under his
control and are relevant to the investigation;
and

(c) take goods so produced, after paying a just
price for them, and cause to be conducted
such tests and examinations with respect to
them as it considers necessary for the pur-
30 pose of determining whether or not they
may be dangerous.
35

Commercial Law (Miscellaneous Provisions).

(2) For the purposes of any such investigation the Committee, or a member of the Committee nominated by it for the purpose, may take evidence on oath, and for that purpose may administer oaths.

5 (3) A person shall not be compelled, for the purposes of any such investigation, to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the Supreme Court or, in obedience
10 to a notice under subsection (1), to attend any such investigation unless the reasonable expenses of his attendance are paid or tendered to him.

(4) Any person who—

- 15 (a) without reasonable excuse, refuses or fails to do anything required of him by a notice under subsection (1); or
- (b) alters, suppresses or destroys any document which he is required by any such notice to produce,

20 is guilty of an offence against this Act.

25 39E. (1) Where a report submitted to the Minister under section 39C (3) contains a recommendation that the supply of goods of any class or description specified in the report, or of any particular goods so specified, ought to be prohibited, or ought to be allowed only subject to conditions or restrictions so specified, the Minister may, if he agrees with the recommendation, make an order giving effect to the recommendation.

Power of Minister to make orders prohibiting or restricting the supply of dangerous goods.

30 (2) Section 41 of the Interpretation Act, 1897, shall apply to an order made under subsection (1) as if the order were a regulation to which that section applies.

(3)

Commercial Law (Miscellaneous Provisions).

5 (3) Where the Committee makes a recommendation under section 39C (4), the Minister may, if he agrees with the recommendation, make an interim order prohibiting the supply of goods of the class or description specified in the recommendation, or of any particular goods so specified, for a period not exceeding 28 days from the date on which the order is published under subsection (4).

10 (4) If the Minister makes an interim order under subsection (3), he shall cause the order to be published in the Gazette.

39F. Any person who supplies goods in contravention of an order made under section 39E (1) or (3) is guilty of an offence against this Act. Offence to contravene an order under section 39E.

15 39G. Where any supplier supplies goods in contravention of an order made under section 39E (1) or (3), that contravention is a breach of duty that, Action for breach of statutory duty. subject to the defences and other incidents applying to actions for breach of statutory duty, is actionable at the suit of any person, whether he is the person to whom the goods were supplied or not, who has 20 sustained loss or damage in consequence of that breach.

39H. An inspector may at any reasonable time— Powers of inspectors.
25 (a) enter any place at which any goods (being goods that are the subject of a question referred to the Committee under section 39C (1) or goods that are the subject of an order made under section 39E (1) or (3)) are **manufactured.**

Commercial Law (Miscellaneous Provisions).

manufactured, prepared or supplied, or at which he has reasonable cause to believe that any such goods are manufactured, prepared or supplied;

- 5 (b) inspect any such goods in that place;
- (c) take any such goods, after paying a just price for them;
- (d) examine with respect to matters under this Division any person employed or engaged in that place; and
- 10 (e) make such examination and inquiries as he thinks necessary for the purposes of this Division.

(g) by omitting Division 3 of Part IV.

Part IV,
Division 3.
(Refrigerators, Ice-Chests, Ice-Boxes and Freezers.)

15 8. The Consumer Protection Act, 1969, is further amended—

Further amendment of Act No. 28, 1969.

- (a) (i) by omitting the definitions of “services” and “supply” in section 42 (1);
- 20 (ii) by omitting section 42 (2) (g), (h), (i) and (j);
- (b) by omitting from section 46 the words “of Labour and Industry”;

Sec. 42.
(Definitions.)

Sec. 46.
(Acting Commissioner for Trade Practices.)

(c)

Commercial Law (Miscellaneous Provisions).

(c) by omitting section 53 (1) and by inserting instead the following subsection :—

Sec. 53.
(Proceedings for offences under this Part.)

(1) Proceedings for an offence arising under this Part shall—

5 (a) be disposed of before the Industrial Commission; and

10 (b) be commenced by information laid in the office of the Industrial Registrar within 12 months after the time when the offence is alleged to have been committed.

9. The Consumer Protection Act, 1969, is further amended—

Further amendment of Act No. 28, 1969.

15 (a) by omitting from section 55 (5) the words “one hundred dollars” and by inserting instead the matter “\$300”;

Sec. 55.
(Inspectors.)

(b) (i) by omitting section 56 (3) and by inserting instead the following subsection :—

Sec. 56.
(Proceedings for offences against this Act.)

20 (3) Proceedings for an offence against this Act (other than an offence arising under Part V) shall—

25 (a) be disposed of summarily before a stipendiary magistrate, or before an industrial magistrate appointed under the Industrial Arbitration Act, 1940; and

(b)

Commercial Law (Miscellaneous Provisions).

(b) be commenced by information laid within 12 months after the time when the offence is alleged to have been committed.

5 (ii) by omitting section 56 (5);

(c) by omitting section 57 (1) and by inserting instead the following subsection :— Sec. 57.
(Penalty.)

10 (1) A person who is guilty of an offence against this Act for which no penalty is otherwise provided is liable to a penalty not exceeding \$2,000 or imprisonment for a term not exceeding 12 months, or both.

15 (d) (i) by omitting from section 58 (1) the words "Under Secretary" and by inserting instead the words "prescribed officer of the Department"; Sec. 58.
(Evidentiary provisions.)

(ii) by inserting after section 58 (2) the following subsections :—

20 (3) In proceedings for an offence against this Act, a printed document which is or purports to be a standard, rule, code or specification of an association or body referred to in, or prescribed for the purposes of, section 52 (3) (b) or section 59 (1A) (a) and which
25 has been or purports to have been published or issued by or on behalf of that association or body is admissible as evidence in those proceedings and, in the absence of evidence to the contrary, is proof of that standard, rule,
30 code or specification.

(4)

Commercial Law (Miscellaneous Provisions).

5 (4) In proceedings for an offence against
this Act, a certificate purporting to be signed
by the Government Analyst or by one of his
officers and certifying the result of an analysis
is, unless the defendant requires the Govern-
ment Analyst or officer to be called as a
witness in the proceedings, admissible as
evidence of the facts certified and, in the
10 absence of evidence to the contrary, is proof
of those facts.

(e) (i) by inserting after section 59 (1) the following subsection :— Sec. 59.
(Regula-
tions.)

(1A) A regulation made under this Act—
15 (a) may adopt, either in whole or in part,
or by reference, any standards, rules,
codes or specifications of the Stan-
dards Association of Australia, the
British Standards Institution or any
20 other association or body prescribed
for the purposes of this paragraph;
and
(b) may include provisions which differ in
their application according to circum-
stances or factors specified in the
25 regulation.

(ii) by omitting section 59 (2) and (3) and by
inserting instead the following subsection :—

30 (2) Section 41 of the Interpretation Act,
1897, applies in respect of a regulation made
under this Act as if this Act had been passed
after the commencement of the Interpretation
(Amendment) Act, 1969.

(f)

Commercial Law (Miscellaneous Provisions).

(f) by inserting after Schedule 2 the following Schedules 3 and 4.
Schedules :—

SCHEDULE 3.

Sec. 39B (4).

PROVISIONS APPLICABLE TO PRODUCTS SAFETY COMMITTEE.

5 1. (1) Subject to subclauses (3), (4) and (5), a member of the Committee shall hold and vacate office in accordance with the terms of his appointment or reappointment. Appointment and tenure of office of members.

10 (2) On the expiration of any period of appointment or reappointment, a member of the Committee may be reappointed for a further period.

(3) A member of the Committee may at any time resign his membership by notice in writing addressed to the Minister.

15 (4) The Minister may at any time remove from office a member of the Committee by notice in writing addressed and delivered to that member.

(5) The chairman of the Committee shall be deemed to have vacated his office as a member of the Committee if he ceases to be a member of the Department.

20 2. (1) If the member referred to in section 39B (3) (a) is unable to carry out his duties as a member of the Committee for any period, the Minister may appoint another officer of the Department to act in his place for that period, and that officer shall, during that period, have and may exercise the duties and powers of chairman of the Committee. Deputies of members.

25 (2) If any of the members referred to in section 39B (3) (b) is unable to carry out his duties as a member of the Committee for any period, the Minister may appoint another person who, in his opinion, has expertise in product safety to act in his place for that period, and a person so appointed shall, during that period, be deemed to be a member of the Committee.

30 3. There shall be paid to members of the Committee such remuneration, and such travelling and other allowances, as in the case of any of those members the Minister may determine. Remuneration and allowances.

35 4. At any meeting of the Committee the decision of a majority of its members present and voting shall be the decision of the Committee. Decisions of Committee.

40

5.

Commercial Law (Miscellaneous Provisions).

5. (1) The Committee, with the prior approval of the Minister, may co-opt any person who, in its opinion, has expertise in relation to any question referred to it under section 39c (1). Co-opted members.

5 (2) A person co-opted under subclause (1) shall, when attending a meeting of the Committee, be deemed to be a member of the Committee and shall have a right to vote and participate in the Committee's proceedings.

SCHEDULE 4.

Sec. 39c (1).

10 ENACTMENTS PROHIBITING OR REGULATING THE SUPPLY OF GOODS.

The following enactments are specified for the purpose of section 39c (1) :—

1. Agricultural Seeds Act, 1921.
- 15 2. Dairy Industry Act, 1915.
3. Explosives Act, 1905.
4. Fertilizers Act, 1934.
5. Inflammable Liquid Act, 1915.
6. Pest Destroyers Act, 1945.
- 20 7. Plant Diseases Act, 1924.
8. Poisons Act, 1966.
9. Pure Food Act, 1908.
10. Radioactive Substances Act, 1957.
11. Stock Foods and Medicines Act, 1940.

25 10. The Credit-sale Agreements Act, 1957, is amended— Amendment of Act No. 29, 1957.

- (a) by omitting from section 8 (2) (b) (iv) the words "which are goods of any of the descriptions referred to in paragraphs (a), (b) and (c) of subsection (2) of Sec. 8. (Requirements relating to credit-sale agreements.)

Commercial Law (Miscellaneous Provisions).

- 5 of section 11 or a television-set or prescribed goods”
and by inserting instead the words “, being goods
of the following descriptions, namely, industrial
machinery, farm equipment, a motor vehicle, a
television-set or prescribed goods”;
- 10 (b) by omitting from the Schedule the matter “P Schedule.
represents the difference between the purchase-price
of the goods and the amount of the deposit provided
by the buyer in connection with the agreement” and
by inserting instead the following matter :—
- 15 P represents the total of the amounts referred to
in section 8 (2) (b) (i), (ii), (iii) and (iv)
and any amount representing the whole or
any part of the stamp duty chargeable on the
agreement under the Stamp Duties Act,
1920, less the amount of the deposit
provided by the buyer in connection with
the agreement.
11. The Lay-by Sales Act, 1943, is amended—
- 20 (a) by omitting section 4 (8) (b) and by inserting Sec. 4. (Register.)
instead the following paragraph :—
- 25 (b) Any member of the police force holding a
rank not below sergeant, and any inspector
appointed under the Consumer Protection Act,
1969, may at all reasonable times inspect the
register and take copies of or extracts from it.
- 30 (b) by omitting section 6 (2) (b) and by inserting Sec. 6.
instead the following paragraph :— (Goods
sold or
agreed to
be sold
on lay-by
to be set
aside.)
- (b) Any member of the police force holding a
rank not below sergeant, and any inspector
appointed under the Consumer Protection Act,

Commercial Law (Miscellaneous Provisions).

1969, may at all reasonable times inspect any goods set aside in accordance with this section and may examine the entries in the register relating to them.

12. The Moneylending Act, 1941, is amended—

Amendment
of Act No.
67, 1941.

5 (a) (i) by inserting in section 45 (1) after the words
“Commissioner of Police,” where secondly
occurring the words “or any inspector
appointed under the Consumer Protection Act,
1969,”; Sec. 45.
(Inspection
of docu-
ments, etc.)

10 (ii) by inserting in section 45 (2) (a) after the
words “authorized as aforesaid” the words
“, or any inspector appointed under the
Consumer Protection Act, 1969,”;

15 (b) (i) by inserting in the definition of “finance
broker” in section 60 after the words “loans or
credits” where firstly occurring the words
“(including home finance loans)”;
Sec. 60.
(Interpre-
tation.)

(ii) by omitting paragraph (c) of the definition of
“finance broker” in section 60;

20 (iii) by inserting after the definition of “finance
broker” in section 60 the following
definitions :—

25 “home finance loan” means a loan the whole
or any part of which is or is intended
to be applied for the purpose of—

(a) enabling the borrower to
acquire a private dwelling-
house or land for the erection
of such a house; or

(b)

Commercial Law (Miscellaneous Provisions).

5 (b) providing the borrower with funds for the erection of a private dwelling-house or for the carrying out of structural improvements or additions to a private dwelling-house,

but does not include a loan to a person—

10 (c) who carries on a business as a building contractor;

15 (d) whose business involves or includes the erection of private dwelling-houses or the carrying out of structural improvements or additions to private dwelling-houses; or

(e) whose business involves or includes the acquisition or disposal of land,

20 if the loan is or is intended to be used for the purpose of that business or in the course of carrying on that business;

“private dwelling-house” means—

25 (a) a building that is designed, or is designed principally, as a separate residence for one family or person; or

30 (b) an apartment, flat or other part of a building that is so designed;

(iv)

Commercial Law (Miscellaneous Provisions).

(iv) by inserting at the end of section 60 the following subsection :—

5 (2) Where a person, in the course of carrying on a business, negotiates or acts as an intermediary to obtain, or advertises or announces or holds himself out in any way as being willing to negotiate or act as an intermediary to obtain—

(a) any loan or credit for or on behalf of a company;

10 (b) any loan (not being a home finance loan) or any credit if the loan or credit is or would if made or provided be for an amount exceeding that prescribed for the purposes of this paragraph;

15 (c) any loan (not being a home finance loan) pursuant to an agreement to finance the erection of a building by a series of advances made or to be made during the erection of the building and secured or to be secured on the land on which the building is being or is to be erected if the aggregate of those advances exceeds or would if made exceed the amount prescribed for the purposes of this paragraph;

20 (d) any loan or credit where the rate of any interest in respect of the loan or credit does not exceed, or would not exceed if the loan or credit were made or provided, the prescribed rate; or

25 (e) any loan made, offered or made available, or any credit provided, offered or made available, by a corporation that, by virtue

of

Commercial Law (Miscellaneous Provisions).

of section 38 (7) (c) (i) of the Companies Act, 1961, is a prescribed corporation as defined in section 38 (7) of that Act,

5 that person shall be deemed not to be a finance broker in respect of that loan or credit, as the case may be.

(c) by inserting after section 71 the following section :—

10 71A. For the purpose of any proceedings in respect of an offence against this Part, or of proceedings under section 72, a loan which, but for this section, would be a home finance loan shall be deemed not to be a home finance loan if—

Defence in proceedings involving the negotiation, etc., of home finance loans.

15 (a) the defendant in the case of proceedings for an offence, or the finance broker in the case of proceedings under section 72, proves that he did not know and had no reason to believe that the loan was, or would if made be, a home finance loan and that he had made reasonable inquiries as to how the loan was to be applied; and

20 (b) the loan would have been of a class referred to in section 60 (2) (b) or (c) if it had not been a home finance loan.

25 13. (1) Each Act referred to in column 1 of Schedule 1 is amended in the manner specified opposite that reference in column 2 of that Schedule.

Amendment of Acts by way of Statute Law Revision.

30 (2) The Commercial Transactions (Miscellaneous Provisions) Act, 1974, is amended by inserting in section 3 (c) (iii) after the words "the total" the words "where firstly occurring".

Amendment of Act No. 105, 1974. Sec. 3. (Amendment of Act No. 33, 1960.)

Commercial Law (Miscellaneous Provisions).

SCHEDULE 1.

Sec. 13 (1).

AMENDMENT OF ACTS BY WAY OF STATUTE LAW REVISION.

| Column 1. | | Column 2. |
|-----------|-------------------------|---|
| 5 | Year and number of Act. | Short title of Act. |
| 10 | Amendment. | |
| 10 | 1941, No. 67.. | Moneylending Act, 1941. |
| 15 | | Section 3 (1)— Omit paragraph (b) of the definition of "Money-lender" and insert instead the following paragraph:— (b) any society registered under the Friendly Societies Act, 1912, or under the Co-operation Act, 1923; or |
| 20 | | Omit from paragraph (b1) of the same definition "", or any Act amending that Act". Omit from paragraph (b2) of the same definition "", or any Act amending or replacing that Act". Omit the definition of "Schedule". |
| 25 | | Section 7 (3) (b) and (c)— Omit "", as amended by subsequent Acts" wherever occurring. |
| 30 | | Section 8 (1) (c)— Omit "", as amended by subsequent Acts". Section 9 (1) (b)— Omit "as amended by subsequent Acts,". |
| 35 | | Section 23 (6)— Omit "1898-1938" and insert instead "1898". Section 34 (3)— Omit "as amended by subsequent Acts,". |
| 40 | | Section 39 (8) and (9)— Omit "1898-1938" wherever occurring and insert instead "1898". Section 50 (1) (a)— Omit "Small Debts Recovery Act, 1912, as amended by subsequent Acts" and insert instead "Courts of Petty Sessions (Civil Claims) Act, 1970". |
| 45 | 1943, No. 36.. | Lay-by Sales Act, 1943. |
| 50 | | Section 1 (3)— Omit "1923-1937" and insert instead "1923". Section 5 (4)— Omit "Factories and Shops Act, 1912-1943" and insert instead "Consumer Protection Act, 1969". Section 7 (3)— Omit "Factories and Shops Act, 1912-1943" and insert instead "Consumer Protection Act, 1969". |

SCHEDULE

*Commercial Law (Miscellaneous Provisions).*SCHEDULE 1—*continued.*AMENDMENT OF ACTS BY WAY OF STATUTE LAW REVISION—
continued.

| Column 1. | | Column 2. |
|-----------|------------------------------------|---|
| 5 | Year and number of Act. | Short title of Act. |
| | | Amendment. |
| 10 | 1943, No. 36— <i>continued.</i> | Lay-by Sales Act, 1943— <i>continued.</i> |
| 15 | | Section 7 (6)— Omit "1902-1940" and insert instead "1902". Section 13 (1) and (2)— Omit "holden before a stipendiary magistrate or a police magistrate" wherever occurring and insert instead "held before a stipendiary magistrate". |
| 20 | | Section 13 (4)— Omit "Small Debts Recovery Act, 1912, as amended by subsequent Acts, and be enforceable as such under the provisions of that Act as so amended" and insert instead "Courts of Petty Sessions (Civil Claims) Act, 1970, and be enforceable under that Act". |
| 25 | | Section 17 (6)— Omit "purchaser" from the definition of "vendor" and insert instead "vendor". |
| 30 | | Section 19 (2)— Omit "holden before a stipendiary or a police magistrate" and insert instead "held before a stipendiary magistrate". |
| 35 | | Section 22— Omit subsection (4) and insert instead the following subsection:— (4) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation made under this Act as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969. |
| 40 | 1957, No. 29.. | Credit-sale Agreements Act, 1957. |
| 45 | | Section 2 (1)— Omit ", as amended by subsequent Acts" from the definition of "Credit-sale agreement". Section 8 (2) (b)— Omit ", as amended by subsequent Acts" wherever occurring. Omit ", as subsequently amended". |
| 50 | | Section 12 (2)— Omit "the provisions of section 26D of the Hire-purchase Agreements Act, 1941, as amended by subsequent Acts" and insert instead "section 23 of the Hire-Purchase Act, 1960". |

Commercial Law (Miscellaneous Provisions).

SCHEDULE 1—*continued.*AMENDMENT OF ACTS BY WAY OF STATUTE LAW REVISION—
continued.

| Column 1. | | Column 2. |
|-----------|------------------------------------|--|
| 5 | Year and number of Act. | Amendment. |
| 10 | 1957, No. 29— <i>continued.</i> | Section 14— Omit subsection (2) and insert instead the following subsection:— (2) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation made under this Act as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969. |
| 15 | | |
| 20 | 1969, No. 28.. | Section 3 (2)— Omit “, as subsequently amended” wherever occurring. Omit “as so amended.” Omit “Part IV, and shall be deemed to have been made under this Act.” and insert instead:— Part IV, and shall be deemed to have been made under this Act. |
| 25 | | |
| 30 | | Section 4 (2)— Omit “, or any Act amending or replacing any such Act”. |
| 35 | | Section 11 (6)— Omit paragraph (b) and insert instead the following paragraph:— (b) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act; |
| 40 | | Omit paragraph (d) and insert instead the following paragraph:— (d) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration, or estate, for their benefit; |
| 45 | | |
| 50 | | Section 13— Omit “, as subsequently amended”. Section 42 (2) (f)— Omit “, as subsequently amended”. Section 45— Omit “, as subsequently amended”. |

*Commercial Law (Miscellaneous Provisions).*SCHEDULE 1—*continued.*AMENDMENT OF ACTS BY WAY OF STATUTE LAW REVISION—
continued.

| Column 1. | | Column 2. |
|-----------|------------------------------------|--|
| 5 | Year and number of Act. | Short title of Act. |
| 10 | 1969, No. 28— <i>continued.</i> | Consumer Protection Act, 1969— <i>continued.</i> |
| 15 | | Section 53 (2)— Omit “, as subsequently amended”. Section 54 (2)— Omit “, as subsequently amended”. Section 56 (1)— Omit “, as subsequently amended”. Section 56 (4)— Omit “, as subsequently amended”. Section 58 (1)— Omit “, as subsequently amended” wherever occurring. |
| 20 | | Schedule 2— Clause 3— Omit “as subsequently amended”, Clause 13— Omit “1912-1960,” and insert instead “1912,”. Omit “as subsequently amended”, Clause 14— Omit “1912-1960,” and insert instead “1912,”. Omit “as subsequently amended”, Clause 15— Omit “, as subsequently amended”. |
| 25 | | |
| 30 | | |

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1975
[56c]

**COMMERCIAL LAW (MISCELLANEOUS PROVISIONS)
BILL, 1975**

EXPLANATORY NOTE

THE object of this Bill is to effect amendments to—

- (a) the Consumer Protection Act, 1969—by clauses 3 to 9;
- (b) the Credit-sale Agreements Act, 1957—by clause 10;
- (c) the Lay-by Sales Act, 1943—by clause 11; and
- (d) the Moneylending Act, 1941—by clause 12,

and to make other amendments of a minor nature by way of statute law revision.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clauses 3 to 9 make the following amendments to the Consumer Protection Act, 1969—

- (a) Section 5 of the Act, which defines the expressions used in the Act, is being substituted. Most of the definitions in the substituted section are already defined elsewhere in the Act but for convenience are being brought into the one section.
- (b) The references in the Act to the “Department of Labour and Industry” are being changed to the “Department”, an expression which is defined in the substituted section 5 mentioned above. This is being done so as to enable the Act to be administered by a Department other than the Department of Labour and Industry.
- (c) The functions of the Consumer Affairs Bureau as specified in section 16 of the Act are being extended to include the provision of secretarial services to the Consumer Affairs Council and the provision by the Bureau of information to the Council relating to consumer goods and services.
- (d) Section 16c of the Act is being amended by prescribing the methods of service of written notices and warnings under that section.
- (e) A new Division, Division 3A of Part II, will empower the Commissioner for Consumer Affairs, on the application of a person claiming to be or alleged to be a consumer and who wishes to bring proceedings in respect of, or who is a party to proceedings relating to, the supply of goods or services, to assist that person in the conduct of his case in those proceedings by assigning the case to the Public Solicitor or a solicitor employed in the office of the Public Solicitor, a solicitor employed in the Public Service, or a solicitor in private practice who has indicated his willingness to undertake the conduct of such cases.

- (f) An amendment to section 29 of the Act will provide for the enforcement of orders made under that section for the refund of money outlaid by a person who has purchased goods to which a false trade description has been appended.
- (g) The references in sections 21, 22, 23, 24, 25, 26 and 29 of the Act to "sell", "sale" and "sold" are being replaced by "supply" and "supplied". The latter expressions include the supply of goods under a leasing, hiring or hire-purchase agreement as well as supply by way of sale.
- (h) A new section, 32A, will prohibit the publication, without the consent of the Minister administering the Act, of statements in advertising and other promotional literature which include references to the Consumer Affairs Bureau, the Commissioner for Consumer Affairs and certain other bodies and persons.
- (i) A new Part, IIIA, comprising sections 34A to 34C and relating to instructions for care of certain goods supplied to consumers, is being inserted in the Act. Section 34A empowers the Governor to make regulations with respect to instructions for the care of goods of a class or description prescribed in the regulations. Section 34B makes it an offence for a person to supply goods of such a class or description if the requirements of the regulations are not complied with. Section 34C empowers inspectors appointed under the Act to enter any place at which goods subject to the regulations are supplied.
- (j) A new Division, Division 2A of Part IV, comprising sections 39A to 39H and relating to the supply of dangerous goods, is being inserted in the Act. Section 39A defines the expressions used in the Division. Section 39B provides for the establishment by the Minister administering the Act of a committee, to be known as the Products Safety Committee. The section also provides for the constitution of the Committee. Section 39C empowers the Minister, or the Commissioner with the approval of the Minister, to refer to the Committee the question as to whether or not the supply of goods of a specified class or description or any particular specified goods ought to be prohibited or to be allowed only subject to conditions or restrictions. The Committee, after considering the question, will be required to report its recommendations to the Minister, but if in the meantime the Committee thinks that it is in the interests of the safety of the public to do so, it will be able to recommend to the Minister that he make an interim order temporarily prohibiting the supply of goods of the class or description or, as the case may be, the particular goods to which the question relates. Section 39C also enables the Committee, on considering any such question, to make such investigations as it thinks necessary and requires it to take into account any representations made by any person appearing to have a substantial interest in the question. Section 39D provides for the attendance of witnesses and the production of documents to the Committee for the purpose of enabling it to consider the question. Section 39E empowers the Minister to make an order giving effect to the recommendations of the Committee made in a report submitted to him under section 39C (3) or to make an interim order giving effect to a recommendation made under section 39C (4). An interim order may prohibit the supply of goods of a class or description, or of any particular goods, specified in the order for a period not exceeding 28 days. Section 39F makes it an offence for a person to supply goods in

contravention of an order made under section 39E and section 39G makes it an actionable breach of statutory duty for a person to supply goods in contravention of such an order where in consequence of that contravention a person has sustained loss or damage. Section 39H prescribes the powers of inspectors under the Division.

- (k) Division 3 of Part IV of the Act, which relates to refrigerators, ice-chests, ice-boxes and freezers, is to be repealed, but the repeal will not take effect until a date to be proclaimed by the Governor.
- (l) Section 53 (1) of the Act, which relates to offences arising under Part V of the Act, is being substituted. Under the substituted subsection proceedings for such an offence shall be commenced by information laid within 12 months after the offence is alleged to have been committed.
- (m) The maximum penalty which may be imposed under section 55 of the Act, which relates to offences involving the exercise of powers of inspectors appointed under the Act, is being increased from \$100 to \$300.
- (n) Section 56 (1) of the Act, which relates to offences arising under the Act otherwise than under Part V, is being extended to provide that proceedings for such an offence may be commenced by information laid within 12 months after the offence is alleged to have been committed. Section 56 (5) of the Act, which relates to the conduct of prosecutions, is being omitted as being no longer necessary.
- (o) Section 57 of the Act is being amended so as to provide that a person guilty of an offence against the Act is liable to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 12 months, or both. At present, the section provides for a fine of \$200 or 6 months' imprisonment, or both, for a first offence, a fine of \$300 or 12 months' imprisonment, or both, for a second offence, and a fine of \$500 or 12 months' imprisonment, or both, for a third or subsequent offence.
- (p) Section 58 of the Act, which contains evidentiary provisions, is being amended so as to provide for the admissibility as evidence in legal proceedings of any standard, rule, code or specification of a prescribed body. The section is also being amended to provide for the admissibility as evidence in legal proceedings of certificates made or purporting to be made by Government analysts.
- (q) Section 59 of the Act, which empowers regulations to be made for the purposes of the Act, is being amended to provide that a regulation made under the Act may adopt by reference any standard, rule, code or specification of the Standards Association of Australia and certain other prescribed bodies.
- (r) A new Schedule, Schedule 3, which sets out provisions applicable to the Products Safety Committee, to be established under the proposed section 39B, is being inserted in the Act. A further new Schedule, Schedule 4, specifies certain enactments for the purpose of section 39C (1) which empowers the Minister administering the proposed Act to refer a question to the Committee as to whether or not the supply of goods of a specified class or description ought to be prohibited or restricted.

Commercial Law (Miscellaneous Provisions).

(iii) by omitting from section 16 (1) (b) (iii) the word "work." and by inserting instead the word "work;" ;

5

(iv) by inserting after section 16 (1) (b) (iii) the following subparagraphs :—

(iv) to act as a secretariat to the Council; and

10

(v) to provide the Council with such information as it may reasonably require relating to goods or services supplied to consumers and to consumer affairs, and to carry out such research as may be necessary for the purpose of enabling that information to be provided.

15

(h) by omitting section 16B (a) and by inserting instead the following paragraph :—

Sec. 16B.
(Power of investigating officer to enter, etc.)

20

(a) enter any place at which goods are manufactured, prepared or supplied, or services are supplied, or any place at which he has reason to believe that goods are manufactured, prepared or supplied, or services are supplied ;

25

(i) by inserting after section 16c (7) the following subsections :—

Sec. 16c.
(Investigating officer may require furnishing of information and production of documents.)

(8) A written warning or a notice may be given under subsection (2)—

(a) to a person, not being a corporation—

(i) by delivering it to him personally ;

(ii)

PROOF

No. , 1975.

A BILL

To require certain goods to be labelled with instructions for care; to empower the Minister to make orders prohibiting or restricting the supply of certain goods supplied or likely to be supplied to consumers; to empower the Commissioner for Consumer Affairs to grant assistance to persons who wish to bring, or who are parties to, legal proceedings arising out of the supply of goods or services; and for these and other purposes to

amend

Commercial Law (Miscellaneous Provisions).

amend the Consumer Protection Act, 1969, the Credit-sale Agreements Act, 1957, the Lay-by Sales Act, 1943, the Moneylending Act, 1941, and the Commercial Transactions (Miscellaneous Provisions) Act, 1974.

5 [SIR ERIC WILLIS—25 November, 1975.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—
10

1. This Act may be cited as the "Commercial Law Short title. (Miscellaneous Provisions) Act, 1975".

2. (1) Except as provided in subsections (2) and (3), Commence- this Act shall commence on the date of assent to this Act. ment.

15 (2) Sections 3 (a) (vi) and (vii), 7 (f), 7 (g), 9 (d) (i) and 12 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(3) Section 13 (2) shall be deemed to have 20 commenced on 1st January, 1975.

3. The Consumer Protection Act, 1969, is amended— Amendment of Act No. 28, 1969.

(a) (i) by omitting from section 2 the matter relating to Division 1 of Part II; Sec. 2. (Division of Act.)

(ii)

Commercial Law (Miscellaneous Provisions).

- (ii) by inserting in section 2 after the matter relating to Division 3 of Part II the following matter :—

DIVISION 3A.—*Legal Assistance to Consumers*—ss. 16G–16L.

5

- (iii) by omitting from section 2 the matter relating to Division 3 of Part III and by inserting instead the following matter :—

DIVISION 3.—*Control of Advertisements*—ss. 32, 32A.

10

- (iv) by inserting in section 2 after the matter relating to Division 4 of Part III the following matter :—

PART IIIA.—*INSTRUCTIONS FOR CARE OF GOODS*—ss. 34A–34C.

15

- (v) by omitting from section 2 the matter relating to Division 1 of Part IV;

- (vi) by inserting in section 2 after the matter relating to Division 2 of Part IV the following matter :—

20

DIVISION 2A.—*Prohibition or Restriction on Supply of Dangerous Goods to Consumers*—ss. 39A–39H.

- (vii) by omitting from section 2 the matter relating to Division 3 of Part IV;

25

(b)

Commercial Law (Miscellaneous Provisions).

(b) by omitting section 5 and by inserting instead the Sec. 5. following section :—

5. (1) In this Act, except so far as the context ^{Interpre-} or subject-matter otherwise indicates or requires— ^{tation.}

5 “Bureau” means the Consumer Affairs Bureau established under Part II;

 “Commissioner” means the Commissioner for Consumer Affairs appointed under Part II;

10 “component part”, in relation to any goods, includes an accessory to those goods;

 “consumer” means a person—

15 (a) to whom goods are or are offered to be supplied in the course of a business carried on by the person supplying or offering to supply them; or

20 (b) to whom services are or are offered to be supplied in the course of a business carried on by the person supplying or offering to supply them,

 and who does not receive or seek to receive the goods or services in the course of a business carried on by him;

25 “Council” means the Consumer Affairs Council constituted under Part II;

30 “credit-sale agreement” means an agreement for the sale of goods under which the whole or any part of the purchase price is payable by instalments;

 “Department”

Commercial Law (Miscellaneous Provisions).

“Department” means a Department, Ministry or other authority that under the Minister is concerned with the administration of this Act;

5 “goods” includes any chattel or other thing that is the subject of trade or manufacture;

“hire-purchase agreement” has the meaning ascribed to that expression by section 2 of the Hire-Purchase Act, 1960;

10 “inspector” means an inspector appointed under section 55;

“regulations” means regulations under this Act;

“services” includes the rights and benefits that are or are to be supplied under—

15 (a) a contract for or involving—

(i) the performance of work (including work of a professional nature);

20 (ii) the provision of, or the use or enjoyment of, facilities for amusement, entertainment, recreation or instruction; or

25 (iii) the provision of gas or electricity or other forms of energy;

(b) a contract of insurance (including life assurance); or

(d)

(c)

Commercial Law (Miscellaneous Provisions).

8 (c) a contract between a banker and client entered into in the course of the carrying on by the banker of the business of banking, or any other contract (whether between a banker and client or otherwise) for or involving the loan of money or the provision of credit facilities,

10 whether the contract is express or implied and, if it is express, whether it is oral or in writing, and also includes both services supplied to order and services supplied by making them available to potential users, but does not include services supplied under a contract of employment or of apprenticeship;

15 "supplier" means a person who in the course of a business supplies goods or services;

"supply"—

20 (a) in relation to goods, includes supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase, and also includes exhibit, expose or have in possession for the purpose of sale, exchange, lease, hire or hire-purchase or for any purpose of advertisement, manufacture or trade; and

25 (b) in relation to services, includes provide, grant or render.

30 (2) For the purposes of this Act—

(a) a reference to the supply or acquisition of goods includes a reference to agreeing to supply or acquire goods;

(b)

Commercial Law (Miscellaneous Provisions).

- (b) a reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods in pursuance of a supply of the goods;
- 5 (c) a reference to the supply or acquisition of services includes a reference to agreeing to supply or acquire services;
- 10 (d) a reference to the supply or acquisition of goods includes a reference to the supply or acquisition of goods together with services; and
- 15 (e) a reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with goods.

4. The Consumer Protection Act, 1969, is further amended— Further amendment of Act No. 28, 1969.

- (a) by omitting Division 1 of Part II; Part II, Division I (Interpretation.)
- 20 (b) by omitting from section 7 (2) (a) the words "of Labour and Industry"; Sec. 7. (Constitution of Council.)
- (c) by omitting from section 8 (1) the words "of Labour and Industry"; Sec. 8. (Chairman of Council.)
- (d)

Commercial Law (Miscellaneous Provisions).

- (d) (i) by inserting after section 11 (7) the following subsections :—
- Sec. 11.
(Provisions
applying
to the
Council.)
- (7A) The Chairman ceases to hold office as such and there is a casual vacancy in his office—
- (a) if he dies;
- (b) if he ceases to be an officer of the Department; or
- (c) if he is removed from office by the Governor.
- (7B) On the occurrence of a casual vacancy in the office of Chairman, the Governor may appoint an officer of the Department to fill the vacant office.
- (ii) by omitting from section 11 (8) the word “Governor” and by inserting instead the word “Minister”;
- (e) by omitting from section 14 the words “of Labour and Industry”;
- Sec. 14.
(Acting
Com-
missioner.)
- (f) by omitting from section 15 the words “within the Department of Labour and Industry”;
- Sec. 15.
(Consumer
Affairs
Bureau.)
- (g) (i) by omitting from section 16 (1) (a) the words “Department of Labour and Industry” and by inserting instead the word “Minister”;
- Sec. 16.
(Functions
of Consumer
Affairs
Bureau.)
- (ii) by omitting from section 16 (1) (b) (ii) the word “and” where secondly occurring;
- (iii)

Commercial Law (Miscellaneous Provisions).

(j) by inserting after Division 3 of Part II the following Division :— Part II,
Division 3A.

DIVISION 3A.—Legal Assistance to Consumers.

5 16G. (1) Where any person, being a person claiming or alleged to be a consumer— Applications
for legal
assistance
by persons
claiming or
alleged to
be con-
sumers.

(a) wishes to bring legal proceedings arising out of the supply to him of goods or services ; or

(b) is a party to any legal proceedings arising out of any such supply,

10 that person may apply to the Commissioner for the grant of assistance in relation to the conduct of his case in those proceedings.

(2) Every such application shall—

15 (a) be in or to the effect of the prescribed form ;

(b) include the particulars required by the form ;
and

(c) be verified in the prescribed manner.

20 16H. (1) The Commissioner may grant an application made under section 16G if— Power of
Commis-
sioner to
grant appli-
cations for
assistance.

(a) he is satisfied that the person who made the application has reasonable grounds for bringing, or being a party to, the proceedings ;

25 (b) he is of the opinion that it is desirable, in the interests of consumers in general or of any class of consumers (including the person who made the application), that he should grant the assistance applied for ;

(d) (c)

Commercial Law (Miscellaneous Provisions).

5 (c) the proceedings are for the recovery of a liquidated amount not exceeding the amount prescribed for the purposes of this paragraph, or are for the recovery of an unliquidated amount which, in the opinion of the Commissioner, will not exceed the amount so prescribed; and

10 (d) the Minister has authorised in writing the Commissioner to grant the assistance applied for.

(2) Where the Commissioner grants or refuses any such application, he shall notify the person who made the application in writing of that grant or refusal.

15 (3) Where any such application is granted and the person who made the application is so notified—

(a) that person shall not—

20 (i) without the agreement of the Commissioner, withdraw from the proceedings or discharge any solicitor to whom his case is assigned under section 161 or any barrister or solicitor acting for him in the proceedings; or

25 (ii) except to the extent required or authorised by the Commissioner, interfere or involve himself in the conduct of the case; and

(b)

Commercial Law (Miscellaneous Provisions).

5 (b) the Commissioner, or any person authorised by the Commissioner, shall have the same control over, and the same rights in respect of the case (including the right to settle or compromise any claim arising in the proceedings) as he would have had if he were that person.

10 (4) All expenses incurred in connection with the granting of assistance to a person under this Division (including the cost of employing any barrister or solicitor, any court fees incurred on behalf of the person and any costs required to be met by the Commissioner by virtue of section 16K (3) in relation to that person's case) shall be met by the Commissioner out of money appropriated by Parliament for the purpose.

16I. (1) On granting assistance to a person under section 16H, the Commissioner shall—

Assignment of cases of assisted persons to solicitors.

- (a) assign the case of that person to—
- 20 (i) the Public Solicitor or any solicitor employed in the office of the Public Solicitor, but only if the Public Solicitor has agreed to the case being so assigned;
- 25 (ii) any solicitor employed in the Department;
- 30 (iii) any solicitor employed in any other government department, but only if the permanent head of that department has agreed to the case being so assigned; or

(iv)

Commercial Law (Miscellaneous Provisions).

5 (iv) any solicitor practising on his own account who has indicated to the Commissioner his willingness to undertake the conduct of cases of persons who are granted assistance under section 16H; and

(b) notify to that person in writing particulars of the solicitor to whom the case has been assigned.

10 (2) Where a person's case is assigned to a solicitor under subsection (1), that solicitor may, on behalf of that person, appear, and conduct any matter or proceeding relating to the case, in any court either personally or, with the concurrence of
15 the Commissioner, by any barrister or solicitor.

(3) A solicitor assigned under this section to act for a person shall not discontinue his assistance without the leave of the Commissioner.

20 16J. (1) Before taking any other step in the proceedings (being proceedings that have already been brought), a solicitor to whom a case has been assigned under section 16I shall, as soon as practicable after the case is assigned to him, serve on the other party or parties to the proceedings, and file in the office of the court in which the proceedings are pending, a notice to the effect that he is undertaking the conduct of the case.

Provisions relating to court proceedings to which an assisted person is a party.

25
30 (2) Subject to subsection (3), where any such notice is filed, then, unless otherwise ordered by the court in which the proceedings are pending, the proceedings shall, by virtue of this section, be

stayed

Commercial Law (Miscellaneous Provisions).

5 stayed for a period of 14 days and, during that period, unless otherwise ordered by the court, time fixed by or under any Act for the doing of any act or the taking of any step in the proceedings shall not run.

(3) The filing of a notice under subsection (1) shall not prevent—

10 (a) the making of any interlocutory order which, in the opinion of the court in which the proceedings are pending, is necessary to prevent injustice; or

15 (b) unless otherwise ordered by the court, the institution or continuance of proceedings to obtain, enforce or otherwise carry into effect any such order.

(4) The period during which proceedings are stayed by virtue of this section may be reduced or extended by order of the court in which the proceedings are pending.

20 (5) No fee shall be charged in respect of the filing of any notice under subsection (1).

25 (6) Where, in any proceedings to which a person granted assistance under section 16H is a party, any party makes a counterclaim, or pleads a set-off, and that counterclaim or set-off does not relate to the supply of goods or services to that person, the court in which the proceedings are brought may, on application being made in that behalf by or on behalf of the Commissioner, order
30 that the counterclaim or set-off be dealt with separately, and may make such other orders or give such directions in that behalf as it thinks fit.

Commercial Law (Miscellaneous Provisions).

16K. (1) Where proceedings are brought to which a person granted assistance under section 16H is a party, the court in which those proceedings are brought shall make—

Costs and expenses, etc., relating to proceedings to which an assisted person is a party.

- 5 (a) in favour of that person, the same order for costs (except against another person granted assistance under section 16H) as the court would have made in favour of that person if he had not been granted assistance; or
- 10 (b) if the case so requires, against that person, the same order for costs (except in favour of another person granted assistance under section 16H) as the court would have made against that person if he had not been
- 15 granted assistance.

20 (2) Where any order for costs is made to which subsection (1) (a) relates, those costs shall not be payable to the person in whose favour the order was made but shall be payable to and may be recovered by the Commissioner, and on being so recovered shall be paid into the Consolidated Revenue Fund.

25 (3) Where any order for costs is made to which subsection (1) (b) relates, those costs shall be met by the Commissioner.

30 (4) Subject to subsection (2), where in proceedings to which a person granted assistance under section 16H is a party any money is awarded in favour of that person, that money shall be paid to him without deduction.

Commercial Law (Miscellaneous Provisions).

5 16L. The same privileges as those which arise from the relationship of client and solicitor acting in his professional capacity and in the course of his professional employment shall arise from the relationship between a person who has applied for assistance under section 16G or who has been granted that assistance under section 16H and the Commissioner and the solicitor (if any) to whom that person's case is assigned under section 16I.

Privilege attaching to certain relationships.

10 5. The Consumer Protection Act, 1969, is further amended—

Further amendment of Act No. 28, 1969.

(a) (i) by omitting the definition of "services" in section 19;

Sec. 19. (Definitions.)

15 (ii) by inserting at the end of section 19 the following subsection :—

(2) This Part does not apply to or in respect of a supply of goods under a lease, hiring agreement or hire-purchase agreement where the lease, hiring agreement or, as the case may be, hire-purchase agreement took effect before the commencement of the Commercial Law (Miscellaneous Provisions) Act, 1975.

25 (b) (i) by omitting from section 21 (1) the word "sell" and by inserting instead the words "supply";

Sec. 21. (Trade description to be appended to certain goods.)

(ii) by omitting from section 21 (3) the word "vendor" and by inserting instead the word "supplier";

30 (iii) by omitting from section 21 (3) the word "purchaser" and by inserting instead the word "consumer";

Commercial Law (Miscellaneous Provisions).

- (iv) by omitting from section 21 (3) the word "sale" and by inserting instead the word "supply";
- 5 (v) by omitting from section 21 (4) the word "purchaser" and by inserting instead the word "consumer";
- (vi) by omitting from section 21 (4) the word "vendor" and by inserting instead the word "supplier";
- 10 (vii) by inserting after section 21 (4) the following subsections :—
 - (5) This section does not apply to a person—
 - 15 (a) who, in the case of prescribed goods supplied under a credit-sale agreement or a hire-purchase agreement, did not have possession of the goods before the goods were supplied and only became their owner at the time at which or
 - 20 after which the agreement was entered into;
 - (b) who supplies prescribed goods as scrap, that is to say, for the value of the materials of which they are composed
 - 25 and not for use as finished goods;
 - (c) who, in the case of prescribed goods that are damaged, whether the damage was caused by fire or flood or other cause, supplies the goods to another
 - 30 person who carries on a business of acquiring damaged goods or, where the goods have been insured against damage, to the insurer of those goods; or
 - 35 (d) who supplies prescribed goods in connection with the sale or lease of premises.

(6)

Commercial Law (Miscellaneous Provisions).

(6) Regulations made under section 20 may contain such other exemptions from the operation of this section, applicable in such cases, as may be prescribed.

- 5 (c) (i) by omitting from section 22 (a) the word "purchaser" and by inserting instead the word "consumer"; Sec. 22.
(Evidence in prosecutions under this Division.)
- (ii) by omitting from section 22 (a) the word "sale" and by inserting instead the word "supply"; 01
- 10 (iii) by omitting from section 22 the word "sold" wherever occurring and by inserting instead the word "supplied";
- (iv) by omitting from section 22 (b) the word "vendor" and by inserting instead the word "supplier"; 21
- 15 (d) by omitting from section 23 (2) the word "sells" and by inserting instead the word "supplies"; Sec. 23.
(False trade descriptions.)
- (e) by omitting from section 24 (2) the word "sells" and by inserting instead the word "supplies"; Sec. 24.
(Alteration of trade description.)
- 20 (f) by omitting from section 25 (c) the word "sale" and by inserting instead the word "supply"; Sec. 25.
(Offence in the ordinary course of business.)
- (g)

Commercial Law (Miscellaneous Provisions).

- (g) by omitting from section 26 (1) (b) (ii) the word "sale" and by inserting instead the word "supply"; (Appending trade description.) Sec. 26.
- 5 (h) by omitting from section 28 (2) the words "the provisions of Schedule 2, and those provisions as from time to time so amended shall be deemed to be"; Sec. 28.
(Marking of furniture.)
- (i) (i) by omitting from section 29 (1) the word "sale" and by inserting instead the word "supply"; Sec. 29.
(Powers of Court on conviction under this Division.)
- 10 (ii) by omitting from section 29 (1) (a) the word "purchaser" and by inserting instead the word "consumer";
- 15 (iii) by omitting from section 29 (1) (b) the words "supply to the purchaser" and by inserting instead the words "provide the consumer with";
- (iv) by omitting from section 29 (1) (b) the words "supply such goods" and by inserting instead the words "provide those goods";
- 20 (v) by omitting section 29 (2) and by inserting instead the following subsections :—
- 25 (2) Where an order under subsection (1) is for the refund of an amount not exceeding the amount specified in section 12 (1) of the Courts of Petty Sessions (Civil Claims) Act, 1970, the order may be enforced in a court of petty sessions specified in the order or, if no such court is specified, in any court of petty

sessions

Commercial Law (Miscellaneous Provisions).

sessions, and Part V of the Courts of Petty Sessions (Civil Claims) Act, 1970, shall apply in respect of the order as if—

- 5 (a) the order were a judgment of the court of petty sessions specified in the order or, if no such court is specified, the court of petty sessions in which enforcement of the order is sought;
- 10 (b) the amount ordered to be refunded were a judgment debt referred to in that Part;
- (c) the defendant against whom the order was made were a judgment debtor referred to in that Part; and
- 15 (d) the person in favour of whom the order was made were a judgment creditor referred to in that Part.

20 (3) Where an order under subsection (1) is for the refund of an amount exceeding the amount specified in section 12 (1) of the Courts of Petty Sessions (Civil Claims) Act, 1970, but not exceeding that specified in section 44 (1) (a) of the District Court Act, 1973, the order may be enforced in the

25 District Court, and Division 4 of Part IV of the District Court Act, 1973, shall apply in respect of the order as if—

- (a) the order were a judgment of the District Court;
- 30 (b) the amount ordered to be refunded were a judgment debt referred to in that Division;
- (c)

Commercial Law (Miscellaneous Provisions).

- (c) the defendant against whom the order was made were a judgment debtor referred to in that Division; and
- 5 (d) the person in favour of whom the order was made were a judgment creditor referred to in that Division.
- (4) Where an order under subsection (1) is for the refund of an amount exceeding the amount specified in section 44 (1) (a) of the District Court Act, 1973, the order may be enforced in the Supreme Court, in accordance with the Supreme Court Rules as if—
- 10 (a) the order were a judgment of the Supreme Court for the payment of money; and
- 15 (b) the defendant against whom the order was made were a person bound by such a judgment.
- (j) by omitting from the heading to Division 3 of Part III the words "*False or Misleading Advertisements*" and by inserting instead the words "*Control of Advertisements*"; Part III, Division 3. Heading.
- 20
- (k) (i) by omitting from section 32 (1) (a) the words "sale, disposal or letting on hire" and by inserting instead the word "supply"; Sec. 32. (Penalty for publishing or causing to be published any false advertisement to promote the supply of goods.)
- 25 (ii) by omitting from section 32 (2) (b) (i) the words "vehicle or" and by inserting instead the words "vehicle, aircraft or ship or in any other";
- (iii)

Commercial Law (Miscellaneous Provisions).

(iii) by inserting in section 32 (2) (c) after the word "upon" the words "or at";

(1) by inserting after section 32 the following Sec. 32A. section :—

5 32A. (1) A person shall not, without the prior consent in writing of the Minister or of a person authorised by him, publish or cause to be published any statement which—

Statements including references to certain organisations, etc., not to be published without Minister's consent.

10 (a) is intended or apparently intended by that person to promote the business of supplying goods or services to consumers carried on by him or by another person; and

(b) makes reference to—

15 (i) the Bureau;

(ii) the Commissioner;

(iii) the Council;

20 (iv) a person appointed, or an organisation constituted, under an Act of the Commonwealth or of any State or Territory of the Commonwealth, and having functions relating to the protection of consumers (being a person or an organisation prescribed for the purposes of this subparagraph); or

25

(v)

Commercial Law (Miscellaneous Provisions).

(v) a person employed in the Bureau or by a person, or by or in an organisation, referred to in subparagraph (iv).

5 Penalty: \$2,000 or imprisonment for three months, or both.

(2) A statement shall be deemed to be published for the purposes of subsection (1) if it is—

10 (a) inserted in a newspaper or other publication printed or published in New South Wales;

(b) publicly exhibited—

15 (i) in, on, over or under any building, vehicle, aircraft or ship or in any other place (whether or not a public place and whether on land or water); or

20 (ii) in the air in view of persons being or passing in or on any street or public place;

(c) contained in any document gratuitously sent or delivered to any person or thrown or left upon or at premises in the occupation of any person;

25

(d) broadcast by wireless transmission or by television; or

(e) made verbally.

(m)

Commercial Law (Miscellaneous Provisions).

(m) by omitting from section 33 (a) the words "prepared, or sold, or offered for hire" wherever occurring and by inserting instead the words "prepared or supplied".

Sec. 33.
(Powers of inspectors.)

5 6. The Consumer Protection Act, 1969, is further amended by inserting after Part III the following Part :—

Further amendment of Act No. 28, 1969. Part IIIA.

PART IIIA.

INSTRUCTIONS FOR CARE OF GOODS.

- 10 34A. (1) The Governor may make regulations for or with respect to—
- (a) instructions for the care of goods of a prescribed class or description;
- (b) specifying whether the instructions are required to be marked on the goods or are required to accompany them;
- 15 (c) the manner in which the instructions are required to be marked on or to accompany the goods;
- (d) standards with which the instructions are required to comply; and
- 20 (e) the matters with which the instructions are required to deal.

Regulations requiring goods to be marked with or accompanied by instructions for care.

(2) The regulations made under subsection (1) may apply either generally or in prescribed circumstances or subject to prescribed conditions.

(3)

Commercial Law (Miscellaneous Provisions).

5 (3) A class or description of goods may be prescribed in regulations made under subsection (1) notwithstanding that the goods are for use only as component parts of other goods (whether or not those other goods are of a class or description so prescribed).

10 34B. (1) Any supplier who supplies goods in respect of which regulations made under section 34A are in force is guilty of an offence against this Act if any requirement of the regulations relating to those goods is contravened or not complied with. Offence to supply certain goods in contravention of regulations made under section 34A.

(2) Subsection (1) does not apply to a supplier—

- (a) who believes on reasonable grounds that the goods will not be used in New South Wales;
- 15 (b) who, in the case of goods supplied under a credit-sale agreement or a hire-purchase agreement, did not have possession of the goods before the goods were supplied and only became their owner at the time at which or after which the agreement was entered into;
- 20 (c) who supplies the goods as scrap, that is to say, for the value of the materials of which they are composed and not for use as finished goods;
- 25 (d) who, in the case of goods that are damaged, whether the damage was caused by fire or flood or other cause, supplies the goods to another person who carries on a business of acquiring damaged goods or, where the goods have been insured against damage, to the insurer of the goods;
- 30

(e)

Commercial Law (Miscellaneous Provisions).

(e) who supplies the goods in connection with the sale or lease of premises ; or

5 (f) where the goods are supplied under a lease, hiring agreement or hire-purchase agreement, if the supply did not contravene any regulation made under section 34A when the lease, hiring agreement or, as the case may be, hire-purchase agreement took effect.

10 (3) It is a defence to a prosecution for an offence under subsection (1) if the defendant proves that the goods referred to in the information for the offence were manufactured in or imported into New South Wales before the regulations applicable to those goods (being regulations made under section 34A) took effect, but, if the defendant has failed to give reasonable notice of the defence to the informant before the hearing of the information is commenced, he shall, if the court so directs, pay such of the costs of the informant as have resulted from that failure.

20 (4) Regulations made under section 34A may contain such other exemptions from the operation of subsection (1), applicable in such cases, as may be prescribed.

34C. An inspector may at any reasonable time—

25 (a) enter any place where goods (being goods of a class or description that are subject to regulations made under section 34A) are supplied, or where he has reasonable cause to believe that any such goods are supplied ;

Powers of inspectors under this Part.

30 (b) inspect any such goods in that place ;

(c)

Commercial Law (Miscellaneous Provisions).

- (c) take any such goods, after paying a just price for them;
- 5 (d) examine with respect to matters under this Part any person employed or engaged in any such place; and
- (e) make such examinations and inquiries as he thinks necessary to ascertain whether the requirements of this Part are being complied with.

7. The Consumer Protection Act, 1969, is further
10 amended—

- (a) by omitting Division 1 of Part IV;
- (b) by omitting section 36 (2) and by inserting instead
15 the following subsection :—
- (2) Regulations made under subsection (1) may apply either generally or in prescribed circumstances or subject to prescribed conditions.
- (c) (i) by omitting from section 37 (1) the word
20 “sell” and by inserting instead the word “supply”;
- (ii) by omitting from section 37 (2) the word
“sell” and by inserting instead the word “supply”;
- (iii) by omitting from section 37 (3) (b) the words
25 “a sale” and by inserting instead the words “a supply of goods or component parts”;
- (iv) by omitting from section 37 (3) (b) the words
“a letting”;

Further amendment of Act No. 28, 1969.

Part IV, Division 1. (Interpretation.)

Sec. 36. (Safety requirements and instructions.)

Sec. 37. (Prohibition on supply of goods not complying with regulations under s. 36.)

(v)

Commercial Law (Miscellaneous Provisions).

- (v) by omitting from section 37 (3) (c) the word "selling" and by inserting instead the word "supplying";
- 5 (vi) by omitting from section 37 (3) (d) the words "by, or in consequence of, fire or flooding, where he is selling" and by inserting instead the words ", whether the damage was caused by fire or flood or other cause, where he supplies";
- 10 (d) by omitting from section 38 (1) the word "sell" and by inserting instead the word "supply"; Sec. 38.
(Enforcement of s. 37.)
- (e) (i) by omitting from section 39 (a) the words "belonging to a class or description in respect of which regulations have been made under section 36 or component parts of any such goods are sold or kept for any purpose of advertisement or trade" and by inserting instead the words "(being goods of a class or description that are subject to regulations made under section 36), or component parts of any such goods, are supplied"; Sec. 39.
(Powers of inspectors.)
- 15
- 20 (ii) by omitting from section 39 (a) the words "sold or so kept" and by inserting instead the word "supplied";
- 25 (f) by inserting after Division 2 of Part IV the following Part IV,
Division 2A.
Division :—
DIVISION 2A.—*Prohibition or Restriction on Supply of Dangerous Goods to Consumers.*
39A. In this Division and in Schedule 3— Definitions for the purposes of this Division.
30 "Committee" means the Products Safety Committee established under section 39B;
"dangerous" means likely to cause the death, or injury to the body or health, of any person, whether directly or indirectly.

Commercial Law (Miscellaneous Provisions).

39B. (1) There shall be established a committee to be known as the Products Safety Committee for the purpose of performing the functions assigned to the Committee under this Division. Constitution of Products Safety Committee.

5 (2) The Committee shall consist of such number of members appointed by the Minister as the Minister may determine.

(3) Of the members—

10 (a) one shall be an officer of the Department who shall be the chairman of the Committee; and

(b) the remainder shall be persons who, in the opinion of the Minister, have expertise in product safety.

15 (4) The provisions of Schedule 3 shall have effect with respect to the Committee.

20 39C. (1) The Minister, or the Commissioner with the approval of the Minister, may refer to the Committee the question as to whether the supply of goods of a class or description specified in the reference or of any particular goods so specified (being goods which, in the opinion of the Minister or the Commissioner, as the case may be, are or are likely to be supplied to consumers in New South Wales, but not being goods the supply of which is prohibited or regulated by or under an enactment specified in Schedule 4) ought, by reason of the goods being dangerous, to be prohibited or to be allowed only subject to conditions or restrictions. References to the Committee.

30 (2) Whenever the Minister or the Commissioner refers a question under subsection (1), he shall cause particulars of the question to be notified to the public in the prescribed manner.

(3)

Commercial Law (Miscellaneous Provisions).

5 (3) The Committee shall, on the reference of any question under subsection (1), fully consider the question and determine what recommendations it should make with respect to the question and shall then prepare a report containing those recommendations and submit that report to the Minister.

10 (4) Where, on the reference of any question under subsection (1), the Committee is of the opinion that the supply of goods of a class or description, or, as the case may be, the particular goods, to which the question relates ought, in the interests of the safety of the public, to be prohibited immediately, the Committee may, notwithstanding that it has not fully considered the question as required by subsection (3), make a recommendation to the Minister that he make an interim order with respect to those goods in accordance with section 39E (3).

20 (5) The Commissioner shall, if he is requested to do so by the Committee, give to the Committee to enable it to consider the question—

- (a) any information in his possession which relates to the question; and
- 25 (b) any other assistance which the Committee may require, and which it is within his power to give, in relation to the question.

30 (6) If a member of the Committee dissents from a decision of the Committee in respect of the question, the chairman of the Committee shall record in the report a note of that dissent and of the reasons for it (if any).

(7)

Commercial Law (Miscellaneous Provisions).

(7) The Committee, in considering the question—

- 5 (a) may make such investigations as it considers necessary to enable it to make a recommendation with respect to the question;
- 10 (b) shall take into account any representations made to it by any person who, in its opinion, has a substantial interest in the subject-matter of the question or by any body which, in its opinion, represents a substantial number of persons who have such an interest; and
- 15 (c) unless in all the circumstances the Committee does not consider that it is reasonably practicable to do so, shall permit any such person or body to be heard orally by the Committee, or by a member of the Committee nominated by the Committee for
- 20 the purpose.

(8) Subject to subsection (7) and clause 5 of Schedule 3, the Committee may determine its own procedure for considering the question, and in particular may determine—

- 25 (a) the extent, if any, to which persons interested or claiming to be interested in the question are allowed to be present or to be heard, either by themselves or by their representatives, or to cross-examine witnesses or
- 30 otherwise participate in the consideration of the question; and
- (b) the extent, if any, to which the Committee shall hold its proceedings in public.

(9)

Commercial Law (Miscellaneous Provisions).

(9) In determining its procedure under subsection (8), the Committee shall act in accordance with any general directions which may be given it by the Minister.

5 (10) The regulations may amend
Schedule 4 by omitting the reference to any enact-
ment specified in that Schedule or by inserting in
that Schedule a reference to any enactment which
10 prohibits or regulates the supply of any class or
description of goods.

39D. (1) For the purposes of any investigation Attendance
of a question referred to it under section 39C (1), of witnesses
the Committee may, by notice in writing signed by and produc-
the chairman or by a member of the Committee tion of
15 on his behalf— documents.

(a) require any person to attend at a time and
place specified in the notice and to give
evidence to the Committee or to a member
of the Committee nominated by it for the
20 purpose;

(b) require any person to produce, at a time
and place specified in the notice, to the
Committee or to a member of the Com-
mittee nominated by it for the purpose, any
25 goods or documents which are specified or
described in the notice and which are goods
or documents in his custody or under his
control and are relevant to the investigation;
and

(c) take goods so produced, after paying a just
price for them, and cause to be conducted
such tests and examinations with respect to
them as it considers necessary for the pur-
30 pose of determining whether or not they
may be dangerous.
35

Commercial Law (Miscellaneous Provisions).

(2) For the purposes of any such investigation the Committee, or a member of the Committee nominated by it for the purpose, may take evidence on oath, and for that purpose may administer oaths.

5 (3) A person shall not be compelled, for the purposes of any such investigation, to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the Supreme Court or, in obedience
10 to a notice under subsection (1), to attend any such investigation unless the reasonable expenses of his attendance are paid or tendered to him.

(4) Any person who—

15 (a) without reasonable excuse, refuses or fails to do anything required of him by a notice under subsection (1); or

(b) alters, suppresses or destroys any document which he is required by any such notice to produce,

20 is guilty of an offence against this Act.

25 39E. (1) Where a report submitted to the Minister under section 39C (3) contains a recommendation that the supply of goods of any class or description specified in the report, or of any particular goods so specified, ought to be prohibited, or ought to be allowed only subject to conditions or restrictions so specified, the Minister may, if he agrees with the recommendation, make an order giving effect to the recommendation.

Power of Minister to make orders prohibiting or restricting the supply of dangerous goods.

30 (2) Section 41 of the Interpretation Act, 1897, shall apply to an order made under subsection (1) as if the order were a regulation to which that section applies.

(3)

Commercial Law (Miscellaneous Provisions).

5 (3) Where the Committee makes a recommendation under section 39c (4), the Minister may, if he agrees with the recommendation, make an interim order prohibiting the supply of goods of the class or description specified in the recommendation, or of any particular goods so specified, for a period not exceeding 28 days from the date on which the order is published under subsection (4).

10 (4) If the Minister makes an interim order under subsection (3), he shall cause the order to be published in the Gazette.

39F. Any person who supplies goods in contravention of an order made under section 39E (1) or (3) is guilty of an offence against this Act. Offence to contravene an order under section 39E.

15 39G. Where any supplier supplies goods in contravention of an order made under section 39E (1) or (3), that contravention is a breach of duty that, Action for breach of statutory duty. subject to the defences and other incidents applying to actions for breach of statutory duty, is actionable at the suit of any person, whether he is the person to whom the goods were supplied or not, who has 21 sustained loss or damage in consequence of that breach.

20

39H. An inspector may at any reasonable time— Powers of inspectors.

25 (a) enter any place at which any goods (being goods that are the subject of a question referred to the Committee under section 39c (1) or goods that are the subject of an order made under section 39E (1) or (3)) are manufactured,

Commercial Law (Miscellaneous Provisions).

manufactured, prepared or supplied, or at which he has reasonable cause to believe that any such goods are manufactured, prepared or supplied;

5

(b) inspect any such goods in that place;

(c) take any such goods, after paying a just price for them;

10

(d) examine with respect to matters under this Division any person employed or engaged in that place; and

(e) make such examination and inquiries as he thinks necessary for the purposes of this Division.

(g) by omitting Division 3 of Part IV.

Part IV,
Division 3.
(Refrigerators, Ice-Chests, Ice-Boxes and Freezers.)

15

8. The Consumer Protection Act, 1969, is further amended—

Further amendment of Act No. 28, 1969.

(a) (i) by omitting the definitions of "services" and "supply" in section 42 (1);

Sec. 42.
(Definitions.)

20

(ii) by omitting section 42 (2) (g), (h), (i) and (j);

(b) by omitting from section 46 the words "of Labour and Industry";

Sec. 46.
(Acting Commissioner for Trade Practices.)

(c)

Commercial Law (Miscellaneous Provisions).

(c) by omitting section 53 (1) and by inserting instead the following subsection :—

Sec. 53.
(Proceedings for offences under this Part.)

(1) Proceedings for an offence arising under this Part shall—

- 5 (a) be disposed of before the Industrial Commission; and
- (b) be commenced by information laid in the office of the Industrial Registrar within 12 months after the time when the offence is
- 10 alleged to have been committed.

9. The Consumer Protection Act, 1969, is further amended—

Further amendment of Act No. 28, 1969.

(a) by omitting from section 55 (5) the words “one hundred dollars” and by inserting instead the matter “\$300”;

Sec. 55.
(Inspectors.)

15

(b) (i) by omitting section 56 (3) and by inserting instead the following subsection :—

Sec. 56.
(Proceedings for offences against this Act.)

20

(3) Proceedings for an offence against this Act (other than an offence arising under Part V) shall—

25

(a) be disposed of summarily before a stipendiary magistrate, or before an industrial magistrate appointed under the Industrial Arbitration Act, 1940; and

(b)

Commercial Law (Miscellaneous Provisions).

(b) be commenced by information laid within 12 months after the time when the offence is alleged to have been committed.

5 (ii) by omitting section 56 (5);

(c) by omitting section 57 (1) and by inserting instead the following subsection :— Sec. 57. (Penalty.)

10 (1) A person who is guilty of an offence against this Act for which no penalty is otherwise provided is liable to a penalty not exceeding \$2,000 or imprisonment for a term not exceeding 12 months, or both.

15 (d) (i) by omitting from section 58 (1) the words "Under Secretary" and by inserting instead the words "prescribed officer of the Department"; Sec. 58. (Evidentiary provisions.)

(ii) by inserting after section 58 (2) the following subsections :—

20 (3) In proceedings for an offence against this Act, a printed document which is or purports to be a standard, rule, code or specification of an association or body referred to in, or prescribed for the purposes of, section 52 (3) (b) or section 59 (1A) (a) and which has been or purports to have been published or issued by or on behalf of that association or body is admissible as evidence in those proceedings and, in the absence of evidence to the contrary, is proof of that standard, rule, code or specification.

25

30

(4)

Commercial Law (Miscellaneous Provisions).

5 (4) In proceedings for an offence against
this Act, a certificate purporting to be signed
by the Government Analyst or by one of his
officers and certifying the result of an analysis
is, unless the defendant requires the Govern-
ment Analyst or officer to be called as a
witness in the proceedings, admissible as
evidence of the facts certified and, in the
10 absence of evidence to the contrary, is proof
of those facts.

(e) (i) by inserting after section 59 (1) the following subsection :— Sec. 59.
(Regula-
tions.)

(1A) A regulation made under this Act—
15 (a) may adopt, either in whole or in part,
or by reference, any standards, rules,
codes or specifications of the Stan-
dards Association of Australia, the
British Standards Institution or any
20 other association or body prescribed
for the purposes of this paragraph;
and
(b) may include provisions which differ in
their application according to circum-
stances or factors specified in the
25 regulation.

(ii) by omitting section 59 (2) and (3) and by
inserting instead the following subsection :—

30 (2) Section 41 of the Interpretation Act,
1897, applies in respect of a regulation made
under this Act as if this Act had been passed
after the commencement of the Interpretation
(Amendment) Act, 1969.

(f)

Commercial Law (Miscellaneous Provisions).

(f) by inserting after Schedule 2 the following Schedules
Schedules :— 3 and 4.

SCHEDULE 3.

Sec. 39B (4).

PROVISIONS APPLICABLE TO PRODUCTS SAFETY COMMITTEE.

5 1. (1) Subject to subclauses (3), (4) and (5), a member Appointment
of the Committee shall hold and vacate office in accordance and tenure
with the terms of his appointment or reappointment. of office of
members.

10 (2) On the expiration of any period of appointment
or reappointment, a member of the Committee may be
reappointed for a further period.

(3) A member of the Committee may at any time
resign his membership by notice in writing addressed to the
Minister.

15 (4) The Minister may at any time remove from office
a member of the Committee by notice in writing addressed
and delivered to that member.

(5) The chairman of the Committee shall be deemed
to have vacated his office as a member of the Committee if
he ceases to be a member of the Department.

20 2. (1) If the member referred to in section 39B (3) (a) Deputies of
is unable to carry out his duties as a member of the members.
Committee for any period, the Minister may appoint
another officer of the Department to act in his place for
that period, and that officer shall, during that period, have
25 and may exercise the duties and powers of chairman of the
Committee.

30 (2) If any of the members referred to in section 39B
(3) (b) is unable to carry out his duties as a member of the
Committee for any period, the Minister may appoint another
person who, in his opinion, has expertise in product safety
to act in his place for that period, and a person so appointed
shall, during that period, be deemed to be a member of the
Committee.

35 3. There shall be paid to members of the Committee Remunera-
such remuneration, and such travelling and other allowances, tion and
as in the case of any of those members the Minister may allowances.
determine.

40 4. At any meeting of the Committee the decision of a Decisions of
majority of its members present and voting shall be the Committee.
decision of the Committee.

Commercial Law (Miscellaneous Provisions).

5. (1) The Committee, with the prior approval of the Co-opted Minister, may co-opt any person who, in its opinion, has members. expertise in relation to any question referred to it under section 39c (1).

5 (2) A person co-opted under subclause (1) shall, when attending a meeting of the Committee, be deemed to be a member of the Committee and shall have a right to vote and participate in the Committee's proceedings.

SCHEDULE 4.

Sec. 39c (1).

10 ENACTMENTS PROHIBITING OR REGULATING THE SUPPLY OF GOODS.

The following enactments are specified for the purpose of section 39c (1) :—

- 15
1. Agricultural Seeds Act, 1921.
 2. Dairy Industry Act, 1915.
 3. Explosives Act, 1905.
 4. Fertilizers Act, 1934.
 5. Inflammable Liquid Act, 1915.
 6. Pest Destroyers Act, 1945.
 - 20 7. Plant Diseases Act, 1924.
 8. Poisons Act, 1966.
 9. Pure Food Act, 1908.
 10. Radioactive Substances Act, 1957.
 11. Stock Foods and Medicines Act, 1940.

25 10. The Credit-sale Agreements Act, 1957, is amended— Amendment of Act No. 29, 1957.

- (a) by omitting from section 8 (2) (b) (iv) the words "which are goods of any of the descriptions referred to in paragraphs (a), (b) and (c) of subsection (2) of Sec. 8. (Requirements relating to credit-sale agreements.)"

Commercial Law (Miscellaneous Provisions).

5 of section 11 or a television-set or prescribed goods” and by inserting instead the words “, being goods of the following descriptions, namely, industrial machinery, farm equipment, a motor vehicle, a television-set or prescribed goods”;

(b) by omitting from the Schedule the matter “P Schedule. represents the difference between the purchase-price of the goods and the amount of the deposit provided by the buyer in connection with the agreement” and by inserting instead the following matter :—

10 P represents the total of the amounts referred to in section 8 (2) (b) (i), (ii), (iii) and (iv) and any amount representing the whole or any part of the stamp duty chargeable on the agreement under the Stamp Duties Act, 1920, less the amount of the deposit provided by the buyer in connection with the agreement.

11. The Lay-by Sales Act, 1943, is amended—

Amendment of Act No. 36, 1943.

20 (a) by omitting section 4 (8) (b) and by inserting Sec. 4. (Register.) instead the following paragraph :—

25 (b) Any member of the police force holding a rank not below sergeant, and any inspector appointed under the Consumer Protection Act, 1969, may at all reasonable times inspect the register and take copies of or extracts from it.

(b) by omitting section 6 (2) (b) and by inserting Sec. 6. (Goods sold or agreed to be sold on lay-by to be set aside.) instead the following paragraph :—

30 (b) Any member of the police force holding a rank not below sergeant, and any inspector appointed under the Consumer Protection Act,

Commercial Law (Miscellaneous Provisions).

1969, may at all reasonable times inspect any goods set aside in accordance with this section and may examine the entries in the register relating to them.

12. The Moneylending Act, 1941, is amended—

Amendment
of Act No.
67, 1941.

- 5 (a) (i) by inserting in section 45 (1) after the words
"Commissioner of Police," where secondly
occurring the words "or any inspector
appointed under the Consumer Protection Act,
1969,";
- 10 (ii) by inserting in section 45 (2) (a) after the
words "authorized as aforesaid" the words
"; or any inspector appointed under the
Consumer Protection Act, 1969,";
- 15 (b) (i) by inserting in the definition of "finance
broker" in section 60 after the words "loans or
credits" where firstly occurring the words
"(including home finance loans)";
- (ii) by omitting paragraph (c) of the definition of
"finance broker" in section 60;
- 20 (iii) by inserting after the definition of "finance
broker" in section 60 the following
definitions :—
- 25 "home finance loan" means a loan the whole
or any part of which is or is intended
to be applied for the purpose of—
- (a) enabling the borrower to
acquire a private dwelling-
house or land for the erection
of such a house; or
- (b)

Commercial Law (Miscellaneous Provisions).

5 (b) providing the borrower with funds for the erection of a private dwelling-house or for the carrying out of structural improvements or additions to a private dwelling-house,

but does not include a loan to a person—

10 (c) who carries on a business as a building contractor;

15 (d) whose business involves or includes the erection of private dwelling-houses or the carrying out of structural improvements or additions to private dwelling-houses; or

(e) whose business involves or includes the acquisition or disposal of land,

20 if the loan is or is intended to be used for the purpose of that business or in the course of carrying on that business;

“private dwelling-house” means—

25 (a) a building that is designed, or is designed principally, as a separate residence for one family or person; or

30 (b) an apartment, flat or other part of a building that is so designed;

(iv)

Commercial Law (Miscellaneous Provisions).

(iv) by inserting at the end of section 60 the following subsection :—

5 (2) Where a person, in the course of carrying on a business, negotiates or acts as an intermediary to obtain, or advertises or announces or holds himself out in any way as being willing to negotiate or act as an intermediary to obtain—

(a) any loan or credit for or on behalf of a company;

10 (b) any loan (not being a home finance loan) or any credit if the loan or credit is or would if made or provided be for an amount exceeding that prescribed for the purposes of this paragraph;

15 (c) any loan (not being a home finance loan) pursuant to an agreement to finance the erection of a building by a series of advances made or to be made during the erection of the building and secured or to be secured
20 on the land on which the building is being or is to be erected if the aggregate of those advances exceeds or would if made exceed the amount prescribed for the purposes of this paragraph;

25 (d) any loan or credit where the rate of any interest in respect of the loan or credit does not exceed, or would not exceed if the loan or credit were made or provided, the prescribed rate; or

30 (e) any loan made, offered or made available, or any credit provided, offered or made available, by a corporation that, by virtue

of

Commercial Law (Miscellaneous Provisions).

of section 38 (7) (c) (i) of the Companies Act, 1961, is a prescribed corporation as defined in section 38 (7) of that Act,

5 that person shall be deemed not to be a finance broker in respect of that loan or credit, as the case may be.

(c) by inserting after section 71 the following section :—

10 71A. For the purpose of any proceedings in respect of an offence against this Part, or of proceedings under section 72, a loan which, but for this section, would be a home finance loan shall be deemed not to be a home finance loan if—

Defence in proceedings involving the negotiation, etc., of home finance loans.

15 (a) the defendant in the case of proceedings for an offence, or the finance broker in the case of proceedings under section 72, proves that he did not know and had no reason to believe that the loan was, or would if made be, a home finance loan and that he had made reasonable inquiries as to how the loan was to be applied; and

20 (b) the loan would have been of a class referred to in section 60 (2) (b) or (c) if it had not been a home finance loan.

25 13. (1) Each Act referred to in column 1 of Schedule 1 is amended in the manner specified opposite that reference in column 2 of that Schedule.

Amendment of Acts by way of Statute Law Revision.

30 (2) The Commercial Transactions (Miscellaneous Provisions) Act, 1974, is amended by inserting in section 3 (c) (iii) after the words "the total" the words "where firstly occurring".

Amendment of Act No. 105, 1974. Sec. 3. (Amendment of Act No. 33, 1960.)

SCHEDULE

Commercial Law (Miscellaneous Provisions).

SCHEDULE 1.

Sec. 13 (1).

AMENDMENT OF ACTS BY WAY OF STATUTE LAW REVISION.

| Column 1. | | Column 2. |
|-------------------------|---------------------|--|
| Year and number of Act. | Short title of Act. | Amendment. |
| 5 | | |
| 10 | 1941, No. 67.. | Moneylending Act, 1941. |
| 15 | | Section 3 (1)— Omit paragraph (b) of the definition of "Money-lender" and insert instead the following paragraph:— (b) any society registered under the Friendly Societies Act, 1912, or under the Co-operation Act, 1923; or |
| 20 | | Omit from paragraph (b1) of the same definition " , or any Act amending that Act". Omit from paragraph (b2) of the same definition " , or any Act amending or replacing that Act". Omit the definition of "Schedule". Section 7 (3) (b) and (c)— Omit " , as amended by subsequent Acts" wherever occurring. |
| 25 | | Section 8 (1) (c)— Omit " , as amended by subsequent Acts". Section 9 (1) (b)— Omit "as amended by subsequent Acts,". |
| 30 | | Section 23 (6)— Omit "1898-1938" and insert instead "1898". Section 34 (3)— Omit "as amended by subsequent Acts,". |
| 35 | | Section 39 (8) and (9)— Omit "1898-1938" wherever occurring and insert instead "1898". Section 50 (1) (a)— Omit "Small Debts Recovery Act, 1912, as amended by subsequent Acts" and insert instead "Courts of Petty Sessions (Civil Claims) Act, 1970". |
| 40 | 1943, No. 36.. | Lay-by Sales Act, 1943. |
| 45 | | Section 1 (3)— Omit "1923-1937" and insert instead "1923". Section 5 (4)— Omit "Factories and Shops Act, 1912-1943" and insert instead "Consumer Protection Act, 1969". |
| 50 | | Section 7 (3)— Omit "Factories and Shops Act, 1912-1943" and insert instead "Consumer Protection Act, 1969". |

SCHEDULE

*Commercial Law (Miscellaneous Provisions).*SCHEDULE 1—*continued.*AMENDMENT OF ACTS BY WAY OF STATUTE LAW REVISION—
continued.

| Column 1. | | Column 2. |
|-----------|------------------------------------|---|
| 5 | Year and number of Act. | Short title of Act. |
| | | Amendment. |
| 10 | 1943, No. 36— <i>continued.</i> | Lay-by Sales Act, 1943— <i>continued.</i> |
| 15 | | Section 7 (6)— Omit “1902-1940” and insert instead “1902”. Section 13 (1) and (2)— Omit “holden before a stipendiary magistrate or a police magistrate” wherever occurring and insert instead “held before a stipendiary magistrate”. |
| 20 | | Section 13 (4)— Omit “Small Debts Recovery Act, 1912, as amended by subsequent Acts, and be enforceable as such under the provisions of that Act as so amended” and insert instead “Courts of Petty Sessions (Civil Claims) Act, 1970, and be enforceable under that Act”. |
| 25 | | Section 17 (6)— Omit “purchaser” from the definition of “vendor” and insert instead “vendor”. |
| 30 | | Section 19 (2)— Omit “holden before a stipendiary or a police magistrate” and insert instead “held before a stipendiary magistrate”. |
| 35 | | Section 22— Omit subsection (4) and insert instead the following subsection:— (4) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation made under this Act as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969. |
| 40 | 1957, No. 29.. | Credit-sale Agreements Act, 1957. |
| 45 | | Section 2 (1)— Omit “, as amended by subsequent Acts” from the definition of “Credit-sale agreement”. Section 8 (2) (b)— Omit “, as amended by subsequent Acts” wherever occurring. Omit “, as subsequently amended”. |
| 50 | | Section 12 (2)— Omit “the provisions of section 26D of the Hire-purchase Agreements Act, 1941, as amended by subsequent Acts” and insert instead “section 23 of the Hire-Purchase Act, 1960”. |

*Commercial Law (Miscellaneous Provisions).*SCHEDULE 1—*continued.*AMENDMENT OF ACTS BY WAY OF STATUTE LAW REVISION—
continued.

| Column 1. | | Column 2. |
|-----------|------------------------------------|--|
| 5 | Year and number of Act. | Short title of Act. |
| | | Amendment. |
| 10 | 1957, No. 29— <i>continued.</i> | Credit-sale Agreements Act, 1957— <i>continued.</i> |
| 15 | 1969, No. 28.. | Consumer Protection Act, 1969. |
| 20 | | Section 14— Omit subsection (2) and insert instead the following subsection:— (2) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation made under this Act as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969. |
| 25 | | Section 3 (2)— Omit “, as subsequently amended” wherever occurring. Omit “as so amended.” Omit “Part IV, and shall be deemed to have been made under this Act.” and insert instead:— Part IV, and shall be deemed to have been made under this Act. |
| 30 | | Section 4 (2)— Omit “, or any Act amending or replacing any such Act”. |
| 35 | | Section 11 (6)— Omit paragraph (b) and insert instead the following paragraph:— (b) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act; |
| 40 | | Omit paragraph (d) and insert instead the following paragraph:— (d) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration, or estate, for their benefit; |
| 45 | | Section 13— Omit “, as subsequently amended”. |
| 50 | | Section 42 (2) (f)— Omit “, as subsequently amended”. |
| | | Section 45— Omit “, as subsequently amended”. |

*Commercial Law (Miscellaneous Provisions).*SCHEDULE 1—*continued.*AMENDMENT OF ACTS BY WAY OF STATUTE LAW REVISION—
continued.

| Column 1. | | Column 2. |
|-----------|------------------------------------|--|
| 5 | Year and number of Act. | Short title of Act. |
| | | Amendment. |
| 10 | 1969, No. 28— <i>continued.</i> | Consumer Protection Act, 1969— <i>continued.</i> |
| 15 | | Section 53 (2)— Omit “, as subsequently amended”. |
| | | Section 54 (2)— Omit “, as subsequently amended”. |
| | | Section 56 (1)— Omit “, as subsequently amended”. |
| | | Section 56 (4)— Omit “, as subsequently amended”. |
| 20 | | Section 58 (1)— Omit “, as subsequently amended” wherever occurring. |
| | | Schedule 2— Clause 3— Omit “as subsequently amended,”. |
| 25 | | Clause 13— Omit “1912–1960,” and insert instead “1912,”. |
| | | Omit “as subsequently amended,”. |
| 30 | | Clause 14— Omit “1912–1960,” and insert instead “1912,”. |
| | | Omit “as subsequently amended,”. |
| | | Clause 15— Omit “, as subsequently amended”. |

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1975

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. 105, 1975.

An Act to require certain goods to be labelled with instructions for care; to empower the Minister to make orders prohibiting or restricting the supply of certain goods supplied or likely to be supplied to consumers; to empower the Commissioner for Consumer Affairs to grant assistance to persons who wish to bring, or who are parties to, legal proceedings arising out of the supply of goods or services; and for these and other purposes to

amend

Commercial Law (Miscellaneous Provisions).

amend the Consumer Protection Act, 1969, the Credit-sale Agreements Act, 1957, the Lay-by Sales Act, 1943, the Moneylending Act, 1941, and the Commercial Transactions (Miscellaneous Provisions) Act, 1974. [Assented to, 23rd December, 1975.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title. **1.** This Act may be cited as the "Commercial Law (Miscellaneous Provisions) Act, 1975".

Commence-ment. **2.** (1) Except as provided in subsections (2) and (3), this Act shall commence on the date of assent to this Act.

(2) Sections 3 (a) (vi) and (vii), 7 (f), 7 (g), 9 (d) (i) and 12 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(3) Section 13 (2) shall be deemed to have commenced on 1st January, 1975.

Amendment of Act No. 28, 1969. **3.** The Consumer Protection Act, 1969, is amended—

Sec. 2. **(a)** (i) by omitting from section 2 the matter relating
(Division of Act.) to Division 1 of Part II;

(ii)

Commercial Law (Miscellaneous Provisions).

- (ii) by inserting in section 2 after the matter relating to Division 3 of Part II the following matter :—

DIVISION 3A.—*Legal Assistance to Consumers*—ss. 16G–16L.

- (iii) by omitting from section 2 the matter relating to Division 3 of Part III and by inserting instead the following matter :—

DIVISION 3.—*Control of Advertisements*—ss. 32, 32A.

- (iv) by inserting in section 2 after the matter relating to Division 4 of Part III the following matter :—

PART IIIA.—*INSTRUCTIONS FOR CARE OF GOODS*—ss. 34A–34C.

- (v) by omitting from section 2 the matter relating to Division 1 of Part IV;

- (vi) by inserting in section 2 after the matter relating to Division 2 of Part IV the following matter :—

DIVISION 2A.—*Prohibition or Restriction on Supply of Dangerous Goods to Consumers*—ss. 39A–39H.

- (vii) by omitting from section 2 the matter relating to Division 3 of Part IV;

(b)

Commercial Law (Miscellaneous Provisions).

Sec. 5.

(b) by omitting section 5 and by inserting instead the following section :—

**Interpre-
tation.**

5. (1) In this Act, except so far as the context or subject-matter otherwise indicates or requires—

“Bureau” means the Consumer Affairs Bureau established under Part II;

“Commissioner” means the Commissioner for Consumer Affairs appointed under Part II;

“component part”, in relation to any goods, includes an accessory to those goods;

“consumer” means a person—

(a) to whom goods are or are offered to be supplied in the course of a business carried on by the person supplying or offering to supply them;
or

(b) to whom services are or are offered to be supplied in the course of a business carried on by the person supplying or offering to supply them,

and who does not receive or seek to receive the goods or services in the course of a business carried on by him;

“Council” means the Consumer Affairs Council constituted under Part II;

“credit-sale agreement” means an agreement for the sale of goods under which the whole or any part of the purchase price is payable by instalments;

“Department”

Commercial Law (Miscellaneous Provisions).

“Department” means a Department, Ministry or other authority that under the Minister is concerned with the administration of this Act;

“goods” includes any chattel or other thing that is the subject of trade or manufacture;

“hire-purchase agreement” has the meaning ascribed to that expression by section 2 of the Hire-Purchase Act, 1960;

“inspector” means an inspector appointed under section 55;

“regulations” means regulations under this Act;

“services” includes the rights and benefits that are or are to be supplied under—

(a) a contract for or involving—

(i) the performance of work (including work of a professional nature);

(ii) the provision of, or the use or enjoyment of, facilities for amusement, entertainment, recreation or instruction; or

(iii) the provision of gas or electricity or other forms of energy;

(b) a contract of insurance (including life assurance); or

(d)

(c)

Commercial Law (Miscellaneous Provisions).

- (c) a contract between a banker and client entered into in the course of the carrying on by the banker of the business of banking, or any other contract (whether between a banker and client or otherwise) for or involving the loan of money or the provision of credit facilities,

whether the contract is express or implied and, if it is express, whether it is oral or in writing, and also includes both services supplied to order and services supplied by making them available to potential users, but does not include services supplied under a contract of employment or of apprenticeship;

“supplier” means a person who in the course of a business supplies goods or services;

“supply”—

- (a) in relation to goods, includes supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase, and also includes exhibit, expose or have in possession for the purpose of sale, exchange, lease, hire or hire-purchase or for any purpose of advertisement, manufacture or trade; and

- (b) in relation to services, includes provide, grant or render.

(2) For the purposes of this Act—

- (a) a reference to the supply or acquisition of goods includes a reference to agreeing to supply or acquire goods;

(b)

Commercial Law (Miscellaneous Provisions).

- (b) a reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods in pursuance of a supply of the goods;
- (c) a reference to the supply or acquisition of services includes a reference to agreeing to supply or acquire services;
- (d) a reference to the supply or acquisition of goods includes a reference to the supply or acquisition of goods together with services; and
- (e) a reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with goods.

4. The Consumer Protection Act, 1969, is further amended—

Further amendment of Act No. 28, 1969.

- (a) by omitting Division 1 of Part II;
- (b) by omitting from section 7 (2) (a) the words “of Labour and Industry”;
- (c) by omitting from section 8 (1) the words “of Labour and Industry”;

Part II, Division 1. (Interpretation.)

Sec. 7. (Constitution of Council.)

Sec. 8. (Chairman of Council.)

(iii)

(d)

Commercial Law (Miscellaneous Provisions).

Sec. 11.
(Provisions
applying
to the
Council.)

(d) (i) by inserting after section 11 (7) the following subsections :—

(7A) The Chairman ceases to hold office as such and there is a casual vacancy in his office—

(a) if he dies;

(b) if he ceases to be an officer of the Department; or

(c) if he is removed from office by the Governor.

(7B) On the occurrence of a casual vacancy in the office of Chairman, the Governor may appoint an officer of the Department to fill the vacant office.

(ii) by omitting from section 11 (8) the word "Governor" and by inserting instead the word "Minister";

Sec. 14.
(Acting
Com-
missioner.)

(e) by omitting from section 14 the words "of Labour and Industry";

Sec. 15.
(Consumer
Affairs
Bureau.)

(f) by omitting from section 15 the words "within the Department of Labour and Industry";

Sec. 16.
(Functions
of Consumer
Affairs
Bureau.)

(g) (i) by omitting from section 16 (1) (a) the words "Department of Labour and Industry" and by inserting instead the word "Minister";

(ii) by omitting from section 16 (1) (b) (ii) the word "and" where secondly occurring;

(iii)

Commercial Law (Miscellaneous Provisions).

(iii) by omitting from section 16 (1) (b) (iii) the word "work." and by inserting instead the word "work;"

(iv) by inserting after section 16 (1) (b) (iii) the following subparagraphs :—

(iv) to act as a secretariat to the Council;
and

(v) to provide the Council with such information as it may reasonably require relating to goods or services supplied to consumers and to consumer affairs, and to carry out such research as may be necessary for the purpose of enabling that information to be provided.

(h) by omitting section 16B (a) and by inserting instead the following paragraph :—

Sec. 16B.
(Power of investigating officer to enter, etc.)

(a) enter any place at which goods are manufactured, prepared or supplied, or services are supplied, or any place at which he has reason to believe that goods are manufactured, prepared or supplied, or services are supplied;

(i) by inserting after section 16c (7) the following subsections :—

Sec. 16c.
(Investigating officer may require furnishing of information and production of documents.)

(8) A written warning or a notice may be given under subsection (2)—

(a) to a person, not being a corporation—

(i) by delivering it to him personally;

(ii)

Commercial Law (Miscellaneous Provisions).

(ii) by leaving it at his place of residence with someone who apparently resides there or at his place of business or employment with someone who is apparently employed there, being in either case a person who has or apparently has attained 16 years of age; or

(iii) by posting it in a letter addressed to him at the address last known to the Commissioner of his place of residence, business or employment; or

(b) to a person, being a corporation—

(i) by delivering it to the secretary of the corporation, or any other person concerned in the management of the corporation, personally;

(ii) by leaving it at the corporation's only or principal place of business with a person apparently employed there, being a person who has or apparently has attained 16 years of age; or

(iii) by posting it in a letter addressed to the corporation at the address last known to the Commissioner of its only or principal place of business.

(9) Subsection (8) (b) is in addition to section 362 of the Companies Act, 1961.

(ii)

(j)

Commercial Law (Miscellaneous Provisions).

(j) by inserting after Division 3 of Part II the following Division :—

Part II,
Division 3A.

DIVISION 3A.—Legal Assistance to Consumers.

16G. (1) Where any person, being a person claiming or alleged to be a consumer—

Applications for legal assistance by persons claiming or alleged to be consumers.

(a) wishes to bring legal proceedings arising out of the supply to him of goods or services; or

(b) is a party to any legal proceedings arising out of any such supply,

that person may apply to the Commissioner for the grant of assistance in relation to the conduct of his case in those proceedings.

(2) Every such application shall—

(a) be in or to the effect of the prescribed form;

(b) include the particulars required by the form; and

(c) be verified in the prescribed manner.

16H. (1) The Commissioner may grant an application made under section 16G if—

Power of Commissioner to grant applications for assistance.

(a) he is satisfied that the person who made the application has reasonable grounds for bringing, or being a party to, the proceedings;

(b) he is of the opinion that it is desirable, in the interests of consumers in general or of any class of consumers (including the person who made the application), that he should grant the assistance applied for;

(c)

Commercial Law (Miscellaneous Provisions).

(c) the proceedings are for the recovery of a liquidated amount not exceeding the amount prescribed for the purposes of this paragraph, or are for the recovery of an unliquidated amount which, in the opinion of the Commissioner, will not exceed the amount so prescribed; and

(d) the Minister has authorised in writing the Commissioner to grant the assistance applied for.

(2) Where the Commissioner grants or refuses any such application, he shall notify the person who made the application in writing of that grant or refusal.

(3) Where any such application is granted and the person who made the application is so notified—

(a) that person shall not—

(i) without the agreement of the Commissioner, withdraw from the proceedings or discharge any solicitor to whom his case is assigned under section 16i or any barrister or solicitor acting for him in the proceedings; or

(ii) except to the extent required or authorised by the Commissioner, interfere or involve himself in the conduct of the case; and

(b)

Commercial Law (Miscellaneous Provisions).

(b) the Commissioner, or any person authorised by the Commissioner, shall have the same control over, and the same rights in respect of the case (including the right to settle or compromise any claim arising in the proceedings) as he would have had if he were that person.

(4) All expenses incurred in connection with the granting of assistance to a person under this Division (including the cost of employing any barrister or solicitor, any court fees incurred on behalf of the person and any costs required to be met by the Commissioner by virtue of section 16K (3) in relation to that person's case) shall be met by the Commissioner out of money appropriated by Parliament for the purpose.

16I. (1) On granting assistance to a person under section 16H, the Commissioner shall—

Assignment
of cases
of assisted
persons to
solicitors.

(a) assign the case of that person to—

- (i) the Public Solicitor or any solicitor employed in the office of the Public Solicitor, but only if the Public Solicitor has agreed to the case being so assigned;
- (ii) any solicitor employed in the Department;
- (iii) any solicitor employed in any other government department, but only if the permanent head of that department has agreed to the case being so assigned; or

(iv)

Commercial Law (Miscellaneous Provisions).

(iv) any solicitor practising on his own account who has indicated to the Commissioner his willingness to undertake the conduct of cases of persons who are granted assistance under section 16H; and

(b) notify to that person in writing particulars of the solicitor to whom the case has been assigned.

(2) Where a person's case is assigned to a solicitor under subsection (1), that solicitor may, on behalf of that person, appear, and conduct any matter or proceeding relating to the case, in any court either personally or, with the concurrence of the Commissioner, by any barrister or solicitor.

(3) A solicitor assigned under this section to act for a person shall not discontinue his assistance without the leave of the Commissioner.

Provisions relating to court proceedings to which an assisted person is a party.

16J. (1) Before taking any other step in the proceedings (being proceedings that have already been brought), a solicitor to whom a case has been assigned under section 16I shall, as soon as practicable after the case is assigned to him, serve on the other party or parties to the proceedings, and file in the office of the court in which the proceedings are pending, a notice to the effect that he is undertaking the conduct of the case.

(2) Subject to subsection (3), where any such notice is filed, then, unless otherwise ordered by the court in which the proceedings are pending, the proceedings shall, by virtue of this section, be

(vi)

stayed

Commercial Law (Miscellaneous Provisions).

stayed for a period of 14 days and, during that period, unless otherwise ordered by the court, time fixed by or under any Act for the doing of any act or the taking of any step in the proceedings shall not run.

(3) The filing of a notice under subsection (1) shall not prevent—

- (a) the making of any interlocutory order which, in the opinion of the court in which the proceedings are pending, is necessary to prevent injustice; or
- (b) unless otherwise ordered by the court, the institution or continuance of proceedings to obtain, enforce or otherwise carry into effect any such order.

(4) The period during which proceedings are stayed by virtue of this section may be reduced or extended by order of the court in which the proceedings are pending.

(5) No fee shall be charged in respect of the filing of any notice under subsection (1).

(6) Where, in any proceedings to which a person granted assistance under section 16H is a party, any party makes a counterclaim, or pleads a set-off, and that counterclaim or set-off does not relate to the supply of goods or services to that person, the court in which the proceedings are brought may, on application being made in that behalf by or on behalf of the Commissioner, order that the counterclaim or set-off be dealt with separately, and may make such other orders or give such directions in that behalf as it thinks fit.

Commercial Law (Miscellaneous Provisions).

Costs and expenses, etc., relating to proceedings to which an assisted person is a party.

16K. (1) Where proceedings are brought to which a person granted assistance under section 16H is a party, the court in which those proceedings are brought shall make—

- (a) in favour of that person, the same order for costs (except against another person granted assistance under section 16H) as the court would have made in favour of that person if he had not been granted assistance; or
- (b) if the case so requires, against that person, the same order for costs (except in favour of another person granted assistance under section 16H) as the court would have made against that person if he had not been granted assistance.

(2) Where any order for costs is made to which subsection (1) (a) relates, those costs shall not be payable to the person in whose favour the order was made but shall be payable to and may be recovered by the Commissioner, and on being so recovered shall be paid into the Consolidated Revenue Fund.

(3) Where any order for costs is made to which subsection (1) (b) relates, those costs shall be met by the Commissioner.

(4) Subject to subsection (2), where in proceedings to which a person granted assistance under section 16H is a party any money is awarded in favour of that person, that money shall be paid to him without deduction.

Commercial Law (Miscellaneous Provisions).

16L. The same privileges as those which arise from the relationship of client and solicitor acting in his professional capacity and in the course of his professional employment shall arise from the relationship between a person who has applied for assistance under section 16G or who has been granted that assistance under section 16H and the Commissioner and the solicitor (if any) to whom that person's case is assigned under section 16I.

Privilege attaching to certain relationships.

5. The Consumer Protection Act, 1969, is further amended—

Further amendment of Act No. 28, 1969.

(a) (i) by omitting the definition of "services" in section 19;

Sec. 19. (Definitions.)

(ii) by inserting at the end of section 19 the following subsection:—

(2) This Part does not apply to or in respect of a supply of goods under a lease, hiring agreement or hire-purchase agreement where the lease, hiring agreement or, as the case may be, hire-purchase agreement took effect before the commencement of the Commercial Law (Miscellaneous Provisions) Act, 1975.

(b) (i) by omitting from section 21 (1) the word "sell" and by inserting instead the word "supply";

Sec. 21. (Trade description to be appended to certain goods.)

(ii) by omitting from section 21 (3) the word "vendor" and by inserting instead the word "supplier";

(iii) by omitting from section 21 (3) the word "purchaser" and by inserting instead the word "consumer";

(iv)

Commercial Law (Miscellaneous Provisions).

- (iv) by omitting from section 21 (3) the word "sale" and by inserting instead the word "supply";
- (v) by omitting from section 21 (4) the word "purchaser" and by inserting instead the word "consumer";
- (vi) by omitting from section 21 (4) the word "vendor" and by inserting instead the word "supplier";
- (vii) by inserting after section 21 (4) the following subsections :—

(5) This section does not apply to a person—

- (a) who, in the case of prescribed goods supplied under a credit-sale agreement or a hire-purchase agreement, did not have possession of the goods before the goods were supplied and only became their owner at the time at which or after which the agreement was entered into;
- (b) who supplies prescribed goods as scrap, that is to say, for the value of the materials of which they are composed and not for use as finished goods;
- (c) who, in the case of prescribed goods that are damaged, whether the damage was caused by fire or flood or other cause, supplies the goods to another person who carries on a business of acquiring damaged goods or, where the goods have been insured against damage, to the insurer of those goods; or
- (d) who supplies prescribed goods in connection with the sale or lease of premises.

(6)

Commercial Law (Miscellaneous Provisions).

(6) Regulations made under section 20 may contain such other exemptions from the operation of this section, applicable in such cases, as may be prescribed.

- (c) (i) by omitting from section 22 (a) the word "purchaser" and by inserting instead the word "consumer"; Sec. 22.
(Evidence in prosecutions under this Division.)
- (ii) by omitting from section 22 (a) the word "sale" and by inserting instead the word "supply";
- (iii) by omitting from section 22 the word "sold" wherever occurring and by inserting instead the word "supplied";
- (iv) by omitting from section 22 (b) the word "vendor" and by inserting instead the word "supplier";
- (d) by omitting from section 23 (2) the word "sells" and by inserting instead the word "supplies"; Sec. 23.
(False trade descriptions.)
- (e) by omitting from section 24 (2) the word "sells" and by inserting instead the word "supplies"; Sec. 24.
(Alteration of trade description.)
- (f) by omitting from section 25 (c) the word "sale" and by inserting instead the word "supply"; Sec. 25.
(Offence in the ordinary course of business.)

(g)

Commercial Law (Miscellaneous Provisions).

Sec. 26. (g) by omitting from section 26 (1) (b) (ii) the word
(Appending trade description.) “sale” and by inserting instead the word “supply”;

Sec. 28. (h) by omitting from section 28 (2) the words “the
(Marking of furniture.) provisions of Schedule 2, and those provisions as from time to time so amended shall be deemed to be”;

Sec. 29. (i) (i) by omitting from section 29 (1) the word
(Powers of Court on conviction under this Division.) “sale” and by inserting instead the word “supply”;

(ii) by omitting from section 29 (1) (a) the word “purchaser” and by inserting instead the word “consumer”;

(iii) by omitting from section 29 (1) (b) the words “supply to the purchaser” and by inserting instead the words “provide the consumer with”;

(iv) by omitting from section 29 (1) (b) the words “supply such goods” and by inserting instead the words “provide those goods”;

(v) by omitting section 29 (2) and by inserting instead the following subsections :—

(2) Where an order under subsection (1) is for the refund of an amount not exceeding the amount specified in section 12 (1) of the Courts of Petty Sessions (Civil Claims) Act, 1970, the order may be enforced in a court of petty sessions specified in the order or, if no such court is specified, in any court of petty

Commercial Law (Miscellaneous Provisions).

sessions, and Part V of the Courts of Petty Sessions (Civil Claims) Act, 1970, shall apply in respect of the order as if—

- (a) the order were a judgment of the court of petty sessions specified in the order or, if no such court is specified, the court of petty sessions in which enforcement of the order is sought;
- (b) the amount ordered to be refunded were a judgment debt referred to in that Part;
- (c) the defendant against whom the order was made were a judgment debtor referred to in that Part; and
- (d) the person in favour of whom the order was made were a judgment creditor referred to in that Part.

(3) Where an order under subsection (1) is for the refund of an amount exceeding the amount specified in section 12 (1) of the Courts of Petty Sessions (Civil Claims) Act, 1970, but not exceeding that specified in section 44 (1) (a) of the District Court Act, 1973, the order may be enforced in the District Court, and Division 4 of Part IV of the District Court Act, 1973, shall apply in respect of the order as if—

- (a) the order were a judgment of the District Court;
- (b) the amount ordered to be refunded were a judgment debt referred to in that Division;
- (c)

Commercial Law (Miscellaneous Provisions).

(c) the defendant against whom the order was made were a judgment debtor referred to in that Division; and

(d) the person in favour of whom the order was made were a judgment creditor referred to in that Division.

(4) Where an order under subsection (1) is for the refund of an amount exceeding the amount specified in section 44 (1) (a) of the District Court Act, 1973, the order may be enforced in the Supreme Court, in accordance with the Supreme Court Rules as if—

(a) the order were a judgment of the Supreme Court for the payment of money; and

(b) the defendant against whom the order was made were a person bound by such a judgment.

Part III,
Division 3.
Heading.

(j) by omitting from the heading to Division 3 of Part III the words "*False or Misleading Advertisements*" and by inserting instead the words "*Control of Advertisements*";

Sec. 32.
(Penalty for publishing or causing to be published any false advertisement to promote the supply of goods.)

(k) (i) by omitting from section 32 (1) (a) the words "sale, disposal or letting on hire" and by inserting instead the word "supply";

(ii) by omitting from section 32 (2) (b) (i) the words "vehicle or" and by inserting instead the words "vehicle, aircraft or ship or in any other";

(iii)

Commercial Law (Miscellaneous Provisions).

(iii) by inserting in section 32 (2) (c) after the word "upon" the words "or at";

(1) by inserting after section 32 the following **Sec. 32A.**
section :—

32A. (1) A person shall not, without the prior consent in writing of the Minister or of a person authorised by him, publish or cause to be published any statement which—

Statements including references to certain organisations, etc., not to be published without Minister's consent.

(a) is intended or apparently intended by that person to promote the business of supplying goods or services to consumers carried on by him or by another person; and

(b) makes reference to—

(i) the Bureau;

(ii) the Commissioner;

(iii) the Council;

(iv) a person appointed, or an organisation constituted, under an Act of the Commonwealth or of any State or Territory of the Commonwealth, and having functions relating to the protection of consumers (being a person or an organisation prescribed for the purposes of this subparagraph); or

(v)

Commercial Law (Miscellaneous Provisions).

- (v) a person employed in the Bureau or by a person, or by or in an organisation, referred to in subparagraph (iv).

Penalty: \$2,000 or imprisonment for three months, or both.

(2) A statement shall be deemed to be published for the purposes of subsection (1) if it is—

(a) inserted in a newspaper or other publication printed or published in New South Wales;

(b) publicly exhibited—

(i) in, on, over or under any building, vehicle, aircraft or ship or in any other place (whether or not a public place and whether on land or water); or

(ii) in the air in view of persons being or passing in or on any street or public place;

(c) contained in any document gratuitously sent or delivered to any person or thrown or left upon or at premises in the occupation of any person;

(d) broadcast by wireless transmission or by television; or

(e) made verbally.

(m)

Commercial Law (Miscellaneous Provisions).

- (m) by omitting from section 33 (a) the words "prepared, or sold, or offered for hire" wherever occurring and by inserting instead the words "prepared or supplied".
- Sec. 33.
(Powers of inspectors.)

6. The Consumer Protection Act, 1969, is further amended by inserting after Part III the following Part :—
- Further amendment of Act No. 28, 1969.
Part IIIA.

PART IIIA.

INSTRUCTIONS FOR CARE OF GOODS.

- 34A. (1) The Governor may make regulations or with respect to—
- Regulations requiring goods to be marked with or accompanied by instructions for care.
- (a) instructions for the care of goods of a prescribed class or description ;
 - (b) specifying whether the instructions are required to be marked on the goods or are required to accompany them ;
 - (c) the manner in which the instructions are required to be marked on or to accompany the goods ;
 - (d) standards with which the instructions are required to comply ; and
 - (e) the matters with which the instructions are required to deal.

(2) The regulations made under subsection (1) may apply either generally or in prescribed circumstances or subject to prescribed conditions.

(3)

Commercial Law (Miscellaneous Provisions).

(3) A class or description of goods may be prescribed in regulations made under subsection (1) notwithstanding that the goods are for use only as component parts of other goods (whether or not those other goods are of a class or description so prescribed).

Offence to supply certain goods in contravention of regulations made under section 34A.

34B. (1) Any supplier who supplies goods in respect of which regulations made under section 34A are in force is guilty of an offence against this Act if any requirement of the regulations relating to those goods is contravened or not complied with.

(2) Subsection (1) does not apply to a supplier—

- (a) who believes on reasonable grounds that the goods will not be used in New South Wales;
- (b) who, in the case of goods supplied under a credit-sale agreement or a hire-purchase agreement, did not have possession of the goods before the goods were supplied and only became their owner at the time at which or after which the agreement was entered into;
- (c) who supplies the goods as scrap, that is to say, for the value of the materials of which they are composed and not for use as finished goods;
- (d) who, in the case of goods that are damaged, whether the damage was caused by fire or flood or other cause, supplies the goods to another person who carries on a business of acquiring damaged goods or, where the goods have been insured against damage, to the insurer of the goods;

(f)

(e)

Commercial Law (Miscellaneous Provisions).

- (e) who supplies the goods in connection with the sale or lease of premises; or
- (f) where the goods are supplied under a lease, hiring agreement or hire-purchase agreement, if the supply did not contravene any regulation made under section 34A when the lease, hiring agreement or, as the case may be, hire-purchase agreement took effect.

(3) It is a defence to a prosecution for an offence under subsection (1) if the defendant proves that the goods referred to in the information for the offence were manufactured in or imported into New South Wales before the regulations applicable to those goods (being regulations made under section 34A) took effect, but, if the defendant has failed to give reasonable notice of the defence to the informant before the hearing of the information is commenced, he shall, if the court so directs, pay such of the costs of the informant as have resulted from that failure.

(4) Regulations made under section 34A may contain such other exemptions from the operation of subsection (1), applicable in such cases, as may be prescribed.

34c. An inspector may at any reasonable time—

- (a) enter any place where goods (being goods of a class or description that are subject to regulations made under section 34A) are supplied, or where he has reasonable cause to believe that any such goods are supplied;
- (b) inspect any such goods in that place;

Powers of
inspectors
under this
Part.

(c)

Commercial Law (Miscellaneous Provisions).

- (c) take any such goods, after paying a just price for them;
- (d) examine with respect to matters under this Part any person employed or engaged in any such place; and
- (e) make such examinations and inquiries as he thinks necessary to ascertain whether the requirements of this Part are being complied with.

Further amendment of Act No. 28, 1969.

7. The Consumer Protection Act, 1969, is further amended—

Part IV,
Division 1.
(Interpretation.)

- (a) by omitting Division 1 of Part IV;

Sec. 36.
(Safety requirements and instructions.)

- (b) by omitting section 36 (2) and by inserting instead the following subsection :—

(2) Regulations made under subsection (1) may apply either generally or in prescribed circumstances or subject to prescribed conditions.

Sec. 37.
(Prohibition on supply of goods not complying with regulations under s. 36.)

- (c) (i) by omitting from section 37 (1) the word “sell” and by inserting instead the word “supply”;
- (ii) by omitting from section 37 (2) the word “sell” and by inserting instead the word “supply”;
- (iii) by omitting from section 37 (3) (b) the words “a sale” and by inserting instead the words “a supply of goods or component parts”;
- (iv) by omitting from section 37 (3) (b) the words “a letting”;

(v)

Commercial Law (Miscellaneous Provisions).

- (v) by omitting from section 37 (3) (c) the word “selling” and by inserting instead the word “supplying”;
- (vi) by omitting from section 37 (3) (d) the words “by, or in consequence of, fire or flooding, where he is selling” and by inserting instead the words “, whether the damage was caused by fire or flood or other cause, where he supplies”;
- (d) by omitting from section 38 (1) the word “sell” and by inserting instead the word “supply”;
- (e) (i) by omitting from section 39 (a) the words “belonging to a class or description in respect of which regulations have been made under section 36 or component parts of any such goods are sold or kept for any purpose of advertisement or trade” and by inserting instead the words “(being goods of a class or description that are subject to regulations made under section 36), or component parts of any such goods, are supplied”;
- (ii) by omitting from section 39 (a) the words “sold or so kept” and by inserting instead the word “supplied”;
- (f) by inserting after Division 2 of Part IV the following Division :—
- (Enforcement of s. 37.)
Sec. 38.
- Sec. 39.
(Powers of inspectors.)
- Part IV,
Division
2A.
- Definitions for the purposes of this Division.
- DIVISION 2A.—Prohibition or Restriction on Supply of Dangerous Goods to Consumers.*
- 39A. In this Division and in Schedule 3—
- “Committee” means the Products Safety Committee established under section 39B;
- “dangerous” means likely to cause the death, or injury to the body or health, of any person, whether directly or indirectly.

Commercial Law (Miscellaneous Provisions).

Constitution
of Products
Safety
Committee.

39B. (1) There shall be established a committee to be known as the Products Safety Committee for the purpose of performing the functions assigned to the Committee under this Division.

(2) The Committee shall consist of such number of members appointed by the Minister as the Minister may determine.

(3) Of the members—

(a) one shall be an officer of the Department who shall be the chairman of the Committee; and

(b) the remainder shall be persons who, in the opinion of the Minister, have expertise in product safety.

(4) The provisions of Schedule 3 shall have effect with respect to the Committee.

References
to the
Committee.

39C. (1) The Minister, or the Commissioner with the approval of the Minister, may refer to the Committee the question as to whether the supply of goods of a class or description specified in the reference or of any particular goods so specified (being goods which, in the opinion of the Minister or the Commissioner, as the case may be, are or are likely to be supplied to consumers in New South Wales, but not being goods the supply of which is prohibited or regulated by or under an enactment specified in Schedule 4) ought, by reason of the goods being dangerous, to be prohibited or to be allowed only subject to conditions or restrictions.

(2) Whenever the Minister or the Commissioner refers a question under subsection (1), he shall cause particulars of the question to be notified to the public in the prescribed manner.

(3)

Commercial Law (Miscellaneous Provisions).

(3) The Committee shall, on the reference of any question under subsection (1), fully consider the question and determine what recommendations it should make with respect to the question and shall then prepare a report containing those recommendations and submit that report to the Minister.

(4) Where, on the reference of any question under subsection (1), the Committee is of the opinion that the supply of goods of a class or description, or, as the case may be, the particular goods, to which the question relates ought, in the interests of the safety of the public, to be prohibited immediately, the Committee may, notwithstanding that it has not fully considered the question as required by subsection (3), make a recommendation to the Minister that he make an interim order with respect to those goods in accordance with section 39E (3).

(5) The Commissioner shall, if he is requested to do so by the Committee, give to the Committee to enable it to consider the question—

- (a) any information in his possession which relates to the question; and
- (b) any other assistance which the Committee may require, and which it is within his power to give, in relation to the question.

(6) If a member of the Committee dissents from a decision of the Committee in respect of the question, the chairman of the Committee shall record in the report a note of that dissent and of the reasons for it (if any).

(7)

Commercial Law (Miscellaneous Provisions).

(7) The Committee, in considering the question—

- (a) may make such investigations as it considers necessary to enable it to make a recommendation with respect to the question;
- (b) shall take into account any representations made to it by any person who, in its opinion, has a substantial interest in the subject-matter of the question or by any body which, in its opinion, represents a substantial number of persons who have such an interest; and
- (c) unless in all the circumstances the Committee does not consider that it is reasonably practicable to do so, shall permit any such person or body to be heard orally by the Committee, or by a member of the Committee nominated by the Committee for the purpose.

(8) Subject to subsection (7) and clause 5 of Schedule 3, the Committee may determine its own procedure for considering the question, and in particular may determine—

- (a) the extent, if any, to which persons interested or claiming to be interested in the question are allowed to be present or to be heard, either by themselves or by their representatives, or to cross-examine witnesses or otherwise participate in the consideration of the question; and
- (b) the extent, if any, to which the Committee shall hold its proceedings in public.

(9)

Commercial Law (Miscellaneous Provisions).

(9) In determining its procedure under subsection (8), the Committee shall act in accordance with any general directions which may be given it by the Minister.

(10) The regulations may amend Schedule 4 by omitting the reference to any enactment specified in that Schedule or by inserting in that Schedule a reference to any enactment which prohibits or regulates the supply of any class or description of goods.

39D. (1) For the purposes of any investigation of a question referred to it under section 39C (1), the Committee may, by notice in writing signed by the chairman or by a member of the Committee on his behalf—

Attendance
of witnesses
and produc-
tion of
documents.

- (a) require any person to attend at a time and place specified in the notice and to give evidence to the Committee or to a member of the Committee nominated by it for the purpose;
- (b) require any person to produce, at a time and place specified in the notice, to the Committee or to a member of the Committee nominated by it for the purpose, any goods or documents which are specified or described in the notice and which are goods or documents in his custody or under his control and are relevant to the investigation; and
- (c) take goods so produced, after paying a just price for them, and cause to be conducted such tests and examinations with respect to them as it considers necessary for the purpose of determining whether or not they may be dangerous.

Commercial Law (Miscellaneous Provisions).

(2) For the purposes of any such investigation the Committee, or a member of the Committee nominated by it for the purpose, may take evidence on oath, and for that purpose may administer oaths.

(3) A person shall not be compelled, for the purposes of any such investigation, to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the Supreme Court or, in obedience to a notice under subsection (1), to attend any such investigation unless the reasonable expenses of his attendance are paid or tendered to him.

(4) Any person who—

(a) without reasonable excuse, refuses or fails to do anything required of him by a notice under subsection (1); or

(b) alters, suppresses or destroys any document which he is required by any such notice to produce,

is guilty of an offence against this Act.

Power of Minister to make orders prohibiting or restricting the supply of dangerous goods.

39E. (1) Where a report submitted to the Minister under section 39C (3) contains a recommendation that the supply of goods of any class or description specified in the report, or of any particular goods so specified, ought to be prohibited, or ought to be allowed only subject to conditions or restrictions so specified, the Minister may, if he agrees with the recommendation, make an order giving effect to the recommendation.

(2) Section 41 of the Interpretation Act, 1897, shall apply to an order made under subsection (1) as if the order were a regulation to which that section applies.

Commercial Law (Miscellaneous Provisions).

(3) Where the Committee makes a recommendation under section 39C (4), the Minister may, if he agrees with the recommendation, make an interim order prohibiting the supply of goods of the class or description specified in the recommendation, or of any particular goods so specified, for a period not exceeding 28 days from the date on which the order is published under subsection (4).

(4) If the Minister makes an interim order under subsection (3), he shall cause the order to be published in the Gazette.

(e) make such examination and inquiries as he thinks necessary for the purposes of this

39F. Any person who supplies goods in contravention of an order made under section 39E (1) or (3) is guilty of an offence against this Act.

Offence to contravene an order under section 39E.

(g) by omitting Division 3 of Part IV.

39G. Where any supplier supplies goods in contravention of an order made under section 39E (1) or (3), that contravention is a breach of duty that, subject to the defences and other incidents applying to actions for breach of statutory duty, is actionable at the suit of any person, whether he is the person to whom the goods were supplied or not, who has sustained loss or damage in consequence of that breach.

Part IV, Division 3. (Retriggers-Action for breach of statutory duty. and Prescriers) Further amendment of Act No. 28, 1969. Sec. 42. (Definitions.)

39H. An inspector may at any reasonable time—

Powers of inspectors.

(a) enter any place at which any goods (being goods that are the subject of a question referred to the Committee under section 39C (1) or goods that are the subject of an order made under section 39E (1) or (3)) are

Sec. 46. (Acting-Comms-ioner for Trade Practices.)

(c)

manufactured,

Commercial Law (Miscellaneous Provisions).

manufactured, prepared or supplied, or at which he has reasonable cause to believe that any such goods are manufactured, prepared or supplied;

- (b) inspect any such goods in that place;
- (c) take any such goods, after paying a just price for them;
- (d) examine with respect to matters under this Division any person employed or engaged in that place; and
- (e) make such examination and inquiries as he thinks necessary for the purposes of this Division.

(g) by omitting Division 3 of Part IV.

Part IV,
Division 3.
(Refrigerators, Ice-Chests, Ice-Boxes and Freezers.)

8. The Consumer Protection Act, 1969, is further amended—

Further amendment of Act No. 28, 1969.

Sec. 42.
(Definitions.)

- (a) (i) by omitting the definitions of "services" and "supply" in section 42 (1);
- (ii) by omitting section 42 (2) (g), (h), (i) and (j);

Sec. 46.
(Acting Commissioner for Trade Practices.)

- (b) by omitting from section 46 the words "of Labour and Industry";

(c)

Commercial Law (Miscellaneous Provisions).

- (c) by omitting section 53 (1) and by inserting instead the following subsection :—
- Sec. 53.
(Proceedings for offences under this Part.)

(1) Proceedings for an offence arising under this Part shall—

(a) be disposed of before the Industrial Commission; and

(b) be commenced by information laid in the office of the Industrial Registrar within 12 months after the time when the offence is alleged to have been committed.

9. The Consumer Protection Act, 1969, is further amended—

Further amendment of Act No. 28, 1969.

- (a) by omitting from section 55 (5) the words “one hundred dollars” and by inserting instead the matter “\$300”;
- Sec. 55.
(Inspectors.)

- (b) (i) by omitting section 56 (3) and by inserting instead the following subsection :—
- Sec. 56.
(Proceedings for offences against this Act.)

(3) Proceedings for an offence against this Act (other than an offence arising under Part V) shall—

(a) be disposed of summarily before a stipendiary magistrate, or before an industrial magistrate appointed under the Industrial Arbitration Act, 1940; and

(b)

Commercial Law (Miscellaneous Provisions).

(b) be commenced by information laid within 12 months after the time when the offence is alleged to have been committed.

(ii) by omitting section 56 (5);

Sec. 57.
(Penalty.)

(c) by omitting section 57 (1) and by inserting instead the following subsection :—

(1) A person who is guilty of an offence against this Act for which no penalty is otherwise provided is liable to a penalty not exceeding \$2,000 or imprisonment for a term not exceeding 12 months, or both.

Sec. 58.
(Evidentiary provisions.)

(d) (i) by omitting from section 58 (1) the words "Under Secretary" and by inserting instead the words "prescribed officer of the Department";

(ii) by inserting after section 58 (2) the following subsections :—

(3) In proceedings for an offence against this Act, a printed document which is or purports to be a standard, rule, code or specification of an association or body referred to in, or prescribed for the purposes of, section 52 (3) (b) or section 59 (1A) (a) and which has been or purports to have been published or issued by or on behalf of that association or body is admissible as evidence in those proceedings and, in the absence of evidence to the contrary, is proof of that standard, rule, code or specification.

(d)

(4)

Commercial Law (Miscellaneous Provisions).

(4) In proceedings for an offence against this Act, a certificate purporting to be signed by the Government Analyst or by one of his officers and certifying the result of an analysis is, unless the defendant requires the Government Analyst or officer to be called as a witness in the proceedings, admissible as evidence of the facts certified and, in the absence of evidence to the contrary, is proof of those facts.

- (e) (i) by inserting after section 59 (1) the following subsection :—

Sec. 59.
(Regulations.)

(1A) A regulation made under this Act—

(a) may adopt, either in whole or in part, or by reference, any standards, rules, codes or specifications of the Standards Association of Australia, the British Standards Institution or any other association or body prescribed for the purposes of this paragraph; and

(b) may include provisions which differ in their application according to circumstances or factors specified in the regulation.

- (ii) by omitting section 59 (2) and (3) and by inserting instead the following subsection :—

(2) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation made under this Act as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969.

(f)

Commercial Law (Miscellaneous Provisions).

Schedules
3 and 4.

(f) by inserting after Schedule 2 the following Schedules :—

Sec. 39B (4).

SCHEDULE 3.

PROVISIONS APPLICABLE TO PRODUCTS SAFETY COMMITTEE.

Appointment
and tenure
of office of
members.

1. (1) Subject to subclauses (3), (4) and (5), a member of the Committee shall hold and vacate office in accordance with the terms of his appointment or reappointment.

(2) On the expiration of any period of appointment or reappointment, a member of the Committee may be reappointed for a further period.

(3) A member of the Committee may at any time resign his membership by notice in writing addressed to the Minister.

(4) The Minister may at any time remove from office a member of the Committee by notice in writing addressed and delivered to that member.

(5) The chairman of the Committee shall be deemed to have vacated his office as a member of the Committee if he ceases to be a member of the Department.

Deputies of
members.

2. (1) If the member referred to in section 39B (3) (a) is unable to carry out his duties as a member of the Committee for any period, the Minister may appoint another officer of the Department to act in his place for that period, and that officer shall, during that period, have and may exercise the duties and powers of chairman of the Committee.

(2) If any of the members referred to in section 39B (3) (b) is unable to carry out his duties as a member of the Committee for any period, the Minister may appoint another person who, in his opinion, has expertise in product safety to act in his place for that period, and a person so appointed shall, during that period, be deemed to be a member of the Committee.

Remunera-
tion and
allowances.

3. There shall be paid to members of the Committee such remuneration, and such travelling and other allowances, as in the case of any of those members the Minister may determine.

Decisions of
Committee.

4. At any meeting of the Committee the decision of a majority of its members present and voting shall be the decision of the Committee.

Commercial Law (Miscellaneous Provisions).

5. (1) The Committee, with the prior approval of the Minister, may co-opt any person who, in its opinion, has expertise in relation to any question referred to it under section 39c (1). Co-opted members.

(2) A person co-opted under subclause (1) shall, when attending a meeting of the Committee, be deemed to be a member of the Committee and shall have a right to vote and participate in the Committee's proceedings.

 SCHEDULE 4.

Sec. 39c (1).

 ENACTMENTS PROHIBITING OR REGULATING THE SUPPLY
OF GOODS.

The following enactments are specified for the purpose of section 39c (1) :—

1. Agricultural Seeds Act, 1921.
2. Dairy Industry Act, 1915.
3. Explosives Act, 1905.
4. Fertilizers Act, 1934.
5. Inflammable Liquid Act, 1915.
6. Pest Destroyers Act, 1945.
7. Plant Diseases Act, 1924.
8. Poisons Act, 1966.
9. Pure Food Act, 1908.
10. Radioactive Substances Act, 1957.
11. Stock Foods and Medicines Act, 1940.

10. The Credit-sale Agreements Act, 1957, is amended— Amendment of Act No. 29, 1957.

- (a) by omitting from section 8 (2) (b) (iv) the words "which are goods of any of the descriptions referred to in paragraphs (a), (b) and (c) of subsection (2) of Sec. 8. (Requirements relating to credit-sale agreements.)

Commercial Law (Miscellaneous Provisions).

of section 11 or a television-set or prescribed goods” and by inserting instead the words “, being goods of the following descriptions, namely, industrial machinery, farm equipment, a motor vehicle, a television-set or prescribed goods”;

Schedule.

- (b) by omitting from the Schedule the matter “P represents the difference between the purchase-price of the goods and the amount of the deposit provided by the buyer in connection with the agreement” and by inserting instead the following matter :—

P represents the total of the amounts referred to in section 8 (2) (b) (i), (ii), (iii) and (iv) and any amount representing the whole or any part of the stamp duty chargeable on the agreement under the Stamp Duties Act, 1920, less the amount of the deposit provided by the buyer in connection with the agreement.

Amendment
of Act No.
36, 1943.

11. The Lay-by Sales Act, 1943, is amended—

Sec. 4.
(Register.)

- (a) by omitting section 4 (8) (b) and by inserting instead the following paragraph :—

(b) Any member of the police force holding a rank not below sergeant, and any inspector appointed under the Consumer Protection Act, 1969, may at all reasonable times inspect the register and take copies of or extracts from it.

Sec. 6.
(Goods
sold or
agreed to
be sold
on lay-by
to be set
aside.)

- (b) by omitting section 6 (2) (b) and by inserting instead the following paragraph :—

(b) Any member of the police force holding a rank not below sergeant, and any inspector appointed under the Consumer Protection Act,

Commercial Law (Miscellaneous Provisions).

1969, may at all reasonable times inspect any goods set aside in accordance with this section and may examine the entries in the register relating to them

12. The Moneylending Act, 1941, is amended—

Amendment of Act No. 67, 1941.

(a) (i) by inserting in section 45 (1) after the words "Commissioner of Police," where secondly occurring the words "or any inspector appointed under the Consumer Protection Act, 1969,"; Sec. 45. (Inspection of documents, etc.)

(ii) by inserting in section 45 (2) (a) after the words "authorized as aforesaid" the words ", or any inspector appointed under the Consumer Protection Act, 1969,";

(b) (i) by inserting in the definition of "finance broker" in section 60 after the words "loans or credits" where firstly occurring the words "(including home finance loans)"; Sec. 60. (Interpretation.)

(ii) by omitting paragraph (c) of the definition of "finance broker" in section 60;

(iii) by inserting after the definition of "finance broker" in section 60 the following definitions :—

"home finance loan" means a loan the whole or any part of which is or is intended to be applied for the purpose of—

(a) enabling the borrower to acquire a private dwelling-house or land for the erection of such a house; or

(b)

Commercial Law (Miscellaneous Provisions).

- (b) providing the borrower with funds for the erection of a private dwelling-house or for the carrying out of structural improvements or additions to a private dwelling-house,

but does not include a loan to a person—

- (c) who carries on a business as a building contractor;
- (d) whose business involves or includes the erection of private dwelling-houses or the carrying out of structural improvements or additions to private dwelling-houses; or
- (e) whose business involves or includes the acquisition or disposal of land,

if the loan is or is intended to be used for the purpose of that business or in the course of carrying on that business;

“private dwelling-house” means—

- (a) a building that is designed, or is designed principally, as a separate residence for one family or person; or
- (b) an apartment, flat or other part of a building that is so designed;

(d)

(iv)

Commercial Law (Miscellaneous Provisions).

(iv) by inserting at the end of section 60 the following subsection :—

(2) Where a person, in the course of carrying on a business, negotiates or acts as an intermediary to obtain, or advertises or announces or holds himself out in any way as being willing to negotiate or act as an intermediary to obtain—

- (a) any loan or credit for or on behalf of a company;
- (b) any loan (not being a home finance loan) or any credit if the loan or credit is or would if made or provided be for an amount exceeding that prescribed for the purposes of this paragraph;
- (c) any loan (not being a home finance loan) pursuant to an agreement to finance the erection of a building by a series of advances made or to be made during the erection of the building and secured or to be secured on the land on which the building is being or is to be erected if the aggregate of those advances exceeds or would if made exceed the amount prescribed for the purposes of this paragraph;
- (d) any loan or credit where the rate of any interest in respect of the loan or credit does not exceed, or would not exceed if the loan or credit were made or provided, the prescribed rate; or
- (e) any loan made, offered or made available, or any credit provided, offered or made available, by a corporation that, by virtue

of

Commercial Law (Miscellaneous Provisions).

of section 38 (7) (c) (i) of the Companies Act, 1961, is a prescribed corporation as defined in section 38 (7) of that Act,

that person shall be deemed not to be a finance broker in respect of that loan or credit, as the case may be.

Sec. 71A.

(c) by inserting after section 71 the following section :—

Defence in proceedings involving the negotiation, etc., of home finance loans.

71A. For the purpose of any proceedings in respect of an offence against this Part, or of proceedings under section 72, a loan which, but for this section, would be a home finance loan shall be deemed not to be a home finance loan if—

(a) the defendant in the case of proceedings for an offence, or the finance broker in the case of proceedings under section 72, proves that he did not know and had no reason to believe that the loan was, or would if made be, a home finance loan and that he had made reasonable inquiries as to how the loan was to be applied; and

(b) the loan would have been of a class referred to in section 60 (2) (b) or (c) if it had not been a home finance loan.

Amend-
of Acts by
way of
Statute Law
Revision.

13. (1) Each Act referred to in column 1 of Schedule 1 is amended in the manner specified opposite that reference in column 2 of that Schedule.

Amendment
of Act No.
105, 1974.
Sec. 3.
(Amend-
ment
of Act No.
33, 1960.)

(2) The Commercial Transactions (Miscellaneous Provisions) Act, 1974, is amended by inserting in section 3 (c) (iii) after the words "the total" the words "where firstly occurring".

Commercial Law (Miscellaneous Provisions).

SCHEDULE 1.

Sec. 13 (1).

AMENDMENT OF ACTS BY WAY OF STATUTE LAW REVISION.

| Column 1. | | Column 2. |
|-------------------------|-------------------------|---|
| Year and number of Act. | Short title of Act. | Amendment. |
| 1941, No. 67. | Moneylending Act, 1941. | <p>Section 3 (1)— Omit paragraph (b) of the definition of "Money-lender" and insert instead the following paragraph:— (b) any society registered under the Friendly Societies Act, 1912, or under the Co-operation Act, 1923; or Omit from paragraph (b1) of the same definition " , or any Act amending that Act". Omit from paragraph (b2) of the same definition " , or any Act amending or replacing that Act". Omit the definition of "Schedule". Section 7 (3) (b) and (c)— Omit " , as amended by subsequent Acts" wherever occurring. Section 8 (1) (c)— Omit " , as amended by subsequent Acts". Section 9 (1) (b)— Omit "as amended by subsequent Acts". Section 23 (6)— Omit "1898-1938" and insert instead "1898". Section 34 (3)— Omit "as amended by subsequent Acts,". Section 39 (8) and (9)— Omit "1898-1938" wherever occurring and insert instead "1898". Section 50 (1) (a)— Omit "Small Debts Recovery Act, 1912, as amended by subsequent Acts" and insert instead "Courts of Petty Sessions (Civil Claims) Act, 1970".</p> |
| 1943, No. 36. | Lay-by Sales Act, 1943. | <p>Section 1 (3)— Omit "1923-1937" and insert instead "1923". Section 5 (4)— Omit "Factories and Shops Act, 1912-1943" and insert instead "Consumer Protection Act, 1969". Section 7 (3)— Omit "Factories and Shops Act, 1912-1943" and insert instead "Consumer Protection Act, 1969".</p> |

*Commercial Law (Miscellaneous Provisions).*SCHEDULE 1—*continued.*AMENDMENT OF ACTS BY WAY OF STATUTE LAW REVISION—
continued.

| Column 1. | | Column 2. |
|------------------------------------|--|---|
| Year and number of Act. | Short title of Act. | Amendment. |
| 1943, No. 36— <i>continued.</i> | Lay-by Sales Act, 1943— <i>continued.</i> | <p>Section 7 (6)— Omit “1902-1940” and insert instead “1902”.</p> <p>Section 13 (1) and (2)— Omit “holden before a stipendiary magistrate or a police magistrate” wherever occurring and insert instead “held before a stipendiary magistrate”.</p> <p>Section 13 (4)— Omit “Small Debts Recovery Act, 1912, as amended by subsequent Acts, and be enforceable as such under the provisions of that Act as so amended” and insert instead “Courts of Petty Sessions (Civil Claims) Act, 1970, and be enforceable under that Act”.</p> <p>Section 17 (6)— Omit “purchaser” from the definition of “vendor” and insert instead “vendor”.</p> <p>Section 19 (2)— Omit “holden before a stipendiary or a police magistrate” and insert instead “held before a stipendiary magistrate”.</p> <p>Section 22— Omit subsection (4) and insert instead the following subsection:— (4) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation made under this Act as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969.</p> |
| 1957, No. 29. | Credit-sale Agreements Act, 1957. | <p>Section 2 (1)— Omit “, as amended by subsequent Acts” from the definition of “Credit-sale agreement”.</p> <p>Section 8 (2) (b)— Omit “, as amended by subsequent Acts” wherever occurring.</p> <p>Omit “, as subsequently amended”.</p> <p>Section 12 (2)— Omit “the provisions of section 26D of the Hire-purchase Agreements Act, 1941, as amended by subsequent Acts” and insert instead “section 23 of the Hire-Purchase Act, 1960”.</p> |

*Commercial Law (Miscellaneous Provisions).*SCHEDULE 1—*continued.*AMENDMENT OF ACTS BY WAY OF STATUTE LAW REVISION—
continued.

| Column 1. | | Column 2. |
|------------------------------------|--|---|
| Year and number of Act. | Short title of Act. | Amendment. |
| 1957, No. 29— <i>continued.</i> | Credit-sale Agreements Act, 1957— <i>continued.</i> | Section 14— Omit subsection (2) and insert instead the following subsection:— (2) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation made under this Act as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969. |
| 1969, No. 28.. | Consumer Protection Act, 1969. | Section 3 (2)— Omit “, as subsequently amended” wherever occurring. Omit “as so amended,”. Omit “Part IV, and shall be deemed to have been made under this Act.” and insert instead:— Part IV, and shall be deemed to have been made under this Act. Section 4 (2)— Omit “, or any Act amending or replacing any such Act”. Section 11 (6)— Omit paragraph (b) and insert instead the following paragraph:— (b) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act; Omit paragraph (d) and insert instead the following paragraph:— (d) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration, or estate, for their benefit; Section 13— Omit “, as subsequently amended”. Section 42 (2) (f)— Omit “, as subsequently amended”. Section 45— Omit “, as subsequently amended”. |

Commercial Law (Miscellaneous Provisions).

SCHEDULE 1—*continued.*AMENDMENT OF ACTS BY WAY OF STATUTE LAW REVISION—
continued.

| Column 1. | | Column 2. |
|------------------------------------|---|---|
| Year and number of Act. | Short title of Act. | Amendment. |
| 1969, No. 28— <i>continued.</i> | Consumer Protection Act, 1969— <i>continued.</i> | Section 53 (2)— Omit “, as subsequently amended”. Section 54 (2)— Omit “, as subsequently amended”. Section 56 (1)— Omit “, as subsequently amended”. Section 56 (4)— Omit “, as subsequently amended”. Section 58 (1)— Omit “, as subsequently amended” wherever occurring. Schedule 2— Clause 3— Omit “as subsequently amended,”. Clause 13— Omit “1912-1960,” and insert instead “1912,”. Omit “as subsequently amended,”. Clause 14— Omit “1912-1960,” and insert instead “1912,”. Omit “as subsequently amended,”. Clause 15— Omit “, as subsequently amended”. |

 BY AUTHORITY

L. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1976

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 9 December, 1975.*

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. 105, 1975.

An Act to require certain goods to be labelled with instructions for care; to empower the Minister to make orders prohibiting or restricting the supply of certain goods supplied or likely to be supplied to consumers; to empower the Commissioner for Consumer Affairs to grant assistance to persons who wish to bring, or who are parties to, legal proceedings arising out of the supply of goods or services; and for these and other purposes to

amend

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

J. H. BROWN,
Chairman of Committees of the Legislative Assembly.

Commercial Law (Miscellaneous Provisions).

amend the Consumer Protection Act, 1969, the Credit-sale Agreements Act, 1957, the Lay-by Sales Act, 1943, the Moneylending Act, 1941, and the Commercial Transactions (Miscellaneous Provisions) Act, 1974. [Assented to, 23rd December, 1975.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title. **1.** This Act may be cited as the "Commercial Law (Miscellaneous Provisions) Act, 1975".

Commence-ment. **2.** (1) Except as provided in subsections (2) and (3), this Act shall commence on the date of assent to this Act.

(2) Sections 3 (a) (vi) and (vii), 7 (f), 7 (g), 9 (d) (i) and 12 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(3) Section 13 (2) shall be deemed to have commenced on 1st January, 1975.

Amendment of Act No. 28, 1969. **3.** The Consumer Protection Act, 1969, is amended—

Sec. 2. (a) (i) by omitting from section 2 the matter relating
(Division of Act.) to Division 1 of Part II;

(ii)

Commercial Law (Miscellaneous Provisions).

- (ii) by inserting in section 2 after the matter relating to Division 3 of Part II the following matter :—

DIVISION 3A.—*Legal Assistance to Consumers*—ss. 16G–16L.

- (iii) by omitting from section 2 the matter relating to Division 3 of Part III and by inserting instead the following matter :—

DIVISION 3.—*Control of Advertisements*—ss. 32, 32A.

- (iv) by inserting in section 2 after the matter relating to Division 4 of Part III the following matter :—

PART IIIA.—*INSTRUCTIONS FOR CARE OF GOODS*—ss. 34A–34C.

- (v) by omitting from section 2 the matter relating to Division 1 of Part IV;

- (vi) by inserting in section 2 after the matter relating to Division 2 of Part IV the following matter :—

DIVISION 2A.—*Prohibition or Restriction on Supply of Dangerous Goods to Consumers*—ss. 39A–39H.

- (vii) by omitting from section 2 the matter relating to Division 3 of Part IV;

(b)

Commercial Law (Miscellaneous Provisions).

Sec. 5. (b) by omitting section 5 and by inserting instead the following section :—

Interpre-
tation.

5. (1) In this Act, except so far as the context or subject-matter otherwise indicates or requires—

“Bureau” means the Consumer Affairs Bureau established under Part II;

“Commissioner” means the Commissioner for Consumer Affairs appointed under Part II;

“component part”, in relation to any goods, includes an accessory to those goods;

“consumer” means a person—

(a) to whom goods are or are offered to be supplied in the course of a business carried on by the person supplying or offering to supply them; or

(b) to whom services are or are offered to be supplied in the course of a business carried on by the person supplying or offering to supply them,

and who does not receive or seek to receive the goods or services in the course of a business carried on by him;

“Council” means the Consumer Affairs Council constituted under Part II;

“credit-sale agreement” means an agreement for the sale of goods under which the whole or any part of the purchase price is payable by instalments;

“Department”

Commercial Law (Miscellaneous Provisions).

“Department” means a Department, Ministry or other authority that under the Minister is concerned with the administration of this Act;

“goods” includes any chattel or other thing that is the subject of trade or manufacture;

“hire-purchase agreement” has the meaning ascribed to that expression by section 2 of the Hire-Purchase Act, 1960;

“inspector” means an inspector appointed under section 55;

“regulations” means regulations under this Act;

“services” includes the rights and benefits that are or are to be supplied under—

(a) a contract for or involving—

(i) the performance of work (including work of a professional nature);

(ii) the provision of, or the use or enjoyment of, facilities for amusement, entertainment, recreation or instruction; or

(iii) the provision of gas or electricity or other forms of energy;

(b) a contract of insurance (including life assurance); or

(d)

(c)

Commercial Law (Miscellaneous Provisions).

- (c) a contract between a banker and client entered into in the course of the carrying on by the banker of the business of banking, or any other contract (whether between a banker and client or otherwise) for or involving the loan of money or the provision of credit facilities,

whether the contract is express or implied and, if it is express, whether it is oral or in writing, and also includes both services supplied to order and services supplied by making them available to potential users, but does not include services supplied under a contract of employment or of apprenticeship;

“supplier” means a person who in the course of a business supplies goods or services;

“supply”—

- (a) in relation to goods, includes supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase, and also includes exhibit, expose or have in possession for the purpose of sale, exchange, lease, hire or hire-purchase or for any purpose of advertisement, manufacture or trade; and
- (b) in relation to services, includes provide, grant or render.

(2) For the purposes of this Act—

- (a) a reference to the supply or acquisition of goods includes a reference to agreeing to supply or acquire goods;

(b)

Commercial Law (Miscellaneous Provisions).

- (b) a reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods in pursuance of a supply of the goods;
- (c) a reference to the supply or acquisition of services includes a reference to agreeing to supply or acquire services;
- (d) a reference to the supply or acquisition of goods includes a reference to the supply or acquisition of goods together with services; and
- (e) a reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with goods.

4. The Consumer Protection Act, 1969, is further amended—

- (a) by omitting Division 1 of Part II; Further amendment of Act No. 28, 1969.
Part II,
Division 1.
(Interpretation.)
- (b) by omitting from section 7 (2) (a) the words "of Labour and Industry"; Sec. 7.
(Constitution of Council.)
- (c) by omitting from section 8 (1) the words "of Labour and Industry"; Sec. 8.
(Chairman of Council.)

(d)

Commercial Law (Miscellaneous Provisions).

Sec. 11.
(Provisions
applying
to the
Council.)

(d) (i) by inserting after section 11 (7) the following subsections :—

(7A) The Chairman ceases to hold office as such and there is a casual vacancy in his office—

- (a) if he dies;
- (b) if he ceases to be an officer of the Department; or
- (c) if he is removed from office by the Governor.

(7B) On the occurrence of a casual vacancy in the office of Chairman, the Governor may appoint an officer of the Department to fill the vacant office.

(ii) by omitting from section 11 (8) the word "Governor" and by inserting instead the word "Minister";

Sec. 14.
(Acting
Com-
missioner.)

(e) by omitting from section 14 the words "of Labour and Industry";

Sec. 15.
(Consumer
Affairs
Bureau.)

(f) by omitting from section 15 the words "within the Department of Labour and Industry";

Sec. 16.
(Functions
of Consumer
Affairs
Bureau.)

(g) (i) by omitting from section 16 (1) (a) the words "Department of Labour and Industry" and by inserting instead the word "Minister";

(ii) by omitting from section 16 (1) (b) (ii) the word "and" where secondly occurring;

(iii)

Commercial Law (Miscellaneous Provisions).

- (iii) by omitting from section 16 (1) (b) (iii) the word "work." and by inserting instead the word "work;"
- (iv) by inserting after section 16 (1) (b) (iii) the following subparagraphs :—
 - (iv) to act as a secretariat to the Council; and
 - (v) to provide the Council with such information as it may reasonably require relating to goods or services supplied to consumers and to consumer affairs, and to carry out such research as may be necessary for the purpose of enabling that information to be provided.
- (h) by omitting section 16B (a) and by inserting instead the following paragraph :—
 - (a) enter any place at which goods are manufactured, prepared or supplied, or services are supplied, or any place at which he has reason to believe that goods are manufactured, prepared or supplied, or services are supplied;

Sec. 16B.
(Power of investigating officer to enter, etc.)
- (i) by inserting after section 16c (7) the following subsections :—
 - (8) A written warning or a notice may be given under subsection (2)—
 - (a) to a person, not being a corporation—
 - (i) by delivering it to him personally;
 - (ii)

Sec. 16c.
(Investigating officer may require furnishing of information and production of documents.)

Commercial Law (Miscellaneous Provisions).

(ii) by leaving it at his place of residence with someone who apparently resides there or at his place of business or employment with someone who is apparently employed there, being in either case a person who has or apparently has attained 16 years of age; or

(iii) by posting it in a letter addressed to him at the address last known to the Commissioner of his place of residence, business or employment; or

(b) to a person, being a corporation—

(i) by delivering it to the secretary of the corporation, or any other person concerned in the management of the corporation, personally;

(ii) by leaving it at the corporation's only or principal place of business with a person apparently employed there, being a person who has or apparently has attained 16 years of age; or

(iii) by posting it in a letter addressed to the corporation at the address last known to the Commissioner of its only or principal place of business.

(9) Subsection (8) (b) is in addition to section 362 of the Companies Act, 1961.

(j)

Commercial Law (Miscellaneous Provisions).

- (j) by inserting after Division 3 of Part II the following Division :— Part II,
Division 3A.

DIVISION 3A.—*Legal Assistance to Consumers.*

16G. (1) Where any person, being a person claiming or alleged to be a consumer— Applications
for legal
assistance
by persons
claiming or
alleged to
be con-
sumers.

- (a) wishes to bring legal proceedings arising out of the supply to him of goods or services ; or
- (b) is a party to any legal proceedings arising out of any such supply,

that person may apply to the Commissioner for the grant of assistance in relation to the conduct of his case in those proceedings.

(2) Every such application shall—

- (a) be in or to the effect of the prescribed form ;
- (b) include the particulars required by the form ;
and
- (c) be verified in the prescribed manner.

16H. (1) The Commissioner may grant an application made under section 16G if— Power of
Commis-
sioner to
grant appli-
cations for
assistance.

- (a) he is satisfied that the person who made the application has reasonable grounds for bringing, or being a party to, the proceedings ;
- (b) he is of the opinion that it is desirable, in the interests of consumers in general or of any class of consumers (including the person who made the application), that he should grant the assistance applied for ;

(c)

Commercial Law (Miscellaneous Provisions).

- (c) the proceedings are for the recovery of a liquidated amount not exceeding the amount prescribed for the purposes of this paragraph, or are for the recovery of an unliquidated amount which, in the opinion of the Commissioner, will not exceed the amount so prescribed; and
- (d) the Minister has authorised in writing the Commissioner to grant the assistance applied for.

(2) Where the Commissioner grants or refuses any such application, he shall notify the person who made the application in writing of that grant or refusal.

(3) Where any such application is granted and the person who made the application is so notified—

(a) that person shall not—

- (i) without the agreement of the Commissioner, withdraw from the proceedings or discharge any solicitor to whom his case is assigned under section 161 or any barrister or solicitor acting for him in the proceedings; or
- (ii) except to the extent required or authorised by the Commissioner, interfere or involve himself in the conduct of the case; and

(b)

Commercial Law (Miscellaneous Provisions).

(b) the Commissioner, or any person authorised by the Commissioner, shall have the same control over, and the same rights in respect of the case (including the right to settle or compromise any claim arising in the proceedings) as he would have had if he were that person.

(4) All expenses incurred in connection with the granting of assistance to a person under this Division (including the cost of employing any barrister or solicitor, any court fees incurred on behalf of the person and any costs required to be met by the Commissioner by virtue of section 16K (3) in relation to that person's case) shall be met by the Commissioner out of money appropriated by Parliament for the purpose.

16I. (1) On granting assistance to a person under section 16H, the Commissioner shall—

Assignment
of cases
of assisted
persons to
solicitors.

(a) assign the case of that person to—

- (i) the Public Solicitor or any solicitor employed in the office of the Public Solicitor, but only if the Public Solicitor has agreed to the case being so assigned;
- (ii) any solicitor employed in the Department;
- (iii) any solicitor employed in any other government department, but only if the permanent head of that department has agreed to the case being so assigned; or

(iv)

Commercial Law (Miscellaneous Provisions).

(iv) any solicitor practising on his own account who has indicated to the Commissioner his willingness to undertake the conduct of cases of persons who are granted assistance under section 16H; and

(b) notify to that person in writing particulars of the solicitor to whom the case has been assigned.

(2) Where a person's case is assigned to a solicitor under subsection (1), that solicitor may, on behalf of that person, appear, and conduct any matter or proceeding relating to the case, in any court either personally or, with the concurrence of the Commissioner, by any barrister or solicitor.

(3) A solicitor assigned under this section to act for a person shall not discontinue his assistance without the leave of the Commissioner.

Provisions relating to court proceedings to which an assisted person is a party.

16J. (1) Before taking any other step in the proceedings (being proceedings that have already been brought), a solicitor to whom a case has been assigned under section 16I shall, as soon as practicable after the case is assigned to him, serve on the other party or parties to the proceedings, and file in the office of the court in which the proceedings are pending, a notice to the effect that he is undertaking the conduct of the case.

(2) Subject to subsection (3), where any such notice is filed, then, unless otherwise ordered by the court in which the proceedings are pending, the proceedings shall, by virtue of this section, be

stayed

Commercial Law (Miscellaneous Provisions).

stayed for a period of 14 days and, during that period, unless otherwise ordered by the court, time fixed by or under any Act for the doing of any act or the taking of any step in the proceedings shall not run.

(3) The filing of a notice under subsection (1) shall not prevent—

- (a) the making of any interlocutory order which, in the opinion of the court in which the proceedings are pending, is necessary to prevent injustice; or
- (b) unless otherwise ordered by the court, the institution or continuance of proceedings to obtain, enforce or otherwise carry into effect any such order.

(4) The period during which proceedings are stayed by virtue of this section may be reduced or extended by order of the court in which the proceedings are pending.

(5) No fee shall be charged in respect of the filing of any notice under subsection (1).

(6) Where, in any proceedings to which a person granted assistance under section 16H is a party, any party makes a counterclaim, or pleads a set-off, and that counterclaim or set-off does not relate to the supply of goods or services to that person, the court in which the proceedings are brought may, on application being made in that behalf by or on behalf of the Commissioner, order that the counterclaim or set-off be dealt with separately, and may make such other orders or give such directions in that behalf as it thinks fit.

Commercial Law (Miscellaneous Provisions).

Costs and expenses, etc., relating to proceedings to which an assisted person is a party.

16K. (1) Where proceedings are brought to which a person granted assistance under section 16H is a party, the court in which those proceedings are brought shall make—

- (a) in favour of that person, the same order for costs (except against another person granted assistance under section 16H) as the court would have made in favour of that person if he had not been granted assistance; or
- (b) if the case so requires, against that person, the same order for costs (except in favour of another person granted assistance under section 16H) as the court would have made against that person if he had not been granted assistance.

(2) Where any order for costs is made to which subsection (1) (a) relates, those costs shall not be payable to the person in whose favour the order was made but shall be payable to and may be recovered by the Commissioner, and on being so recovered shall be paid into the Consolidated Revenue Fund.

(3) Where any order for costs is made to which subsection (1) (b) relates, those costs shall be met by the Commissioner.

(4) Subject to subsection (2), where in proceedings to which a person granted assistance under section 16H is a party any money is awarded in favour of that person, that money shall be paid to him without deduction.

16L.

Commercial Law (Miscellaneous Provisions).

16L. The same privileges as those which arise from the relationship of client and solicitor acting in his professional capacity and in the course of his professional employment shall arise from the relationship between a person who has applied for assistance under section 16G or who has been granted that assistance under section 16H and the Commissioner and the solicitor (if any) to whom that person's case is assigned under section 16I.

Privilege attaching to certain relationships.

5. The Consumer Protection Act, 1969, is further amended—

Further amendment of Act No. 28, 1969.

(a) (i) by omitting the definition of "services" in section 19;

Sec. 19. (Definitions.)

(ii) by inserting at the end of section 19 the following subsection :—

(2) This Part does not apply to or in respect of a supply of goods under a lease, hiring agreement or hire-purchase agreement where the lease, hiring agreement or, as the case may be, hire-purchase agreement took effect before the commencement of the Commercial Law (Miscellaneous Provisions) Act, 1975.

(b) (i) by omitting from section 21 (1) the word "sell" and by inserting instead the word "supply";

Sec. 21. (Trade description to be appended to certain goods.)

(ii) by omitting from section 21 (3) the word "vendor" and by inserting instead the word "supplier";

(iii) by omitting from section 21 (3) the word "purchaser" and by inserting instead the word "consumer";

(iv)

Commercial Law (Miscellaneous Provisions).

- (iv) by omitting from section 21 (3) the word "sale" and by inserting instead the word "supply";
- (v) by omitting from section 21 (4) the word "purchaser" and by inserting instead the word "consumer";
- (vi) by omitting from section 21 (4) the word "vendor" and by inserting instead the word "supplier";
- (vii) by inserting after section 21 (4) the following subsections :—
 - (5) This section does not apply to a person—
 - (a) who, in the case of prescribed goods supplied under a credit-sale agreement or a hire-purchase agreement, did not have possession of the goods before the goods were supplied and only became their owner at the time at which or after which the agreement was entered into;
 - (b) who supplies prescribed goods as scrap, that is to say, for the value of the materials of which they are composed and not for use as finished goods;
 - (c) who, in the case of prescribed goods that are damaged, whether the damage was caused by fire or flood or other cause, supplies the goods to another person who carries on a business of acquiring damaged goods or, where the goods have been insured against damage, to the insurer of those goods; or
 - (d) who supplies prescribed goods in connection with the sale or lease of premises.

(6)

Commercial Law (Miscellaneous Provisions).

(6) Regulations made under section 20 may contain such other exemptions from the operation of this section, applicable in such cases, as may be prescribed.

- (c) (i) by omitting from section 22 (a) the word "purchaser" and by inserting instead the word "consumer"; Sec. 22.
(Evidence in prosecutions under this Division.)
- (ii) by omitting from section 22 (a) the word "sale" and by inserting instead the word "supply";
- (iii) by omitting from section 22 the word "sold" wherever occurring and by inserting instead the word "supplied";
- (iv) by omitting from section 22 (b) the word "vendor" and by inserting instead the word "supplier";
- (d) by omitting from section 23 (2) the word "sells" and by inserting instead the word "supplies"; Sec. 23.
(False trade descriptions.)
- (e) by omitting from section 24 (2) the word "sells" and by inserting instead the word "supplies"; Sec. 24.
(Alteration of trade description.)
- (f) by omitting from section 25 (c) the word "sale" and by inserting instead the word "supply"; Sec. 25.
(Offence in the ordinary course of business.)

(g)

Commercial Law (Miscellaneous Provisions).

Sec. 26.
(Appending
trade
description.)

(g) by omitting from section 26 (1) (b) (ii) the word "sale" and by inserting instead the word "supply";

Sec. 28.
(Marking of
furniture.)

(h) by omitting from section 28 (2) the words "the provisions of Schedule 2, and those provisions as from time to time so amended shall be deemed to be";

Sec. 29.
(Powers of
Court on
conviction
under this
Division.)

(i) (i) by omitting from section 29 (1) the word "sale" and by inserting instead the word "supply";

(ii) by omitting from section 29 (1) (a) the word "purchaser" and by inserting instead the word "consumer";

(iii) by omitting from section 29 (1) (b) the words "supply to the purchaser" and by inserting instead the words "provide the consumer with";

(iv) by omitting from section 29 (1) (b) the words "supply such goods" and by inserting instead the words "provide those goods";

(v) by omitting section 29 (2) and by inserting instead the following subsections :—

(2) Where an order under subsection (1) is for the refund of an amount not exceeding the amount specified in section 12 (1) of the Courts of Petty Sessions (Civil Claims) Act, 1970, the order may be enforced in a court of petty sessions specified in the order or, if no such court is specified, in any court of petty

sessions

Commercial Law (Miscellaneous Provisions).

sessions, and Part V of the Courts of Petty Sessions (Civil Claims) Act, 1970, shall apply in respect of the order as if—

- (a) the order were a judgment of the court of petty sessions specified in the order or, if no such court is specified, the court of petty sessions in which enforcement of the order is sought;
- (b) the amount ordered to be refunded were a judgment debt referred to in that Part;
- (c) the defendant against whom the order was made were a judgment debtor referred to in that Part; and
- (d) the person in favour of whom the order was made were a judgment creditor referred to in that Part.

(3) Where an order under subsection (1) is for the refund of an amount exceeding the amount specified in section 12 (1) of the Courts of Petty Sessions (Civil Claims) Act, 1970, but not exceeding that specified in section 44 (1) (a) of the District Court Act, 1973, the order may be enforced in the District Court, and Division 4 of Part IV of the District Court Act, 1973, shall apply in respect of the order as if—

- (a) the order were a judgment of the District Court;
- (b) the amount ordered to be refunded were a judgment debt referred to in that Division;
- (c)

Commercial Law (Miscellaneous Provisions).

(c) the defendant against whom the order was made were a judgment debtor referred to in that Division; and

(d) the person in favour of whom the order was made were a judgment creditor referred to in that Division.

(4) Where an order under subsection (1) is for the refund of an amount exceeding the amount specified in section 44 (1) (a) of the District Court Act, 1973, the order may be enforced in the Supreme Court, in accordance with the Supreme Court Rules as if—

(a) the order were a judgment of the Supreme Court for the payment of money; and

(b) the defendant against whom the order was made were a person bound by such a judgment.

Part III,
Division 3.
Heading.

(j) by omitting from the heading to Division 3 of Part III the words "*False or Misleading Advertisements*" and by inserting instead the words "*Control of Advertisements*";

Sec. 32.
(Penalty for
publishing
or causing
to be
published
any false
advertisement to
promote the
supply of
goods.)

(k) (i) by omitting from section 32 (1) (a) the words "sale, disposal or letting on hire" and by inserting instead the word "supply";

(ii) by omitting from section 32 (2) (b) (i) the words "vehicle or" and by inserting instead the words "vehicle, aircraft or ship or in any other";

(iii)

Commercial Law (Miscellaneous Provisions).

(iii) by inserting in section 32 (2) (c) after the word "upon" the words "or at";

(1) by inserting after section 32 the following section :—

32A. (1) A person shall not, without the prior consent in writing of the Minister or of a person authorised by him, publish or cause to be published any statement which—

Statements including references to certain organisations, etc., not to be published without Minister's consent.

(a) is intended or apparently intended by that person to promote the business of supplying goods or services to consumers carried on by him or by another person; and

(b) makes reference to—

(i) the Bureau;

(ii) the Commissioner;

(iii) the Council;

(iv) a person appointed, or an organisation constituted, under an Act of the Commonwealth or of any State or Territory of the Commonwealth, and having functions relating to the protection of consumers (being a person or an organisation prescribed for the purposes of this subparagraph); or

(v)

Commercial Law (Miscellaneous Provisions).

- (v) a person employed in the Bureau or by a person, or by or in an organisation, referred to in subparagraph (iv).

Penalty: \$2,000 or imprisonment for three months, or both.

(2) A statement shall be deemed to be published for the purposes of subsection (1) if it is—

- (a) inserted in a newspaper or other publication printed or published in New South Wales;
- (b) publicly exhibited—
 - (i) in, on, over or under any building, vehicle, aircraft or ship or in any other place (whether or not a public place and whether on land or water); or
 - (ii) in the air in view of persons being or passing in or on any street or public place;
- (c) contained in any document gratuitously sent or delivered to any person or thrown or left upon or at premises in the occupation of any person;
- (d) broadcast by wireless transmission or by television; or
- (e) made verbally.

(m)

Commercial Law (Miscellaneous Provisions).

- (m) by omitting from section 33 (a) the words "prepared, or sold, or offered for hire" wherever occurring and by inserting instead the words "prepared or supplied".
- Sec. 33.
(Powers of inspectors.)

6. The Consumer Protection Act, 1969, is further amended by inserting after Part III the following Part :—
- Further amendment of Act No. 28, 1969. Part IIIA.

PART IIIA.

INSTRUCTIONS FOR CARE OF GOODS.

- 34A. (1) The Governor may make regulations for or with respect to—
- Regulations requiring goods to be marked with or accompanied by instructions for care.
- (a) instructions for the care of goods of a prescribed class or description ;
 - (b) specifying whether the instructions are required to be marked on the goods or are required to accompany them ;
 - (c) the manner in which the instructions are required to be marked on or to accompany the goods ;
 - (d) standards with which the instructions are required to comply ; and
 - (e) the matters with which the instructions are required to deal.

(2) The regulations made under subsection (1) may apply either generally or in prescribed circumstances or subject to prescribed conditions.

(3)

Commercial Law (Miscellaneous Provisions).

(3) A class or description of goods may be prescribed in regulations made under subsection (1) notwithstanding that the goods are for use only as component parts of other goods (whether or not those other goods are of a class or description so prescribed).

Offence to supply certain goods in contravention of regulations made under section 34A.

34B. (1) Any supplier who supplies goods in respect of which regulations made under section 34A are in force is guilty of an offence against this Act if any requirement of the regulations relating to those goods is contravened or not complied with.

(2) Subsection (1) does not apply to a supplier—

- (a) who believes on reasonable grounds that the goods will not be used in New South Wales;
- (b) who, in the case of goods supplied under a credit-sale agreement or a hire-purchase agreement, did not have possession of the goods before the goods were supplied and only became their owner at the time at which or after which the agreement was entered into;
- (c) who supplies the goods as scrap, that is to say, for the value of the materials of which they are composed and not for use as finished goods;
- (d) who, in the case of goods that are damaged, whether the damage was caused by fire or flood or other cause, supplies the goods to another person who carries on a business of acquiring damaged goods or, where the goods have been insured against damage, to the insurer of the goods;

(e)

Commercial Law (Miscellaneous Provisions).

- (e) who supplies the goods in connection with the sale or lease of premises ; or
- (f) where the goods are supplied under a lease, hiring agreement or hire-purchase agreement, if the supply did not contravene any regulation made under section 34A when the lease, hiring agreement or, as the case may be, hire-purchase agreement took effect.

(3) It is a defence to a prosecution for an offence under subsection (1) if the defendant proves that the goods referred to in the information for the offence were manufactured in or imported into New South Wales before the regulations applicable to those goods (being regulations made under section 34A) took effect, but, if the defendant has failed to give reasonable notice of the defence to the informant before the hearing of the information is commenced, he shall, if the court so directs, pay such of the costs of the informant as have resulted from that failure.

(4) Regulations made under section 34A may contain such other exemptions from the operation of subsection (1), applicable in such cases, as may be prescribed.

34c. An inspector may at any reasonable time—

Powers of
inspectors
under this
Part.

- (a) enter any place where goods (being goods of a class or description that are subject to regulations made under section 34A) are supplied, or where he has reasonable cause to believe that any such goods are supplied;
- (b) inspect any such goods in that place;

(c)

Commercial Law (Miscellaneous Provisions).

- (c) take any such goods, after paying a just price for them;
- (d) examine with respect to matters under this Part any person employed or engaged in any such place; and
- (e) make such examinations and inquiries as he thinks necessary to ascertain whether the requirements of this Part are being complied with.

Further amendment of Act No. 28, 1969.

7. The Consumer Protection Act, 1969, is further amended—

Part IV, Division 1. (Interpretation.)

- (a) by omitting Division 1 of Part IV;

Sec. 36. (Safety requirements and instructions.)

- (b) by omitting section 36 (2) and by inserting instead the following subsection :—

(2) Regulations made under subsection (1) may apply either generally or in prescribed circumstances or subject to prescribed conditions.

Sec. 37. (Prohibition on supply of goods not complying with regulations under s. 36.)

- (c) (i) by omitting from section 37 (1) the word “sell” and by inserting instead the word “supply”;
- (ii) by omitting from section 37 (2) the word “sell” and by inserting instead the word “supply”;
- (iii) by omitting from section 37 (3) (b) the words “a sale” and by inserting instead the words “a supply of goods or component parts”;
- (iv) by omitting from section 37 (3) (b) the words “a letting”;

(v)

Commercial Law (Miscellaneous Provisions).

- (v) by omitting from section 37 (3) (c) the word “selling” and by inserting instead the word “supplying”;
- (vi) by omitting from section 37 (3) (d) the words “by, or in consequence of, fire or flooding, where he is selling” and by inserting instead the words “, whether the damage was caused by fire or flood or other cause, where he supplies”;
- (d) by omitting from section 38 (1) the word “sell” and by inserting instead the word “supply”;
- (Enforcement
of s. 37.)
Sec. 38.
- (e) (i) by omitting from section 39 (a) the words “belonging to a class or description in respect of which regulations have been made under section 36 or component parts of any such goods are sold or kept for any purpose of advertisement or trade” and by inserting instead the words “(being goods of a class or description that are subject to regulations made under section 36), or component parts of any such goods, are supplied”;
- Sec. 39.
(Powers of
inspectors.)
- (ii) by omitting from section 39 (a) the words “sold or so kept” and by inserting instead the word “supplied”;
- (f) by inserting after Division 2 of Part IV the following Division :—
- Part IV,
Division
2A.
- DIVISION 2A.—*Prohibition or Restriction on Supply of Dangerous Goods to Consumers.*
- 39A. In this Division and in Schedule 3—
- Definitions
for the
purposes of
this
Division.
- “Committee” means the Products Safety Committee established under section 39B;
- “dangerous” means likely to cause the death, or injury to the body or health, of any person, whether directly or indirectly.

39B.

Commercial Law (Miscellaneous Provisions).

Constitution
of Products
Safety
Committee.

39B. (1) There shall be established a committee to be known as the Products Safety Committee for the purpose of performing the functions assigned to the Committee under this Division.

(2) The Committee shall consist of such number of members appointed by the Minister as the Minister may determine.

(3) Of the members—

- (a) one shall be an officer of the Department who shall be the chairman of the Committee; and
- (b) the remainder shall be persons who, in the opinion of the Minister, have expertise in product safety.

(4) The provisions of Schedule 3 shall have effect with respect to the Committee.

References
to the
Committee.

39C. (1) The Minister, or the Commissioner with the approval of the Minister, may refer to the Committee the question as to whether the supply of goods of a class or description specified in the reference or of any particular goods so specified (being goods which, in the opinion of the Minister or the Commissioner, as the case may be, are or are likely to be supplied to consumers in New South Wales, but not being goods the supply of which is prohibited or regulated by or under an enactment specified in Schedule 4) ought, by reason of the goods being dangerous, to be prohibited or to be allowed only subject to conditions or restrictions.

(2) Whenever the Minister or the Commissioner refers a question under subsection (1), he shall cause particulars of the question to be notified to the public in the prescribed manner.

(3)

Commercial Law (Miscellaneous Provisions).

(3) The Committee shall, on the reference of any question under subsection (1), fully consider the question and determine what recommendations it should make with respect to the question and shall then prepare a report containing those recommendations and submit that report to the Minister.

(4) Where, on the reference of any question under subsection (1), the Committee is of the opinion that the supply of goods of a class or description, or, as the case may be, the particular goods, to which the question relates ought, in the interests of the safety of the public, to be prohibited immediately, the Committee may, notwithstanding that it has not fully considered the question as required by subsection (3), make a recommendation to the Minister that he make an interim order with respect to those goods in accordance with section 39E (3).

(5) The Commissioner shall, if he is requested to do so by the Committee, give to the Committee to enable it to consider the question—

- (a) any information in his possession which relates to the question; and
- (b) any other assistance which the Committee may require, and which it is within his power to give, in relation to the question.

(6) If a member of the Committee dissents from a decision of the Committee in respect of the question, the chairman of the Committee shall record in the report a note of that dissent and of the reasons for it (if any).

(7)

Commercial Law (Miscellaneous Provisions).

(7) The Committee, in considering the question—

- (a) may make such investigations as it considers necessary to enable it to make a recommendation with respect to the question;
- (b) shall take into account any representations made to it by any person who, in its opinion, has a substantial interest in the subject-matter of the question or by any body which, in its opinion, represents a substantial number of persons who have such an interest; and
- (c) unless in all the circumstances the Committee does not consider that it is reasonably practicable to do so, shall permit any such person or body to be heard orally by the Committee, or by a member of the Committee nominated by the Committee for the purpose.

(8) Subject to subsection (7) and clause 5 of Schedule 3, the Committee may determine its own procedure for considering the question, and in particular may determine—

- (a) the extent, if any, to which persons interested or claiming to be interested in the question are allowed to be present or to be heard, either by themselves or by their representatives, or to cross-examine witnesses or otherwise participate in the consideration of the question; and
- (b) the extent, if any, to which the Committee shall hold its proceedings in public.

(9)

Commercial Law (Miscellaneous Provisions).

(9) In determining its procedure under subsection (8), the Committee shall act in accordance with any general directions which may be given it by the Minister.

(10) The regulations may amend Schedule 4 by omitting the reference to any enactment specified in that Schedule or by inserting in that Schedule a reference to any enactment which prohibits or regulates the supply of any class or description of goods.

39D. (1) For the purposes of any investigation of a question referred to it under section 39C (1), the Committee may, by notice in writing signed by the chairman or by a member of the Committee on his behalf—

Attendance
of witnesses
and produc-
tion of
documents.

- (a) require any person to attend at a time and place specified in the notice and to give evidence to the Committee or to a member of the Committee nominated by it for the purpose;
- (b) require any person to produce, at a time and place specified in the notice, to the Committee or to a member of the Committee nominated by it for the purpose, any goods or documents which are specified or described in the notice and which are goods or documents in his custody or under his control and are relevant to the investigation; and
- (c) take goods so produced, after paying a just price for them, and cause to be conducted such tests and examinations with respect to them as it considers necessary for the purpose of determining whether or not they may be dangerous.

(2)

Commercial Law (Miscellaneous Provisions).

(2) For the purposes of any such investigation the Committee, or a member of the Committee nominated by it for the purpose, may take evidence on oath, and for that purpose may administer oaths.

(3) A person shall not be compelled, for the purposes of any such investigation, to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the Supreme Court or, in obedience to a notice under subsection (1), to attend any such investigation unless the reasonable expenses of his attendance are paid or tendered to him.

(4) Any person who—

- (a) without reasonable excuse, refuses or fails to do anything required of him by a notice under subsection (1); or
- (b) alters, suppresses or destroys any document which he is required by any such notice to produce,

is guilty of an offence against this Act.

Power of Minister to make orders prohibiting or restricting the supply of dangerous goods.

39E. (1) Where a report submitted to the Minister under section 39C (3) contains a recommendation that the supply of goods of any class or description specified in the report, or of any particular goods so specified, ought to be prohibited, or ought to be allowed only subject to conditions or restrictions so specified, the Minister may, if he agrees with the recommendation, make an order giving effect to the recommendation.

(2) Section 41 of the Interpretation Act, 1897, shall apply to an order made under subsection (1) as if the order were a regulation to which that section applies.

(3)

Commercial Law (Miscellaneous Provisions).

(3) Where the Committee makes a recommendation under section 39C (4), the Minister may, if he agrees with the recommendation, make an interim order prohibiting the supply of goods of the class or description specified in the recommendation, or of any particular goods so specified, for a period not exceeding 28 days from the date on which the order is published under subsection (4).

(4) If the Minister makes an interim order under subsection (3), he shall cause the order to be published in the Gazette.

39F. Any person who supplies goods in contravention of an order made under section 39E (1) or (3) is guilty of an offence against this Act.

Offence to contravene an order under section 39E.

39G. Where any supplier supplies goods in contravention of an order made under section 39E (1) or (3), that contravention is a breach of duty that, subject to the defences and other incidents applying to actions for breach of statutory duty, is actionable at the suit of any person, whether he is the person to whom the goods were supplied or not, who has sustained loss or damage in consequence of that breach.

Action for breach of statutory duty.

39H. An inspector may at any reasonable time—

Powers of inspectors.

- (a) enter any place at which any goods (being goods that are the subject of a question referred to the Committee under section 39C (1) or goods that are the subject of an order made under section 39E (1) or (3)) are manufactured,

Commercial Law (Miscellaneous Provisions).

manufactured, prepared or supplied, or at which he has reasonable cause to believe that any such goods are manufactured, prepared or supplied;

- (b) inspect any such goods in that place;
- (c) take any such goods, after paying a just price for them;
- (d) examine with respect to matters under this Division any person employed or engaged in that place; and
- (e) make such examination and inquiries as he thinks necessary for the purposes of this Division.

Part IV,
Division 3.
(Refrigerators, Ice-Chests, Ice-Boxes and Freezers.)

(g) by omitting Division 3 of Part IV.

Further amendment of Act No. 28, 1969.

8. The Consumer Protection Act, 1969, is further amended—

Sec. 42.
(Definitions.)

- (a) (i) by omitting the definitions of “services” and “supply” in section 42 (1);
- (ii) by omitting section 42 (2) (g), (h), (i) and (j);

Sec. 46.
(Acting Commissioner for Trade Practices.)

- (b) by omitting from section 46 the words “of Labour and Industry”;

(c)

Commercial Law (Miscellaneous Provisions).

- (c) by omitting section 53 (1) and by inserting instead the following subsection :—
- Sec. 53.
(Proceedings for offences under this Part.)

(1) Proceedings for an offence arising under this Part shall—

- (a) be disposed of before the Industrial Commission; and
- (b) be commenced by information laid in the office of the Industrial Registrar within 12 months after the time when the offence is alleged to have been committed.

9. The Consumer Protection Act, 1969, is further amended—
- Further amendment of Act No. 28, 1969.

- (a) by omitting from section 55 (5) the words “one hundred dollars” and by inserting instead the matter “\$300”;
- Sec. 55.
(Inspectors.)

- (b) (i) by omitting section 56 (3) and by inserting instead the following subsection :—
- Sec. 56.
(Proceedings for offences against this Act.)

(3) Proceedings for an offence against this Act (other than an offence arising under Part V) shall—

- (a) be disposed of summarily before a stipendiary magistrate, or before an industrial magistrate appointed under the Industrial Arbitration Act, 1940; and

(b)

Commercial Law (Miscellaneous Provisions).

(b) be commenced by information laid within 12 months after the time when the offence is alleged to have been committed.

(ii) by omitting section 56 (5);

Sec. 57.
(Penalty.)

(c) by omitting section 57 (1) and by inserting instead the following subsection :—

(1) A person who is guilty of an offence against this Act for which no penalty is otherwise provided is liable to a penalty not exceeding \$2,000 or imprisonment for a term not exceeding 12 months, or both.

Sec. 58.
(Evidentiary provisions.)

(d) (i) by omitting from section 58 (1) the words "Under Secretary" and by inserting instead the words "prescribed officer of the Department";

(ii) by inserting after section 58 (2) the following subsections :—

(3) In proceedings for an offence against this Act, a printed document which is or purports to be a standard, rule, code or specification of an association or body referred to in, or prescribed for the purposes of, section 52 (3) (b) or section 59 (1A) (a) and which has been or purports to have been published or issued by or on behalf of that association or body is admissible as evidence in those proceedings and, in the absence of evidence to the contrary, is proof of that standard, rule, code or specification.

(4)

Commercial Law (Miscellaneous Provisions).

(4) In proceedings for an offence against this Act, a certificate purporting to be signed by the Government Analyst or by one of his officers and certifying the result of an analysis is, unless the defendant requires the Government Analyst or officer to be called as a witness in the proceedings, admissible as evidence of the facts certified and, in the absence of evidence to the contrary, is proof of those facts.

- (e) (i) by inserting after section 59 (1) the following subsection :—

Sec. 59.
(Regulations.)

(1A) A regulation made under this Act—

(a) may adopt, either in whole or in part, or by reference, any standards, rules, codes or specifications of the Standards Association of Australia, the British Standards Institution or any other association or body prescribed for the purposes of this paragraph; and

(b) may include provisions which differ in their application according to circumstances or factors specified in the regulation.

- (ii) by omitting section 59 (2) and (3) and by inserting instead the following subsection :—

(2) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation made under this Act as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969.

(f)

Commercial Law (Miscellaneous Provisions).

Schedules 3 and 4. (f) by inserting after Schedule 2 the following Schedules :—

Sec. 39B (4).

SCHEDULE 3.

PROVISIONS APPLICABLE TO PRODUCTS SAFETY COMMITTEE.

Appointment and tenure of office of members.

1. (1) Subject to subclauses (3), (4) and (5), a member of the Committee shall hold and vacate office in accordance with the terms of his appointment or reappointment.

(2) On the expiration of any period of appointment or reappointment, a member of the Committee may be reappointed for a further period.

(3) A member of the Committee may at any time resign his membership by notice in writing addressed to the Minister.

(4) The Minister may at any time remove from office a member of the Committee by notice in writing addressed and delivered to that member.

(5) The chairman of the Committee shall be deemed to have vacated his office as a member of the Committee if he ceases to be a member of the Department.

Deputies of members.

2. (1) If the member referred to in section 39B (3) (a) is unable to carry out his duties as a member of the Committee for any period, the Minister may appoint another officer of the Department to act in his place for that period, and that officer shall, during that period, have and may exercise the duties and powers of chairman of the Committee.

(2) If any of the members referred to in section 39B (3) (b) is unable to carry out his duties as a member of the Committee for any period, the Minister may appoint another person who, in his opinion, has expertise in product safety to act in his place for that period, and a person so appointed shall, during that period, be deemed to be a member of the Committee.

Remuneration and allowances.

3. There shall be paid to members of the Committee such remuneration, and such travelling and other allowances, as in the case of any of those members the Minister may determine.

Decisions of Committee.

4. At any meeting of the Committee the decision of a majority of its members present and voting shall be the decision of the Committee.

5.

Commercial Law (Miscellaneous Provisions).

5. (1) The Committee, with the prior approval of the Co-opted Minister, may co-opt any person who, in its opinion, has members. expertise in relation to any question referred to it under section 39c (1).

(2) A person co-opted under subclause (1) shall, when attending a meeting of the Committee, be deemed to be a member of the Committee and shall have a right to vote and participate in the Committee's proceedings.

 SCHEDULE 4.

Sec. 39c (1).

 ENACTMENTS PROHIBITING OR REGULATING THE SUPPLY
OF GOODS.

The following enactments are specified for the purpose of section 39c (1) :—

1. Agricultural Seeds Act, 1921.
2. Dairy Industry Act, 1915.
3. Explosives Act, 1905.
4. Fertilizers Act, 1934.
5. Inflammable Liquid Act, 1915.
6. Pest Destroyers Act, 1945.
7. Plant Diseases Act, 1924.
8. Poisons Act, 1966.
9. Pure Food Act, 1908.
10. Radioactive Substances Act, 1957.
11. Stock Foods and Medicines Act, 1940.

10. The Credit-sale Agreements Act, 1957, is amended— Amendment of Act No. 29, 1957.

- (a) by omitting from section 8 (2) (b) (iv) the words "which are goods of any of the descriptions referred to in paragraphs (a), (b) and (c) of subsection (2) of
- Sec. 8. (Requirements relating to credit-sale agreements.)

Commercial Law (Miscellaneous Provisions).

of section 11 or a television-set or prescribed goods” and by inserting instead the words “, being goods of the following descriptions, namely, industrial machinery, farm equipment, a motor vehicle, a television-set or prescribed goods”;

Schedule.

- (b) by omitting from the Schedule the matter “P represents the difference between the purchase-price of the goods and the amount of the deposit provided by the buyer in connection with the agreement” and by inserting instead the following matter :—

P represents the total of the amounts referred to in section 8 (2) (b) (i), (ii), (iii) and (iv) and any amount representing the whole or any part of the stamp duty chargeable on the agreement under the Stamp Duties Act, 1920, less the amount of the deposit provided by the buyer in connection with the agreement.

**Amendment
of Act No.
36, 1943.**

11. The Lay-by Sales Act, 1943, is amended—

**Sec. 4.
(Register.)**

- (a) by omitting section 4 (8) (b) and by inserting instead the following paragraph :—

(b) Any member of the police force holding a rank not below sergeant, and any inspector appointed under the Consumer Protection Act, 1969, may at all reasonable times inspect the register and take copies of or extracts from it.

**Sec. 6.
(Goods
sold or
agreed to
be sold
on lay-by
to be set
aside.)**

- (b) by omitting section 6 (2) (b) and by inserting instead the following paragraph :—

(b) Any member of the police force holding a rank not below sergeant, and any inspector appointed under the Consumer Protection Act,

1969,

Commercial Law (Miscellaneous Provisions).

1969, may at all reasonable times inspect any goods set aside in accordance with this section and may examine the entries in the register relating to them

12. The Moneylending Act, 1941, is amended—

Amendment
of Act No.
67, 1941.

- (a) (i) by inserting in section 45 (1) after the words “Commissioner of Police,” where secondly occurring the words “or any inspector appointed under the Consumer Protection Act, 1969,”; Sec. 45.
(Inspection of documents, etc.)
- (ii) by inserting in section 45 (2) (a) after the words “authorized as aforesaid” the words “, or any inspector appointed under the Consumer Protection Act, 1969,”;
- (b) (i) by inserting in the definition of “finance broker” in section 60 after the words “loans or credits” where firstly occurring the words “(including home finance loans)”;
Sec. 60.
(Interpretation.)
- (ii) by omitting paragraph (c) of the definition of “finance broker” in section 60;
- (iii) by inserting after the definition of “finance broker” in section 60 the following definitions :—
- “home finance loan” means a loan the whole or any part of which is or is intended to be applied for the purpose of—
- (a) enabling the borrower to acquire a private dwelling-house or land for the erection of such a house; or

(b)

Commercial Law (Miscellaneous Provisions).

- (b) providing the borrower with funds for the erection of a private dwelling-house or for the carrying out of structural improvements or additions to a private dwelling-house,

but does not include a loan to a person—

- (c) who carries on a business as a building contractor;
- (d) whose business involves or includes the erection of private dwelling-houses or the carrying out of structural improvements or additions to private dwelling-houses; or
- (e) whose business involves or includes the acquisition or disposal of land,

if the loan is or is intended to be used for the purpose of that business or in the course of carrying on that business;

“private dwelling-house” means—

- (a) a building that is designed, or is designed principally, as a separate residence for one family or person; or
- (b) an apartment, flat or other part of a building that is so designed;

(iv)

Commercial Law (Miscellaneous Provisions).

(iv) by inserting at the end of section 60 the following subsection :—

(2) Where a person, in the course of carrying on a business, negotiates or acts as an intermediary to obtain, or advertises or announces or holds himself out in any way as being willing to negotiate or act as an intermediary to obtain—

- (a) any loan or credit for or on behalf of a company;
- (b) any loan (not being a home finance loan) or any credit if the loan or credit is or would if made or provided be for an amount exceeding that prescribed for the purposes of this paragraph;
- (c) any loan (not being a home finance loan) pursuant to an agreement to finance the erection of a building by a series of advances made or to be made during the erection of the building and secured or to be secured on the land on which the building is being or is to be erected if the aggregate of those advances exceeds or would if made exceed the amount prescribed for the purposes of this paragraph;
- (d) any loan or credit where the rate of any interest in respect of the loan or credit does not exceed, or would not exceed if the loan or credit were made or provided, the prescribed rate; or
- (e) any loan made, offered or made available, or any credit provided, offered or made available, by a corporation that, by virtue

of

Commercial Law (Miscellaneous Provisions).

of section 38 (7) (c) (i) of the Companies Act, 1961, is a prescribed corporation as defined in section 38 (7) of that Act,

that person shall be deemed not to be a finance broker in respect of that loan or credit, as the case may be.

Sec. 71A. (c) by inserting after section 71 the following section :—

Defence in proceedings involving the negotiation, etc., of home finance loans.

71A. For the purpose of any proceedings in respect of an offence against this Part, or of proceedings under section 72, a loan which, but for this section, would be a home finance loan shall be deemed not to be a home finance loan if—

- (a) the defendant in the case of proceedings for an offence, or the finance broker in the case of proceedings under section 72, proves that he did not know and had no reason to believe that the loan was, or would if made be, a home finance loan and that he had made reasonable inquiries as to how the loan was to be applied; and
- (b) the loan would have been of a class referred to in section 60 (2) (b) or (c) if it had not been a home finance loan.

Amend- of Acts by way of Statute Law Revision.

13. (1) Each Act referred to in column 1 of Schedule 1 is amended in the manner specified opposite that reference in column 2 of that Schedule.

Amendment of Act No. 105, 1974. Sec. 3. (Amendment of Act No. 33, 1960.)

(2) The Commercial Transactions (Miscellaneous Provisions) Act, 1974, is amended by inserting in section 3 (c) (iii) after the words “the total” the words “where firstly occurring”.

SCHEDULE

Commercial Law (Miscellaneous Provisions).

SCHEDULE 1.

Sec. 13 (1).

AMENDMENT OF ACTS BY WAY OF STATUTE LAW REVISION.

| Column 1. | | Column 2. |
|-------------------------|-------------------------|--|
| Year and number of Act. | Short title of Act. | Amendment. |
| 1941, No. 67.. | Moneylending Act, 1941. | <p>Section 3 (1)— Omit paragraph (b) of the definition of "Money-lender" and insert instead the following paragraph:— (b) any society registered under the Friendly Societies Act, 1912, or under the Co-operation Act, 1923; or Omit from paragraph (b1) of the same definition " , or any Act amending that Act". Omit from paragraph (b2) of the same definition " , or any Act amending or replacing that Act". Omit the definition of "Schedule". Section 7 (3) (b) and (c)— Omit " , as amended by subsequent Acts" wherever occurring. Section 8 (1) (c)— Omit " , as amended by subsequent Acts". Section 9 (1) (b)— Omit "as amended by subsequent Acts,". Section 23 (6)— Omit "1898-1938" and insert instead "1898". Section 34 (3)— Omit "as amended by subsequent Acts,". Section 39 (8) and (9)— Omit "1898-1938" wherever occurring and insert instead "1898". Section 50 (1) (a)— Omit "Small Debts Recovery Act, 1912, as amended by subsequent Acts" and insert instead "Courts of Petty Sessions (Civil Claims) Act, 1970".</p> |
| 1943, No. 36.. | Lay-by Sales Act, 1943. | <p>Section 1 (3)— Omit "1923-1937" and insert instead "1923". Section 5 (4)— Omit "Factories and Shops Act, 1912-1943" and insert instead "Consumer Protection Act, 1969". Section 7 (3)— Omit "Factories and Shops Act, 1912-1943" and insert instead "Consumer Protection Act, 1969".</p> |

SCHEDULE

Commercial Law (Miscellaneous Provisions).

 SCHEDULE 1—*continued.*

 AMENDMENT OF ACTS BY WAY OF STATUTE LAW REVISION—
continued.

| Column 1. | | Column 2. |
|------------------------------------|--|---|
| Year and number of Act. | Short title of Act. | Amendment. |
| 1943, No. 36— <i>continued.</i> | Lay-by Sales Act, 1943— <i>continued.</i> | Section 7 (6)— Omit “1902-1940” and insert instead “1902”. Section 13 (1) and (2)— Omit “holden before a stipendiary magistrate or a police magistrate” wherever occurring and insert instead “held before a stipendiary magistrate”. Section 13 (4)— Omit “Small Debts Recovery Act, 1912, as amended by subsequent Acts, and be enforceable as such under the provisions of that Act as so amended” and insert instead “Courts of Petty Sessions (Civil Claims) Act, 1970, and be enforceable under that Act”. Section 17 (6)— Omit “purchaser” from the definition of “vendor” and insert instead “vendor”. Section 19 (2)— Omit “holden before a stipendiary or a police magistrate” and insert instead “held before a stipendiary magistrate”. Section 22— Omit subsection (4) and insert instead the following subsection:— (4) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation made under this Act as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969. |
| 1957, No. 29. | Credit-sale Agreements Act, 1957. | Section 2 (1)— Omit “, as amended by subsequent Acts” from the definition of “Credit-sale agreement”. Section 8 (2) (b)— Omit “, as amended by subsequent Acts” wherever occurring. Omit “, as subsequently amended”. Section 12 (2)— Omit “the provisions of section 26D of the Hire-purchase Agreements Act, 1941, as amended by subsequent Acts” and insert instead “section 23 of the Hire-Purchase Act, 1960”. |

SCHEDULE

*Commercial Law (Miscellaneous Provisions).*SCHEDULE 1—*continued.*AMENDMENT OF ACTS BY WAY OF STATUTE LAW REVISION—
continued.

| Column 1. | | Column 2. |
|------------------------------------|--|---|
| Year and number of Act. | Short title of Act. | Amendment. |
| 1957, No. 29— <i>continued.</i> | Credit-sale Agreements Act, 1957— <i>continued.</i> | Section 14— Omit subsection (2) and insert instead the following subsection:— (2) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation made under this Act as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969. |
| 1969, No. 28.. | Consumer Protection Act, 1969. | Section 3 (2)— Omit “, as subsequently amended” wherever occurring. Omit “as so amended,”. Omit “Part IV, and shall be deemed to have been made under this Act.” and insert instead:— Part IV, and shall be deemed to have been made under this Act. Section 4 (2)— Omit “, or any Act amending or replacing any such Act”. Section 11 (6)— Omit paragraph (b) and insert instead the following paragraph:— (b) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act; Omit paragraph (d) and insert instead the following paragraph:— (d) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration, or estate, for their benefit; Section 13— Omit “, as subsequently amended”. Section 42 (2) (f)— Omit “, as subsequently amended”. Section 45— Omit “, as subsequently amended”. |

*Commercial Law (Miscellaneous Provisions).*SCHEDULE 1—*continued.*AMENDMENT OF ACTS BY WAY OF STATUTE LAW REVISION—
continued.

| Column 1. | | Column 2. |
|------------------------------------|---|--|
| Year and number of Act. | Short title of Act. | Amendment. |
| 1969, No. 28— <i>continued.</i> | Consumer Protection Act, 1969— <i>continued.</i> | Section 53 (2)— Omit “, as subsequently amended”. Section 54 (2)— Omit “, as subsequently amended”. Section 56 (1)— Omit “, as subsequently amended”. Section 56 (4)— Omit “, as subsequently amended”. Section 58 (1)— Omit “, as subsequently amended” wherever occurring. Schedule 2— Clause 3— Omit “as subsequently amended”. Clause 13— Omit “1912–1960,” and insert instead “1912”. Omit “as subsequently amended”. Clause 14— Omit “1912–1960,” and insert instead “1912”. Omit “as subsequently amended”. Clause 15— Omit “, as subsequently amended”. |

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

*Government House,
Sydney, 23rd December, 1975.*