

CONSUMER PROTECTION.

No. 21 of 1975.

AN ACT to amend the Consumer Protection Act,
1971.

[Assented to 13th May, 1975.]

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 Protection Act Amendment Act, 1975.* Short title and citation.

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

(3) The principal Act as amended by this Act may be cited as the Consumer Affairs Act, 1971-1975.

Commence-
ment.

2. The provisions of this Act shall come into operation on such date or dates as is or are, respectively, fixed by proclamation.

Long title
amended.

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

(a) by deleting the words “Consumer Protection Bureau” in line two, and substituting the words “Bureau of Consumer Affairs”; and

(b) by deleting the word “Protection” in line four, and substituting the word “Affairs”.

Section 3
amended.

4. Section 3 of the principal Act is amended by deleting the words “CONSUMER PROTECTION BUREAU AND COMMISSIONER FOR CONSUMER PROTECTION” in lines four and five, and substituting the words “BUREAU OF CONSUMER AFFAIRS AND COMMISSIONER FOR CONSUMER AFFAIRS”.

Section 4
amended.

5. Section 4 of the principal Act is amended—

(a) by adding after the section number “4.” the subsection designation “(1)”;

(b) by deleting the words “Consumer Protection Bureau” in the definition “Bureau”, and substituting the words “Bureau of Consumer Affairs”;

(c) by deleting the word “Protection” in the definition “Commissioner”, and substituting the word “Affairs”;

(d) by deleting the definition “consumer” and substituting a definition as follows—

“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; ; and

(e) by adding subsections as follows—

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

- (a) goods purchased or taken on hire or lease by him, or of which he is a potential purchaser, hirer or lessee;
- (b) a service used by him, or of which he is a potential user;

- (c) an estate or interest in land or a building purchased by him, or of which he is a potential purchaser; or
- (d) any land or building or part of a building of which he becomes the tenant or lessee, or is a potential tenant or lessee,

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

(3) References, however expressed, in any other Act or in any regulation, notice, proclamation, or statutory instrument of any kind made, published or in force under this or any other Act to the Commissioner for Consumer Protection and the Consumer Protection Bureau shall, unless the context requires otherwise, be read and construed as references to the Commissioner for Consumer Affairs appointed under this Act and the Bureau of Consumer Affairs established under this Act, respectively. .

Section 5
amended.

6. Section 5 of the principal Act is amended by deleting the words "the Secretary for Labour in the department of the State known as the Department of Labour" in lines three, four and five of subsection (2), and substituting the words "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".

Section 6
amended.

7. Section 6 of the principal Act is amended by deleting paragraph (a) of subsection (2) and substituting a paragraph as follows—

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

8. The principal Act is amended by deleting the heading to Part III and substituting a heading as follows—

Heading to
Part III
amended.

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

9. Section 15 of the principal Act is amended—

Section 15
amended.

(a) by deleting the word “Protection” in line two of subsection (1) and substituting the word “Affairs”; and

(b) by adding after subsection (4) subsections as follows—

(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. .

10. Section 16 of the principal Act is amended by deleting the words “Consumer Protection Bureau” in line two of subsection (1), and substituting the words “Bureau of Consumer Affairs”.

Section 16
amended.

11. Section 18 of the principal Act is amended by deleting the words “two thousand five hundred” in line ten of subsection (1) and substituting the words “five thousand”.

Section 18
amended.

Section 19
amended.

12. Section 19 of the principal Act is amended—

- (a) by deleting paragraph (b) of subsection (1);
- (b) by deleting the passage “by notice in writing,” in line one of paragraph (c) of subsection (1);
- (c) by adding after subsection (1) subsections as follows—

(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;
- (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. .

Section 20
amended.

13. Section 20 of the principal Act is amended—

- (a) by deleting the words commencing with the word “and” in line six of subsection (1) and ending with the word “be” in the last line of that subsection;
- (b) by deleting the words “answer any question” in line seven of subsection (2), and substituting the words “comply with that requirement”; and
- (c) by deleting the words “answer given” in line ten of subsection (2), and substituting the passage “information or answer given, or document produced.”

Section 21
amended.

14. Section 21 of the principal Act is amended—

- (a) by deleting paragraph (a) of subsection (1) and substituting a paragraph as follows—
 - (a) fails to give that information or answer that question at or within the time specified in that requirement; ;
- (b) by deleting paragraph (c) of subsection (1) and substituting a paragraph as follows—
 - (c) fails to produce that document at or within the time specified in that requirement, ; and
- (c) by repealing subsection (2) and re-enacting that subsection as follows—
 - (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.

15. Section 23 of the principal Act is amended by deleting the words "investigate any matter or matters specified in the written authority" in the last two lines, and substituting the words "carry out investigations and inquiries for the purposes of this Act".

Section 23
amended.

16. The principal Act is amended by adding after section 23 a section as follows—

Section 23A
added.

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.

Section 25A
added.

17. The principal Act is amended by adding after section 25 a section as follows—

Advertisements not to imply approval by Council, Bureau or other authority.

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

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

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

Penalty: Five hundred dollars.

(2) In this section—

“consumer affairs authority” means—

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

that State or Territory similar to those of the Council, the Bureau or the Commissioner under the laws of this State,

and includes—

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

“published” includes—

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

and “publishes” has a corresponding meaning. .