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

Assembly of New South Wales in Parliament assembled, and be

New South Wales



ANNO TRICESIMO

ELIZABETHÆ II REGINÆ

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.]

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.

- 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.

PERSONAL PROPERTY OF PARTY OF THE PRINCIPAL ACT.

Amendment of Act No. 28, 1969.

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

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- 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.

(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)—

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".

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)— (3) (3) (b) (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.

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.

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".

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.

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;

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

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

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.

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".

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.

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

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)".

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

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

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.

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 39_G (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 39_J (8)—

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

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.

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:

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- (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.

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.

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

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 :—

- 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;

SCHEDULE 6—continued.

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.

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)".

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.".

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,

TOA JASTONIAL BELLOCK STORE Governor.

Government House,
Sydney, 22nd April, 1981.

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

CONSUMER PROTECTION (AMENDMENT) BILL, 1980

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

- (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));

for Consumer Affairs with

- (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 391 of the Act (Schedule 4 (8));
- (1) 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.

LEADER PRODUCTION TOWNS AND ASSAULT TO

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With Private and 10 Notes above 1980)

CONSUMER PROTECTION (AMENDMENT)

BE if 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 (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 5 and Schedules I-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:

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3. The Consumer Protector Luis A is referred to in this Principal

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.]

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

SCHEDULE 3.—AMENDMENTS TO PART III OF THE

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

SCHEDULE S.—AMENDMENT TO PART V OF THE STATE OF STATE OF

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".
 - 2. (1) Except as provided by subsection (2), this Act shall Commence-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.
 - 3. The Consumer Protection Act, 1969, is referred to in this Principal Act as the Principal Act.

An Act to amend the Consumer Protection Act, 1969, to make further provision with respect to the supply of goods and

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

- SCHEDULE 6.—AMENDMENTS TO PART VI OF THE
- schedule 7.—Amendments to Schedule 3 to the riogga 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 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. (2)
- 15 (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 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.

(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 SCHEDULE 7,-AMENDMENTS TO SCHEDULE & vsb batniogge PRINCIPAL ACT.

SCHEDULE 8 -- AMENDMENTS TO SCHEDULE 4 TO THE PRINCIPAL ACT.

.c. .se The Principal Act is aim AJUGHOS anner set forth in Amenda on 28, 1969

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".

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- Omit "Dairy Industry Act, 1915", insert instead "Dairy 10 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 15 employed pursuant to section 15 or a person whose services are being used in accordance with arrangements made under section 16F".

Principal Act, as amended by this Act, applies to or in respect of any civil proceedings commenced before the appointed day.

SCHEDULE 2. S AJUGAHOZ

Sec. 5.

AMENDMENTS TO PART II OF THE PRINCIPAL ACT.

(1) Section 15 (1)—

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- 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)—

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

(b) Section 16E (4) (a) - 101 20200070 10 Zaididzo (1)

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

- (c) Section 16E (4) (b)— (c) Section 16E (4) (
- Omit "of his holding any position under this Act or".

SCHEDULE 2—continued.

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—continued.

(5) (a) Section 17—

Sec. 5.

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After "Council" where firstly occurring, insert "or of the Products Safety Committee". To 2150 fffo 28 . 2721"

(b) Section 17—

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

(c) Section 17— 10

> Omit "or the Council" where secondly occurring, insert instead ", the Council or the Products Safety After "instrumentality", insert "or of estimmoo

SCHEDULE 3. —(8) (8) odl noise (8) &

After "instrumentality" wherever occurring, insert "or

15 AMENDMENTS TO PART III OF THE PRINCIPAL ACT.

(1) Section 28A—

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After section 28, insert :- " begages" Total "(whether as an officer of the

28A. (1) A supplier who—

Certain goods

- (a) exhibits or exposes for sale any goods, being to be 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. dein do 11 mo

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Consumer Protection (Amendment).

SCHEDULE 3—continued. WIGHTE

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) weight in the admin (ii)

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Omit "supplies", insert instead "sells".

(b) Section 29 (2) (b) document (c)

Omit "supply", insert instead "sale".

(c) Section 29 (2) (c) - colonia vd resolution (b)

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".

After section 29 (3), insert:

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

 Australian currency.
 - (a) where a name, business name, address 18, 318, 318 enough (a)

Before section 32, insert :- to leaf at immental a

31A. In this Division—

yltmor to english redation to a statement, includes—

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

Pt. III, Div. 3.

(a) inserted in a newspaper or other publication;

SCHEDULE 3—continued.

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—continued.

(2) For the publicly exhibited (2)

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- beyonns at it fie (i) in, on, over or under a building, stamped on or othervehicle, 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
 - ni (e) made verbally; a floidw ougolates to

"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

- (a) where a name, business name, address, telephone publication. 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

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—

dition 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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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),".

10 (d) Section 32 (6A)—

After section 32 (6), insert: ___ od w goesog 8 (d)

(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:—

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(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;

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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.

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Consumer Protection (Amendment).

SCHEDULE 3—continued.

AMENDMENTS	TO	PART	III	OF	THE	PRINCIPAL	ACT—continued.
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- Omit "by the first mentioned person or any other person".
 - - (ia) the Department;

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- 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)—ordered again proceedings and the again that the again the
 - (g) Section 32A (1)—

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

SCHEDULE 3—continued.

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—continued.

(h) Section 32A (2)— — (s) (1) ASE notice of the section (a)

Omit the subsection. mentioned the bimo

5 (6) Section 33B— Last representation (1) (d) (1) ASE notices that the contract of the contra

After section 33A, insert :- " Instaini M only (i)

33B. (1) The obligation imposed by section 32 (1) or Civil
(2) on any person not to publish or cause to be published action in respect of 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.

SCHEDULE 4 JUGHOS

Sec. 5.

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT.

(1) Section 37 (6) (11) vlqqus all ii (ii) be allowed, under what

Omit the subsections.

(b) the question whether a regula (4) 86 noises (c) to made under section 36 so as to exempt

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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) ot bestern moissand a basismi

Omit the subsection, insert instead :—

Omit "the question" where firstly occurring, insert

(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

5 (2)

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.
- 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 11(4), ((6) 306 noitoe2 (d)

Omit "any" wherever occurring, insert instead "a".

(c) Section 39c (5)—

Sec. 5.

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- Omit "the question" where firstly occurring, insert instead "a question referred to it under subsection (1)".
 - (d) Section 39c (6) ____ (1) The Minister, or the Country (1)

Omit "the question", insert instead "a question referred to it under subsection (1)".

(e) Section 39c (7)— aboog gained ton) bediced as

Omit "the question" where firstly occurring, insert instead "a question referred to it under subsection (1)".

Omit "the question" where firstly occurring, insert instead "a question referred to it under subsection (1)", panelighted to another

(f) Section 39c (8)— and reduced (i)

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SCHEDULE 4—continued.

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—continued.

(4) (a) Section 39DA (1)—w repro no spried (d)

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)—one of the

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:—

(4) Where the Minister makes an order under sub-

- (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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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)".

15 (b) Section 39E (4), (4A)—(GA)

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 (2) section (2) give a supplier notice in writing of the supplier and 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—
 - due ni of barrielar boiles (ii)—the expiration of the period daily no tab add—(i) of 42 days after the day on which to barrielar of the supplier receives the notice; or

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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-Pritted and as bemean and Harla than themselvined

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After section 39F, insert:—

39FA. (1) Where—

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

Remedy for supply of goods, etc., in contravention of Act

- (b) any goods are supplied, in contravention of an of Act order made under section 39DA (1) or section order. 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.

164-B

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
 - 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. Of moiles?

20 (7) Section 39g (2)—

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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) - sandy drive and knowledge union reclique.

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

SCHEDULE 4—continued.

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—continued.

(5) In any proceedings for an offe (01), (9) tee notice (d) an authority to prosecute, purporting to have been signed

Minister, shall be evidence: trasni, (8), insert of the order of the

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—

(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

Minister's signature.

- (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.

stipende emitti SCHEDULE 5. nagita

(i) a court of peny sessions constituted by and

Sec. 5.

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AMENDMENT TO PART V OF THE PRINCIPAL ACT.

Section 53 (4), (5)—

After section 53 (3), insert :— (Al)

(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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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 10 15 16 16 10
- Omit section 56 (1), insert instead:

that those goods or component parts be destroyed or otherwise disposed of by the

- (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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Sec. 5.

SCHEDULE 6—continued.

AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—continued.

(2) Sections 56A, 56B—

Omit section 56A, insert instead:

- 56A. (1) Where a person is contravening, has on 2 or Injunctions.
 - (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,
 - 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.
 - 56B. The Minister may, at any stage of proceedings Intervenbrought 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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(2) Sections 56a, 56a

Consumer Protection (Amendment).

SCHEDULE 6—continued.

AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—continued.

(3) Section 57A—

Omit section 56, insert instead : trasni ,78 noitsead

57A. (1) Notwithstanding the provisions of the Justices Default Act, 1902, or of any other law, where any person is by any imprisonment not conviction or order adjudged to pay any fine, penalty, sum to be 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—
- of petty sessions—of the 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—
- 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

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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 the conviction or order was effected or made, made, made, made and beyond the subsection of the conviction or order was effected or made, made, made and beyond the conviction or order was effected or made, made, made and beyond 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.
 - - (b) Section 58 (2) (a) (ii) 2010 . novered a of (d)

Omit "require,", insert instead "require; or".

15 (c) Section 58 (2) (a) (iii) di banta

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

- (iii) that any legislation specified in the statement is administered by the Minister,
- (5) Section 58A __ seatble and is no lettog 100

- 20 After section 58, insert : To sould legio
 - 58A. (1) Where, under this Act, the Commissioner or Service any officer is required or permitted to give in writing to of notices, 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;

SCHEDULE 6—continued.

AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—continued.

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- (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.

(u) to a person, not being a corporation

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—

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

(3) Schedule 4—

Omit "5. Inflammable Liquid Act, 1915.".

Sec. 5

SCHEDULE 8—continued.

AMENDMENTS TO SCHEDULE 4 TO THE PRINCIPAL MANAMA 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 CHILD

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

AMENDMENTS TO SCHEDULE 4 TO THE PRINCIPAL ACT. (956)

10 (1) Schedule 4-

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

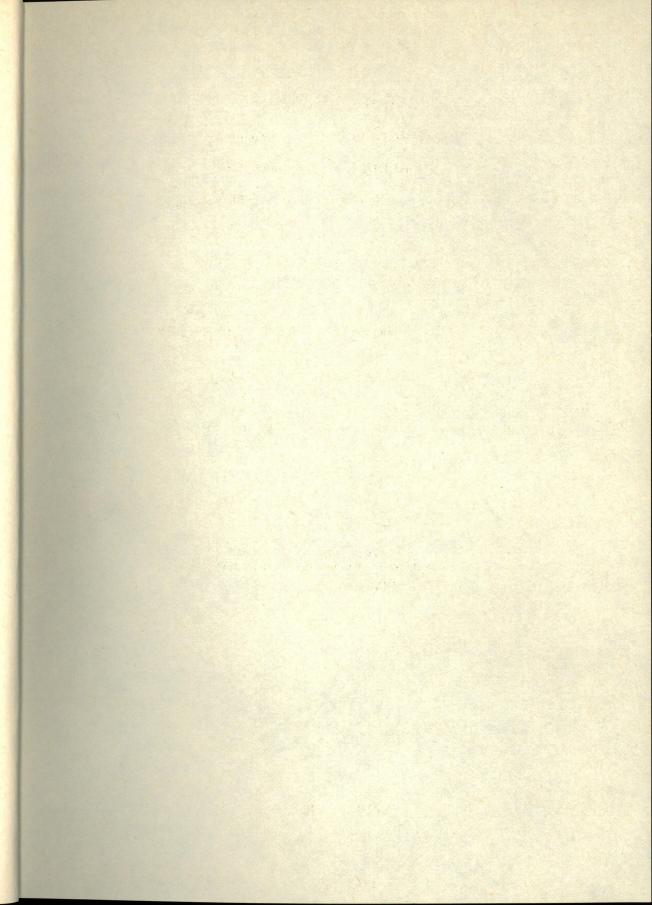
(2) Schedule 4—

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

.

(3) Schedule 4-

Omit "5. Inflammable Liquid Act, 1915.".



CONSUMER PROTECTION (AMENDMENT) BILL, 1980

and drive vino make of war EXPLANATORY NOTE

respect to the disposal of goods impounded by an inspector under

(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 391 of the Act (Schedule 4 (8));
- (1) 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.

SENSOR PROTECTION AND SENSORS

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- (k) to extend the powers of the Communication of the description and the desposal of goods information and the description of the Art (Schedule 4 (87)).
- (i) to provide from proceedings under the Act may be related the authority of the Minister (Scheduler 5 and 0 (14));
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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 Amendment) Act, 1980".

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

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

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A. BILL FOR Profes Profes 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.]

PRINCIPAL ACT.

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".
 - 2. (1) Except as provided by subsection (2), this Act shall Commence-commence on the date of assent to this Act.
- (2) Section 5 and Schedules 1-8 shall commence on such to 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.

 Silam of ,0001, to A notice of the principal act.
 - 4. This Act contains the following Schedules:

 Schedules.

services, and for other

- 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.

- SCHEDULE 6.—AMENDMENTS TO PART VI OF THE PRINCIPAL ACT.
- SCHEDULE 7.—AMENDMENTS TO SCHEDULE 3 TO THE HOOGS
 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 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. (2)
- 15 (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 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.

(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 SCHEDULE 7.—AMENDMENTS TO SCHEDULE 3. yeb betrioqqa

SCHEDULE 8 SEAMENDMENTS TO SCHEDULE 4 TO THE PRINCIPAL ACT. LAGRENINGPH | ACL 1980"

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) Nothing in this Act affects any liability incurred before

- to or by a person whose services were being used in accordance (2) Section 4 (2)— one to got doubt come also a discussion of the section of the
- Omit "Dairy Industry Act, 1915", insert instead "Dairy 10 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 15 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

Property wet, as appended by this Act, applies to or in respect of any cost proceedings commenced before the appointed day

SCHEDULE 2.5 ALIUGHDS

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".
- 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)—

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Omit the subsections.

A MENDARY TO PART III OF THE PRINCIPAL ACT.

- (4) (a) Section 16E (2)—

 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)—
 Omit "of his holding any position under this Act or".

SCHEDULE 2—continued.

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—continued.

(5) (a) Section 17—

Sec. 5.

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After "Council" where firstly occurring, insert "or of the Products Safety Committee". 10 2150 ffto 88 . 0701"

(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" o 10" tread "valetneroutikni" 1911A

SCHEDULE 3. —(8) (8) 501 not sec. 5(8) 2.1

After "instrumentality" wherever occurring, insert "or

15 AMENDMENTS TO PART III OF THE PRINCIPAL ACT.

(1) Section 28A—

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After section 28, insert :whether as an officer of the De

28A. (1) A supplier who—

Certain goods

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- (a) exhibits or exposes for sale any goods, being to be 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.

OF

Interpreta-

Consumer Protection (Amendment).

SCHEDULE 3—continued. 1003HD2

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)— waiv at the edit (ii)
 Omit "supplies", insert instead "sells".
- 10 (b) Section 29 (2) (b)—muoob a ni bonistnos (5)

 Omit "supply", insert instead "sale".
 - (c) Section 29 (2) (c)— January of Reposted (b)

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) o analo agam abrow (s)

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—abba sman additional and a statement is that of the section 32, insert:—: a statement is that of the section 32.

31A. In this Division—

"published", in relation to a statement, includes—Pt. III, Div. 3.

(a) inserted in a newspaper or other publication;

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Consumer Protection (Amendment).

SCHEDULE 3—continued.

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—continued.

- (2) For the pupilicly exhibited (d), a prior
- Lexonus at it 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

- (a) where a name, business name, address, telephone publication. 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

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 :- Total and the

- (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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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),".

10 (d) Section 32 (6A)—

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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;
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 noo vr (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.

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AMENDM

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Consumer Protection (Amendment).

SCHEDULE 3—continued. UGBHO?

AMENDMENTS	TO PART	III of	THE	PRINCIPAL	ACT—continued.
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- (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 = 888 motion (3) (3) (4)
 - (i) the Minister;
 - (ia) the Department;
- Omit "or" where lastly occurring.
 - (d) Section 32A (1) (b) (iva)—in logs attrable in 1946 bits

 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)—order anibescore in sometime in the more of the state of the section and section a
 - (g) Section 32A (1)—
 Omit "\$2,000 or imprisonment for three months, or both", insert instead "\$10,000".

SCHEDULE 3—continued.

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—continued.

5 (6) Section 33B—

After section 33A, insert :—

33B. (1) The obligation imposed by section 32 (1) or Civil
(2) on any person not to publish or cause to be published action in respect of a statement in contravention of either of those subsections false or 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.

SCHEDULE 4. LUCEHOS

Sec. 5.

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT.

(1) Section 37 (6) (11) vlqque ant li (ii)

Omit the subsections.

5 (2) Section 38 (4) Section 38 (4) Section 36 so as to exempt

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) ot berrefer of description of the 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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Sec. 5.

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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.
- made by the court in which those proceedings are brought, a document under the seal of (4), (5) 398 noises (b)

Omit "any" wherever occurring, insert instead "a".

(c) Section 39c (5)— and to actions

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) soon and the left of the section and t

Omit "the question" where firstly occurring, insert instead "a question referred to it under subsection (1)".

25 (f) Section 39c (8) and radiadw (i)

Omit "the question" where firstly occurring, insert instead "a question referred to it under subsection (1)".

SCHEDULE 4—continued.

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—continued.

(4) (a) Section 39DA (1)—w 19D10 his said (d)

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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

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)".

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:—
 - (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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SCHEDULE 4—continued.

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—continued.

- 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.

the judgment debt shall be deemed to be satisfied and (6)

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After section 39F, insert :—

Remedy for supply of goods, etc., in contravention

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

(b) any goods are supplied, in contravention of an of Act order made under section 39DA (1) or section order.

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.

164-B

SCHEDULE 4—continued.

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—continued.

- section (1) 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 the case may be a particular to the case may be, on which the plaintiff relied;
- 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. (8) noises (8)

20 (7) Section 39G (2)—

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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)— section 39J (8)

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

SCHEDULE 4—continued.

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—continued.

(b) Section 39 J (9), (10) of an office of any proceedings for an office of the secure, purporting (0), (10) of the secure of th

Minister, shall be evidence: trasmi, (8), insert: or the

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(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—

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Sec. 5.

(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

Minister's signature.

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(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.

(b) be disposed of summarily before-

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stipend2.3LUGAHOS sitting alone; sustanted by anist stipend2.3LUGAHOS sitting alone;

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

Sec. 5.

AMENDMENT TO PART V OF THE PRINCIPAL ACT.

Section 53 (4), (5)—

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

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.

to slow components parts are required to be destroyed or

SCHEDULE 6.

destroyed or otherwise disposed of by the

Sec. 5.

AMENDMENTS TO PART VI OF THE PRINCIPAL ACT.

(1) Section 56 (1), (1A) ___ 10 10 19 19 19 19

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Sec. 5.

Omit section 56 (1), insert instead:—

goods or component parts be

- (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.

SCHEDULE 6—continued.

AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—continued.

(2) Sections 56A, 56B—

Omit section 56A, insert instead: _______ Tresent . To notice section 56A, insert instead :_______ Tresent . Tresent

- 5 56A. (1) Where a person is contravening, has on 2 or Injuncmore 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; hable to imprisonment in default of payment of
 - (b) a provision of any other legislation administered by the Minister or an order made under any such legislation, no to notoknoo tadt (o
 - 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. and another palar

56B. The Minister may, at any stage of proceedings Intervenbrought before any court under this Act, the regulations tion by 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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SCHEDULE 6—continued.

AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—continued.

(3) Section 57A—

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- 57A. (1) Notwithstanding the provisions of the Justices Default Act, 1902, or of any other law, where any person is by any imprisonment not conviction or order adjudged to pay any fine, penalty, sum to be of money or costs in respect of an offence against this Act awarded. 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—
 - of petty sessions—of the 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—
- 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

SCHEDULE 6—continued.

AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—continued.

by 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, and beyongment

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- 225thbs ed is noits 100100
- 20 After section 58, insert :—
 - 58A. (1) Where, under this Act, the Commissioner or Service any officer is required or permitted to give in writing to of notices, 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).

SCHEDULE 6—continued.

AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—continued.

- by leaving it at his place of residence with someone who apparently resides there or at his place of business or 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.

warping or direction may be gi

tion of section 362 of the Companies Act, 1961.

(a) to a person, not being a corpor

SCHEDULE ST AJUGAHOS

Sec. 5.

AMENDMENTS TO SCHEDULE 3 TO THE PRINCIPAL ACT.

ACT-continued.

At the end of Schedule 4, insert: -

(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.

(65c)

10 (1) Schedule 4—

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

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

(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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Sec. 5.

Consumer Protection (Amendment).

Sec. 5.

SCHEDULE 8—continued.

AMENDMENTS TO SCHEDULE 4 TO THE PRINCIPAL MONTH A ACT—continued.

(4) Schedule 4—

At the end of Schedule 4, insert :—

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

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

AMENDMENTS TO SCHEDULE 4 TO THE PRINCIPAL ACT. (56)

10 (1) Schedule 4- 10:203 Market

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

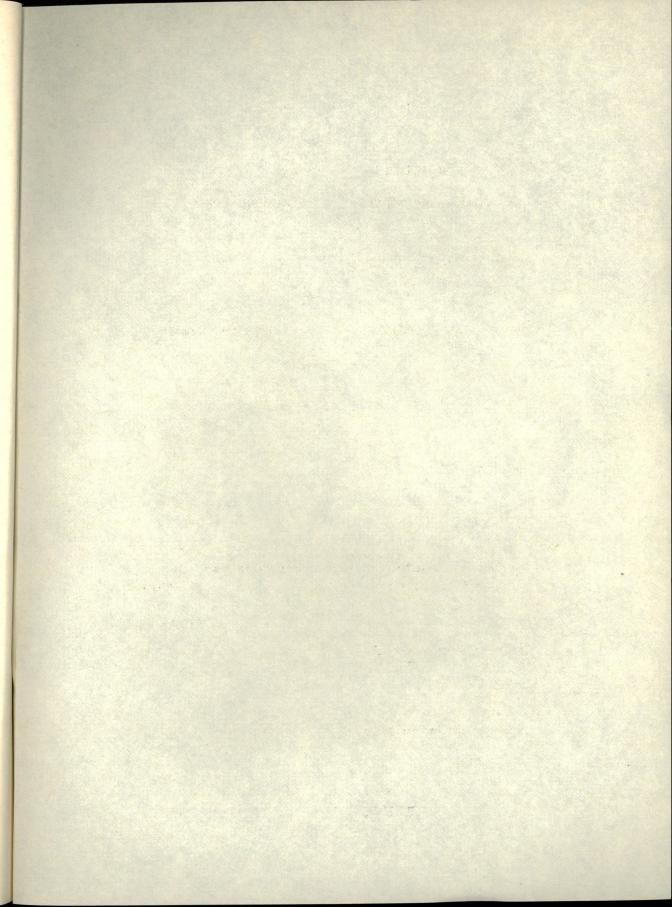
(2) Schedule 4—

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

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(3) Schedule 4—

Omit "5. Inflammable Liquid Act, 1915.".



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SCHEDILL N - WE WE

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Aviation and of Schedule 4, insert

Any Act infrastructure at a factory pay of the charge way.

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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.

the advice and consent of the Legislative Council and Legislative ydd by seembled, and by seembled, and by seembled, and by seembled.

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.

SCHEDULE 5 - AMENDMENT TO PART 461 OF G1268

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 :-
- 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.

- 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 commenced 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.

(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.

5. The Principal Act is ament a supported in the state of the state of

(Sec. 5.) wbedo2

Amendment of Act No. 28, 1969.

30 Principal Act. as amended by this A

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)— ii best gnied erew seelves seedwarden er yd 10 21

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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".

SCHEDULE 2. THE GRADE

(Sec. 5.)

AMENDMENTS TO PART II OF THE PRINCIPAL ACT.

- the furnishing of any information, or the (1) 15 noise of any document, relating to a person (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)—
- (4) (a) Section 16E (1), (2). "Isis remmos ro section 16E (1), (2)."
 - (c) Section 16 (1) (b) (ii) complished in complished (1)

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

a person who is engaged (whether as an officer of the Department or otherwise) in t(4)+(2) 161 noises (b)

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

(3) (a) Section 16c (2) begages or at order of the order

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Debu Omit "An", insert instead "Subject to subsection (2A), tadt ran". transcripper a ditwoorgilgmoo ni

- (b) Section 16c (2A) morning that to you (d)
- 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,

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.

Omit the subsections.

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(4) (a) Section 16E (1), (2)—laionement to about time

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 mi navig vilsion another person who is not so engaged,

is guilty of an offence against this Act. In our noiselest

SCHEDULE 2—continued.

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—continued.

(b) Section 16E (3)— The section of subsection

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- 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".
 - AMENDMENTS TO PARE III OF THE PRINCE (5) 361 noises (e)

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".

- Omit "or the Council" where firstly occurring, insert instead "or by the Council or the Products Safety Committee".

SCHEDULE 2—continued.

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

(c) Section 17—

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

(c) Section 16E (4) (a)— colleguesces (a

Department or otherwise)".

(d) Section 16E (4) (b)—

Omit "of his holding a.8 aJUDADZer this Act or".

(Sec. 5.)

AMENDMENTS TO PART III OF THE PRINCIPAL ACT. (6)

10 (1) Section 28A— Author is produced, to moilboadus and tim Ocean

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After section 28, insert ". or any of the contents

After "information", insert ", or any of the contents

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. "solliming)

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)— minima and min (ii)
 Omit "supplies", insert instead "sells".
- 10 (b) Section 29 (2) (b)— by an instance (a) Omit "supply", insert instead "sale".
- 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)— Share realled with 1979021814W After section 29 (3), insert:— (6)
- (3A) In subsection (1), "price" does not include an amount expressed in a currency other than Australian currency.
 - (3) Sections 31A, 31B— i Claids rabous againeescong you at 1818

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Before section 32, insert: — mand common a condition (a)

Interpretation: Pt. III, Div. 3.0 tant at immediate a

25 31A. In this Division— and most squared a fo

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

(a) inserted in a newspaper or other publication;

SCHEDULE 3—continued.

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—continued.

	bergage sit it is absolute exhibited—od to I (2)
5	became at it it abo (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
.0	(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
- ens shoon (e) made verbally; and for tracy was noon

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

- (a) words, maps, plans or drawings; or
- abulant for (b) pictorial representation or design,

Evidence as to publication.

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31B. In any proceedings under this Division ALE another (8)

- (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).

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) 10 guidailduq lo villing banot Omit "by that person or any other person".
 - (b) Section 32 (2)—

Omit the subsection, insert instead: - die easier

- 20 (2) Any person who, in connection with
 - lo easto (a) the supply or use of goods or services or the
 - (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

disidure (c) concerns the existence or effect of any contis but remarked the control of warranty provided by law in relaent attendance tion to the supply or use of any such goods and or a row or services or the disposal of any such replacement of the control of the contro

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SCHEDULE 3—continued.

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—continued.

the part (d) is to his knowledge false or misleading in bull his steered 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),".

10 (d) Section 32 (6A)—amed to a document scale of delivered

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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.

SCHEDULE 3—continued.

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—continued.

(5) (a) Section 32A (1) (a)—

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- 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; The Department is the Department in the Depar
- 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:

- (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)— (1) (1) (1)

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

- (f) Section 32A (1) (b) (v)—againeesong at esnebive at After "(iv)", insert "or (iva)".
- (g) Section 32A (1)—

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

SCHEDULE 3—continued.

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—continued.

(h) Section 32A (2)—

(5) (a) il Section 32x (4) s(a) -spelwoir Omit the subsection.order mention other

5 (6) Section 33B—

Omit section 72A (1) (b) (i) insent instead :-After section 33A, insert:

Civil action in respect of false or misleading statement.

(b) Section 32A (1) (b) (i), (ia)-

- 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 10 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.
- (2) Where, in any proceedings brought against a person for an offence under section 32 (1) or (2), a 20 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.

both", insert instead "\$10,000".

(g) Section 32A (1)_

SCHEDULE 4.

(Sec. 5.)

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT. HMG/HMA

- (1) Section 37 (6)-(11)-(11) and it (ii)
- 5 Omit the subsections.
 - (2) Section 38 (4) are a red enterior of the discount of the control of the contr

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.
- 15 (3) (a) Section 39c (1) bornelet noitseup a bastani

Omit the subsection, insert instead: ... (1)

(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— receives the section (1) or
 - (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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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.
- made by the court in which those proceedings are brought, a document under the scal c—(4), (6) 398 noises (d)

Omit "any" wherever occurring, insert instead "a".

(c) Section 39c (5)—

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- Omit "the question" where firstly occurring, insert instead "a question referred to it under subsection (1)".
 - (d) Section 39c (6)— (1) (1) (1)

Omit "the question", insert instead "a question referred to it under subsection (1)".

specified in the reference or any particular goods (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) rediadw (i)

Omit "the question" where firstly occurring, insert instead "a question referred to it under subsection (1)".

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)— 1500002 2231011

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
- 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

notice; or isoliton

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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)".

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)—
 - (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

SCHEDULE 4—continued.

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—continued.

- due about algor (ii) where the order is published in the Gazette under subsection (4) (b) to 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
- To be line (b) being an order which is published in the Gazette under subsection (4) (b) (whether being a some 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—

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After section 39F, insert :-

Remedy for supply of goods, etc., in contravention of Act of a contravention of a contravention

(2) Where, in any proceedings brough age

- (a) any goods or component parts are supplied, in contravention of section 37, to a person; or
- 25 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.

SCHEDULE 4—continued.

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—continued.

- section (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
- 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) in contact (2) 39G (7) Section 39G (2)

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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 39 t (8) be a distribution of competent jurisdiction, as a decimal with those goods or compenent.

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

SCHEDULE 4—continued.

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—continued.

(b) Section 39_J (9), (10)—no as not again as not again as not again (2)

After section 39J (8), insert :—

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.

s vd baturitenco SCHEDULE 15. 11000 a (i)

with the authority in writing of the Minister; and

(Sec. 5.)

AMENDMENT TO PART V OF THE PRINCIPAL ACT.

Section 53 (4), (5)—

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After section 53 (3), insert:—

(1) noticed by mi of berneler sunibecome was all (Al

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

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. or component parts are required to be destroyed or

of sent (a) that those goods or component parts be ballqque os destroyed to hornerwise disposed of by the

(b) that those 6 SCHEDULE parts be

yd to bezogaib eziwiedto romboyoriseb er (Sec. 5.) AMENDMENTS TO PART VI OF THE PRINCIPAL ACT. of the owner or of a person having posses

10 (1) Section 56 (1), (1A)—

Omit section 56 (1), insert instead: (01)

- subsection (9) and who does not comply with the (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 THEMOLEGIA
 - (iii) the Supreme Court in its summary jurisdiction. Section 53 (4), (5)-
- After section 53 (3), insert: -(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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SCHEDULE 6—continued.

AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—continued.

(2) Sections 56A, 56B—

After section 57, insert instead: _______. To a notice section 56A, insert instead: ______.

5 Injunctions.

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- 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.
- 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).

SCHEDULE 6—continued.

AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—continued.

(3) Section 57A-

After section 57, insert :-

- 5 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—

Omit section 564,

- (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—
- 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
- 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

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)—nied more a of (d)
 Omit "require,", insert instead "require; or".
- 15 (c) Section 58 (2) (a) (iii) 1 11 Don 199

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

- (iii) that any legislation specified in the statement is administered by the Minister,
- (iii) by posting it in a letter address A87 noise (5)

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20 After section 58, insert:

Service of notices, etc. and to cooking landio

- 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;

SCHEDULE 6—continued.

AMENDMENTS TO PART VI OF THE PRINCIPAL ACT—continued.

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- (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.

(i) by delivering it to him personally

(a) to a person, not being a corporation

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)".

SCHEDULE 8.

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(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.".

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 nouse Acts. or in relation to any application made

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Omit "Explosives Act, 1905", insert instead "Dangerous

(3) Schedule 4-

Omit "5. Inflammable Liquid Act, 1915.".