

CONSUMER PROTECTION (AMENDMENT) ACT.

New South Wales



ANNO VICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. 25, 1972.

An Act to make further provisions with respect to the functions of the Consumer Affairs Bureau and the powers, authorities, duties and functions of certain officers under the Consumer Protection Act, 1969; for this purpose and for other purposes to amend that Act; and for purposes connected therewith. [Assented to, 11th April, 1972.]

BE

Consumer Protection (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by No. 25, 1972
and with the advice and consent of the Legislative
Council and Legislative Assembly of New South Wales in
Parliament assembled, and by the authority of the same, as
follows :—

1. This Act may be cited as the "Consumer Protection Short title.
(Amendment) Act, 1972".

2. The Consumer Protection Act, 1969, is amended— Amendment
of Act No.
28, 1969.

(a) by omitting from section two the figures "16" and Sec. 2.
by inserting in lieu thereof the figures and letter (Division
of Act.)
"16F";

(b) by inserting next after the definition of "Bureau" Sec. 6.
in section six the following new definition :— (Defini-
tions.)

"Commissioner" means the Commissioner for
Consumer Affairs appointed under this
Part;

(c) by inserting next before section thirteen the New sec.
12A.
following new section :—

12A. In this Division, except in so far as the Defini-
tions.
context or subject-matter otherwise indicates or
requires—

"complaint" means a complaint referred to in
subsection one of section sixteen of this
Act;

"investigating officer", in relation to an investi-
gation, means the person making the investi-
gation, or if two or more persons are
making the investigation, either or any of
those persons;

"investigation" means an investigation under this
Division.

(d)

Consumer Protection (Amendment).

No. 25, 1972

Sec. 14.
(Acting
Commissioner for
Consumer
Affairs.)

- (d) by omitting from section fourteen the words "for Consumer Affairs" wherever occurring;

Sec. 15.
(Consumer
Affairs
Bureau.)

- (e) by omitting from section fifteen the words "for Consumer Affairs";

Sec. 16.
(Functions
of Con-
sumer
Affairs
Bureau.)

- (f) (i) by omitting from subparagraph (ii) of paragraph (b) of section sixteen the words "where appropriate," and by inserting in lieu thereof the words "subject to this Division, to make an investigation of the matter the subject of any such complaint or";

- (ii) by inserting at the end of the same section the following new subsections:—

(2) The matter the subject of a complaint shall not be investigated or referred to a government department or instrumentality under this Division unless the Commissioner, or an officer of the Bureau from time to time authorised by the Commissioner for the purposes of this section, is of the opinion that it would be proper for the matter to be so investigated or for the complaint to be so referred, as the case may require.

(3) The matter the subject of a complaint may be investigated under this Division notwithstanding that the matter has been referred to a government department or instrumentality under this Division.

(4) A complaint may be referred to a government department or instrumentality under this Division notwithstanding that an investigation of the matter the subject of the complaint has been commenced or completed.

(g)

Consumer Protection (Amendment).

(g) by inserting next after section sixteen the following **No. 25, 1972**
new sections : —

New secs.
16A-16F.

16A. (1) An investigation may be made on behalf of the Bureau by the Commissioner, an officer of the Bureau or an inspector, or by any two or more of those persons. Investigating officers.

(2) The powers conferred on an investigating officer by this Division are additional to any powers conferred on him by any other provisions of this Act.

16B. An investigating officer making an investigation may, at any reasonable time, for the purposes of the investigation— Power of investigating officer to enter, etc.

- (a) enter any place where any goods are manufactured, prepared, or sold, or offered for hire, or any place where he has reason to believe that any goods are manufactured, prepared, or sold, or offered for hire;
- (b) inspect any goods in any such place;
- (c) in any such place, take any goods, whether manufactured or partly manufactured, paying a just price for them, or take samples of materials used in their manufacture; or
- (d) in any such place, make such examination as he considers to be necessary or desirable.

16C. (1) In this section, "specified", in relation to a requirement under this section imposed— Investigating officer may require furnishing of information and production of documents.

- (a) orally by an investigating officer—means specified by the officer; or
- (b) by notice in writing—means specified in the notice.

(2)

Consumer Protection (Amendment).

No. 25, 1972

(2) An investigating officer making an investigation—

(a) upon giving a person, not being a corporation, an oral or written warning of his obligation to comply with a requirement under this section—may, orally or by notice in writing, require that person—

(i) to furnish to the investigating officer, by writing signed by that person, any specified information;

(ii) to furnish to the investigating officer orally any specified information; or

(iii) to produce to the investigating officer any specified document; or

(b) upon giving a person, being a corporation, a written warning of its obligation to comply with a requirement under this section—may, by notice in writing, require that person—

(i) to furnish to the investigating officer through a competent officer of the corporation, by writing signed by that competent officer, any specified information;

(ii) to furnish to the investigating officer through such a competent officer orally any specified information; or

(iii) to produce to the investigating officer through such a competent officer any specified document,

which the investigating officer believes on reasonable grounds to relate to the subject-matter of the investigation, and may further require that person so to furnish that information, or produce that document, at a specified place and at or within a specified time.

(3)

Consumer Protection (Amendment).

(3) A person who refuses or fails to comply with a requirement under this section is guilty of an offence against this Act, unless he proves that in so far as he did not comply with the requirement he was not capable of complying with it. No. 25, 1972

(4) A person who, in purported compliance with a requirement under this section, knowingly furnishes information that is false or misleading in a material particular is guilty of an offence against this Act.

(5) A person is not excused from furnishing information or producing a document in compliance with a requirement under this section on the ground that the information or document might tend to incriminate him.

(6) Subject to subsection seven of this section, where a person furnishes any information or produces any document in compliance with a requirement under this section, the fact that he furnished that information or produced that document, and any statement or disclosure made by him in compliance with the requirement, are inadmissible in evidence against any person in any proceedings if the lastmentioned person objects to the admission thereof in evidence.

(7) Nothing in subsection six of this section applies—

- (a) in respect of proceedings for an offence against this Act arising under subsection three or four of this section; or
- (b) in respect of information furnished by a person as to his name or address or as to the ownership of any business.

Consumer Protection (Amendment).

No. 25, 1972

Copying
and im-
pounding
of docu-
ments.

16D. (1) In this section, "the prescribed person", in relation to any documents produced to an investigating officer, means the Commissioner, or a person authorised by the Commissioner for the purposes of this section, or an investigating officer.

(2) The prescribed person may inspect all documents produced in compliance with a requirement under section 16C of this Act, and may make copies of or take extracts from those documents.

(3) The prescribed person may, for the purposes of the investigation during the course of which a document was so produced, take, and retain for as long as is necessary for those purposes, possession of the document, but the person otherwise entitled to possession of the document is, if he so requests the prescribed person, entitled to be supplied, as soon as practicable, with a copy certified by the Commissioner to be a true copy, and such a certified copy shall be received in all courts as evidence as if it were the original.

(4) Until such a certified copy is supplied, the prescribed person shall, at such times and places as he thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by the person otherwise so entitled, to inspect and make copies of or extracts from the document.

Preserva-
tion of
secrecy.

16E. (1) In this section, "request for secrecy", in relation to any information or the contents of any document furnished or produced by a person, means a request that the information or the contents or any portion thereof be kept secret.

(2)

Consumer Protection (Amendment).

(2) Where a person, when furnishing any information or producing any document to an investigating officer in compliance with a requirement under section 16C of this Act, makes an oral or written request that is or substantially is a request for secrecy, a person who is engaged in the administration of this Act and who, in the course of his duty under this Act and knowing that that request was made in relation to that information or the contents of that document, or any portion thereof, discloses that information or those contents, or that portion, or any material part thereof, to—

- (a) another person who is so engaged, without informing him that the request was made; or
- (b) another person who is not so engaged, without the permission of the Minister specially given in relation to that disclosure,

is guilty of an offence against this Act.

(3) The Minister may grant the permission referred to in subsection two of this section only if he is satisfied that to do so would be in the public interest.

(4) Where—

- (a) a person who is, or was at any time, engaged in the administration of this Act, discloses to any person any information or any of the contents of any document furnished or produced in the course of an investigation;

(b)

Consumer Protection (Amendment).

No. 25, 1972

(b) that information or those contents came to his knowledge in consequence of his holding any position under this Act or of his being so engaged; and

(c) that disclosure was not made in the course of his duty under this Act,

that person is guilty of an offence against this Act.

(5) Subsection four of this section applies in respect of any information or the contents of any document, or any portion thereof, whether or not a request for secrecy was made in relation thereto.

(6) Nothing in subsection four of this section prohibits the Commissioner from communicating to the appropriate Minister or officer of the Crown in right of this or any other State or of the Commonwealth any information which the Commissioner considers should be so communicated for the purposes of the administration of any law of this or any other State or of the Commonwealth.

(7) Where, but for the foregoing provisions of this section, a person would be compellable to answer any question in any proceedings, that person shall, notwithstanding those provisions, be compellable to answer that question in those proceedings.

Use of
services
of govern-
ment de-
partments
or instru-
mentalities.

16F. The Commissioner may, for purposes connected with his powers, authorities, duties or functions under this Act, arrange, with the approval of the Minister administering any government department or instrumentality, for the use of the services of any officer or employee of the department or instrumentality.

(h)

Consumer Protection (Amendment).

- (h) by omitting from section seventeen the words "for No. 25, 1972 Consumer Affairs" wherever occurring;

Sec. 17.
(Liability
of members
and
officers.)

- (i) by inserting next after section fifty-five the following new section:—

New sec.
55A.

55A. (1) In this section, "officer" means an officer of the Consumer Affairs Bureau, and includes the Commissioner for Consumer Affairs.

Exercise of
powers by
Commis-
sioner for
Consumer
Affairs and
officers of
Bureau.

(2) An officer shall not—

- (a) exercise any power under section 16B of this Act; or
- (b) orally impose any requirement under section 16C of this Act,

unless he has been provided by the Minister with a certificate of identification.

(3) An officer—

- (a) on exercising any power under section 16B of this Act in any place, shall, if so requested by any person apparently in charge of the place or of any work carried out therein, produce his certificate of identification; or
- (b) on orally imposing any requirement upon a person under section 16C of this Act, shall, if so requested by that person, produce his certificate of identification.

(4) A reference in subsections four and five (paragraph (c) excepted) of section fifty-five of this Act to an inspector includes a reference to an officer.

(j)

Consumer Protection (Amendment).

No. 25, 1972

Sec. 58.

(Evidentiary provisions.)

(j) by inserting at the end of section fifty-eight the following new subsection :—

(2) In all proceedings, whether under this Act or otherwise—

(a) a statement purporting to be signed by the Commissioner for Consumer Affairs—

(i) that an investigation made or being made by the Commissioner, an officer of the Consumer Affairs Bureau or an inspector, or by any two or more of those persons was made or being made under Division 3 of Part II of this Act; or

(ii) that at any date or during any period a person specified in the statement was an officer of the Consumer Affairs Bureau authorised by the Commissioner for the purposes of subsection two of section sixteen of this Act, or for the purposes of section 16D of this Act, as the case may require,

shall be prima facie evidence of the matter contained in the statement without proof of the signature or of the official character of the person by whom the statement purports to have been signed;

(b) a statement purporting to be signed by the Minister that he did not give his permission referred to in subsection two of section 16E of this Act in relation to a disclosure referred to in the statement shall be prima facie evidence of the matter contained in the statement without proof of the signature or of the official character of the person by whom the statement purports to have been signed; and

(c)

Consumer Protection (Amendment).

(c) it shall, wherever material, be presumed, No. 25, 1972
unless the contrary is proved, that—

- (i) an investigation of the nature referred to in subparagraph (i) of paragraph (a) of this subsection was made or was being made into a matter the subject of a complaint duly received by the Bureau under subsection one of section sixteen of this Act; and
 - (ii) the opinion referred to in subsection two of section sixteen of this Act had been duly formed in relation to the subject-matter of such an investigation.
-

FORESTRY,