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CONSUMER PROTECTION (AMENDMENT) BILL, 1978

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are to amend the Consumer Protection Act, 1969, for the purposes of—

(a) replacing the definition of "consumer" with a wider definition which will include any person who—

(i) in relation to goods, acquires (otherwise than for the purpose of re-supply) goods where the price paid or payable for the goods does not exceed the prescribed amount (expected to be $15,000) or, if the price exceeds that amount, the goods are of a kind which are ordinarily acquired for personal, domestic or household use or consumption, are of a prescribed class or description or are of a kind which might ordinarily be acquired for the purpose of a farming undertaking or comprise a motor vehicle;

(ii) acquires services where the price paid or payable for the services does not exceed the prescribed amount referred to above or, if the price exceeds that amount, the services are of a kind which are ordinarily acquired for personal, domestic or household use or consumption or the services are of a kind which might ordinarily be acquired in connection with the carrying on of a farming undertaking; or

(iii) acquires an interest in land but only if the land is not used or intended or apparently intended for use for industrial or commercial purposes (Schedule 1 (4));

(b) extending the definition of "services" to include the granting or conferring of franchises under which a person, in consideration of the franchise, invests money and performs work associated with the investment (Schedule 1 (4));

(c) providing for the Chairman of the Consumer Affairs Council to be appointed from among the members of the Council instead of the Commissioner for Consumer Affairs being the Chairman ex officio as at present (Schedule 2 (1));

(d) redefining the functions of the Consumer Affairs Council and, in particular, providing that the Council may perform its functions only with the consent or at the direction of the Minister (Schedule 2 (5));

(e) providing for the abolition of the Consumer Affairs Bureau, providing for the appointment of officers of the Department of Consumer Affairs and providing for the delegation of the functions and powers of the Commissioner for Consumer Affairs (Schedule 2 (7));

(f) enabling the Commissioner for Consumer Affairs to receive complaints not only with respect to the supply of goods and services but also with respect to the disposal of interests in land (Schedule 2 (8));

(g) clarifying section 16A of the Act so as to make it clear that an investigation referred to in that section may be carried out in respect of a matter whether or not a complaint has been made in respect of the matter to the Commissioner for Consumer Affairs by a consumer (Schedule 2 (9));

(h) making it an offence for a supplier to supply goods to which two or more prices are appended at a price which exceeds the lower or lowest of those prices (Schedule 3 (4));

(i) making it an offence for a supplier to engage in "bait and switch" advertising (that is, the advertising of goods or services at a special price in circumstances where none or only an unreasonably small number of those goods or services is available for acquisition at that price or where goods or services are available for acquisition at that price for an unreasonably short period) (Schedule 3 (4));

(j) extending the scope of section 32 of the Act, which makes it an offence to publish a statement to promote the supply or use of goods or services which is false or misleading, so that the section will apply to statements to promote the disposal of interests in land (Schedule 3 (5));

(k) replacing section 29 of the Act with a new section, 33A, so as to empower a court which finds a person guilty of an offence under Division 2 of Part III of the Act not only to make an order directing that person to make a refund of money paid to him or to provide goods having a true trade description, but also to make an order directing the person to compensate any party to the proceedings before the court who has suffered loss or damage which is attributable in some degree to a false or misleading statement published in contravention of section 32 of the Act (Schedule 3 (7));

(l) providing that section 37 of the Act, which prohibits the supply of dangerous goods or component parts of a class or description prescribed in regulations made under section 36 of the Act unless the goods or parts comply with the requirements of those regulations, is not contravened where the goods or component parts supplied are included in a class or description of goods or component parts, or are particular goods or component parts, in respect of which the Products Safety Committee has issued a certificate of safety, notwithstanding that the goods or parts supplied are included in the class or description of goods or parts so prescribed (Schedule 4(1));

(m) enabling the Minister to make, without making a reference to the Products Safety Committee under section 39C of the Act, an order prohibiting the supply of goods of a class or description specified in the order, or allowing the supply of goods of any such class or description but subject to conditions or restrictions so specified, where a competent authority of the Commonwealth or of another State or of a Territory of the Commonwealth has, on the ground that the goods are dangerous, made a similar order or other instrument (Schedule 4 (5));

(n) inserting into the Act a new section, 39I, which will empower an inspector who suspects on reasonable grounds that any goods or component parts are being or have been supplied in contravention of section 37 of the Act (which prohibits the supply of prescribed goods or parts not complying with prescribed safety requirements) or that any goods are being or have been supplied in contravention of an order made under section 39E (1) or (1A) (that is, an order prohibiting the supply of certain goods considered to be dangerous or allowing the supply of such goods but only subject to conditions or restrictions), to impound and detain those goods or parts (Schedule 4 (9));

(o) inserting into the Act a new section, 39J, which will enable a person from whom goods or parts have been impounded under the proposed section 39I to make an application to the District Court for disallowance of the impounding of the goods or parts and which will provide for the disposal of the impounded goods or parts in the event of the application succeeding and also in the event of such an application being made and being refused (Schedule 4 (9));

(p) replacing section 56 of the Act, which relates to proceedings for offences against the Act, with a new section which will, as well as conferring jurisdiction to deal with such offences on courts of petty sessions and industrial magistrates, confer jurisdiction to deal with those offences on the Supreme Court in its summary jurisdiction but which will enable only the Supreme Court to impose in respect of such an offence a penalty in excess of $2,000 (Schedule 5 (3));

(q) inserting into the Act a new section, 56A, which will enable the Supreme Court, on the application of the Commissioner for Consumer Affairs made with the consent of the Minister, to grant an injunction for repeated, continued or threatened breaches of the Act or regulations under the Act or of other legislation administered by the Minister which relates to consumer affairs (Schedule 5 (4)); and

(r) providing for an increase in the maximum penalty that may be imposed in respect of an offence against the Act to $10,000 and abolishing sentences of imprisonment for such an offence (Schedule 5 (5)).

The Bill also makes other amendments to the Act of a minor, consequential or ancillary nature.

CONSUMER PROTECTION (AMENDMENT) BILL, 1978

No. , 1978.

A BILL FOR

An Act to amend the Consumer Protection Act, 1969, for the purposes of reorganising the Consumer Affairs Council, abolishing the Consumer Affairs Bureau and conferring the functions of the Bureau on the Commissioner for Consumer Affairs, and providing increased protection to consumers with respect to certain types of transactions, and for certain other purposes.

[MR EINFELD—15 *February*, 1978.]

44087F 409—A

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 :—

5 **1.** This Act may be cited as the "Consumer Protection (Amendment) Act, 1978". **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.**

(2) Section 4 shall, in its application to a provision of 10 Schedules 1–5, commence on the day on which that provision commences.

(3) The several provisions of Schedules 1–5 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation 15 published in the Gazette.

3. This Act contains the following Schedules:— **Schedules.**

SCHEDULE 1.—AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969.

SCHEDULE 2.—AMENDMENTS TO PART II OF THE 20 CONSUMER PROTECTION ACT, 1969.

SCHEDULE 3.—AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969.

SCHEDULE 4.—AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969.

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SCHEDULE 5.—AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969.

SCHEDULE 6.—SAVINGS AND TRANSITIONAL PROVISIONS.

4. The Consumer Protection Act, 1969, is amended in the manner set forth in Schedules 1–5.

10

Amendment of Act No. 28, 1969.

5. Schedule 6 has effect.

Savings and transitional provisions.

SCHEDULE 1.

Sec. 4.

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969.

(1) Long title—

Omit "and the establishment of a Consumer Affairs Bureau".

(2) Section 2—

(a) Omit the matter relating to Division 3 of Part II, insert instead :—

DIVISION 3.—*Commissioner for Consumer Affairs —ss.* 12A–16F.

(b) Omit the matter relating to Division 2 of Part III, insert instead :—

DIVISION 2.—*Trade Descriptions and Unfair Practices—ss.* 20–31.

(c) From the matter relating to Division 4 of Part III, omit "33, 34", insert instead "33–34".

(d) After the matter relating to Division 2A of Part IV, insert :—

DIVISION 2B.—*Further Powers of Inspectors—ss.* 39I, 39J.

(3) Section 4 (2)—

(a) Omit ", Fruit Cases Act, 1912".

(b) Omit ", Stock and Station and Real Estate", insert instead "and".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(4) (a) Section 5 (1), definition of "acquire"—

After "otherwise indicates or requires", insert :—

"acquire" includes—

(a) in relation to goods—acquire by way of purchase, exchange or taking on lease, on hire or on hire-purchase;

(b) in relation to services—acquire by way of purchase or exchange; and

(c) in relation to an interest in land, acquire by way of purchase, exchange or taking on lease or by any other method by which an interest in land may lawfully be acquired for a valuable consideration;

(b) Section 5 (1), definition of "Bureau"—

Omit the definition.

(c) Section 5 (1), definition of "consumer"—

Omit the definition, insert instead :—

"consumer" means—

(a) a person who acquires goods from a supplier, but only if the person does not acquire the goods, and does not

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

hold himself out as acquiring the goods, for the purposes of resupply and—

(i) the price paid or payable for the goods (not being goods to which subparagraph (ii) relates) does not exceed the prescribed amount or, where the price paid or payable for the goods (not being goods to which subparagraph (ii) relates) exceeds the prescribed amount, the goods—

(a) are of a kind which are ordinarily acquired for personal, domestic or household use or consumption; or

(b) are of a class or description prescribed for the purpose of this subparagraph,

and the person does not acquire the goods, and does not hold himself out as acquiring the goods, in connection with a business carried on by him, for the purpose of consuming or transforming them in the course of a process of manufacture or production or for the purpose of repairing or treating fixtures on land or other goods; or

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(ii) the goods, whether or not the price paid or payable for the goods exceeds the prescribed amount—

(a) are of a kind which might ordinarily be acquired for the purpose of a farming undertaking and are in fact acquired for that purpose; or

(b) comprise a motor vehicle within the meaning of the Motor Dealers Act, 1974;

(b) a person who acquires services from a supplier, but only if—

(i) the price paid or payable for the services does not exceed the prescribed amount; or

(ii) where the price paid or payable for the services exceeds the prescribed amount, the services—

(a) are of a kind which are ordinarily acquired for personal, domestic or household use or consumption; or

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) are of a kind which might ordinarily be acquired in connection with the carrying on of a farming undertaking and are in fact acquired for that purpose; or

(c) a person who acquires an interest in land from another person but only if the land is not used or intended, or apparently intended for use, for industrial or commercial purposes;

(d) Section 5 (1), definitions of "disposal", "farming undertaking"—

After the definition of "Department", insert :—

"disposal", in relation to an interest in land, includes disposal by way of sale, exchange or lease or by any other method by which an interest in land may lawfully be disposed of for a valuable consideration;

"farming undertaking" includes any agricultural, pastoral, horticultural, orcharding or viticultural undertaking;

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(e) Section 5 (1), definitions of "interest", "officer of the Department" or "officer", "Products Safety Committee" or "Committee"—

After the definition of "inspector", insert :—

"interest", in relation to land, means—

(a) a legal or an equitable estate or interest in the land;

(b) a right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of shares, or by virtue of a contract to purchase shares, in an incorporated company that owns the land or the building; or

(c) a right, power or privilege over, or in connection with, the land;

"officer of the Department" or "officer" means the Commissioner or a person appointed and holding office under section 15;

"Products Safety Committee" or "Committee" means the Products Safety Committee established under section 39B;

(f) Section 5 (1), definition of "services"—

(i) From paragraph (b), omit "or".

(ii) From paragraph (c), omit "facilities,", insert instead "facilities; or".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(iii) After paragraph (c), insert :—

5 (d) a contract under which one person grants or confers or purports to grant or confer a franchise or other right, benefit or privilege to one or more other persons in consideration of the investment by that 10 other person or those other persons of money and the performance by him or them of work associated with that investment,

(g) Section 5 (1), definition of "supply"—

15 Omit "render.", insert instead "render for a valuable consideration;".

(h) Section 5 (1), definition of "Supreme Court"—

After the definition of "supply", insert :—

"Supreme Court" means the Supreme Court of 20 New South Wales.

(i) Section 5 (2) (d)—

Omit "and".

(j) Section 5 (2) (e)—

Omit "goods.", insert instead "goods;".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(k) Section 5 (2) (f), (g)—

5 After section 5 (2) (e), insert :—

(f) a reference to the disposal or acquisition of an interest in land includes a reference to agreeing to dispose of or acquire such an interest, whether the agreement is in writing or is evi-
10 denced by writing or not; and

(g) a reference to the disposal or acquisition of an interest in land includes a reference to the disposal or acquisition of such an interest together with goods

15 (l) Section 5 (3), (4)—

After section 5 (2), insert:—

(3) Where it is alleged in any proceeding under this Act or in any other proceeding in respect of a matter arising under this Act that a person was a
20 consumer in relation to any particular goods, services or land, it shall be presumed, unless the contrary is established, that the person was a consumer in relation to those goods or services or that land.

(4) Where by virtue of any provision of this Act
25 an inspector has power to take goods after paying a just price for them, the inspector shall be deemed to have paid the just price if he gives or tenders to a person who appears to be the owner of or in charge

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

of the goods a voucher, in or to the effect of the prescribed form, which purports to contain an undertaking by the Commissioner to pay the price written by the inspector on the voucher, being such price as the inspector has agreed on with that owner or person in charge or, in the absence of such an agreement, such price as appears to be the market price of the goods.

SCHEDULE 2. Sec. 4.

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969.

(1) Section 8—

Omit the section, insert instead:—

Chairman of Council.

8. (1) One of the members of the Council shall, by the instrument of his appointment or by a subsequent instrument executed by the Governor, be appointed as Chairman of the Council to hold office during his term of office as a member.

(2) The Chairman of the Council shall preside at all meetings of the Council at which he is present but if he is unable for any reason to attend any meeting of the Council, the Minister shall appoint one of the other members of the Council to preside at the meeting.

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(3) A member of the Council appointed under subsection (2) shall, when presiding at a meeting of the Council, be deemed to be the Chairman of the Council.

(2) Section 9 (1)—

Omit the subsection, insert instead :—

(1) In the event of any member of the Council being unable to attend a meeting or meetings of the Council due to illness or other cause, the Governor may appoint as an alternative member a person who has the same qualification for appointment as a member of the Council as the member was required to have when he was appointed to act in place of the member during his absence.

(3) Section 10—

Omit "other than the Chairman shall hold office for a term of three years and shall be eligible for reappointment", insert instead "shall hold office for a term of 3 years and shall, from time to time, be eligible for reappointment for a further term of 3 years".

(4) (a) Section 11 (3)—

Omit the subsection, insert instead :—

(3) At a meeting of the Council, a majority of the members of the Council shall constitute a quorum.

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) Section 11 (5)—

Omit "or person acting in his place at any meeting of the Council".

(c) Section 11 (6)—

(i) Omit ", other than the Chairman,".

(ii) Omit "by the Governor.", insert instead :—

by the Governor; or

(f) if, in the case of the member referred to in section 7 (2) (a), he ceases to be an officer of the Department.

(d) Section 11 (7)—

Omit the subsection, insert instead :—

(7) On the occurrence of a casual vacancy in the office of a member of the Council, the Governor may fill the vacancy by appointing as a member of the Council a person who has the same qualification for appointment as a member of the Council as the person whose office has been vacated was required to have when he was appointed and the person appointed to fill the vacancy shall hold office for the residue of the term of office of his predecessor.

(e) Section 11 (7A), (7B)—

Omit the subsections.

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(f) Section 11 (8)—

Omit "the Chairman", insert instead "the member referred to in section 7 (2) (a)".

(g) Section 11 (9)—

Omit ", as subsequently amended".

(5) Section 12—

Omit the section, insert instead :—

Functions of Council.

12. (1) The Council shall have the following functions :—

(a) the carrying out of investigations into matters relating to the interests of consumers and the making of recommendations with respect to those matters;

(b) the provision of advice to the Minister with respect to the operation of this Act or any other Act which is designed to protect the interests of consumers; and

(c) any other function imposed on the Council by the regulations.

(2) The Council shall perform a function referred to in subsection (1) only with the consent or at the direction of the Minister.

(3) The Council may, with the consent of the Minister, co-operate or affiliate with any organisation that has power to make an investigation of the nature referred to in subsection (1) (a), whether in New South Wales or elsewhere.

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(6) Part II, Division 3, heading—

5 Omit *"Consumer Affairs Bureau"*, insert instead *"Commissioner for Consumer Affairs"*.

(7) Sections 15, 15A—

Omit section 15, insert instead:—

15. (1) Such persons as may be necessary to enable the Commissioner to perform his functions and exercise his powers under this Act shall be appointed and employed under and subject to the Public Service Act, 1902, as officers or employees. **Officers, etc., of Department.**

(2) The Commissioner may, with the approval of the Minister, appoint and employ, otherwise than under a contract of service, on such terms and conditions as he thinks fit and for any particular purpose any person, body or organisation considered to be capable of providing services, information or advice required by the Commissioner to enable him to perform his functions or exercise his powers under this Act.

15A. (1) The Commissioner may, by instrument in writing, delegate such of his functions and powers (other than this power of delegation) as may be specified in the instrument to any officer or employee of the Department and may, by similar instrument, revoke any such delegation either in whole or in part. **Delegation.**

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(2) A delegation under subsection (1) may be made subject to such conditions or limitations as to the performance or exercise of any of the functions or powers that have been delegated, or as to time or circumstance, as may be specified in the instrument of delegation.

(3) A function or power the performance or exercise of which has been delegated under subsection (1) may, while the delegation remains unrevoked, be performed or exercised by the delegate from time to time in accordance with the terms of the delegation.

(4) Notwithstanding the making of any delegation under subsection (1), the Commissioner may continue to perform or exercise all or any of the functions or powers that have been delegated.

(5) Any act, omission or thing done, omitted or undergone by a delegate while acting pursuant to a delegation made under subsection (1) shall have the same force and effect as if the act, omission or thing had been done, omitted or undergone by the Commissioner.

(8) (a) Section 16 (1)—

Omit "Bureau", insert instead "Commissioner".

(b) Section 16 (1) (a)—

After "remedying infringements of", insert ", or, as the case may be, securing compliance with,".

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(c) Section 16 (1) (a)—

5 After "otherwise;", insert "and".

(d) Section 16 (1) (b) (ii)—

Omit "goods or services", insert instead "the supply of goods or services or the disposal of interests in land".

10 (e) Section 16 (1) (b) (ii)—

Omit "it", insert instead "he".

(f) Section 16 (1) (b) (iii)—

After "conduct research,", insert "to make investigations,".

15 (g) Section 16 (1) (b) (iii)—

After "work;", insert "and".

(h) Section 16 (1) (b) (iv), (v)—

Omit the subparagraphs, insert instead :—

(iv) to provide the Council with such information
20 as it may reasonably require relating to the supply to consumers of goods or services or

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

the disposal to consumers of interests in land or relating to consumer affairs generally and to carry out such research as may be necessary for the purpose of enabling that information to be provided.

(i) Section 16 (2)—

Omit "Bureau", insert instead "Department".

(9) Section 16A (1)—

Omit the subsection, insert instead :—

(1) An investigation under section 16 (1) (b) (ii) or (iii) may be made by one or more officers designated by the Commissioner for the purpose.

(10) (a) Section 16B—

After "making an investigation", insert "relating to the supply of goods or services".

(b) Section 16B (2)—

At the end of section 16B, insert:—

(2) An investigating officer making an investigation relating to the disposal of an interest in land may, at any reasonable time, for the purposes of the investigation—

(a) enter any place at which transactions involving the disposal of interests in land takes place or which is land an interest in

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

which is being or is proposed to be disposed of, or at which he has reason to believe that any such transactions take place or, as the case may be, which he has reason to believe is any such land;

(b) inspect any documents in any such place which relate to the disposal of an interest in land; or

(c) in any such place, make such examination as he considers to be necessary or desirable.

(11) Section 16F—

Omit "powers, authorities, duties or functions", insert instead "functions or powers".

(12) (a) Section 16G (1) (a)—

After "goods or services", insert "or the disposal to him of an interest in land".

(b) Section 16G (1) (b)—

After "supply", insert "or disposal".

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(13) Section 16J (6)—

5 After "goods or services", insert ", or, as the case may be, the disposal of an interest in land,".

(14) Sections 17, 18—

Omit the sections, insert instead:—

Liability of officers of Department, etc.

17. Neither the Commissioner or any other officer of the
10 Department nor any member of the Council shall be personally liable, nor shall the Crown be liable, for any act done or omitted, or any statement issued, by the Commissioner or any such officer or the Council in good faith in the course of the operations of the Commissioner or the
15 Council.

Annual report.

18. The Commissioner shall, not later than 3 months after the expiration of the period of 12 months ending on 30th June in each year, prepare a report in respect of his operations and the operations of the Department and of
20 the Council during that period of 12 months and submit the report to the Minister for presentation to Parliament.

SCHEDULE 3.

Sec. 4.

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969.

(1) Part III, Division 2, heading—

After *"Trade Descriptions"*, insert *"and Unfair Practices"*.

(2) (a) Section 21 (3)—

Omit "consumer", insert instead "person acquiring the goods".

(b) Section 21 (4)—

Omit "consumer of", insert instead "person acquiring".

(3) Section 22 (a)—

Omit "consumer", insert instead "person acquiring the goods".

(4) Sections 29, 29A—

Omit section 29, insert instead :—

29. (1) A supplier who supplies goods to which two or more prices are appended at a price which exceeds the lower or the lowest of those prices is guilty of an offence against this Act. Double ticketing.

(2) For the purposes of subsection (1), a price that is not appended to goods shall be deemed to be appended to the goods if it is—

(a) appended to any covering, label, reel or thing used in connection with the goods;

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) used in connection with the goods on any thing on which the goods are mounted for display or are exposed for supply; or

(c) included in any advertisement or catalogue which is used to promote the supply of the goods or make known the availability of the goods for acquisition.

(3) For the purposes of subsection (1), two or more prices are appended to goods notwithstanding that one of those prices is written, printed or stamped wholly or partly over another of those prices.

(4) For the purposes of this section, a price shall be deemed to be appended to goods or to any covering, label, reel or thing used in connection with the goods if it is annexed or affixed to, or is written, printed or stamped on or otherwise applied to, the goods or to the covering, label, reel or thing, as the case may be.

Bait advertising.

29A. (1) If a supplier advertises for supply at a special price goods or services that he does not intend to make available for supply at that price—

(a) during a period, or in a quantity, specified in the advertisement; or

(b) if no such period or quantity is specified in the advertisement, during such period and in such quantity as is reasonable having regard to the nature of the market in which the supplier carries on business and the nature of the advertisement,

he is guilty of an offence against this Act.

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(2) Where a supplier who has advertised for supply at a special price a quantity of goods or services specified in the advertisement fails to make available for supply to any person who offers to acquire at that price goods or services of the description specified in the advertisement, that supplier is guilty of an offence against this Act.

(3) In any proceedings for an offence under subsection (2), it is a defence for the supplier to establish that—

(a) he was, at the time of the publication of the advertisement, able to supply the quantity of goods or services specified in the advertisement; and

(b) since that publication, he has exhausted that quantity of goods or services by supplying them at the advertised special price.

(4) Where a supplier who has advertised goods or services for supply at a special price for a specified period fails to make available those goods or services for supply to any person who, during that period, offers to acquire those goods or services at that price, that supplier is guilty of an offence against this Act.

(5) Where a supplier who has advertised goods or services for supply at a special price without specifying in the advertisement the period during which the goods or services are available for supply, or the quantity of goods or services that are available for supply, at that price, fails

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

to make those goods or services available for supply to any person who, during such period as is reasonable, having regard to the nature of the market in which the supplier carries on business and the nature of the advertisement, offers to acquire them at that price, that supplier is guilty of an offence against this Act.

(6) In any proceedings for an offence under subsection (4) or (5), it is a defence for the supplier to establish that—

(a) he offered to make available for supply, or offered to procure another person to make available for supply, goods or services of the kind advertised to the person referred to in subsection (4) or, as the case may be, subsection (5) within a reasonable period, in a reasonable quantity and at the advertised special price; or

(b) he immediately offered to make available for supply, or offered to procure another person to make available for supply within a reasonable period, equivalent goods or services to the person referred to in subsection (4) or, as the case may be, subsection (5) in a reasonable quantity and at the price at which the first mentioned goods or services were advertised,

and, in either case, where the offer was accepted by that person, the supplier has made available for supply, or procured another person to make available for supply, goods or services of that kind or equivalent to those referred to in paragraph (a).

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(7) For the purposes of this section, "special price", in relation to an advertisement for the supply of goods or services, means—

(a) a price that is represented in the advertisement for the supply of goods or services to be a special or bargain price, by reference to an ordinary price or otherwise; or

(b) a price that a person who reads, hears or sees the advertisement would reasonably understand to be a special or bargain price, having regard to the prices at which the goods or services advertised or similar goods or services are ordinarily supplied.

(5) Section 32 (1) (a)—

Omit the paragraph, insert instead :—

(a) is intended or apparently intended by that person or any other person to promote the supply or use of goods or services or the disposal of interests in land; and

(6) (a) Section 32A (1) (a)—

Omit the paragraph, insert instead :—

(a) is intended or apparently intended by the first mentioned person or any other person to promote the supply or use of goods or services or the disposal of interests in land; and

(b) Section 32A (1) (b)—

Omit "Bureau" wherever occurring, insert instead "Department".

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(7) Section 33A—

After section 33, insert :—

Powers of court on finding of guilt in respect of certain offences under Pt. III.

33A. (1) Where a person is found guilty of an offence under Division 2 in respect of the supply of goods to which a false trade description is appended, the court which made the finding may, in addition to any penalty imposed in respect of the offence, make an order directing the person found guilty of the offence, within a period specified in the order—

(a) to refund to the person who acquired the goods any money paid to him by that person for the goods; or

(b) to provide the person who acquired the goods with goods in accordance with the true trade description or, if he is unable to provide goods of that description, to refund the money paid to him by that person for the goods.

(2) Where a person is found guilty of an offence under section 32 and the court which made the finding also finds that a party to the proceedings for the offence has sustained loss or damage which is attributable, or partly attributable, to the reliance by that other person on the statement to which the offence relates, that court may, in addition to any penalty imposed in respect of the offence, make an order directing the person found guilty of the offence, within a period specified in the order—

(a) to refund any money paid, or to return any property transferred, to him by that party to the proceedings; or

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) to pay to that other person money equivalent in amount to the loss or damage that that party has sustained.

(3) Where the court referred to in subsection (1) or (2) is a court of summary jurisdiction, that court shall not make an order under either of those subsections directing the refund or payment of an amount in excess of the amount for the time being specified in section 12 (1) of the Courts of Petty Sessions (Civil Claims) Act, 1970.

(4) An order made under subsection (1) or (2) by a court of summary jurisdiction may be enforced in the court, and Part V of the Courts of Petty Sessions (Civil Claims) Act, 1970, shall apply in respect of the court as if it were a court of petty sessions exercising jurisdiction under that Act and in respect of the order as if—

(a) the order were a judgment of a court of petty sessions exercising that jurisdiction;

(b) the amount ordered to be refunded were a judgment debt referred to in that Part;

(c) the person 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.

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(5) An order made under subsection (1) or (2) by the Supreme Court may be enforced in that Court as if—

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

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

(8) (a) Section 34E (2)—

Omit "Except so far as may be authorised by or under the regulations, a", insert instead "A".

(b) Section 34E (4)—

After section 34E (3), insert:—

(4) The regulations may contain such exemptions from the operation of subsections (1) and (2), applicable in such cases, as may be prescribed.

SCHEDULE 4.

Sec. 4.

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969.

(1) Section 37 (6)–(11)—

After section 37 (5), insert:—

(6) Subsections (1) and (2) shall not apply in relation to any class or description of goods or component parts, or any particular goods or component parts, in respect of which a certificate of safety has been issued by the Products Safety Committee, notwithstanding that the class or description of goods or component parts or, as the case may be, the particular goods or component parts are goods or component parts included in a class or description of goods or component parts in respect of which regulations made under section 36 are for the time being in force.

(7) Any person who wishes to supply goods or component parts of a class or description, or particular goods or component parts, that are included in a class or description of goods or component parts in respect of which regulations made under section 36 are for the time being in force may apply in writing to the Products Safety Committee for the issue of a certificate of safety in respect of goods or component parts of the first mentioned class or description or, as the case may be, those particular goods or component parts.

(8) Where, on consideration of an application made to it under subsection (7), the Products Safety Committee is satisfied that the goods or component parts to which the application relates are sufficiently safe to warrant their exemption from the requirements of the regulations made under section 36, the Committee shall issue the certificate applied for, but if it is not so satisfied it shall refuse the application and notify the applicant in writing of the refusal, which shall include a statement of the reasons as to why the application was refused.

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(9) The Products Safety Committee, in considering an application made under subsection (7)—

(a) may make such investigations as it considers necessary to enable it to arrive at a decision with respect to the application;

(b) shall take into account any representations made to it by or on behalf of the applicant; and

(c) unless in all the circumstances it does not consider that it is reasonably practicable to do so, shall permit the applicant or his representative, if the applicant so wishes, to be heard orally by the Committee, or by a member of the Committee appointed for the purpose.

(10) Subject to subsection (9) and clause 5 of Schedule 3, the Products Safety Committee may determine its own procedure for considering applications made under subsection (7) and, in particular, may determine whether or not its consideration of the application should be held in public.

(11) The provisions of section 39D shall apply in relation to an investigation made under subsection (9) (a) in the same way as they apply in relation to an investigation of a question referred to the Products Safety Committee under section 39C (1).

(2) Section 39B (1), definition of "Committee"—

Omit the definition.

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(3) Section 39C (1)—

5 Omit "to consumers in New South Wales", insert instead "in New South Wales to consumers".

(4) Section 39DA (3), (4)—

Omit the subsections, insert instead :—

(3) An order made under subsection (1) shall not be
10 capable of being renewed or replaced by a further order under that subsection but may, at any time before it expires or is revoked, be replaced by an order made under section 39E (1) or (3).

(4) Where—

15 (a) an order has been made under subsection (1) in respect of goods of any class or description or any particular goods; and

(b) before that order expires or is revoked, an order made under section 39E (1) or (3) takes effect
20 in respect of goods of that class or description or those particular goods,

the order referred to in paragraph (a) is revoked.

(5) (a) Section 39E (1A)—

After section 39E (1), insert :—

25 (1A) Where—

(a) a competent authority of the Commonwealth or of a State (other than New South Wales) or a Territory of the Common-

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

wealth, under the authority of an enactment of the Commonwealth or of that State or Territory, has, after full consideration of the matter and of representations made by interested parties, made an order or similar instrument—

(i) prohibiting the supply in the Commonwealth or in that State or Territory of goods of a class or description specified or referred to in the order or instrument; or

(ii) allowing the supply in the Commonwealth or in that State or Territory of goods of a class or description specified or referred to in the order or instrument but only subject to conditions or restrictions so specified or referred to;

(b) the reason for the making of the order or instrument was that the goods were dangerous; and

(c) the order or instrument has not been revoked or otherwise ceased to have effect,

the Minister, without making a reference under section 39C (1) to the Committee in respect of goods of that class or description, may, if he is satisfied that goods of that class or description are dangerous, make—

(d) where an order or instrument to which paragraph (a) (i) relates is in force—an order prohibiting the supply in New South

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

Wales to consumers of goods of the class or description specified or referred to in the order or instrument; or

(e) where an order or instrument to which paragraph (a) (ii) relates is in force—an order allowing the supply in New South Wales to consumers of goods of the class or description specified or referred to in the order or instrument, but only subject to conditions or restrictions similar to those so specified or referred to.

(b) Section 39E (2)—

After "subsection (1)", insert "or (1A)".

(c) Section 39E (5), (6)—

After section 39E (4), insert :—

(5) An order made under subsection (3) shall not be capable of being renewed or replaced by a further order under that subsection but may, at any time before it expires or is revoked, be replaced by an order made under subsection (1).

(6) Where—

(a) an order has been made under subsection (3) in respect of goods of any class or description or any particular goods; and

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) before that order expires or is revoked, an order made under subsection (1) takes effect in respect of goods of that class or description or those particular goods,

the order referred to in paragraph (a) is revoked.

(6) Section 39F—

After "section 39E (1)", insert "or (1A)".

(7) Section 39G—

After "section 39E (1)", insert ", (1A)".

(8) Section 39H (a)—

After "section 39E (1)", insert ", (1A)".

(9) Part IV, Division 2B—

After Division 2A of Part IV, insert :—

DIVISION 2B.—*Further Powers of Inspectors.*

Power to impound goods, etc., in certain cases.

39I. (1) Where an inspector suspects on reasonable grounds that—

(a) any goods or component parts are being or have been supplied in contravention of section 37; or

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) any goods are being or have been supplied in contravention of an order made under section 39E (1) or (1A),

he may, subject to this section, impound those goods or component parts or, as the case may be, those goods and deal with them in the prescribed manner.

(2) For the purposes of, and in connection with, the exercise of the power conferred by subsection (1), an inspector may enter any place where the goods or component parts are located or where he believes on reasonable grounds that the goods or parts are located.

(3) Any goods or component parts impounded under subsection (1) may, at the option of the inspector who impounded the goods or parts or of any inspector acting in his place, be detained in the place where they were impounded or removed to another place and detained there.

(4) If any person, without the permission of the Commissioner or an inspector, removes, takes away or interferes with goods or component parts which that person knows or might reasonably be expected to know to have been impounded and detained in accordance with this section, that person, in addition to any other penalty to which he may be liable, is, unless he has made an application under section 39J and an order has been made under that section disallowing the impounding, guilty of an offence against this Act.

(5) An inspector shall exercise the powers conferred by subsections (1) and (2) only with the consent, or at the direction, of the Minister.

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

Applications for orders disallowing the impounding of goods, etc.

39J. (1) Any person claiming to be entitled to goods or component parts that have been impounded under section 39I (1) may, within 28 days after the impounding of the goods or parts, make an application to the District Court for an order disallowing the impounding of the goods or parts.

(2) An application made under subsection (1) shall not be heard unless the applicant has previously served a copy of the application on the Commissioner.

(3) The Commissioner shall be entitled to appear at the hearing of an application made under subsection (1) as respondent and may be represented at the hearing either by another officer of the Department appointed by him or by a solicitor or by counsel.

(4) On the hearing of an application made under subsection (1) the following provisions shall apply :—

(a) in the case of goods or component parts impounded for a suspected contravention of section 37, the Court shall make an order disallowing the impounding of the goods or component parts—

(i) if it is proved by or on behalf of the applicant that he would, but for the impounding, be entitled to the goods or parts and it is not proved beyond all reasonable doubt by or on behalf of the Commissioner that the goods or parts were being or had been, at the time of the impounding, supplied in contravention of section 37; or

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(ii) if, in the opinion of the Court, there are exceptional circumstances justifying the making of an order disallowing the impounding,

but otherwise the Court shall refuse the application; or

(b) in the case of goods impounded for a suspected contravention of an order made under section 39E (1) or (1A), the Court shall make an order disallowing the impounding of the goods—

(i) if it is proved by or on behalf of the applicant that he would, but for the impounding, be entitled to the goods and it is not proved beyond all reasonable doubt by or on behalf of the Commissioner that the goods were being or had been, at the time of the impounding, supplied in contravention of the order made under section 39E (1) or (1A); or

(ii) if, in the opinion of the Court, there are exceptional circumstances justifying the making of an order disallowing the impounding,

but otherwise the Court shall refuse the application.

(5) Where the Court makes an order under subsection (4) (a) or (b) disallowing the impounding of goods or component parts, it shall also make one or both of the following orders :—

(a) an order directing the Commissioner to cause the goods or parts to be delivered to the applicant or to such other person as appears to the Court to be entitled to the goods or parts;

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) where the goods or component parts cannot for any reason be so delivered or have depreciated in value by reason of their having been impounded, an order directing the Commissioner to pay to the applicant or to such other person as appears to the Court to be entitled to the goods or parts, such amount by way of compensation as the Court considers to be just and reasonable.

(6) The award of costs with respect to the hearing of an application made under this section shall be in the discretion of the Court.

(7) Where the Court makes an order referred to in subsection (5) (b) or awards any amount as costs under subsection (6), that order or award shall be enforceable as a judgment of the Court.

(8) If no application is made under subsection (1) within 28 days after the date on which goods or component parts were impounded under section 39I (1) or if such an application is made but is refused or is withdrawn before it is heard, the goods or parts shall be forfeited to and become the property of the Crown and shall be destroyed or otherwise disposed of in such manner as the Commissioner shall direct.

(10) (a) Schedule 3, clause 1 (5)—

Omit "a member", insert instead "an officer".

(b) Schedule 3, clause 5 (1)—

After "section 39C (1)", insert "or in relation to any application made under section 37 (7)".

SCHEDULE 5.

Sec. 4.

AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969.

(1) (a) Section 55 (1)—

Omit the subsection, insert instead :—

(1) The Minister may appoint an officer of the Department as an inspector for the purposes of carrying into effect the provisions of this Act.

(b) Section 55 (4)—

After "shall not", insert ", without the consent of the occupier,".

(c) Section 55 (4)—

After "manufacture", insert ", business".

(d) Section 55 (5) (a)—

After "under this", insert "or any other".

(2) Section 55A (1)—

Omit the subsection.

(3) Section 56—

Omit the section, insert instead :—

Proceedings for offences.

56. (1) Proceedings for an offence against this Act (Part V excepted) shall be disposed of summarily before—

(a) a court of petty sessions constituted by a stipendiary magistrate sitting alone;

(b) an industrial magistrate; or

(c) with the written consent of the Minister, the Supreme Court in its summary jurisdiction.

SCHEDULE 5—*continued.*

AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(2) If proceedings for an offence against this Act (Part V excepted) are taken in a court of petty sessions or before an industrial magistrate, the court or magistrate shall not, on convicting any person for the offence, impose a penalty exceeding $2,000, notwithstanding that the maximum penalty which could, apart from this subsection, be imposed under this Act exceeds that amount.

(3) If proceedings for an offence against this Act (Part V excepted) are taken in the Supreme Court in its summary jurisdiction, the Supreme Court may impose a penalty not exceeding the maximum penalty prescribed by this Act in respect of the offence.

(4) Proceedings for an offence against this Act (Part V excepted) shall be commenced by information but may not be commenced after the expiration of 12 months after the time when the offence is alleged to have been committed.

(5) The provisions of the Industrial Arbitration Act, 1940, and the regulations made under that Act, relating to proceedings before an industrial magistrate and to appeals from an industrial magistrate to the Industrial Commission of New South Wales shall, so far as applicable and with any necessary modifications, apply to proceedings before a court of petty sessions or an industrial magistrate for offences against this Act.

(4) Section 56A—

After section 56, insert :—

Injunctions.

56A. Where a person—

(a) is contravening or failing to comply with;

SCHEDULE 5—*continued.*

AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) has on two or more occasions contravened or failed to comply with; or

(c) threatens to contravene or fail to comply with,

a provision of this Act or the regulations or of any order made under this Act or a provision of any other Act administered by the Minister relating to consumer affairs or of any regulation or order made under that other Act, the Supreme Court may, on an application being made by the Commissioner with the consent of the Minister, grant an injunction—

(d) in the case referred to in paragraph (a)—restraining the continuation of the contravention or failure to comply so referred to;

(e) in the case referred to in paragraph (b)—restraining any further contravention or failure to comply so referred to; or

(f) in the case referred to in paragraph (c)—restraining the threatened contravention or failure to comply so referred to.

(5) (a) Section 57 (1)—

Omit "$2,000 or imprisonment for a term not exceeding 12 months, or both", insert instead "$10,000".

(b) Section 57 (2)—

Omit "or the regulations".

SCHEDULE 5—*continued.*

AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(6) (a) Section 58 (2)—

Omit "Commissioner for Consumer Affairs", insert instead "Commissioner".

(b) Section 58 (2) (a) (i)—

Omit "the Commissioner, an officer of the Consumer Affairs Bureau or an inspector, or by any two or more of those persons", insert instead "an officer of the Department or by two or more such officers".

(c) Section 58 (2) (a) (ii)—

Omit "Consumer Affairs Bureau authorised by the Commissioner for the purposes of subsection (2) of section 16", insert instead "Department authorised by the Commissioner for the purposes of section 16 (2)".

(d) Section 58 (2) (b)—

Omit "subsection (2) of section 16E", insert instead "section 16E (2)".

(e) Section 58 (2) (c) (i)—

Omit "Bureau under subsection (1) of section 16", insert instead "Commissioner under section 16 (1)".

(f) Section 58 (2) (c) (ii)—

Omit "subsection (2) of section 16", insert instead "section 16 (2)".

SCHEDULE 6.

Sec. 5.

SAVINGS AND TRANSITIONAL PROVISIONS.

Term of office of officer of Department who is a member of Consumer Affairs Council.

1. The officer of the Department who, at the commencement of Schedule 2 (4), is a member of the Consumer Affairs Council by virtue of being appointed pursuant to section 7 (2) (a) of the Consumer Protection Act, 1969, shall, subject to section 11 (6) of that Act, as in force after that commencement, hold office for a term of 3 years from the date on which he was appointed.

Officers and employees of Consumer Affairs Bureau.

2. Every person employed in the Consumer Affairs Bureau as an officer or an employee immediately before the commencement of Schedule 2 (7) shall be deemed to be an officer, or, as the case may be, to be an employee, appointed and employed under section 15 (1) of the Consumer Protection Act, 1969, as in force after that commencement.

Functions of Consumer Affairs Bureau.

3. (1) Where, immediately before the commencement of Schedule 2 (8), any action for remedying infringements of the Consumer Protection Act, 1969, or of regulations made under that Act, or of any other legislation administered by the Minister administering that Act and relating to the protection of consumers, was being taken by the Consumer Affairs Bureau or had been taken by that Bureau without having been completed, that action may be continued and completed by the Commissioner for Consumer Affairs.

(2) Where, immediately before the commencement of Schedule 2 (8), any matter is being investigated by the Consumer Affairs Bureau, that investigation may be continued and completed by the Commissioner for Consumer Affairs.

Inspectors.

4. An inspector holding office by virtue of being appointed under subsection (1) of section 55 of the Consumer Protection Act, 1969, as in force immediately before the commencement of Schedule 5 (1), shall be deemed to have been appointed under that subsection, as in force after that commencement.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1978
[48c]

CONSUMER PROTECTION (AMENDMENT) BILL, 1978

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are to amend the Consumer Protection Act, 1969, for the purposes of—

(a) replacing the definition of "consumer" with a wider definition which will include any person who—

(i) in relation to goods, acquires (otherwise than for the purpose of re-supply) goods where the price paid or payable for the goods does not exceed the prescribed amount (expected to be $15,000) or, if the price exceeds that amount, the goods are of a kind which are ordinarily acquired for personal, domestic or household use or consumption, are of a prescribed class or description or are of a kind which might ordinarily be acquired for the purpose of a farming undertaking or comprise a motor vehicle;

(ii) acquires services where the price paid or payable for the services does not exceed the prescribed amount referred to above or, if the price exceeds that amount, the services are of a kind which are ordinarily acquired for personal, domestic or household use or consumption or the services are of a kind which might ordinarily be acquired in connection with the carrying on of a farming undertaking; or

(iii) acquires an interest in land but only if the land is not used or intended or apparently intended for use for industrial or commercial purposes (Schedule 1 (4));

(b) extending the definition of "services" to include the granting or conferring of franchises under which a person, in consideration of the franchise, invests money and performs work associated with the investment (Schedule 1 (4));

(c) providing for the Chairman of the Consumer Affairs Council to be appointed from among the members of the Council instead of the Commissioner for Consumer Affairs being the Chairman ex officio as at present (Schedule 2 (1));

(d) redefining the functions of the Consumer Affairs Council and, in particular, providing that the Council may perform its functions only with the consent or at the direction of the Minister (Schedule 2 (5));

(e) providing for the abolition of the Consumer Affairs Bureau, providing for the appointment of officers of the Department of Consumer Affairs and providing for the delegation of the functions and powers of the Commissioner for Consumer Affairs (Schedule 2 (7));

(f) enabling the Commissioner for Consumer Affairs to receive complaints not only with respect to the supply of goods and services but also with respect to the disposal of interests in land (Schedule 2 (8));

(g) clarifying section 16A of the Act so as to make it clear that an investigation referred to in that section may be carried out in respect of a matter whether or not a complaint has been made in respect of the matter to the Commissioner for Consumer Affairs by a consumer (Schedule 2 (9));

(h) making it an offence for a supplier to supply goods to which two or more prices are appended at a price which exceeds the lower or lowest of those prices (Schedule 3 (4));

(i) making it an offence for a supplier to engage in "bait and switch" advertising (that is, the advertising of goods or services at a special price in circumstances where none or only an unreasonably small number of those goods or services is available for acquisition at that price or where goods or services are available for acquisition at that price for an unreasonably short period) (Schedule 3 (4));

(j) extending the scope of section 32 of the Act, which makes it an offence to publish a statement to promote the supply or use of goods or services which is false or misleading, so that the section will apply to statements to promote the disposal of interests in land (Schedule 3 (5));

(k) replacing section 29 of the Act with a new section, 33A, so as to empower a court which finds a person guilty of an offence under Division 2 of Part III of the Act not only to make an order directing that person to make a refund of money paid to him or to provide goods having a true trade description, but also to make an order directing the person to compensate any party to the proceedings before the court who has suffered loss or damage which is attributable in some degree to a false or misleading statement published in contravention of section 32 of the Act (Schedule 3 (7));

(l) providing that section 37 of the Act, which prohibits the supply of dangerous goods or component parts of a class or description prescribed in regulations made under section 36 of the Act unless the goods or parts comply with the requirements of those regulations, is not contravened where the goods or component parts supplied are included in a class or description of goods or component parts, or are particular goods or component parts, in respect of which the Products Safety Committee has issued a certificate of safety, notwithstanding that the goods or parts supplied are included in the class or description of goods or parts so prescribed (Schedule 4(1));

(m) enabling the Minister to make, without making a reference to the Products Safety Committee under section 39C of the Act, an order prohibiting the supply of goods of a class or description specified in the order, or allowing the supply of goods of any such class or description but subject to conditions or restrictions so specified, where a competent authority of the Commonwealth or of another State or of a Territory of the Commonwealth has, on the ground that the goods are dangerous, made a similar order or other instrument (Schedule 4 (5));

(n) inserting into the Act a new section, 39I, which will empower an inspector who suspects on reasonable grounds that any goods or component parts are being or have been supplied in contravention of section 37 of the Act (which prohibits the supply of prescribed goods or parts not complying with prescribed safety requirements) or that any goods are being or have been supplied in contravention of an order made under section 39E (1) or (1A) (that is, an order prohibiting the supply of certain goods considered to be dangerous or allowing the supply of such goods but only subject to conditions or restrictions), to impound and detain those goods or parts (Schedule 4 (9));

(o) inserting into the Act a new section, 39J, which will enable a person from whom goods or parts have been impounded under the proposed section 39I to make an application to the District Court for disallowance of the impounding of the goods or parts and which will provide for the disposal of the impounded goods or parts in the event of the application succeeding and also in the event of such an application being made and being refused (Schedule 4 (9));

(p) replacing section 56 of the Act, which relates to proceedings for offences against the Act, with a new section which will, as well as conferring jurisdiction to deal with such offences on courts of petty sessions and industrial magistrates, confer jurisdiction to deal with those offences on the Supreme Court in its summary jurisdiction but which will enable only the Supreme Court to impose in respect of such an offence a penalty in excess of $2,000 (Schedule 5 (3));

(q) inserting into the Act a new section, 56A, which will enable the Supreme Court, on the application of the Commissioner for Consumer Affairs made with the consent of the Minister, to grant an injunction for repeated, continued or threatened breaches of the Act or regulations under the Act or of other legislation administered by the Minister which relates to consumer affairs (Schedule 5 (4)); and

(r) providing for an increase in the maximum penalty that may be imposed in respect of an offence against the Act to $10,000 and abolishing sentences of imprisonment for such an offence (Schedule 5 (5)).

The Bill also makes other amendments to the Act of a minor, consequential or ancillary nature.

CONSUMER PROTECTION (AMENDMENT) BILL, 1978

No. , 1978.

A BILL FOR

An Act to amend the Consumer Protection Act, 1969, for the purposes of reorganising the Consumer Affairs Council, abolishing the Consumer Affairs Bureau and conferring the functions of the Bureau on the Commissioner for Consumer Affairs, and providing increased protection to consumers with respect to certain types of transactions, and for certain other purposes.

[MR EINFELD—15 *February*, 1978.]

44087F 409—A

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 :—

5 **1.** This Act may be cited as the "Consumer Protection (Amendment) Act, 1978". 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.

(2) Section 4 shall, in its application to a provision of 10 Schedules 1–5, commence on the day on which that provision commences.

(3) The several provisions of Schedules 1–5 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation 15 published in the Gazette.

3. This Act contains the following Schedules:— Schedules.

SCHEDULE 1.—AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969.

SCHEDULE 2.—AMENDMENTS TO PART II OF THE 20 CONSUMER PROTECTION ACT, 1969.

SCHEDULE 3.—AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969.

SCHEDULE 4.—AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969.

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SCHEDULE 5.—AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969.

SCHEDULE 6.—SAVINGS AND TRANSITIONAL PROVISIONS.

4. The Consumer Protection Act, 1969, is amended in the manner set forth in Schedules 1–5.

Amendment of Act No. 28, 1969.

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5. Schedule 6 has effect.

Savings and transitional provisions.

SCHEDULE 1.

Sec. 4.

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969.

(1) Long title—

Omit "and the establishment of a Consumer Affairs Bureau".

(2) Section 2—

(a) Omit the matter relating to Division 3 of Part II, insert instead :—

DIVISION 3.—*Commissioner for Consumer Affairs —ss.* 12A–16F.

(b) Omit the matter relating to Division 2 of Part III, insert instead :—

DIVISION 2.—*Trade Descriptions and Unfair Practices—ss.* 20–31.

(c) From the matter relating to Division 4 of Part III, omit "33, 34", insert instead "33–34".

(d) After the matter relating to Division 2A of Part IV, insert :—

DIVISION 2B.—*Further Powers of Inspectors—ss.* 39I, 39J.

(3) Section 4 (2)—

(a) Omit ", Fruit Cases Act, 1912".

(b) Omit ", Stock and Station and Real Estate", insert instead "and".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(4) (a) Section 5 (1), definition of "acquire"—

After "otherwise indicates or requires", insert :—

"acquire" includes—

(a) in relation to goods—acquire by way of purchase, exchange or taking on lease, on hire or on hire-purchase;

(b) in relation to services—acquire by way of purchase or exchange; and

(c) in relation to an interest in land, acquire by way of purchase, exchange or taking on lease or by any other method by which an interest in land may lawfully be acquired for a valuable consideration;

(b) Section 5 (1), definition of "Bureau"—

Omit the definition.

(c) Section 5 (1), definition of "consumer"—

Omit the definition, insert instead :—

"consumer" means—

(a) a person who acquires goods from a supplier, but only if the person does not acquire the goods, and does not

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

hold himself out as acquiring the goods, for the purposes of resupply and—

(i) the price paid or payable for the goods (not being goods to which subparagraph (ii) relates) does not exceed the prescribed amount or, where the price paid or payable for the goods (not being goods to which subparagraph (ii) relates) exceeds the prescribed amount, the goods—

(a) are of a kind which are ordinarily acquired for personal, domestic or household use or consumption; or

(b) are of a class or description prescribed for the purpose of this subparagraph,

and the person does not acquire the goods, and does not hold himself out as acquiring the goods, in connection with a business carried on by him, for the purpose of consuming or transforming them in the course of a process of manufacture or production or for the purpose of repairing or treating fixtures on land or other goods; or

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(ii) the goods, whether or not the price paid or payable for the goods exceeds the prescribed amount—

(a) are of a kind which might ordinarily be acquired for the purpose of a farming undertaking and are in fact acquired for that purpose; or

(b) comprise a motor vehicle within the meaning of the Motor Dealers Act, 1974;

(b) a person who acquires services from a supplier, but only if—

(i) the price paid or payable for the services does not exceed the prescribed amount; or

(ii) where the price paid or payable for the services exceeds the prescribed amount, the services—

(a) are of a kind which are ordinarily acquired for personal, domestic or household use or consumption; or

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) are of a kind which might ordinarily be acquired in connection with the carrying on of a farming undertaking and are in fact acquired for that purpose; or

(c) a person who acquires an interest in land from another person but only if the land is not used or intended, or apparently intended for use, for industrial or commercial purposes;

(d) Section 5 (1), definitions of "disposal", "farming undertaking"—

After the definition of "Department", insert :—

"disposal", in relation to an interest in land, includes disposal by way of sale, exchange or lease or by any other method by which an interest in land may lawfully be disposed of for a valuable consideration;

"farming undertaking" includes any agricultural, pastoral, horticultural, orcharding or viticultural undertaking;

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(e) Section 5 (1), definitions of "interest", "officer of the Department" or "officer", "Products Safety Committee" or "Committee"—

After the definition of "inspector", insert :—

"interest", in relation to land, means—

(a) a legal or an equitable estate or interest in the land;

(b) a right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of shares, or by virtue of a contract to purchase shares, in an incorporated company that owns the land or the building; or

(c) a right, power or privilege over, or in connection with, the land;

"officer of the Department" or "officer" means the Commissioner or a person appointed and holding office under section 15;

"Products Safety Committee" or "Committee" means the Products Safety Committee established under section 39B;

(f) Section 5 (1), definition of "services"—

(i) From paragraph (b), omit "or".

(ii) From paragraph (c), omit "facilities,", insert instead "facilities; or".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(iii) After paragraph (c), insert :—

5 (d) a contract under which one person grants or confers or purports to grant or confer a franchise or other right, benefit or privilege to one or more other persons in consideration of the investment by that 10 other person or those other persons of money and the performance by him or them of work associated with that investment,

(g) Section 5 (1), definition of "supply"—

15 Omit "render.", insert instead "render for a valuable consideration;".

(h) Section 5 (1), definition of "Supreme Court"—

After the definition of "supply", insert :—

"Supreme Court" means the Supreme Court of 20 New South Wales.

(i) Section 5 (2) (d)—

Omit "and".

(j) Section 5 (2) (e)—

Omit "goods.", insert instead "goods;".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(k) Section 5 (2) (f), (g)—

5 After section 5 (2) (e), insert :—

(f) a reference to the disposal or acquisition of an interest in land includes a reference to agreeing to dispose of or acquire such an interest, whether the agreement is in writing or is evi-
10 denced by writing or not; and

(g) a reference to the disposal or acquisition of an interest in land includes a reference to the disposal or acquisition of such an interest together with goods

15 (l) Section 5 (3), (4)—

After section 5 (2), insert:—

(3) Where it is alleged in any proceeding under this Act or in any other proceeding in respect of a matter arising under this Act that a person was a
20 consumer in relation to any particular goods, services or land, it shall be presumed, unless the contrary is established, that the person was a consumer in relation to those goods or services or that land.

(4) Where by virtue of any provision of this Act
25 an inspector has power to take goods after paying a just price for them, the inspector shall be deemed to have paid the just price if he gives or tenders to a person who appears to be the owner of or in charge

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

of the goods a voucher, in or to the effect of the prescribed form, which purports to contain an undertaking by the Commissioner to pay the price written by the inspector on the voucher, being such price as the inspector has agreed on with that owner or person in charge or, in the absence of such an agreement, such price as appears to be the market price of the goods.

SCHEDULE 2. Sec. 4.

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969.

(1) Section 8—

Omit the section, insert instead:—

Chairman of Council.

8. (1) One of the members of the Council shall, by the instrument of his appointment or by a subsequent instrument executed by the Governor, be appointed as Chairman of the Council to hold office during his term of office as a member.

(2) The Chairman of the Council shall preside at all meetings of the Council at which he is present but if he is unable for any reason to attend any meeting of the Council, the Minister shall appoint one of the other members of the Council to preside at the meeting.

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(3) A member of the Council appointed under subsection (2) shall, when presiding at a meeting of the Council, be deemed to be the Chairman of the Council.

(2) Section 9 (1)—

Omit the subsection, insert instead :—

(1) In the event of any member of the Council being unable to attend a meeting or meetings of the Council due to illness or other cause, the Governor may appoint as an alternative member a person who has the same qualification for appointment as a member of the Council as the member was required to have when he was appointed to act in place of the member during his absence.

(3) Section 10—

Omit "other than the Chairman shall hold office for a term of three years and shall be eligible for reappointment", insert instead "shall hold office for a term of 3 years and shall, from time to time, be eligible for reappointment for a further term of 3 years".

(4) (a) Section 11 (3)—

Omit the subsection, insert instead :—

(3) At a meeting of the Council, a majority of the members of the Council shall constitute a quorum.

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) Section 11 (5)—

Omit "or person acting in his place at any meeting of the Council".

(c) Section 11 (6)—

(i) Omit ", other than the Chairman,".

(ii) Omit "by the Governor.", insert instead :—

by the Governor; or

(f) if, in the case of the member referred to in section 7 (2) (a), he ceases to be an officer of the Department.

(d) Section 11 (7)—

Omit the subsection, insert instead :—

(7) On the occurrence of a casual vacancy in the office of a member of the Council, the Governor may fill the vacancy by appointing as a member of the Council a person who has the same qualification for appointment as a member of the Council as the person whose office has been vacated was required to have when he was appointed and the person appointed to fill the vacancy shall hold office for the residue of the term of office of his predecessor.

(e) Section 11 (7A), (7B)—

Omit the subsections.

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(f) Section 11 (8)—

Omit "the Chairman", insert instead "the member referred to in section 7 (2) (a)".

(g) Section 11 (9)—

Omit ", as subsequently amended".

(5) Section 12—

Omit the section, insert instead :—

Functions of Council.

12. (1) The Council shall have the following functions :—

(a) the carrying out of investigations into matters relating to the interests of consumers and the making of recommendations with respect to those matters;

(b) the provision of advice to the Minister with respect to the operation of this Act or any other Act which is designed to protect the interests of consumers; and

(c) any other function imposed on the Council by the regulations.

(2) The Council shall perform a function referred to in subsection (1) only with the consent or at the direction of the Minister.

(3) The Council may, with the consent of the Minister, co-operate or affiliate with any organisation that has power to make an investigation of the nature referred to in subsection (1) (a), whether in New South Wales or elsewhere.

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(6) Part II, Division 3, heading—

Omit "*Consumer Affairs Bureau*", insert instead "*Commissioner for Consumer Affairs*".

(7) Sections 15, 15A—

Omit section 15, insert instead:—

Officers, etc., of Department.

15. (1) Such persons as may be necessary to enable the Commissioner to perform his functions and exercise his powers under this Act shall be appointed and employed under and subject to the Public Service Act, 1902, as officers or employees.

(2) The Commissioner may, with the approval of the Minister, appoint and employ, otherwise than under a contract of service, on such terms and conditions as he thinks fit and for any particular purpose any person, body or organisation considered to be capable of providing services, information or advice required by the Commissioner to enable him to perform his functions or exercise his powers under this Act.

Delegation.

15A. (1) The Commissioner may, by instrument in writing, delegate such of his functions and powers (other than this power of delegation) as may be specified in the instrument to any officer or employee of the Department and may, by similar instrument, revoke any such delegation either in whole or in part.

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(2) A delegation under subsection (1) may be made subject to such conditions or limitations as to the performance or exercise of any of the functions or powers that have been delegated, or as to time or circumstance, as may be specified in the instrument of delegation.

(3) A function or power the performance or exercise of which has been delegated under subsection (1) may, while the delegation remains unrevoked, be performed or exercised by the delegate from time to time in accordance with the terms of the delegation.

(4) Notwithstanding the making of any delegation under subsection (1), the Commissioner may continue to perform or exercise all or any of the functions or powers that have been delegated.

(5) Any act, omission or thing done, omitted or undergone by a delegate while acting pursuant to a delegation made under subsection (1) shall have the same force and effect as if the act, omission or thing had been done, omitted or undergone by the Commissioner.

(8) (a) Section 16 (1)—

Omit "Bureau", insert instead "Commissioner".

(b) Section 16 (1) (a)—

After "remedying infringements of", insert ", or, as the case may be, securing compliance with,".

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(c) Section 16 (1) (a)—

5 After "otherwise;", insert "and".

(d) Section 16 (1) (b) (ii)—

Omit "goods or services", insert instead "the supply of goods or services or the disposal of interests in land".

10 (e) Section 16 (1) (b) (ii)—

Omit "it", insert instead "he".

(f) Section 16 (1) (b) (iii)—

After "conduct research,", insert "to make investigations,".

15 (g) Section 16 (1) (b) (iii)—

After "work;", insert "and".

(h) Section 16 (1) (b) (iv), (v)—

Omit the subparagraphs, insert instead :—

(iv) to provide the Council with such information
20 as it may reasonably require relating to the supply to consumers of goods or services or

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

the disposal to consumers of interests in land or relating to consumer affairs generally and to carry out such research as may be necessary for the purpose of enabling that information to be provided.

(i) Section 16 (2)—

Omit "Bureau", insert instead "Department".

(9) Section 16A (1)—

Omit the subsection, insert instead :—

(1) An investigation under section 16 (1) (b) (ii) or (iii) may be made by one or more officers designated by the Commissioner for the purpose.

(10) (a) Section 16B—

After "making an investigation", insert "relating to the supply of goods or services".

(b) Section 16B (2)—

At the end of section 16B, insert:—

(2) An investigating officer making an investigation relating to the disposal of an interest in land may, at any reasonable time, for the purposes of the investigation—

(a) enter any place at which transactions involving the disposal of interests in land takes place or which is land an interest in

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

which is being or is proposed to be disposed of, or at which he has reason to believe that any such transactions take place or, as the case may be, which he has reason to believe is any such land;

(b) inspect any documents in any such place which relate to the disposal of an interest in land; or

(c) in any such place, make such examination as he considers to be necessary or desirable.

(11) Section 16F—

Omit "powers, authorities, duties or functions", insert instead "functions or powers".

(12) (a) Section 16G (1) (a)—

After "goods or services", insert "or the disposal to him of an interest in land".

(b) Section 16G (1) (b)—

After "supply", insert "or disposal".

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(13) Section 16J (6)—

5 After "goods or services", insert ", or, as the case may be, the disposal of an interest in land,".

(14) Sections 17, 18—

Omit the sections, insert instead:—

Liability of officers of Department, etc.

17. Neither the Commissioner or any other officer of the
10 Department nor any member of the Council shall be personally liable, nor shall the Crown be liable, for any act done or omitted, or any statement issued, by the Commissioner or any such officer or the Council in good faith in the course of the operations of the Commissioner or the
15 Council.

Annual report.

18. The Commissioner shall, not later than 3 months after the expiration of the period of 12 months ending on 30th June in each year, prepare a report in respect of his operations and the operations of the Department and of
20 the Council during that period of 12 months and submit the report to the Minister for presentation to Parliament.

SCHEDULE 3.

Sec. 4.

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969.

(1) Part III, Division 2, heading—

After *"Trade Descriptions"*, insert *"and Unfair Practices"*.

(2) (a) Section 21 (3)—

Omit "consumer", insert instead "person acquiring the goods".

(b) Section 21 (4)—

Omit "consumer of", insert instead "person acquiring".

(3) Section 22 (a)—

Omit "consumer", insert instead "person acquiring the goods".

(4) Sections 29, 29A—

Omit section 29, insert instead :—

29. (1) A supplier who supplies goods to which two or more prices are appended at a price which exceeds the lower or the lowest of those prices is guilty of an offence against this Act. Double ticketing.

(2) For the purposes of subsection (1), a price that is not appended to goods shall be deemed to be appended to the goods if it is—

(a) appended to any covering, label, reel or thing used in connection with the goods;

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) used in connection with the goods on any thing on which the goods are mounted for display or are exposed for supply; or

(c) included in any advertisement or catalogue which is used to promote the supply of the goods or make known the availability of the goods for acquisition.

(3) For the purposes of subsection (1), two or more prices are appended to goods notwithstanding that one of those prices is written, printed or stamped wholly or partly over another of those prices.

(4) For the purposes of this section, a price shall be deemed to be appended to goods or to any covering, label, reel or thing used in connection with the goods if it is annexed or affixed to, or is written, printed or stamped on or otherwise applied to, the goods or to the covering, label, reel or thing, as the case may be.

Bait advertising.

29A. (1) If a supplier advertises for supply at a special price goods or services that he does not intend to make available for supply at that price—

(a) during a period, or in a quantity, specified in the advertisement; or

(b) if no such period or quantity is specified in the advertisement, during such period and in such quantity as is reasonable having regard to the nature of the market in which the supplier carries on business and the nature of the advertisement,

he is guilty of an offence against this Act.

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(2) Where a supplier who has advertised for supply at a special price a quantity of goods or services specified in the advertisement fails to make available for supply to any person who offers to acquire at that price goods or services of the description specified in the advertisement, that supplier is guilty of an offence against this Act.

(3) In any proceedings for an offence under subsection (2), it is a defence for the supplier to establish that—

(a) he was, at the time of the publication of the advertisement, able to supply the quantity of goods or services specified in the advertisement; and

(b) since that publication, he has exhausted that quantity of goods or services by supplying them at the advertised special price.

(4) Where a supplier who has advertised goods or services for supply at a special price for a specified period fails to make available those goods or services for supply to any person who, during that period, offers to acquire those goods or services at that price, that supplier is guilty of an offence against this Act.

(5) Where a supplier who has advertised goods or services for supply at a special price without specifying in the advertisement the period during which the goods or services are available for supply, or the quantity of goods or services that are available for supply, at that price, fails

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

to make those goods or services available for supply to any person who, during such period as is reasonable, having regard to the nature of the market in which the supplier carries on business and the nature of the advertisement, offers to acquire them at that price, that supplier is guilty of an offence against this Act.

(6) In any proceedings for an offence under subsection (4) or (5), it is a defence for the supplier to establish that—

(a) he offered to make available for supply, or offered to procure another person to make available for supply, goods or services of the kind advertised to the person referred to in subsection (4) or, as the case may be, subsection (5) within a reasonable period, in a reasonable quantity and at the advertised special price; or

(b) he immediately offered to make available for supply, or offered to procure another person to make available for supply within a reasonable period, equivalent goods or services to the person referred to in subsection (4) or, as the case may be, subsection (5) in a reasonable quantity and at the price at which the first mentioned goods or services were advertised,

and, in either case, where the offer was accepted by that person, the supplier has made available for supply, or procured another person to make available for supply, goods or services of that kind or equivalent to those referred to in paragraph (a).

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(7) For the purposes of this section, "special price", in relation to an advertisement for the supply of goods or services, means—

(a) a price that is represented in the advertisement for the supply of goods or services to be a special or bargain price, by reference to an ordinary price or otherwise; or

(b) a price that a person who reads, hears or sees the advertisement would reasonably understand to be a special or bargain price, having regard to the prices at which the goods or services advertised or similar goods or services are ordinarily supplied.

(5) Section 32 (1) (a)—

Omit the paragraph, insert instead :—

(a) is intended or apparently intended by that person or any other person to promote the supply or use of goods or services or the disposal of interests in land; and

(6) (a) Section 32A (1) (a)—

Omit the paragraph, insert instead :—

(a) is intended or apparently intended by the first mentioned person or any other person to promote the supply or use of goods or services or the disposal of interests in land; and

(b) Section 32A (1) (b)—

Omit "Bureau" wherever occurring, insert instead "Department".

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(7) Section 33A—

5 After section 33, insert :—

Powers of court on finding of guilt in respect of certain offences under Pt. III.

33A. (1) Where a person is found guilty of an offence under Division 2 in respect of the supply of goods to which a false trade description is appended, the court which made the finding may, in addition to any penalty imposed in 10 respect of the offence, make an order directing the person found guilty of the offence, within a period specified in the order—

(a) to refund to the person who acquired the goods any money paid to him by that person for the 15 goods; or

(b) to provide the person who acquired the goods with goods in accordance with the true trade description or, if he is unable to provide goods of that description, to refund the money paid 20 to him by that person for the goods.

(2) Where a person is found guilty of an offence under section 32 and the court which made the finding also finds that a party to the proceedings for the offence has sustained loss or damage which is attributable, or partly 25 attributable, to the reliance by that other person on the statement to which the offence relates, that court may, in addition to any penalty imposed in respect of the offence, make an order directing the person found guilty of the offence, within a period specified in the order—

30 (a) to refund any money paid, or to return any property transferred, to him by that party to the proceedings; or

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) to pay to that other person money equivalent in amount to the loss or damage that that party has sustained.

(3) Where the court referred to in subsection (1) or (2) is a court of summary jurisdiction, that court shall not make an order under either of those subsections directing the refund or payment of an amount in excess of the amount for the time being specified in section 12 (1) of the Courts of Petty Sessions (Civil Claims) Act, 1970.

(4) An order made under subsection (1) or (2) by a court of summary jurisdiction may be enforced in the court, and Part V of the Courts of Petty Sessions (Civil Claims) Act, 1970, shall apply in respect of the court as if it were a court of petty sessions exercising jurisdiction under that Act and in respect of the order as if—

(a) the order were a judgment of a court of petty sessions exercising that jurisdiction;

(b) the amount ordered to be refunded were a judgment debt referred to in that Part;

(c) the person 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.

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(5) An order made under subsection (1) or (2) by the Supreme Court may be enforced in that Court as if—

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

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

(8) (a) Section 34E (2)—

Omit "Except so far as may be authorised by or under the regulations, a", insert instead "A".

(b) Section 34E (4)—

After section 34E (3), insert:—

(4) The regulations may contain such exemptions from the operation of subsections (1) and (2), applicable in such cases, as may be prescribed.

SCHEDULE 4.

Sec. 4.

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969.

(1) Section 37 (6)–(11)—

After section 37 (5), insert:—

(6) Subsections (1) and (2) shall not apply in relation to any class or description of goods or component parts, or any particular goods or component parts, in respect of which a certificate of safety has been issued by the Products Safety Committee, notwithstanding that the class or description of goods or component parts or, as the case may be, the particular goods or component parts are goods or component parts included in a class or description of goods or component parts in respect of which regulations made under section 36 are for the time being in force.

(7) Any person who wishes to supply goods or component parts of a class or description, or particular goods or component parts, that are included in a class or description of goods or component parts in respect of which regulations made under section 36 are for the time being in force may apply in writing to the Products Safety Committee for the issue of a certificate of safety in respect of goods or component parts of the first mentioned class or description or, as the case may be, those particular goods or component parts.

(8) Where, on consideration of an application made to it under subsection (7), the Products Safety Committee is satisfied that the goods or component parts to which the application relates are sufficiently safe to warrant their exemption from the requirements of the regulations made under section 36, the Committee shall issue the certificate applied for, but if it is not so satisfied it shall refuse the application and notify the applicant in writing of the refusal, which shall include a statement of the reasons as to why the application was refused.

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(9) The Products Safety Committee, in considering an application made under subsection (7)—

(a) may make such investigations as it considers necessary to enable it to arrive at a decision with respect to the application;

(b) shall take into account any representations made to it by or on behalf of the applicant; and

(c) unless in all the circumstances it does not consider that it is reasonably practicable to do so, shall permit the applicant or his representative, if the applicant so wishes, to be heard orally by the Committee, or by a member of the Committee appointed for the purpose.

(10) Subject to subsection (9) and clause 5 of Schedule 3, the Products Safety Committee may determine its own procedure for considering applications made under subsection (7) and, in particular, may determine whether or not its consideration of the application should be held in public.

(11) The provisions of section 39D shall apply in relation to an investigation made under subsection (9) (a) in the same way as they apply in relation to an investigation of a question referred to the Products Safety Committee under section 39C (1).

(2) Section 39B (1), definition of "Committee"—

Omit the definition.

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(3) Section 39C (1)—

5 Omit "to consumers in New South Wales", insert instead "in New South Wales to consumers".

(4) Section 39DA (3), (4)—

Omit the subsections, insert instead :—

(3) An order made under subsection (1) shall not be
10 capable of being renewed or replaced by a further order under that subsection but may, at any time before it expires or is revoked, be replaced by an order made under section 39E (1) or (3).

(4) Where—

15 (a) an order has been made under subsection (1) in respect of goods of any class or description or any particular goods; and

(b) before that order expires or is revoked, an order made under section 39E (1) or (3) takes effect
20 in respect of goods of that class or description or those particular goods,

the order referred to in paragraph (a) is revoked.

(5) (a) Section 39E (1A)—

After section 39E (1), insert :—

25 (1A) Where—

(a) a competent authority of the Commonwealth or of a State (other than New South Wales) or a Territory of the Common-

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

wealth, under the authority of an enactment of the Commonwealth or of that State or Territory, has, after full consideration of the matter and of representations made by interested parties, made an order or similar instrument—

(i) prohibiting the supply in the Commonwealth or in that State or Territory of goods of a class or description specified or referred to in the order or instrument; or

(ii) allowing the supply in the Commonwealth or in that State or Territory of goods of a class or description specified or referred to in the order or instrument but only subject to conditions or restrictions so specified or referred to;

(b) the reason for the making of the order or instrument was that the goods were dangerous; and

(c) the order or instrument has not been revoked or otherwise ceased to have effect,

the Minister, without making a reference under section 39C (1) to the Committee in respect of goods of that class or description, may, if he is satisfied that goods of that class or description are dangerous, make—

(d) where an order or instrument to which paragraph (a) (i) relates is in force—an order prohibiting the supply in New South

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

Wales to consumers of goods of the class or description specified or referred to in the order or instrument; or

(e) where an order or instrument to which paragraph (a) (ii) relates is in force—an order allowing the supply in New South Wales to consumers of goods of the class or description specified or referred to in the order or instrument, but only subject to conditions or restrictions similar to those so specified or referred to.

(b) Section 39E (2)—

After "subsection (1)", insert "or (1A)".

(c) Section 39E (5), (6)—

After section 39E (4), insert :—

(5) An order made under subsection (3) shall not be capable of being renewed or replaced by a further order under that subsection but may, at any time before it expires or is revoked, be replaced by an order made under subsection (1).

(6) Where—

(a) an order has been made under subsection (3) in respect of goods of any class or description or any particular goods; and

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) before that order expires or is revoked, an order made under subsection (1) takes effect in respect of goods of that class or description or those particular goods,

the order referred to in paragraph (a) is revoked.

(6) Section 39F—

After "section 39E (1)", insert "or (1A)".

(7) Section 39G—

After "section 39E (1)", insert ", (1A)".

(8) Section 39H (a)—

After "section 39E (1)", insert ", (1A)".

(9) Part IV, Division 2B—

After Division 2A of Part IV, insert :—

DIVISION 2B.—*Further Powers of Inspectors.*

Power to impound goods, etc., in certain cases.

39I. (1) Where an inspector suspects on reasonable grounds that—

(a) any goods or component parts are being or have been supplied in contravention of section 37; or

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) any goods are being or have been supplied in contravention of an order made under section 39E (1) or (1A),

he may, subject to this section, impound those goods or component parts or, as the case may be, those goods and deal with them in the prescribed manner.

(2) For the purposes of, and in connection with, the exercise of the power conferred by subsection (1), an inspector may enter any place where the goods or component parts are located or where he believes on reasonable grounds that the goods or parts are located.

(3) Any goods or component parts impounded under subsection (1) may, at the option of the inspector who impounded the goods or parts or of any inspector acting in his place, be detained in the place where they were impounded or removed to another place and detained there.

(4) If any person, without the permission of the Commissioner or an inspector, removes, takes away or interferes with goods or component parts which that person knows or might reasonably be expected to know to have been impounded and detained in accordance with this section, that person, in addition to any other penalty to which he may be liable, is, unless he has made an application under section 39J and an order has been made under that section disallowing the impounding, guilty of an offence against this Act.

(5) An inspector shall exercise the powers conferred by subsections (1) and (2) only with the consent, or at the direction, of the Minister.

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

Applications for orders disallowing the impounding of goods, etc.

39J. (1) Any person claiming to be entitled to goods or component parts that have been impounded under section 39I (1) may, within 28 days after the impounding of the goods or parts, make an application to the District Court for an order disallowing the impounding of the goods or parts.

(2) An application made under subsection (1) shall not be heard unless the applicant has previously served a copy of the application on the Commissioner.

(3) The Commissioner shall be entitled to appear at the hearing of an application made under subsection (1) as respondent and may be represented at the hearing either by another officer of the Department appointed by him or by a solicitor or by counsel.

(4) On the hearing of an application made under subsection (1) the following provisions shall apply :—

(a) in the case of goods or component parts impounded for a suspected contravention of section 37, the Court shall make an order disallowing the impounding of the goods or component parts—

(i) if it is proved by or on behalf of the applicant that he would, but for the impounding, be entitled to the goods or parts and it is not proved beyond all reasonable doubt by or on behalf of the Commissioner that the goods or parts were being or had been, at the time of the impounding, supplied in contravention of section 37; or

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(ii) if, in the opinion of the Court, there are exceptional circumstances justifying the making of an order disallowing the impounding,

but otherwise the Court shall refuse the application; or

(b) in the case of goods impounded for a suspected contravention of an order made under section 39E (1) or (1A), the Court shall make an order disallowing the impounding of the goods—

(i) if it is proved by or on behalf of the applicant that he would, but for the impounding, be entitled to the goods and it is not proved beyond all reasonable doubt by or on behalf of the Commissioner that the goods were being or had been, at the time of the impounding, supplied in contravention of the order made under section 39E (1) or (1A); or

(ii) if, in the opinion of the Court, there are exceptional circumstances justifying the making of an order disallowing the impounding,

but otherwise the Court shall refuse the application.

(5) Where the Court makes an order under subsection (4) (a) or (b) disallowing the impounding of goods or component parts, it shall also make one or both of the following orders :—

(a) an order directing the Commissioner to cause the goods or parts to be delivered to the applicant or to such other person as appears to the Court to be entitled to the goods or parts;

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) where the goods or component parts cannot for any reason be so delivered or have depreciated in value by reason of their having been impounded, an order directing the Commissioner to pay to the applicant or to such other person as appears to the Court to be entitled to the goods or parts, such amount by way of compensation as the Court considers to be just and reasonable.

(6) The award of costs with respect to the hearing of an application made under this section shall be in the discretion of the Court.

(7) Where the Court makes an order referred to in subsection (5) (b) or awards any amount as costs under subsection (6), that order or award shall be enforceable as a judgment of the Court.

(8) If no application is made under subsection (1) within 28 days after the date on which goods or component parts were impounded under section 39I (1) or if such an application is made but is refused or is withdrawn before it is heard, the goods or parts shall be forfeited to and become the property of the Crown and shall be destroyed or otherwise disposed of in such manner as the Commissioner shall direct.

(10) (a) Schedule 3, clause 1 (5)—

Omit "a member", insert instead "an officer".

(b) Schedule 3, clause 5 (1)—

After "section 39C (1)", insert "or in relation to any application made under section 37 (7)".

SCHEDULE 5.

Sec. 4.

AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969.

(1) (a) Section 55 (1)—

Omit the subsection, insert instead :—

(1) The Minister may appoint an officer of the Department as an inspector for the purposes of carrying into effect the provisions of this Act.

(b) Section 55 (4)—

After "shall not", insert ", without the consent of the occupier,".

(c) Section 55 (4)—

After "manufacture", insert ", business".

(d) Section 55 (5) (a)—

After "under this", insert "or any other".

(2) Section 55A (1)—

Omit the subsection.

(3) Section 56—

Omit the section, insert instead :—

Proceedings for offences.

56. (1) Proceedings for an offence against this Act (Part V excepted) shall be disposed of summarily before—

(a) a court of petty sessions constituted by a stipendiary magistrate sitting alone;

(b) an industrial magistrate; or

(c) with the written consent of the Minister, the Supreme Court in its summary jurisdiction.

SCHEDULE 5—*continued.*

AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(2) If proceedings for an offence against this Act (Part V excepted) are taken in a court of petty sessions or before an industrial magistrate, the court or magistrate shall not, on convicting any person for the offence, impose a penalty exceeding $2,000, notwithstanding that the maximum penalty which could, apart from this subsection, be imposed under this Act exceeds that amount.

(3) If proceedings for an offence against this Act (Part V excepted) are taken in the Supreme Court in its summary jurisdiction, the Supreme Court may impose a penalty not exceeding the maximum penalty prescribed by this Act in respect of the offence.

(4) Proceedings for an offence against this Act (Part V excepted) shall be commenced by information but may not be commenced after the expiration of 12 months after the time when the offence is alleged to have been committed.

(5) The provisions of the Industrial Arbitration Act, 1940, and the regulations made under that Act, relating to proceedings before an industrial magistrate and to appeals from an industrial magistrate to the Industrial Commission of New South Wales shall, so far as applicable and with any necessary modifications, apply to proceedings before a court of petty sessions or an industrial magistrate for offences against this Act.

(4) Section 56A—

After section 56, insert :—

56A. Where a person— Injunctions.

(a) is contravening or failing to comply with;

SCHEDULE 5—*continued.*

AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) has on two or more occasions contravened or failed to comply with; or

(c) threatens to contravene or fail to comply with,

a provision of this Act or the regulations or of any order made under this Act or a provision of any other Act administered by the Minister relating to consumer affairs or of any regulation or order made under that other Act, the Supreme Court may, on an application being made by the Commissioner with the consent of the Minister, grant an injunction—

(d) in the case referred to in paragraph (a)—restraining the continuation of the contravention or failure to comply so referred to;

(e) in the case referred to in paragraph (b)—restraining any further contravention or failure to comply so referred to; or

(f) in the case referred to in paragraph (c)—restraining the threatened contravention or failure to comply so referred to.

(5) (a) Section 57 (1)—

Omit "$2,000 or imprisonment for a term not exceeding 12 months, or both", insert instead "$10,000".

(b) Section 57 (2)—

Omit "or the regulations".

SCHEDULE 5—*continued.*

AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(6) (a) Section 58 (2)—

5 Omit "Commissioner for Consumer Affairs", insert instead "Commissioner".

(b) Section 58 (2) (a) (i)—

Omit "the Commissioner, an officer of the Consumer Affairs Bureau or an inspector, or by any two or more
10 of those persons", insert instead "an officer of the Department or by two or more such officers".

(c) Section 58 (2) (a) (ii)—

Omit "Consumer Affairs Bureau authorised by the Commissioner for the purposes of subsection (2) of
15 section 16", insert instead "Department authorised by the Commissioner for the purposes of section 16 (2)".

(d) Section 58 (2) (b)—

Omit "subsection (2) of section 16E", insert instead "section 16E (2)".

20 (e) Section 58 (2) (c) (i)—

Omit "Bureau under subsection (1) of section 16", insert instead "Commissioner under section 16 (1)".

(f) Section 58 (2) (c) (ii)—

Omit "subsection (2) of section 16", insert instead
25 "section 16 (2)".

SCHEDULE 6.

Sec. 5.

Savings and Transitional Provisions.

1. The officer of the Department who, at the commencement of Schedule 2 (4), is a member of the Consumer Affairs Council by virtue of being appointed pursuant to section 7 (2) (a) of the Consumer Protection Act, 1969, shall, subject to section 11 (6) of that Act, as in force after that commencement, hold office for a term of 3 years from the date on which he was appointed.

Term of office of officer of Department who is a member of Consumer Affairs Council.

2. Every person employed in the Consumer Affairs Bureau as an officer or an employee immediately before the commencement of Schedule 2 (7) shall be deemed to be an officer, or, as the case may be, to be an employee, appointed and employed under section 15 (1) of the Consumer Protection Act, 1969, as in force after that commencement.

Officers and employees of Consumer Affairs Bureau.

3. (1) Where, immediately before the commencement of Schedule 2 (8), any action for remedying infringements of the Consumer Protection Act, 1969, or of regulations made under that Act, or of any other legislation administered by the Minister administering that Act and relating to the protection of consumers, was being taken by the Consumer Affairs Bureau or had been taken by that Bureau without having been completed, that action may be continued and completed by the Commissioner for Consumer Affairs.

Functions of Consumer Affairs Bureau.

(2) Where, immediately before the commencement of Schedule 2 (8), any matter is being investigated by the Consumer Affairs Bureau, that investigation may be continued and completed by the Commissioner for Consumer Affairs.

4. An inspector holding office by virtue of being appointed under subsection (1) of section 55 of the Consumer Protection Act, 1969, as in force immediately before the commencement of Schedule 5 (1), shall be deemed to have been appointed under that subsection, as in force after that commencement.

Inspectors.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1978
[48c]

PROOF

CONSUMER PROTECTION (AMENDMENT) BILL, 1978

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are to amend the Consumer Protection Act, 1969, for the purposes of—

(a) replacing the definition of "consumer" with a wider definition which will include any person who—

(i) in relation to goods, acquires (otherwise than for the purpose of re-supply) goods where the price paid or payable for the goods does not exceed the prescribed amount (expected to be $15,000) or, if the price exceeds that amount, the goods are of a kind which are ordinarily acquired for personal, domestic or household use or consumption, are of a prescribed class or description or are of a kind which might ordinarily be acquired for the purpose of a farming undertaking or comprise a motor vehicle;

(ii) acquires services where the price paid or payable for the services does not exceed the prescribed amount referred to above or, if the price exceeds that amount, the services are of a kind which are ordinarily acquired for personal, domestic or household use or consumption or the services are of a kind which might ordinarily be acquired in connection with the carrying on of a farming undertaking; or

(iii) acquires an interest in land but only if the land is not used or intended or apparently intended for use for industrial or commercial purposes (Schedule 1 (4));

(b) extending the definition of "services" to include the granting or conferring of franchises under which a person, in consideration of the franchise, invests money and performs work associated with the investment (Schedule 1 (4));

(c) providing for the Chairman of the Consumer Affairs Council to be appointed from among the members of the Council instead of the Commissioner for Consumer Affairs being the Chairman ex officio as at present (Schedule 2 (1));

(d) redefining the functions of the Consumer Affairs Council and, in particular, providing that the Council may perform its functions only with the consent or at the direction of the Minister (Schedule 2 (5));

(e) providing for the abolition of the Consumer Affairs Bureau, providing for the appointment of officers of the Department of Consumer Affairs and providing for the delegation of the functions and powers of the Commissioner for Consumer Affairs (Schedule 2 (7));

(f) enabling the Commissioner for Consumer Affairs to receive complaints not only with respect to the supply of goods and services but also with respect to the disposal of interests in land (Schedule 2 (8));

(g) clarifying section 16A of the Act so as to make it clear that an investigation referred to in that section may be carried out in respect of a matter whether or not a complaint has been made in respect of the matter to the Commissioner for Consumer Affairs by a consumer (Schedule 2 (9));

(h) making it an offence for a supplier to supply goods to which two or more prices are appended at a price which exceeds the lower or lowest of those prices (Schedule 3 (4));

(i) making it an offence for a supplier to engage in "bait and switch" advertising (that is, the advertising of goods or services at a special price in circumstances where none or only an unreasonably small number of those goods or services is available for acquisition at that price or where goods or services are available for acquisition at that price for an unreasonably short period) (Schedule 3 (4));

(j) extending the scope of section 32 of the Act, which makes it an offence to publish a statement to promote the supply or use of goods or services which is false or misleading, so that the section will apply to statements to promote the disposal of interests in land (Schedule 3 (5));

(k) replacing section 29 of the Act with a new section, 33A, so as to empower a court which finds a person guilty of an offence under Division 2 of Part III of the Act not only to make an order directing that person to make a refund of money paid to him or to provide goods having a true trade description, but also to make an order directing the person to compensate any party to the proceedings before the court who has suffered loss or damage which is attributable in some degree to a false or misleading statement published in contravention of section 32 of the Act (Schedule 3 (7));

(l) providing that section 37 of the Act, which prohibits the supply of dangerous goods or component parts of a class or description prescribed in regulations made under section 36 of the Act unless the goods or parts comply with the requirements of those regulations, is not contravened where the goods or component parts supplied are included in a class or description of goods or component parts, or are particular goods or component parts, in respect of which the Products Safety Committee has issued a certificate of safety, notwithstanding that the goods or parts supplied are included in the class or description of goods or parts so prescribed (Schedule 4(1));

(m) enabling the Minister to make, without making a reference to the Products Safety Committee under section 39C of the Act, an order prohibiting the supply of goods of a class or description specified in the order, or allowing the supply of goods of any such class or description but subject to conditions or restrictions so specified, where a competent authority of the Commonwealth or of another State or of a Territory of the Commonwealth has, on the ground that the goods are dangerous, made a similar order or other instrument (Schedule 4 (5));

(n) inserting into the Act a new section, 39I, which will empower an inspector who suspects on reasonable grounds that any goods or component parts are being or have been supplied in contravention of section 37 of the Act (which prohibits the supply of prescribed goods or parts not complying with prescribed safety requirements) or that any goods are being or have been supplied in contravention of an order made under section 39E (1) or (1A) (that is, an order prohibiting the supply of certain goods considered to be dangerous or allowing the supply of such goods but only subject to conditions or restrictions), to impound and detain those goods or parts (Schedule 4 (9));

(o) inserting into the Act a new section, 39J, which will enable a person from whom goods or parts have been impounded under the proposed section 39I to make an application to the District Court for disallowance of the impounding of the goods or parts and which will provide for the disposal of the impounded goods or parts in the event of the application succeeding and also in the event of such an application being made and being refused (Schedule 4 (9));

(p) replacing section 56 of the Act, which relates to proceedings for offences against the Act, with a new section which will, as well as conferring jurisdiction to deal with such offences on courts of petty sessions and industrial magistrates, confer jurisdiction to deal with those offences on the Supreme Court in its summary jurisdiction but which will enable only the Supreme Court to impose in respect of such an offence a penalty in excess of $2,000 (Schedule 5 (3));

(q) inserting into the Act a new section, 56A, which will enable the Supreme Court, on the application of the Commissioner for Consumer Affairs made with the consent of the Minister, to grant an injunction for repeated, continued or threatened breaches of the Act or regulations under the Act or of other legislation administered by the Minister which relates to consumer affairs (Schedule 5 (4)); and

(r) providing for an increase in the maximum penalty that may be imposed in respect of an offence against the Act to $10,000 and abolishing sentences of imprisonment for such an offence (Schedule 5 (5)).

The Bill also makes other amendments to the Act of a minor, consequential or ancillary nature.

PROOF

CONSUMER PROTECTION (AMENDMENT) BILL, 1978

No. , 1978.

A BILL FOR

An Act to amend the Consumer Protection Act, 1969, for the purposes of reorganising the Consumer Affairs Council, abolishing the Consumer Affairs Bureau and conferring the functions of the Bureau on the Commissioner for Consumer Affairs, and providing increased protection to consumers with respect to certain types of transactions, and for certain other purposes.

[MR EINFELD—15 *February,* 1978.]

44087F 409—A

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 :—

5 **1.** This Act may be cited as the "Consumer Protection (Amendment) Act, 1978". 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.

(2) Section 4 shall, in its application to a provision of 10 Schedules 1–5, commence on the day on which that provision commences.

(3) The several provisions of Schedules 1–5 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation 15 published in the Gazette.

3. This Act contains the following Schedules:— Schedules.

SCHEDULE 1.—AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969.

SCHEDULE 2.—AMENDMENTS TO PART II OF THE 20 CONSUMER PROTECTION ACT, 1969.

SCHEDULE 3.—AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969.

SCHEDULE 4.—AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969.

5

SCHEDULE 5.—AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969.

SCHEDULE 6.—SAVINGS AND TRANSITIONAL PROVISIONS.

4. The Consumer Protection Act, 1969, is amended in the manner set forth in Schedules 1–5.

Amendment of Act No. 28, 1969.

10

5. Schedule 6 has effect.

Savings and transitional provisions.

SCHEDULE 1.

Sec. 4.

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969.

(1) Long title—

Omit "and the establishment of a Consumer Affairs Bureau".

(2) Section 2—

(a) Omit the matter relating to Division 3 of Part II, insert instead :—

DIVISION 3.—*Commissioner for Consumer Affairs —ss.* 12A–16F.

(b) Omit the matter relating to Division 2 of Part III, insert instead :—

DIVISION 2.—*Trade Descriptions and Unfair Practices—ss.* 20–31.

(c) From the matter relating to Division 4 of Part III, omit "33, 34", insert instead "33–34".

(d) After the matter relating to Division 2A of Part IV, insert :—

DIVISION 2B.—*Further Powers of Inspectors—ss.* 39I, 39J.

(3) Section 4 (2)—

(a) Omit ", Fruit Cases Act, 1912".

(b) Omit ", Stock and Station and Real Estate", insert instead "and".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(4) (a) Section 5 (1), definition of "acquire"—

After "otherwise indicates or requires", insert :—

"acquire" includes—

(a) in relation to goods—acquire by way of purchase, exchange or taking on lease, on hire or on hire-purchase;

(b) in relation to services—acquire by way of purchase or exchange; and

(c) in relation to an interest in land, acquire by way of purchase, exchange or taking on lease or by any other method by which an interest in land may lawfully be acquired for a valuable consideration;

(b) Section 5 (1), definition of "Bureau"—

Omit the definition.

(c) Section 5 (1), definition of "consumer"—

Omit the definition, insert instead :—

"consumer" means—

(a) a person who acquires goods from a supplier, but only if the person does not acquire the goods, and does not

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

hold himself out as acquiring the goods, for the purposes of resupply and—

(i) the price paid or payable for the goods (not being goods to which subparagraph (ii) relates) does not exceed the prescribed amount or, where the price paid or payable for the goods (not being goods to which subparagraph (ii) relates) exceeds the prescribed amount, the goods—

(a) are of a kind which are ordinarily acquired for personal, domestic or household use or consumption; or

(b) are of a class or description prescribed for the purpose of this subparagraph,

and the person does not acquire the goods, and does not hold himself out as acquiring the goods, in connection with a business carried on by him, for the purpose of consuming or transforming them in the course of a process of manufacture or production or for the purpose of repairing or treating fixtures on land or other goods; or

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(ii) the goods, whether or not the price paid or payable for the goods exceeds the prescribed amount—

(a) are of a kind which might ordinarily be acquired for the purpose of a farming undertaking and are in fact acquired for that purpose; or

(b) comprise a motor vehicle within the meaning of the Motor Dealers Act, 1974;

(b) a person who acquires services from a supplier, but only if—

(i) the price paid or payable for the services does not exceed the prescribed amount; or

(ii) where the price paid or payable for the services exceeds the prescribed amount, the services—

(a) are of a kind which are ordinarily acquired for personal, domestic or household use or consumption; or

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) are of a kind which might ordinarily be acquired in connection with the carrying on of a farming undertaking and are in fact acquired for that purpose; or

(c) a person who acquires an interest in land from another person but only if the land is not used or intended, or apparently intended for use, for industrial or commercial purposes;

(d) Section 5 (1), definitions of "disposal", "farming undertaking"—

After the definition of "Department", insert :—

"disposal", in relation to an interest in land, includes disposal by way of sale, exchange or lease or by any other method by which an interest in land may lawfully be disposed of for a valuable consideration;

"farming undertaking" includes any agricultural, pastoral, horticultural, orcharding or viticultural undertaking;

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(e) Section 5 (1), definitions of "interest", "officer of the Department" or "officer", "Products Safety Committee" or "Committee"—

After the definition of "inspector", insert :—

"interest", in relation to land, means—

(a) a legal or an equitable estate or interest in the land;

(b) a right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of shares, or by virtue of a contract to purchase shares, in an incorporated company that owns the land or the building; or

(c) a right, power or privilege over, or in connection with, the land;

"officer of the Department" or "officer" means the Commissioner or a person appointed and holding office under section 15;

"Products Safety Committee" or "Committee" means the Products Safety Committee established under section 39B;

(f) Section 5 (1), definition of "services"—

(i) From paragraph (b), omit "or".

(ii) From paragraph (c), omit "facilities,", insert instead "facilities; or".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(iii) After paragraph (c), insert :—

5 (d) a contract under which one person grants or confers or purports to grant or confer a franchise or other right, benefit or privilege to one or more other persons in consideration of the investment by that 10 other person or those other persons of money and the performance by him or them of work associated with that investment,

(g) Section 5 (1), definition of "supply"—

15 Omit "render.", insert instead "render for a valuable consideration;".

(h) Section 5 (1), definition of "Supreme Court"—

After the definition of "supply", insert :—

"Supreme Court" means the Supreme Court of 20 New South Wales.

(i) Section 5 (2) (d)—

Omit "and".

(j) Section 5 (2) (e)—

Omit "goods.", insert instead "goods;".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(k) Section 5 (2) (f), (g)—

5 After section 5 (2) (e), insert :—

(f) a reference to the disposal or acquisition of an interest in land includes a reference to agreeing to dispose of or acquire such an interest, whether the agreement is in writing or is evi-
10 denced by writing or not; and

(g) a reference to the disposal or acquisition of an interest in land includes a reference to the disposal or acquisition of such an interest together with goods

15 (l) Section 5 (3), (4)—

After section 5 (2), insert:—

(3) Where it is alleged in any proceeding under this Act or in any other proceeding in respect of a matter arising under this Act that a person was a
20 consumer in relation to any particular goods, services or land, it shall be presumed, unless the contrary is established, that the person was a consumer in relation to those goods or services or that land.

(4) Where by virtue of any provision of this Act
25 an inspector has power to take goods after paying a just price for them, the inspector shall be deemed to have paid the just price if he gives or tenders to a person who appears to be the owner of or in charge

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

of the goods a voucher, in or to the effect of the prescribed form, which purports to contain an undertaking by the Commissioner to pay the price written by the inspector on the voucher, being such price as the inspector has agreed on with that owner or person in charge or, in the absence of such an agreement, such price as appears to be the market price of the goods.

SCHEDULE 2. Sec. 4.

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969.

(1) Section 8—

Omit the section, insert instead:—

Chairman of Council.

8. (1) One of the members of the Council shall, by the instrument of his appointment or by a subsequent instrument executed by the Governor, be appointed as Chairman of the Council to hold office during his term of office as a member.

(2) The Chairman of the Council shall preside at all meetings of the Council at which he is present but if he is unable for any reason to attend any meeting of the Council, the Minister shall appoint one of the other members of the Council to preside at the meeting.

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(3) A member of the Council appointed under subsection (2) shall, when presiding at a meeting of the Council, be deemed to be the Chairman of the Council.

(2) Section 9 (1)—

Omit the subsection, insert instead :—

(1) In the event of any member of the Council being unable to attend a meeting or meetings of the Council due to illness or other cause, the Governor may appoint as an alternative member a person who has the same qualification for appointment as a member of the Council as the member was required to have when he was appointed to act in place of the member during his absence.

(3) Section 10—

Omit "other than the Chairman shall hold office for a term of three years and shall be eligible for reappointment", insert instead "shall hold office for a term of 3 years and shall, from time to time, be eligible for reappointment for a further term of 3 years".

(4) (a) Section 11 (3)—

Omit the subsection, insert instead :—

(3) At a meeting of the Council, a majority of the members of the Council shall constitute a quorum.

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) Section 11 (5)—

Omit "or person acting in his place at any meeting of the Council".

(c) Section 11 (6)—

(i) Omit ", other than the Chairman,".

(ii) Omit "by the Governor.", insert instead :—

by the Governor; or

(f) if, in the case of the member referred to in section 7 (2) (a), he ceases to be an officer of the Department.

(d) Section 11 (7)—

Omit the subsection, insert instead :—

(7) On the occurrence of a casual vacancy in the office of a member of the Council, the Governor may fill the vacancy by appointing as a member of the Council a person who has the same qualification for appointment as a member of the Council as the person whose office has been vacated was required to have when he was appointed and the person appointed to fill the vacancy shall hold office for the residue of the term of office of his predecessor.

(e) Section 11 (7A), (7B)—

Omit the subsections.

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(f) Section 11 (8)—

Omit "the Chairman", insert instead "the member referred to in section 7 (2) (a)".

(g) Section 11 (9)—

Omit ", as subsequently amended".

(5) Section 12—

Omit the section, insert instead :—

Functions of Council.

12. (1) The Council shall have the following functions :—

(a) the carrying out of investigations into matters relating to the interests of consumers and the making of recommendations with respect to those matters;

(b) the provision of advice to the Minister with respect to the operation of this Act or any other Act which is designed to protect the interests of consumers; and

(c) any other function imposed on the Council by the regulations.

(2) The Council shall perform a function referred to in subsection (1) only with the consent or at the direction of the Minister.

(3) The Council may, with the consent of the Minister, co-operate or affiliate with any organisation that has power to make an investigation of the nature referred to in subsection (1) (a), whether in New South Wales or elsewhere.

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(6) Part II, Division 3, heading—

5 Omit *"Consumer Affairs Bureau"*, insert instead *"Commissioner for Consumer Affairs"*.

(7) Sections 15, 15A—

Omit section 15, insert instead:—

15. (1) Such persons as may be necessary to enable the Commissioner to perform his functions and exercise his powers under this Act shall be appointed and employed under and subject to the Public Service Act, 1902, as officers or employees. Officers, etc., of Department.

(2) The Commissioner may, with the approval of the Minister, appoint and employ, otherwise than under a contract of service, on such terms and conditions as he thinks fit and for any particular purpose any person, body or organisation considered to be capable of providing services, information or advice required by the Commissioner to enable him to perform his functions or exercise his powers under this Act.

15A. (1) The Commissioner may, by instrument in writing, delegate such of his functions and powers (other than this power of delegation) as may be specified in the instrument to any officer or employee of the Department and may, by similar instrument, revoke any such delegation either in whole or in part. Delegation.

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(2) A delegation under subsection (1) may be made subject to such conditions or limitations as to the performance or exercise of any of the functions or powers that have been delegated, or as to time or circumstance, as may be specified in the instrument of delegation.

(3) A function or power the performance or exercise of which has been delegated under subsection (1) may, while the delegation remains unrevoked, be performed or exercised by the delegate from time to time in accordance with the terms of the delegation.

(4) Notwithstanding the making of any delegation under subsection (1), the Commissioner may continue to perform or exercise all or any of the functions or powers that have been delegated.

(5) Any act, omission or thing done, omitted or undergone by a delegate while acting pursuant to a delegation made under subsection (1) shall have the same force and effect as if the act, omission or thing had been done, omitted or undergone by the Commissioner.

(8) (a) Section 16 (1)—

Omit "Bureau", insert instead "Commissioner".

(b) Section 16 (1) (a)—

After "remedying infringements of", insert ", or, as the case may be, securing compliance with,".

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(c) Section 16 (1) (a)—

5 After "otherwise;", insert "and".

(d) Section 16 (1) (b) (ii)—

Omit "goods or services", insert instead "the supply of goods or services or the disposal of interests in land".

10 (e) Section 16 (1) (b) (ii)—

Omit "it", insert instead "he".

(f) Section 16 (1) (b) (iii)—

After "conduct research,", insert "to make investigations,".

15 (g) Section 16 (1) (b) (iii)—

After "work;", insert "and".

(h) Section 16 (1) (b) (iv), (v)—

Omit the subparagraphs, insert instead :—

(iv) to provide the Council with such information
20 as it may reasonably require relating to the supply to consumers of goods or services or

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

the disposal to consumers of interests in land or relating to consumer affairs generally and to carry out such research as may be necessary for the purpose of enabling that information to be provided.

(i) Section 16 (2)—

Omit "Bureau", insert instead "Department".

(9) Section 16A (1)—

Omit the subsection, insert instead :—

(1) An investigation under section 16 (1) (b) (ii) or (iii) may be made by one or more officers designated by the Commissioner for the purpose.

(10) (a) Section 16B—

After "making an investigation", insert "relating to the supply of goods or services".

(b) Section 16B (2)—

At the end of section 16B, insert:—

(2) An investigating officer making an investigation relating to the disposal of an interest in land may, at any reasonable time, for the purposes of the investigation—

(a) enter any place at which transactions involving the disposal of interests in land takes place or which is land an interest in

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

which is being or is proposed to be disposed of, or at which he has reason to believe that any such transactions take place or, as the case may be, which he has reason to believe is any such land;

(b) inspect any documents in any such place which relate to the disposal of an interest in land; or

(c) in any such place, make such examination as he considers to be necessary or desirable.

(11) Section 16F—

Omit "powers, authorities, duties or functions", insert instead "functions or powers".

(12) (a) Section 16G (1) (a)—

After "goods or services", insert "or the disposal to him of an interest in land".

(b) Section 16G (1) (b)—

After "supply", insert "or disposal".

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(13) Section 16J (6)—

5 After "goods or services", insert ", or, as the case may be, the disposal of an interest in land,".

(14) Sections 17, 18—

Omit the sections, insert instead:—

Liability of officers of Department, etc.

17. Neither the Commissioner or any other officer of the
10 Department nor any member of the Council shall be personally liable, nor shall the Crown be liable, for any act done or omitted, or any statement issued, by the Commissioner or any such officer or the Council in good faith in the course of the operations of the Commissioner or the
15 Council.

Annual report.

18. The Commissioner shall, not later than 3 months after the expiration of the period of 12 months ending on 30th June in each year, prepare a report in respect of his operations and the operations of the Department and of
20 the Council during that period of 12 months and submit the report to the Minister for presentation to Parliament.

SCHEDULE 3.

Sec. 4.

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969.

(1) Part III, Division 2, heading—

After *"Trade Descriptions"*, insert *"and Unfair Practices"*.

(2) (a) Section 21 (3)—

Omit "consumer", insert instead "person acquiring the goods".

(b) Section 21 (4)—

Omit "consumer of", insert instead "person acquiring".

(3) Section 22 (a)—

Omit "consumer", insert instead "person acquiring the goods".

(4) Sections 29, 29A—

Omit section 29, insert instead :—

Double ticketing.

29. (1) A supplier who supplies goods to which two or more prices are appended at a price which exceeds the lower or the lowest of those prices is guilty of an offence against this Act.

(2) For the purposes of subsection (1), a price that is not appended to goods shall be deemed to be appended to the goods if it is—

(a) appended to any covering, label, reel or thing used in connection with the goods;

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) used in connection with the goods on any thing on which the goods are mounted for display or are exposed for supply; or

(c) included in any advertisement or catalogue which is used to promote the supply of the goods or make known the availability of the goods for acquisition.

(3) For the purposes of subsection (1), two or more prices are appended to goods notwithstanding that one of those prices is written, printed or stamped wholly or partly over another of those prices.

(4) For the purposes of this section, a price shall be deemed to be appended to goods or to any covering, label, reel or thing used in connection with the goods if it is annexed or affixed to, or is written, printed or stamped on or otherwise applied to, the goods or to the covering, label, reel or thing, as the case may be.

Bait advertising.

29A. (1) If a supplier advertises for supply at a special price goods or services that he does not intend to make available for supply at that price—

(a) during a period, or in a quantity, specified in the advertisement; or

(b) if no such period or quantity is specified in the advertisement, during such period and in such quantity as is reasonable having regard to the nature of the market in which the supplier carries on business and the nature of the advertisement,

he is guilty of an offence against this Act.

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(2) Where a supplier who has advertised for supply at a special price a quantity of goods or services specified in the advertisement fails to make available for supply to any person who offers to acquire at that price goods or services of the description specified in the advertisement, that supplier is guilty of an offence against this Act.

(3) In any proceedings for an offence under subsection (2), it is a defence for the supplier to establish that—

(a) he was, at the time of the publication of the advertisement, able to supply the quantity of goods or services specified in the advertisement; and

(b) since that publication, he has exhausted that quantity of goods or services by supplying them at the advertised special price.

(4) Where a supplier who has advertised goods or services for supply at a special price for a specified period fails to make available those goods or services for supply to any person who, during that period, offers to acquire those goods or services at that price, that supplier is guilty of an offence against this Act.

(5) Where a supplier who has advertised goods or services for supply at a special price without specifying in the advertisement the period during which the goods or services are available for supply, or the quantity of goods or services that are available for supply, at that price, fails

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

to make those goods or services available for supply to any person who, during such period as is reasonable, having regard to the nature of the market in which the supplier carries on business and the nature of the advertisement, offers to acquire them at that price, that supplier is guilty of an offence against this Act.

(6) In any proceedings for an offence under subsection (4) or (5), it is a defence for the supplier to establish that—

(a) he offered to make available for supply, or offered to procure another person to make available for supply, goods or services of the kind advertised to the person referred to in subsection (4) or, as the case may be, subsection (5) within a reasonable period, in a reasonable quantity and at the advertised special price; or

(b) he immediately offered to make available for supply, or offered to procure another person to make available for supply within a reasonable period, equivalent goods or services to the person referred to in subsection (4) or, as the case may be, subsection (5) in a reasonable quantity and at the price at which the first mentioned goods or services were advertised,

and, in either case, where the offer was accepted by that person, the supplier has made available for supply, or procured another person to make available for supply, goods or services of that kind or equivalent to those referred to in paragraph (a).

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(7) For the purposes of this section, "special price", in relation to an advertisement for the supply of goods or services, means—

(a) a price that is represented in the advertisement for the supply of goods or services to be a special or bargain price, by reference to an ordinary price or otherwise; or

(b) a price that a person who reads, hears or sees the advertisement would reasonably understand to be a special or bargain price, having regard to the prices at which the goods or services advertised or similar goods or services are ordinarily supplied.

(5) Section 32 (1) (a)—

Omit the paragraph, insert instead :—

(a) is intended or apparently intended by that person or any other person to promote the supply or use of goods or services or the disposal of interests in land; and

(6) (a) Section 32A (1) (a)—

Omit the paragraph, insert instead :—

(a) is intended or apparently intended by the first mentioned person or any other person to promote the supply or use of goods or services or the disposal of interests in land; and

(b) Section 32A (1) (b)—

Omit "Bureau" wherever occurring, insert instead "Department".

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(7) Section 33A—

5 After section 33, insert :—

Powers of court on finding of guilt in respect of certain offences under Pt. III.

33A. (1) Where a person is found guilty of an offence under Division 2 in respect of the supply of goods to which a false trade description is appended, the court which made the finding may, in addition to any penalty imposed in 10 respect of the offence, make an order directing the person found guilty of the offence, within a period specified in the order—

(a) to refund to the person who acquired the goods any money paid to him by that person for the 15 goods; or

(b) to provide the person who acquired the goods with goods in accordance with the true trade description or, if he is unable to provide goods of that description, to refund the money paid 20 to him by that person for the goods.

(2) Where a person is found guilty of an offence under section 32 and the court which made the finding also finds that a party to the proceedings for the offence has sustained loss or damage which is attributable, or partly 25 attributable, to the reliance by that other person on the statement to which the offence relates, that court may, in addition to any penalty imposed in respect of the offence, make an order directing the person found guilty of the offence, within a period specified in the order—

30 (a) to refund any money paid, or to return any property transferred, to him by that party to the proceedings; or

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) to pay to that other person money equivalent in amount to the loss or damage that that party has sustained.

(3) Where the court referred to in subsection (1) or (2) is a court of summary jurisdiction, that court shall not make an order under either of those subsections directing the refund or payment of an amount in excess of the amount for the time being specified in section 12 (1) of the Courts of Petty Sessions (Civil Claims) Act, 1970.

(4) An order made under subsection (1) or (2) by a court of summary jurisdiction may be enforced in the court, and Part V of the Courts of Petty Sessions (Civil Claims) Act, 1970, shall apply in respect of the court as if it were a court of petty sessions exercising jurisdiction under that Act and in respect of the order as if—

(a) the order were a judgment of a court of petty sessions exercising that jurisdiction;

(b) the amount ordered to be refunded were a judgment debt referred to in that Part;

(c) the person 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.

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(5) An order made under subsection (1) or (2) by the Supreme Court may be enforced in that Court as if—

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

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

(8) (a) Section 34E (2)—

Omit "Except so far as may be authorised by or under the regulations, a", insert instead "A".

(b) Section 34E (4)—

After section 34E (3), insert:—

(4) The regulations may contain such exemptions from the operation of subsections (1) and (2), applicable in such cases, as may be prescribed.

SCHEDULE 4.

Sec. 4.

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969.

(1) Section 37 (6)–(11)—

After section 37 (5), insert:—

(6) Subsections (1) and (2) shall not apply in relation to any class or description of goods or component parts, or any particular goods or component parts, in respect of which a certificate of safety has been issued by the Products Safety Committee, notwithstanding that the class or description of goods or component parts or, as the case may be, the particular goods or component parts are goods or component parts included in a class or description of goods or component parts in respect of which regulations made under section 36 are for the time being in force.

(7) Any person who wishes to supply goods or component parts of a class or description, or particular goods or component parts, that are included in a class or description of goods or component parts in respect of which regulations made under section 36 are for the time being in force may apply in writing to the Products Safety Committee for the issue of a certificate of safety in respect of goods or component parts of the first mentioned class or description or, as the case may be, those particular goods or component parts.

(8) Where, on consideration of an application made to it under subsection (7), the Products Safety Committee is satisfied that the goods or component parts to which the application relates are sufficiently safe to warrant their exemption from the requirements of the regulations made under section 36, the Committee shall issue the certificate applied for, but if it is not so satisfied it shall refuse the application and notify the applicant in writing of the refusal, which shall include a statement of the reasons as to why the application was refused.

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(9) The Products Safety Committee, in considering an application made under subsection (7)—

(a) may make such investigations as it considers necessary to enable it to arrive at a decision with respect to the application;

(b) shall take into account any representations made to it by or on behalf of the applicant; and

(c) unless in all the circumstances it does not consider that it is reasonably practicable to do so, shall permit the applicant or his representative, if the applicant so wishes, to be heard orally by the Committee, or by a member of the Committee appointed for the purpose.

(10) Subject to subsection (9) and clause 5 of Schedule 3, the Products Safety Committee may determine its own procedure for considering applications made under subsection (7) and, in particular, may determine whether or not its consideration of the application should be held in public.

(11) The provisions of section 39D shall apply in relation to an investigation made under subsection (9) (a) in the same way as they apply in relation to an investigation of a question referred to the Products Safety Committee under section 39C (1).

(2) Section 39B (1), definition of "Committee"—

Omit the definition.

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(3) Section 39C (1)—

Omit "to consumers in New South Wales", insert instead "in New South Wales to consumers".

(4) Section 39DA (3), (4)—

Omit the subsections, insert instead :—

(3) An order made under subsection (1) shall not be capable of being renewed or replaced by a further order under that subsection but may, at any time before it expires or is revoked, be replaced by an order made under section 39E (1) or (3).

(4) Where—

(a) an order has been made under subsection (1) in respect of goods of any class or description or any particular goods; and

(b) before that order expires or is revoked, an order made under section 39E (1) or (3) takes effect in respect of goods of that class or description or those particular goods,

the order referred to in paragraph (a) is revoked.

(5) (a) Section 39E (1A)—

After section 39E (1), insert :—

(1A) Where—

(a) a competent authority of the Commonwealth or of a State (other than New South Wales) or a Territory of the Common-

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

wealth, under the authority of an enactment of the Commonwealth or of that State or Territory, has, after full consideration of the matter and of representations made by interested parties, made an order or similar instrument—

(i) prohibiting the supply in the Commonwealth or in that State or Territory of goods of a class or description specified or referred to in the order or instrument; or

(ii) allowing the supply in the Commonwealth or in that State or Territory of goods of a class or description specified or referred to in the order or instrument but only subject to conditions or restrictions so specified or referred to;

(b) the reason for the making of the order or instrument was that the goods were dangerous; and

(c) the order or instrument has not been revoked or otherwise ceased to have effect,

the Minister, without making a reference under section 39C (1) to the Committee in respect of goods of that class or description, may, if he is satisfied that goods of that class or description are dangerous, make—

(d) where an order or instrument to which paragraph (a) (i) relates is in force—an order prohibiting the supply in New South

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

Wales to consumers of goods of the class or description specified or referred to in the order or instrument; or

(e) where an order or instrument to which paragraph (a) (ii) relates is in force—an order allowing the supply in New South Wales to consumers of goods of the class or description specified or referred to in the order or instrument, but only subject to conditions or restrictions similar to those so specified or referred to.

(b) Section 39E (2)—

After "subsection (1)", insert "or (1A)".

(c) Section 39E (5), (6)—

After section 39E (4), insert :—

(5) An order made under subsection (3) shall not be capable of being renewed or replaced by a further order under that subsection but may, at any time before it expires or is revoked, be replaced by an order made under subsection (1).

(6) Where—

(a) an order has been made under subsection (3) in respect of goods of any class or description or any particular goods; and

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) before that order expires or is revoked, an order made under subsection (1) takes effect in respect of goods of that class or description or those particular goods,

the order referred to in paragraph (a) is revoked.

(6) Section 39F—

After "section 39E (1)", insert "or (1A)".

(7) Section 39G—

After "section 39E (1)", insert ", (1A)".

(8) Section 39H (a)—

After "section 39E (1)", insert ", (1A)".

(9) Part IV, Division 2B—

After Division 2A of Part IV, insert :—

DIVISION 2B.—*Further Powers of Inspectors.*

Power to impound goods, etc., in certain cases.

39I. (1) Where an inspector suspects on reasonable grounds that—

(a) any goods or component parts are being or have been supplied in contravention of section 37; or

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) any goods are being or have been supplied in contravention of an order made under section 39E (1) or (1A),

he may, subject to this section, impound those goods or component parts or, as the case may be, those goods and deal with them in the prescribed manner.

(2) For the purposes of, and in connection with, the exercise of the power conferred by subsection (1), an inspector may enter any place where the goods or component parts are located or where he believes on reasonable grounds that the goods or parts are located.

(3) Any goods or component parts impounded under subsection (1) may, at the option of the inspector who impounded the goods or parts or of any inspector acting in his place, be detained in the place where they were impounded or removed to another place and detained there.

(4) If any person, without the permission of the Commissioner or an inspector, removes, takes away or interferes with goods or component parts which that person knows or might reasonably be expected to know to have been impounded and detained in accordance with this section, that person, in addition to any other penalty to which he may be liable, is, unless he has made an application under section 39J and an order has been made under that section disallowing the impounding, guilty of an offence against this Act.

(5) An inspector shall exercise the powers conferred by subsections (1) and (2) only with the consent, or at the direction, of the Minister.

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

Applications for orders disallowing the impounding of goods, etc.

39J. (1) Any person claiming to be entitled to goods or component parts that have been impounded under section 39I (1) may, within 28 days after the impounding of the goods or parts, make an application to the District Court for an order disallowing the impounding of the goods or parts.

(2) An application made under subsection (1) shall not be heard unless the applicant has previously served a copy of the application on the Commissioner.

(3) The Commissioner shall be entitled to appear at the hearing of an application made under subsection (1) as respondent and may be represented at the hearing either by another officer of the Department appointed by him or by a solicitor or by counsel.

(4) On the hearing of an application made under subsection (1) the following provisions shall apply :—

(a) in the case of goods or component parts impounded for a suspected contravention of section 37, the Court shall make an order disallowing the impounding of the goods or component parts—

(i) if it is proved by or on behalf of the applicant that he would, but for the impounding, be entitled to the goods or parts and it is not proved beyond all reasonable doubt by or on behalf of the Commissioner that the goods or parts were being or had been, at the time of the impounding, supplied in contravention of section 37; or

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(ii) if, in the opinion of the Court, there are exceptional circumstances justifying the making of an order disallowing the impounding,

but otherwise the Court shall refuse the application; or

(b) in the case of goods impounded for a suspected contravention of an order made under section 39E (1) or (1A), the Court shall make an order disallowing the impounding of the goods—

(i) if it is proved by or on behalf of the applicant that he would, but for the impounding, be entitled to the goods and it is not proved beyond all reasonable doubt by or on behalf of the Commissioner that the goods were being or had been, at the time of the impounding, supplied in contravention of the order made under section 39E (1) or (1A); or

(ii) if, in the opinion of the Court, there are exceptional circumstances justifying the making of an order disallowing the impounding,

but otherwise the Court shall refuse the application.

(5) Where the Court makes an order under subsection (4) (a) or (b) disallowing the impounding of goods or component parts, it shall also make one or both of the following orders :—

(a) an order directing the Commissioner to cause the goods or parts to be delivered to the applicant or to such other person as appears to the Court to be entitled to the goods or parts;

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) where the goods or component parts cannot for any reason be so delivered or have depreciated in value by reason of their having been impounded, an order directing the Commissioner to pay to the applicant or to such other person as appears to the Court to be entitled to the goods or parts, such amount by way of compensation as the Court considers to be just and reasonable.

(6) The award of costs with respect to the hearing of an application made under this section shall be in the discretion of the Court.

(7) Where the Court makes an order referred to in subsection (5) (b) or awards any amount as costs under subsection (6), that order or award shall be enforceable as a judgment of the Court.

(8) If no application is made under subsection (1) within 28 days after the date on which goods or component parts were impounded under section 39I (1) or if such an application is made but is refused or is withdrawn before it is heard, the goods or parts shall be forfeited to and become the property of the Crown and shall be destroyed or otherwise disposed of in such manner as the Commissioner shall direct.

(10) (a) Schedule 3, clause 1 (5)—

Omit "a member", insert instead "an officer".

(b) Schedule 3, clause 5 (1)—

After "section 39C (1)", insert "or in relation to any application made under section 37 (7)".

SCHEDULE 5.

Sec. 4.

AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969.

(1) (a) Section 55 (1)—

Omit the subsection, insert instead :—

(1) The Minister may appoint an officer of the Department as an inspector for the purposes of carrying into effect the provisions of this Act.

(b) Section 55 (4)—

After "shall not", insert ", without the consent of the occupier,".

(c) Section 55 (4)—

After "manufacture", insert ", business".

(d) Section 55 (5) (a)—

After "under this", insert "or any other".

(2) Section 55A (1)—

Omit the subsection.

(3) Section 56—

Omit the section, insert instead :—

Proceedings for offences.

56. (1) Proceedings for an offence against this Act (Part V excepted) shall be disposed of summarily before—

(a) a court of petty sessions constituted by a stipendiary magistrate sitting alone;

(b) an industrial magistrate; or

(c) with the written consent of the Minister, the Supreme Court in its summary jurisdiction.

SCHEDULE 5—*continued.*

AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(2) If proceedings for an offence against this Act (Part V excepted) are taken in a court of petty sessions or before an industrial magistrate, the court or magistrate shall not, on convicting any person for the offence, impose a penalty exceeding $2,000, notwithstanding that the maximum penalty which could, apart from this subsection, be imposed under this Act exceeds that amount.

(3) If proceedings for an offence against this Act (Part V excepted) are taken in the Supreme Court in its summary jurisdiction, the Supreme Court may impose a penalty not exceeding the maximum penalty prescribed by this Act in respect of the offence.

(4) Proceedings for an offence against this Act (Part V excepted) shall be commenced by information but may not be commenced after the expiration of 12 months after the time when the offence is alleged to have been committed.

(5) The provisions of the Industrial Arbitration Act, 1940, and the regulations made under that Act, relating to proceedings before an industrial magistrate and to appeals from an industrial magistrate to the Industrial Commission of New South Wales shall, so far as applicable and with any necessary modifications, apply to proceedings before a court of petty sessions or an industrial magistrate for offences against this Act.

(4) Section 56A—

After section 56, insert :—

56A. Where a person— Injunctions.

(a) is contravening or failing to comply with;

SCHEDULE 5—*continued.*

AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) has on two or more occasions contravened or failed to comply with; or

(c) threatens to contravene or fail to comply with,

a provision of this Act or the regulations or of any order made under this Act or a provision of any other Act administered by the Minister relating to consumer affairs or of any regulation or order made under that other Act, the Supreme Court may, on an application being made by the Commissioner with the consent of the Minister, grant an injunction—

(d) in the case referred to in paragraph (a)—restraining the continuation of the contravention or failure to comply so referred to;

(e) in the case referred to in paragraph (b)—restraining any further contravention or failure to comply so referred to; or

(f) in the case referred to in paragraph (c)—restraining the threatened contravention or failure to comply so referred to.

(5) (a) Section 57 (1)—

Omit "$2,000 or imprisonment for a term not exceeding 12 months, or both", insert instead "$10,000".

(b) Section 57 (2)—

Omit "or the regulations".

SCHEDULE 5—*continued.*

AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(6) (a) Section 58 (2)—

Omit "Commissioner for Consumer Affairs", insert instead "Commissioner".

(b) Section 58 (2) (a) (i)—

Omit "the Commissioner, an officer of the Consumer Affairs Bureau or an inspector, or by any two or more of those persons", insert instead "an officer of the Department or by two or more such officers".

(c) Section 58 (2) (a) (ii)—

Omit "Consumer Affairs Bureau authorised by the Commissioner for the purposes of subsection (2) of section 16", insert instead "Department authorised by the Commissioner for the purposes of section 16 (2)".

(d) Section 58 (2) (b)—

Omit "subsection (2) of section 16E", insert instead "section 16E (2)".

(e) Section 58 (2) (c) (i)—

Omit "Bureau under subsection (1) of section 16", insert instead "Commissioner under section 16 (1)".

(f) Section 58 (2) (c) (ii)—

Omit "subsection (2) of section 16", insert instead "section 16 (2)".

SCHEDULE 6.

Sec. 5.

SAVINGS AND TRANSITIONAL PROVISIONS.

Term of office of officer of Department who is a member of Consumer Affairs Council.

1. The officer of the Department who, at the commencement of Schedule 2 (4), is a member of the Consumer Affairs Council by virtue of being appointed pursuant to section 7 (2) (a) of the Consumer Protection Act, 1969, shall, subject to section 11 (6) of that Act, as in force after that commencement, hold office for a term of 3 years from the date on which he was appointed.

Officers and employees of Consumer Affairs Bureau.

2. Every person employed in the Consumer Affairs Bureau as an officer or an employee immediately before the commencement of Schedule 2 (7) shall be deemed to be an officer, or, as the case may be, to be an employee, appointed and employed under section 15 (1) of the Consumer Protection Act, 1969, as in force after that commencement.

Functions of Consumer Affairs Bureau.

3. (1) Where, immediately before the commencement of Schedule 2 (8), any action for remedying infringements of the Consumer Protection Act, 1969, or of regulations made under that Act, or of any other legislation administered by the Minister administering that Act and relating to the protection of consumers, was being taken by the Consumer Affairs Bureau or had been taken by that Bureau without having been completed, that action may be continued and completed by the Commissioner for Consumer Affairs.

(2) Where, immediately before the commencement of Schedule 2 (8), any matter is being investigated by the Consumer Affairs Bureau, that investigation may be continued and completed by the Commissioner for Consumer Affairs.

Inspectors.

4. An inspector holding office by virtue of being appointed under subsection (1) of section 55 of the Consumer Protection Act, 1969, as in force immediately before the commencement of Schedule 5 (1), shall be deemed to have been appointed under that subsection, as in force after that commencement.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1978

CONSUMER PROTECTION (AMENDMENT) ACT, 1978, No. 60

New South Wales

ANNO VICESIMO SEPTIMO

ELIZABETHÆ II REGINÆ

* *

Act No. 60, 1978.

An Act to amend the Consumer Protection Act, 1969, for the purposes of reorganising the Consumer Affairs Council, abolishing the Consumer Affairs Bureau and conferring the functions of the Bureau on the Commissioner for Consumer Affairs, and providing increased protection to consumers with respect to certain types of transactions, and for certain other purposes. [Assented to, 6th April, 1978.]

P 46852G (88c)

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 "Consumer Protection (Amendment) Act, 1978".

Commencement.

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

(2) Section 4 shall, in its application to a provision of Schedules 1–5, commence on the day on which that provision commences.

(3) The several provisions of Schedules 1–5 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.

Schedules.

3. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969.

SCHEDULE 2.—AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969.

SCHEDULE 3.—AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969.

SCHEDULE 4.—AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969.

SCHEDULE 5.—AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969.

SCHEDULE 6.—SAVINGS AND TRANSITIONAL PROVISIONS.

4. The Consumer Protection Act, 1969, is amended in the manner set forth in Schedules 1–5.

Amendment of Act No. 28, 1969.

5. Schedule 6 has effect.

Savings and transitional provisions.

Sec. 4.

SCHEDULE 1.

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969.

(1) Long title—

Omit "and the establishment of a Consumer Affairs Bureau".

(2) Section 2—

(a) Omit the matter relating to Division 3 of Part II, insert instead :—

DIVISION 3.—*Commissioner for Consumer Affairs —ss.* 12A–16F.

(b) Omit the matter relating to Division 2 of Part III, insert instead :—

DIVISION 2.—*Trade Descriptions and Unfair Practices—ss.* 20–31.

(c) From the matter relating to Division 4 of Part III, omit "33, 34", insert instead "33–34".

(d) After the matter relating to Division 2A of Part IV, insert :—

DIVISION 2B.—*Further Powers of Inspectors—ss.* 39I, 39J.

(3) Section 4 (2)—

(a) Omit ", Fruit Cases Act, 1912".

(b) Omit ", Stock and Station and Real Estate", insert instead "and".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(4) (a) Section 5 (1), definition of "acquire"—

After "otherwise indicates or requires", insert :—

"acquire" includes—

(a) in relation to goods—acquire by way of purchase, exchange or taking on lease, on hire or on hire-purchase;

(b) in relation to services—acquire by way of purchase or exchange; and

(c) in relation to an interest in land, acquire by way of purchase, exchange or taking on lease or by any other method by which an interest in land may lawfully be acquired for a valuable consideration;

(b) Section 5 (1), definition of "Bureau"—

Omit the definition.

(c) Section 5 (1), definition of "consumer"—

Omit the definition, insert instead :—

"consumer" means—

(a) a person who acquires goods from a supplier, but only if the person does not acquire the goods, and does not

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

hold himself out as acquiring the goods, for the purposes of resupply and—

(i) the price paid or payable for the goods (not being goods to which subparagraph (ii) relates) does not exceed the prescribed amount or, where the price paid or payable for the goods (not being goods to which subparagraph (ii) relates) exceeds the prescribed amount, the goods—

(a) are of a kind which are ordinarily acquired for personal, domestic or household use or consumption; or

(b) are of a class or description prescribed for the purpose of this subparagraph,

and the person does not acquire the goods, and does not hold himself out as acquiring the goods, in connection with a business carried on by him, for the purpose of consuming or transforming them in the course of a process of manufacture or production or for the purpose of repairing or treating fixtures on land or other goods; or

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(ii) the goods, whether or not the price paid or payable for the goods exceeds the prescribed amount—

(a) are of a kind which might ordinarily be acquired for the purpose of a farming undertaking and are in fact acquired for that purpose; or

(b) comprise a motor vehicle within the meaning of the Motor Dealers Act, 1974;

(b) a person who acquires services from a supplier, but only if—

(i) the price paid or payable for the services does not exceed the prescribed amount; or

(ii) where the price paid or payable for the services exceeds the prescribed amount, the services—

(a) are of a kind which are ordinarily acquired for personal, domestic or household use or consumption; or

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) are of a kind which might ordinarily be acquired in connection with the carrying on of a farming undertaking and are in fact acquired for that purpose; or

(c) a person who acquires an interest in land from another person but only if the land is not used or intended, or apparently intended for use, for industrial or commercial purposes;

(d) Section 5 (1), definitions of "disposal", "farming undertaking"—

After the definition of "Department", insert :—

"disposal", in relation to an interest in land, includes disposal by way of sale, exchange or lease or by any other method by which an interest in land may lawfully be disposed of for a valuable consideration;

"farming undertaking" includes any agricultural, pastoral, horticultural, orcharding or viticultural undertaking;

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(e) Section 5 (1), definitions of "interest", "officer of the Department" or "officer", "Products Safety Committee" or "Committee"—

After the definition of "inspector", insert :—

"interest", in relation to land, means—

(a) a legal or an equitable estate or interest in the land;

(b) a right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of shares, or by virtue of a contract to purchase shares, in an incorporated company that owns the land or the building; or

(c) a right, power or privilege over, or in connection with, the land;

"officer of the Department" or "officer" means the Commissioner or a person appointed and holding office under section 15;

"Products Safety Committee" or "Committee" means the Products Safety Committee established under section 39B;

(f) Section 5 (1), definition of "services"—

(i) From paragraph (b), omit "or".

(ii) From paragraph (c), omit "facilities,", insert instead "facilities; or".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(iii) After paragraph (c), insert :—

(d) a contract under which one person grants or confers or purports to grant or confer a franchise or other right, benefit or privilege to one or more other persons in consideration of the investment by that other person or those other persons of money and the performance by him or them of work associated with that investment,

(g) Section 5 (1), definition of "supply"—

Omit "render.", insert instead "render for a valuable consideration;".

(h) Section 5 (1), definition of "Supreme Court"—

After the definition of "supply", insert :—

"Supreme Court" means the Supreme Court of New South Wales.

(i) Section 5 (2) (d)—

Omit "and".

(j) Section 5 (2) (e)—

Omit "goods.", insert instead "goods;".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(k) Section 5 (2) (f), (g)—

After section 5 (2) (e), insert :—

(f) a reference to the disposal or acquisition of an interest in land includes a reference to agreeing to dispose of or acquire such an interest, whether the agreement is in writing or is evidenced by writing or not; and

(g) a reference to the disposal or acquisition of an interest in land includes a reference to the disposal or acquisition of such an interest together with goods.

(l) Section 5 (3), (4)—

After section 5 (2), insert:—

(3) Where it is alleged in any proceeding under this Act or in any other proceeding in respect of a matter arising under this Act that a person was a consumer in relation to any particular goods, services or land, it shall be presumed, unless the contrary is established, that the person was a consumer in relation to those goods or services or that land.

(4) Where by virtue of any provision of this Act an inspector has power to take goods after paying a just price for them, the inspector shall be deemed to have paid the just price if he gives or tenders to a person who appears to be the owner of or in charge

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

of the goods a voucher, in or to the effect of the prescribed form, which purports to contain an undertaking by the Commissioner to pay the price written by the inspector on the voucher, being such price as the inspector has agreed on with that owner or person in charge or, in the absence of such an agreement, such price as appears to be the market price of the goods.

Sec. 4.

SCHEDULE 2.

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969.

(1) Section 8—

Omit the section, insert instead:—

Chairman of Council.

8. (1) One of the members of the Council shall, by the instrument of his appointment or by a subsequent instrument executed by the Governor, be appointed as Chairman of the Council to hold office during his term of office as a member.

(2) The Chairman of the Council shall preside at all meetings of the Council at which he is present but if he is unable for any reason to attend any meeting of the Council, the Minister shall appoint one of the other members of the Council to preside at the meeting.

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(3) A member of the Council appointed under subsection (2) shall, when presiding at a meeting of the Council, be deemed to be the Chairman of the Council.

(2) Section 9 (1)—

Omit the subsection, insert instead :—

(1) In the event of any member of the Council being unable to attend a meeting or meetings of the Council due to illness or other cause, the Governor may appoint as an alternative member a person who has the same qualification for appointment as a member of the Council as the member was required to have when he was appointed to act in place of the member during his absence.

(3) Section 10—

Omit "other than the Chairman shall hold office for a term of three years and shall be eligible for reappointment", insert instead "shall hold office for a term of 3 years and shall, from time to time, be eligible for reappointment for a further term of 3 years".

(4) (a) Section 11 (3)—

Omit the subsection, insert instead :—

(3) At a meeting of the Council, a majority of the members of the Council shall constitute a quorum.

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) Section 11 (5)—

Omit "or person acting in his place at any meeting of the Council".

(c) Section 11 (6)—

(i) Omit ", other than the Chairman,".

(ii) Omit "by the Governor.", insert instead :—

by the Governor; or

(f) if, in the case of the member referred to in section 7 (2) (a), he ceases to be an officer of the Department.

(d) Section 11 (7)—

Omit the subsection, insert instead :—

(7) On the occurrence of a casual vacancy in the office of a member of the Council, the Governor may fill the vacancy by appointing as a member of the Council a person who has the same qualification for appointment as a member of the Council as the person whose office has been vacated was required to have when he was appointed and the person appointed to fill the vacancy shall hold office for the residue of the term of office of his predecessor.

(e) Section 11 (7A), (7B)—

Omit the subsections.

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(f) Section 11 (8)—

Omit "the Chairman", insert instead "the member referred to in section 7 (2) (a)".

(g) Section 11 (9)—

Omit ", as subsequently amended".

(5) Section 12—

Omit the section, insert instead :—

Functions of Council.

12. (1) The Council shall have the following functions :—

(a) the carrying out of investigations into matters relating to the interests of consumers and the making of recommendations with respect to those matters;

(b) the provision of advice to the Minister with respect to the operation of this Act or any other Act which is designed to protect the interests of consumers; and

(c) any other function imposed on the Council by the regulations.

(2) The Council shall perform a function referred to in subsection (1) only with the consent or at the direction of the Minister.

(3) The Council may, with the consent of the Minister, co-operate or affiliate with any organisation that has power to make an investigation of the nature referred to in subsection (1) (a), whether in New South Wales or elsewhere.

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(6) Part II, Division 3, heading—

Omit "*Consumer Affairs Bureau*", insert instead "*Commissioner for Consumer Affairs*".

(7) Sections 15, 15A—

Omit section 15, insert instead:—

Officers, etc., of Department.

15. (1) Such persons as may be necessary to enable the Commissioner to perform his functions and exercise his powers under this Act shall be appointed and employed under and subject to the Public Service Act, 1902, as officers or employees.

(2) The Commissioner may, with the approval of the Minister, appoint and employ, otherwise than under a contract of service, on such terms and conditions as he thinks fit and for any particular purpose any person, body or organisation considered to be capable of providing services, information or advice required by the Commissioner to enable him to perform his functions or exercise his powers under this Act.

Delegation.

15A. (1) The Commissioner may, by instrument in writing, delegate such of his functions and powers (other than this power of delegation) as may be specified in the instrument to any officer or employee of the Department and may, by similar instrument, revoke any such delegation either in whole or in part.

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(2) A delegation under subsection (1) may be made subject to such conditions or limitations as to the performance or exercise of any of the functions or powers that have been delegated, or as to time or circumstance, as may be specified in the instrument of delegation.

(3) A function or power the performance or exercise of which has been delegated under subsection (1) may, while the delegation remains unrevoked, be performed or exercised by the delegate from time to time in accordance with the terms of the delegation.

(4) Notwithstanding the making of any delegation under subsection (1), the Commissioner may continue to perform or exercise all or any of the functions or powers that have been delegated.

(5) Any act, omission or thing done, omitted or undergone by a delegate while acting pursuant to a delegation made under subsection (1) shall have the same force and effect as if the act, omission or thing had been done, omitted or undergone by the Commissioner.

(8) (a) Section 16 (1)—

Omit "Bureau", insert instead "Commissioner".

(b) Section 16 (1) (a)—

After "remedying infringements of", insert ", or, as the case may be, securing compliance with,".

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(c) Section 16 (1) (a)—

After "otherwise;", insert "and".

(d) Section 16 (1) (b) (ii)—

Omit "goods or services", insert instead "the supply of goods or services or the disposal of interests in land".

(e) Section 16 (1) (b) (ii)—

Omit "it", insert instead "he".

(f) Section 16 (1) (b) (iii)—

After "conduct research,", insert "to make investigations,".

(g) Section 16 (1) (b) (iii)—

After "work;", insert "and".

(h) Section 16 (1) (b) (iv), (v)—

Omit the subparagraphs, insert instead :—

(iv) to provide the Council with such information as it may reasonably require relating to the supply to consumers of goods or services or

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

the disposal to consumers of interests in land or relating to consumer affairs generally and to carry out such research as may be necessary for the purpose of enabling that information to be provided.

(i) Section 16 (2)—

Omit "Bureau", insert instead "Department".

(9) Section 16A (1)—

Omit the subsection, insert instead :—

(1) An investigation under section 16 (1) (b) (ii) or (iii) may be made by one or more officers designated by the Commissioner for the purpose.

(10) (a) Section 16B—

After "making an investigation", insert "relating to the supply of goods or services".

(b) Section 16B (2)—

At the end of section 16B, insert:—

(2) An investigating officer making an investigation relating to the disposal of an interest in land may, at any reasonable time, for the purposes of the investigation—

(a) enter any place at which transactions involving the disposal of interests in land takes place or which is land an interest in

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

which is being or is proposed to be disposed of, or at which he has reason to believe that any such transactions take place or, as the case may be, which he has reason to believe is any such land;

(b) inspect any documents in any such place which relate to the disposal of an interest in land; or

(c) in any such place, make such examination as he considers to be necessary or desirable.

(11) Section 16F—

Omit "powers, authorities, duties or functions", insert instead "functions or powers".

(12) (a) Section 16G (1) (a)—

After "goods or services", insert "or the disposal to him of an interest in land".

(b) Section 16G (1) (b)—

After "supply", insert "or disposal".

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(13) Section 16J (6)—

After "goods or services", insert ", or, as the case may be, the disposal of an interest in land,".

(14) Sections 17, 18—

Omit the sections, insert instead:—

Liability of officers of Department, etc.

17. Neither the Commissioner or any other officer of the Department nor any member of the Council shall be personally liable, nor shall the Crown be liable, for any act done or omitted, or any statement issued, by the Commissioner or any such officer or the Council in good faith in the course of the operations of the Commissioner or the Council.

Annual report.

18. The Commissioner shall, not later than 3 months after the expiration of the period of 12 months ending on 30th June in each year, prepare a report in respect of his operations and the operations of the Department and of the Council during that period of 12 months and submit the report to the Minister for presentation to Parliament.

Sec. 4.

SCHEDULE 3.

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969.

(1) Part III, Division 2, heading—

After *"Trade Descriptions"*, insert *"and Unfair Practices"*.

(2) (a) Section 21 (3)—

Omit "consumer", insert instead "person acquiring the goods".

(b) Section 21 (4)—

Omit "consumer of", insert instead "person acquiring".

(3) Section 22 (a)—

Omit "consumer", insert instead "person acquiring the goods".

(4) Sections 29, 29A—

Omit section 29, insert instead :—

Double ticketing.

29. (1) A supplier who supplies goods to which two or more prices are appended at a price which exceeds the lower or the lowest of those prices is guilty of an offence against this Act.

(2) For the purposes of subsection (1), a price that is not appended to goods shall be deemed to be appended to the goods if it is—

(a) appended to any covering, label, reel or thing used in connection with the goods;

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) used in connection with the goods on any thing on which the goods are mounted for display or are exposed for supply; or

(c) included in any advertisement or catalogue which is used to promote the supply of the goods or make known the availability of the goods for acquisition.

(3) For the purposes of subsection (1), two or more prices are appended to goods notwithstanding that one of those prices is written, printed or stamped wholly or partly over another of those prices.

(4) For the purposes of this section, a price shall be deemed to be appended to goods or to any covering, label, reel or thing used in connection with the goods if it is annexed or affixed to, or is written, printed or stamped on or otherwise applied to, the goods or to the covering, label, reel or thing, as the case may be.

Bait advertising.

29A. (1) If a supplier advertises for supply at a special price goods or services that he does not intend to make available for supply at that price—

(a) during a period, or in a quantity, specified in the advertisement; or

(b) if no such period or quantity is specified in the advertisement, during such period and in such quantity as is reasonable having regard to the nature of the market in which the supplier carries on business and the nature of the advertisement,

he is guilty of an offence against this Act.

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(2) Where a supplier who has advertised for supply at a special price a quantity of goods or services specified in the advertisement fails to make available for supply to any person who offers to acquire at that price goods or services of the description specified in the advertisement, that supplier is guilty of an offence against this Act.

(3) In any proceedings for an offence under subsection (2), it is a defence for the supplier to establish that—

(a) he was, at the time of the publication of the advertisement, able to supply the quantity of goods or services specified in the advertisement; and

(b) since that publication, he has exhausted that quantity of goods or services by supplying them at the advertised special price.

(4) Where a supplier who has advertised goods or services for supply at a special price for a specified period fails to make available those goods or services for supply to any person who, during that period, offers to acquire those goods or services at that price, that supplier is guilty of an offence against this Act.

(5) Where a supplier who has advertised goods or services for supply at a special price without specifying in the advertisement the period during which the goods or services are available for supply, or the quantity of goods or services that are available for supply, at that price, fails

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

to make those goods or services available for supply to any person who, during such period as is reasonable, having regard to the nature of the market in which the supplier carries on business and the nature of the advertisement, offers to acquire them at that price, that supplier is guilty of an offence against this Act.

(6) In any proceedings for an offence under subsection (4) or (5), it is a defence for the supplier to establish that—

(a) he offered to make available for supply, or offered to procure another person to make available for supply, goods or services of the kind advertised to the person referred to in subsection (4) or, as the case may be, subsection (5) within a reasonable period, in a reasonable quantity and at the advertised special price; or

(b) he immediately offered to make available for supply, or offered to procure another person to make available for supply within a reasonable period, equivalent goods or services to the person referred to in subsection (4) or, as the case may be, subsection (5) in a reasonable quantity and at the price at which the first mentioned goods or services were advertised,

and, in either case, where the offer was accepted by that person, the supplier has made available for supply, or procured another person to make available for supply, goods or services of that kind or equivalent to those referred to in paragraph (a).

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(7) For the purposes of this section, "special price", in relation to an advertisement for the supply of goods or services, means—

(a) a price that is represented in the advertisement for the supply of goods or services to be a special or bargain price, by reference to an ordinary price or otherwise; or

(b) a price that a person who reads, hears or sees the advertisement would reasonably understand to be a special or bargain price, having regard to the prices at which the goods or services advertised or similar goods or services are ordinarily supplied.

(5) Section 32 (1) (a)—

Omit the paragraph, insert instead :—

(a) is intended or apparently intended by that person or any other person to promote the supply or use of goods or services or the disposal of interests in land; and

(6) (a) Section 32A (1) (a)—

Omit the paragraph, insert instead :—

(a) is intended or apparently intended by the first mentioned person or any other person to promote the supply or use of goods or services or the disposal of interests in land; and

(b) Section 32A (1) (b)—

Omit "Bureau" wherever occurring, insert instead "Department".

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(7) Section 33A—

After section 33, insert :—

Powers of court on finding of guilt in respect of certain offences under Pt. III.

33A. (1) Where a person is found guilty of an offence under Division 2 in respect of the supply of goods to which a false trade description is appended, the court which made the finding may, in addition to any penalty imposed in respect of the offence, make an order directing the person found guilty of the offence, within a period specified in the order—

(a) to refund to the person who acquired the goods any money paid to him by that person for the goods; or

(b) to provide the person who acquired the goods with goods in accordance with the true trade description or, if he is unable to provide goods of that description, to refund the money paid to him by that person for the goods.

(2) Where a person is found guilty of an offence under section 32 and the court which made the finding also finds that a party to the proceedings for the offence has sustained loss or damage which is attributable, or partly attributable, to the reliance by that other person on the statement to which the offence relates, that court may, in addition to any penalty imposed in respect of the offence, make an order directing the person found guilty of the offence, within a period specified in the order—

(a) to refund any money paid, or to return any property transferred, to him by that party to the proceedings; or

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) to pay to that other person money equivalent in amount to the loss or damage that that party has sustained.

(3) Where the court referred to in subsection (1) or (2) is a court of summary jurisdiction, that court shall not make an order under either of those subsections directing the refund or payment of an amount in excess of the amount for the time being specified in section 12 (1) of the Courts of Petty Sessions (Civil Claims) Act, 1970.

(4) An order made under subsection (1) or (2) by a court of summary jurisdiction may be enforced in the court, and Part V of the Courts of Petty Sessions (Civil Claims) Act, 1970, shall apply in respect of the court as if it were a court of petty sessions exercising jurisdiction under that Act and in respect of the order as if—

(a) the order were a judgment of a court of petty sessions exercising that jurisdiction;

(b) the amount ordered to be refunded were a judgment debt referred to in that Part;

(c) the person 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.

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(5) An order made under subsection (1) or (2) by the Supreme Court may be enforced in that Court as if—

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

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

(8) (a) Section 34E (2)—

Omit "Except so far as may be authorised by or under the regulations, a", insert instead "A".

(b) Section 34E (4)—

After section 34E (3), insert:—

(4) The regulations may contain such exemptions from the operation of subsections (1) and (2), applicable in such cases, as may be prescribed.

Sec. 4.

SCHEDULE 4.

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969.

(1) Section 37 (6)–(11)—

After section 37 (5), insert:—

(6) Subsections (1) and (2) shall not apply in relation to any class or description of goods or component parts, or any particular goods or component parts, in respect of which a certificate of safety has been issued by the Products Safety Committee, notwithstanding that the class or description of goods or component parts or, as the case may be, the particular goods or component parts are goods or component parts included in a class or description of goods or component parts in respect of which regulations made under section 36 are for the time being in force.

(7) Any person who wishes to supply goods or component parts of a class or description, or particular goods or component parts, that are included in a class or description of goods or component parts in respect of which regulations made under section 36 are for the time being in force may apply in writing to the Products Safety Committee for the issue of a certificate of safety in respect of goods or component parts of the first mentioned class or description or, as the case may be, those particular goods or component parts.

(8) Where, on consideration of an application made to it under subsection (7), the Products Safety Committee is satisfied that the goods or component parts to which the application relates are sufficiently safe to warrant their exemption from the requirements of the regulations made under section 36, the Committee shall issue the certificate applied for, but if it is not so satisfied it shall refuse the application and notify the applicant in writing of the refusal, which shall include a statement of the reasons as to why the application was refused.

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(9) The Products Safety Committee, in considering an application made under subsection (7)—

(a) may make such investigations as it considers necessary to enable it to arrive at a decision with respect to the application;

(b) shall take into account any representations made to it by or on behalf of the applicant; and

(c) unless in all the circumstances it does not consider that it is reasonably practicable to do so, shall permit the applicant or his representative, if the applicant so wishes, to be heard orally by the Committee, or by a member of the Committee appointed for the purpose.

(10) Subject to subsection (9) and clause 5 of Schedule 3, the Products Safety Committee may determine its own procedure for considering applications made under subsection (7) and, in particular, may determine whether or not its consideration of the application should be held in public.

(11) The provisions of section 39D shall apply in relation to an investigation made under subsection (9) (a) in the same way as they apply in relation to an investigation of a question referred to the Products Safety Committee under section 39C (1).

(2) Section 39A (1), definition of "Committee"—

Omit the definition.

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(3) Section 39C (1)—

Omit "to consumers in New South Wales", insert instead "in New South Wales to consumers".

(4) Section 39DA (3), (4)—

Omit the subsections, insert instead :—

(3) An order made under subsection (1) shall not be capable of being renewed or replaced by a further order under that subsection but may, at any time before it expires or is revoked, be replaced by an order made under section 39E (1) or (3).

(4) Where—

(a) an order has been made under subsection (1) in respect of goods of any class or description or any particular goods; and

(b) before that order expires or is revoked, an order made under section 39E (1) or (3) takes effect in respect of goods of that class or description or those particular goods,

the order referred to in paragraph (a) is revoked.

(5) (a) Section 39E (1A)—

After section 39E (1), insert :—

(1A) Where—

(a) a competent authority of the Commonwealth or of a State (other than New South Wales) or a Territory of the Common-

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

wealth, under the authority of an enactment of the Commonwealth or of that State or Territory, has, after full consideration of the matter and of representations made by interested parties, made an order or similar instrument—

(i) prohibiting the supply in the Commonwealth or in that State or Territory of goods of a class or description specified or referred to in the order or instrument; or

(ii) allowing the supply in the Commonwealth or in that State or Territory of goods of a class or description specified or referred to in the order or instrument but only subject to conditions or restrictions so specified or referred to;

(b) the reason for the making of the order or instrument was that the goods were dangerous; and

(c) the order or instrument has not been revoked or otherwise ceased to have effect,

the Minister, without making a reference under section 39C (1) to the Committee in respect of goods of that class or description, may, if he is satisfied that goods of that class or description are dangerous, make—

(d) where an order or instrument to which paragraph (a) (i) relates is in force—an order prohibiting the supply in New South

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

Wales to consumers of goods of the class or description specified or referred to in the order or instrument; or

(e) where an order or instrument to which paragraph (a) (ii) relates is in force—an order allowing the supply in New South Wales to consumers of goods of the class or description specified or referred to in the order or instrument, but only subject to conditions or restrictions similar to those so specified or referred to.

(b) Section 39E (2)—

After "subsection (1)", insert "or (1A)".

(c) Section 39E (5), (6)—

After section 39E (4), insert :—

(5) An order made under subsection (3) shall not be capable of being renewed or replaced by a further order under that subsection but may, at any time before it expires or is revoked, be replaced by an order made under subsection (1).

(6) Where—

(a) an order has been made under subsection (3) in respect of goods of any class or description or any particular goods; and

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) before that order expires or is revoked, an order made under subsection (1) takes effect in respect of goods of that class or description or those particular goods,

the order referred to in paragraph (a) is revoked.

(6) Section 39F—

After "section 39E (1)", insert "or (1A)".

(7) Section 39G—

After "section 39E (1)", insert ", (1A)".

(8) Section 39H (a)—

After "section 39E (1)", insert ", (1A)".

(9) Part IV, Division 2B—

After Division 2A of Part IV, insert :—

DIVISION 2B.—*Further Powers of Inspectors.*

Power to impound goods, etc., in certain cases.

39I. (1) Where an inspector suspects on reasonable grounds that—

(a) any goods or component parts are being or have been supplied in contravention of section 37; or

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) any goods are being or have been supplied in contravention of an order made under section 39E (1) or (1A),

he may, subject to this section, impound those goods or component parts or, as the case may be, those goods and deal with them in the prescribed manner.

(2) For the purposes of, and in connection with, the exercise of the power conferred by subsection (1), an inspector may enter any place where the goods or component parts are located or where he believes on reasonable grounds that the goods or parts are located.

(3) Any goods or component parts impounded under subsection (1) may, at the option of the inspector who impounded the goods or parts or of any inspector acting in his place, be detained in the place where they were impounded or removed to another place and detained there.

(4) If any person, without the permission of the Commissioner or an inspector, removes, takes away or interferes with goods or component parts which that person knows or might reasonably be expected to know to have been impounded and detained in accordance with this section, that person, in addition to any other penalty to which he may be liable, is, unless he has made an application under section 39J and an order has been made under that section disallowing the impounding, guilty of an offence against this Act.

(5) An inspector shall exercise the powers conferred by subsections (1) and (2) only with the consent, or at the direction, of the Minister.

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

Applications for orders disallowing the impounding of goods, etc.

39J. (1) Any person claiming to be entitled to goods or component parts that have been impounded under section 39I (1) may, within 28 days after the impounding of the goods or parts, make an application to the District Court for an order disallowing the impounding of the goods or parts.

(2) An application made under subsection (1) shall not be heard unless the applicant has previously served a copy of the application on the Commissioner.

(3) The Commissioner shall be entitled to appear at the hearing of an application made under subsection (1) as respondent and may be represented at the hearing either by another officer of the Department appointed by him or by a solicitor or by counsel.

(4) On the hearing of an application made under subsection (1) the following provisions shall apply :—

(a) in the case of goods or component parts impounded for a suspected contravention of section 37, the Court shall make an order disallowing the impounding of the goods or component parts—

(i) if it is proved by or on behalf of the applicant that he would, but for the impounding, be entitled to the goods or parts and it is not proved beyond all reasonable doubt by or on behalf of the Commissioner that the goods or parts were being or had been, at the time of the impounding, supplied in contravention of section 37; or

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(ii) if, in the opinion of the Court, there are exceptional circumstances justifying the making of an order disallowing the impounding,

but otherwise the Court shall refuse the application; or

(b) in the case of goods impounded for a suspected contravention of an order made under section 39E (1) or (1A), the Court shall make an order disallowing the impounding of the goods—

(i) if it is proved by or on behalf of the applicant that he would, but for the impounding, be entitled to the goods and it is not proved beyond all reasonable doubt by or on behalf of the Commissioner that the goods were being or had been, at the time of the impounding, supplied in contravention of the order made under section 39E (1) or (1A); or

(ii) if, in the opinion of the Court, there are exceptional circumstances justifying the making of an order disallowing the impounding,

but otherwise the Court shall refuse the application.

(5) Where the Court makes an order under subsection (4) (a) or (b) disallowing the impounding of goods or component parts, it shall also make one or both of the following orders :—

(a) an order directing the Commissioner to cause the goods or parts to be delivered to the applicant or to such other person as appears to the Court to be entitled to the goods or parts;

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) where the goods or component parts cannot for any reason be so delivered or have depreciated in value by reason of their having been impounded, an order directing the Commissioner to pay to the applicant or to such other person as appears to the Court to be entitled to the goods or parts, such amount by way of compensation as the Court considers to be just and reasonable.

(6) The award of costs with respect to the hearing of an application made under this section shall be in the discretion of the Court.

(7) Where the Court makes an order referred to in subsection (5) (b) or awards any amount as costs under subsection (6), that order or award shall be enforceable as a judgment of the Court.

(8) If no application is made under subsection (1) within 28 days after the date on which goods or component parts were impounded under section 39I (1) or if such an application is made but is refused or is withdrawn before it is heard, the goods or parts shall be forfeited to and become the property of the Crown and shall be destroyed or otherwise disposed of in such manner as the Commissioner shall direct.

(10) (a) Schedule 3, clause 1 (5)—

Omit "a member", insert instead "an officer".

(b) Schedule 3, clause 5 (1)—

After "section 39C (1)", insert "or in relation to any application made under section 37 (7)".

Sec. 4.

SCHEDULE 5.

AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969.

(1) (a) Section 55 (1)—

Omit the subsection, insert instead :—

(1) The Minister may appoint an officer of the Department as an inspector for the purposes of carrying into effect the provisions of this Act.

(b) Section 55 (4)—

After "shall not", insert ", without the consent of the occupier,".

(c) Section 55 (4)—

After "manufacture", insert ", business".

(d) Section 55 (5) (a)—

After "under this", insert "or any other".

(2) Section 55A (1)—

Omit the subsection.

(3) Section 56—

Omit the section, insert instead :—

Proceedings for offences.

56. (1) Proceedings for an offence against this Act (Part V excepted) shall be disposed of summarily before—

(a) a court of petty sessions constituted by a stipendiary magistrate sitting alone;

(b) an industrial magistrate; or

(c) with the written consent of the Minister, the Supreme Court in its summary jurisdiction.

SCHEDULE 5—*continued.*

AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(2) If proceedings for an offence against this Act (Part V excepted) are taken in a court of petty sessions or before an industrial magistrate, the court or magistrate shall not, on convicting any person for the offence, impose a penalty exceeding $2,000, notwithstanding that the maximum penalty which could, apart from this subsection, be imposed under this Act exceeds that amount.

(3) If proceedings for an offence against this Act (Part V excepted) are taken in the Supreme Court in its summary jurisdiction, the Supreme Court may impose a penalty not exceeding the maximum penalty prescribed by this Act in respect of the offence.

(4) Proceedings for an offence against this Act (Part V excepted) shall be commenced by information but may not be commenced after the expiration of 12 months after the time when the offence is alleged to have been committed.

(5) The provisions of the Industrial Arbitration Act, 1940, and the regulations made under that Act, relating to proceedings before an industrial magistrate and to appeals from an industrial magistrate to the Industrial Commission of New South Wales shall, so far as applicable and with any necessary modifications, apply to proceedings before a court of petty sessions or an industrial magistrate for offences against this Act.

(4) Section 56A—

After section 56, insert :—

56A. Where a person— Injunctions.

(a) is contravening or failing to comply with;

SCHEDULE 5—*continued.*

AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) has on two or more occasions contravened or failed to comply with; or

(c) threatens to contravene or fail to comply with,

a provision of this Act or the regulations or of any order made under this Act or a provision of any other Act administered by the Minister relating to consumer affairs or of any regulation or order made under that other Act, the Supreme Court may, on an application being made by the Commissioner with the consent of the Minister, grant an injunction—

(d) in the case referred to in paragraph (a)—restraining the continuation of the contravention or failure to comply so referred to;

(e) in the case referred to in paragraph (b)—restraining any further contravention or failure to comply so referred to; or

(f) in the case referred to in paragraph (c)—restraining the threatened contravention or failure to comply so referred to.

(5) (a) Section 57 (1)—

Omit "$2,000 or imprisonment for a term not exceeding 12 months, or both", insert instead "$10,000".

(b) Section 57 (2)—

Omit "or the regulations".

SCHEDULE 5—*continued.*

AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(6) (a) Section 58 (2)—

Omit "Commissioner for Consumer Affairs", insert instead "Commissioner".

(b) Section 58 (2) (a) (i)—

Omit "the Commissioner, an officer of the Consumer Affairs Bureau or an inspector, or by any two or more of those persons", insert instead "an officer of the Department or by two or more such officers".

(c) Section 58 (2) (a) (ii)—

Omit "Consumer Affairs Bureau authorised by the Commissioner for the purposes of subsection (2) of section 16", insert instead "Department authorised by the Commissioner for the purposes of section 16 (2)".

(d) Section 58 (2) (b)—

Omit "subsection (2) of section 16E", insert instead "section 16E (2)".

(e) Section 58 (2) (c) (i)—

Omit "Bureau under subsection (1) of section 16", insert instead "Commissioner under section 16 (1)".

(f) Section 58 (2) (c) (ii)—

Omit "subsection (2) of section 16", insert instead "section 16 (2)".

Sec. 5.

SCHEDULE 6.

Savings and Transitional Provisions.

Term of office of officer of Department who is a member of Consumer Affairs Council.

1. The officer of the Department who, at the commencement of Schedule 2 (4), is a member of the Consumer Affairs Council by virtue of being appointed pursuant to section 7 (2) (a) of the Consumer Protection Act, 1969, shall, subject to section 11 (6) of that Act, as in force after that commencement, hold office for a term of 3 years from the date on which he was appointed.

Officers and employees of Consumer Affairs Bureau.

2. Every person employed in the Consumer Affairs Bureau as an officer or an employee immediately before the commencement of Schedule 2 (7) shall be deemed to be an officer, or, as the case may be, to be an employee, appointed and employed under section 15 (1) of the Consumer Protection Act, 1969, as in force after that commencement.

Functions of Consumer Affairs Bureau.

3. (1) Where, immediately before the commencement of Schedule 2 (8), any action for remedying infringements of the Consumer Protection Act, 1969, or of regulations made under that Act, or of any other legislation administered by the Minister administering that Act and relating to the protection of consumers, was being taken by the Consumer Affairs Bureau or had been taken by that Bureau without having been completed, that action may be continued and completed by the Commissioner for Consumer Affairs.

(2) Where, immediately before the commencement of Schedule 2 (8), any matter is being investigated by the Consumer Affairs Bureau, that investigation may be continued and completed by the Commissioner for Consumer Affairs.

Inspectors.

4. An inspector holding office by virtue of being appointed under subsection (1) of section 55 of the Consumer Protection Act, 1969, as in force immediately before the commencement of Schedule 5 (1), shall be deemed to have been appointed under that subsection, as in force after that commencement.

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

Government House,
Sydney, 6th April, 1978.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1978

CONSUMER PROTECTION (AMENDMENT) ACT, 1978, No. 60

New South Wales

ANNO VICESIMO SEPTIMO

ELIZABETHÆ II REGINÆ

* *

Act No. 60, 1978.

An Act to amend the Consumer Protection Act, 1969, for the purposes of reorganising the Consumer Affairs Council, abolishing the Consumer Affairs Bureau and conferring the functions of the Bureau on the Commissioner for Consumer Affairs, and providing increased protection to consumers with respect to certain types of transactions, and for certain other purposes. [Assented to, 6th April, 1978.]

P 46852G (88c)

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 "Consumer Protection (Amendment) Act, 1978".

Commencement.

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

(2) Section 4 shall, in its application to a provision of Schedules 1–5, commence on the day on which that provision commences.

(3) The several provisions of Schedules 1–5 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.

Schedules.

3. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969.

SCHEDULE 2.—AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969.

SCHEDULE 3.—AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969.

SCHEDULE 4.—AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969.

SCHEDULE 5.—AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969.

SCHEDULE 6.—SAVINGS AND TRANSITIONAL PROVISIONS.

4. The Consumer Protection Act, 1969, is amended in the manner set forth in Schedules 1–5.

Amendment of Act No. 28, 1969.

5. Schedule 6 has effect.

Savings and transitional provisions.

Sec. 4.

SCHEDULE 1.

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969.

(1) Long title—

Omit "and the establishment of a Consumer Affairs Bureau".

(2) Section 2—

(a) Omit the matter relating to Division 3 of Part II, insert instead :—

DIVISION 3.—*Commissioner for Consumer Affairs —ss.* 12A–16F.

(b) Omit the matter relating to Division 2 of Part III, insert instead :—

DIVISION 2.—*Trade Descriptions and Unfair Practices—ss.* 20–31.

(c) From the matter relating to Division 4 of Part III, omit "33, 34", insert instead "33–34".

(d) After the matter relating to Division 2A of Part IV, insert :—

DIVISION 2B.—*Further Powers of Inspectors—ss.* 39I, 39J.

(3) Section 4 (2)—

(a) Omit ", Fruit Cases Act, 1912".

(b) Omit ", Stock and Station and Real Estate", insert instead "and".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(4) (a) Section 5 (1), definition of "acquire"—

After "otherwise indicates or requires", insert :—

"acquire" includes—

(a) in relation to goods—acquire by way of purchase, exchange or taking on lease, on hire or on hire-purchase;

(b) in relation to services—acquire by way of purchase or exchange; and

(c) in relation to an interest in land, acquire by way of purchase, exchange or taking on lease or by any other method by which an interest in land may lawfully be acquired for a valuable consideration;

(b) Section 5 (1), definition of "Bureau"—

Omit the definition.

(c) Section 5 (1), definition of "consumer"—

Omit the definition, insert instead :—

"consumer" means—

(a) a person who acquires goods from a supplier, but only if the person does not acquire the goods, and does not

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

hold himself out as acquiring the goods, for the purposes of resupply and—

(i) the price paid or payable for the goods (not being goods to which subparagraph (ii) relates) does not exceed the prescribed amount or, where the price paid or payable for the goods (not being goods to which subparagraph (ii) relates) exceeds the prescribed amount, the goods—

(a) are of a kind which are ordinarily acquired for personal, domestic or household use or consumption; or

(b) are of a class or description prescribed for the purpose of this subparagraph,

and the person does not acquire the goods, and does not hold himself out as acquiring the goods, in connection with a business carried on by him, for the purpose of consuming or transforming them in the course of a process of manufacture or production or for the purpose of repairing or treating fixtures on land or other goods; or

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(ii) the goods, whether or not the price paid or payable for the goods exceeds the prescribed amount—

(a) are of a kind which might ordinarily be acquired for the purpose of a farming undertaking and are in fact acquired for that purpose; or

(b) comprise a motor vehicle within the meaning of the Motor Dealers Act, 1974;

(b) a person who acquires services from a supplier, but only if—

(i) the price paid or payable for the services does not exceed the prescribed amount; or

(ii) where the price paid or payable for the services exceeds the prescribed amount, the services—

(a) are of a kind which are ordinarily acquired for personal, domestic or household use or consumption; or

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) are of a kind which might ordinarily be acquired in connection with the carrying on of a farming undertaking and are in fact acquired for that purpose; or

(c) a person who acquires an interest in land from another person but only if the land is not used or intended, or apparently intended for use, for industrial or commercial purposes;

(d) Section 5 (1), definitions of "disposal", "farming undertaking"—

After the definition of "Department", insert :—

"disposal", in relation to an interest in land, includes disposal by way of sale, exchange or lease or by any other method by which an interest in land may lawfully be disposed of for a valuable consideration;

"farming undertaking" includes any agricultural, pastoral, horticultural, orcharding or viticultural undertaking;

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(e) Section 5 (1), definitions of "interest", "officer of the Department" or "officer", "Products Safety Committee" or "Committee"—

After the definition of "inspector", insert :—

"interest", in relation to land, means—

(a) a legal or an equitable estate or interest in the land;

(b) a right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of shares, or by virtue of a contract to purchase shares, in an incorporated company that owns the land or the building; or

(c) a right, power or privilege over, or in connection with, the land;

"officer of the Department" or "officer" means the Commissioner or a person appointed and holding office under section 15;

"Products Safety Committee" or "Committee" means the Products Safety Committee established under section 39B;

(f) Section 5 (1), definition of "services"—

(i) From paragraph (b), omit "or".

(ii) From paragraph (c), omit "facilities,", insert instead "facilities; or".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(iii) After paragraph (c), insert :—

(d) a contract under which one person grants or confers or purports to grant or confer a franchise or other right, benefit or privilege to one or more other persons in consideration of the investment by that other person or those other persons of money and the performance by him or them of work associated with that investment,

(g) Section 5 (1), definition of "supply"—

Omit "render.", insert instead "render for a valuable consideration;".

(h) Section 5 (1), definition of "Supreme Court"—

After the definition of "supply", insert :—

"Supreme Court" means the Supreme Court of New South Wales.

(i) Section 5 (2) (d)—

Omit "and".

(j) Section 5 (2) (e)—

Omit "goods.", insert instead "goods;".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(k) Section 5 (2) (f), (g)—

After section 5 (2) (e), insert :—

(f) a reference to the disposal or acquisition of an interest in land includes a reference to agreeing to dispose of or acquire such an interest, whether the agreement is in writing or is evidenced by writing or not; and

(g) a reference to the disposal or acquisition of an interest in land includes a reference to the disposal or acquisition of such an interest together with goods.

(l) Section 5 (3), (4)—

After section 5 (2), insert:—

(3) Where it is alleged in any proceeding under this Act or in any other proceeding in respect of a matter arising under this Act that a person was a consumer in relation to any particular goods, services or land, it shall be presumed, unless the contrary is established, that the person was a consumer in relation to those goods or services or that land.

(4) Where by virtue of any provision of this Act an inspector has power to take goods after paying a just price for them, the inspector shall be deemed to have paid the just price if he gives or tenders to a person who appears to be the owner of or in charge

SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG TITLE AND PART I OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

of the goods a voucher, in or to the effect of the prescribed form, which purports to contain an undertaking by the Commissioner to pay the price written by the inspector on the voucher, being such price as the inspector has agreed on with that owner or person in charge or, in the absence of such an agreement, such price as appears to be the market price of the goods.

Sec. 4.

SCHEDULE 2.

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969.

(1) Section 8—

Omit the section, insert instead:—

Chairman of Council.

8. (1) One of the members of the Council shall, by the instrument of his appointment or by a subsequent instrument executed by the Governor, be appointed as Chairman of the Council to hold office during his term of office as a member.

(2) The Chairman of the Council shall preside at all meetings of the Council at which he is present but if he is unable for any reason to attend any meeting of the Council, the Minister shall appoint one of the other members of the Council to preside at the meeting.

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(3) A member of the Council appointed under subsection (2) shall, when presiding at a meeting of the Council, be deemed to be the Chairman of the Council.

(2) Section 9 (1)—

Omit the subsection, insert instead :—

(1) In the event of any member of the Council being unable to attend a meeting or meetings of the Council due to illness or other cause, the Governor may appoint as an alternative member a person who has the same qualification for appointment as a member of the Council as the member was required to have when he was appointed to act in place of the member during his absence.

(3) Section 10—

Omit "other than the Chairman shall hold office for a term of three years and shall be eligible for reappointment", insert instead "shall hold office for a term of 3 years and shall, from time to time, be eligible for reappointment for a further term of 3 years".

(4) (a) Section 11 (3)—

Omit the subsection, insert instead :—

(3) At a meeting of the Council, a majority of the members of the Council shall constitute a quorum.

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) Section 11 (5)—

Omit "or person acting in his place at any meeting of the Council".

(c) Section 11 (6)—

(i) Omit ", other than the Chairman,".

(ii) Omit "by the Governor.", insert instead :—

by the Governor; or

(f) if, in the case of the member referred to in section 7 (2) (a), he ceases to be an officer of the Department.

(d) Section 11 (7)—

Omit the subsection, insert instead :—

(7) On the occurrence of a casual vacancy in the office of a member of the Council, the Governor may fill the vacancy by appointing as a member of the Council a person who has the same qualification for appointment as a member of the Council as the person whose office has been vacated was required to have when he was appointed and the person appointed to fill the vacancy shall hold office for the residue of the term of office of his predecessor.

(e) Section 11 (7A), (7B)—

Omit the subsections.

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(f) Section 11 (8)—

Omit "the Chairman", insert instead "the member referred to in section 7 (2) (a)".

(g) Section 11 (9)—

Omit ", as subsequently amended".

(5) Section 12—

Omit the section, insert instead :—

Functions of Council.

12. (1) The Council shall have the following functions :—

(a) the carrying out of investigations into matters relating to the interests of consumers and the making of recommendations with respect to those matters;

(b) the provision of advice to the Minister with respect to the operation of this Act or any other Act which is designed to protect the interests of consumers; and

(c) any other function imposed on the Council by the regulations.

(2) The Council shall perform a function referred to in subsection (1) only with the consent or at the direction of the Minister.

(3) The Council may, with the consent of the Minister, co-operate or affiliate with any organisation that has power to make an investigation of the nature referred to in subsection (1) (a), whether in New South Wales or elsewhere.

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(6) Part II, Division 3, heading—

Omit "*Consumer Affairs Bureau*", insert instead "*Commissioner for Consumer Affairs*".

(7) Sections 15, 15A—

Omit section 15, insert instead:—

Officers, etc., of Department.

15. (1) Such persons as may be necessary to enable the Commissioner to perform his functions and exercise his powers under this Act shall be appointed and employed under and subject to the Public Service Act, 1902, as officers or employees.

(2) The Commissioner may, with the approval of the Minister, appoint and employ, otherwise than under a contract of service, on such terms and conditions as he thinks fit and for any particular purpose any person, body or organisation considered to be capable of providing services, information or advice required by the Commissioner to enable him to perform his functions or exercise his powers under this Act.

Delegation.

15A. (1) The Commissioner may, by instrument in writing, delegate such of his functions and powers (other than this power of delegation) as may be specified in the instrument to any officer or employee of the Department and may, by similar instrument, revoke any such delegation either in whole or in part.

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(2) A delegation under subsection (1) may be made subject to such conditions or limitations as to the performance or exercise of any of the functions or powers that have been delegated, or as to time or circumstance, as may be specified in the instrument of delegation.

(3) A function or power the performance or exercise of which has been delegated under subsection (1) may, while the delegation remains unrevoked, be performed or exercised by the delegate from time to time in accordance with the terms of the delegation.

(4) Notwithstanding the making of any delegation under subsection (1), the Commissioner may continue to perform or exercise all or any of the functions or powers that have been delegated.

(5) Any act, omission or thing done, omitted or undergone by a delegate while acting pursuant to a delegation made under subsection (1) shall have the same force and effect as if the act, omission or thing had been done, omitted or undergone by the Commissioner.

(8) (a) Section 16 (1)—

Omit "Bureau", insert instead "Commissioner".

(b) Section 16 (1) (a)—

After "remedying infringements of", insert ", or, as the case may be, securing compliance with,".

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(c) Section 16 (1) (a)—

After "otherwise;", insert "and".

(d) Section 16 (1) (b) (ii)—

Omit "goods or services", insert instead "the supply of goods or services or the disposal of interests in land".

(e) Section 16 (1) (b) (ii)—

Omit "it", insert instead "he".

(f) Section 16 (1) (b) (iii)—

After "conduct research,", insert "to make investigations,".

(g) Section 16 (1) (b) (iii)—

After "work;", insert "and".

(h) Section 16 (1) (b) (iv), (v)—

Omit the subparagraphs, insert instead :—

(iv) to provide the Council with such information as it may reasonably require relating to the supply to consumers of goods or services or

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

the disposal to consumers of interests in land or relating to consumer affairs generally and to carry out such research as may be necessary for the purpose of enabling that information to be provided.

(i) Section 16 (2)—

Omit "Bureau", insert instead "Department".

(9) Section 16A (1)—

Omit the subsection, insert instead :—

(1) An investigation under section 16 (1) (b) (ii) or (iii) may be made by one or more officers designated by the Commissioner for the purpose.

(10) (a) Section 16B—

After "making an investigation", insert "relating to the supply of goods or services".

(b) Section 16B (2)—

At the end of section 16B, insert:—

(2) An investigating officer making an investigation relating to the disposal of an interest in land may, at any reasonable time, for the purposes of the investigation—

(a) enter any place at which transactions involving the disposal of interests in land takes place or which is land an interest in

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

which is being or is proposed to be disposed of, or at which he has reason to believe that any such transactions take place or, as the case may be, which he has reason to believe is any such land;

(b) inspect any documents in any such place which relate to the disposal of an interest in land; or

(c) in any such place, make such examination as he considers to be necessary or desirable.

(11) Section 16F—

Omit "powers, authorities, duties or functions", insert instead "functions or powers".

(12) (a) Section 16G (1) (a)—

After "goods or services", insert "or the disposal to him of an interest in land".

(b) Section 16G (1) (b)—

After "supply", insert "or disposal".

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(13) Section 16J (6)—

After "goods or services", insert ", or, as the case may be, the disposal of an interest in land,".

(14) Sections 17, 18—

Omit the sections, insert instead:—

Liability of officers of Department, etc.

17. Neither the Commissioner or any other officer of the Department nor any member of the Council shall be personally liable, nor shall the Crown be liable, for any act done or omitted, or any statement issued, by the Commissioner or any such officer or the Council in good faith in the course of the operations of the Commissioner or the Council.

Annual report.

18. The Commissioner shall, not later than 3 months after the expiration of the period of 12 months ending on 30th June in each year, prepare a report in respect of his operations and the operations of the Department and of the Council during that period of 12 months and submit the report to the Minister for presentation to Parliament.

Sec. 4.

SCHEDULE 3.

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969.

(1) Part III, Division 2, heading—

After *"Trade Descriptions"*, insert *"and Unfair Practices"*.

(2) (a) Section 21 (3)—

Omit "consumer", insert instead "person acquiring the goods".

(b) Section 21 (4)—

Omit "consumer of", insert instead "person acquiring".

(3) Section 22 (a)—

Omit "consumer", insert instead "person acquiring the goods".

(4) Sections 29, 29A—

Omit section 29, insert instead :—

Double ticketing.

29. (1) A supplier who supplies goods to which two or more prices are appended at a price which exceeds the lower or the lowest of those prices is guilty of an offence against this Act.

(2) For the purposes of subsection (1), a price that is not appended to goods shall be deemed to be appended to the goods if it is—

(a) appended to any covering, label, reel or thing used in connection with the goods;

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) used in connection with the goods on any thing on which the goods are mounted for display or are exposed for supply; or

(c) included in any advertisement or catalogue which is used to promote the supply of the goods or make known the availability of the goods for acquisition.

(3) For the purposes of subsection (1), two or more prices are appended to goods notwithstanding that one of those prices is written, printed or stamped wholly or partly over another of those prices.

(4) For the purposes of this section, a price shall be deemed to be appended to goods or to any covering, label, reel or thing used in connection with the goods if it is annexed or affixed to, or is written, printed or stamped on or otherwise applied to, the goods or to the covering, label, reel or thing, as the case may be.

Bait advertising.

29A. (1) If a supplier advertises for supply at a special price goods or services that he does not intend to make available for supply at that price—

(a) during a period, or in a quantity, specified in the advertisement; or

(b) if no such period or quantity is specified in the advertisement, during such period and in such quantity as is reasonable having regard to the nature of the market in which the supplier carries on business and the nature of the advertisement,

he is guilty of an offence against this Act.

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(2) Where a supplier who has advertised for supply at a special price a quantity of goods or services specified in the advertisement fails to make available for supply to any person who offers to acquire at that price goods or services of the description specified in the advertisement, that supplier is guilty of an offence against this Act.

(3) In any proceedings for an offence under subsection (2), it is a defence for the supplier to establish that—

(a) he was, at the time of the publication of the advertisement, able to supply the quantity of goods or services specified in the advertisement; and

(b) since that publication, he has exhausted that quantity of goods or services by supplying them at the advertised special price.

(4) Where a supplier who has advertised goods or services for supply at a special price for a specified period fails to make available those goods or services for supply to any person who, during that period, offers to acquire those goods or services at that price, that supplier is guilty of an offence against this Act.

(5) Where a supplier who has advertised goods or services for supply at a special price without specifying in the advertisement the period during which the goods or services are available for supply, or the quantity of goods or services that are available for supply, at that price, fails

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

to make those goods or services available for supply to any person who, during such period as is reasonable, having regard to the nature of the market in which the supplier carries on business and the nature of the advertisement, offers to acquire them at that price, that supplier is guilty of an offence against this Act.

(6) In any proceedings for an offence under subsection (4) or (5), it is a defence for the supplier to establish that—

(a) he offered to make available for supply, or offered to procure another person to make available for supply, goods or services of the kind advertised to the person referred to in subsection (4) or, as the case may be, subsection (5) within a reasonable period, in a reasonable quantity and at the advertised special price; or

(b) he immediately offered to make available for supply, or offered to procure another person to make available for supply within a reasonable period, equivalent goods or services to the person referred to in subsection (4) or, as the case may be, subsection (5) in a reasonable quantity and at the price at which the first mentioned goods or services were advertised,

and, in either case, where the offer was accepted by that person, the supplier has made available for supply, or procured another person to make available for supply, goods or services of that kind or equivalent to those referred to in paragraph (a).

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(7) For the purposes of this section, "special price", in relation to an advertisement for the supply of goods or services, means—

(a) a price that is represented in the advertisement for the supply of goods or services to be a special or bargain price, by reference to an ordinary price or otherwise; or

(b) a price that a person who reads, hears or sees the advertisement would reasonably understand to be a special or bargain price, having regard to the prices at which the goods or services advertised or similar goods or services are ordinarily supplied.

(5) Section 32 (1) (a)—

Omit the paragraph, insert instead :—

(a) is intended or apparently intended by that person or any other person to promote the supply or use of goods or services or the disposal of interests in land; and

(6) (a) Section 32A (1) (a)—

Omit the paragraph, insert instead :—

(a) is intended or apparently intended by the first mentioned person or any other person to promote the supply or use of goods or services or the disposal of interests in land; and

(b) Section 32A (1) (b)—

Omit "Bureau" wherever occurring, insert instead "Department".

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(7) Section 33A—

After section 33, insert :—

Powers of court on finding of guilt in respect of certain offences under Pt. III.

33A. (1) Where a person is found guilty of an offence under Division 2 in respect of the supply of goods to which a false trade description is appended, the court which made the finding may, in addition to any penalty imposed in respect of the offence, make an order directing the person found guilty of the offence, within a period specified in the order—

(a) to refund to the person who acquired the goods any money paid to him by that person for the goods; or

(b) to provide the person who acquired the goods with goods in accordance with the true trade description or, if he is unable to provide goods of that description, to refund the money paid to him by that person for the goods.

(2) Where a person is found guilty of an offence under section 32 and the court which made the finding also finds that a party to the proceedings for the offence has sustained loss or damage which is attributable, or partly attributable, to the reliance by that other person on the statement to which the offence relates, that court may, in addition to any penalty imposed in respect of the offence, make an order directing the person found guilty of the offence, within a period specified in the order—

(a) to refund any money paid, or to return any property transferred, to him by that party to the proceedings; or

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) to pay to that other person money equivalent in amount to the loss or damage that that party has sustained.

(3) Where the court referred to in subsection (1) or (2) is a court of summary jurisdiction, that court shall not make an order under either of those subsections directing the refund or payment of an amount in excess of the amount for the time being specified in section 12 (1) of the Courts of Petty Sessions (Civil Claims) Act, 1970.

(4) An order made under subsection (1) or (2) by a court of summary jurisdiction may be enforced in the court, and Part V of the Courts of Petty Sessions (Civil Claims) Act, 1970, shall apply in respect of the court as if it were a court of petty sessions exercising jurisdiction under that Act and in respect of the order as if—

(a) the order were a judgment of a court of petty sessions exercising that jurisdiction;

(b) the amount ordered to be refunded were a judgment debt referred to in that Part;

(c) the person 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.

SCHEDULE 3—*continued.*

AMENDMENTS TO PARTS III AND IIIB OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(5) An order made under subsection (1) or (2) by the Supreme Court may be enforced in that Court as if—

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

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

(8) (a) Section 34E (2)—

Omit "Except so far as may be authorised by or under the regulations, a", insert instead "A".

(b) Section 34E (4)—

After section 34E (3), insert:—

(4) The regulations may contain such exemptions from the operation of subsections (1) and (2), applicable in such cases, as may be prescribed.

Sec. 4.

SCHEDULE 4.

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969.

(1) Section 37 (6)–(11)—

After section 37 (5), insert:—

(6) Subsections (1) and (2) shall not apply in relation to any class or description of goods or component parts, or any particular goods or component parts, in respect of which a certificate of safety has been issued by the Products Safety Committee, notwithstanding that the class or description of goods or component parts or, as the case may be, the particular goods or component parts are goods or component parts included in a class or description of goods or component parts in respect of which regulations made under section 36 are for the time being in force.

(7) Any person who wishes to supply goods or component parts of a class or description, or particular goods or component parts, that are included in a class or description of goods or component parts in respect of which regulations made under section 36 are for the time being in force may apply in writing to the Products Safety Committee for the issue of a certificate of safety in respect of goods or component parts of the first mentioned class or description or, as the case may be, those particular goods or component parts.

(8) Where, on consideration of an application made to it under subsection (7), the Products Safety Committee is satisfied that the goods or component parts to which the application relates are sufficiently safe to warrant their exemption from the requirements of the regulations made under section 36, the Committee shall issue the certificate applied for, but if it is not so satisfied it shall refuse the application and notify the applicant in writing of the refusal, which shall include a statement of the reasons as to why the application was refused.

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(9) The Products Safety Committee, in considering an application made under subsection (7)—

(a) may make such investigations as it considers necessary to enable it to arrive at a decision with respect to the application;

(b) shall take into account any representations made to it by or on behalf of the applicant; and

(c) unless in all the circumstances it does not consider that it is reasonably practicable to do so, shall permit the applicant or his representative, if the applicant so wishes, to be heard orally by the Committee, or by a member of the Committee appointed for the purpose.

(10) Subject to subsection (9) and clause 5 of Schedule 3, the Products Safety Committee may determine its own procedure for considering applications made under subsection (7) and, in particular, may determine whether or not its consideration of the application should be held in public.

(11) The provisions of section 39D shall apply in relation to an investigation made under subsection (9) (a) in the same way as they apply in relation to an investigation of a question referred to the Products Safety Committee under section 39C (1).

(2) Section 39A (1), definition of "Committee"—

Omit the definition.

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(3) Section 39C (1)—

Omit "to consumers in New South Wales", insert instead "in New South Wales to consumers".

(4) Section 39DA (3), (4)—

Omit the subsections, insert instead :—

(3) An order made under subsection (1) shall not be capable of being renewed or replaced by a further order under that subsection but may, at any time before it expires or is revoked, be replaced by an order made under section 39E (1) or (3).

(4) Where—

(a) an order has been made under subsection (1) in respect of goods of any class or description or any particular goods; and

(b) before that order expires or is revoked, an order made under section 39E (1) or (3) takes effect in respect of goods of that class or description or those particular goods,

the order referred to in paragraph (a) is revoked.

(5) (a) Section 39E (1A)—

After section 39E (1), insert :—

(1A) Where—

(a) a competent authority of the Commonwealth or of a State (other than New South Wales) or a Territory of the Common-

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

wealth, under the authority of an enactment of the Commonwealth or of that State or Territory, has, after full consideration of the matter and of representations made by interested parties, made an order or similar instrument—

(i) prohibiting the supply in the Commonwealth or in that State or Territory of goods of a class or description specified or referred to in the order or instrument; or

(ii) allowing the supply in the Commonwealth or in that State or Territory of goods of a class or description specified or referred to in the order or instrument but only subject to conditions or restrictions so specified or referred to;

(b) the reason for the making of the order or instrument was that the goods were dangerous; and

(c) the order or instrument has not been revoked or otherwise ceased to have effect,

the Minister, without making a reference under section 39C (1) to the Committee in respect of goods of that class or description, may, if he is satisfied that goods of that class or description are dangerous, make—

(d) where an order or instrument to which paragraph (a) (i) relates is in force—an order prohibiting the supply in New South

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

Wales to consumers of goods of the class or description specified or referred to in the order or instrument; or

(e) where an order or instrument to which paragraph (a) (ii) relates is in force—an order allowing the supply in New South Wales to consumers of goods of the class or description specified or referred to in the order or instrument, but only subject to conditions or restrictions similar to those so specified or referred to.

(b) Section 39E (2)—

After "subsection (1)", insert "or (1A)".

(c) Section 39E (5), (6)—

After section 39E (4), insert :—

(5) An order made under subsection (3) shall not be capable of being renewed or replaced by a further order under that subsection but may, at any time before it expires or is revoked, be replaced by an order made under subsection (1).

(6) Where—

(a) an order has been made under subsection (3) in respect of goods of any class or description or any particular goods; and

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) before that order expires or is revoked, an order made under subsection (1) takes effect in respect of goods of that class or description or those particular goods,

the order referred to in paragraph (a) is revoked.

(6) Section 39F—

After "section 39E (1)", insert "or (1A)".

(7) Section 39G—

After "section 39E (1)", insert ", (1A)".

(8) Section 39H (a)—

After "section 39E (1)", insert ", (1A)".

(9) Part IV, Division 2B—

After Division 2A of Part IV, insert :—

DIVISION 2B.—*Further Powers of Inspectors.*

Power to impound goods, etc., in certain cases.

39I. (1) Where an inspector suspects on reasonable grounds that—

(a) any goods or component parts are being or have been supplied in contravention of section 37; or

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) any goods are being or have been supplied in contravention of an order made under section 39E (1) or (1A),

he may, subject to this section, impound those goods or component parts or, as the case may be, those goods and deal with them in the prescribed manner.

(2) For the purposes of, and in connection with, the exercise of the power conferred by subsection (1), an inspector may enter any place where the goods or component parts are located or where he believes on reasonable grounds that the goods or parts are located.

(3) Any goods or component parts impounded under subsection (1) may, at the option of the inspector who impounded the goods or parts or of any inspector acting in his place, be detained in the place where they were impounded or removed to another place and detained there.

(4) If any person, without the permission of the Commissioner or an inspector, removes, takes away or interferes with goods or component parts which that person knows or might reasonably be expected to know to have been impounded and detained in accordance with this section, that person, in addition to any other penalty to which he may be liable, is, unless he has made an application under section 39J and an order has been made under that section disallowing the impounding, guilty of an offence against this Act.

(5) An inspector shall exercise the powers conferred by subsections (1) and (2) only with the consent, or at the direction, of the Minister.

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

Applications for orders disallowing the impounding of goods, etc.

39J. (1) Any person claiming to be entitled to goods or component parts that have been impounded under section 39I (1) may, within 28 days after the impounding of the goods or parts, make an application to the District Court for an order disallowing the impounding of the goods or parts.

(2) An application made under subsection (1) shall not be heard unless the applicant has previously served a copy of the application on the Commissioner.

(3) The Commissioner shall be entitled to appear at the hearing of an application made under subsection (1) as respondent and may be represented at the hearing either by another officer of the Department appointed by him or by a solicitor or by counsel.

(4) On the hearing of an application made under subsection (1) the following provisions shall apply :—

(a) in the case of goods or component parts impounded for a suspected contravention of section 37, the Court shall make an order disallowing the impounding of the goods or component parts—

(i) if it is proved by or on behalf of the applicant that he would, but for the impounding, be entitled to the goods or parts and it is not proved beyond all reasonable doubt by or on behalf of the Commissioner that the goods or parts were being or had been, at the time of the impounding, supplied in contravention of section 37; or

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(ii) if, in the opinion of the Court, there are exceptional circumstances justifying the making of an order disallowing the impounding,

but otherwise the Court shall refuse the application; or

(b) in the case of goods impounded for a suspected contravention of an order made under section 39E (1) or (1A), the Court shall make an order disallowing the impounding of the goods—

(i) if it is proved by or on behalf of the applicant that he would, but for the impounding, be entitled to the goods and it is not proved beyond all reasonable doubt by or on behalf of the Commissioner that the goods were being or had been, at the time of the impounding, supplied in contravention of the order made under section 39E (1) or (1A); or

(ii) if, in the opinion of the Court, there are exceptional circumstances justifying the making of an order disallowing the impounding,

but otherwise the Court shall refuse the application.

(5) Where the Court makes an order under subsection (4) (a) or (b) disallowing the impounding of goods or component parts, it shall also make one or both of the following orders :—

(a) an order directing the Commissioner to cause the goods or parts to be delivered to the applicant or to such other person as appears to the Court to be entitled to the goods or parts;

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF, AND SCHEDULE 3 TO, THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) where the goods or component parts cannot for any reason be so delivered or have depreciated in value by reason of their having been impounded, an order directing the Commissioner to pay to the applicant or to such other person as appears to the Court to be entitled to the goods or parts, such amount by way of compensation as the Court considers to be just and reasonable.

(6) The award of costs with respect to the hearing of an application made under this section shall be in the discretion of the Court.

(7) Where the Court makes an order referred to in subsection (5) (b) or awards any amount as costs under subsection (6), that order or award shall be enforceable as a judgment of the Court.

(8) If no application is made under subsection (1) within 28 days after the date on which goods or component parts were impounded under section 39I (1) or if such an application is made but is refused or is withdrawn before it is heard, the goods or parts shall be forfeited to and become the property of the Crown and shall be destroyed or otherwise disposed of in such manner as the Commissioner shall direct.

(10) (a) Schedule 3, clause 1 (5)—

Omit "a member", insert instead "an officer".

(b) Schedule 3, clause 5 (1)—

After "section 39C (1)", insert "or in relation to any application made under section 37 (7)".

Sec. 4.

SCHEDULE 5.

AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969.

(1) (a) Section 55 (1)—

Omit the subsection, insert instead :—

(1) The Minister may appoint an officer of the Department as an inspector for the purposes of carrying into effect the provisions of this Act.

(b) Section 55 (4)—

After "shall not", insert ", without the consent of the occupier,".

(c) Section 55 (4)—

After "manufacture", insert ", business".

(d) Section 55 (5) (a)—

After "under this", insert "or any other".

(2) Section 55A (1)—

Omit the subsection.

(3) Section 56—

Omit the section, insert instead :—

Proceedings for offences.

56. (1) Proceedings for an offence against this Act (Part V excepted) shall be disposed of summarily before—

(a) a court of petty sessions constituted by a stipendiary magistrate sitting alone;

(b) an industrial magistrate; or

(c) with the written consent of the Minister, the Supreme Court in its summary jurisdiction.

SCHEDULE 5—*continued.*

AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(2) If proceedings for an offence against this Act (Part V excepted) are taken in a court of petty sessions or before an industrial magistrate, the court or magistrate shall not, on convicting any person for the offence, impose a penalty exceeding $2,000, notwithstanding that the maximum penalty which could, apart from this subsection, be imposed under this Act exceeds that amount.

(3) If proceedings for an offence against this Act (Part V excepted) are taken in the Supreme Court in its summary jurisdiction, the Supreme Court may impose a penalty not exceeding the maximum penalty prescribed by this Act in respect of the offence.

(4) Proceedings for an offence against this Act (Part V excepted) shall be commenced by information but may not be commenced after the expiration of 12 months after the time when the offence is alleged to have been committed.

(5) The provisions of the Industrial Arbitration Act, 1940, and the regulations made under that Act, relating to proceedings before an industrial magistrate and to appeals from an industrial magistrate to the Industrial Commission of New South Wales shall, so far as applicable and with any necessary modifications, apply to proceedings before a court of petty sessions or an industrial magistrate for offences against this Act.

(4) Section 56A—

After section 56, insert :—

56A. Where a person— Injunctions.

(a) is contravening or failing to comply with;

SCHEDULE 5—*continued.*

AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(b) has on two or more occasions contravened or failed to comply with; or

(c) threatens to contravene or fail to comply with,

a provision of this Act or the regulations or of any order made under this Act or a provision of any other Act administered by the Minister relating to consumer affairs or of any regulation or order made under that other Act, the Supreme Court may, on an application being made by the Commissioner with the consent of the Minister, grant an injunction—

(d) in the case referred to in paragraph (a)—restraining the continuation of the contravention or failure to comply so referred to;

(e) in the case referred to in paragraph (b)—restraining any further contravention or failure to comply so referred to; or

(f) in the case referred to in paragraph (c)—restraining the threatened contravention or failure to comply so referred to.

(5) (a) Section 57 (1)—

Omit "$2,000 or imprisonment for a term not exceeding 12 months, or both", insert instead "$10,000".

(b) Section 57 (2)—

Omit "or the regulations".

SCHEDULE 5—*continued.*

AMENDMENTS TO PART VI OF THE CONSUMER PROTECTION ACT, 1969—*continued.*

(6) (a) Section 58 (2)—

Omit "Commissioner for Consumer Affairs", insert instead "Commissioner".

(b) Section 58 (2) (a) (i)—

Omit "the Commissioner, an officer of the Consumer Affairs Bureau or an inspector, or by any two or more of those persons", insert instead "an officer of the Department or by two or more such officers".

(c) Section 58 (2) (a) (ii)—

Omit "Consumer Affairs Bureau authorised by the Commissioner for the purposes of subsection (2) of section 16", insert instead "Department authorised by the Commissioner for the purposes of section 16 (2)".

(d) Section 58 (2) (b)—

Omit "subsection (2) of section 16E", insert instead "section 16E (2)".

(e) Section 58 (2) (c) (i)—

Omit "Bureau under subsection (1) of section 16", insert instead "Commissioner under section 16 (1)".

(f) Section 58 (2) (c) (ii)—

Omit "subsection (2) of section 16", insert instead "section 16 (2)".

Sec. 5.

SCHEDULE 6.

Savings and Transitional Provisions.

Term of office of officer of Department who is a member of Consumer Affairs Council.

1. The officer of the Department who, at the commencement of Schedule 2 (4), is a member of the Consumer Affairs Council by virtue of being appointed pursuant to section 7 (2) (a) of the Consumer Protection Act, 1969, shall, subject to section 11 (6) of that Act, as in force after that commencement, hold office for a term of 3 years from the date on which he was appointed.

Officers and employees of Consumer Affairs Bureau.

2. Every person employed in the Consumer Affairs Bureau as an officer or an employee immediately before the commencement of Schedule 2 (7) shall be deemed to be an officer, or, as the case may be, to be an employee, appointed and employed under section 15 (1) of the Consumer Protection Act, 1969, as in force after that commencement.

Functions of Consumer Affairs Bureau.

3. (1) Where, immediately before the commencement of Schedule 2 (8), any action for remedying infringements of the Consumer Protection Act, 1969, or of regulations made under that Act, or of any other legislation administered by the Minister administering that Act and relating to the protection of consumers, was being taken by the Consumer Affairs Bureau or had been taken by that Bureau without having been completed, that action may be continued and completed by the Commissioner for Consumer Affairs.

(2) Where, immediately before the commencement of Schedule 2 (8), any matter is being investigated by the Consumer Affairs Bureau, that investigation may be continued and completed by the Commissioner for Consumer Affairs.

Inspectors.

4. An inspector holding office by virtue of being appointed under subsection (1) of section 55 of the Consumer Protection Act, 1969, as in force immediately before the commencement of Schedule 5 (1), shall be deemed to have been appointed under that subsection, as in force after that commencement.

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

Government House,
Sydney, 6th April, 1978.

BY AUTHORITY
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