

CONSUMER PROTECTION.

No. 68 of 1971.

AN ACT to establish a Consumer Affairs Council and a Consumer Protection Bureau, and to provide for the appointment of a Commissioner for Consumer Protection, and for incidental and other purposes.

[Assented to 22nd December, 1971.]

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

PART I.—PRELIMINARY.

1. This Act may be cited as the *Consumer Protection Act, 1971*. Short title.

2. This Act shall come into operation on a date to be fixed by proclamation. Commence-
ment.

Arrangement
of Act.

3. This Act is divided into Parts as follows—

PART I.—PRELIMINARY, ss. 1-5.

PART II.—CONSUMER AFFAIRS COUNCIL, ss. 6-14.

PART III.—CONSUMER PROTECTION BUREAU AND
COMMISSIONER FOR CONSUMER PROTECTION,
ss. 15-23.

PART IV.—MISCELLANEOUS, ss. 24-27.

Definitions.
N.S.W., No.
28, 1969, ss.
5, 6;
Qld., No. 27
of 1970, s. 4;
S.A., No. 40
of 1970, s. 2;
Tas., No. 26
of 1970, s. 2;
Vic., No. 7965
(1970), s. 3.

4. In this Act unless the contrary intention
appears—

“Bureau” means the Consumer Protection
Bureau established under section 16;

“Chairman” means the person appointed to be
the Chairman of the Council under section
9;

“Commissioner” means the Commissioner for
Consumer Protection appointed under
section 15;

“consumer” means a person who buys or takes
on hire or lease, or is a potential buyer or
hirer or lessee of, or borrows money for the
purpose of purchasing, goods otherwise
than for resale or letting on hire or leasing;
and includes a person who uses otherwise
than for the purpose of trading or carrying
on a business, or is a potential user other-
wise than for the purpose of trading or
carrying on a business of, any service
rendered for fee or reward;

“Council” means the Consumer Affairs Council
established under section 6;

“documents” includes books, papers, and
accounts, and any written records;

“goods” includes anything that is the subject
of trade, manufacture or merchandise;

“member” means a member of the Council;

“section” means a section of this Act;

“services” means services provided by a person in the carrying on of an industrial, commercial, business, profit-making, or remunerative undertaking (including a professional practice), and includes the provision for reward of lodging or accommodation.

5. (1) This Act shall be read and construed as being in addition to and not in derogation of or in substitution for any other Act or rule of law for the time being in force in the State that relates to the duty or liability of persons with respect to goods or services supplied to a consumer.

Construction of Act.

(2) This Act shall be administered by the Minister and, subject to any direction of the Minister, by the person for the time being holding the office of the Secretary for Labour in the department of the State known as the Department of Labour.

Administration of Act.

PART II.—CONSUMER AFFAIRS COUNCIL.

6. (1) There shall be established a council to be known as the Consumer Affairs Council.

Consumer Affairs Council.

(2) The Council shall consist of twelve members appointed by the Governor, of whom—

Constitution of Council.

- (a) one shall be a member of the Faculty of Economics and Commerce of the University of Western Australia;
- (b) one shall be a person who is a practitioner within the meaning of the Legal Practitioners Act, 1893;
- (c) one shall be appointed as representing the interests of primary producers;
- (d) three shall be appointed from persons experienced in any of the fields of manufacture, retailing, distribution, advertising or other aspects of trade or commerce;
- (e) four shall be appointed as representing the interests of consumers;
- (f) one shall be a member of an industrial union of workers registered under the Industrial Arbitration Act, 1912;

Ibid.,
N.S.W., s. 7;
Qld., s. 5;
Tas., s. 3;
Vic., s. 4.

(g) one shall be a member of a union or society of employers.

(3) At least two of the members appointed under paragraph (e) of subsection (2) of this section shall be women.

(4) Subject to subsection (5) of section 13, the performance or exercise of the functions, powers, rights, authorities, duties or obligations of the Council shall not be affected by reason only of there being a vacancy in the office of a member of the Council or there being a defect in the appointment of any member.

Term of appointment.

7. (1) A member may be appointed to hold office for any term not exceeding three years.

(2) A member is eligible for reappointment.

Deputies of members.
Ibid.,
N.S.W., s. 9;
Qid., s. 10.

8. (1) The Governor may appoint a person to be a deputy of a member and may terminate such appointment at any time.

(2) A person appointed to be a deputy of a member under subsection (1) of this section shall have a like qualification for membership of the Council as that member and in the event of the absence from a meeting of the Council of that member is entitled to attend that meeting and, when so attending shall be deemed to be a member.

Chairman and Acting Chairman.

9. (1) One member shall at the time of his appointment as member be appointed by the Governor to be the Chairman.

(2) During any vacancy in the office of Chairman, or when and as often as the Chairman is absent on leave or in consequence of sickness, or for any reason is temporarily unable to perform the duties of his office, the Council shall appoint another member to act as Chairman during the period of such vacancy or the absence or inability of the Chairman.

(3) A member while acting as Chairman pursuant to subsection (2) of this section shall be deemed to be the Chairman.

10. (1) Subject to subsection (2) of this section a member and a deputy of a member shall be paid such remuneration and allowances as the Governor determines.

Remuneration of members and deputies.

(2) The remuneration and allowances to be paid to a member to whom the Public Service Act, 1904, applies shall not be determined under subsection (1) of this section except with the prior approval of the Public Service Board established under that Act.

11. If a member—

Vacation of office.

- (a) is an undischarged bankrupt or person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
- (b) becomes permanently incapable of performing his duties as a member;
- (c) resigns his office by writing under his hand addressed to the Governor;
- (d) absents himself, except on leave duly granted by the Minister, from three consecutive meetings of the Council,

the office of that member becomes vacant.

12. The Minister may grant leave of absence to a member upon such terms and conditions as to remuneration or otherwise as the Minister determines.

Leave of absence.

13. (1) The Council shall hold meetings at such times and places as the Council determines.

Meetings of Council.

(2) The Minister may at any time convene a meeting of the Council.

(3) The Chairman or the Acting Chairman shall preside at all meetings of the Council at which he is present.

(4) Where both the Chairman and Acting Chairman are absent from a meeting of the Council the members present at that meeting shall elect a member from among those present to preside at that meeting and while so presiding that member shall be deemed to be the Chairman.

(5) At a meeting of the Council—

- (a) eight members form a quorum;
- (b) a question arising at the meeting shall be determined by a majority of the valid votes of the members present thereat;
- (c) a member presiding thereat has a deliberative vote only.

(6) Subject to this Act, the Council may regulate its procedure in such manner as it thinks fit.

Functions
of Council.
Ibid.,
N.S.W., s. 12;
Qld., s. 6.

14. (1) The functions of the Council are—

- (a) to make such recommendations to the Minister as it considers necessary or desirable in the interests of consumers and in particular to investigate and make recommendations to the Minister in relation to any matters that concern the need for or desirability of legislative or administrative action in the interests of consumers;
- (b) to advise the Minister on such matters affecting the interests of consumers as he may refer to it;
- (c) to make recommendations to the Minister for the establishment and maintenance of means by which matters that affect the interests of consumers and of persons engaged in the production, manufacture, preparation or supply of goods or in commerce or in the provision of services may receive adequate consideration and

whereby information concerning such matters and considerations may be disseminated at large.

(2) The Council may co-operate, affiliate, or consult with other organisations that have the power to make investigations of the nature referred to in subsection (1) (a) of this section.

PART III.—CONSUMER PROTECTION BUREAU AND
COMMISSIONER FOR CONSUMER PROTECTION.

15. (1) Subject to this section, there shall be appointed a Commissioner for Consumer Protection and such other officers as are necessary to assist the Commissioner in carrying out his functions under this Act.

Commis-
sioner of
Consumer
Protection.
Ibid.,
N.S.W., s. 13;
Qld., s. 17.

(2) The Commissioner may be appointed—

- (a) by the Governor for a term not exceeding seven years; or
- (b) under and subject to the Public Service Act, 1904.

(3) Where the Commissioner is appointed by the Governor for a term of years—

- (a) the conditions of service of the Commissioner shall be such as the Governor determines;
- (b) the Commissioner shall be paid such remuneration and allowances as the Governor may, from time to time, determine;
- (c) the Commissioner may be re-appointed, from time to time, at the expiration of the term, unless he has been previously removed from office by the Governor under paragraph (d) of this subsection;

(d) the Commissioner may, at any time, be removed from office by the Governor for disability, bankruptcy, neglect of duty or misconduct; and

(e) the Commissioner may at any time resign his office by writing under his hand addressed to the Governor.

(4) The officers appointed under subsection (1) of this section to assist the Commissioner shall be appointed under and subject to the Public Service Act, 1904.

Consumer
Protection
Bureau.
Ibid.,
Qld., s. 18.

16. (1) There shall be established in the charge of the Minister a Consumer Protection Bureau.

(2) The Bureau shall consist of the Commissioner and the officers for the time being holding office who were appointed to assist him under subsection (1) of section 15.

(3) The Bureau shall perform its functions under the direction and control of the Commissioner.

Functions
of the
Bureau.
Ibid.,
N.S.W., s. 16;
Qld., s. 19;
S.A., s. 6;
Vic., s. 7.

17. (1) The functions of the Bureau are—

(a) to promote the interests of consumers and to assist them to a greater awareness in relation to their assessment and user of goods and services;

(b) to collect, collate and disseminate information in respect of matters affecting the interests of consumers;

(c) to receive complaints from consumers concerning matters touching their interests as consumers, to consider and, if the Commissioner considers it warranted, to investigate those complaints and to take such action in respect of those complaints as seems proper to the Commissioner;

- (d) to receive complaints of fraudulent or deceptive practices in relation to matters that affect or are likely to affect the interests of consumers and to make such investigations and inquiries and to take such other action in respect of those complaints as seems proper to the Commissioner;
- (e) to advise and assist consumers who seek from the Bureau information or guidance on matters affecting their interests as consumers;
- (f) to arrange for investigations on behalf of the Council;
- (g) to arrange for the collection, collation and furnishing to the Council of data to assist the Council in the performance of its functions under this Act;
- (h) to encourage and undertake the dissemination of information concerning consumer affairs to producers, manufacturers and suppliers of goods or services.

18. (1) Where after a complaint or matter has been made or referred to the Bureau the Commissioner is satisfied that a consumer has a cause of action or a good defence to an action and that it is in the public interest or proper so to do, he may, on behalf of the consumer institute legal proceedings against any other person or defend any proceedings brought against the consumer, where the amount claimed or involved in either case does not exceed the sum of two thousand five hundred dollars, with a view to enforcing or protecting the rights of the consumer in relation to any infringement or suspected infringement by that other person of those rights or of any of the provisions of any Act or any other law relating to the interests of consumers.

Power of
Commis-
sioner to
institute or
defend legal
proceedings
on behalf of
consumers.
Ibid.,
S.A., s. 6.

(2) The Commissioner shall not institute or defend any proceedings pursuant to subsection (1) of this section without first—

- (a) obtaining the written consent of the consumer which once given is irrevocable except with the consent of the Commissioner; and
- (b) obtaining the written consent of the Minister which may be given subject to such conditions as the Minister thinks fit.

(3) In relation to any proceedings referred to in subsection (2) of this section, the following provisions apply—

- (a) the Commissioner shall, on behalf of the consumer, have in all respects the same rights in and control over the proceedings, including the right to settle any action or part of any action, as the consumer would have had in the conduct of those proceedings;
- (b) the Commissioner may, without consulting or seeking the consent of the consumer, conduct the proceedings in such manner as the Commissioner thinks appropriate and proper;
- (c) any moneys (excluding costs) recovered by the Commissioner shall belong and be paid to the consumer without deduction and any amount awarded against the consumer shall be paid by and recoverable from the consumer, but in all cases the costs of the proceedings shall be borne by or paid to and retained by the Commissioner as the case may require; and
- (d) if any party to the proceedings files a counterclaim, or if the consumer on whose behalf the proceedings are being defended is entitled to file a counterclaim, and that counterclaim is not related to the cause of

action and in no way relates to the interests of the consumer as a consumer, the court hearing the proceedings shall, on the application of the Commissioner, order that the counterclaim be heard separately and that the consumer be a party to the counterclaim in his own right and may make such other orders or give such directions in that behalf as it thinks fit.

(4) Any money which the Commissioner becomes liable to pay by virtue of this section shall be paid out of the Consolidated Revenue Fund and this Act, without any further appropriation, is sufficient authority for the payment of the money.

19. (1) For the purposes of carrying out any investigation or inquiry in the course of carrying out his duties under this Act, the Commissioner may—

Power of Commissioner to investigate, inquire and obtain information.
Idid., s. 20;
Tas., s. 8.

- (a) require any person—
 - (i) to give him such information as he requires;
 - (ii) to answer any question put to him, in relation to any matter the subject of such investigation or inquiry;
- (b) require that any such information or such answer be given—
 - (i) orally or in writing;
 - (ii) at any place specified by the Commissioner;
 - (iii) on oath or affirmation or by statutory declaration for which purpose the Commissioner may administer an oath or affirmation and have the authority of a commissioner for declarations;

- (c) by notice in writing, require the production of any documents relating to any such investigation or inquiry;
- (d) enter at all reasonable times and search any premises and inspect any documents that he finds thereon and take samples of any stocks of goods and inspect any service carried on therein;
- (e) make a copy or abstract of any document produced to, or inspected by, him in pursuance of this section, or of any entry made therein and in the absence of proof to the contrary any such copy certified as correct by the Commissioner shall be received in all courts as evidence of, and of equal validity as, the original.

(2) Before entering any premises pursuant to this section the Commissioner or a person authorized by the Commissioner so to do shall—

- (a) obtain a warrant to do so from a Magistrate or Justice of the Peace which warrant the Magistrate or Justice of the Peace is authorized to issue upon being satisfied that the entry is sought in good faith for the purpose of carrying out any investigation or enquiry under this Act;
- (b) display to the person, if any, affording him entry—
 - (i) in the case of the Commissioner, a document signed by the Minister and certifying that he is the Commissioner; and
 - (ii) in the case of an authorized person, a document signed by the Commissioner and certifying that that person is an authorized person.

20. (1) A person is not obliged to answer any question or furnish any information pursuant to section 19 unless the Commissioner has reasonable grounds for the belief that such person is able to materially assist in such investigation or enquiry as is mentioned in that section and unless he has first been informed by the Commissioner that he is required and is obliged to answer such question by virtue of that section and he has been given sufficient notice to enable him to obtain the information or ascertain the answer as the case may be.

Sufficient notice to be given to enable questions etc. to be answered.

(2) Without prejudice to the provisions of section 11 of the Evidence Act, 1906, where a person is by virtue of this Act required to—

- (a) give any information;
- (b) answer any question;
- (c) produce any document,

he shall not refuse to answer any question on the ground that the information, answer or document may tend to incriminate him or render him liable to any penalty, but the answer given by him shall not be admissible in evidence in any proceedings against him other than proceedings in respect of an offence against paragraph (b) of subsection (1) of section 21.

21. (1) Where under section 19 a person is required by the Commissioner to give any information, answer any question or produce any document and that person, without reasonable excuse—

Failure to supply information. *Ibid.*, s. 20; Tas., s. 9.

- (a) refuses or fails to give that information or answer that question;
 - (b) gives any information or answer that is false in any particular; or
 - (c) refuses or fails to produce that document
- the person commits an offence.

Penalty: Two hundred dollars.

(2) It is a defence in any proceeding for an offence under paragraph (a) or (c) of subsection (1) of this section for the defendant to show that he had not been informed before refusing or failing to give the information or answer the question or to produce the document, as the case may be, that he was required under this Act to give the information or answer, or produce the document, as the case may be.

Obstructing
Commissioner.

22. A person who without reasonable excuse prevents or attempts to prevent the Commissioner from entering premises or otherwise obstructs or impedes the Commissioner in the exercise of his powers under section 19, commits an offence.

Penalty: Two hundred dollars.

"Commissioner"
includes
other officers.
Ibid.,
Qtd., s. 20.

23. A reference in section 19, 20, 21 or 22 to the Commissioner shall be deemed to include a reference to a person approved by the Minister who is authorized in writing by the Commissioner, which the Commissioner is hereby empowered to do, to investigate any matter or matters specified in the written authority.

PART IV.—MISCELLANEOUS.

Secrecy.

24. (1) This section applies to any person who is or has been the Commissioner, an officer, whether permanent or temporary of the Bureau or a member.

(2) A person to whom this section applies shall not, either directly or indirectly, except in the performance of a duty under or in connection with this Act, make a record of, or divulge or communicate to any person, any information concerning the affairs of any other person acquired by him by reason of his office or employment under or for the purposes of this Act.

"This Act"
includes
regulations.
S. 4 Act No.
30 of 1918.

Penalty: Five hundred dollars.

25. A member, the Commissioner and any officer of the Bureau is not personally liable, and the Crown in right of the State is not liable, for any act done or default made or statement issued by the Council, the Commissioner or an officer of the Bureau in good faith in the course of the operations of the Council or of the Bureau.

Liability of members, officers and the Crown.
Ibid., N.S.W., s. 17.

26. (1) The Chairman shall on behalf of the Council submit to the Minister on or before each first day of September, a report on the activities of the Council and of the Bureau for the year ending on the thirtieth day of June last preceding.

Annual report.

(2) The Minister shall cause the report to be laid on the Table of each House of Parliament within fourteen days of its receipt, or if at that time Parliament is not in session, then within fourteen days of the commencement of the next session of Parliament.

27. (1) The Governor may make such regulations, not inconsistent with this Act, as he considers necessary and desirable for the proper administration of this Act or for achieving the objects and purposes of this Act.

Regulations.

(2) The regulations may prescribe penalties, not exceeding a fine of two hundred dollars in respect of a breach of any of the regulations.

(3) The regulations may require that any information, account, document or form required to be given or furnished thereunder shall be verified by statutory declaration.