



AUSTRALIAN CAPITAL TERRITORY

Consumer Affairs (Amendment) Act 1992

No. 73 of 1992

An Act to amend the *Consumer Affairs Act 1973*

[Notified in ACT Gazette S218: 8 December 1992]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Consumer Affairs (Amendment) Act 1992*.

Commencement

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Principal Act

3. In this Act, “Principal Act” means the *Consumer Affairs Act 1973*.¹

Interpretation

4. Section 3 of the Principal Act is amended—

(a) by inserting in subsection (1) the following definitions:

“ ‘consumer’ has the same meaning as in the *Fair Trading Act 1992*;

‘consumer product information standard’, in relation to goods, means a standard established under section 15FCA in relation to those goods;”;

(b) by omitting the definitions of “acquire”, “consumer product safety standard”, “goods”, “services” and “supply” and substituting the following definitions:

“ ‘acquire’ has the same meaning as in the *Fair Trading Act 1992*;

‘consumer product safety standard’ in relation to goods, means a standard established under section 15FBA in relation to those goods;

‘goods’ has the same meaning as in the *Fair Trading Act 1992*;

‘services’ has the same meaning as in the *Fair Trading Act 1992*;

‘supply’ has the same meaning as in the *Fair Trading Act 1992*;”;

and

(c) by omitting subsections (2) and (3).

Insertion

5. After section 3 of the Principal Act the following section is inserted in Part I:

Position of Crown

“3A. This Act binds the Crown.”.

Functions of Bureau

6. Section 14 of the Principal Act is amended—

(a) by omitting from paragraph (d) “and”; and

- (b) by adding at the end of paragraph (e) the following word and paragraph:

“; and (f) to assist the Director with the discharge of such functions as are conferred on him or her by or under this Act or any other law of the Territory.”.

Insertion of Division

7. Before section 15FA of the Principal Act the following Division and Division heading are inserted in Part IIIA:

“Division 1—Product Safety Advisory Committee

Product Safety Advisory Committee

“15FAA. (1) There is established a Product Safety Advisory Committee having the functions conferred or imposed on it by this Act.

“(2) The Product Safety Advisory Committee consists of—

- (a) a person appointed by the Minister as Chairperson of the Committee;
- (b) a public servant employed in the Bureau appointed by the Minister as Executive Officer of the Committee; and
- (c) such other persons appointed by the Minister as the Minister considers to be qualified by reason of their knowledge or expertise on matters related to product safety.

“(3) If the Chairperson is unable to exercise the functions of Chairperson, they shall be exercised by a member of the Committee appointed by the Minister as acting Chairperson.

Appointment and tenure of office of members

“15FAB. (1) Subject to subsection (4) a member of the Product Safety Advisory Committee holds office in accordance with the terms of his or her appointment.

“(2) On the expiration of any period of appointment or reappointment, a member of the Committee may be reappointed for a further period.

“(3) A member of the Committee may at any time resign from the Committee by notice in writing addressed to the Minister and delivered to the Director.

“(4) The Minister may at any time remove from office a member of the Committee by notice in writing addressed and delivered to the member.

“(5) The Executive Officer of the Committee vacates office as a member of the Committee on ceasing to be a public servant employed in the Bureau.

Deputies of members

“15FAC. If a member of the Product Safety Advisory Committee is unable to carry out his or her duties for any period, the Minister may appoint another person whom the Minister considers to have knowledge or expertise on matters related to product safety to act in the place of that member for that period, and a person so appointed is deemed during that period to be a member of the Committee.

Co-opted members

“15FAD. (1) The Product Safety Advisory Committee with the prior approval of the Minister may co-opt any person whom it considers to have expertise in relation to the functions of the Committee.

“(2) A person co-opted under subsection (1) is, when attending a meeting of the Committee, deemed to be a member of the Committee and has a right to vote and participate in the Committee’s proceedings.

General procedure

“15FAE. The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall be as determined by the Committee.

Voting

“15FAF. A decision supported by a majority of the votes cast at a meeting of the Product Safety Advisory Committee shall be the decision of the Committee.

Minutes

“15FAG. The Product Safety Advisory Committee shall cause full and accurate minutes to be kept of the proceedings at each meeting of the Committee.

“Division 2—Orders and standards”.

Advice concerning consumer product safety orders or standards

8. Section 15FA of the Principal Act is amended—

- (a)** by inserting in paragraph (1) (c) “or recall or notification order made under subsection 15FKA (1)” after “order”;

- (b) by omitting from paragraph (1) (c) “or” (last occurring);
- (c) by adding after paragraph (1) (d) the following word and paragraph:
 - “or (e) a consumer product information standard should be prescribed or a prescribed consumer product information standard should be amended or repealed;”;
- (d) by omitting from subsection (3) “or (d)” and substituting “, (d) or (e)”; and
- (e) by omitting from subsection (4) “An advisory committee” and “or (d)” and substituting “The Product Safety Advisory Committee” and “, (d) or (e)” respectively.

Insertion

9. After section 15FA of the Principal Act the following section is inserted:

Consumer product safety standards

“15FBA. (1) The regulations may prescribe a consumer product safety standard to be used for a specified kind of goods.

“(2) A consumer product safety standard in relation to goods shall consist of such requirements as to—

- (a) performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods;
- (b) the testing of the goods during, or after the completion of, manufacture or processing;
- (c) the form and content of markings, warnings or instructions to accompany the goods or be placed on a vending machine for the goods or a display stand or sign adjacent to the goods; and
- (d) equipment or accessories to be supplied with the goods;

as are reasonable and necessary to prevent or reduce risk of injury to a person.”.

Interim safety orders

10. Section 15FB of the Principal Act is amended—

- (a) by omitting from paragraph (1) (b) “an advisory committee” and substituting “the Product Safety Advisory Committee”;

- (b) by omitting from subsection (2) “an advisory committee” and substituting “the Product Safety Advisory Committee”;
- (c) by omitting from subsection (2) “the committee” and substituting “the Committee”;
- (d) by omitting from subsection (3) “the advisory committee” and substituting “the Product Safety Advisory Committee”;
- (e) by omitting from paragraph (5) (b) “an advisory committee” and substituting “the Product Safety Advisory Committee”; and
- (f) by adding at the end of subsection (6) “unless the other order or orders relate to an aspect of the goods or class of goods not covered by the first mentioned order”.

Insertion

11. After section 15FC of the Principal Act the following section is inserted:

Consumer product information standards

“15FCA. (1) The regulations may prescribe a consumer product information standard to be used for a specified kind of goods consisting of requirements for, and for the form and manner of, disclosure of such information as to—

- (a) the price, performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods;
- (b) the place of manufacture or production of the goods;
- (c) the identity of the manufacturer, producer or supplier of the goods;
- (d) the date of the manufacture or production, or the durable life, of the goods; and
- (e) care and storage of the goods;

as is reasonably necessary to give persons using the goods information as to their origin, quantity, quality, nature, durability or value.

“(2) A notice referred to in subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

Offences

12. Section 15FE of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “or”;

- (b) by adding after paragraph (1) (b) the following word, paragraph and penalty:

“; or (c) there is a consumer product information standard applicable to the goods and the goods do not comply with that standard.

Penalty:

- (a) if the offender is a natural person—\$20,000;
- (b) if the offender is a body corporate—\$100,000.”;
- (c) by omitting subsection (2);
- (d) by adding at the end of subsection (4) “or prescribed consumer product information standard”;
- (e) by adding at the end of paragraph (5) (a) “or prescribed consumer product information standard”;
- (f) by inserting in paragraph (6) (b) “or a dangerous characteristic of the goods” after “defect in the goods”;
- (g) by omitting from paragraph (6) (b) “in relation to” and substituting “as to a characteristic of”.

Insertion of Part

13. After Part IIIA of the Principal Act the following Part is inserted:

“PART IIIB—PRODUCT RECALL

Recall etc. of goods

“15FKA. (1) Where a person supplies goods and—

- (a) it appears to the Minister that the goods are of a kind which will or may cause injury to any person;
- (b) the goods are of a kind in respect of which there is a prescribed consumer product safety standard and the goods do not comply with that standard; or
- (c) the goods are of a kind in relation to which there is in force a notice under section 15FB, 15FC or 15FD;

and it appears to the Minister that the supplier has not taken satisfactory action to prevent the goods causing injury to any person, the Minister may, by notice in writing published in the *Gazette*, require the supplier to take action within the period specified in the notice to—

- (d) recall the goods in the manner specified in the notice;

- (e) disclose to the public, or to a class of persons specified in the order in the manner so specified one or more of the following:
 - (i) the nature of any defect in the goods identified in the order;
 - (ii) the circumstances in which the use of the goods is dangerous;
 - (iii) procedures for disposing of the goods; or
- (f) notify the public, or a class of persons specified in the notice, in the manner and within the period so specified, that the supplier undertakes to do whichever of the following the supplier thinks is appropriate:
 - (i) except where the order identifies a dangerous characteristic of the goods—repair the goods;
 - (ii) replace the goods;
 - (iii) refund to a person to whom the goods were supplied (whether by the supplier or by another person) the price of the goods;

within the period specified in the order.

“(2) If an order so provides, where—

- (a) the supplier undertakes to refund the price of the goods; and
- (b) a period of more than 12 months has elapsed since a person (whether or not the person to whom the refund is to be made) acquired the goods from the supplier;

the amount of the refund may be reduced by an amount, specified in the order, which represents the use which that person has had of the goods.

“(3) If a supplier undertakes to repair goods, the supplier shall cause the goods to be repaired so that—

- (a) any defect in the goods identified in the order is remedied; and
- (b) if there is a consumer product safety standard for goods of that kind—the goods comply with the standard.

“(4) If a supplier undertakes to replace goods, the supplier shall replace the goods with like goods which—

- (a) if a defect in the goods to be replaced was identified in the order—do not contain that defect; and

- (b) if there is a consumer product safety standard for goods of that kind—comply with that standard.

“(5) If a supplier undertakes to repair goods or replace goods, the cost of the repair or replacement, including any necessary transport costs, shall be borne by the supplier.

“(6) While an order under subsection (1) is in force, a supplier of goods to which the order relates shall not—

- (a) fail to comply with a requirement of, or a direction in, the order;
- (b) where the order identifies a defect in the goods—supply goods of the kind to which the order relates and which contain that defect;
- (c) in a case other than a case referred to in paragraph (b)—supply goods of the kind to which the order relates;
- (d) fail to carry out an undertaking notified by the supplier under subsection (1); or
- (e) having given such an undertaking to repair or replace goods—fail to comply with subsection (3), (4) or (5), where applicable.

Penalty:

- (a) if the offender is a natural person—\$20,000;
- (b) if the offender is a body corporate—\$100,000.

“(7) Where goods are recalled, whether voluntarily or in accordance with an order under subsection (1), a person who has supplied any of the recalled goods to another person outside the Territory shall, as soon as practicable after the supply of those goods, give notice in writing to that other person—

- (a) stating that the goods are subject to recall;
- (b) if the goods have a defect—stating the nature of the defect; and
- (c) if the goods do not comply with a consumer product safety standard for the goods—setting out the nature of the non-compliance.

Penalty:

- (a) if the offender is a natural person—\$2,000;
- (b) if the offender is a body corporate—\$10,000.

“(8) A supplier who voluntarily takes action to recall goods shall, not later than 2 days after that action is taken, give to the Director notice in writing—

- (a) stating that the goods are subject to recall;
- (b) if the goods have a defect—stating the nature of the defect; and
- (c) if the goods do not comply with a consumer product safety standard for the goods—setting out the nature of the non-compliance.

Penalty:

- (a) if the offender is a natural person—\$2,000;
- (b) if the offender is a body corporate—\$10,000.

“(9) It is a sufficient compliance with subsection (8) if a copy of the notice relating to the goods is given under section 65R of the *Trade Practices Act 1974* of the Commonwealth to the Director.

Conferences relating to compulsory product recall

“15FKB. (1) If the Minister—

- (a) makes in conjunction with a consumer product safety order under section 15FC any order under section 15FKA relating to goods the subject of the consumer product safety order; or
- (b) has under consideration a draft of any order under section 15FKA that is not proposed to be made in conjunction with a consumer product safety order under section 15FC;

the Minister shall cause to be published in the *Gazette* a notice that complies with subsection (2) in relation to the order or draft order.

“(2) A notice relating to an order or draft order complies with this subsection if it specifies—

- (a) that a supplier of the goods to which the order or draft order relates may, before a day specified in the notice (being a day that is not earlier than 10 days after publication of the notice) lodge with the Product Safety Advisory Committee a request for a conference with that committee; and
- (b) in the case of a draft order—the terms of the draft order and a summary of the reasons why it is under consideration.

“(3) Where the Minister causes to be published in the *Gazette* a notice under subsection (1), the Director shall, within 2 days after its publication or, if it is not practicable to do so within that period, as soon as practicable after the end of that period, either—

- (a) cause a copy of the notice to be given to each person who, to the knowledge of the Director, supplies goods to which the notice relates; or
- (b) cause a copy of the notice to be published in a daily newspaper published and circulating in the Territory.

“(4) Any failure to comply with subsection (3) in relation to a notice does not invalidate the notice.

“(5) The Product Safety Advisory Committee may allow further time for the lodging of a request for a conference and shall—

- (a) where no request for a conference has been lodged inform the Minister accordingly; or
- (b) where a request for a conference has been lodged—notify the Minister and each supplier who has duly requested the conference, of the time and place for the holding of the conference, being a time not later than 14 days after the expiration of the time for lodging a request for the conference.

“(6) If a conference is held—

- (a) the Product Safety Advisory Committee shall be represented by a member nominated by the Chairperson;
- (b) each supplier who has requested the conference, and any other person whose presence at the conference is considered by the Product Safety Advisory Committee to be appropriate, is entitled to be present or be represented; and
- (c) the Minister or a person or persons nominated in writing by the Minister is or are entitled to be present.

“(7) A person in attendance at the conference may—

- (a) inspect documents in the possession of the member representing the Product Safety Advisory Committee that relate to the goods to which the order or draft order relates (not being documents specifying a secret formula or process); and
- (b) be heard by, and make submissions to, the member representing the Product Safety Advisory Committee with respect to the order or draft order.

“(8) The member representing the Product Safety Advisory Committee shall keep a record of proceedings at a conference under this section.

“(9) After a conference is held, the Product Safety Advisory Committee shall—

- (a) where the conference related to a draft order—make a written recommendation to the Minister as to whether the Minister should—
 - (i) publish an order in terms of the draft order;
 - (ii) publish an order in terms of the draft order with amendments; or
 - (iii) refrain from publishing an order affecting the goods to which the draft order relates; or
- (b) where the conference related to an order under section 15FKA—make a written recommendation to the Minister as to whether the order should remain in force, be varied or be revoked.

“(10) The Product Safety Advisory Committee shall cause a copy of a recommendation made under subsection (9) to be given to each supplier who was present or represented at the conference.

“(11) The Minister is not bound by a recommendation under subsection (9) but, if the Minister decides not to act in accordance with the recommendation, he or she shall publish in the *Gazette* the reasons for that decision.

Certain amounts recoverable as debt or damages

“15FKC. (1) If a supplier fails to carry out an undertaking given under section 15FKA to refund the price of goods, the amount that should have been refunded is recoverable as a debt due by the supplier to the person to whom the undertaking was given.

“(2) If a supplier fails to carry out an undertaking under section 15FKA to repair or replace goods, the supplier is deemed to have given instead an undertaking, notified under section 15FKA, to refund the price of the goods within the period specified for the repair or replacement of the goods.

“(3) If—

- (a) a person fails to comply with any requirement of an order made under section 15FKA or supplies goods in contravention of such an order disclosing a defect in, or dangerous characteristic of, the goods; and

- (b) another person suffers loss or damage because of a defect in, or a dangerous characteristic of, the goods or by not having particular information as to a characteristic of the goods;

the person who suffered the loss or damage is deemed, for the purposes of this Act, to have suffered it because of the failure or contravention.

Certain action not to affect insurance contracts

“15FKD. The liability of an insurer under a contract of insurance with a person, being a contract relating to the recall of goods supplied or proposed to be supplied by the person or to the liability of the person with respect to possible defects in goods supplied or proposed to be supplied by the person, shall not be affected only because the person gives to the Minister, to the Product Safety Advisory Committee or to an officer information relating to any goods supplied or proposed to be supplied by the person.”.

Liability for defamatory statement

14. Section 16 of the Principal Act is amended—

- (a) by inserting in subsection (1) “or the Product Safety Advisory Committee” after “committee”; and
- (b) by inserting in subsection (2) “, the Product Safety Advisory Committee” after “committee”.

Regulations

15. Section 18 of the Principal Act is amended by omitting all the words after “giving effect to this Act”.

Further amendments

16. The Principal Act is amended as set out in the Schedule.

SCHEDULE

Section 16

FURTHER AMENDMENTS

Subsection 15B (1)—

Insert “or she” after “he”.

Subsection 15B (5)—

Insert “or her” after “him”.

SCHEDULE—continued**Paragraph 15C (1) (a)—**

Insert “or her” after “his”.

Subsection 15C (3)—

Insert “or her” after “his” (wherever occurring).

Subsection 15C (3A)—

Insert “or her” after “his”.

Subsection 15C (5)—

(a) Insert “or she” after “he”.

(b) Insert “or her” after “him”.

Paragraph 15D (4) (b)—

Insert “or her” after “his”.

Paragraph 15E (2) (a)—

(a) Insert “or her” after “him”.

(b) Insert “or her” after “his”.

Subsections 15F (1) and (2)—

Insert “or she” after “he”.

Paragraph 15F (9) (b)—

Insert “or she” after “he”.

Subsection 15F (12)—

Insert “or her” after “him”.

Subsection 15FD (4)—

Insert “or she” after “he”.

Subsection 15FE (4)—

Insert “or she” after “he”.

Paragraph 15FE (5) (b)—

Insert “or her” after “his”.

Paragraph 15FE (6) (b)—

Insert “or her” after “his”.

SCHEDULE—continued

Subsection 15FG (1)—

Insert “or her” after “him”.

Subsection 15FG (2)—

Insert “or she” after “he”.

Subsection 16 (1)—

(a) Insert “or her” after “him”.

(b) Insert “or her” after “his”.

Subsection 16 (3)—

(a) Insert “or she” after “he”.

(b) Insert “or her” after “him”.

NOTE

1. Reprinted as at 31 March 1991. See also Act No. 23, 1992.

[Presentation speech made in Assembly on 9 September 1992]

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