

CONSUMER AFFAIRS.

No. 90 of 1978.

AN ACT to amend the Consumer Affairs Act,
1971-1975.

[Assented to 8th November, 1978.]

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

1. (1) This Act may be cited as the *Consumer Affairs Act Amendment Act, 1978*.

Short title
and
citation.

(2) In this Act the Consumer Affairs Act, 1971-1975 is referred to as the principal Act.

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as approved
for reprint
12th July,
1977.

(3) The principal Act as amended by this Act may be cited as the Consumer Affairs Act, 1971-1978.

Long title amended.

2. The long title to the principal Act is amended—

- (a) by deleting the word “and” where secondly occurring in line two; and
- (b) by inserting after the passage “Consumer Affairs,” in line four, the passage “to establish a Consumer Products Safety Committee,”.

Section 3 repealed and re-enacted.

3. Section 3 of the principal Act is repealed and re-enacted as follows—

Arrangement.

3. This Act is arranged as follows—

PART I.—PRELIMINARY, ss. 1-5.

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

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

PART IIIA.—CONSUMER PRODUCTS SAFETY COMMITTEE, ss. 23B-23Y.

Division 1.—Preliminary, ss. 23B-23D.

Division 2.—Prohibition or Restriction on Supply of Dangerous Goods to Consumers, ss. 23E-23T.

Division 3.—Imposition of Safety Requirements by Regulation, ss. 23U-23W.

Division 4.—General, ss. 23X and 23Y.

PART IV.—MISCELLANEOUS, ss. 24-27.

SCHEDULE.

Section 4 amended.

4. Subsection (1) of section 4 of the principal Act is amended by inserting below the interpretation “Commissioner” the following interpretation—

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

5. Section 9 of the principal Act is amended by repealing subsection (1) and substituting subsections as follows—

Section 9
amended.

(1) One member shall be appointed by the Governor to be the Chairman of the Council.

(1a) Subject to subsection (1b) of this section the Chairman shall hold that office for the term of his appointment as a member but he is eligible for re-appointment as Chairman if he is re-appointed as a member.

(1b) The office of Chairman becomes vacant if—

- (a) the person holding the office resigns the office by writing under his hand addressed to the Governor;
- (b) the person holding the office ceases to be a member; or
- (c) the Governor declares the office to be vacant. .

6. Section 15 of the principal Act is amended by adding after subsection (1) the following subsection—

Section 15
amended.

(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, 1904, 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. .

Part IIIA
added.

7. The principal Act is amended by inserting after section 23A a new Part as follows—

PART IIIA.—CONSUMER PRODUCTS SAFETY
COMMITTEE.

Division 1.—Preliminary.

Definitions.

23B. 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.

Application.

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.

(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.

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.

Schedule
may be
amended by
regulations.

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

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

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.

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.

Committee
may seek
advice.

(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.

Appoint-
ment and
term of
office of
members.

(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.

Minister
may remove
members.

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.

Deputies.

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.

(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.

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.

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.

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.

References
of questions
to the
Committee.

(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.

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

Committee
to report to
Commis-
sioner.

- (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.

Commissioner to assist investigations.

23N. 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.

Powers of Committee in investigating referred questions.

23O. (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) of this section, the Committee shall act in accordance with any general directions which may be given it by the Minister.

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—

Attendance
of wit-
nesses and
production
of docu-
ments.

- (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.

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*.

Interim
orders.

(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.

Commis-
sioner.
may make
orders
prohibiting
or restrict-
ing supply
of goods.

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.

(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.

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

Offences.

Penalty: Five thousand dollars.

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.

Action for
breach of
statutory
duty.

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

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—

Regulations
for safety
require-
ments.

- (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).

Prohibition
on supply
of goods not
complying
with
regulations.

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.

(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.

(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.

Authorized
persons.

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

(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 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. .

Offences.

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. .

**Section 25A
amended.**

8. Subsection (2) of section 25A of the principal Act is amended as to the interpretation “consumer affairs authority”—

- (a) by adding after the passage “the Council,” in line one of paragraph (a) the passage “the Committee,”; and
- (b) by adding after the passage “the Council,” in line nine of paragraph (b), the passage “the Committee,”.

9. The principal Act is amended by adding after section 27 a schedule as follows—

Schedule
added.

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, 1903.
 - 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, 1959.
 - Firearms Act, 1973.
 - Fruit Cases Act, 1919.
 - 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, 1950.
 - Spear-guns Control Act, 1955.
 - Veterinary Preparations and Animal Feeding Stuffs Act, 1976.
 - Weights and Measures Act, 1915.
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