

**CONSUMER PROTECTION (AMENDMENT)  
ACT, 1981, No. 12**

**New South Wales**



**ANNO TRICESIMO**

**ELIZABETHÆ II REGINÆ**

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**Act No. 12, 1981.**

An Act to amend the Consumer Protection Act, 1969, to make further provision with respect to the supply of goods and services to consumers and the advertising of goods and services, and for other purposes. [Assented to, 22nd April, 1981.]



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*Consumer Protection (Amendment).*

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**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, 1981".

**Commencement.**

2. (1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.

(2) Section 5 and Schedules 1–8 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Principal Act.**

3. The Consumer Protection Act, 1969, is referred to in this Act as the Principal Act.

**Schedules.**

4. This Act contains the following Schedules :—

SCHEDULE 1.—AMENDMENTS TO PART I OF THE  
PRINCIPAL ACT.

SCHEDULE 2.—AMENDMENTS TO PART II OF THE  
PRINCIPAL ACT.

SCHEDULE 3.—AMENDMENTS TO PART III OF THE  
PRINCIPAL ACT.

SCHEDULE 4.—AMENDMENTS TO PART IV OF THE  
PRINCIPAL ACT.

SCHEDULE 5.—AMENDMENT TO PART V OF THE  
PRINCIPAL ACT.



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*Consumer Protection (Amendment).*

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**SCHEDULE 6.—AMENDMENTS TO PART VI OF THE PRINCIPAL ACT.**

**SCHEDULE 7.—AMENDMENTS TO SCHEDULE 3 TO THE PRINCIPAL ACT.**

**SCHEDULE 8.—AMENDMENTS TO SCHEDULE 4 TO THE PRINCIPAL ACT.**

**Amendment of Act No. 28, 1969.**

**5.** The Principal Act is amended in the manner set forth in Schedules 1–8.

**Savings.**

**6. (1)** In this section, “appointed day” means the day appointed and notified under section 2(2).

**(2)** Nothing in this Act affects any liability incurred before the appointed day by a member of the Products Safety Committee or by a person whose services were being used in accordance with arrangements made under section 16F of the Principal Act.

**(3)** Section 31B of the Principal Act, as amended by this Act, does not apply to or in respect of any proceedings commenced before the appointed day.

**(4)** Section 33B of the Principal Act, as amended by this Act, does not confer upon any person a right of action in respect of a statement published before the appointed day.

**(5)** Notwithstanding the repeal of section 37 (6) of the Principal Act by Schedule 4 (1), the provisions of that subsection shall be deemed to continue to apply to and in respect of any class or description of goods or component parts, or any particular goods or components parts, in respect of which a certificate of safety was issued before the appointed day.

**(6)** Nothing in section 38 (4) or section 39G (2) of the Principal Act, as amended by this Act, applies to or in respect of any civil proceedings commenced before the appointed day.



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*Consumer Protection (Amendment).*

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(7) Section 39FA of the Principal Act, as amended by this Act, does not confer upon any person a right of action in respect of any goods or component parts supplied to him before the appointed day.

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SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO PART I OF THE PRINCIPAL ACT.

(1) Section 2, matter relating to Division 3 of Part III—

Omit “32, 32A”, insert instead “31A–32A”.

(2) Section 4 (2)—

Omit “Dairy Industry Act, 1915”, insert instead “Dairy Industry Marketing Authority Act, 1979”.

(3) Section 5 (1), definition of “officer of the Department” or “officer”—

Omit “or a person appointed and holding office under section 15”, insert instead “, a person who is appointed and employed pursuant to section 15 or a person whose services are being used in accordance with arrangements made under section 16F”.



*Consumer Protection (Amendment).*

SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO PART II OF THE PRINCIPAL ACT.

(1) Section 15 (1)—

Omit “1902, as officers or employees”, insert instead  
“1979, as officers or temporary employees”.

(2) (a) Section 16 (1) (a)—

Omit “and relating to the protection of consumers”.

(b) Section 16 (1) (b) (ii)—

Omit “trade or commercial”.

(c) Section 16 (1) (b) (ii)—

After “instrumentality”, insert “or other body”.

(d) Section 16 (2)–(4)—

After “instrumentality” wherever occurring, insert “or  
another body”.

(3) (a) Section 16c (2)—

Omit “An”, insert instead “Subject to subsection (2A),  
an”.

(b) Section 16c (2A)—

After section 16c (2), insert:—

(2A) An investigating officer shall not, without the  
written permission of the Minister specially given in  
relation to the requirement, require, under this section,



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*Consumer Protection (Amendment).*

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SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

the furnishing of any information, or the production of any document, relating to a person other than a person who has consented to the furnishing of the information, or the production of the document, as the case may be, to the investigating officer for the purposes of an investigation.

## (c) Section 16C (8), (9)—

Omit the subsections.

## (4) (a) Section 16E (1), (2)—

Omit the subsections, insert instead:—

(1) Where, in compliance with a requirement under section 16C, any information is furnished, or any document is produced, to an investigating officer, a person who is engaged (whether as an officer of the Department or otherwise) in the administration of this Act and who, in the course of his duty under this Act discloses—

(a) any of that information or any of the contents of that document to another person who is so engaged, without informing him that the information was furnished or, as the case may be, the document was produced, in compliance with a requirement under that section; or

(b) any of that information or any of the contents of that document, without the written permission of the Minister specially given in relation to that disclosure, to another person who is not so engaged,

is guilty of an offence against this Act.



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*Consumer Protection (Amendment).*

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(b) Section 16E (3)—

Omit “subsection (2)”, insert instead “subsection (1) (b)”.

(c) Section 16E (4) (a)—

After “engaged”, insert “(whether as an officer of the Department or otherwise)”.

(d) Section 16E (4) (b)—

Omit “of his holding any position under this Act or”.

(e) Section 16E (5)—

Omit the subsection.

(f) Section 16E (6)—

After “information”, insert “, or any of the contents of any document,”.

(5) (a) Section 17—

After “Council” where firstly occurring, insert “or of the Products Safety Committee”.

(b) Section 17—

Omit “or the Council” where firstly occurring, insert instead “or by the Council or the Products Safety Committee”.



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*Consumer Protection (Amendment).*

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(c) Section 17—

Omit “or the Council” where secondly occurring, insert instead “, the Council or the Products Safety Committee”.

SCHEDULE 3.

(Sec. 5.)

AMENDMENTS TO PART III OF THE PRINCIPAL ACT.

(1) Section 28A—

After section 28, insert :—

**Certain goods to be ticketed.**

28A. (1) A supplier who—

(a) exhibits or exposes for sale any goods, being goods of a prescribed class or description, to which a price is not conspicuously appended; or

(b) sells any goods of such a class or description at a price greater than the price appended thereto,

is guilty of an offence against this Act.



*Consumer Protection (Amendment).*

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(2) For the purposes of subsection (1), a price shall be deemed to be appended to goods if it is annexed or affixed to, or is written, printed or stamped on or otherwise applied to, the goods or to any covering, label, reel or thing used in connection with the goods.

(2) (a) Section 29 (1)—

Omit “supplies”, insert instead “sells”.

(b) Section 29 (2) (b)—

Omit “supply”, insert instead “sale”.

(c) Section 29 (2) (c)—

After “any”, insert “advertisement which is displayed, or catalogue which is available to the public, in or upon any part of the premises where the goods are exposed for sale, being an”.

(d) Section 29 (3A)—

After section 29 (3), insert :—

(3A) In subsection (1), “price” does not include an amount expressed in a currency other than Australian currency.

(3) Sections 31A, 31B—

Before section 32, insert :—

**Interpretation: Pt. III, Div. 3.**

31A. In this Division—

“published”, in relation to a statement, includes—

(a) inserted in a newspaper or other publication;



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*Consumer Protection (Amendment).*

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SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

## (b) publicly exhibited—

- (i) in, on, over or under a building, vehicle, aircraft or ship or in any other place (whether or not a public place and whether on land or water); or
- (ii) in the air in view of persons being or passing in or on a street or public place;

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

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

(e) made verbally;

“statement” includes any representation of any kind whatsoever, whether made by means of—

(a) words, maps, plans or drawings; or

(b) pictorial representation or design,

or any combination of those means.

**Evidence as to publication.**

31B. In any proceedings under this Division—

(a) where a name, business name, address, telephone number or post office box number specified in a statement is that of a person, or of the agent of a person, who—

(i) is the owner, whether alone or jointly with one or more other persons, of any goods or interests in land;

(ii) is the supplier of any goods or services; or



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*Consumer Protection (Amendment).*

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SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

- (iii) has, otherwise than as an owner, an interest in any goods or interests in land, or the supply of any services,  
being goods, services or interests in land the supply, use or disposal of which the statement is intended or apparently intended to promote, that person or agent, as the case may be, shall be deemed, in the absence of proof to the contrary, to have caused the statement to be published; and
- (b) a person who causes a statement to be published shall be deemed to have done so on any day on which the statement was published.
- (4) (a) Section 32 (1) (a)—  
Omit “by that person or any other person”.
- (b) Section 32 (2)—  
Omit the subsection, insert instead :—
- (2) Any person who, in connection with—
- (a) the supply or use of goods or services or the disposal of interests in land; or
- (b) the promotion by any means of the supply or use of goods or services or the disposal of interests in land,  
publishes or causes to be published any statement which—
- (c) concerns the existence or effect of any condition or warranty provided by law in relation to the supply or use of any such goods or services or the disposal of any such interests in land; and



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*Consumer Protection (Amendment).*

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SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(d) is to his knowledge false or misleading in any material particular,

is guilty of an offence against this Act.

(c) Section 32 (5)—

Omit “In this section ‘newspaper’ includes any periodical publication and”, insert instead “In subsection (4),”.

(d) Section 32 (6A)—

After section 32 (6), insert :—

(6A) Where, in any proceedings under this section brought in the Supreme Court, a person has been found guilty of publishing or causing to be published a false or misleading statement concerning any goods, services or interests in land, the Court may, on application made with the approval of the Minister by the Commissioner at any stage of the proceedings, make either or both of the following orders :—

(a) an order requiring the person to disclose to the public, to a particular person or to persons included in a particular class of persons, in such manner as is specified in the order, such information, or information of such a kind, as is so specified, being information concerning those goods, services or interests in land and which is in the possession of the person to whom the order is directed or to which he has access;

(b) an order requiring that person to publish, at his own expense, in a manner and at times specified in the order, statements the content of which is specified in, or is to be determined in accordance with, the order.



*Consumer Protection (Amendment).*

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(5) (a) Section 32A (1) (a)—

Omit “by the first mentioned person or any other person”.

(b) Section 32A (1) (b) (i), (ia)—

Omit section 32A (1) (b) (i), insert instead :—

(i) the Minister;

(ia) the Department;

(c) Section 32A (1) (b) (iv)—

Omit “or” where lastly occurring.

(d) Section 32A (1) (b) (iva)—

After section 32A (1) (b) (iv), insert :—

(iva) a person or an organisation prescribed for the purposes of this subparagraph, being a person or an organisation in existence at, or at any time prior to, the prescription; or

(e) Section 32A (1) (b) (v)—

After “person” where firstly occurring, insert “who is or was, at any time,”.

(f) Section 32A (1) (b) (v)—

After “(iv)”, insert “or (iva)”.

(g) Section 32A (1)—

Omit “\$2,000 or imprisonment for three months, or both”, insert instead “\$10,000”.



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*Consumer Protection (Amendment).*

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SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

## (h) Section 32A (2)—

Omit the subsection.

## (6) Section 33B—

After section 33A, insert :—

**Civil action in respect of false or misleading statement.**

33B. (1) The obligation imposed by section 32 (1) or (2) on any person not to publish or cause to be published a statement in contravention of either of those subsections is a duty which is owed by him to every other person, and a breach of that duty is actionable (subject to the defences and other incidents applying to actions for breach of statutory duty) at the suit of any person who has sustained loss or damage in consequence of that breach, whether or not he is a person who purchased or used any goods or services, or acquired any interests in land, in reliance upon the statement.

(2) Where, in any proceedings brought against a person for an offence under section 32 (1) or (2), a finding of fact is made by the court in which those proceedings are brought, a document under the seal of that court from which the finding of fact appears is admissible in evidence in proceedings brought under subsection (1) against that person and is *prima facie* evidence of that fact.

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*Consumer Protection (Amendment).*

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SCHEDULE 4.

(Sec. 5.)

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT.

(1) Section 37 (6)–(11)—

Omit the subsections.

(2) Section 38 (4)—

After section 38 (3), insert :—

(4) Where, in any proceedings brought against a person for an offence under this section, a finding of fact is made by the court in which those proceedings are brought, a document under the seal of that court from which the finding of fact appears is admissible in evidence in proceedings brought under subsection (1) against that person and is prima facie evidence of that fact.

(3) (a) Section 39c (1)—

Omit the subsection, insert instead :—

(1) The Minister, or the Commissioner with the approval of the Minister, may refer to the Products Safety Committee either or both of the following questions in relation to goods of a class or description specified in the reference or any particular goods so specified (not being goods the supply of which is prohibited or regulated by or under an enactment specified in Schedule 4) :—

(a) the question—

- (i) whether the supply of those goods should, by reason of their being dangerous, be prohibited or should be allowed only subject to conditions or restrictions; and



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*Consumer Protection (Amendment).*

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SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

- (ii) if the supply of those goods should be allowed, under what conditions or restrictions, if any, the supply of those goods should be so allowed;
- (b) the question whether a regulation should be made under section 36 so as to exempt those goods from the operation of section 37 (1) and (2) and, if so, what any such regulation should provide.
- (b) Section 39c (3), (4)—  
Omit “any” wherever occurring, insert instead “a”.
- (c) Section 39c (5)—  
Omit “the question” where firstly occurring, insert instead “a question referred to it under subsection (1)”.
- (d) Section 39c (6)—  
Omit “the question”, insert instead “a question referred to it under subsection (1)”.
- (e) Section 39c (7)—  
Omit “the question” where firstly occurring, insert instead “a question referred to it under subsection (1)”.
- (f) Section 39c (8)—  
Omit “the question” where firstly occurring, insert instead “a question referred to it under subsection (1)”.



*Consumer Protection (Amendment).*

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

(4) (a) Section 39DA (1)—

Omit “for a period not exceeding 28 days from the date on which the order is published in the Gazette under subsection (2)”.

(b) Section 39DA (2), (2A)—

Omit section 39DA (2), insert instead :—

(2) Where the Minister makes an order under subsection (1), he may do either or both of the following :—

(a) give a supplier notice in writing of the order;

(b) publish the order in the Gazette.

(2A) An order made under subsection (1)—

(a) being an order of which notice has been given to a supplier under subsection (2) (a), has effect from the time the supplier receives the notice and remains in effect, unless sooner revoked, until—

(i) except as provided by subparagraph (ii)—the expiration of the period of 42 days after the day on which the supplier receives the notice; or

(ii) where the order is published in the Gazette under subsection (2) (b) on a day not later than the expiration of the period referred to in subparagraph (i)—the day on which the order is so published; or



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*Consumer Protection (Amendment).*


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SCHEDULE 4—*continued.*


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AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

- (b) being an order which is published in the Gazette under subsection (2) (b) (whether or not it is an order of which notice has been given to a supplier under subsection (2) (a)), has effect from the day on which it is so published and remains in effect, unless sooner revoked, until the expiration of the period of 42 days after that day.

(5) (a) Section 39E (3)—

Omit “, for a period not exceeding 28 days from the date on which the order is published under subsection (4)”.

(b) Section 39E (4), (4A)—

Omit section 39E (4), insert instead :—

(4) Where the Minister makes an order under subsection (3), he may do either or both of the following :—

- (a) give a supplier notice in writing of the order;
- (b) publish the order in the Gazette.

(4A) An order made under subsection (3)—

(a) being an order of which notice has been given to a supplier under subsection (4) (a), has effect from the time the supplier receives the notice and remains in effect, unless sooner revoked, until—

- (i) except as provided by subparagraph (ii)—the expiration of the period of 42 days after the day on which the supplier receives the notice; or



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*Consumer Protection (Amendment).*

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SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

(ii) where the order is published in the Gazette under subsection (4) (b) on a day not later than the expiration of the period referred to in subparagraph (i)—the day on which the order is so published; or

(b) being an order which is published in the Gazette under subsection (4) (b) (whether or not it is an order of which notice has been given to a supplier under subsection (4) (a)), has effect from the day on which it is so published and remains in effect, unless sooner revoked, until the expiration of the period of 42 days after that day.

(6) Section 39FA—

After section 39F, insert :—

**Remedy for supply of goods, etc., in contravention of Act or order.**

39FA. (1) Where—

(a) any goods or component parts are supplied, in contravention of section 37, to a person; or

(b) any goods are supplied, in contravention of an order made under section 39DA (1) or section 39E (1), (1A) or (3), to a person,

that person may, subject to subsection (2), recover, in a court of competent jurisdiction, as a debt due to him by the supplier who supplied him with those goods or component parts, any money paid by him for those goods or component parts.



*Consumer Protection (Amendment).*SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

(2) Where, in an action brought under subsection (1) in respect of any goods or component parts the court gives judgment for the plaintiff, the court may, if it thinks fit, direct that—

(a) if the defendant repairs or modifies the goods or component parts in such a manner that, had the goods or component parts, as so repaired or modified, been supplied at the material time to the plaintiff they would have been so supplied without contravention of the section or order, as the case may be, on which the plaintiff relied; and

(b) if the goods or component parts, as so repaired or modified, are delivered to and accepted by the judgment creditor on or before a day specified in the judgment,

the judgment debt shall be deemed to be satisfied.

## (7) Section 39G (2)—

At the end of section 39G, insert :—

(2) Where, in any proceedings brought against a person for an offence under section 39F, a finding of fact is made by the court in which those proceedings are brought, a document under the seal of that court from which the finding of fact appears is admissible in evidence in proceedings brought under subsection (1) against that person and is prima facie evidence of that fact.

## (8) (a) Section 39J (8)—

Omit “shall be forfeited to and become the property of the Crown and”.



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*Consumer Protection (Amendment).*

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SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

(b) Section 39J (9), (10)—

After section 39J (8), insert :—

(9) Where, by virtue of subsection (8), any goods or component parts are required to be destroyed or otherwise disposed of, the Commissioner may direct—

(a) that those goods or component parts be destroyed or otherwise disposed of by the owner or by a person having possession of them; or

(b) that those goods or component parts be destroyed or otherwise disposed of by another person or other persons at the cost of the owner or of a person having possession of them.

(10) A person to whom a direction is given under subsection (9) and who does not comply with the direction is guilty of an offence against this Act.

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SCHEDULE 5.

(Sec. 5.)

AMENDMENT TO PART V OF THE PRINCIPAL ACT.

Section 53 (4), (5)—

After section 53 (3), insert :—

(4) Proceedings for an offence arising under this Part shall not be commenced except by a person authorised in writing by the Minister.



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*Consumer Protection (Amendment).*

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**SCHEDULE 5—continued.**

**AMENDMENT TO PART V OF THE PRINCIPAL ACT—continued.**

(5) In any proceedings for an offence arising under this Part, an authority to prosecute, purporting to have been signed by the Minister, shall be evidence of the authority without proof of the Minister's signature.

**SCHEDULE 6.**

(Sec. 5.)

**AMENDMENTS TO PART VI OF THE PRINCIPAL ACT.**

(1) Section 56 (1), (1A)—

Omit section 56 (1), insert instead :—

(1) Proceedings for an offence against this Act (Part V excepted) may—

(a) be taken and prosecuted only by a person acting with the authority in writing of the Minister; and

(b) be disposed of summarily before—

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

(ii) an industrial magistrate; or

(iii) the Supreme Court in its summary jurisdiction.

(1A) In any proceedings referred to in subsection (1), an authority to prosecute, purporting to have been signed by the Minister, shall be evidence of the authority without proof of the Minister's signature.



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*Consumer Protection (Amendment).*

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SCHEDULE 6—*continued.*

AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—*continued.*

(2) Sections 56A, 56B—

Omit section 56A, insert instead :—

**Injunctions.**

56A. (1) Where a person is contravening, has on 2 or more occasions contravened, or threatens to contravene—

- (a) a provision of this Act or of the regulations, or an order made under this Act or the regulations; or
- (b) a provision of any other legislation administered by the Minister or an order made under any such legislation,

the Supreme Court may, on application made by the Commissioner with the consent of the Minister, grant an injunction restraining the person from continuing to contravene the provision or order or from contravening the provision or order, as the case may require.

(2) An injunction under subsection (1) may be granted as an interim injunction, without any undertaking being given by the Commissioner as to damages, or as a permanent injunction.

**Intervention by Minister.**

56B. The Minister may, at any stage of proceedings brought before any court under this Act, the regulations or any other legislation administered by the Minister, intervene by counsel or by a solicitor, and shall thereupon become a party to, and shall have all the rights of a party to, those proceedings before that court, including the right to appeal against any order or judgment of the court.



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*Consumer Protection (Amendment).*

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SCHEDULE 6—*continued.*AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—*continued.*

## (3) Section 57A—

After section 57, insert :—

**Default imprisonment not to be awarded.**

57A. (1) Notwithstanding the provisions of the Justices Act, 1902, or of any other law, where any person is by any conviction or order adjudged to pay any fine, penalty, sum of money or costs in respect of an offence against this Act or any other legislation administered by the Minister—

(a) that person shall not be adjudged to be, or be, liable to imprisonment in default of payment of the amount of that fine, penalty, sum of money or costs; and

(b) that conviction or order shall, irrespective of the amount adjudged to be paid, operate, and be enforceable in the same way, as a judgment, where it was effected or made—

(i) by a court of petty sessions—of the court of petty sessions exercising jurisdiction under the Courts of Petty Sessions (Civil Claims) Act, 1970, at the place where it was effected or made; or

(ii) by an industrial magistrate—of the court of petty sessions exercising that jurisdiction at the place nearest to the place where the industrial magistrate effected or made the conviction or order.

(2) The registrar of the court of petty sessions exercising jurisdiction—

(a) in the case of a conviction or order referred to in subsection (1) effected or made by a court of petty sessions—at the place where the conviction or order was effected or made; or



*Consumer Protection (Amendment).*

SCHEDULE 6—*continued.*

AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—*continued.*

(b) in the case of a conviction or order referred to in subsection (1) effected or made by an industrial magistrate—at the place nearest to the place where the conviction or order was effected or made,

shall, on the application of the informant made as prescribed, enter up judgment against the defendant in the records of the court for the amount adjudged to be paid.

(4) (a) Section 58 (2) (a) (i)—

Omit “or” where lastly occurring.

(b) Section 58 (2) (a) (ii)—

Omit “require,” insert instead “require; or”.

(c) Section 58 (2) (a) (iii)—

After section 58 (2) (a) (ii), insert :—

(iii) that any legislation specified in the statement is administered by the Minister,

(5) Section 58A—

After section 58, insert :—

**Service of notices, etc.**

58A. (1) Where, under this Act, the Commissioner or any officer is required or permitted to give in writing to any person any notice, warning or direction, the notice, warning or direction may be given—

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

(i) by delivering it to him personally;



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*Consumer Protection (Amendment).*

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**SCHEDULE 6—continued.**

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**AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—continued.**

- (ii) by leaving it at his place of residence with someone who apparently resides there or at his place of business or employment with someone who is apparently employed there, being in either case a person who has or apparently has attained 16 years of age; or
  - (iii) by posting it in a letter addressed to him at the address last known to the Commissioner of his place of residence, business or employment; or
- (b) to a person, being a corporation—
- (i) by delivering it to the secretary of the corporation, or any other person concerned in the management of the corporation, personally;
  - (ii) by leaving it at the corporation's only or principal place of business with a person apparently employed there, being a person who has or apparently has attained 16 years of age; or
  - (iii) by posting it in a letter addressed to the corporation at the address last known to the Commissioner of its only or principal place of business.

(2) Subsection (1) (b) does not limit the operation of section 362 of the Companies Act, 1961.

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*Consumer Protection (Amendment).*

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SCHEDULE 7.

(Sec. 5.)

AMENDMENTS TO SCHEDULE 3 TO THE PRINCIPAL ACT.

- (1) Schedule 3, clause 5 (1)—

Omit “any question”, insert instead “a question”.

- (2) Schedule 3, clause 5 (1)—

Omit “or in relation to any application made under section 37 (7)”.

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SCHEDULE 8.

(Sec. 5.)

AMENDMENTS TO SCHEDULE 4 TO THE PRINCIPAL ACT.

- (1) Schedule 4—

Omit “Dairy Industry Act, 1915”, insert instead “Dairy Industry Marketing Authority Act, 1979”.

- (2) Schedule 4—

Omit “Explosives Act, 1905”, insert instead “Dangerous Goods Act, 1975”.

- (3) Schedule 4—

Omit “5. Inflammable Liquid Act, 1915”.



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*Consumer Protection (Amendment).*

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SCHEDULE 8—*continued.*AMENDMENTS TO SCHEDULE 4 TO THE PRINCIPAL  
ACT—*continued.*

## (4) Schedule 4—

At the end of Schedule 4, insert :—

12. Any Act amending or replacing any of the foregoing Acts.

*In the name and on behalf of Her Majesty I assent to this Act.*

J. A. ROWLAND,  
Governor.

Government House,  
Sydney, 22nd April, 1981.

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BY AUTHORITY  
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1981



## **CONSUMER PROTECTION (AMENDMENT) BILL, 1980**

### **EXPLANATORY NOTE**

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

The object of this Bill is to amend the Consumer Protection Act, 1969 ("the Act")—

- (a) to provide that persons whose services are being used by the Commissioner for Consumer Affairs under section 16F of the Act are given the same privileges, and are subject to the same obligations, as are given to or imposed upon officers and employees in the Department of Consumer Affairs (Schedules 1 (2) and 2 (4));
- (b) to allow the Commissioner for Consumer Affairs to investigate complaints concerning professional services rendered to consumers (Schedule 2 (2) (b));
- (c) to give members of the Products Safety Committee the same protection against personal liability arising out of their operations under the Act as is given to officers of the Department (Schedule 2 (5));
- (d) to provide that certain goods on sale shall be marked with their prices (Schedule 3 (1));
- (e) to extend the operation of the Act with respect to the offence of publishing false or misleading advertisements (Schedule 3 (3) and (4) (b));
- (f) to provide that, where a court convicts a person of publishing a false or misleading advertisement concerning goods, services or interests in land, the court may order him to publish information concerning the true character of those goods, services or interests (Schedule 3 (4) (d));
- (g) to provide that a person who suffers loss or damage by reason of a false or misleading advertisement may recover damages (Schedule 3 (6));
- (h) to extend the functions of the Products Safety Committee to enable it to determine the conditions on which certain goods may be supplied (Schedule 4 (3));



- (i) to extend the Minister's powers with respect to interim orders prohibiting or restricting the supply of goods (Schedule 4 (4) and (5));
  - (j) to afford consumers certain remedies with respect to goods supplied to them in contravention of a Ministerial order (Schedule 4 (6) and (7));
  - (k) to extend the powers of the Commissioner for Consumer Affairs with respect to the disposal of goods impounded by an inspector under section 39i of the Act (Schedule 4 (8));
  - (l) to provide that proceedings under the Act may be taken only with the authority of the Minister (Schedules 5 and 6 (1));
  - (m) to allow the Minister to intervene in court proceedings brought under any legislation administered by the Minister (Schedule 6 (2));
  - (n) to exclude default imprisonment as a penalty for offences against the provisions of any legislation administered by the Minister administering the Act (Schedule 6 (3)); and
  - (o) to make other provisions of a minor, consequential or ancillary nature.
-











Act No. 1980.  
**CONSUMER PROTECTION (AMENDMENT)  
BILL, 1980**

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

1. This Act may be cited as the "Consumer Protection Short title.  
(Amendment) Act, 1980".

(1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.

(2) Section 2 and Schedules 1-8 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

No. , 1980.

3. The Consumer Protection Act, 1969, is referred to in this Principal Act as the Principal Act.

**A BILL FOR**

**An Act to amend the Consumer Protection Act, 1969, to make further provision with respect to the supply of goods and services to consumers and the advertising of goods and services, and for other purposes.**

[MR EINFELD—19 November, 1980.]



*Consumer Protection (Amendment).*

**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 **Short**  
(Amendment) Act, 1980". **title.**

2. (1) Except as provided by subsection (2), this Act shall **Commence-**  
commence on the date of assent to this Act. **ment.**

(2) Section 5 and Schedules 1–8 shall commence on such  
10 day as may be appointed by the Governor in respect thereof and  
as may be notified by proclamation published in the Gazette.

3. The Consumer Protection Act, 1969, is referred to in this **Principal**  
Act as the Principal Act. **Act.**

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

15    SCHEDULE 1.—AMENDMENTS TO PART I OF THE  
PRINCIPAL ACT.

SCHEDULE 2.—AMENDMENTS TO PART II OF THE  
PRINCIPAL ACT.

20    SCHEDULE 3.—AMENDMENTS TO PART III OF THE  
PRINCIPAL ACT.

SCHEDULE 4.—AMENDMENTS TO PART IV OF THE  
PRINCIPAL ACT.

SCHEDULE 5.—AMENDMENT TO PART V OF THE  
PRINCIPAL ACT.



*Consumer Protection (Amendment).***SCHEDULE 6.—AMENDMENTS TO PART VI OF THE  
PRINCIPAL ACT.****SCHEDULE 7.—AMENDMENTS TO SCHEDULE 3 TO THE  
PRINCIPAL ACT.****5 SCHEDULE 8.—AMENDMENTS TO SCHEDULE 4 TO THE  
PRINCIPAL ACT.**

**5. The Principal Act is amended in the manner set forth in** Amendment  
Schedules 1–8. of Act No.  
28, 1969.

**6. (1) In this section, “appointed day” means the day** Savings.  
10 appointed and notified under section 2 (2).

(2) Nothing in this Act affects any liability incurred before  
the appointed day by a member of the Products Safety Committee  
or by a person whose services were being used in accordance  
with arrangements made under section 16F of the Principal Act.

**15 (3) Section 31B of the Principal Act, as amended by this  
Act, does not apply to or in respect of any proceedings com-  
menced before the appointed day.**

**20 (4) Section 33B of the Principal Act, as amended by this  
Act, does not confer upon any person a right of action in respect  
of a statement published before the appointed day.**

**25 (5) Notwithstanding the repeal of section 37 (6) of the  
Principal Act by Schedule 4 (1), the provisions of that subsection  
shall be deemed to continue to apply to and in respect of any class  
or description of goods or component parts, or any particular goods  
or components parts, in respect of which a certificate of safety  
was issued before the appointed day.**

**(6) Nothing in section 38 (4) or section 39G (2) of the  
Principal Act, as amended by this Act, applies to or in respect  
of any civil proceedings commenced before the appointed day.**



*Consumer Protection (Amendment).*

(7) Section 39FA of the Principal Act, as amended by this Act, does not confer upon any person a right of action in respect of any goods or component parts supplied to him before the appointed day.

**SCHEDULE 1.** Sec. 5.  
**AMENDMENTS TO PART I OF THE PRINCIPAL ACT.**

(1) Section 2, matter relating to Division 3 of Part III—

Omit “32, 32A”, insert instead “31A–32A”.

(2) Section 4 (2)—

10 Omit “Dairy Industry Act, 1915”, insert instead “Dairy Industry Marketing Authority Act, 1979”.

(3) Section 5 (1), definition of “officer of the Department” or “officer”—

15 Omit “or a person appointed and holding office under section 15”, insert instead “, a person who is appointed and employed pursuant to section 15 or a person whose services are being used in accordance with arrangements made under section 16F”.



*Consumer Protection (Amendment).*

## SCHEDULE 2.

## Sec. 5.

## AMENDMENTS TO PART II OF THE PRINCIPAL ACT.

## (1) Section 15 (1)—

- 5 Omit "1902, as officers or employees", insert instead  
"1979, as officers or temporary employees".

## (2) (a) Section 16 (1) (a)—

Omit "and relating to the protection of consumers".

## (b) Section 16 (1) (b) (ii)—

Omit "trade or commercial".

## 10 (c) Section 16 (1) (b) (ii)—

After "instrumentality", insert "or other body".

## (d) Section 16 (2)–(4)—

After "instrumentality" wherever occurring, insert "or another body".

## 15 (3) Section 16c (8), (9)—

Omit the subsections.

## 20 (4) (a) Section 16E (2)—

After "engaged" where firstly occurring, insert  
"(whether as an officer of the Department or other-  
wise)".

## (b) Section 16E (4) (a)—

After "engaged", insert "(whether as an officer of the  
Department or otherwise)".

## (c) Section 16E (4) (b)—

- 25 Omit "of his holding any position under this Act or".



*Consumer Protection (Amendment).*

## SCHEDULE 2—continued.

## AMENDMENTS TO PART II OF THE PRINCIPAL ACT—continued.

## (5) (a) Section 17—

- 5 After “Council” where firstly occurring, insert “or of the Products Safety Committee”.

## (b) Section 17—

Omit “or the Council” where firstly occurring, insert instead “or by the Council or the Products Safety Committee”.

## 10 (c) Section 17—

Omit “or the Council” where secondly occurring, insert instead “, the Council or the Products Safety Committee”.

## SCHEDULE 3.

Sec. 5.

## 15 AMENDMENTS TO PART III OF THE PRINCIPAL ACT.

## (1) Section 28A—

After section 28, insert :—

28A. (1) A supplier who—

- 20 (a) exhibits or exposes for sale any goods, being goods of a prescribed class or description, to which a price is not conspicuously appended; or
- (b) sells any goods of such a class or description at a price greater than the price appended thereto,

is guilty of an offence against this Act.

Certain  
goods  
to be  
ticketed.



*Consumer Protection (Amendment).*SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

5 (2) For the purposes of subsection (1), a price shall be deemed to be appended to goods if it is annexed or affixed to, or is written, printed or stamped on or otherwise applied to, the goods or to any covering, label, reel or thing used in connection with the goods.

(2) (a) Section 29 (1)—

Omit "supplies", insert instead "sells".

10 (b) Section 29 (2) (b)—

Omit "supply", insert instead "sale".

(c) Section 29 (2) (c)—

15 After "any", insert "advertisement which is displayed, or catalogue which is available to the public, in or upon any part of the premises where the goods are exposed for sale, being an".

(d) Section 29 (3A)—

After section 29 (3), insert :—

20 (3A) In subsection (1), "price" does not include an amount expressed in a currency other than Australian currency.

(3) Sections 31A, 31B—

Before section 32, insert :—

31A. In this Division—

35 "published", in relation to a statement, includes—  
(a) inserted in a newspaper or other publication;

Interpreta-  
tion:  
Pt. III,  
Div. 3.



*Consumer Protection (Amendment).***SCHEDULE 3—continued.****AMENDMENTS TO PART III OF THE PRINCIPAL ACT—continued.**

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

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

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

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

(e) made verbally;

“statement” includes any representation of any kind  
whatsoever, whether made by means of—

(a) words, maps, plans or drawings; or

(b) pictorial representation or design,

or any combination of those means.

**31B. In any proceedings under this Division—**

(a) where a name, business name, address, telephone  
number or post office box number specified in  
a statement is that of a person, or of the agent  
of a person, who—

Evidence  
as to  
publication.

(i) is the owner, whether alone or jointly  
with one or more other persons, of any  
goods or interests in land;

(ii) is the supplier of any goods or services; or



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*Consumer Protection (Amendment).*

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**SCHEDULE 3—continued.****AMENDMENTS TO PART III OF THE PRINCIPAL ACT—continued.**

5 (iii) has, otherwise than as an owner, an interest in any goods or interests in land, or the supply of any services,

being goods, services or interests in land the supply, use or disposal of which the statement is intended or apparently intended to promote, that person or agent, as the case may be, shall be deemed, in the absence of proof to the contrary, to have caused the statement to be published; and

10 (b) a person who causes a statement to be published shall be deemed to have done so on any day on which the statement was published.

15 (4) (a) Section 32 (1) (a)—

Omit "by that person or any other person".

(b) Section 32 (2)—

Omit the subsection, insert instead :—

20 (2) Any person who, in connection with—

(a) the supply or use of goods or services or the disposal of interests in land; or

25 (b) the promotion by any means of the supply or use of goods or services or the disposal of interests in land,

publishes or causes to be published any statement which—

30 (c) concerns the existence or effect of any condition or warranty provided by law in relation to the supply or use of any such goods or services or the disposal of any such interests in land; and



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*Consumer Protection (Amendment).*

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SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

- (d) is to his knowledge false or misleading in any material particular,  
5 is guilty of an offence against this Act.
- (c) Section 32 (5)—  
Omit “In this section ‘newspaper’ includes any periodical publication and”, insert instead “In subsection (4),”.
- 10 (d) Section 32 (6A)—  
After section 32 (6), insert :—  
(6A) Where, in any proceedings under this section brought in the Supreme Court, a person has been found guilty of publishing or causing to be published a false or misleading statement concerning any goods, services or interests in land, the Court may, on application made with the approval of the Minister by the Commissioner at any stage of the proceedings, make either or both of the following orders :—
- 15 (a) an order requiring the person to disclose to the public, to a particular person or to persons included in a particular class of persons, in such manner as is specified in the order, such information, or information of such a kind, as is so specified, being information concerning those goods, services or interests in land and which is in the possession of the person to whom the order is directed or to which he has access;
- 20 (b) an order requiring that person to publish, at his own expense, in a manner and at times specified in the order, statements the content of which is specified in, or is to be determined in accordance with, the order.
- 25
- 30



*Consumer Protection (Amendment).*

## SCHEDULE 3—continued.

## AMENDMENTS TO PART III OF THE PRINCIPAL ACT—continued.

## (5) (a) Section 32A (1) (a)—

5 Omit “by the first mentioned person or any other person”.

## (b) Section 32A (1) (b) (i), (ia)—

Omit section 32A (1) (b) (i), insert instead :—

(i) the Minister;

(ia) the Department;

## 10 (c) Section 32A (1) (b) (iv)—

Omit “or” where lastly occurring.

## (d) Section 32A (1) (b) (iva)—

After section 32A (1) (b) (iv), insert :—

15 (iva) a person or an organisation prescribed for the purposes of this subparagraph, being a person or an organisation in existence at, or at any time prior to, the prescription; or

## (e) Section 32A (1) (b) (v)—

20 After “person” where firstly occurring, insert “who is or was, at any time,”

## (f) Section 32A (1) (b) (v)—

After “(iv)”, insert “or (iva)”.

## (g) Section 32A (1)—

25 Omit “\$2,000 or imprisonment for three months, or both”, insert instead “\$10,000”.



Consumer Protection (Amendment).

SCHEDULE 3—continued.

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—continued.

(h) Section 32A (2)—

Omit the subsection.

5 (6) Section 33B—

After section 33A, insert :—

10 33B. (1) The obligation imposed by section 32 (1) or  
(2) on any person not to publish or cause to be published  
a statement in contravention of either of those subsections  
is a duty which is owed by him to every other person, and  
a breach of that duty is actionable (subject to the defences  
and other incidents applying to actions for breach of  
statutory duty) at the suit of any person who has sustained  
15 loss or damage in consequence of that breach, whether or  
not he is a person who purchased or used any goods or  
services, or acquired any interests in land, in reliance upon  
the statement.

Civil  
action in  
respect of  
false or  
misleading  
statement.

20 (2) Where, in any proceedings brought against a  
person for an offence under section 32 (1) or (2), a  
finding of fact is made by the court in which those  
proceedings are brought, a document under the seal of that  
court from which the finding of fact appears is admissible  
in evidence in proceedings brought under subsection (1)  
25 against that person and is prima facie evidence of that  
fact.



*Consumer Protection (Amendment).*

## SCHEDULE 4.

## Sec. 5.

## AMENDMENTS TO PART IV OF THE PRINCIPAL ACT.

(1) Section 37 (6)-(11)—

Omit the subsections.

5 (2) Section 38 (4)—

After section 38 (3), insert :—

10 (4) Where, in any proceedings brought against a person for an offence under this section, a finding of fact is made by the court in which those proceedings are brought, a document under the seal of that court from which the finding of fact appears is admissible in evidence in proceedings brought under subsection (1) against that person and is prima facie evidence of that fact.

(3) (a) Section 39c (1)—

15 Omit the subsection, insert instead :—

20 (1) The Minister, or the Commissioner with the approval of the Minister, may refer to the Products Safety Committee either or both of the following questions in relation to goods of a class or description specified in the reference or any particular goods so specified (not being goods the supply of which is prohibited or regulated by or under an enactment specified in Schedule 4) :—

(a) the question—

25 (i) whether the supply of those goods should, by reason of their being dangerous, be prohibited or should be allowed only subject to conditions or restrictions; and



*Consumer Protection (Amendment).*SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

- (ii) if the supply of those goods should be allowed, under what conditions or restrictions, if any, the supply of those goods should be so allowed;
- (b) the question whether a regulation should be made under section 36 so as to exempt those goods from the operation of section 37 (1) and (2) and, if so, what any such regulation should provide.
- (b) Section 39c (3), (4)—  
Omit “any” wherever occurring, insert instead “a”.
- (c) Section 39c (5)—  
Omit “the question” where firstly occurring, insert instead “a question referred to it under subsection (1)”.
- (d) Section 39c (6)—  
Omit “the question”, insert instead “a question referred to it under subsection (1)”.
- (e) Section 39c (7)—  
Omit “the question” where firstly occurring, insert instead “a question referred to it under subsection (1)”.
- (f) Section 39c (8)—  
Omit “the question” where firstly occurring, insert instead “a question referred to it under subsection (1)”.



*Consumer Protection (Amendment)*

**SCHEDULE 4—continued.**

**AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—continued.**

(4) (a) Section 39DA (1)—

5 Omit “for a period not exceeding 28 days from the date on which the order is published in the Gazette under subsection (2)”.

(b) Section 39DA (2), (2A)—

Omit section 39DA (2), insert instead :—

10 (2) Where the Minister makes an order under subsection (1), he may do either or both of the following :—

(a) give a supplier notice in writing of the order;

(b) publish the order in the Gazette.

15 (2A) An order made under subsection (1)—

(a) being an order of which notice has been given to a supplier under subsection (2)

20 (a), has effect from the time the supplier receives the notice and remains in effect, unless sooner revoked, until—

— (i) except as provided by subparagraph

(ii)—the expiration of the period of 42 days after the day on which the supplier receives the notice; or

25 (ii) where the order is published in the Gazette under subsection (2) (b) on a day not later than the expiration of the period referred to in subparagraph (i)—the day on which the order is so published; or

30



*Consumer Protection (Amendment)*SCHEDULE 4—*continued*.AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued*.

- (b) being an order which is published in the Gazette under subsection (2) (b) (whether or not it is an order of which notice has been given to a supplier under subsection (2) (a)), has effect from the day on which it is so published and remains in effect, unless sooner revoked, until the expiration of the period of 42 days after that day.
- (5) (a) Section 39E (3)—  
Omit “, for a period not exceeding 28 days from the date on which the order is published under subsection (4)”.
- (b) Section 39E (4), (4A)—  
Omit section 39E (4), insert instead :—  
(4) Where the Minister makes an order under subsection (3), he may do either or both of the following :—  
(a) give a supplier notice in writing of the order;  
(b) publish the order in the Gazette.
- (4A) An order made under subsection (3)—  
(a) being an order of which notice has been given to a supplier under subsection (4) (a), has effect from the time the supplier receives the notice and remains in effect, unless sooner revoked, until—  
(i) except as provided by subparagraph (ii)—the expiration of the period of 42 days after the day on which the supplier receives the notice; or



*Consumer Protection (Amendment).***SCHEDULE 4—continued.****AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—continued.**

- 5 (ii) where the order is published in the Gazette under subsection (4) (b) on a day not later than the expiration of the period referred to in subparagraph (i)—the day on which the order is so published; or
- 10 (b) being an order which is published in the Gazette under subsection (4) (b) (whether or not it is an order of which notice has been given to a supplier under subsection (4) (a)), has effect from the day on which it is so published and remains in effect,
- 15 unless sooner revoked, until the expiration of the period of 42 days after that day.

**(6) Section 39FA—**

After section 39F, insert :—

- 39FA. (1) Where—
- 20 (a) any goods or component parts are supplied, in contravention of section 37, to a person; or
- (b) any goods are supplied, in contravention of an order made under section 39DA (1) or section 39E (1), (1A) or (3), to a person,
- 25 that person may, subject to subsection (2), recover, in a court of competent jurisdiction, as a debt due to him by the supplier who supplied him with those goods or component parts, any money paid by him for those goods or component parts.

Remedy  
for  
supply  
of goods,  
etc., in  
contra-  
vention  
of Act  
or  
order.



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*Consumer Protection (Amendment).*

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SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

5 (2) Where, in an action brought under subsection (1) in respect of any goods or component parts the court gives judgment for the plaintiff, the court may, if it thinks fit, direct that—

10 (a) if the defendant repairs or modifies the goods or component parts in such a manner that, had the goods or component parts, as so repaired or modified, been supplied at the material time to the plaintiff they would have been so supplied without contravention of the section or order, as the case may be, on which the plaintiff relied; and

15 (b) if the goods or component parts, as so repaired or modified, are delivered to and accepted by the judgment creditor on or before a day specified in the judgment,

the judgment debt shall be deemed to be satisfied.

20 (7) Section 39G (2)—

At the end of section 39G, insert :—

25 (2) Where, in any proceedings brought against a person for an offence under section 39F, a finding of fact is made by the court in which those proceedings are brought, a document under the seal of that court from which the finding of fact appears is admissible in evidence in proceedings brought under subsection (1) against that person and is prima facie evidence of that fact.

(8) (a) Section 39J (8)—

30 Omit “shall be forfeited to and become the property of the Crown and”.



*Consumer Protection (Amendment).*

**SCHEDULE 4—continued.**

**AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—continued.**

(b) Section 39J (9), (10)—

After section 39J (8), insert :—

5 (9) Where, by virtue of subsection (8), any goods or component parts are required to be destroyed or otherwise disposed of, the Commissioner may direct—

10 (a) that those goods or component parts be destroyed or otherwise disposed of by the owner or by a person having possession of them; or

15 (b) that those goods or component parts be destroyed or otherwise disposed of by another person or other persons at the cost of the owner or of a person having possession of them.

(10) A person to whom a direction is given under subsection (9) and who does not comply with the direction is guilty of an offence against this Act.

20 **SCHEDULE 5.**

**Sec. 5.**

**AMENDMENT TO PART V OF THE PRINCIPAL ACT.**

Section 53 (4), (5)—

After section 53 (3), insert :—

25 (4) Proceedings for an offence arising under this Part shall not be commenced except by a person authorised in writing by the Minister.



*Consumer Protection (Amendment).*

**SCHEDULE 5—continued.**

**AMENDMENT TO PART V OF THE PRINCIPAL ACT—continued.**

- (5) In any proceedings for an offence arising under this Part, an authority to prosecute, purporting to have been signed by the Minister, shall be evidence of the authority without proof of the Minister's signature.

**SCHEDULE 6.**

**Sec. 5.**

**AMENDMENTS TO PART VI OF THE PRINCIPAL ACT.**

- (1) Section 56 (1), (1A)—
- 10 Omit section 56 (1), insert instead :—
- (1) Proceedings for an offence against this Act (Part V excepted) may—
- (a) be taken and prosecuted only by a person acting with the authority in writing of the Minister; and
- 15 (b) be disposed of summarily before—
- (i) a court of petty sessions constituted by a stipendiary magistrate sitting alone;
- (ii) an industrial magistrate; or
- 20 (iii) the Supreme Court in its summary jurisdiction.
- (1A) In any proceedings referred to in subsection (1), an authority to prosecute, purporting to have been signed by the Minister, shall be evidence of the authority without proof of the Minister's signature.



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*Consumer Protection (Amendment).*

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**SCHEDULE 6—continued.****AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—continued.****(2) Sections 56A, 56B—**

**Omit section 56A, insert instead :—**

5 **56A. (1) Where a person is contravening, has on 2 or Injunc-**  
**more occasions contravened, or threatens to contravene— tions.**

- (a) a provision of this Act or of the regulations, or  
an order made under this Act or the regulations;  
or  
10 (b) a provision of any other legislation administered  
by the Minister or an order made under any  
such legislation,

15 the Supreme Court may, on application made by the Com-  
missioner with the consent of the Minister, grant an  
injunction restraining the person from continuing to contra-  
vene the provision or order or from contravening the pro-  
vision or order, as the case may require.

20 (2) An injunction under subsection (1) may be  
granted as an interim injunction, without any undertaking  
being given by the Commissioner as to damages, or as a  
permanent injunction.

25 **56B. The Minister may, at any stage of proceedings**  
**brought before any court under this Act, the regulations**  
**or any other legislation administered by the Minister, inter-**  
**vene by counsel or by a solicitor, and shall thereupon**  
**become a party to, and shall have all the rights of a party**  
**to, those proceedings before that court, including the right**  
**to appeal against any order or judgment of the court.**

**Interven-**  
**tion by**  
**Minister.**



*Consumer Protection (Amendment).*SCHEDULE 6—*continued.*AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—*continued.*

## (3) Section 57A—

After section 57, insert :—

- 5 57A. (1) Notwithstanding the provisions of the Justices Act, 1902, or of any other law, where any person is by any conviction or order adjudged to pay any fine, penalty, sum of money or costs in respect of an offence against this Act or any other legislation administered by the Minister—
- 10 (a) that person shall not be adjudged to be, or be, liable to imprisonment in default of payment of the amount of that fine, penalty, sum of money or costs; and
- 15 (b) that conviction or order shall, irrespective of the amount adjudged to be paid, operate, and be enforceable in the same way, as a judgment, where it was effected or made—
- 20 (i) by a court of petty sessions—of the court of petty sessions exercising jurisdiction under the Courts of Petty Sessions (Civil Claims) Act, 1970, at the place where it was effected or made; or
- 25 (ii) by an industrial magistrate—of the court of petty sessions exercising that jurisdiction at the place nearest to the place where the industrial magistrate effected or made the conviction or order.
- (2) The registrar of the court of petty sessions exercising jurisdiction—
- 30 (a) in the case of a conviction or order referred to in subsection (1) effected or made by a court of petty sessions—at the place where the conviction or order was effected or made; or

Default imprisonment not to be awarded.



*Consumer Protection (Amendment)*SCHEDULE 6—*continued*.AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—*continued*.

- (b) in the case of a conviction or order referred to in subsection (1) effected or made by an industrial magistrate—at the place nearest to the place where the conviction or order was effected or made,

shall, on the application of the informant made as prescribed, enter up judgment against the defendant in the records of the court for the amount adjudged to be paid.

- (4) (a) Section 58 (2) (a) (i)—

Omit “or” where lastly occurring.

- (b) Section 58 (2) (a) (ii)—

Omit “require,”; insert instead “require; or”.

- (c) Section 58 (2) (a) (iii)—

After section 58 (2) (a) (ii), insert :—

(iii) that any legislation specified in the statement is administered by the Minister,

- (5) Section 58A—

After section 58, insert :—

58A. (1) Where, under this Act, the Commissioner or any officer is required or permitted to give in writing to any person any notice, warning or direction, the notice, warning or direction may be given—

Service  
of notices,  
etc.

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

(i) by delivering it to him personally;



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*Consumer Protection (Amendment).*

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**SCHEDULE 6—continued.****AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—continued.**

- 5 (ii) by leaving it at his place of residence with someone who apparently resides there or at his place of business or employment with someone who is apparently employed there, being in either case a person who has or apparently has attained 16 years of age; or
- 10 (iii) by posting it in a letter addressed to him at the address last known to the Commissioner of his place of residence, business or employment; or
- (b) to a person, being a corporation—
- 15 (i) by delivering it to the secretary of the corporation, or any other person concerned in the management of the corporation, personally;
- 20 (ii) by leaving it at the corporation's only or principal place of business with a person apparently employed there, being a person who has or apparently has attained 16 years of age; or
- 25 (iii) by posting it in a letter addressed to the corporation at the address last known to the Commissioner of its only or principal place of business.
- (2) Subsection (1) (b) does not limit the operation of section 362 of the Companies Act, 1961.



*Consumer Protection (Amendment).*

**SCHEDULE 7.**

**Sec. 5.**

**AMENDMENTS TO SCHEDULE 3 TO THE PRINCIPAL ACT.**

(1) Schedule 3, clause 5 (1)—

Omit “any question”, insert instead “a question”.

5 (2) Schedule 3, clause 5 (1)—

Omit “or in relation to any application made under section 37 (7)”.

**SCHEDULE 8.**

**Sec. 5.**

**AMENDMENTS TO SCHEDULE 4 TO THE PRINCIPAL ACT.**

10 (1) Schedule 4—

Omit “Dairy Industry Act, 1915”, insert instead “Dairy Industry Marketing Authority Act, 1979”.

(2) Schedule 4—

15 Omit “Explosives Act, 1905”, insert instead “Dangerous Goods Act, 1975”.

(3) Schedule 4—

Omit “5. Inflammable Liquid Act, 1915.”.



Consumer Protection (Amendment).

SCHEDULE 8—continued.

AMENDMENTS TO SCHEDULE 4 TO THE PRINCIPAL ACT—continued.

(4) Schedule 4—

5 At the end of Schedule 4, insert :—

12. Any Act amending or replacing any of the foregoing Acts.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1980

(65c)











## **CONSUMER PROTECTION (AMENDMENT) BILL, 1980**

### **EXPLANATORY NOTE**

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

The object of this Bill is to amend the Consumer Protection Act, 1969 ("the Act")—

- (a) to provide that persons whose services are being used by the Commissioner for Consumer Affairs under section 16F of the Act are given the same privileges, and are subject to the same obligations, as are given to or imposed upon officers and employees in the Department of Consumer Affairs (Schedules 1 (2) and 2 (4));
- (b) to allow the Commissioner for Consumer Affairs to investigate complaints concerning professional services rendered to consumers (Schedule 2 (2) (b));
- (c) to give members of the Products Safety Committee the same protection against personal liability arising out of their operations under the Act as is given to officers of the Department (Schedule 2 (5));
- (d) to provide that certain goods on sale shall be marked with their prices (Schedule 3 (1));
- (e) to extend the operation of the Act with respect to the offence of publishing false or misleading advertisements (Schedule 3 (3) and (4) (b));
- (f) to provide that, where a court convicts a person of publishing a false or misleading advertisement concerning goods, services or interests in land, the court may order him to publish information concerning the true character of those goods, services or interests (Schedule 3 (4) (d));
- (g) to provide that a person who suffers loss or damage by reason of a false or misleading advertisement may recover damages (Schedule 3 (6));
- (h) to extend the functions of the Products Safety Committee to enable it to determine the conditions on which certain goods may be supplied (Schedule 4 (3));



- (i) to extend the Minister's powers with respect to interim orders prohibiting or restricting the supply of goods (Schedule 4 (4) and (5));
  - (j) to afford consumers certain remedies with respect to goods supplied to them in contravention of a Ministerial order (Schedule 4 (6) and (7));
  - (k) to extend the powers of the Commissioner for Consumer Affairs with respect to the disposal of goods impounded by an inspector under section 39i of the Act (Schedule 4 (8));
  - (l) to provide that proceedings under the Act may be taken only with the authority of the Minister (Schedules 5 and 6 (1));
  - (m) to allow the Minister to intervene in court proceedings brought under any legislation administered by the Minister (Schedule 6 (2));
  - (n) to exclude default imprisonment as a penalty for offences against the provisions of any legislation administered by the Minister administering the Act (Schedule 6 (3)); and
  - (o) to make other provisions of a minor, consequential or ancillary nature.
-



WILDLIFE PROTECTION AMENDMENT  
BILL, 1980

Section 1. (a) The Wildlife Protection Act, 1972, is amended by inserting in it the following sections:-

(b) The Wildlife Protection Act, 1972, is amended by inserting in it the following sections:-

Section 2. (a) The Wildlife Protection Act, 1972, is amended by inserting in it the following sections:-

(b) The Wildlife Protection Act, 1972, is amended by inserting in it the following sections:-



- (j) to extend the Minister's powers under the Act as to interim orders and  
bidding or restricting the supply of goods (sections 4(1A) and 4(1B));
- (k) to afford consumers certain remedies in relation to goods supplied to  
them in contravention of a Ministerial order under sections 5(4) and 17(4);
- (l) to extend the powers of the Commissioner of Consumer Affairs with  
respect to the disposal of goods impounded by a Ministerial order  
section 39 of the Act (Schedule 4 (B));
- (m) to provide that proceedings under the Act may be taken only with the  
authority of the Minister (Schedule 5 and 6 (1) & 2);

- (n) to enable the Minister to intervene in court proceedings brought by a  
consumer against a trader under the Act (Schedule 6 (2) & 3);

and to make such amendments to the Act as may be necessary or expedient  
in connection with the foregoing provisions of this Bill.

Enacted by the Queen's Most Excellent Majesty in Council.



Act No. 1980.104  
**CONSUMER PROTECTION (AMENDMENT)  
BILL, 1980**

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

1. The Act may be cited as the Consumer Protection Short (Amendment) Act, 1980.

2. (1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.

(2) Section 2 and Schedules 1–8 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

No. , 1980.

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**A BILL FOR**

**An Act to amend the Consumer Protection Act, 1969, to make further provision with respect to the supply of goods and services to consumers and the advertising of goods and services, and for other purposes.**

[MR EINFELD—19 November, 1980.]

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*Consumer Protection (Amendment).*

**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 Short  
(Amendment) Act, 1980”. title.

2. (1) Except as provided by subsection (2), this Act shall Commence-  
commence on the date of assent to this Act. ment.

(2) Section 5 and Schedules 1–8 shall commence on such  
10 day as may be appointed by the Governor in respect thereof and  
as may be notified by proclamation published in the Gazette.

3. The Consumer Protection Act, 1969, is referred to in this Principal  
Act as the Principal Act. Act.

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

15    SCHEDULE 1.—AMENDMENTS TO PART I OF THE  
PRINCIPAL ACT.

SCHEDULE 2.—AMENDMENTS TO PART II OF THE  
PRINCIPAL ACT.

20    SCHEDULE 3.—AMENDMENTS TO PART III OF THE  
PRINCIPAL ACT.

SCHEDULE 4.—AMENDMENTS TO PART IV OF THE  
PRINCIPAL ACT.

SCHEDULE 5.—AMENDMENT TO PART V OF THE  
PRINCIPAL ACT.



*Consumer Protection (Amendment).*

SCHEDULE 6.—AMENDMENTS TO PART VI OF THE  
PRINCIPAL ACT.

SCHEDULE 7.—AMENDMENTS TO SCHEDULE 3 TO THE  
PRINCIPAL ACT.

5 SCHEDULE 8.—AMENDMENTS TO SCHEDULE 4 TO THE  
PRINCIPAL ACT.

5. The Principal Act is amended in the manner set forth in Amendment  
Schedules 1–8. of Act No.  
28, 1969.

6. (1) In this section, “appointed day” means the day Savings.  
10 appointed and notified under section 2 (2).

(2) Nothing in this Act affects any liability incurred before  
the appointed day by a member of the Products Safety Committee  
or by a person whose services were being used in accordance  
with arrangements made under section 16F of the Principal Act.

15 (3) Section 31B of the Principal Act, as amended by this  
Act, does not apply to or in respect of any proceedings com-  
menced before the appointed day.

(4) Section 33B of the Principal Act, as amended by this  
Act, does not confer upon any person a right of action in respect  
20 of a statement published before the appointed day.

(5) Notwithstanding the repeal of section 37 (6) of the  
Principal Act by Schedule 4 (1), the provisions of that subsection  
shall be deemed to continue to apply to and in respect of any class  
or description of goods or component parts, or any particular goods  
25 or components parts, in respect of which a certificate of safety  
was issued before the appointed day.

(6) Nothing in section 38 (4) or section 39G (2) of the  
Principal Act, as amended by this Act, applies to or in respect  
of any civil proceedings commenced before the appointed day.



*Consumer Protection (Amendment).*

(7) Section 39FA of the Principal Act, as amended by this Act, does not confer upon any person a right of action in respect of any goods or component parts supplied to him before the appointed day.

**SCHEDULE 8—AMENDMENTS TO SCHEDULE 4 TO THE PRINCIPAL ACT.**

**SCHEDULE 1.**  
**AMENDMENTS TO PART I OF THE PRINCIPAL ACT.**

(1) Section 2, matter relating to Division 3 of Part III—

Omit “32, 32A”, insert instead “31A–32A”.

(2) Section 4 (2)—

10 Omit “Dairy Industry Act, 1915”, insert instead “Dairy Industry Marketing Authority Act, 1979”.

(3) Section 5 (1), definition of “officer of the Department” or “officer”—

15 Omit “or a person appointed and holding office under section 15”, insert instead “, a person who is appointed and employed pursuant to section 15 or a person whose services are being used in accordance with arrangements made under section 16F”.



*Consumer Protection (Amendment)*

## SCHEDULE 2.

## Sec. 5.

## AMENDMENTS TO PART II OF THE PRINCIPAL ACT.

## (1) Section 15 (1)—

5 Omit “1902, as officers or employees”, insert instead  
“1979, as officers or temporary employees”.

## (2) (a) Section 16 (1) (a)—

Omit “and relating to the protection of consumers”.

## (b) Section 16 (1) (b) (ii)—

Omit “trade or commercial”.

## 10 (c) Section 16 (1) (b) (ii)—

After “instrumentality”, insert “or other body”.

## (d) Section 16 (2)–(4)—

After “instrumentality” wherever occurring, insert “or another body”.

## 15 (3) Section 16C (8), (9)—

Omit the subsections.

## (4) (a) Section 16E (2)—

20 After “engaged” where firstly occurring, insert  
“(whether as an officer of the Department or otherwise)”.

## (b) Section 16E (4) (a)—

After “engaged”, insert “(whether as an officer of the Department or otherwise)”.

## (c) Section 16E (4) (b)—

25 Omit “of his holding any position under this Act or”.



*Consumer Protection (Amendment).*SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

## (5) (a) Section 17—

5 After “Council” where firstly occurring, insert “or of the Products Safety Committee”.

## (b) Section 17—

Omit “or the Council” where firstly occurring, insert instead “or by the Council or the Products Safety Committee”.

## 10 (c) Section 17—

Omit “or the Council” where secondly occurring, insert instead “, the Council or the Products Safety Committee”.

## SCHEDULE 3.

Sec. 5.

## 15 AMENDMENTS TO PART III OF THE PRINCIPAL ACT.

## (1) Section 28A—

After section 28, insert :—

28A. (1) A supplier who—

- 20 (a) exhibits or exposes for sale any goods, being goods of a prescribed class or description, to which a price is not conspicuously appended; or
- (b) sells any goods of such a class or description at a price greater than the price appended thereto,

Certain goods to be ticketed.

is guilty of an offence against this Act.



*Consumer Protection (Amendment).*SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

5 (2) For the purposes of subsection (1), a price shall be deemed to be appended to goods if it is annexed or affixed to, or is written, printed or stamped on or otherwise applied to, the goods or to any covering, label, reel or thing used in connection with the goods.

(2) (a) Section 29 (1)—

Omit "supplies", insert instead "sells".

10 (b) Section 29 (2) (b)—

Omit "supply", insert instead "sale".

(c) Section 29 (2) (c)—

15 After "any", insert "advertisement which is displayed, or catalogue which is available to the public, in or upon any part of the premises where the goods are exposed for sale, being an".

(d) Section 29 (3A)—

After section 29 (3), insert :—

20 (3A) In subsection (1), "price" does not include an amount expressed in a currency other than Australian currency.

(3) Sections 31A, 31B—

Before section 32, insert :—

31A. In this Division—

35 "published", in relation to a statement, includes—

(a) inserted in a newspaper or other publication;

Interpreta-  
tion:  
Pt. III,  
Div. 3.



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Consumer Protection (Amendment).

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## SCHEDULE 3—continued.

## AMENDMENTS TO PART III OF THE PRINCIPAL ACT—continued.

(b) publicly exhibited—

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

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

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

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

(e) made verbally;

“statement” includes any representation of any kind whatsoever, whether made by means of—

(a) words, maps, plans or drawings; or

(b) pictorial representation or design,

or any combination of those means.

## 31B. In any proceedings under this Division—

Evidence  
as to  
publication.

(a) where a name, business name, address, telephone number or post office box number specified in a statement is that of a person, or of the agent of a person, who—

(i) is the owner, whether alone or jointly with one or more other persons, of any goods or interests in land;

(ii) is the supplier of any goods or services; or



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*Consumer Protection (Amendment).*

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**SCHEDULE 3—continued.**

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**AMENDMENTS TO PART III OF THE PRINCIPAL ACT—continued.**

- 5                   (iii) has, otherwise than as an owner, an interest in any goods or interests in land, or the supply of any services,
- being goods, services or interests in land the supply, use or disposal of which the statement is intended or apparently intended to promote, that person or agent, as the case may be, shall be
- 10                   deemed, in the absence of proof to the contrary, to have caused the statement to be published; and
- (b) a person who causes a statement to be published shall be deemed to have done so on any day on
- 15                   which the statement was published.
- (4) (a) Section 32 (1) (a)—
- Omit “by that person or any other person”.
- (b) Section 32 (2)—
- Omit the subsection, insert instead :—
- 20                   (2) Any person who, in connection with—
- (a) the supply or use of goods or services or the disposal of interests in land; or
- (b) the promotion by any means of the supply or use of goods or services or the disposal
- 25                   of interests in land,
- publishes or causes to be published any statement which—
- (c) concerns the existence or effect of any condition or warranty provided by law in relation to the supply or use of any such goods or services or the disposal of any such
- 30                   interests in land; and



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*Consumer Protection (Amendment).*

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**SCHEDULE 3—continued.****AMENDMENTS TO PART III OF THE PRINCIPAL ACT—continued.**

- (d) is to his knowledge false or misleading in  
any material particular,  
5 is guilty of an offence against this Act.

(c) Section 32 (5)—

Omit “In this section ‘newspaper’ includes any  
periodical publication and”, insert instead “In  
subsection (4),”.

10 (d) Section 32 (6A)—

After section 32 (6), insert :—

- (6A) Where, in any proceedings under this section  
brought in the Supreme Court, a person has been  
found guilty of publishing or causing to be published  
15 a false or misleading statement concerning any goods,  
services or interests in land, the Court may, on  
application made with the approval of the Minister  
by the Commissioner at any stage of the proceedings,  
make either or both of the following orders :—

- 20 (a) an order requiring the person to disclose to  
the public, to a particular person or to  
persons included in a particular class of  
persons, in such manner as is specified in  
the order, such information, or information  
25 of such a kind, as is so specified, being  
information concerning those goods,  
services or interests in land and which is in  
the possession of the person to whom the  
order is directed or to which he has access;
- 30 (b) an order requiring that person to publish,  
at his own expense, in a manner and at  
times specified in the order, statements the  
content of which is specified in, or is to be  
determined in accordance with, the order.



*Consumer Protection (Amendment)*

SCHEDULE 3—continued.

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—continued.

(5) (a) Section 32A (1) (a)—

5 Omit “by the first mentioned person or any other person”.

(b) Section 32A (1) (b) (i), (ia)—

Omit section 32A (1) (b) (i), insert instead :—

(i) the Minister;

(ia) the Department;

10 (c) Section 32A (1) (b) (iv)—

Omit “or” where lastly occurring.

(d) Section 32A (1) (b) (iva)—

After section 32A (1) (b) (iv), insert :—

15 (iva) a person or an organisation prescribed for the purposes of this subparagraph, being a person or an organisation in existence at, or at any time prior to, the prescription; or

(e) Section 32A (1) (b) (v)—

20 After “person” where firstly occurring, insert “who is or was, at any time,”.

(f) Section 32A (1) (b) (v)—

After “(iv)”, insert “or (iva)”.

(g) Section 32A (1)—

25 Omit “\$2,000 or imprisonment for three months, or both”, insert instead “\$10,000”.



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*Consumer Protection (Amendment).*

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## SCHEDULE 3—continued.

## AMENDMENTS TO PART III OF THE PRINCIPAL ACT—continued.

(h) Section 32A (2)—

Omit the subsection.

5 (6) Section 33B—

After section 33A, insert :—

10 33B. (1) The obligation imposed by section 32 (1) or  
(2) on any person not to publish or cause to be published  
a statement in contravention of either of those subsections  
is a duty which is owed by him to every other person, and  
a breach of that duty is actionable (subject to the defences  
and other incidents applying to actions for breach of  
statutory duty) at the suit of any person who has sustained  
loss or damage in consequence of that breach, whether or  
15 not he is a person who purchased or used any goods or  
services, or acquired any interests in land, in reliance upon  
the statement.

Civil  
action in  
respect of  
false or  
misleading  
statement.

20 (2) Where, in any proceedings brought against a  
person for an offence under section 32 (1) or (2), a  
finding of fact is made by the court in which those  
proceedings are brought, a document under the seal of that  
court from which the finding of fact appears is admissible  
in evidence in proceedings brought under subsection (1)  
against that person and is prima facie evidence of that  
25 fact.



*Consumer Protection (Amendment).*

## SCHEDULE 4.

## Sec. 5.

## AMENDMENTS TO PART IV OF THE PRINCIPAL ACT.

## (1) Section 37 (6)-(11)—

Omit the subsections.

## 5 (2) Section 38 (4)—

After section 38 (3), insert :—

10

(4) Where, in any proceedings brought against a person for an offence under this section, a finding of fact is made by the court in which those proceedings are brought, a document under the seal of that court from which the finding of fact appears is admissible in evidence in proceedings brought under subsection (1) against that person and is prima facie evidence of that fact.

## (3) (a) Section 39C (1)—

15

Omit the subsection, insert instead :—

20

(1) The Minister, or the Commissioner with the approval of the Minister, may refer to the Products Safety Committee either or both of the following questions in relation to goods of a class or description specified in the reference or any particular goods so specified (not being goods the supply of which is prohibited or regulated by or under an enactment specified in Schedule 4) :—

(a) the question—

25

(i) whether the supply of those goods should, by reason of their being dangerous, be prohibited or should be allowed only subject to conditions or restrictions; and



*Consumer Protection (Amendment).*SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

- (ii) if the supply of those goods should be allowed, under what conditions or restrictions, if any, the supply of those goods should be so allowed;
- (b) the question whether a regulation should be made under section 36 so as to exempt those goods from the operation of section 37 (1) and (2) and, if so, what any such regulation should provide.
- (b) Section 39c (3), (4)—  
Omit “any” wherever occurring, insert instead “a”.
- (c) Section 39c (5)—  
Omit “the question” where firstly occurring, insert instead “a question referred to it under subsection (1)”.
- (d) Section 39c (6)—  
Omit “the question”, insert instead “a question referred to it under subsection (1)”.
- (e) Section 39c (7)—  
Omit “the question” where firstly occurring, insert instead “a question referred to it under subsection (1)”.
- (f) Section 39c (8)—  
Omit “the question” where firstly occurring, insert instead “a question referred to it under subsection (1)”.



*Consumer Protection (Amendment).*SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

## (4) (a) Section 39DA (1)—

5 Omit “for a period not exceeding 28 days from the date on which the order is published in the Gazette under subsection (2)”.

## (b) Section 39DA (2), (2A)—

Omit section 39DA (2), insert instead :—

10 (2) Where the Minister makes an order under subsection (1), he may do either or both of the following :—

- (a) give a supplier notice in writing of the order;
- (b) publish the order in the Gazette.

## 15 (2A) An order made under subsection (1)—

(a) being an order of which notice has been given to a supplier under subsection (2) (a), has effect from the time the supplier receives the notice and remains in effect, unless sooner revoked, until—

- (i) except as provided by subparagraph (ii)—the expiration of the period of 42 days after the day on which the supplier receives the notice; or
- 25 (ii) where the order is published in the Gazette under subsection (2) (b) on a day not later than the expiration of the period referred to in subparagraph (i)—the day on which
- 30 the order is so published; or



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*Consumer Protection (Amendment).*

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**SCHEDULE 4—continued.****AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—continued.**

- 5 (b) being an order which is published in the Gazette under subsection (2) (b) (whether or not it is an order of which notice has been given to a supplier under subsection (2) (a)), has effect from the day on which it is so published and remains in effect, unless sooner revoked, until the expiration of the period of 42 days after that day.
- 10 (5) (a) Section 39E (3)—  
Omit “, for a period not exceeding 28 days from the date on which the order is published under subsection (4)”.
- 15 (b) Section 39E (4), (4A)—  
Omit section 39E (4), insert instead :—  
(4) Where the Minister makes an order under subsection (3), he may do either or both of the following :—  
20 (a) give a supplier notice in writing of the order;  
(b) publish the order in the Gazette.
- (4A) An order made under subsection (3)—  
25 (a) being an order of which notice has been given to a supplier under subsection (4) (a), has effect from the time the supplier receives the notice and remains in effect, unless sooner revoked, until—  
30 (i) except as provided by subparagraph (ii)—the expiration of the period of 42 days after the day on which the supplier receives the notice; or



*Consumer Protection (Amendment).***SCHEDULE 4—continued.****AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—continued.**

- 5 (ii) where the order is published in the Gazette under subsection (4) (b) on a day not later than the expiration of the period referred to in subparagraph (i)—the day on which the order is so published; or
- 10 (b) being an order which is published in the Gazette under subsection (4) (b) (whether or not it is an order of which notice has been given to a supplier under subsection (4) (a)), has effect from the day on which it is so published and remains in effect,
- 15 unless sooner revoked, until the expiration of the period of 42 days after that day.

**(6) Section 39FA—**

After section 39F, insert :—

- 39FA. (1) Where—
- 20 (a) any goods or component parts are supplied, in contravention of section 37, to a person; or
- (b) any goods are supplied, in contravention of an order made under section 39DA (1) or section 39E (1), (1A) or (3), to a person,
- 25 that person may, subject to subsection (2), recover, in a court of competent jurisdiction, as a debt due to him by the supplier who supplied him with those goods or component parts, any money paid by him for those goods or component parts.

Remedy  
for  
supply  
of goods,  
etc., in  
contra-  
vention  
of Act  
or  
order.



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*Consumer Protection (Amendment).*

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**SCHEDULE 4—continued.**

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**AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—continued.**

5 (2) Where, in an action brought under subsection (1) in respect of any goods or component parts the court gives judgment for the plaintiff, the court may, if it thinks fit, direct that—

10 (a) if the defendant repairs or modifies the goods or component parts in such a manner that, had the goods or component parts, as so repaired or modified, been supplied at the material time to the plaintiff they would have been so supplied without contravention of the section or order, as the case may be, on which the plaintiff relied; and

15 (b) if the goods or component parts, as so repaired or modified, are delivered to and accepted by the judgment creditor on or before a day specified in the judgment,

the judgment debt shall be deemed to be satisfied.

20 (7) Section 39G (2)—

At the end of section 39G, insert :—

25 (2) Where, in any proceedings brought against a person for an offence under section 39F, a finding of fact is made by the court in which those proceedings are brought, a document under the seal of that court from which the finding of fact appears is admissible in evidence in proceedings brought under subsection (1) against that person and is prima facie evidence of that fact.

(8) (a) Section 39J (8)—

30 Omit “shall be forfeited to and become the property of the Crown and”.



*Consumer Protection (Amendment).*

**SCHEDULE 4—continued.**

**AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—continued.**

(b) Section 39J (9), (10)—

After section 39J (8), insert :—

5 (9) Where, by virtue of subsection (8), any goods or component parts are required to be destroyed or otherwise disposed of, the Commissioner may direct—

10 (a) that those goods or component parts be destroyed or otherwise disposed of by the owner or by a person having possession of them; or

15 (b) that those goods or component parts be destroyed or otherwise disposed of by another person or other persons at the cost of the owner or of a person having possession of them.

(10) A person to whom a direction is given under subsection (9) and who does not comply with the direction is guilty of an offence against this Act.

20

**SCHEDULE 5.**

**Sec. 5.**

**AMENDMENT TO PART V OF THE PRINCIPAL ACT.**

Section 53 (4), (5)—

After section 53 (3), insert :—

25 (4) Proceedings for an offence arising under this Part shall not be commenced except by a person authorised in writing by the Minister.



*Consumer Protection (Amendment).***SCHEDULE 5—continued.****AMENDMENT TO PART V OF THE PRINCIPAL ACT—continued.**

- (5) In any proceedings for an offence arising under this Part, an authority to prosecute, purporting to have been signed by the Minister, shall be evidence of the authority without proof of the Minister's signature.

**SCHEDULE 6.**

Sec. 5.

**AMENDMENTS TO PART VI OF THE PRINCIPAL ACT.**

- (1) Section 56 (1), (1A)—

- 10 Omit section 56 (1), insert instead :—

(1) Proceedings for an offence against this Act (Part V excepted) may—

- (a) be taken and prosecuted only by a person acting with the authority in writing of the Minister; and
- 15 (b) be disposed of summarily before—
- (i) a court of petty sessions constituted by a stipendiary magistrate sitting alone;
- (ii) an industrial magistrate; or
- 20 (iii) the Supreme Court in its summary jurisdiction.

(1A) In any proceedings referred to in subsection (1), an authority to prosecute, purporting to have been signed by the Minister, shall be evidence of the authority without proof of the Minister's signature.



## Consumer Protection (Amendment)

## SCHEDULE 6—continued.

## AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—continued.

## (2) Sections 56A, 56B—

Omit section 56A, insert instead :—

5 56A. (1) Where a person is contravening, has on 2 or Injunc-  
more occasions contravened, or threatens to contravene— tions.

— (a) a provision of this Act or of the regulations, or  
an order made under this Act or the regulations;  
or

10 (b) a provision of any other legislation administered  
by the Minister or an order made under any  
such legislation,

15 the Supreme Court may, on application made by the Com-  
missioner with the consent of the Minister, grant an  
injunction restraining the person from continuing to contra-  
vene the provision or order or from contravening the pro-  
vision or order, as the case may require.

20 (2) An injunction under subsection (1) may be  
granted as an interim injunction, without any undertaking  
being given by the Commissioner as to damages, or as a  
permanent injunction.

25 56B. The Minister may, at any stage of proceedings Intervention  
brought before any court under this Act, the regulations by  
or any other legislation administered by the Minister, Minister.  
intervene by counsel or by a solicitor, and shall thereupon  
become a party to, and shall have all the rights of a party  
to, those proceedings before that court, including the right  
to appeal against any order or judgment of the court.



*Consumer Protection (Amendment).*

## SCHEDULE 6—continued.

## AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—continued.

## (3) Section 57A—

After section 57, insert :—

5 57A. (1) Notwithstanding the provisions of the Justices Act, 1902, or of any other law, where any person is by any conviction or order adjudged to pay any fine, penalty, sum of money or costs in respect of an offence against this Act or any other legislation administered by the Minister—

Default imprisonment not to be awarded.

10 (a) that person shall not be adjudged to be, or be, liable to imprisonment in default of payment of the amount of that fine, penalty, sum of money or costs; and

15 (b) that conviction or order shall, irrespective of the amount adjudged to be paid, operate, and be enforceable in the same way, as a judgment, where it was effected or made—

20 (i) by a court of petty sessions—of the court of petty sessions exercising jurisdiction under the Courts of Petty Sessions (Civil Claims) Act, 1970, at the place where it was effected or made; or

25 (ii) by an industrial magistrate—of the court of petty sessions exercising that jurisdiction at the place nearest to the place where the industrial magistrate effected or made the conviction or order.

(2) The registrar of the court of petty sessions exercising jurisdiction—

30 (a) in the case of a conviction or order referred to in subsection (1) effected or made by a court of petty sessions—at the place where the conviction or order was effected or made; or



*Consumer Protection (Amendment)*SCHEDULE 6—*continued*AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—*continued*

- 5 (b) in the case of a conviction or order referred to in subsection (1) effected or made by an industrial magistrate—at the place nearest to the place where the conviction or order was effected or made,

10 shall, on the application of the informant made as prescribed, enter up judgment against the defendant in the records of the court for the amount adjudged to be paid.

- (4) (a) Section 58 (2) (a) (i)—

Omit “or” where lastly occurring.

- (b) Section 58 (2) (a) (ii)—

Omit “require,” insert instead “require; or”.

- 15 (c) Section 58 (2) (a) (iii)—

After section 58 (2) (a) (ii), insert :—

(iii) that any legislation specified in the statement is administered by the Minister,

- (5) Section 58A—

20 After section 58, insert :—

58A. (1) Where, under this Act, the Commissioner or any officer is required or permitted to give in writing to any person any notice, warning or direction, the notice, warning or direction may be given—

Service  
of notices,  
etc.

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

(i) by delivering it to him personally;



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*Consumer Protection (Amendment).*

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**SCHEDULE 6—continued.****AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—continued.**

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

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

(b) to a person, being a corporation—

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

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

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

(2) Subsection (1)(b) does not limit the operation of section 362 of the Companies Act, 1961.



*Consumer Protection (Amendment).*

**SCHEDULE 7.**

**Sec. 5.**

**AMENDMENTS TO SCHEDULE 3 TO THE PRINCIPAL ACT.**

- (1) Schedule 3, clause 5 (1)—

Omit “any question”, insert instead “a question”.

- 5 (2) Schedule 3, clause 5 (1)—

Omit “or in relation to any application made under section 37 (7)”.

**SCHEDULE 8.**

**Sec. 5.**

**AMENDMENTS TO SCHEDULE 4 TO THE PRINCIPAL ACT.**

- 10 (1) Schedule 4—

Omit “Dairy Industry Act, 1915”, insert instead “Dairy Industry Marketing Authority Act, 1979”.

- (2) Schedule 4—

15 Omit “Explosives Act, 1905”, insert instead “Dangerous Goods Act, 1975”.

- (3) Schedule 4—

Omit “5. Inflammable Liquid Act, 1915.”.



Consumer Protection (Amendment)

SCHEDULE 8—continued.

AMENDMENTS TO SCHEDULE 4 TO THE PRINCIPAL ACT—continued.

(4) Schedule 4—

5 At the end of Schedule 4, insert :—

12. Any Act amending or replacing any of the foregoing Acts.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1980

(65c)

AMENDMENTS TO SCHEDULE 4 TO THE PRINCIPAL ACT.

10 (1) Schedule 4—

Omit "Dairy Industry Act, 1915," insert instead "Dairy Industry Marketing Authority Act, 1979."

(2) Schedule 4—

Omit "Explosives Act, 1905," insert instead "Dangerous Goods Act, 1975."

(3) Schedule 4—

Omit "Inflammable Liquid Act, 1915."







*Consumer Protection (Amendment)*

SCHEDULE 3 — *continued*.

AMENDMENT TO SCHEDULE 3 TO THE PRINCIPAL

Act — *continued*

16. Schedule 3 —

3. At the end of Schedule 3, insert —

4. Any Act or regulation or any of the following Acts



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

Clerk of the Legislative Assembly.

Legislative Assembly Chamber,  
Sydney, March , 1981.

## New South Wales



ANNO TRICESIMO

ELIZABETHÆ II REGINÆ

\*\*\*\*\*

Act No. , 1981.

An Act to amend the Consumer Protection Act, 1969, to make further provision with respect to the supply of goods and services to consumers and the advertising of goods and services, and for other purposes.



*Consumer Protection (Amendment).*

**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 Short title.**

1. This Act may be cited as the "Consumer Protection (Amendment) Act, 1981".

**Commencement.**

2. (1) Except as provided by subsection (2), this Act shall  
10 commence on the date of assent to this Act.

(2) Section 5 and Schedules 1–8 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Principal Act.**

15 3. The Consumer Protection Act, 1969, is referred to in this Act as the Principal Act.

**Schedules.**

4. This Act contains the following Schedules :—

20 SCHEDULE 1.—AMENDMENTS TO PART I OF THE PRINCIPAL ACT.

SCHEDULE 2.—AMENDMENTS TO PART II OF THE PRINCIPAL ACT.

SCHEDULE 3.—AMENDMENTS TO PART III OF THE PRINCIPAL ACT.

25 SCHEDULE 4.—AMENDMENTS TO PART IV OF THE PRINCIPAL ACT.

SCHEDULE 5.—AMENDMENT TO PART V OF THE PRINCIPAL ACT.



*Consumer Protection (Amendment).*

SCHEDULE 6.—AMENDMENTS TO PART VI OF THE  
PRINCIPAL ACT.

SCHEDULE 7.—AMENDMENTS TO SCHEDULE 3 TO THE  
PRINCIPAL ACT.

5 SCHEDULE 8.—AMENDMENTS TO SCHEDULE 4 TO THE  
PRINCIPAL ACT.

**Amendment of Act No. 28, 1969.**

**5.** The Principal Act is amended in the manner set forth in  
Schedules 1–8.

**10 Savings.**

**6. (1)** In this section, “appointed day” means the day  
appointed and notified under section 2 (2).

**(2)** Nothing in this Act affects any liability incurred before  
the appointed day by a member of the Products Safety Committee  
15 or by a person whose services were being used in accordance  
with arrangements made under section 16F of the Principal Act.

**(3)** Section 31B of the Principal Act, as amended by this  
Act, does not apply to or in respect of any proceedings com-  
menced before the appointed day.

20 **(4)** Section 33B of the Principal Act, as amended by this  
Act, does not confer upon any person a right of action in respect  
of a statement published before the appointed day.

**(5)** Notwithstanding the repeal of section 37 (6) of the  
Principal Act by Schedule 4 (1), the provisions of that subsection  
25 shall be deemed to continue to apply to and in respect of any class  
or description of goods or component parts, or any particular goods  
or components parts, in respect of which a certificate of safety  
was issued before the appointed day.

**(6)** Nothing in section 38 (4) or section 39G (2) of the  
30 Principal Act, as amended by this Act, applies to or in respect  
of any civil proceedings commenced before the appointed day.



*Consumer Protection (Amendment).*

(7) Section 39FA of the Principal Act, as amended by this Act, does not confer upon any person a right of action in respect of any goods or component parts supplied to him before the appointed day.

**SCHEDULE 1.**

(Sec. 5.)

**AMENDMENTS TO PART I OF THE PRINCIPAL ACT.**

(1) Section 2, matter relating to Division 3 of Part III—

Omit “32, 32A”, insert instead “31A–32A”.

10 (2) Section 4 (2)—

Omit “Dairy Industry Act, 1915”, insert instead “Dairy Industry Marketing Authority Act, 1979”.

(3) Section 5 (1), definition of “officer of the Department” or “officer”—

15

Omit “or a person appointed and holding office under section 15”, insert instead “, a person who is appointed and employed pursuant to section 15 or a person whose services are being used in accordance with arrangements made under section 16F”.



*Consumer Protection (Amendment).*

## SCHEDULE 2.

(Sec. 5.)

## AMENDMENTS TO PART II OF THE PRINCIPAL ACT.

- (1) Section 15 (1)—  
 5 Omit "1902, as officers or employees", insert instead  
 "1979, as officers or temporary employees".
- (2) (a) Section 16 (1) (a)—  
 Omit "and relating to the protection of consumers".
- (b) Section 16 (1) (b) (ii)—  
 10 Omit "trade or commercial".
- (c) Section 16 (1) (b) (ii)—  
 After "instrumentality", insert "or other body".
- (d) Section 16 (2)-(4)—  
 15 After "instrumentality" wherever occurring, insert "or  
 another body".
- (3) (a) Section 16c (2)—  
 Omit "An", insert instead "Subject to subsection (2A),  
 an".
- (b) Section 16c (2A)—  
 20 After section 16c (2), insert:—  
 (2A) An investigating officer shall not, without the  
 written permission of the Minister specially given in  
 relation to the requirement, require, under this section,



*Consumer Protection (Amendment).*

## SCHEDULE 2—continued.

## AMENDMENTS TO PART II OF THE PRINCIPAL ACT—continued.

the furnishing of any information, or the production of any document, relating to a person other than a person who has consented to the furnishing of the information, or the production of the document, as the case may be, to the investigating officer for the purposes of an investigation.

(c) Section 16C (8), (9)—

Omit the subsections.

(4) (a) Section 16E (1), (2)—

Omit the subsections, insert instead:—

(1) Where, in compliance with a requirement under section 16C, any information is furnished, or any document is produced, to an investigating officer, a person who is engaged (whether as an officer of the Department or otherwise) in the administration of this Act and who, in the course of his duty under this Act discloses—

(a) any of that information or any of the contents of that document to another person who is so engaged, without informing him that the information was furnished or, as the case may be, the document was produced, in compliance with a requirement under that section; or

(b) any of that information or any of the contents of that document, without the written permission of the Minister specially given in relation to that disclosure, to another person who is not so engaged,

is guilty of an offence against this Act.



*Consumer Protection (Amendment).*

**SCHEDULE 2—continued.**

**AMENDMENTS TO PART II OF THE PRINCIPAL ACT—continued.**

(b) Section 16E (3)—

5 Omit “subsection (2)”, insert instead “subsection (1)  
(b)”.

(c) Section 16E (4) (a)—

After “engaged”, insert “(whether as an officer of the  
Department or otherwise)”.

(d) Section 16E (4) (b)—

10 Omit “of his holding any position under this Act or”.

(e) Section 16E (5)—

Omit the subsection.

(f) Section 16E (6)—

15 After “information”, insert “, or any of the contents  
of any document,”.

(5) (a) Section 17—

After “Council” where firstly occurring, insert “or of  
the Products Safety Committee”.

(b) Section 17—

20 Omit “or the Council” where firstly occurring, insert  
instead “or by the Council or the Products Safety  
Committee”.



Consumer Protection (Amendment).

SCHEDULE 2—continued.

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—continued.

(c) Section 17—

5

Omit "or the Council" where secondly occurring, insert instead "the Council or the Products Safety Committee".

After "engaged", insert "(whether as an officer of the Department or otherwise)".

(b) Section 16 (4) (b) —

SCHEDULE 3.

(Sec. 5.)

AMENDMENTS TO PART III OF THE PRINCIPAL ACT.

10 (1) Section 28A—

After section 28, insert :—

Certain goods to be ticketed.

28A. (1) A supplier who—

15

- (a) exhibits or exposes for sale any goods, being goods of a prescribed class or description, to which a price is not conspicuously appended; or
  - (b) sells any goods of such a class or description at a price greater than the price appended thereto,
- is guilty of an offence against this Act.



*Consumer Protection (Amendment)*SCHEDULE 3—*continued*.AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued*.

- 5 (2) For the purposes of subsection (1), a price shall be deemed to be appended to goods if it is annexed or affixed to, or is written, printed or stamped on or otherwise applied to, the goods or to any covering, label, reel or thing used in connection with the goods.

- (2) (a) Section 29 (1)—  
Omit “supplies”, insert instead “sells”.

- 10 (b) Section 29 (2) (b)—  
Omit “supply”, insert instead “sale”.

- (c) Section 29 (2) (c)—  
After “any”, insert “advertisement which is displayed, or catalogue which is available to the public, in or upon any part of the premises where the goods are exposed for sale, being an”.

- 15 (d) Section 29 (3A)—  
After section 29 (3), insert :—

- 20 (3A) In subsection (1), “price” does not include an amount expressed in a currency other than Australian currency.

- (3) Sections 31A, 31B—  
Before section 32, insert :—

**Interpretation: Pt. III, Div. 3.**

- 25 31A. In this Division—  
“published”, in relation to a statement, includes—  
(a) inserted in a newspaper or other publication;



*Consumer Protection (Amendment).*

**SCHEDULE 3—continued.**

**AMENDMENTS TO PART III OF THE PRINCIPAL ACT—continued.**

- (b) publicly exhibited—
- (i) in, on, over or under a building, vehicle, aircraft or ship or in any other place (whether or not a public place and whether on land or water); or
- (ii) in the air in view of persons being or passing in or on a street or public place;
- (c) contained in a document sent or delivered to a person or thrown or left upon or at premises in the occupation of a person;
- (d) broadcast by wireless transmission or by television; and
- (e) made verbally;
- “statement” includes any representation of any kind whatsoever, whether made by means of—
- (a) words, maps, plans or drawings; or
- (b) pictorial representation or design, or any combination of those means.

**Evidence as to publication.**

31B. In any proceedings under this Division—

- (a) where a name, business name, address, telephone number or post office box number specified in a statement is that of a person, or of the agent of a person, who—
- (i) is the owner, whether alone or jointly with one or more other persons, of any goods or interests in land;
- (ii) is the supplier of any goods or services; or



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*Consumer Protection (Amendment).*

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**SCHEDULE 3—continued.****AMENDMENTS TO PART III OF THE PRINCIPAL ACT—continued.**

- (iii) has, otherwise than as an owner, an interest in any goods or interests in land, or the supply of any services, being goods, services or interests in land the supply, use or disposal of which the statement is intended or apparently intended to promote, that person or agent, as the case may be, shall be deemed, in the absence of proof to the contrary, to have caused the statement to be published; and
- (b) a person who causes a statement to be published shall be deemed to have done so on any day on which the statement was published.
- (4) (a) Section 32 (1) (a)—  
Omit “by that person or any other person”.
- (b) Section 32 (2)—  
Omit the subsection, insert instead :—
- (2) Any person who, in connection with—
- (a) the supply or use of goods or services or the disposal of interests in land; or
- (b) the promotion by any means of the supply or use of goods or services or the disposal of interests in land,
- publishes or causes to be published any statement which—
- (c) concerns the existence or effect of any condition or warranty provided by law in relation to the supply or use of any such goods or services or the disposal of any such interests in land; and



Consumer Protection (Amendment).

SCHEDULE 3—continued.

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—continued.

(d) is to his knowledge false or misleading in any material particular,

5 is guilty of an offence against this Act.

(c) Section 32 (5)—

Omit "In this section 'newspaper' includes any periodical publication and", insert instead "In subsection (4),".

10 (d) Section 32 (6A)—

After section 32 (6), insert :—

(6A) Where, in any proceedings under this section brought in the Supreme Court, a person has been found guilty of publishing or causing to be published a false or misleading statement concerning any goods, services or interests in land, the Court may, on application made with the approval of the Minister by the Commissioner at any stage of the proceedings, make either or both of the following orders :—

(a) an order requiring the person to disclose to the public, to a particular person or to persons included in a particular class of persons, in such manner as is specified in the order, such information, or information of such a kind, as is so specified, being information concerning those goods, services or interests in land and which is in the possession of the person to whom the order is directed or to which he has access;

(b) an order requiring that person to publish, at his own expense, in a manner and at times specified in the order, statements the content of which is specified in, or is to be determined in accordance with, the order.



*Consumer Protection (Amendment).*SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

## (5) (a) Section 32A (1) (a)—

5 Omit “by the first mentioned person or any other person”.

## (b) Section 32A (1) (b) (i), (ia)—

Omit section 32A (1) (b) (i), insert instead :—

(i) the Minister;

(ia) the Department;

## 10 (c) Section 32A (1) (b) (iv)—

Omit “or” where lastly occurring.

## (d) Section 32A (1) (b) (iva)—

After section 32A (1) (b) (iv), insert :—

15 (iva) a person or an organisation prescribed for the purposes of this subparagraph, being a person or an organisation in existence at, or at any time prior to, the prescription; or

## (e) Section 32A (1) (b) (v)—

20 After “person” where firstly occurring, insert “who is or was, at any time,”.

## (f) Section 32A (1) (b) (v)—

After “(iv)”, insert “or (iva)”.

## (g) Section 32A (1)—

25 Omit “\$2,000 or imprisonment for three months, or both”, insert instead “\$10,000”.



*Consumer Protection (Amendment).*SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

## (h) Section 32A (2)—

Omit the subsection.

## 5 (6) Section 33B—

After section 33A, insert :—

**Civil action in respect of false or misleading statement.**

10 33B. (1) The obligation imposed by section 32 (1) or  
 (2) on any person not to publish or cause to be published  
 a statement in contravention of either of those subsections  
 is a duty which is owed by him to every other person, and  
 a breach of that duty is actionable (subject to the defences  
 and other incidents applying to actions for breach of  
 15 statutory duty) at the suit of any person who has sustained  
 loss or damage in consequence of that breach, whether or  
 not he is a person who purchased or used any goods or  
 services, or acquired any interests in land, in reliance upon  
 the statement.

20 (2) Where, in any proceedings brought against a  
 person for an offence under section 32 (1) or (2), a  
 finding of fact is made by the court in which those  
 proceedings are brought, a document under the seal of that  
 court from which the finding of fact appears is admissible  
 25 in evidence in proceedings brought under subsection (1)  
 against that person and is prima facie evidence of that  
 fact.



*Consumer Protection (Amendment).*

## SCHEDULE 4.

(Sec. 5.)

## AMENDMENTS TO PART IV OF THE PRINCIPAL ACT.

## (1) Section 37 (6)-(11)—

5 Omit the subsections.

## (2) Section 38 (4)—

After section 38 (3), insert :—

10 (4) Where, in any proceedings brought against a person for an offence under this section, a finding of fact is made by the court in which those proceedings are brought, a document under the seal of that court from which the finding of fact appears is admissible in evidence in proceedings brought under subsection (1) against that person and is prima facie evidence of that fact.

## 15 (3) (a) Section 39c (1)—

Omit the subsection, insert instead :—

20 (1) The Minister, or the Commissioner with the approval of the Minister, may refer to the Products Safety Committee either or both of the following questions in relation to goods of a class or description specified in the reference or any particular goods so specified (not being goods the supply of which is prohibited or regulated by or under an enactment specified in Schedule 4) :—

25 (a) the question—

(i) whether the supply of those goods should, by reason of their being dangerous, be prohibited or should be allowed only subject to conditions or restrictions; and

30



*Consumer Protection (Amendment).*SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

- 5 (ii) if the supply of those goods should be allowed, under what conditions or restrictions, if any, the supply of those goods should be so allowed;
- 10 (b) the question whether a regulation should be made under section 36 so as to exempt those goods from the operation of section 37 (1) and (2) and, if so, what any such regulation should provide.
- (b) Section 39c (3), (4)—  
Omit “any” wherever occurring, insert instead “a”.
- 15 (c) Section 39c (5)—  
Omit “the question” where firstly occurring, insert instead “a question referred to it under subsection (1)”.
- 20 (d) Section 39c (6)—  
Omit “the question”, insert instead “a question referred to it under subsection (1)”.
- (e) Section 39c (7)—  
Omit “the question” where firstly occurring, insert instead “a question referred to it under subsection (1)”.
- 25 (f) Section 39c (8)—  
Omit “the question” where firstly occurring, insert instead “a question referred to it under subsection (1)”.



*Consumer Protection (Amendment).*SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

## (4) (a) Section 39DA (1)—

5 Omit “for a period not exceeding 28 days from the date on which the order is published in the Gazette under subsection (2)”.

## (b) Section 39DA (2), (2A)—

Omit section 39DA (2), insert instead :—

10 (2) Where the Minister makes an order under subsection (1), he may do either or both of the following :—

(a) give a supplier notice in writing of the order;

(b) publish the order in the Gazette.

## 15 (2A) An order made under subsection (1)—

(a) being an order of which notice has been given to a supplier under subsection (2) (a), has effect from the time the supplier receives the notice and remains in effect, unless sooner revoked, until—

20 (i) except as provided by subparagraph (ii)—the expiration of the period of 42 days after the day on which the supplier receives the notice; or

25 (ii) where the order is published in the Gazette under subsection (2) (b) on a day not later than the expiration of the period referred to in subparagraph (i)—the day on which the order is so published; or

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*Consumer Protection (Amendment).*SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

- 5 (b) being an order which is published in the Gazette under subsection (2) (b) (whether or not it is an order of which notice has been given to a supplier under subsection (2) (a)), has effect from the day on which it is so published and remains in effect, unless sooner revoked, until the expiration of the period of 42 days after that day.
- 10 (5) (a) Section 39E (3)—  
Omit “, for a period not exceeding 28 days from the date on which the order is published under subsection (4)”.
- 15 (b) Section 39E (4), (4A)—  
Omit section 39E (4), insert instead :—  
(4) Where the Minister makes an order under subsection (3), he may do either or both of the following :—  
20 (a) give a supplier notice in writing of the order;  
(b) publish the order in the Gazette.  
(4A) An order made under subsection (3)—  
25 (a) being an order of which notice has been given to a supplier under subsection (4) (a), has effect from the time the supplier receives the notice and remains in effect, unless sooner revoked, until—  
30 (i) except as provided by subparagraph (ii)—the expiration of the period of 42 days after the day on which the supplier receives the notice; or



*Consumer Protection (Amendment).*

## SCHEDULE 4—continued.

## AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—continued.

- (ii) where the order is published in the Gazette under subsection (4) (b) on a day not later than the expiration of the period referred to in subparagraph (i)—the day on which the order is so published; or
- (b) being an order which is published in the Gazette under subsection (4) (b) (whether or not it is an order of which notice has been given to a supplier under subsection (4) (a)), has effect from the day on which it is so published and remains in effect, unless sooner revoked, until the expiration of the period of 42 days after that day.

## (6) Section 39FA—

After section 39F, insert :—

**Remedy for supply of goods, etc., in contravention of Act or order.**

39FA. (1) Where—

- (a) any goods or component parts are supplied, in contravention of section 37, to a person; or
- (b) any goods are supplied, in contravention of an order made under section 39DA (1) or section 39E (1), (1A) or (3), to a person,

that person may, subject to subsection (2), recover, in a court of competent jurisdiction, as a debt due to him by the supplier who supplied him with those goods or component parts, any money paid by him for those goods or component parts.



*Consumer Protection (Amendment).*

## SCHEDULE 4—continued.

## AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—continued.

(2) Where, in an action brought under subsection (1) in respect of any goods or component parts the court gives judgment for the plaintiff, the court may, if it thinks fit, direct that—

(a) if the defendant repairs or modifies the goods or component parts in such a manner that, had the goods or component parts, as so repaired or modified, been supplied at the material time to the plaintiff they would have been so supplied without contravention of the section or order, as the case may be, on which the plaintiff relied; and

(b) if the goods or component parts, as so repaired or modified, are delivered to and accepted by the judgment creditor on or before a day specified in the judgment,

the judgment debt shall be deemed to be satisfied.

## 20 (7) Section 39G (2)—

At the end of section 39G, insert :—

(2) Where, in any proceedings brought against a person for an offence under section 39F, a finding of fact is made by the court in which those proceedings are brought, a document under the seal of that court from which the finding of fact appears is admissible in evidence in proceedings brought under subsection (1) against that person and is prima facie evidence of that fact.

## 30 (8) (a) Section 39J (8)—

Omit "shall be forfeited to and become the property of the Crown and".



*Consumer Protection (Amendment).***SCHEDULE 4—continued.****AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—continued.**

(b) Section 39J (9), (10)—

After section 39J (8), insert :—

(9) Where, by virtue of subsection (8), any goods or component parts are required to be destroyed or otherwise disposed of, the Commissioner may direct—

(a) that those goods or component parts be destroyed or otherwise disposed of by the owner or by a person having possession of them; or

(b) that those goods or component parts be destroyed or otherwise disposed of by another person or other persons at the cost of the owner or of a person having possession of them.

(10) A person to whom a direction is given under subsection (9) and who does not comply with the direction is guilty of an offence against this Act.

**SCHEDULE 5.**

(Sec. 5.)

**AMENDMENT TO PART V OF THE PRINCIPAL ACT.**

Section 53 (4), (5)—

After section 53 (3), insert :—

(4) Proceedings for an offence arising under this Part shall not be commenced except by a person authorised in writing by the Minister.



Consumer Protection (Amendment).

SCHEDULE 5—continued.

AMENDMENT TO PART V OF THE PRINCIPAL ACT—continued.

- 5 (5) In any proceedings for an offence arising under this Part, an authority to prosecute, purporting to have been signed by the Minister, shall be evidence of the authority without proof of the Minister's signature.

SCHEDULE 6. (Sec. 5.)

AMENDMENTS TO PART VI OF THE PRINCIPAL ACT.

- 10 (1) Section 56 (1), (1A)—

Omit section 56 (1), insert instead :—

(1) Proceedings for an offence against this Act (Part V excepted) may—

- 15 (a) be taken and prosecuted only by a person acting with the authority in writing of the Minister; and
- (b) be disposed of summarily before—
- 20 (i) a court of petty sessions constituted by a stipendiary magistrate sitting alone;
- (ii) an industrial magistrate; or
- (iii) the Supreme Court in its summary jurisdiction.

(1A) In any proceedings referred to in subsection (1), an authority to prosecute, purporting to have been signed by the Minister, shall be evidence of the authority without proof of the Minister's signature.



*Consumer Protection (Amendment).*SCHEDULE 6—*continued.*AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—*continued.*

## (2) Sections 56A, 56B—

Omit section 56A, insert instead :—

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**Injunctions.**

56A. (1) Where a person is contravening, has on 2 or more occasions contravened, or threatens to contravene—

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(a) a provision of this Act or of the regulations, or an order made under this Act or the regulations; or

(b) a provision of any other legislation administered by the Minister or an order made under any such legislation,

15

the Supreme Court may, on application made by the Commissioner with the consent of the Minister, grant an injunction restraining the person from continuing to contravene the provision or order or from contravening the provision or order, as the case may require.

20

(2) An injunction under subsection (1) may be granted as an interim injunction, without any undertaking being given by the Commissioner as to damages, or as a permanent injunction.

**Intervention by Minister.**

25

56B. The Minister may, at any stage of proceedings brought before any court under this Act, the regulations or any other legislation administered by the Minister, intervene by counsel or by a solicitor, and shall thereupon become a party to, and shall have all the rights of a party to, those proceedings before that court, including the right to appeal against any order or judgment of the court.

30



*Consumer Protection (Amendment).*

**SCHEDULE 6—continued.**

**AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—continued.**

**(3) Section 57A—**

After section 57, insert :—

**Default imprisonment not to be awarded.**

57A. (1) Notwithstanding the provisions of the Justices Act, 1902, or of any other law, where any person is by any conviction or order adjudged to pay any fine, penalty, sum of money or costs in respect of an offence against this Act or any other legislation administered by the Minister—

(a) that person shall not be adjudged to be, or be, liable to imprisonment in default of payment of the amount of that fine, penalty, sum of money or costs; and

(b) that conviction or order shall, irrespective of the amount adjudged to be paid, operate, and be enforceable in the same way, as a judgment, where it was effected or made—

(i) by a court of petty sessions—of the court of petty sessions exercising jurisdiction under the Courts of Petty Sessions (Civil Claims) Act, 1970, at the place where it was effected or made; or

(ii) by an industrial magistrate—of the court of petty sessions exercising that jurisdiction at the place nearest to the place where the industrial magistrate effected or made the conviction or order.

(2) The registrar of the court of petty sessions exercising jurisdiction—

(a) in the case of a conviction or order referred to in subsection (1) effected or made by a court of petty sessions—at the place where the conviction or order was effected or made; or



*Consumer Protection (Amendment).***SCHEDULE 6—continued.****AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—continued.**

5 (b) in the case of a conviction or order referred to in subsection (1) effected or made by an industrial magistrate—at the place nearest to the place where the conviction or order was effected or made,

10 shall, on the application of the informant made as prescribed, enter up judgment against the defendant in the records of the court for the amount adjudged to be paid.

(4) (a) Section 58 (2) (a) (i)—

Omit “or” where lastly occurring.

(b) Section 58 (2) (a) (ii)—

Omit “require,” insert instead “require; or”.

15 (c) Section 58 (2) (a) (iii)—

After section 58 (2) (a) (ii), insert :—

(iii) that any legislation specified in the statement is administered by the Minister,

(5) Section 58A—

20 After section 58, insert :—

**Service of notices, etc.**

25 58A. (1) Where, under this Act, the Commissioner or any officer is required or permitted to give in writing to any person any notice, warning or direction, the notice, warning or direction may be given—

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

(i) by delivering it to him personally;



*Consumer Protection (Amendment).*

## SCHEDULE 6—continued.

## AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—continued.

- 5 (ii) by leaving it at his place of residence with someone who apparently resides there or at his place of business or employment with someone who is apparently employed there, being in either case a person who has or apparently has attained 16 years of age; or
- 10 (iii) by posting it in a letter addressed to him at the address last known to the Commissioner of his place of residence, business or employment; or
- (b) to a person, being a corporation—
- 15 (i) by delivering it to the secretary of the corporation, or any other person concerned in the management of the corporation, personally;
- 20 (ii) by leaving it at the corporation's only or principal place of business with a person apparently employed there, being a person who has or apparently has attained 16 years of age; or
- 25 (iii) by posting it in a letter addressed to the corporation at the address last known to the Commissioner of its only or principal place of business.
- (2) Subsection (1) (b) does not limit the operation of section 362 of the Companies Act, 1961.



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*Consumer Protection (Amendment).*

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SCHEDULE 7.

(Sec. 5.)

AMENDMENTS TO SCHEDULE 3 TO THE PRINCIPAL ACT.

- (1) Schedule 3, clause 5 (1)—  
5       Omit “any question”, insert instead “a question”.
- (2) Schedule 3, clause 5 (1)—  
      Omit “or in relation to any application made under section  
      37 (7)”.

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SCHEDULE 8.

(Sec. 5.)

AMENDMENTS TO SCHEDULE 4 TO THE PRINCIPAL ACT.

- (1) Schedule 4—  
      Omit “Dairy Industry Act, 1915”, insert instead “Dairy  
      Industry Marketing Authority Act, 1979”.
- 15 (2) Schedule 4—  
      Omit “Explosives Act, 1905”, insert instead “Dangerous  
      Goods Act, 1975”.
- (3) Schedule 4—  
      Omit “5. Inflammable Liquid Act, 1915.”.



*Consumer Protection (Amendment).*

**SCHEDULE 8—continued.**

**AMENDMENTS TO SCHEDULE 4 TO THE PRINCIPAL ACT—continued.**

(4) Schedule 4—

At the end of Schedule 4, insert :—

**12. Any Act amending or replacing any of the foregoing Acts.**

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1981