

Approved for Reprint 12th July, 1977.

WESTERN AUSTRALIA.

CONSUMER AFFAIRS

No. 68 of 1971.¹

[As Amended by Act:

No. 21 of 1975,² assented to 13th May, 1975,

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

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

Long title.
Amended
by No. 21
of 1975, s. 3.

[Assented to 22nd December, 1971.]

BE it enacted—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Consumer Affairs Act, 1971-1975*.

Short title.
Amended
by No. 21
of 1975, s. 1.

2. This Act shall come into operation on a date to be fixed by proclamation.¹

Commence-
ment.

¹ Proclaimed to operate from 11th August, 1972; see *Government Gazette* 11/8/72, p. 3192.

² Proclaimed to operate from 23rd May, 1975, see *Government Gazette* 23/5/75, p. 1395.

Arrangement
of Act.
Amended
by No. 21
of 1975, s. 4.

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.—BUREAU OF CONSUMER AFFAIRS AND
COMMISSIONER FOR CONSUMER AFFAIRS, ss.
15-23.

PART IV.—MISCELLANEOUS, ss. 24-27.

Definitions.
Amended
by No. 21
of 1975, s. 5.
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. (1) In this Act unless the contrary intention appears—

“Bureau” means the Bureau of Consumer Affairs 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 Affairs appointed under section 15;

“consumer” means—

- (a) a person who purchases or takes on hire or lease, or is a potential purchaser or hirer or lessee of, or borrows money for the purpose of purchasing, goods otherwise than for resale or letting on hire or leasing;
- (b) a person who uses or is a potential user of, or borrows money for the purpose of using, any service rendered for fee or reward;
- (c) a person who purchases or is a potential purchaser of, or borrows money for the purpose of purchasing, an estate or interest in any land or building otherwise than for resale letting or leasing; or
- (d) a person who becomes a tenant or lessee of, or is a potential tenant or lessee of, any land or building or part of a building otherwise than for assignment or underletting;

“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.

(2) Notwithstanding the definition “consumer” in subsection (1) of this section, a person who carries on a trade or business is not a consumer for the purposes of this Act in respect of or in relation to—

- (a) goods purchased or taken on hire or lease by him, or of which he is a potential purchaser, hirer or lessee;
- (b) a service used by him, or of which he is a potential user;
- (c) an estate or interest in land or a building purchased by him, or of which he is a potential purchaser; or
- (d) any land or building or part of a building of which he becomes the tenant or lessee, or is a potential tenant or lessee,

in the course of or for the purpose of the carrying on of that trade or business.

(3) References, however expressed, in any other Act or in any regulation, notice, proclamation, or statutory instrument of any kind made, published or in force under this or any other Act to the Commissioner for Consumer Protection and the Consumer

Protection Bureau shall, unless the context requires otherwise, be read and construed as references to the Commissioner for Consumer Affairs appointed under this Act and the Bureau of Consumer Affairs established under this Act, respectively.

Construction of Act. Amended by No. 21 of 1975, s. 6.

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

Administration 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 permanent head of the department of the Public Service of the State principally responsible for assisting the Minister in the administration of this Act.

PART II.—CONSUMER AFFAIRS COUNCIL.

Consumer Affairs Council.

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

Constitution of Council. Amended by No. 21 of 1975, s. 7. *Ibid.*, N.S.W., s. 7; Qld., s. 5; Tas., s. 3; Vic., s. 4.

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

- (a) one shall be a member of the academic staff of The University of Western Australia, Murdoch University or The Western Australian Institute of Technology;
- (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;
- (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.

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

Term of appointment.

(2) A member is eligible for reappointment.

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

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

(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.

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

Chairman and Acting 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.

Remunera-
tion of
members and
deputies.

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.

(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.

Vacation
of office.

11. If a member—

- (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.

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

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

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 paragraph (a) of subsection (1) of this section.

Heading amended by No. 21 of 1975, s. 8.

PART III.—BUREAU OF CONSUMER AFFAIRS AND COMMISSIONER FOR CONSUMER AFFAIRS.

Commissioner for Consumer Affairs. Amended by No. 21 of 1975, s. 9. *Ibid.*, N.S.W., s. 13; Qld., s. 17.

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

(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.

(5) If a person appointed to the office of Commissioner for Consumer Protection was holding that office immediately before the coming into operation of section 9 of the Consumer Protection Act Amendment Act, 1975 that person shall be deemed to have been appointed Commissioner for Consumer Affairs under this section.

(6) All officers appointed to assist the Commissioner for Consumer Protection who were holding office immediately before the coming into operation of section 9 of the Consumer Protection Act Amendment Act, 1975, shall be deemed to have been appointed under this section to assist the Commissioner for Consumer Affairs.

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

Bureau of
Consumer
Affairs.
Amended
by No. 21
of 1975, s. 10.
Ibid.,
Qld., s. 18.

(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. 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 five thousand 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 Commissioner to institute or defend legal proceedings on behalf of consumers.
Amended by No. 21 of 1975, s. 11.
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.

Power of Commissioner to investigate, inquire and obtain information. Amended by No. 21 of 1975, s. 12. *Ibid.*, Qld., s. 20; Tas., s. 8.

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—

- (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) [*Deleted by No. 21 of 1975, s. 12.*]
- (c) 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 pur-
suance 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.

(1a) A requirement made under paragraph (a)
of subsection (1) of this section—

- (a) may be made orally or by notice in writing
served on the person required to give
information or answer a question, as the
case may be;
- (b) shall specify the time at or within which
the information is to be given or the
question is to be answered, as the case may
be;
- (c) may, by its terms, require that the
information or answer required—
- (i) be given orally or in writing;
- (ii) be given at or sent or delivered to any
place specified in the requirement;

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- (iii) in the case of written information or answers, be sent or delivered by any means specified in the requirement;
- (iv) be given 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.

(1b) A requirement made under paragraph (c) of subsection (1) of this section—

- (a) shall be made by notice in writing served on the person required to produce a document;
- (b) shall specify the time at or within which the document is to be produced;
- (c) may, by its terms, require that the document required be produced—
 - (i) at any place specified in the requirement;
 - (ii) by any means specified in the requirement.

(1c) Where, under paragraph (a) of subsection (1) of this section, the Commissioner orally requires a person to give any information or answer any question, the Commissioner shall inform that person that he is required under this Act to give the information or answer the question, as the case may be.

(1d) Where under paragraph (a) or (c) of subsection (1) of this section a person is required by notice in writing to give any information, answer any question or produce any document, the notice shall state that he is required under this Act to give the information, answer the question or produce the document, as the case may be.

(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.

Sufficient notice to be given to enable questions etc. to be answered. Amended by No. 21 of 1975, s. 13.

(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 comply with that requirement on the ground that the information, answer or document may tend to incriminate him or render him liable to any penalty, but the information or answer given, or document produced, 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.

Failure to supply information. Amended by No. 21 of 1975, s. 14. *Ibid.*, s. 20; Tas. s. 9.

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—

- (a) fails to give that information or answer that question at or within the time specified in that requirement;
- (b) gives any information or answer that is false in any particular; or
- (c) fails to produce that document at or within the time specified in that requirement,

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—

- (a) that, in the case of an alleged offence arising out of a requirement made orally under section 19, the Commissioner did not when making the requirement, inform him that he was required under this Act to give the information or answer the question, as the case may be;
- (b) that, in the case of an alleged offence arising out of a requirement made by notice in writing under section 19, the notice did not state that he was required under this Act to give the information, answer the question or produce the document, as the case may be; or
- (c) that the time specified in the requirement did not afford him sufficient notice to enable him to comply with the requirement.

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.

Obstructing
Commis-
sioner.

Penalty: Two hundred dollars.

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 carry out investigations and inquiries for the purposes of this Act.

"Commis-
sioner"
includes
other
officers.
Amended
by No. 21
of 1975, s. 15.
Ibid.,
Qld., s. 20.

23A. All courts, judges and persons acting judicially shall take judicial notice of the official signature of every person who is for the time being and every person who has at any time been the Commissioner and of the fact that such person holds or has held such office.

Judicial
notice.
Added by
No. 21 of
1975, s. 16.

PART IV.—MISCELLANEOUS.

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.

Secrecy.

(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.

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

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.

Advertise-
ments not
to imply
approval by
Council,
Bureau or
other
authority.
Added by
No. 21 of
1975, s. 17.

25A. (1) A person who publishes or causes to be published any statement—

- (a) which is intended or is apparently intended to promote the sale, hiring or leasing of goods, or the sale of an estate or interest in any land or building, or the letting or leasing of any land or building or part of a building, or the use of a service rendered for fee or reward; and
- (b) which states, either expressly or by implication, that any consumer affairs authority has approved, or has refrained from disapproving, the statement or any material particular in the statement or any claim made in the statement or any goods or services depicted or described, whether by a trade name or otherwise, in the statement,

commits an offence unless, prior to the publication of the statement, the Minister has consented in writing to its publication.

Penalty: Five hundred dollars.

(2) In this section—

“consumer affairs authority” means—

- (a) the Council, the Bureau or the Commissioner; or
- (b) any person, or statutory body or authority, appointed or constituted under any law of the Commonwealth or of any State or Territory of the

Commonwealth and having powers, functions and duties under the laws of the Commonwealth or that State or Territory similar to those of the Council, the Bureau or the Commissioner under the laws of this State,

and includes—

- (c) the Chairman or any other member;
- (d) any officer of the Bureau;
- (e) any officer or employee of a statutory body or authority referred to in paragraph (b) of this definition;

“published” includes—

- (a) inserted in any newspaper or other publication printed and published in Western Australia;
- (b) publicly exhibited—
 - (i) in, on, over or under any building, vehicle, or place (whether a public place or private place, and whether on land or water); or
 - (ii) in the air,
in view of persons being or passing in or on any public place;
- (c) contained in any document gratuitously sent or delivered to any person or thrown or left upon premises in the occupation of any person;
- (d) made verbally to any person; or
- (e) publicly announced by means of transmission of light or sound,

and “publishes” has a corresponding meaning.

Annual
Report.

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.

(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.

Regulations.

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.

(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.