



ANNO VICESIMO OCTAVO

# ELIZABETHAE II REGINAE

A.D. 1979

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## No. 52 of 1979

An Act to prescribe standards for and to regulate the safety and quality of goods, the provision of information in respect of goods and services and the packaging of goods; to repeal the Sale of Furniture Act, 1904-1975; the Goods (Trade Descriptions) Act, 1935-1969; the Textile Products Description Act, 1953-1972; the Packages Act, 1967-1972; the Footwear Regulation Act, 1969-1972; the Flammable Clothing Act, 1973; and for other purposes.

[Assented to 22nd March, 1979]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

### PART I

### PART I

#### PRELIMINARY

**Short title.**

1. This Act may be cited as the "Trade Standards Act, 1979".

**Commencement.**

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation made for the purposes of subsection (1) of this section, suspend the operation of any specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

**Arrangement.**

3. This Act is arranged as follows:—

PART I—PRELIMINARY

PART II—ADMINISTRATION

DIVISION I—THE TRADE STANDARDS ADVISORY COUNCIL

DIVISION II—GENERAL

- PART III—SAFETY STANDARDS  
 PART IV—QUALITY STANDARDS  
 PART V—INFORMATION STANDARDS  
 PART VI—PACKAGING STANDARDS  
 PART VII—MISCELLANEOUS

4. (1) The Sale of Furniture Act, 1904-1975, is repealed. Repeal of  
certain Acts.
- (2) The Goods (Trade Descriptions) Act, 1935-1969, is repealed.
- (3) The Textile Products Description Act, 1953-1972, is repealed.
- (4) The Packages Act, 1967-1972, is repealed.
- (5) The Footwear Regulation Act, 1969-1972, is repealed.
- (6) The Flammable Clothing Act, 1973, is repealed.
5. (1) In this Act, unless the contrary intention appears— Interpretation.
- “the Council” means the Trade Standards Advisory Council established under Part II of this Act:
- “dangerous goods” means goods for the time being declared by proclamation under Part III of this Act to be dangerous goods:
- “goods” means any tangible personal property:
- “information standard” means a regulation made under Part V of this Act:
- “label” means affix or annex information to, mark information on, or incorporate information with, anything:
- “manufacture” includes assemble, process or recondition:
- “materially inaccurate” in relation to any information means—
- (a) inaccurate;  
or  
(b) misleading or likely to mislead,
- in a material respect and to a material degree by reason of anything contained therein or omitted therefrom:
- “package” in relation to any goods means—
- (a) wholly or partly enclose the goods in any form of covering or container for supply to any person;  
or  
(b) authorize, direct, cause, suffer or permit the act referred to in paragraph (a) of this definition:
- “packaging standard” means a regulation made under Part VI of this Act:
- “provide” in relation to information in respect of goods or services includes authorize, direct, cause, suffer or permit information to be provided in respect of goods or services:
- “quality standard” means a regulation made under Part IV of this Act:

“safety standard” means a regulation made under Part III of this Act:

“services” includes the conferring of any prescribed right or privilege:

“standard” means—

- (a) a safety standard;
  - (b) a quality standard;
  - (c) an information standard;
- or
- (d) a packaging standard:

“standards officer” means a person appointed to be a standards officer under Part II of this Act:

“supply”—

(a) in relation to any goods means—

- (i) sell;
- (ii) agree to sell;
- (iii) supply by way of barter or exchange;
- (iv) let on hire;
- (v) bail;
- (vi) supply or deliver;
- (vii) offer to do, or keep or have in possession for the purpose of doing, any of the acts referred to in subparagraphs (i) to (vi) of this paragraph;

or

- (viii) authorize, direct, cause, suffer or permit any of the acts referred to in subparagraphs (i) to (vii) of this paragraph;

or

(b) in relation to any services means—

- (i) supply or agree or offer to supply;

or

- (ii) authorize, direct, cause, suffer or permit any of the acts referred to in subparagraph (i) of this paragraph:

“vehicle” includes any kind of aircraft or vessel.

(2) For the purposes of this Act, goods that are attached to, or wrapped or wound around, anything shall be deemed to be packaged and the thing to which they are attached, or around which they are wrapped or wound, shall be deemed to be the covering or container in which they are packaged.

(3) For the purposes of this Act, a person provides information in relation to goods—

- (a) if he labels the goods;
- (b) if he labels any covering or container in which the goods are packaged;

(c) if he places the information in any covering or container in which the goods are packaged;

(d) if he packages the goods in any covering or container that is labelled;

or

(e) if he provides the information in any other manner whether that manner is or is not similar to any manner of providing information referred to in paragraph (a), (b), (c) or (d) of this subsection.

(4) For the purposes of this Act, information shall be deemed to be in respect of goods if it would be taken by any reasonable person as referring directly or indirectly to the goods, or a class of goods that includes the goods, whether or not the goods are in existence at the time the information is provided.

(5) For the purposes of this Act, a person shall be deemed to provide information in respect of goods if he supplies goods in respect of which information is provided (whether by himself or any other person) in the manner referred to in paragraph (a), (b), (c) or (d) of subsection (3) of this section.

(6) For the purposes of this Act, a person provides information in respect of services if he provides the information in such a manner that it would be taken by any reasonable person as referring directly or indirectly to the services, or a class of services that includes the services, whether or not—

(a) the services are being supplied;

or

(b) any physical thing that is or is to be supplied, or that is or is to be provided for use, in the course of supply of the services, is in existence,

at the time the information is provided.

6. This Act binds the Crown.

Act binds  
Crown.

7. (1) The provisions of this Act shall be in addition to and shall not derogate from the provisions of any other Act.

Saving of  
other remedies.

(2) The provisions of this Act shall not limit or affect any civil remedy at law or in equity.

PART II

## PART II

## ADMINISTRATION

DIVISION I

## DIVISION I—TRADE STANDARDS ADVISORY COUNCIL

**Establishment  
of Council.**

8. (1) A body shall be established entitled the "Trade Standards Advisory Council".

(2) The Council shall consist of five members appointed by the Governor of whom—

- (a) one shall be a person nominated by the Minister, who shall be the chairman of the Council;
- (b) one shall be a person nominated by the Minister having the administration of the South Australian Health Commission Act, 1975-1979;
- (c) one shall be appointed from a panel of three persons nominated by the Chamber of Commerce and Industry, South Australia, Incorporated;
- (d) one shall be appointed from a panel of three persons nominated by the Standards Association of Australia (South Australian Branch);

and

- (e) one shall be a person nominated by the Minister who, in the opinion of the Minister, represents the interests of consumers.

(3) If a panel of persons is not nominated by a body for the purposes of subsection (2) of this section within thirty days after the receipt by that body of a written request from the Minister so to do, the Governor may appoint a person nominated by the Minister to be a member of the Council and that person shall be deemed to be duly appointed upon the nomination of that body.

**Terms and  
conditions  
of office.**

9. (1) Subject to this Act, a member of the Council shall hold office for a term of three years upon such conditions as the Governor determines, and, upon the expiration of his term of office, shall be eligible for re-appointment.

(2) The Minister may appoint an appropriate person to be a deputy of a member of the Council and the deputy of any member while acting in the absence of the member of whom he is, or has been appointed, deputy, shall be deemed to be a member of the Council and shall have all the powers, authorities, duties and obligations of that member.

(3) The Governor may remove a member of the Council from office for—

- (a) mental or physical incapacity;
- (b) neglect of duty;
- (c) dishonourable conduct;

or

- (d) any other cause considered sufficient by the Governor.

(4) The office of a member of the Council shall become vacant if—

- (a) he dies;
- (b) his term of office expires;
- (c) he resigns by written notice addressed to the Minister;
- (d) he fails to attend three consecutive meetings of the Council without leave of the chairman of the Council;

or

- (e) he is removed from office by the Governor pursuant to subsection (3) of this section.

(5) Upon the office of a member of the Council becoming vacant, a person shall be appointed, in accordance with this Act, to the vacant office, but where the office of a member becomes vacant before the expiration of the term for which he was appointed, a person appointed in his place shall be appointed only for the balance of the term of his predecessor.

10. A member of the Council shall be entitled to receive such allowances and expenses as may be determined by the Governor. Allowances and expenses.

11. (1) Three members of the Council shall constitute a quorum of the Council and no business shall be transacted at a meeting of the Council unless a quorum is present. Quorum, etc.

(2) The chairman of the Council shall preside at a meeting of the Council at which he is present and in the absence of both the chairman and his deputy from a meeting, the members of the Council present shall decide who is to preside at that meeting.

(3) A decision carried by the votes of a majority of the members of the Council present at a meeting shall be a decision of the Council.

(4) Each member of the Council shall be entitled to one vote on a matter arising for determination by the Council and the person presiding at the meeting of the Council shall, in the event of an equality of votes, have a second or casting vote.

(5) Subject to this Act, the business of the Council shall be conducted in a manner determined by the Council.

12. An act or proceeding of the Council shall not be invalid by reason only of a vacancy in its membership and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, an act or proceeding shall be as valid and effectual as if the member had been duly nominated or appointed. Validity of acts of the Council.

13. The function of the Council is to advise and counsel the Minister, either at the request of the Minister or upon its own motion, on any matter connected with administration of this Act, the prescription of standards or the declaration of goods to be dangerous goods. Function of the Council.

## PART II

## DIVISION II

## DIVISION II—GENERAL

Appointment  
of standards  
officers.

14. (1) The Governor may, by notice published in the *Gazette* appoint any person to be a standards officer for the purposes of this Act.

(2) The Minister shall provide each standards officer with a certificate of identification in the prescribed form.

(3) A standards officer shall produce his certificate at the request of any interested person.

Powers of  
standards  
officer.

15. (1) A standards officer may—

(a) enter into or upon any premises or place or stop and enter into or upon any vehicle, inspect the premises, place or vehicle and any goods in the premises, place or vehicle and open any container, package or other thing for the purpose of determining whether or not any provision of this Act is being or has been complied with;

(b) upon payment or tender of a reasonable price for any goods that he finds in any premises, place or vehicle, remove the goods from the premises, place or vehicle and retain the goods;

(c) seize and remove from any premises, place or vehicle any goods in relation to which he suspects upon reasonable grounds that an offence against this Act has been committed and, subject to this section, retain the goods;

(d) inspect and examine, analyse and test any goods for the purpose of determining whether or not any provision of this Act is being or has been complied with;

(e) require any person to answer a question put to him, whether that question is put to him directly or through an interpreter, for the purpose of determining whether or not any provision of this Act is being or has been complied with;

(f) search, copy and take extracts of, and, if necessary for that purpose, seize and remove from any premises, any books, documents or records of any kind, for the purpose of determining whether or not any provision of this Act is being or has been complied with;

and

(g) give such directions as are reasonably necessary for, or incidental to, the effective exercise of his powers under this section.

(2) In the exercise of his powers under this section, a standards officer may be accompanied by such other persons as he considers necessary or desirable in the circumstances.

(3) A person shall not hinder or obstruct a standards officer, or any person accompanying a standards officer, in the exercise of his powers under this section.

Penalty: Five hundred dollars.

(4) A person to whom a question is put under this section shall not refuse or fail to answer the question to the best of his knowledge, information or belief.

Penalty: Five hundred dollars.

(5) A person shall not be guilty of an offence against subsection (4) of this section if he refuses to answer a question the answer to which would tend to incriminate him.

(6) A person given any direction under this section shall not refuse or fail to comply with the direction.

Penalty: Five hundred dollars.

(7) Where any goods are examined, analysed or tested under this section, the Minister shall—

(a) if the goods were seized and removed under this section;

or

(b) if the goods were purchased and removed under this section and the examination, analysis or test leads to the institution of proceedings for an offence against this Act,

cause the owner or apparent owner of the goods to be informed of the results of the examination, analysis or test and if proceedings for an offence against this Act are instituted against any person as a result of the examination, analysis or test, allow that person to have the goods examined, analysed or tested on his own behalf if that is reasonably practicable in the circumstances.

(8) Where any goods are seized and removed under this section and—

(a) proceedings are not instituted for any offence against this Act in relation to the goods within two months of their seizure;

or

(b) proceedings having been so instituted and completed, the defendant is not convicted,

the person from whom the goods were seized shall be entitled to recover the goods, or, if they have been destroyed or damaged or have deteriorated, to recover from the Minister, by action in any court of competent jurisdiction, the market value of the goods at the time of their seizure.

(9) Where any goods are seized and removed and the person from whom the goods were seized is convicted of an offence against this Act in relation to the goods, the court convicting the person may, in addition, order that the goods be forfeited to the Crown.

16. (1) The Minister may by notice in writing given to any person require that person to furnish within the period specified in the notice any information that is reasonably necessary for the purpose of determining whether or not—

Minister may  
require  
information.

(a) any provision of this Act is being or has been complied with;

(b) any goods should be declared to be dangerous goods;

or

(c) any standard should be prescribed under this Act.

(2) A person given a notice under this section—

(a) shall not fail, without reasonable excuse, to furnish information in accordance with the requirements of the notice;

and



**PART II**  
**DIVISION II**

(b) shall not furnish information that is false or misleading in any material particular.

Penalty: One thousand dollars.

(3) A person shall not be guilty of an offence against this section if he refuses to furnish information on the ground that the information would tend to incriminate him.

**Secrecy.**

17. A person who is engaged or has been engaged in any office or position connected with the administration of this Act shall not, otherwise than in the performance of the duties or functions appertaining to that office or position, divulge or communicate any information obtained by virtue of that office or position.

Penalty: One thousand dollars.

**Costs of test.**

18. (1) The manufacturer and any supplier of any goods that are dangerous goods or subsequently declared to be dangerous goods or that fail to comply with any applicable standard shall be jointly and severally liable to pay the cost of any examination, analysis or test carried out under this Act on the goods for the purpose of determining whether the goods are dangerous goods or should be declared to be dangerous goods or comply with any applicable standard.

(2) Any person who has provided materially inaccurate information in respect of goods in contravention of this Act shall be liable to pay the cost of any examination, analysis or test carried out under this Act on the goods for the purpose of determining whether the information was materially inaccurate.

(3) Any amount payable under this section by any person in relation to any goods may be recovered by the Minister as a debt in any court of competent jurisdiction or may be ordered to be paid to the Minister by any court convicting that person of an offence against this Act in relation to the goods.

(4) A certificate purporting to be signed by the Minister stating the amount of the cost of examining, analysing or testing any goods shall be accepted in any proceedings in which an order is sought for payment of the cost as proof of the amount of the cost.

**Person acting without authority.**

19. A person shall not falsely represent, by words or conduct, that he is a standards officer or otherwise engaged in the administration of this Act.

Penalty: One thousand dollars.

**Delegation by Minister.**

20. The powers of the Minister under this Act may be exercised on his behalf by any officer for the time being so authorized by the Minister and where the exercise of those powers is expressed to depend on a discretion or a state of mind of the Minister that reference shall be read as if it referred to a discretion or a state of mind of the person so authorized to exercise those powers.

**Annual report.**

21. As soon as practicable after the end of each financial year the Minister shall cause a report to be prepared upon the administration of this Act during that financial year and to be laid before each House of Parliament.

## PART III

## PART III

## SAFETY STANDARDS

**22.** No person shall in the course of a trade or business manufacture or supply any goods that do not comply with any applicable safety standard.

Penalty: Ten thousand dollars.

Offence to manufacture or supply goods not complying with safety standard.

**23.** (1) The Governor may make regulations designed to ensure that goods are not of such a nature as to give rise to undue risk of injury to, or impairment of the health of, any person who may possess, handle or use the goods.

Safety standards.

(2) Without limiting the generality of subsection (1) of this section, those regulations may—

(a) prescribe or regulate the design, construction, composition, materials, contents, finish, performance or other characteristics of any goods;

(b) prohibit the supply in the course of a trade or business of any goods to persons less than a specified age;

and

(c) provide for and prescribe penalties not exceeding, in each case, two thousand dollars for breach of, or non-compliance with, any regulation made under this section.

**24.** No person shall in the course of a trade or business manufacture or supply any dangerous goods.

Penalty: Ten thousand dollars.

Offence to manufacture or supply dangerous goods.

**25.** (1) The Governor may, by proclamation, declare any specified goods or class of goods to be dangerous goods if he is satisfied—

Declaration of dangerous goods.

(a) that it is necessary or desirable in order to prevent the exposure of any person to undue risk of injury or impairment of health arising out of the possession, handling or use of the goods;

and

(b) that it is not appropriate in the circumstances that safety standards be prescribed under this Part in relation to the goods.

(2) The Governor may, by proclamation, vary or revoke a proclamation made under this section.

**26.** (1) Any person to whom dangerous goods, or goods not complying with any applicable safety standard have been supplied shall be entitled to recover as a debt due to him by the person by whom the goods were supplied—

Refund by supplier of amount paid for dangerous or unsafe goods.

(a) the amount that he paid that person in respect of the supply of the goods;

(b) where he has returned the goods to that person under this section, any reasonable expenses incurred in returning the goods;

and

PART III

(c) where the goods have been returned to him under this section by a person to whom he supplied the goods, the amount of any expenses that he became liable to pay under this section in respect of the return of the goods to him.

(2) Notwithstanding the provisions of subsection (1) of this section, a person is not entitled to recover any amount under this section—

(a) unless he has returned the goods in whatever condition they may be to the person who supplied them to him or unless it is not possible to return the goods for the reason that they have been consumed or destroyed;

or

(b) where he supplied the goods to another person, unless that other person has recovered from him any amount that the other person is entitled to recover from him under this section.

(3) Any purported waiver, limitation or modification of the rights conferred by this section is void.

Publication  
of harmful  
product.

27. The Minister may take whatever action he considers necessary to warn the public of the danger associated with any dangerous goods or goods that do not comply with any applicable safety standard, and without limiting the generality thereof he may publish in the *Gazette*, or any newspaper or by radio or television any information as to the goods including the trade name and description of the goods, and, if he considers it desirable, the names of the manufacturers and suppliers of the goods that are known to him.

PART IV

## PART IV

## QUALITY STANDARDS

"Goods" for  
the purposes  
of this Part.

28. In this Part—"goods" means textile products, footwear, furniture, leather goods or goods made of gold or silver.

Offence to  
manufacture  
or supply  
goods not  
complying  
with quality  
standard.

29. No person shall in the course of a trade or business manufacture or supply any goods that do not comply with any applicable quality standard.

Penalty: Two thousand dollars.

Quality  
standards.

30. (1) The Governor may make regulations designed to ensure that goods are of such quality as to be reasonably fit for the purpose for which goods of the kind are ordinarily used.

(2) Without limiting the generality of subsection (1) of this section, those regulations may prescribe or regulate the design, construction, composition, materials, contents, finish, performance or other characteristics of any goods.

## PART V

## PART V

## INFORMATION STANDARDS

31. (1) No person shall in the course of a trade or business provide any materially inaccurate information in respect of any goods or services.

Offence to provide materially inaccurate information in respect of goods or services.

Penalty: Five thousand dollars.

(2) For the purposes of this section, "information"—

(a) in relation to goods means information that would be taken by any reasonable person as referring directly or indirectly to any of the following matters with respect to the goods or any part of the goods:—

- (i) price, change in price, comparative or relative price, recommended price or relation to recommended price;
  - (ii) nature, number, quantity, quality, composition, purity, class, grade, gauge, size, measure, mass, model, style, age, or any physical characteristic;
  - (iii) fitness for purpose, strength, accuracy, safety, running costs, durability, benefits to be derived, or any characteristic of performance;
  - (iv) place or date of manufacture, packaging, distribution, supply or origin;
  - (v) person by whom manufactured, packaged, distributed, supplied, selected, classified or graded;
  - (vi) contents or authorship in the case of goods that are printed, recorded or filmed matter;
  - (vii) method or manner of manufacture, packaging, distribution, supply, selection, classification or grading;
  - (viii) testing by any person or results of tests;
  - (ix) sponsorship or approval by, of affiliation with, any person, or conformity with or similarity to, a type sponsored or approved by any person;
  - (x) compliance with a standard under this Act or a standard specified or recognized by any person;
  - (xi) history or previous ownership or use;
  - (xii) suitability of method of caring for, washing, cleaning or maintaining the goods;
- or
- (xiii) availability of maintenance or repair services or spare parts;

or

(b) in relation to services means information that would be taken by any reasonable person as referring directly or indirectly to any of the following matters with respect to the services:—

- (i) price, change in price, comparative or relative price, recommended price, or relation to recommended price;
- (ii) nature or quality;

- (iii) duration of or time at or within which the services are to be provided;
- (iv) results or effect of services or benefits to be derived therefrom;
- (v) place at which services provided;
- (vi) amenities or facilities available;
- (vii) standing, capabilities, competence, professional or technical qualifications of person by whom provided;
- (viii) sponsorship or approval by, or affiliation with any person;
- (ix) nature or amount of goods or materials used in the course of providing the services;
- (x) nature of equipment or machinery used in the course of providing the services;

or

- (xi) compliance with a standard specified or recognized by any person.

(3) Where an information standard has been prescribed assigning a meaning to information of a specified kind in respect of any specified goods or services or class of goods or services, any such information shall, for the purposes of this section, be deemed to be materially inaccurate if it is in that respect inaccurate to any degree in terms of the meaning so assigned.

(4) Alteration or variation by whatever means of any information already provided constitutes the provision of materially inaccurate information if the information as a result of the alteration or variation is materially inaccurate.

Offence to provide or fail to provide information in breach of information standard.

32. No person shall in the course of a trade or business provide, or fail to provide, any information in respect of any goods or services in breach of any applicable information standard.

Penalty: Five thousand dollars.

Information standards.

33. (1) The Governor may make regulations designed to ensure that misleading information is not provided and that adequate information is provided in respect of goods and services.

(2) Without limiting the generality of subsection (1) of this section, those regulations may—

- (a) prescribe or regulate the content of information in respect of goods or services or the manner or form in which information is to be provided in respect of goods or services;
- (b) provide that information of a specified kind is not to be provided in respect of goods or services or that information in respect of goods or services is not to be provided in a specified manner or form;
- (c) require the provision of specified information in respect of goods or services and prescribe the manner and form in which it is to be provided;

- (d) assign a meaning to information of a specified kind in respect of goods or services;
- (e) prohibit the alteration or variation of, or any interference with, any information provided in compliance with any regulation;
- and
- (f) provide for and prescribe penalties not exceeding, in each case, one thousand dollars for breach of, or non-compliance with, any regulations made under this section.

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PART VI

PART VI

## PACKAGING STANDARDS

34. No person shall in the course of a trade or business package any goods, or supply any packaged goods that have been packaged, in breach of any applicable packaging standard.

Offence to package goods or supply packaged goods in breach of packaging standard.

Penalty: Five thousand dollars.

35. (1) The Governor may make regulations designed to prevent deceptive packaging of goods and to ensure that goods are packaged for the reasonable convenience of persons to whom they may be supplied.

Packaging standards.

(2) Without limiting the generality of subsection (1) of this section, those regulations may—

- (a) prescribe or regulate the composition, shape, size, dimensions or thickness of the covering or containers in which goods are packaged;
- (b) provide that the covering or containers in which goods are packaged shall not have any unoccupied space or more than a specified amount of unoccupied space;
- (c) provide that the covering or containers in which goods are packaged shall not have any cavities or recesses or cavities or recesses of a specified kind;
- (d) prescribe or regulate the mass or measure in which goods are to be packaged;
- and
- (e) prescribe or regulate any other matter relating to the packaging of goods whether or not similar to the matters referred to in paragraphs (a), (b), (c) or (d) of this subsection.

## PART VII

## PART VII

## MISCELLANEOUS

Discretionary  
exemptions.

36. (1) The Minister may, upon the application of any person, by giving notice in writing to the applicant and publishing the notice in the *Gazette*, grant an exemption from compliance with any specified provision of this Act in relation to any specified goods or class of goods, where the Minister is satisfied—

(a) that the goods are or were intended for export from the Commonwealth and it is reasonable that the exemption be granted;

(b) that the goods were brought into the Commonwealth and it is reasonable that the exemption be granted;

or

(c) that having regard to the particular circumstances and the general purposes of this Act it is reasonable that the exemption be granted.

(2) An exemption granted under this section may—

(a) apply (in addition to the applicant) to any person or a class of persons specified in the notice;

(b) be permanent or for a period specified in the notice;

and

(c) be unconditional or subject to conditions specified in the notice.

(3) The Minister may, for good cause, by giving notice in writing to the applicant for an exemption granted under this section and publishing the notice in the *Gazette*, vary or revoke the exemption or any condition of the exemption or impose a further such condition.

(4) Any person to whom an exemption under this section applies who breaches, or fails to comply with, any condition of the exemption shall be guilty of an offence and liable to the same penalty as is prescribed for breach of, or non-compliance with, the provision in relation to which the exemption was granted.

Defences.

37. (1) In proceedings for an offence against this Act it shall, subject to subsection (2) of this section, be a defence for the person charged to prove—

(a) that the commission of the offence was due to a mistake, to reliance on information provided to him by, or the act or default of, another person other than his employee, or to some cause beyond his control;

and

(b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) In proceedings for an offence against this Act, a person shall not, without the leave of the court, be entitled to rely upon the defence that the commission of an offence was due to the act or default of another person or to reliance on information provided to him by another person unless, within

seven days before the hearing, he has served on the complainant a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

**38.** A contract for the supply of goods or services is not rendered void or unenforceable by reason only of any breach of or non-compliance with any provision of this Act.

Contracts not avoided for breach of Act.

**39.** (1) A certificate issued by the Minister, or any prescribed officer, in relation to any matters of a prescribed kind shall, in any proceedings under this Act, be accepted as proof of those matters in the absence of proof to the contrary.

Evidence by certificate.

(2) A document purporting to be a certificate referred to in subsection (1) of this section shall, in any proceedings under this Act, be accepted as such in the absence of proof to the contrary.

**40.** (1) In proceedings for an offence against this Act, where it appears to the court from an examination of any information provided in relation to any goods or services, that the information has been provided by, or on behalf of, any person whose name appears therein or whose identity may be inferred therefrom it shall, in the absence of proof to the contrary, be presumed that the information was provided by, or on behalf of, that person.

Evidentiary provisions.

(2) In proceedings for an offence against this Act, where it appears to the court from an examination of any packaged goods that the goods were packaged by, or on behalf of, any person whose name appears therein or whose identity may be inferred therefrom or were packaged at a time or place directly or indirectly indicated thereon, it shall, in the absence of proof to the contrary, be presumed that the goods were packaged by, or on behalf of, that person or at that time or place.

(3) In proceedings for an offence against this Act, an allegation in the complaint that the defendant is a body corporate incorporated under the law of another State or a Territory of the Commonwealth shall, in the absence of proof to the contrary, be accepted as proof of the matter alleged.

(4) In proceedings for an offence against this Act, an allegation in the complaint that a person is a standards officer, shall in the absence of proof to the contrary, be accepted as proof of the matter.

**41.** Where a body corporate is guilty of an offence against this Act, every director and other officer and the manager of the body corporate shall be guilty of an offence and liable to the same penalty as is prescribed for that offence unless he proves that he did not know and could not reasonably be expected to have known of the commission of the offence or that he exercised all due diligence to prevent the commission of the offence.

Offences by bodies corporate.

**42.** Where a person has committed an offence against this Act, or would have committed an offence against this Act, but for the fact that he could establish a defence under section 37 of this Act, and the offence, or what would have constituted the offence, was due to the act or default of another person—

Offences due to act or default of other person.

(a) that other person—



(i) shall be guilty of an offence and liable to the same penalty as is prescribed for the firstmentioned offence;

and

(ii) may be charged with and convicted of the offence by virtue of this section whether or not proceedings are taken against the firstmentioned person;

and

(b) the firstmentioned person shall be a competent and compellable witness in any proceedings taken against that other person in respect of the offence.

**Summary proceedings.**

**43. Proceedings for an offence against this Act—**

(a) shall be disposed of summarily;

(b) shall not be commenced except upon the complaint of a standards officer or the Minister;

and

(c) may be commenced at any time within three years of the day on which the offence is alleged to have been committed or within one year of the day on which the alleged offence came to the knowledge of the complainant or any standards officer, whichever period first expires.

**Compensation.**

**44. (1)** Where a court has convicted a person of an offence against this Act, the court may, upon the application of any other person who it is satisfied has suffered pecuniary loss as a result of the commission of the offence, order that the person convicted shall be liable, in addition to any penalty in respect of the conviction, to pay to the applicant such sum by way of compensation for that loss as the court considers just.

(2) Notwithstanding the provisions of subsection (1) of this section, the court is not empowered to order the payment or payments by way of compensation in respect of one offence exceeding in the aggregate one thousand dollars.

(3) If on an application made under subsection (1) of this section, the court is of the opinion that it has insufficient evidence to enable it to determine the liability for, or the amount of, the compensation or that for any other reason it is not expedient to determine the question of compensation, it may decline to consider the application, and, in that case, the application shall not of itself be a bar to any other proceedings for compensation that may be taken by the applicant.

**Regulations generally.**

**45. (1)** The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1) of this section, those regulations may—

(a) require any person who in the course of a trade or business manufactures goods, supplies goods or services, provides information or packages goods to keep records of a specified kind;

and

- (b) provide for and prescribe penalties not exceeding, in each case, five hundred dollars for breach of, or non-compliance with, any regulation.
- (3) Any regulations made under this section or any other section of this Act may—
- (a) be of general or limited application according to the persons or classes of persons to whom, or the goods or services, or classes of goods or services, or the time, place or circumstances, to which, they are expressed to apply;
- (b) provide that in cases, or classes of cases, specified in the regulations, persons, goods or services, or classes of persons, goods or services, are exempt, or may be exempted by the Minister or any prescribed officer at the discretion of the Minister or officer, from a provision of the regulations, either permanently or for a period, or unconditionally or subject to conditions, specified in the regulations or by the Minister or officer, as the case may be;
- and
- (c) refer to, or incorporate, either in whole or in part, a standard or code of practice, as in force at a specified time, or as in force from time to time, of the Standards Association of Australia, the International Standards Organization or any prescribed body.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor