

WESTERN AUSTRALIA.

CONSUMER AFFAIRS ACT
1971-1983.

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Approved for reprint 22 May 1984.

WESTERN AUSTRALIA.

CONSUMER AFFAIRS.

No. 68 of 1971.¹

[As Amended by Acts:

No. 21 of 1975,² assented to 13 May 1975;
No. 90 of 1978, assented to 8 November 1978;
No. 66 of 1980, assented to 26 November 1980;
No. 110 of 1981,³ assented to 4 December 1981;
No. 52 of 1982, assented to 6 September 1982;
No. 2 of 1983,⁴ assented to 25 March 1983;
No. 24 of 1983, assented to 1 December 1983;
No. 72 of 1983,⁵ assented to 22 December 1983,

and reprinted pursuant to the Amendments Incorporation Act 1983.]

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

Long title.
Amended by
No. 21 of
1975, s. 3;
No. 90 of
1978, s. 2;
No. 110 of
1981, s. 3.

[Assented to 22 December 1971.]

BE it enacted—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Consumer Affairs Act 1971-1983*.

Short title.

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

Commence-
ment.

¹ Came into operation on 11 August 1972; see *Government Gazette* 11/8/72, p. 3102.

² Came into operation on 23 May 1975; see *Government Gazette* 23/5/75, p. 1395.

³ Came into operation on 11 December 1981; see *Government Gazette* 11/12/81, p. 5053.

⁴ Came into operation on 25 March 1983; see *Government Gazette* 25/3/83, p. 1059.

⁵ Came into operation on 30 December 1983; see section 2.

[Section 3 repealed by No. 110 of 1981, s. 4.]

Definitions.
Amended by
No. 21 of
1975, s. 5;
No. 90 of
1978, s. 4;
No. 66 of
1980, s. 2;
No. 110 of
1981, s. 5;
No. 24 of
1983, s. 2.

4. (1) In this Act unless the contrary intention appears—

“Bureau” means the Bureau of Consumer Affairs established under section 16;

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

“Committee” means the Consumer Products Safety Committee established under section 23E;

“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;

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

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

“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—

(a) the provision for reward of lodging or accommodation; and

(b) the entering into by an insurer of, and the provision of rights and benefits under, any contract of insurance, other than a contract of insurance—

(i) required by the Workers' Compensation Act 1912¹, or

(ii) within the meaning of the Motor Vehicle (Third Party Insurance) Act 1943.

(2) Notwithstanding the definition “consumer” in subsection (1) of this section, but subject to subsection (2a) 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

¹ Now see the Workers' Compensation and Assistance Act 1981.

- (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.

(2a) A person who carries on an agricultural, apicultural, pastoral, horticultural, orcharding, viticultural or other farming undertaking does not carry on a trade or business for the purposes of subsection (2) of this section.

(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.

(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.

[*Heading to Part II. repealed by No. 110 of 1981, s. 6.*]

[*Sections 6-14 (inclusive) repealed by No. 110 of 1981, s. 6.*]

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

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

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.

Commis-
sioner for
Consumer
Affairs.
Amended by
No. 21 of
1975, s. 9;
No. 90 of
1978, s. 6.

(1a) Where an officer appointed to assist the Commissioner under subsection (1) of this section holds the office of Deputy Commissioner for Consumer Affairs under the Public Service Act 1904¹, that officer may act as the Commissioner during any period when there is a vacancy in the office of Commissioner or when the Commissioner is absent from duty and the Deputy Commissioner shall, when so acting, be deemed to be the Commissioner.

(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 1904.¹

(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;

¹ Now Public Service Act 1978.

- (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 1904.¹

(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.

Duties
of the
Commis-
sioner.
Inserted by
No. 110
of 1981, s. 7.

15A. (1) The duties of the Commissioner include the following, namely—

- (a) making such recommendations to the Minister as the Commissioner considers necessary or desirable in the interests of consumers and in particular investigating and making 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) advising the Minister on such matters affecting the interests of consumers as he may refer to the Commissioner;

¹ Now Public Service Act 1978.

- (c) making 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 Commissioner may co-operate, associate or consult with organizations that have the power to make investigations of the nature referred to in paragraph (a) of subsection (1) of this section.

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.

(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.

17. The functions of the Bureau are—

Functions
of the
Bureau.
Amended by
No. 110 of
1981, s. 8.

- (a) to promote the interests of consumers and to assist them to a greater awareness in relation to their assessment and use 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;

[Paragraphs (f) and (g) deleted by No. 110 of 1981, s. 8.]

- (h) to encourage and undertake the dissemination of information concerning consumer affairs to producers, manufacturers and suppliers of goods or services.

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

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.

(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.

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;

[Paragraph (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 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.

(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;
 - (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;

Consumer Affairs.

- (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.

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. Amended by No. 21 of 1975, s. 14.

- (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.

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.
Amended by
No. 21 of
1975, s. 15.

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.

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.
Inserted by No. 21 of 1975, s. 16.

PART IIIA.—CONSUMER PRODUCTS SAFETY COMMITTEE.

Heading.
Inserted by No. 90 of 1978, s. 7.

Division 1.—Preliminary.

23B. In this Part, unless the contrary intention appears—

Definitions.
Inserted by No. 90 of 1978, s. 7.

“component part” in relation to any goods includes an accessory to those goods;

“dangerous” means likely to cause death or serious injury to the body or health of any person, whether directly or indirectly;

“supply” in relation to goods, includes supply (including re-supply) by way of sale, exchange, lease, hire, and also includes exhibit, expose or have in possession for the purpose of sale, exchange, lease, hire, or for any purpose of advertisement, manufacture or trade.

23C. (1) The provisions of this Part shall not apply to goods or component parts which are not intended to be supplied in Western Australia.

Application.
Inserted by No. 90 of 1978, s. 7.

(2) In this section reference to the provisions of an Act includes reference to the provisions of any regulation, by-law, Order in Council, proclamation, declaration and notice, made, given or promulgated under the provisions of that Act.

(3) Subject to subsection (4) of this section, where any provision of this Part or a regulation made under this Part is inconsistent with any provision of an Act specified in the Schedule to this Act, the provision of that Act shall prevail.

(4) Where any provision of this Part or a regulation made under this Part is inconsistent with section 338B or 338C of the Health Act 1911, the provisions of this Part shall prevail.

Schedule
may be
amended by
regulations.
Inserted by
No. 90 of
1978, s. 7.

23D. The Governor may make regulations to amend the Schedule to this Act, by deleting reference to any Act specified in that Schedule, or by inserting in that Schedule a reference to any Act which prohibits or regulates the supply of any class or description of goods.

Division 2.—Prohibition or Restriction on Supply of Dangerous Goods to Consumers.

Consumer
Products
Safety
Committee.
Inserted by
No. 90 of
1978, s. 7.

23E. (1) There shall be established a committee to be known as the Consumer Products Safety Committee.

(2) The Committee shall consist of seven persons, appointed by the Minister.

(3) Of the members—

- (a) one shall be an officer of the Bureau who shall be the Chairman of the Committee; and
- (b) the remainder shall be persons who in the opinion of the Minister, have expertise in product safety.

Committee
may seek
advice.
Inserted by
No. 90 of
1978, s. 7.

23F. (1) The Committee may co-opt any person who in its opinion has expertise in product safety in relation to any question referred to it by the Minister or Commissioner pursuant to section 23L, to advise the Committee with respect to that question.

(2) A person co-opted under subsection (1) of this section shall be entitled to participate in, speak at and vote on any matter arising from or connected with the question for which he was co-opted, at any meeting of the Committee.

23G. (1) A member of the Committee shall be appointed for a term of twelve months.

Appointment and term of office of members. Inserted by No. 90 of 1978, s. 7.

(2) On the expiration of any period of appointment, a member of the Committee shall be eligible to be re-appointed.

(3) A member of the Committee may at any time resign his membership by notice in writing addressed to the Minister.

(4) The Chairman shall be deemed to have vacated his office as a member of the Committee if he ceases to be an officer of the Bureau.

23H. The Minister may at any time remove a member of the Committee from office, by notice in writing addressed and delivered to that member.

Minister may remove members. Inserted by No. 90 of 1978, s. 7.

23I. (1) The Minister may appoint an officer of the Bureau to be deputy of the Chairman, and in the absence from a meeting of the Chairman, the officer is entitled to attend the meeting and exercise the powers and duties of the Chairman.

Deputies. Inserted by No. 90 of 1978, s. 7.

(2) The Minister may appoint a person to be a deputy of a member of the Committee.

(3) A person appointed to be a deputy of a member of the Committee under subsection (2) of this section is, in the absence of that member, entitled to attend that meeting and when so attending shall be deemed to be a member of the Committee.

Decisions
of the
Committee.
Inserted by
No. 90 of
1978, s. 7.

23J. At any meeting of the Committee the decision of a majority of persons present and voting shall be the decision of the Committee.

Remunera-
tion.
Inserted by
No. 90 of
1978, s. 7.

23K. (1) There shall be payable to a member of the Committee, a deputy of a member of the Committee and any person co-opted to advise the Committee pursuant to section 23F such remuneration as the Minister may determine.

(2) Subsection (1) of this section shall not apply to the Chairman or Deputy of the Chairman of the Committee.

References
of questions
to the
Committee.
Inserted by
No. 90 of
1978, s. 7.

23L. (1) The Minister or Commissioner may refer to the Committee the question as to whether in the interests of the safety of the public, the supply of goods of a class or description specified in the reference, or of any particular goods so specified ought, by reason of the goods being dangerous, or by reason of the supply of the goods being dangerous, to be prohibited or allowed only subject to restrictions or conditions.

(2) The Minister or Commissioner may refer to the Committee the question of whether an order made under section 23R should be revoked or amended.

(3) Whenever the Minister or the Commissioner refers a question under subsection (1) or (2) of this section, he shall cause particulars of the matter to be published in a newspaper circulating in the State.

Committee
to report to
Commis-
sioner.
Inserted by
No. 90 of
1978, s. 7.

23M. (1) The Committee, on reference of any question pursuant to section 23L, shall—

- (a) make investigations with respect to the question;
- (b) determine what recommendations it should make; and

- (c) submit a report of the recommendations referred to in paragraph (b) of this subsection to the Commissioner.

(2) Where a member of the Committee dissents from a decision of the Committee in respect of a question, the dissent and reasons (if any) shall be included in the report to the Commissioner.

22N. The Commissioner shall, if he is requested to do so by the Committee, give to the Committee to enable it to consider the question—

Commissioner to assist investigations.
Inserted by No. 90 of 1978, s. 7.

- (a) any information in his possession which relates to the question; and
- (b) any other assistance which the Committee may require, and which it is within his power to give, in relation to the question.

23O. (1) The Committee, in considering the question—

Powers of Committee in investigating referred questions.
Inserted by No. 90 of 1978, s. 7.

- (a) may make such investigations as it considers necessary to enable it to make a recommendation with respect to the question;
- (b) shall take into account any representations made to it by any person who, in its opinion, has a substantial interest in the subject-matter of the question or by any body which, in its opinion, represents a substantial number of persons who have such an interest; and
- (c) unless in all the circumstances the Committee does not consider that it is reasonably practicable to do so, shall permit any such person or body to be heard orally by the Committee, or by a member of the Committee nominated by the Committee for the purpose.

(2) The Committee may determine its own procedure for considering any question, and in particular may determine—

- (a) the extent, if any, to which persons interested or claiming to be interested in a question are allowed to be present or to be heard, either by themselves or by their representatives, or to cross-examine witnesses or otherwise participate in the consideration of the question; and
- (b) the extent, if any, to which the Committee shall hold its proceedings in public.

(3) In determining its procedure under subsection (2) of this section, the Committee shall act in accordance with any general directions which may be given it by the Minister.

Attendance of witnesses and production of documents.
 Inserted by No. 90 of 1978, s. 7.

23P. (1) For the purposes of any investigation of a question referred to it under section 23L, the Committee may, by notice in writing signed by the Chairman or by a member of the Committee on his behalf—

- (a) require any person to attend at a time and place specified in the notice and to give evidence to the Committee or to a member of the Committee nominated by it for the purpose;
- (b) require any person to produce, at a time and place specified in the notice, to the Committee or to a member of the Committee nominated by it for the purpose, any goods or documents which are specified or described in the notice and which are goods or documents in his custody or under his control and are relevant to the investigation; and
- (c) take goods so produced, and cause to be conducted such tests and examinations with respect to them as it considers necessary for the purpose of determining whether or not they may be dangerous.

(2) For the purposes of any such investigation the Committee, or a member of the Committee nominated by it for the purpose, may take evidence on oath, and for that purpose may administer oaths.

(3) Without prejudice to the provisions of section 11 of the Evidence Act 1906, where a person is required, pursuant to subsection (1) of this section to—

- (a) give information;
- (b) answer any question;
- (c) produce any goods or documents relevant to the investigation,

he shall not refuse to comply with that requirement on the ground that the information or answer to any question or production of goods or documents relating to the investigation may tend to incriminate him or render him liable to any penalty, but the information or answer given, or goods or documents produced by him, shall not be admissible in evidence in any proceedings against him, other than in proceedings for giving false testimony before the Committee or failing to give information or answer any question, or produce any goods or documents within the specified time.

(4) Any person who—

- (a) without reasonable excuse, refuses or fails to do anything required of him by a notice under subsection (1) of this section; or
- (b) alters, suppresses or destroys any goods or document which he is required by any such notice to produce,

commits an offence against this Act.

Penalty: Five hundred dollars.

Interim
orders.
Inserted by
No. 90 of
1978, s. 7.

23Q. (1) Where the Minister or Commissioner refers any question to the Committee under subsection (1) of section 23L and the Commissioner believes on reasonable grounds that goods of the class or description, or the particular goods to which the question relates are so dangerous that their supply ought, in the interests of the safety of the public to be prohibited immediately, the Commissioner may make an interim order prohibiting the supply of goods of the class or description specified, or of any particular goods so specified, for a period not exceeding twenty-eight days from the date on which the order is published in the *Government Gazette*.

(2) Where in considering a question referred to it pursuant to subsection (1) of section 23L, the Committee is of the opinion that goods of the class or description or, the particular goods to which the question relates are so dangerous that their supply ought, in the interests of the safety of the public to be prohibited immediately, notwithstanding that the Committee has not fully considered the question, the Committee may recommend to the Commissioner that he make an interim order with respect to those goods.

(3) Without limiting subsection (1) of this section, the Commissioner may, if he agrees with the recommendation of the Committee, make an interim order prohibiting the supply of goods of the class or description specified in the recommendation, or, of any particular goods so specified, for a period not exceeding twenty-eight days from the date on which the order is published in the *Government Gazette*.

(4) If the Commissioner makes an order under this section he shall cause the order to be published in the *Government Gazette*.

(5) An order made under this section shall not be capable of being renewed or replaced by a further order made under this section, but the Commissioner may, by notice published in the *Government Gazette* on the recommendation of the Committee, extend the operation of the order for one period not exceeding twenty-eight days.

(6) The Commissioner may, by notice published in the *Government Gazette* on his own motion or on the recommendation of the Committee revoke an order made under this section.

(7) Where—

- (a) an order made under this section is in effect in respect of goods of any class or description or any particular goods; and
- (b) before that order expires or is revoked an order made under section 23R takes effect in respect of goods of that class or description or those particular goods,

the order made under this section is revoked.

23R. (1) Where a report submitted to the Commissioner under section 23M contains a recommendation that the supply of goods of any class or description specified in the report, or of any particular goods so specified, ought to be prohibited, or ought to be allowed only subject to conditions or restrictions so specified, the Commissioner may, if he agrees with the recommendation, make an order giving effect to the recommendation.

Commis-
sioner
may make
orders
prohibiting
or restrict-
ing supply
of goods.
Inserted by
No. 90 of
1978, s. 7.

(2) In subsections (3) and (4) of this section, "consumer affairs authority" means 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 Committee, the Bureau or the Commissioner under the laws of this State.

(3) Where—

- (a) a consumer affairs authority has made an order or similar instrument (in this subsection called “the corresponding order”) prohibiting the supply in a State or Territory of the Commonwealth, or in the Commonwealth, of goods of a class or description specified or referred to in the corresponding order; and
- (b) the corresponding order has not been revoked or otherwise ceased to have effect,

the Commissioner, without making a reference to the Committee under subsection (1) of section 23L in respect of goods of that class or description, may if he considers it necessary in the interests of the safety of the public make an order prohibiting the supply of goods of that class or description to consumers in this State.

(4) Where—

- (a) a consumer affairs authority has made an order or similar instrument (in this subsection called “the corresponding order”) allowing the supply in a State or Territory of the Commonwealth or in the Commonwealth of goods of a class or description specified or referred to in the corresponding order but only subject to conditions or restrictions specified or referred to in the corresponding order; and
- (b) the corresponding order has not been revoked or otherwise ceased to have effect,

the Commissioner, without making a reference to the Committee under subsection (1) of section 23L in respect of goods of that class or description, may, if he considers it necessary in the interests of the safety of the public, make an order allowing the supply of goods of that class or description to consumers in this State,

but only subject to conditions or restrictions specified or referred to in the order being conditions or restrictions that are in conformity with those specified or referred to in the corresponding order.

(5) An order made under this section shall be published in the *Government Gazette* and shall take effect on and from the date of publication or such a later date as is specified in the order.

(6) The Commissioner may—

(a) by notice published in the *Government Gazette* on his own motion, or on the recommendation of the Committee, revoke an order made under this section;

(b) by notice published in the *Government Gazette* on the recommendation of the Committee, amend an order made under this section.

(7) Any person may make an objection to the Minister against an order made under this section.

(8) Any objection—

(a) shall be made within fourteen days after the publication in the *Government Gazette* of the order or, where the objection arises as a result of an amendment of the order, within fourteen days after the publication in the *Government Gazette* of the notice by which the amendment was made;

(b) shall be made in writing and shall set out in full the nature of the objection and the grounds on which it is made.

(9) The Minister may, after considering the objection,—

- (a) dismiss the objection; or
- (b) uphold the objection and, by notice published in the *Government Gazette*, revoke the order or amend the order in such manner as he considers necessary to meet the objection.

Offences.
Inserted by
No. 90 of
1978, s. 7.

23S. A person who supplies goods in contravention of any order made under this Part commits an offence against this Act.

Penalty: Five thousand dollars.

Action for
breach of
statutory
duty.
Inserted by
No. 90 of
1978, s. 7.

23T. Where any supplier supplies goods in contravention of an order made under this Part that contravention is a breach of duty that, subject to the defences and other incidents applying to actions for breach of statutory duty, is actionable at the suit of any person, whether he is the person to whom the goods were supplied or not, who has sustained loss or damage in consequence of that breach.

*Division 3.—Imposition of Safety Requirements
by Regulation.*

Regulations
for safety
requirements.
Inserted by
No. 90 of
1978, s. 7.

23U. (1) The Governor may, for the purpose of preventing or reducing risk of death, personal injury or disease, make regulations for or with respect to imposing with respect to any prescribed class or description of goods—

- (a) requirements, whether as to the composition of contents, design, construction, finish or packing of, or otherwise relating to, goods of that class or description or any component part thereof;

- (b) requirements for securing that goods of that class or description or any component part thereof are in the prescribed manner (if any) marked with or accompanied by any prescribed warning or instructions or any warning or instructions of a prescribed nature.

(2) Regulations made under subsection (1) of this section may—

- (a) apply either generally or in prescribed circumstances or subject to prescribed conditions;
- (b) adopt either wholly or in part and either specifically or by reference any Australian Standard or any of the standard rules, codes or specifications of the body known as the Standards Association of Australia;
- (c) prescribe any class or description of goods, notwithstanding that the goods are for use only as component parts of other goods (whether or not those other goods are goods of a prescribed class or description).

23V. (1) Subject to the provisions of this section, a person shall not supply any goods in respect of which or a component part of which any requirements of regulations made under section 23U are in force unless all requirements of the regulations relating to the goods or component part are complied with.

Prohibition
on supply
of goods not
complying
with
regulations.
Inserted by
No. 90 of
1978, s. 7.

(2) Subject to the provisions of subsection (3) of this section, a person shall not supply a component part in respect of which no requirements have been prescribed under section 23U but which is intended for, but not embodied in, any goods in respect of which any such requirements are in force, unless, if the component part were embodied in the goods, any requirement of the regulations, so far as the requirement relates to that part of the goods, applicable to the goods would be complied with.

(3) The provisions of this section shall not apply to a person—

- (a) where he is supplying the goods or component parts as scrap, that is to say, for the value of the materials of which the goods or parts are composed and not for use as finished articles; or
- (b) in the case of goods or component parts which have been damaged by whatever cause, where he supplies the goods or component parts to a person who carries on a business of buying damaged goods and repairing or reconditioning them for resale, or to a person by whom the goods or parts were insured against damage;
- (c) in a case of letting on hire, where the letting is incidental to the letting of premises;
- (d) in a case of possession for the purpose of letting on hire, where possession is for the purpose of a letting which is to be incidental to the letting of premises;
- (e) in any case of letting, where the letting was lawful at the time when it began.

(4) Unless regulations under section 23U otherwise provide, subsections (1) and (2) of this section shall not, in respect of any requirement relating to the manufacture of goods or a component part of goods, apply in relation to goods or component parts manufactured in or imported into the State before the imposition of the requirement, or if it is so provided by such regulations shall not apply in relation to any such goods or component parts until a prescribed date.

(5) Regulations under section 23U may contain such other exemptions from the operation of subsections (1) and (2) of this section, applicable in such cases, as may be prescribed.

23W. (1) Any obligation imposed by or under section 23V on any person not to supply any goods or component part is a duty which is owed by him to any other person who may be affected by the contravention of or non-compliance with the requirement in question, and, subject to the defences and other incidents applying to actions for breach of statutory duty, a breach of that duty is actionable.

Breach of duty actionable. Inserted by No. 90 of 1978, s. 7.

(2) Any person who contravenes section 23V commits an offence against this Act.

Penalty: Five thousand dollars.

(3) It shall be a sufficient defence to a prosecution for an offence under this section by reason of a contravention of or failure to comply with any requirement imposed under section 23V in relation to the goods or component part in question if the person charged proves that he had reasonable cause to believe that all such requirements were satisfied.

Division 4.—General.

23X. (1) The Commissioner may authorize in writing any person approved by the Minister to carry out investigations for the purposes of this Part.

Authorized persons. Inserted by No. 90 of 1978, s. 7.

(2) A person authorized under subsection (1) of this section may at any reasonable time—

(a) enter any place—

(i) where any goods, which are subject to regulations made pursuant to section 23U, or component parts of any such goods are supplied, or where he has reasonable cause to believe that any such goods or parts are supplied; or

(ii) at which any goods that are the subject of a matter referred to the Committee pursuant to section 23L

Consumer Affairs.

or goods that are subject to any order made under this Part, are manufactured, prepared, or supplied, or at which he has reasonable cause to believe that any such goods are manufactured, prepared, or supplied;

- (b) inspect any such goods or component parts in that place;
- (c) take any such goods, or any component part apparently intended for, but not embodied in, any such goods, found in any such place;
- (d) examine with respect to matters under this Part any person employed or engaged in any such place; and
- (e) make such other examination and inquiries as he thinks necessary to ascertain whether the requirements of this Part are being complied with.

(3) Where a person authorized pursuant to subsection (1) of this section proposes to enter any place pursuant to subsection (2) of this section, he shall, before entering the place,—

- (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 under this Part;
- (b) display to the person, if any, affording him entry, a document signed by the Commissioner and certifying that he is authorized to carry out investigations for the purposes of this Part.

23Y. Where a body corporate is convicted of an offence against this Part, every person who at the time of the commission of the offence was a director or officer concerned in the management of the corporation and who authorized or permitted the commission of the offence shall be deemed to have committed the like offence and be liable to the penalty provided by this Act for that offence.

Offences.
Inserted by
No. 90 of
1978, s. 7.

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 of the Committee.

Secrecy.
Amended by
No. 110 of
1981, s. 9;
No. 2 of
1983, s. 4;
No. 72 of
1983, s. 4.

(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.

Penalty: Five hundred dollars.

(3) Nothing in subsection (2) prohibits a person who also exercises powers or performs duties or functions under the Petroleum Products Pricing Act 1983 from making a record of, or divulging or communicating to any person, any information referred to in that subsection in the course of the exercise of his powers or the performance of his duties or functions under that Act.

25. A member of the Committee, 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—

Liability of
members,
officers and
the Crown.
Substituted
by No. 52 of
1982, s. 2.

- (a) act done;
- (b) statement issued;

(c) advice, assistance or information given;

(d) default or omission made,

by the Committee, the Commissioner, or an officer of the Bureau in good faith in the course of the operations of the Committee or of the Bureau.

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 Committee, the Bureau or the Commissioner; or

(b) any person, or statutory body or authority, appointed or constituted under any law of the Commonwealth

Advertisements not to imply approval by Committee, Bureau or other authority. Inserted by No. 21 of 1975, s. 17. Amended by No. 90 of 1978, s. 8; No. 110 of 1981, s. 11.

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 Committee, the Bureau or the Commissioner under the laws of this State,

and includes—

- (c) the Chairman of the Committee or any other member of the Committee;
- (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 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.
Amended by No. 66 of 1980, s. 3; No. 110 of 1981, s. 12.

26. (1) The Commissioner shall submit to the Minister on or before each first day of October, a report on the activities 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.

Schedule.
Added by No. 90 of 1978, s. 9.

SCHEDULE.

Acts Prohibiting or Regulating the Supply of Goods.

The following enactments are specified for the purpose of section 23C—

Agricultural Products Act 1929.

Agriculture and Related Resources Protection Act 1976.

Bread Act 1982.

Clothes and Fabrics (Labelling and Sales) Act 1973.
Coal Mines Regulation Act 1946.
Construction Safety Act 1972.
Dried Fruits Act 1947.
Explosives and Dangerous Goods Act 1961.
Fertilizers Act 1977.
Filled Milk Act 1959¹.
Firearms Act 1973.
Fruit Cases Act 1919².
Health Act 1911.
Margarine Act 1940.
Motor Vehicle Dealers Act 1973.
Plant Diseases Act 1914.
Poisons Act 1964.
Radiation Safety Act 1975.
Road Traffic Act 1974.
Seeds Act 1981.
Spear-guns Control Act 1955.
Veterinary Preparations and Animal Feeding Stuffs
Act 1976.
Weights and Measures Act 1915.

¹ Repealed by Act No. 45 of 1980.

² Repealed by Act No. 61 of 1982.