

CONSUMER PROTECTION ORDINANCE 1978

TABLE OF PROVISIONS

Section

PART I—PRELIMINARY

1. Short title
2. Commencement
3. Repeal
4. Interpretation

PART II—CONSUMER AFFAIRS COUNCIL

5. Consumer Affairs Council
6. Functions of Council
7. Chairman and deputy chairman
8. Casual vacancies
9. Temporary vacancies
10. Presiding at meetings
11. Removal of member from office
12. Vacating office
13. Meetings of Council
14. Member to declare interest
15. Annual report

PART III—COMMISSIONER OF CONSUMER AFFAIRS

16. Commissioner of Consumer Affairs
17. Functions of Commissioner
18. Power of Commissioner

PART IV—DANGEROUS GOODS

19. Dangerous goods

PART V—MISCELLANEOUS

20. Protection for members of Council and Commissioner and his staff
21. Preservation of secrecy
22. Offences
23. Penalties
24. Saving of civil remedies
25. Fees and allowances
26. Regulations

CONSUMER PROTECTION ORDINANCE 1978

No. 41 of 1978

An Ordinance to establish a Consumer Affairs Council for the purpose of making investigations into matters affecting consumers and to make provision for matters incidental thereto

[Assented to 29 June 1978]

BE it ordained by the Legislative Assembly for the Northern Territory of Australia as follows:

PART I—PRELIMINARY

1. This Ordinance may be cited as the *Consumer Protection Ordinance 1978*. Short title

2. This Ordinance shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*. * Commencement

3. The *Consumers Protection Council Ordinance 1969* is repealed. Repeal

4. In this Ordinance, unless the contrary intention appears— Interpretation

“chairman” means the chairman for the time being of the Consumer Affairs Council and includes a person acting in that capacity;

“Commissioner” means the Commissioner of Consumer Affairs for the Northern Territory appointed under section 17 and includes a person acting in that capacity;

“consumer” means a person who buys or hires goods otherwise than for re-sale or letting on hire or in the course of a trade or business carried on by him or for whom services are supplied for fee or reward otherwise than in the course of a trade or business carried on by that person;

“Council” means the Consumer Affairs Council constituted under this Ordinance;

“employee” has the same meaning as in the *Public Service Ordinance*;

*The date fixed was 11 August 1978 (see *Northern Territory Government Gazette* No. 32 of 11 August 1978, page 10).

PART II—CONSUMER AFFAIRS COUNCIL

Consumer
Affairs
Council

5.(1) There shall be a Consumer Affairs Council comprised of not less than 6 or more than 10 members appointed by the Minister.

(2) Of the members of the Council—

- (a) at least 4 shall be consumers who are not engaged wholly or primarily in commerce or industry; and
- (b) not more than 2 shall be engaged in commerce or the manufacture of goods or the business of advertising.

(3) Each of the members referred to in sub-section (2) shall be appointed after consultation with such body or bodies as may represent the interests of the classes of persons whose interests that member is appointed as representing.

(4) Each member shall be appointed for a period not exceeding 3 years, but, on the termination of his period of appointment, is eligible for re-appointment.

Functions of
Council

6. The Council shall have the following functions:

- (a) to act as an advisory body to the Minister on matters affecting the interests of consumers;
- (b) to investigate and make recommendations to the Minister on matters calculated to protect the interests of consumers;
- (c) to investigate and make recommendations to the Minister on matters referred to it by the Minister;
- (d) to consult, and receive submissions from manufacturers, retailers, advertisers, other persons concerned with the provision and distribution of consumer goods or services, consumers and consumer organizations in respect of matters affecting the interests of consumers;
- (e) to disseminate information to the public relating to matters affecting the interests of consumers;
- (f) to affiliate and co-operate with organizations whether formed in the Territory or elsewhere having powers to investigate matters of interest to consumers or having as part of their objects the protection of the interests of consumers; and
- (g) to establish and maintain committees for such purposes as it thinks fit including the carrying out of its functions and appoint persons (including persons who are not members of the Council) to be members of such a committee.

Chairman and
deputy chair-
man

7.(1) The Minister shall appoint one of the members of the Council as chairman and, unless he sooner resigns the office, the chairman shall remain chairman for so long as he continues to be a member of the Council.

(2) As soon as practicable after each constitution of the Council the members of the Council shall elect from amongst their number a person to be deputy chairman of the Council.

(3) Unless he sooner resigns the office, or is designated chairman, the member so elected shall be deputy chairman for so long as he continues to be a member of the Council during his term of appointment as a member existing at the date of such election.

(4) The chairman or deputy chairman may resign his office as such by writing under his hand addressed to and delivered to the Minister.

8.(1) When a vacancy occurs in the office of a member of the Council before the expiration of his term of appointment the Minister shall, by notification published in the *Gazette*, appoint to the Council a person having a like qualification for membership of the Council to that of his predecessor in the office. Casual vacancies

(2) Unless he sooner vacates his office as prescribed by this Ordinance, a person appointed to fill such a casual vacancy shall hold office until the time when his predecessor's term of appointment would have expired.

(3) When a vacancy occurs in the office of chairman of the Council before the expiration of the terms of appointment of the existing members of the Council the Minister shall, by notification published in the *Gazette*, designate another member of the Council to be chairman.

(4) Unless he sooner resigns the office, the person so designated shall be chairman for so long as he continues to be a member of the Council during his term of appointment as a member existing at the date of such designation.

(5) When a vacancy occurs in the office of deputy chairman of the Council before the expiration of the terms of appointment of the existing members of the Council, the members of the Council shall, as soon as practicable, elect from amongst their number a person to be deputy chairman.

9.(1) The Minister may, by notification in the *Gazette*, appoint any person having a like qualification for membership of the Council as the member he is intended to replace to act in the place of any member of the Council who is, or is likely to be, prevented by illness or absence from performing his duty as a member. Temporary vacancies

(2) A person appointed pursuant to sub-section (1) is an alternative member of the Council and, when acting in place of a member, shall be deemed to be a member of the Council, but shall not, by reason of his being or acting as an alternative member be chairman or deputy chairman of the Council.

10.(1) The chairman of the Council or, if he is not present, the deputy chairman of the Council shall preside at all meetings of the Council. Presiding at meetings

(2) If both the chairman and deputy chairman are absent from a meeting of the Council, the members present at that meeting shall elect a member from amongst those present to preside at the meeting during the absence of both the chairman and deputy chairman and the person so elected has, during such absence, all the powers of the chairman.

Removal of
member from
office

11.(1) A member may resign his office by writing under his hand addressed to the Minister.

(2) The Minister may remove a member from office for misbehaviour or incapacity.

(3) If a member—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) becomes of unsound mind;
- (c) is punished for an offence by imprisonment for one year or longer; or
- (d) is absent, except on leave granted by the Minister, from 3 consecutive meetings of the Council,

the Minister shall remove the member from office.

Vacating
office

12. If a member—

- (a) dies, or
- (b) ceases to have the qualifications required by this Ordinance to secure his appointment to the Council,

he shall be deemed to have vacated his office.

Meetings of
Council

13.(1) The Council shall meet as and when necessary but so that not more than 6 months shall elapse between any 2 consecutive meetings of the Council.

(2) Meetings of the Council may be convened by the chairman by notice in writing to the other members of the Council, and shall be held at the time and place specified in the notice.

(3) Where the Minister requests him to do so, the chairman shall convene a meeting of the council.

(4) At a meeting of the Council, one-half of the members for the time being of the Council constitute a quorum.

(5) A question arising at a meeting of the Council shall be determined by a majority of votes of the members present and voting.

(6) The chairman, deputy chairman or member presiding at a meeting of the Council has a deliberative vote only and, in the event of an equality of votes, the question shall be decided in the negative.

(7) The Council shall keep a record of its proceedings.

(8) Subject to this section, the procedure at meetings of the Council shall be as the Council determines.

(9) No act or proceeding of, or of the members of any committee of, the Council is invalidated by reason of—

- (a) a defect in the appointment or election of a member;
- (b) a disqualification of a member;
- (c) a defect in the convening of a meeting; or
- (d) a vacancy or vacancies in the membership of the Council.

14. A member of the Council having an interest other than as a consumer in any matter before the Council shall declare that interest to the chairman or, in his absence, the deputy chairman and shall not take part in any decision of the Council in respect of that matter. Member to declare interest

15.(1) The Commissioner shall submit annually to the Minister a report on his activities and, on behalf of the Council, a report of the activities of the Council. Annual report

(2) The Commissioner or the chairman shall not, in any report, furnished pursuant to this section, disclose—

- (a) any information with respect to a process, plant or equipment used in a business carried on by a person; or
- (b) information with respect to the financial affairs of a person, unless he is satisfied that it is in the public interest to do so.

(3) A copy of each report furnished under sub-section (1) shall be laid before the Legislative Assembly by the Minister within 3 sitting days of its receipt by him.

PART III—COMMISSIONER OF CONSUMER AFFAIRS

16.(1) There shall be a Commissioner of Consumer Affairs for the Northern Territory. Commissioner of Consumer Affairs

(2) The Minister shall appoint an employee to be the Commissioner.

17.(1) The functions of the Commissioner 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 investigate such complaints received and to take such action in respect of such complaints as seems proper to the Commissioner;
- Functions of the Commissioner

- (d) to receive complaints of fraudulent or deceptive practices in relation to matters which affect or are likely to affect the interests of consumers and to take such action as seems proper to the Commissioner;
- (e) to advise and assist consumers who seek from the Commissioner information or guidance on matters affecting their interests as consumers;
- (f) to arrange for investigations to be carried out on behalf of the Council;
- (g) to arrange for the collection, collation and furnishing to the Council of data to assist the Council in the performance of its function;
- (h) to carry out consumer education programmes;
- (i) to issue consumer guidelines to the public;
- (j) to encourage and undertake the dissemination of information concerning consumer affairs to producers, manufacturers, traders and suppliers of goods or services.
- (k) to perform such other functions that he is permitted or required to perform under any other law in force in the Territory;
- (l) give such assistance to the Council in carrying out its functions as the Council requires;
- (m) make available to the Council and to its members any information that comes into his possession on matters affecting the interests of consumers; and
- (n) attend a meeting of the Council when requested by the chairman of the Council so to do.

(2) No provision of this section shall be construed to require the Commissioner or an employee under his direction and control to give or hold himself out as ready or competent to give to any consumer advice touching the rights and liabilities in law of the consumer concerning any matter.

(3) The Commissioner, attending a meeting of the Council pursuant to sub-section (1)(n), has no power to vote at that meeting.

(4) The Commissioner may institute and defend proceedings in a court of competent jurisdiction for or on behalf of a consumer or a class of consumers.

(5) The Commissioner may indemnify for any award of costs, a consumer or the representative of a class of consumers, who institutes or defends an action by or against himself alone or as such a representative and may pay the costs incurred by that person in those proceedings.

(6) Where a dispute arises concerning a consumer the Commissioner may, with the consent of all parties, act as or nominate an arbitrator to the dispute.

- 18.**(1) The Commissioner may require any person—
- (a) to furnish to him such information as he requires; or
 - (b) to answer any question put to that person.
- (2) The Commissioner may require that the information be furnished or the question be answered—
- (a) orally or in writing, and in either case at a place specified by him; or
 - (b) on oath or affirmation before the Commissioner (he being empowered for this purpose to administer an oath or affirmation).
- (3) A person shall not—
- (a) fail to furnish the information or to answer the question as required; or
 - (b) furnish information or make an answer that is false in any particular.
- (4) A person shall not be entitled to refuse information or to answer any question as required on the ground only that the information or answer may tend to incriminate him or render him liable to any penalty but, if he claims that the answer to any question might incriminate him and but for this sub-section he would have been entitled to refuse to answer the question, the answer to the question shall not be used in any subsequent criminal proceedings except in the case of a charge against him for an offence against sub-section (3)(b) committed by him in answer to that question.
- (5) A person shall not be taken to have committed an offence against this Ordinance by reason of a contravention of sub-section (3)(a) unless, prior to the contravention, he was warned by the Commissioner that he is by this Ordinance obliged to furnish information required of him or, as the case may be, answer questions asked of him under this Ordinance.
- (6) An answer made by any person as to his name, address or ownership of any business shall be admissible in evidence in any proceeding taken against him under this Ordinance.
- (7) A reference to the Commissioner in this section shall be construed to include reference to a person authorized in writing by him to seek information from or to ask questions of any person concerning the matter specified in the writing.

Power of
Commissioner

PART IV—DANGEROUS GOODS

- 19.**(1) The Commissioner may, or at the direction of the Minister, shall cause an investigation into the nature of goods of a particular class or description or the nature of particular goods to establish whether or not the use of those goods may by reason of their nature cause death or injury to the body or health of any person, whether directly or indirectly.

Dangerous
goods

(2) Where an investigation is commenced under sub-section (1), the Minister may make an interim order in writing banning the supply or sale of goods described in the order for a period not exceeding 28 days.

(3) Where the Commissioner reports to the Minister on the investigation carried out under sub-section (1) that goods are likely to cause death, or injury to the body or health, of any person, whether directly or indirectly, the Minister may make an order or further order in writing prohibiting or restricting the supply or sale of those goods as are specified in the order upon such terms and conditions as the Minister thinks fit.

(4) Notice of an order made under sub-section (2) or (3) shall be published in the *Gazette*.

(5) The Minister may by notice in the *Gazette* suspend, vary or revoke an order or the terms thereof made under this section.

(6) The Minister may, at any time, refer the subject of an investigation under sub-section (1) or an order under this section to the Council for a report.

(7) A person shall not contravene an order or an interim order made under this section.

Penalty: 500 dollars or imprisonment for 3 months, or both.

PART V—MISCELLANEOUS

Protection for
members of
Council and
Commissioner
and his staff

20.(1) A civil action or proceeding does not lie against the chairman, a member of the Council, the Commissioner or any employee acting under the direction or control of the Commissioner for or in respect of any act or thing done in good faith by him in his capacity as chairman, member, Commissioner or employee acting under the direction or control of the Commissioner.

(2) An act or thing shall be deemed to have been done in good faith if the person by whom the act or thing was done was not actuated by ill-will to the person affected or by any other improper motive.

(3) The protection afforded by sub-section (1) extends to the publication by another person of the contents of a report or statement by the Commissioner or the chairman made pursuant to and in accordance with this Ordinance.

Preservation
of secrecy

21.(1) Subject to this Ordinance, a person who is or was at any time a member of the Council, or the Commissioner, or an employee under the direction of the Commissioner, shall not, except in the course of his duty under this Ordinance, directly or indirectly communicate any information that came to his knowledge in consequence of his holding that appointment or position.

(2) The provisions of sub-section (1), shall not be construed to operate so as to—

- (a) prohibit the Commissioner or any person thereunto authorized in writing by him from communicating to the appropriate Departmental Head or other official of the Crown whether of the Commonwealth, a State or a Territory of the Commonwealth, information which the Commissioner considers that should be communicated for the purpose of the administration of any law of Australia, the Territory or of such other State;
- (b) prohibit any person referred to in that sub-section, when called as a witness in a judicial proceeding, from answering any question that he is compellable to answer in that proceeding; or
- (c) restrict the power of the Commissioner or the chairman to make a report under this Ordinance.

(3) In no case shall a person referred to in sub-section (1) disclose or be compelled to disclose the source of information that came to his knowledge in consequence of his holding an appointment or position under this Ordinance.

22.(1) A person who contravenes or fails to comply with a provision of this Ordinance is guilty of an offence. Offences

(2) A proceeding for an offence against this Ordinance may not be instituted except with the consent of the Crown Solicitor.

23. A person guilty of an offence against this Ordinance, where no other penalty is provided, is liable to a penalty of 500 dollars or imprisonment for 3 months, or both. Penalties

24. No proceeding against, or conviction of, a person for an offence consisting of a contravention or a non-compliance with a provision of this Ordinance shall affect any civil right or remedy available against the offender independently of this Ordinance. Saving of civil remedies

25. The Administrator may determine the fees and allowances payable to members of the Council. Fees and allowances

26. The Administrator may make regulations not inconsistent with this Ordinance prescribing all matters required or permitted by this Ordinance to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance. Regulations
