

No. 49 of 1976

AN ORDINANCE

Relating to Consumer Affairs.

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated this sixth day of October, 1976.

JOHN R. KERR  
Governor-General.

By His Excellency's Command,  
A. A. STALEY  
Minister of State for the Capital Territory.

CONSUMER AFFAIRS (AMENDMENT) ORDINANCE 1976

1. This Ordinance may be cited as the *Consumer Affairs (Amendment) Ordinance 1976*.\* Short title.

2. In this Ordinance, "Principal Ordinance" means the *Consumer Affairs Ordinances 1973*.† Principal Ordinance.

3. Sections 1 and 2 of the Principal Ordinance are repealed and the following section substituted:—

"1. This Ordinance may be cited as the *Consumer Affairs Ordinance 1973*." Short title.

4. Section 3 of the Principal Ordinance is amended— Interpretation.

(a) by inserting in sub-section (1), before the definition of "goods", the following definitions:—

" 'certificate of identification' means a certificate issued under section 15A;

'corporation' has the same meaning as in the *Companies Ordinance 1962*;

\* Notified in the *Australian Government Gazette* on 12 October 1976.

† Ordinance No. 17, 1973, as amended by No. 53, 1973.

'dwelling-house' means premises that are used, or intended to be used, for the purpose of residence, and includes the premises of a lodging-house or boarding-house;";

(b) by inserting in that sub-section, after the definition of "goods", the following definitions:—

"'investigating officer', in relation to an investigation, means the Director or an officer authorized by the Director under section 15A;

'investigation' means an investigation under Part III;

'Legislative Assembly' means the Australian Capital Territory Legislative Assembly constituted by the *Legislative Assembly Ordinance 1936*"; and

(c) by inserting in that sub-section, after the definition of "member", the following definition:—

"'services' includes, without limiting the generality of that expression, the rights or benefits that are to be provided under an agreement for—

(a) the performance of work (including work of a professional nature but not including work under a contract of service) involving—

(i) the alteration, cleaning, construction, maintenance, processing, repair or treatment of goods or of a dwelling-house or other fixtures on land; or

(ii) alteration of the physical features of land,

whether with or without the supply of goods;

(b) the provision of, or the use or enjoyment of, facilities for amusement, entertainment, instruction or recreation; or

(c) the conferring of rights or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;".

**Members.**

5. Section 5 of the Principal Ordinance is amended by omitting from sub-section (1) all words after the words "shall be" (last occurring) and substituting the words "a member of the Legislative Assembly nominated by the Assembly".

**Removal of member from office.**

6. Section 8 of the Principal Ordinance is amended by omitting from sub-section (4) the words "an elected member of the Advisory Council ceases to be a member of the Advisory Council" and substituting the words "a member of the Legislative Assembly ceases to be a member of the Assembly".

7. Section 10 of the Principal Ordinance is amended by omitting from sub-section (8) the word "members" and substituting the word "member". Meetings of Council.

8. After the heading to Part III, the following heading is inserted:— Heading.

*" Division 1—Administration "*.

9. Section 14 of the Principal Ordinance is amended by omitting paragraph (c) and substituting the following paragraph:— Functions of Bureau.

" (c) to conduct other investigations and research in relation to matters affecting the interests of consumers;"

10. Section 15 of the Principal Ordinance is amended by adding at the end thereof the following sub-section:— Functions of Director.

" (3) The Director may collaborate or consult with—

- (a) officers of a department or instrumentality of the Crown or with an organization or corporation, wherever situated, that is concerned with the interests of consumers;
- (b) a person who has a special knowledge of an aspect of consumer protection; or
- (c) a person who, in the opinion of the Director, has special knowledge that would facilitate the effective operation of this Ordinance."

11. After section 15 of the Principal Ordinance the following Division is inserted in Part III:—

*" Division 2—Investigations "*

" 15A. (1) Subject to this section and section 15B, an investigation for the purpose of paragraph 14 (b) or 14 (c) may be made by— Investigating officers.

- (a) the Director; or
- (b) one or more officers of the Bureau authorized in writing by the Director for the purposes of this Part.

" (2) The Director shall issue to an investigating officer a certificate stating that the holder of the certificate is an investigating officer for the purposes of this Ordinance, being a certificate bearing a recent photograph of the officer.

" 15B. (1) Where a magistrate is satisfied by information on oath that, for the purpose of an investigation under section 15A, it is reasonably necessary for the Director to enter and inspect— Power of investigating officer to enter, &c.

- (a) premises where goods are manufactured, prepared or sold or offered for hire; or
- (b) premises as to which there are reasonable grounds for believing that goods are manufactured, prepared or sold or offered for hire on the premises,

he may issue a warrant authorizing the Director or an officer of the Bureau named in the warrant to enter the premises.

“(2) A warrant under sub-section (1) shall be in writing signed by the magistrate issuing it and shall state shortly the matters of the information upon which it is founded.

“(3) A warrant under sub-section (1) may be issued on a Sunday or on any other day.

“(4) A person authorized by a warrant under sub-section (1) to enter premises may—

- (a) at any reasonable hour of the day, enter the premises, by force if necessary;
- (b) inspect the premises and any goods on the premises; and
- (c) remove from the premises any goods, whether manufactured or prepared or partly manufactured or prepared, found on the premises, first paying a just price for them, or take samples of materials used in their manufacture or preparation.

“(5) A person who obstructs, threatens or intimidates the Director or an officer named in a warrant in the exercise of a power or the performance of a duty conferred or imposed on him is guilty of an offence against this Ordinance.

“15c. (1) An investigating officer making an investigation—

- (a) upon giving a person other than a corporation a warning, orally or in writing, of his obligation to comply with a requirement under this section, may, by notice in writing, require that person—
  - (i) to furnish to the investigating officer, by writing signed by that person, information specified in the notice;
  - (ii) to furnish to the investigating officer, orally, information specified in the notice; or
  - (iii) to produce to the investigating officer a document specified in the notice;
- (b) may, upon giving a person being a corporation a written warning of its obligation to comply with a requirement under this section, by notice in writing require the person—
  - (i) to furnish to the investigating officer, through a competent officer of the corporation by writing signed by that officer, information specified in the notice;
  - (ii) to furnish to the investigating officer, through such a competent officer, orally, information specified in the notice; and
  - (iii) to produce to the investigating officer, through such a competent officer, a document specified in the notice; and

Investigating officer may require furnishing of information and production of documents.

- (c) may require a person referred to in paragraph (a) or (b) so to furnish the information or produce the document—
- (i) at a place specified in the notice; and
  - (ii) at or within a time specified in the notice.

“ (2) A person who refuses or fails to comply with a requirement under this section is guilty of an offence against this Ordinance unless, in so far as he did not comply with the requirement, he was not capable of so complying.

“ (3) 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 may tend to incriminate him, but the information furnished, or document produced, by him is not admissible in evidence in proceedings against him other than—

- (a) proceedings in respect of the falsity of the information or document; or
- (b) proceedings referred to in paragraph 15E (3)(d) or 15E (3)(e).

“ (4) A reference in this section to information or a document specified in a notice under this section shall be construed as a reference to information or a document, as the case may be, reasonably required for the purposes of this Ordinance.

“ (5) An investigating officer who enters premises in pursuance of an investigation is not authorized to remain on the premises if, on request by the occupier, or the person in charge, of the premises, he does not produce a certificate of identification issued to him.

“ 15D. (1) A prescribed person may—

- (a) inspect documents produced in pursuance of a notice under section 15c; and
- (b) make copies of, or take extracts from, those documents.

Copying  
and  
impounding  
of  
documents.

“ (2) A prescribed person may, for the purposes of this Ordinance, take, and retain for as long as is necessary for those purposes, possession of a document produced in pursuance of a notice under section 15c but the person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the prescribed person under his hand to be a true copy and the certified copy shall be received in all courts as evidence as if it were the original.

“ (3) 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 authorized by that person, to inspect and make copies of, or take extracts from, the document.

“ (4) In this section, ‘ prescribed person ’ means—

- (a) the Director; or
- (b) a person authorized by the Director in writing under his hand for the purposes of this section.

Secrecy.

“ 15E. (1) This section applies to every person who is, or has been, a person engaged in the administration of this Ordinance, including a person who receives information or a document from the Director in pursuance of the powers of the Director under sub-section 15 (3).

“ (2) Subject to this section, a person to whom this section applies shall not, either directly or indirectly, except in the performance of a duty under, or in connexion with, this Ordinance—

- (a) make a record of, or divulge or communicate to a person, information concerning the affairs of another person acquired by him by reason of his office or employment under, or for the purposes of, this Ordinance; or
- (b) produce to a person a document produced in pursuance of this Ordinance.

Penalty: \$1,000 or imprisonment for 3 months.

“ (3) A person to whom this section applies shall not be required—

- (a) to produce in a court a document relating to the affairs of another person, being a document of which he has the custody, or to which he has access, by virtue of his office or employment under, or for the purposes of, this Ordinance; or
- (b) to divulge or communicate to a court information concerning the affairs of another person that is obtained by him by reason of that office or employment,

unless it is necessary to do so for the purposes of—

- (c) this Ordinance;
- (d) proceedings under, or arising out of, this Ordinance; or
- (e) proceedings under, or arising out of, a law specified in the Schedule.

Director's power to institute or defend legal proceedings on behalf of consumers.

“ 15F. (1) Where, after a complaint or other matter involving a consumer is made or referred to the Bureau, the Director is satisfied that—

- (a) a consumer has a cause of action or a good defence to an action; or
- (b) it is otherwise in the public interest to do so,

he may, on behalf of the consumer and either alone or jointly, institute legal proceedings against any other person or defend proceedings brought against the consumer with a view to enforcing or protecting the rights of the consumer in relation to an infringement, or suspected infringement, by that other person of—

- (c) those rights; or
- (d) a provision of a law in force in the Territory relating to the interests of consumers.

“(2) Notwithstanding sub-section (1), the Director shall not institute or defend proceedings under this section unless he first obtains—

- (a) the written consent of the consumer; and
- (b) the written consent of the Minister.

“(3) Nothing in sub-section (2) requires the Director to get the consent of the consumer or the Minister in relation to the defence of a counter claim, set-off or cross-action.

“(4) A consent given under paragraph (2) (a) is irrevocable except with the consent of the Director.

“(5) A consent given under paragraph (2) (b) is subject to such conditions as the Minister thinks fit.

“(6) Subject to sub-section (2), the Director may, without consulting or seeking the consent of the consumer, conduct proceedings under this section in the name of the consumer and in such manner as the Director considers appropriate and proper.

“(7) For the purpose of conducting proceedings under this section, the Director has in all respects the same rights as the consumer would have had in the conduct of the proceedings, including the right—

- (a) to sign documents in connexion with the proceedings on behalf of the consumer;
- (b) to settle an action or part of an action; and
- (c) to give undertakings with regard to costs.

“(8) Moneys (other than costs) recovered by the Director as a result of proceedings under this section shall be paid to the consumer without deduction.

“(9) Where an order for costs is made against the consumer—

- (a) the costs shall be paid by the Director;
- (b) the order may be enforced against the Director as if he were the consumer; and
- (c) the order shall not be enforced against the consumer.

“(10) Where an order for costs is made in favour of the consumer—

- (a) the costs are payable to the Director; and
- (b) the order may be enforced by the Director.

“(11) In proceedings under this section, a court has the same powers as it would have had if the proceedings had been instituted by the consumer.

“(12) The Director is not personally liable as a result of proceedings instituted or defended by him in pursuance of this section but an amount that the Director becomes liable to pay by virtue of sub-section (9) shall be paid by the Commonwealth.”

12. Before section 16 of the Principal Ordinance the following sections are inserted in Part IV:—

“15G. (1) In a prosecution for an offence against this Ordinance, a certificate of identification is *prima facie* evidence of its contents. Evidentiary provisions.

“(2) In proceedings under this Ordinance, a statement purporting to be signed by the Director—

- (a) that an investigation made, or being made, by the Director or an officer of the Bureau was made, or being made, as the case may be, under Part III; or
- (b) that, at a date or period specified in the statement, a person named in the statement was an officer of the Bureau authorized by the Director for the purposes of section 15D,

is *prima facie* evidence of the matter contained in the statement.

Penalties for offences.

“15H. A person who is guilty of an offence against this Ordinance is, where no other penalty is provided, liable—

- (a) for a first offence, to a penalty not exceeding \$200 or imprisonment for a period not exceeding 6 months, or both;
- (b) for a second offence, to a penalty not exceeding \$300 or imprisonment for a period not exceeding 12 months, or both; or
- (c) for a third or subsequent offence, to a penalty not exceeding \$500 or imprisonment for a period not exceeding 12 months, or both.”.

13. Section 16 of the Principal Ordinance is repealed and the following section substituted:—

Protection of members, &c.

“16. An action or proceeding, civil or criminal, does not lie against the Chairman, another member, the Director, an investigating officer or an officer acting under the direction or control of the Director in respect of anything done, or omitted to be done, by him in good faith in the capacity of Chairman, member, Director, investigating officer or officer so acting, as the case requires.”.

Schedule.

14. The Principal Ordinance is amended by adding at the end thereof the following Schedule:—

SCHEDULE

Section 15E (3) (e)

*Trade Practices Act 1974*  
*Door-to-door Sales Ordinance 1969*  
*Hire-purchase Ordinance 1961*  
*Lay-by Sales Agreements Ordinance 1963*  
*Pyramid Selling Ordinance 1973*  
*Prices Regulation Ordinance 1949*  
*Sale of Goods Ordinance 1954*  
*Weights and Measures Ordinance 1929*  
*Weights and Measures (Packaged Goods) Ordinance 1970*