

1992

**AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY**

**CONSUMER AFFAIRS (AMENDMENT) BILL 1992**

**EXPLANATORY MEMORANDUM**

Circulated by authority of the  
Attorney-General  
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GENERAL OUTLINE

This Bill amends the *Consumer Affairs Act 1973* (the Principal Act). It has two main objectives which are:

- . to bring the definitions in the Principal Act into line with the definitions in the proposed Fair Trading Act;
- . to update the product safety provisions in the Principal Act to bring them into line with their counterparts in Part V Division 1A (Product safety and product information) of the *Commonwealth Trade Practices Act 1974* and State and Territory Fair Trading legislation elsewhere in Australia.

Particular improvements to the product safety provisions include:

- . the establishment of a Product Safety Advisory Committee to assist the Minister and the Director of Consumer Affairs to carry out the duties imposed on them under Parts IIIA and IIIB of the Principal Act;
- . enabling the Executive to prescribe consumer product information standards for the purpose of providing, where necessary, product information to consumers about the origin, quantity, quality, nature, durability or value of certain goods; and
- . enabling the Minister to make orders for recalling or requiring public notification or remedial action for unsafe or defective goods.

FINANCIAL IMPACT

The Bill involves no cost to the Government over and above that already expended for the administration of the Principal Act.

## NOTES ON CLAUSES

Clause 1: Short Title

The proposed Act can be referred to as the *Consumer Affairs (Amendment) Act 1992*.

Clause 2: Commencement

The standard commencement provisions apply. It is intended that this Bill and the proposed Fair Trading Act commence at the same time.

Clause 3: Principal Act

Where this Bill refers to the Principal Act, it means the *Consumer Affairs Act 1973*.

Clause 4: Interpretation

The Interpretation section of the Principal Act is amended in the following ways:

## 'consumer'

The word 'consumer' is amended so that it has the same meaning as it does in the proposed Fair Trading Act. An individual or a corporation is a consumer if he, she or it acquires any goods or services from a supplier.

However, individuals and corporations are not consumers if the goods are acquired in the course of a business:

- . for resupply;
- . for use as a raw material;
- . as an adjunct to a manufacturing process; or
- . for use in the repair or maintenance of other goods or property.

## 'consumer product information standard'

A definition of 'consumer product information standard' is inserted for the purposes of the proposed section 15FCA which sets out the criteria for these standards.

## 'consumer product safety standard'

The existing definition of 'consumer product safety standard' is amended. Expanded criteria for these standards are now contained in proposed section 15FBA.

## 'acquire', 'goods', 'services' and 'supply'

The terms 'acquire', 'goods', 'services' and 'supply' are amended so that they have the same meaning as their counterparts in the proposed Fair Trading Act.

Clause 5: Insertion

A new provision is inserted so that the Principal Act expressly binds the Crown.

Clause 6: Functions of the Bureau

Section 14 of the Principal Act is amended to enhance the functions of the Consumer Affairs Bureau so that it can assist the Director of Consumer Affairs to carry out any functions conferred on him or her by any ACT law.

For example, officers of the Bureau will be able to assist the Director to carry out the new responsibilities imposed on him or her by the proposed Fair Trading Act.

Clause 7: Insertion of Division

A new Division is inserted into Part IIIA of the Principal Act to provide for the appointment and operation of a Product Safety Advisory Committee. It consists of sections 15FAA - 15FAG.

Product Safety Advisory Committee

15FAA(1) The Product Safety Advisory Committee (the  
15FAA(2) Committee) consists of the following members appointed by the Minister:

- . a Chairperson;
- . an Executive Officer; and
- . other people the Minister considers have knowledge of or expertise in product safety.

15FAA(3) The Minister must appoint a member of the Committee as acting Chairperson if the Chairperson is unable to carry out his or her duties.

Appointment and tenure of office of members

15FAB The Minister can appoint or re-appoint members for such terms as he or she thinks fit. He or she can also remove a member from office.

Deputies of members

15FAC The Minister can appoint a suitably qualified person to act as a deputy for a member. A deputy is a full member of the Committee.

Co-opted members

15FAD With the prior approval of the Minister, the Committee can co-opt suitably qualified persons.

General procedure

15FAE The Committee determines its own procedure for calling and conducting meetings.

Voting

15FAF The Committee's decisions are made by a simple majority of the votes cast.

Minutes

15FAG The Committee must keep minutes of its proceedings.

Division 2 - Orders and standards

The existing provisions of Part IIIA of the Principal Act, commencing at section 15FA, make up a new Division 2 - 'Orders and standards'.

Clause 8: Advice concerning consumer product safety orders or standards

This clause amends section 15FA of the Principal Act. This section contains the procedure whereby the Minister receives advice or recommendations about the orders that he or she is empowered to make or standards that he or she may recommend to the Executive.

The amendment allows the Director to recommend to the Minister that a consumer product information standard be prescribed, amended or repealed. The manner and form of prescribing consumer product information standards is outlined in the notes on clause 11.

The Director already has similar powers to recommend to the Minister that consumer product safety orders and consumer product safety standards be prescribed, amended or repealed.

The amendment extends these powers to cover product recall or notification orders made by the Minister under proposed subsection 15FKA(1).

Subsection (4) is also amended to allow the Product Safety Advisory Committee to request the Director to make recommendations to the Minister about prescribing, amending or repealing consumer product safety orders, consumer product safety standards, consumer product information standards and product recall and notifications orders.

Clause 9: InsertionConsumer product safety standards

A new section 15FBA is inserted into Part IIIA of the Principal Act to expand the scope of the consumer product safety standards that can be prescribed by the Executive.

The purpose of consumer product safety standards is to prevent or reduce the risk of injury.

Previously, the standard covered only:

- . the performance, composition, contents, methods of manufacture or processing, design, construction, finish of packaging of goods; and
- . the form and content of markings, warnings or instructions accompanying the goods.

The amended provision includes:

- . the testing of goods during or after their manufacture;
- . the equipment or accessories to be supplied with the goods; and
- . the form and content of markings etc to be placed on a vending machine or a display stand for the goods, or a sign adjacent to the goods.

The Executive can prescribe a consumer product safety standard by regulation which is subject to the disallowance procedure of the Legislative Assembly.

Clause 10: Interim safety orders

This clause amends section 15FB of the Principal Act which contains the procedures for making interim safety orders. The functions previously conferred by this section on an unspecified advisory committee are now conferred on the Product Safety Advisory Committee.

Consequently, the Product Safety Advisory Committee can request the Director to recommend to the Minister that he or she make an interim safety order.

In addition, once an interim safety order has been made, the Minister can extend it for a further 28 days to allow the Product Safety Advisory Committee additional time to provide advice.

There is also an amendment to subsection (6) to clarify its operation. The amendment allows the Minister to make more than one interim product safety order in relation to particular goods or a class of goods.

However, these subsequent interim orders must relate to aspects of the goods or the class of goods which are not already covered by an earlier interim product safety order.

Clause 11: Insertion

Consumer product information standards

A new section 15FCA is inserted into Part IIIA of the Principal Act to permit the Executive to prescribe consumer product information standards.

Consumer product information standards are intended to assist consumers who purchase or use certain kinds of goods by giving them information about the origin, quantity, quality, nature, durability or value of those goods.

The standard can:

- . prescribe the form and manner in which the required information must be disclosed to the consumer on or with the goods;
- . require the following information to be disclosed:
  - the price, performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging;
  - the place of manufacture or production;
  - the identity of the manufacturer, producer or supplier;
  - the date of manufacture or production, or the durable life; or
  - the care and storage of the goods.

The Executive can prescribe a consumer product information standard by regulation which is subject to the disallowance procedure of the Legislative Assembly.

#### Clause 12: Offences

##### *Offences*

Section 15FE of the Principal Act makes it an offence to supply goods in breach of a product safety order, an interim product safety order or a consumer product safety standard.

Clause 12 extends this section to cover consumer product information standards. It makes it an offence to supply goods that are intended or likely to be used by a consumer unless they have complied with any consumer product information standard which applies to them.

##### *Penalties*

The penalties for offences under this section have also been updated to bring them into line with the proposed Fair Trading Act. The maximum penalty for an offence by an individual has been raised from \$5,000 to \$20,000, but the penalty of a term of imprisonment for up to two years has been removed. Likewise, the maximum penalty for an offence by a corporation has been raised from \$25,000 to \$100,000.

*Defences*

Subclause 12(d) amends subsection 15FE(4) to extend the defence to prosecutions for failure to comply with a consumer product information standard.

*Deemed loss*

Subsection 15FE(5) facilitates actions for damages where people suffer loss or damage because a supplier has supplied goods that do not comply with a prescribed product safety standard. The loss or damage is assumed by law to have resulted from the failure to comply with the order.

Subclause 12(e) amends subsection 15FE(5) so that the deemed loss provisions also apply where a supplier supplies goods that do not comply with a consumer product information standard.

Subsection 15FE(6) contains a similar deeming provision to that in subsection 15FE(5). This subsection applies to the supply of goods in breach of a product safety order made under sections 15FB, 15FC and 15FD. Subclause 12(f) amends this subsection to ensure that loss arising from the dangerous characteristics of goods is covered as well as loss arising from defects in them.

Clause 13: Insertion of Part

This clause inserts a new Part titled 'Part IIIIB - Product Recall' into the Principal Act. The new part consists of four sections, 15FKA - 15FKD.

Recall etc of goods

Section 15FKA sets out the circumstances in which the Minister can make orders that require a supplier of dangerous or defective goods to take action to recall the goods, make public notification about the goods or take other remedial action.

*Orders*

15FKA(1) Where goods:

- . do not comply with an appropriate product safety standard;
- . are subject to a consumer product safety order; or
- . are of a kind that the Minister believes will or may cause injury to a person;

and the Minister is of the view that the supplier has not taken satisfactory action to prevent the goods causing injury to anyone, the Minister can order the supplier to do one or more of the following:

recall the goods as and when required by the order.

notify the public, or a particular group of people, as and when required by the order, about:

- . any defect in goods; and/or
- . circumstances where using the goods can be dangerous; and/or
- . procedures to follow for disposing of the goods.

notify the public or particular group of people, as and when required by the order, that the supplier will remedy the defect by electing to:

- . repair the goods, unless they are dangerous;
- . replace the goods; or
- . refund the purchase price, even if the goods were supplied by another person.

#### *Refunds*

- 15FKA(2) If the supplier elects to give a refund, but the goods were supplied more than 12 months before the order was made, the order can specify an amount to be deducted for the use of the goods that a person has had.

#### *Repair*

- 15FKA(3) If the supplier elects to repair goods, such repairs must rectify the defect identified and ensure that the repaired goods comply with any applicable consumer product safety standard.

#### *Replacement*

- 15FKA(4) If the supplier elects to replace goods, the replacement goods must not be defective and must comply with any applicable consumer product safety standard.

#### *Costs*

- 15FKA(5) If the supplier elects to repair or replace goods, the supplier is responsible for all associated costs, including transport.

*Offences*

15FKA(6) If a product recall or notification order made under subsection (1) applies to goods, a supplier must not:

- . fail to act as required or directed by the order;
- . supply goods containing the identified defect;
- . supply goods of a kind that are subject to a recall order; or
- . fail to carry out an undertaking or any associated obligations imposed by this section.

The penalty for a breach of this subsection is \$20,000 for an individual and \$100,000 for a corporation.

*Notification*

15FKA(7) If a supplier has supplied recalled goods to a person outside the Territory, the supplier must notify that person of the recall as soon as possible.

The notice must state that the goods are subject to recall, and give details of any defect. If the goods do not comply with a consumer product safety standard, the notice must also provide details.

Suppliers that breach this provision can be fined up to \$2,000 if they are individuals or up to \$10,000 if they are corporations.

15FKA(8) If suppliers take action to voluntarily recall goods, they must notify the Director of Consumer Affairs in writing within 2 days of doing so.

This written notice must advise which goods are subject to recall and give details of any defect. If the goods do not comply with a consumer product safety standard, the notice must also provide details.

Suppliers that breach this provision can be fined up to \$2,000 if they are individuals or up to \$10,000 if they are corporations.

15FKA(9) Suppliers can comply with the notice requirements of subsection (8) if they give the Director a copy of a notice concerning the voluntarily recalled goods given under subsection (8)'s counterpart in the *Commonwealth Trade Practices Act 1974*.

Conferences relating to compulsory product recall etc

Section 15FKB sets out the procedures whereby suppliers of goods are notified and can respond to compulsory recall orders in force or proposed, or a defect notification order made under section 15FKA.

*Notice*

15FKB(1) The Minister must publish a notice in the *Gazette* if he or she makes or proposes to make a recall order, or requires a supplier to issue a defect notice.

*Form and contents of the notice*

15FKB(2) The notice must state:

- . that suppliers have 10 days, (or more, if specified), from the Gazettal date in which to request a conference with the Product Safety Advisory Committee; and
- . if the Minister has made a draft order, the details of that order and the reasons for it.

*Further publication after the Gazettal of a notice*

15FKB(3) After a notice is gazetted, the Director must either  
15FKB(4) send a copy of the notice to all known suppliers of the goods in question or publish the notice in a local daily newspaper.

This additional notice must be given within 2 days of the Gazettal or as soon as practicable. The Gazettal notice is valid whether or not the Director issues the additional notice.

*Time for holding a conference*

15FKB(5) If a supplier requests a conference, it must be held within 14 days after the expiry date for requesting a conference.

*Representation at a conference*

15FKB(6) The following people can attend a conference:

- . a Product Safety Advisory Committee member nominated by the Chairperson;
- . the supplier/s who requested the conference, either in person or through a representative;
- . any other person/s that the Committee considers appropriate; and
- . the Minister or any person/s nominated in writing by the Minister.

*Rights of people attending*

15FKB(7) People attending a conference can:

- . inspect documents held by the Committee representative concerning goods subject to the order or draft order, unless they disclose a secret formula or process; and
- . be heard by, and make submissions to, the Committee representative about the order or draft order.

*Record keeping*

15FKB(8) The Committee representative must record the conference proceedings.

*Recommendations to the Minister*

15FKB(9) The Committee must make a written recommendation to the Minister after the conference.

If the conference involved a draft order, the Committee can recommend that the Minister:

- . publish the draft order;
- . publish an amended order; or
- . refrain from publishing an order.

If the conference involved an existing order, the Committee can recommend that the Minister:

- . continue the order;
- . vary the order; or
- . revoke the order.

*Notification of recommendations*

15FKB(10) The Committee must send a copy of its recommendations to each supplier attending or represented at the conference.

*Power of the Minister*

15FKB(11) The Minister is not obliged to accept the Committee's recommendations. However, if the Minister does not follow the Committee's recommendations, he or she must publish the reasons for this decision in the Gazette.

Certain amounts recoverable as debt or damages

Section 15FKC assists people to recover their loss or damage if a supplier does not comply with a notification order or a recall order under section 15FKA.

15FKC(1) If a supplier fails to carry out an undertaking to refund the price of the goods, the refund can be recovered as if it was a debt owed by the supplier.

15FKC(2) If a supplier fails to carry out an undertaking to repair or replace goods, the undertaking can be treated as if was an undertaking to refund the price of the goods. Consequently, if the supplier fails to refund the price within the required time, the previous subsection will apply so that the refund can be recovered as a debt due.

15FKC(3) This subsection facilitates actions for damages where people suffer loss or damage because a supplier has supplied defective goods subject to a recall or notification order under section 15FKA. The loss or damage is assumed to have resulted from the failure to comply with the order.

Certain action not to affect insurance contracts

Section 15FKD ensures that suppliers' product liability or product recall insurance will not be affected by giving information to the Minister, Committee or an officer about goods covered by that insurance.

Clause 14: Liability for defamatory statement

Section 16 of the Principal Act is amended to extend it to cover members of the Product Safety Advisory Committee. This confers on Committee member's immunity from civil or criminal liability for defamation if the statements were made in good faith in performance of the member's functions under the Act.

Clause 15: Regulations

This clause is amended so that the Executive's regulation making power for consumer product safety standards is now located in proposed section 15FBA.

Clause 16: Further amendments

The Schedule contains sundry amendments which remove the sexist language in the Principal Act.