

Western Australia

Consumer Affairs Act 1971

Reprinted as at 25 March 1999

Western Australia

Consumer Affairs Act 1971

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Defined Terms

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Western Australia

Consumer Affairs Act 1971

An Act to provide for the appointment of a Commissioner for Fair Trading, 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; No. 1 of 1985 s.4; No. 57 of 1997 s.39(1).]*

Part I — Preliminary

1. Short title

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

2. Commencement

This Act shall come into operation on a date to be fixed by proclamation¹.

[3. *Repealed by No. 110 of 1981 s.4.*]

4. Definitions

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

“**Commissioner**” means the Commissioner for Fair Trading referred to in 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;

- “Department”** means the department of the Public Service of the State principally assisting the Minister in the administration of this Act;
- “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 1912*², or
 - (ii) within the meaning of the *Motor Vehicle (Third Party Insurance) Act 1943*.
- (2) Notwithstanding the definition “consumer” in subsection (1), but subject to subsection (2a), 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

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- (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).
- (2b) On and after the coming into operation of Part 2 of the *Legal Practitioners Amendment (Disciplinary and Miscellaneous Provisions) Act 1992* the definition “services” shall be taken not to include a service to which Part IV of the *Legal Practitioners Act 1893* applies.
- (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 Affairs or the Commissioner for Consumer Protection and the Consumer Protection Bureau or the Bureau of Consumer Affairs shall, unless the context requires otherwise, be read and construed as references to the Commissioner for Fair Trading as defined by this Act and the Department as so defined, respectively.

[Section 4 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; No. 1 of 1985 s.5; No. 48 of 1992 s.57; No. 57 of 1997 s.39(2) and (3).]

5. Construction of Act

- (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 chief executive officer of the Department.

[Section 5 amended by No. 21 of 1975 s.6; No. 1 of 1985 s.6; No. 57 of 1997 s.39(4).]

[Part II (sections 6-14). Repealed by No. 110 of 1981 s.6.]

Part III — Commissioner for Fair Trading

[Heading inserted by No. 57 of 1997 s.39(5).]

15. Commissioner for Fair Trading

- (1) There shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* a Commissioner for Fair Trading and such other officers as are necessary to assist the Commissioner in carrying out his functions under this Act.
- (1a) Where an officer appointed to assist the Commissioner within the meaning of subsection (1) holds the office of Deputy Commissioner for Fair Trading under Part 3 of the *Public Sector Management Act 1994*, 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.

[Section 15 amended by No. 21 of 1975 s.9; No. 90 of 1978 s.6; No. 1 of 1985 s.8; No. 32 of 1994 s.3(2); No. 57 of 1997 s.39(6) and (7).]

15A. Duties of the Commissioner

- (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;

- (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 cooperate, associate or consult with organizations that have the power to make investigations of the nature referred to in subsection 1(a).

[Section 15A inserted by No. 110 of 1981 s.7.]

[16. Repealed by No. 1 of 1985 s.9.]

17. Functions of the Department

The functions of the Department are —

- (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;

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- (e) to advise and assist consumers who seek from the Department information or guidance on matters affecting their interests as consumers;
- [(f) deleted]*
- [(g) deleted]*
- (h) to encourage and undertake the dissemination of information concerning consumer affairs to producers, manufacturers and suppliers of goods or services;
- (i) to assist the Minister in the administration of this Act and of any other Act or provision thereof the administration of which is for the time being committed to the Minister by the Governor;
- (j) to perform such other functions as are imposed on the Department by this Act or any other Act.

[Section 17 amended by No. 110 of 1981 s.8; No. 1 of 1985 ss.10 and 16.]

18. Power of Commissioner to institute or defend legal proceedings on behalf of consumers

- (1) Where after a complaint or matter has been made or referred to the Department 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 \$40 000, 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) 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), 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 charged to the Consolidated Fund

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and this Act, without any further appropriation, is sufficient authority for the payment of the money.

[Section 18 amended by No. 21 of 1975 s.11; No. 1 of 1985 s.16; No. 17 of 1988 s.4; No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

19. Power of Commissioner to investigate, inquire and obtain information

(1) For the purposes of carrying out any investigation or inquiry in the course of carrying out his duties under this Act or the *Fair Trading Act 1987*, 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]

(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 subsection (1)(a) —

(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 subsection (1)(c) —
- (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 subsection (1)(a), 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 or the *Fair Trading Act 1987* to give the information or answer the question, as the case may be.
- (1d) Where under subsection (1)(a) or (c) 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

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required under this Act or the *Fair Trading Act 1987* 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 or the *Fair Trading Act 1987*;
 - (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.

[Section 19 amended by No. 21 of 1975 s.12; No. 17 of 1988 s.5.]

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

- (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.
- (2) Without prejudice to the provisions of section 11 of the *Evidence Act 1906*, where a person is by virtue of this Act or the *Fair Trading Act 1987* 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 section 21(1)(b).

[Section 20 amended by No. 21 of 1975 s.13; No. 17 of 1988 s.5.]

21. Failure to supply information

- (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: \$1 000.

- (2) It is a defence in any proceeding for an offence under subsection (1)(a) or (c) 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 or the *Fair Trading Act 1987* 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

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Act or the *Fair Trading Act 1987* 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.

[Section 21 amended by No. 21 of 1975 s.14; No. 1 of 1985 s.11; No. 17 of 1988 s.5.]

22. Obstructing Commissioner

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: \$200.

23. “Commissioner” includes other officers

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 or the chief executive officer of the Department 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 or the *Fair Trading Act 1987*.

[Section 23 amended by No. 21 of 1975 s.15; No. 1 of 1985 s.12; No. 17 of 1988 s.5; No. 57 of 1997 s.39(8).]

23A. Judicial notice

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.

[Section 23A 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

[Heading inserted by No. 90 of 1978 s.7.]

23B. Definitions

In this Part, unless the contrary intention appears —

“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.

[Section 23B inserted by No. 90 of 1978 s.7; amended by No. 14 of 1996 s.4.]

23C. Application

- (1) The provisions of this Part shall not apply to goods or component parts which are not intended to be supplied in Western Australia.
- (2) In this section reference to the provisions of an Act includes reference to the provisions of any regulation, local law, by-law, Order in Council, proclamation, declaration and notice, made, given or promulgated under the provisions of that Act.
- (3) Subject to subsection (4), 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.

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- (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.

[Section 23C inserted by No. 90 of 1978 s.7; amended by No. 14 of 1996 s.4.]

23D. Schedule may be amended by regulations

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.

[Section 23D inserted by No. 90 of 1978 s.7.]

Division 2 — Prohibition or restriction on supply of dangerous goods to consumers.

[Heading inserted by No. 90 of 1978 s.7.]

23E. Consumer Products Safety Committee

- (1) There shall be established a committee to be known as the Consumer Products Safety Committee.
- (2) The Committee shall consist of 7 persons, appointed by the Minister.
- (3) Of the members —
- (a) one shall be an officer of the Department 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.

[Section 23E inserted by No. 90 of 1978 s.7; amended by No. 1 of 1985 s.16.]

23F. Committee may seek advice

- (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) 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.

[Section 23F inserted by No. 90 of 1978 s.7.]

23G. Appointment and term of office of members

- (1) A member of the Committee shall be appointed for a term of 12 months.
- (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 Department.

[Section 23G inserted by No. 90 of 1978 s.7; amended by No. 1 of 1985 s.16.]

23H. Minister may remove members

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

[Section 23H inserted by No. 90 of 1978 s.7.]

23I. Deputies

- (1) The Minister may appoint an officer of the Department 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.
- (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) 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.

[Section 23I inserted by No. 90 of 1978 s.7; amended by No. 1 of 1985 s.16.]

23J. Decisions of the Committee

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

[Section 23J inserted by No. 90 of 1978 s.7.]

23K. Remuneration

- (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) shall not apply to the Chairman or Deputy of the Chairman of the Committee.

[Section 23K inserted by No. 90 of 1978 s.7.]

23L. References of questions to the Committee

- (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), he shall cause particulars of the matter to be published in a newspaper circulating in the State.

[Section 23L inserted by No. 90 of 1978 s.7.]

23M. Committee to report to Commissioner

- (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) 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.

[Section 23M inserted by No. 90 of 1978 s.7.]

23N. Commissioner to assist investigations

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

- (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.

[Section 23N inserted by No. 90 of 1978 s.7.]

230. Powers of Committee in investigating referred questions

- (1) The Committee, in considering the question —
 - (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), the Committee shall act in accordance with any general directions which may be given it by the Minister.

[Section 23O inserted by No. 90 of 1978 s.7.]

23P. Attendance of witnesses and production of documents

- (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) 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

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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); 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: \$500.

[Section 23P inserted by No. 90 of 1978 s.7.]

23Q. Interim orders

- (1) Where the Minister or Commissioner refers any question to the Committee under section 23L(1) 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 28 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 section 23L(1), 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), 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 28 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 28 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.

[Section 23Q inserted by No. 90 of 1978 s.7.]

23R. Commissioner may make orders prohibiting or restricting supply of goods

- (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.
- (2) In subsections (3) and (4), “**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 Committee, the Department 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 section 23L(1) 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 section 23L(1) 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.

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Division 2 Prohibition or restriction on supply of dangerous goods to consumers.

s. 23S

- (8) Any objection —
- (a) shall be made within 14 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 14 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.

[Section 23R inserted by No. 90 of 1978 s.7; amended by No. 1 of 1985 ss.13 and 16.]

23S. Offences

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

Penalty: \$5 000.

[Section 23S inserted by No. 90 of 1978 s.7.]

23T. Action for breach of statutory duty

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.

[Section 23T inserted by No. 90 of 1978 s.7.]

Division 3 — Imposition of safety requirements by regulation

[Heading inserted by No. 90 of 1978 s.7.]

23U. Regulations for safety requirements

- (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) 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).

[Section 23U inserted by No. 90 of 1978 s.7.]

23V. Prohibition on supply of goods not complying with regulations

- (1) Subject to the provisions of this section, a person shall not supply any goods in respect of which or a component part of

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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.

- (2) Subject to the provisions of subsection (3), 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) 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), applicable in such cases, as may be prescribed.

[Section 23V inserted by No. 90 of 1978 s.7.]

23W. Breach of duty actionable

- (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.
- (2) Any person who contravenes section 23V commits an offence against this Act.
Penalty: \$5 000.
- (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.

[Section 23W inserted by No. 90 of 1978 s.7.]

Division 4 — General

[Heading inserted by No. 90 of 1978 s.7.]

23X. Authorized persons

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

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- (2) A person authorized under subsection (1) 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 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) proposes to enter any place pursuant to subsection (2), 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.

[Section 23X inserted by No. 90 of 1978 s.7.]

23Y. Offences

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.

[Section 23Y inserted by No. 90 of 1978 s.7.]

Part IV — Miscellaneous

24. Secrecy

- (1) This section applies to any person who is or has been the Commissioner, an officer, whether permanent or temporary, of the Department or the former Bureau of Consumer Affairs or a member of the Committee.
- (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: \$500.
- (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.

[Section 24 amended by No. 110 of 1981 s.9; No. 2 of 1983 s.4; No. 72 of 1983 s.4; No. 1 of 1985 s.14.]

25. Liability of members, officers and the Crown

Subject to the *Chattel Securities Act 1987*, a member of the Committee, the Commissioner and any officer of the Department is not personally liable, and the Crown in right of the State is not liable, for any —

- (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 Department in good faith in the course of the operations of the Committee or of the Department.

[Section 25 inserted by No. 52 of 1982 s.2; amended by No. 1 of 1985 s.16; No. 101 of 1987 s.32.]

25A. Advertisements not to imply approval by Committee, Department or other authority

- (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: \$500.

- (2) In this section —

“consumer affairs authority” means —

- (a) the Committee, the Department or the Commissioner;
or
- (b) any person, or statutory body or authority, appointed or constituted under any law of the Commonwealth

s. 25A

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 Department 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 Department;
- (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.

[Section 25A inserted by No. 21 of 1975 s.17; amended by No. 90 of 1978 s.8; No. 110 of 1981 s.11; No. 1 of 1985 s.16.]

26. Application of *Financial Administration and Audit Act 1985*

The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of departments apply to and in respect of the Department and its operations.

[Section 26 inserted by No. 98 of 1985 s.3.]

27. Regulations

- (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 \$200 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

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 1973³.

Construction Safety Act 1972⁴.

Dried Fruits Act 1947.

Explosives and Dangerous Goods Act 1961.

Fertilizers Act 1977.

Filled Milk Act 1959⁵.

Firearms Act 1973.

Fruit Cases Act 1919⁶.

Health Act 1911.

Margarine Act 1940⁷.

Mines Safety and Inspection Act 1994.

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.

[Schedule inserted by No. 90 of 1978 s.9; amended by No. 62 of 1994 s.109.]

Notes

¹ This reprint is a compilation as at 25 March 1999 of the *Consumer Affairs Act 1971* and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Consumer Affairs Act 1971</i>	68 of 1971	22 December 1971	11 August 1972 (see section 2 and <i>Gazette</i> 11 August 1972 p.3102)	
<i>Consumer Protection Act Amendment Act 1975</i>	21 of 1975	13 May 1975	23 May 1975 (see section 2 and <i>Gazette</i> 23 May 1975 p.1395)	
<i>Consumer Affairs Act Amendment Act 1978</i>	90 of 1978	8 November 1978	8 November 1978	
<i>Consumer Affairs Amendment Act 1980</i>	66 of 1980	26 November 1980	26 November 1980	
<i>Consumer Affairs Amendment Act 1981</i>	110 of 1981	4 December 1981	11 December 1981 (see section 2 and <i>Gazette</i> 11 December 1981 p.5053)	
<i>Consumer Affairs Amendment Act (No. 2) 1982</i>	52 of 1982	6 September 1982	6 September 1982	
<i>Acts Amendment (Prevention of Excessive Prices) Act 1983, Part II</i>	2 of 1983	25 March 1983	25 March 1983 (see section 2 and <i>Gazette</i> 25 March 1983 p.1059)	
<i>Consumer Affairs Amendment Act 1983</i>	24 of 1983	1 December 1983	1 December 1983	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Prevention of Excessive Prices) Act (No. 2) 1983, Part II</i>	72 of 1983	22 December 1983	30 December 1983 (see section 2)	
<i>Acts Amendment (Consumer Affairs) Act 1985, Part II</i>	1 of 1985	8 March 1985	Sections 3-9, 13, 14, 16 deemed operative 6 April 1983; sections 10, 12, 15, operative 8 March 1985; section 11 operative 5 April 1985 (see section 2)	
<i>Acts Amendment (Financial Administration and Audit) Act 1985, section 3</i>	98 of 1985	4 December 1985	1 July 1986 (see section 2)	
<i>Chattel Securities Act 1987, section 32</i>	101 of 1987	18 December 1987	29 August 1988 (see section 2 and <i>Gazette</i> 5 August 1988 p.2583)	
<i>Acts Amendment and Repeal (Fair Trading) Act 1988, Part 2</i>	17 of 1988	6 September 1988	9 September 1988 (see section 2 and <i>Gazette</i> 9 September 1988 p.3518)	
<i>Legal Practitioners Amendment (Disciplinary and Miscellaneous Provisions) Act 1992, Part 6</i>	48 of 1992	10 December 1992	1 February 1993 (see section 3 and <i>Gazette</i> 26 January 1993 p.823.)	

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Financial Administration Legislation Amendment Act 1993, section 11</i>	6 of 1993	27 August 1993	Deemed operative 1 July 1993 (see section 2)	
<i>Acts Amendment (Public Sector Management) Act 1994, section 3(2)</i>	32 of 1994	29 June 1994	1 October 1994 (see section 2 and <i>Gazette</i> 30 September 1994 p.4948)	
<i>Mines Safety and Inspection Act 1994, section 109</i>	62 of 1994	7 November 1994	9 December 1995 (see section 2 and <i>Gazette</i> 8 December 1995 p.5935)	
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 June 1996	1 July 1996 (see section 2)	
<i>Financial Legislation Amendment Act 1996, section 64</i>	49 of 1996	25 October 1996	25 October 1996 (see section 2)	
<i>Statutes (Repeals and Minor Amendments) Act 1997, section 39</i>	57 of 1997	15 December 1997	15 December 1997 (see section 2)	Section 39(9): Savings ⁸

² Now see the *Workers' Compensation and Rehabilitation Act 1981*.

³ Repealed by Act No. 17 of 1988.

⁴ Repealed by Act No. 41 of 1987.

⁵ Repealed by Act No. 45 of 1980.

⁶ Repealed by Act No. 61 of 1982.

⁷ Repealed by Act No. 26 of 1991.

⁸ Section 39(9) of the *Statutes (Repeals and Minor Amendments) Act 1997* (Act No. 57 of 1997) reads as follows –

“

- (9) The person appointed and holding office under section 15(1) as the Commissioner for Consumer Affairs immediately before the commencement of this section continues to hold office after that commencement as the Commissioner for Fair Trading.

”

Defined Terms

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
It is not part of the Act.]*

Defined Term	Provision(s)
Commissioner	4(1)
Committee	4(1)
component part.....	23B
consumer affairs authority	23R(2), 25A(2)
consumer	4(1)
dangerous	23B
Department.....	4(1)
documents	4(1)
goods	4(1)
published	25A(2)
publishes	25A(2)
section	4(1)
services.....	4(1)
supply.....	23B
the corresponding order	23R(3)(a), 23R(4)(a)