
Consumer Affairs (Amendment) Ordinance 1982

No. 100 of 1982

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 20 December 1982.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

MICHAEL HODGMAN
Minister of State for the Capital Territory

An Ordinance to amend the *Consumer Affairs Ordinance 1973*

Short title

1. This Ordinance may be cited as the *Consumer Affairs (Amendment) Ordinance 1982*.¹

Principal Ordinance

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

Interpretation

3. Section 3 of the Principal Ordinance is amended—

(a) by inserting after the definition of "certificate of identification" in sub-section (1) the following definitions:

 " 'consumer product safety order' means an order under section 15FC or 15FD;

‘consumer product safety standard’, in relation to any goods, or goods included in any class of goods, means a standard consisting of requirements as to the performance, composition, content, design, construction, finish or packaging of the goods and the form and content of markings, warnings or instructions to accompany the goods;”;

- (b) by inserting after the definition of “goods” in sub-section (1) the following definition:

“ ‘interim safety order’ means an order made by the Minister under section 15FB;” and

- (c) by inserting after the definition of “services” in sub-section (1) the following definition:

“ ‘supply’, in relation to goods, includes—

- (a) supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and
- (b) exhibit, expose or possess for the purposes of sale, exchange, lease, hire, hire-purchase, advertisement, manufacture or trade;”.

Functions of Council

4. Section 11 of the Principal Ordinance is amended by adding at the end thereof the following sub-section:

“(6) The powers and functions conferred on the Council by this section are in addition to, and do not derogate from, the powers and functions conferred on the Council under Part IIIA.”.

5. After section 11 of the Principal Ordinance the following section is inserted in Part II:

Disclosure of pecuniary interest

“11A. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Council shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Council.

“(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Council and the member shall not, unless the Minister or the Council otherwise determines—

- (a) be present during any deliberation of the Council with respect to that matter; or
- (b) take part in any decision of the Council with respect to that matter.

“(3) For the purpose of the making of a determination by the Council under sub-section (2) in relation to a member who has made a disclosure under

sub-section (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not—

- (a) be present during any deliberation of the Council for the purpose of making the determination; or
- (b) take part in the making by the Council of the determination.

“(4) Where a member fails, without reasonable excuse, to comply with the requirements of this section, the Minister shall remove the member from office.”.

6. After Part III of the Principal Ordinance the following Part is inserted:

“PART IIIA—CONSUMER PRODUCT SAFETY ORDERS AND STANDARDS

Investigations by Council

“15FA. (1) The Council may, of its own motion, carry out such investigations as it thinks fit for the purpose of determining whether, in the opinion of the Council—

- (a) a consumer product safety order should be made, amended or revoked; or
 - (b) a consumer product safety standard should be prescribed, or a prescribed product safety standard should be amended or repealed,
- in relation to any goods, or goods included in any class of goods.

“(2) The Council shall, at the request of the Minister, carry out an investigation for the purpose of determining whether, in the opinion of the Council—

- (a) a consumer product safety order should be made, amended or revoked; or
 - (b) a consumer product safety standard should be prescribed or a prescribed product safety standard should be amended or repealed,
- in relation to the goods, or goods included in the class of goods, specified in the request.

“(3) For the purpose of conducting an investigation under this section, the Council may—

- (a) consult with—
 - (i) officers of a department or instrumentality of the Crown or with an organization or corporation, wherever situated, that is concerned with the protection of consumers;
 - (ii) a person who has a special knowledge of any aspect of consumer protection; and
 - (iii) a person who, in the opinion of the Council, has special knowledge that would facilitate the investigation; and
- (b) consult with, and receive written and oral submissions from, any person who, in the opinion of the Council, has a substantial interest in

the subject matter of the investigation, or any organization representing a substantial number of such persons.

“(4) As soon as practicable after the Council completes an investigation under this section, the Council shall furnish to the Minister a report on the investigation and the action (if any) that it recommends should be taken.

“(5) The Council shall not recommend that a consumer product safety order be made or a consumer product safety standard be prescribed in relation to any goods, or goods included in any class of goods, unless the Council is satisfied that the making of the order or the prescribing of the standard, as the case may be, is reasonable and necessary to prevent or reduce the risk of injury to, or impairment of health of, any person arising out of the possession, handling or use of those goods by that person or any other person.

Interim safety orders

“15FB. (1) Where the Council has commenced an investigation under section 15FA in relation to any goods, or goods included in any class of goods, and the Council is satisfied that the supply of the goods, or of goods included in that class of goods, should be prohibited before the investigation is completed in order to prevent or reduce the risk of injury to, or impairment of health of, any person arising out of the possession, handling or use of those goods by that person or any other person, the Council may, before completing the investigation, furnish the Minister with a report recommending that the Minister make an interim safety order in relation to those goods, or goods included in that class of goods.

“(2) Subject to this section, where the Minister is satisfied, on the recommendation of the Council or otherwise, that the supply of any goods, or goods included in any class of goods, in respect of which the Council has commenced an investigation under section 15FA should be prohibited before the investigation is completed in order to prevent or reduce the risk of injury to, or impairment of health of, any person arising out of the possession, handling or use of those goods by that person or any other person, the Minister may, by notice in the *Gazette*, make an interim safety order prohibiting the supply of the goods, or goods included in the class of goods, specified in the order.

“(3) Subject to this Part, an interim safety order—

- (a) takes effect on the day on which it is notified in the *Gazette*; and
- (b) ceases to have effect on the expiration of the period of 28 days after that day or on the coming into effect of a consumer product safety order made under section 15FC in relation to the goods or class of goods specified in the interim safety order, whichever first occurs.

“(4) Where an interim safety order is made under this section in relation to any goods, or goods included in any class of goods, the Minister may, on the recommendation of the Council and for the purpose of enabling the Council to complete its investigation in respect of those goods, by notice in the *Gazette*, extend the period of effect of the order for a further period of 28 days commencing on the expiration of the period of 28 days referred to in paragraph

(3) (b) or until the coming into effect of a consumer product safety order made under section 15FC in respect of those goods, or goods included in that class of goods, whichever first occurs.

“(5) Where the Minister makes an interim safety order under this section in relation to specified goods, or goods included in a specified class of goods, the Minister shall not make another such order in relation to the same goods or class of goods.

“(6) The Minister may, by notice in the *Gazette*, revoke an interim safety order made under this section.

Consumer product safety orders

“15FC. (1) Where—

- (a) the Council, after completing an investigation under section 15FA, furnishes to the Minister a report recommending that the supply of any goods, or goods included in any class of goods, should be prohibited or permitted subject to specified conditions or restrictions; and
- (b) the Minister is satisfied that the making of a consumer product safety order is reasonable and necessary to prevent or reduce the risk of injury to, or impairment of health of, any person arising out of the possession, handling or use of those goods by that person or any other person,

the Minister may, by notice in the *Gazette*, make a consumer product safety order—

- (c) prohibiting the supply of goods, or of goods included in the class of goods, specified in the order; or
- (d) imposing the conditions and restrictions specified in the order on the supply of those goods, or goods included in that class of goods.

“(2) A consumer product safety order made under this section shall take effect on the day on which it is notified in the *Gazette* or on such later date as is specified in the order.

“(3) The Minister may, of his own motion or on the recommendation of the Council, by notice in the *Gazette*, amend or revoke a consumer product safety order made under this section.

Orders made by Director

“15FD. (1) Subject to this section, where a prescribed authority in a State or another Territory has, by order or other instrument—

- (a) prohibited the supply in that State or Territory of any goods, or of goods included in any class of goods; or

- (b) imposed conditions or restrictions on the supply of those goods in that State or Territory,

the Director may, at any time when that order or instrument is in force, by notice in the *Gazette*, make a consumer product safety order—

- (c) where the order or instrument made by the prescribed authority is of a kind referred to in paragraph (a) prohibiting the supply in the Territory of those goods or of goods included in that class of goods; or
- (d) where the order or instrument made by the prescribed authority is of a kind referred to in paragraph (b) imposing conditions or restrictions on the supply of those goods in the Territory.

“(2) A consumer product safety order made under this section—

- (a) takes effect on the day on which it is notified in the *Gazette*, or on such later date as is specified in the order; and
- (b) subject to this section, ceases to have effect on such date (if any) as is specified in the order or on the coming into effect of a consumer product safety order made under section 15FC in relation to the goods, or goods included in the class of goods, specified in the order made under this section, whichever first occurs.

“(3) The Director shall not make a consumer product safety order under this section in relation to any goods, or goods included in any class of goods, if—

- (a) the Council has commenced an investigation under section 15FA in relation to those goods;
- (b) the Council has furnished a report to the Minister under sub-section 15FA (4) or 15FB (1) in relation to those goods; or
- (c) the Minister has made, or has refused to make, an interim safety order or a consumer product safety order in relation to those goods.

“(4) The Director shall not make a consumer product safety order under this section in relation to any goods, or goods included in any class of goods, unless he is satisfied that the making of the order is reasonable and necessary to prevent or reduce the risk of injury to, or impairment of health of, any person arising out of the possession, handling or use of those goods by that person or any other person.

“(5) The Director or the Minister may, by notice in the *Gazette*, amend or revoke a consumer product safety order made under this section.

“(6) In this section, ‘prescribed authority’ means a Minister of a State or another Territory responsible for consumer affairs in that State or Territory, or a person or authority appointed or established under a law of the Commonwealth or of a State or another Territory, with powers and functions that are the same, or substantially the same, as the powers and functions conferred on the Minister, the Council or the Director under this Part.

Offences

“15FE. (1) Subject to this section, a person shall not supply goods that are intended to be used, or are of a kind likely to be used, by a consumer if—

- (a) there is a prescribed consumer product safety standard in respect of the goods and the goods do not comply with that standard; or
- (b) the supplying of the goods contravenes an order under section 15FB, 15FC or 15FD.

“(2) A person who contravenes sub-section (1) is guilty of an offence, punishable on conviction—

- (a) in the case of a person other than a body corporate—by a fine not exceeding \$1,000 or by imprisonment for a term not exceeding 6 months, or both; or
- (b) in the case of a body corporate—by a fine not exceeding \$5,000.

“(3) Paragraph (1) (a) does not apply to, or in relation to, the supply of goods—

- (a) for the value of the material of which the goods are composed and not for the use of the goods as finished articles; or
- (b) as damaged goods to—
 - (i) a person who carries on the business of repairing damaged goods for the purpose of re-selling those goods; or
 - (ii) a person by whom those goods were insured against damage.

“(4) It is a defence to a prosecution for an offence against paragraph (1) (a) that the defendant believed on reasonable grounds at the time he supplied the goods that they complied with the prescribed consumer product safety standard.

“(5) Where—

- (a) the supplying of goods by a person constitutes a contravention of sub-section (1) by reason that the goods do not comply with a prescribed product safety standard;
- (b) a person suffers loss or damage by reason that the goods do not comply with that standard or by reason of his not having particular information in relation to the goods; and
- (c) the person referred to in paragraph (b) would not have suffered the loss or damage if the goods had complied with that standard,

the person referred to in paragraph (b) shall be deemed, for the purposes of this Part, to have suffered the loss or damage by the supplying of the goods.

“(6) Where—

- (a) the supplying of goods by a person constitutes a contravention of sub-section (1) by reason that the supplying contravenes an order under section 15FB, 15FC or 15FD; and

- (b) a person suffers loss or damage, being loss or damage caused by the goods or a defect in the goods or by reason of his not having particular information in relation to the goods,

the person referred to in paragraph (b) shall be deemed, for the purposes of this Part, to have suffered the loss or damage by the supplying of the goods.

Recovery of amount of loss or damage

“15FF. (1) A person who suffers loss or damage by the supplying of goods in contravention of sub-section 15FE (1) may recover the amount of the loss or damage by action against the person by whom the goods were so supplied.

“(2) An action under sub-section (1) may be commenced at any time within 3 years after the date on which the cause of action accrued.

Recovery of amount paid for goods

“15FG. (1) Subject to this section, a person to whom goods have been supplied in contravention of sub-section 15FE (1) may recover, as a debt due to him, against the person who supplied the goods—

- (a) the amount paid in respect of the supplying of the goods by the second-mentioned person; and
- (b) where the first-mentioned person has returned the goods to the second-mentioned person—the amount of any reasonable expenses incurred in so returning the goods.

“(2) A person to whom goods have been supplied in contravention of sub-section 15FE (1) and who supplies those goods to another person in contravention of that sub-section shall not be entitled to recover any amount under sub-section (1) unless he has paid to that other person such amounts as that other person is entitled to recover under sub-section (1).

Finding in proceedings to be evidence

“15FH. In an action against a person under section 15FF or 15FG, a finding of any fact by a court in proceedings for an offence against sub-section 15FE (1), in which that person has been found to have contravened that section, is evidence of that fact.

Contracting out

“15FI. Any agreement whereby the rights and entitlements conferred on a person under section 15FF or 15FG are waived, limited or modified is void.

Notification of decisions

“15FJ. (1) Where the Minister makes a decision—

- (a) making, extending the period of effect of, or revoking an interim safety order; or
- (b) making, amending or revoking a consumer product safety order,

the Minister shall cause a notice containing particulars of the decision to be published in a newspaper circulating in the Territory.

“(2) Where the Minister makes a decision refusing to make an interim safety order or a consumer product safety order the Minister shall cause a notice containing particulars of the decision to be published in the *Gazette* and in a newspaper circulating in the Territory.

“(3) Where the Director makes a decision making, amending or revoking a consumer product safety order, the Director shall cause a notice containing particulars of the decision to be published in a newspaper circulating in the Territory.

“(4) Where the Director makes a decision refusing to make a consumer product safety order, the Director shall cause a notice containing particulars of the decision to be published in the *Gazette* and in a newspaper circulating in the Territory.

“(5) A notice under this section shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, a person whose interests are adversely affected by the decision to which the notice relates may apply to the Administrative Appeals Tribunal for a review of the decision.

“(6) The validity of a decision referred to in this section shall not be taken to be affected by a failure to comply with sub-section (5).

Appeals

“15FK. (1) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Minister—

- (a) making, or refusing to make, an interim safety order;
- (b) extending the period of effect to an interim safety order;
- (c) revoking an interim safety order;
- (d) making, or refusing to make, a consumer product safety order; or
- (e) amending or revoking a consumer product safety order.

“(2) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Director making, amending or revoking a consumer product safety order or refusing to make such an order.”

Regulations

7. Section 18 of the Principal Ordinance is amended by inserting “and in particular prescribing consumer product safety standards in respect of any goods, or goods included in any class of goods” after “Ordinance” (last occurring).

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 31 December 1982.
2. No. 17, 1973 as amended by No. 53, 1973; Nos. 49 and 61, 1976; No. 42, 1979; No. 26, 1981; No. 38, 1982.