

(Reprint No. 1)

SOUTH AUSTRALIA

TRADE STANDARDS ACT, 1979

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 15 January 1992.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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TRADE STANDARDS ACT, 1979

being

Trade Standards Act, 1979, No. 52 of 1979 [Assented to 22 March 1979]¹

as amended by

Statutes Amendment (Fair Trading) Act, 1987, No. 43 of 1987 [Assented to 30 April 1987]²

Trade Standards Act Amendment Act, 1988, No. 26 of 1988 [Assented to 21 April 1988]³

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

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.

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

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.

* * * * *

¹Ss. 1-3, 5-21, 24-27 came into operation 31 January 1980: *Gaz.* 31 January 1980, p. 192; ss. 36-45 came into operation 14 February 1980: *Gaz.* 14 February 1980, p. 310; ss. 22, 23, 28-35 came into operation 24 July 1980: *Gaz.* 24 July 1980, p. 295; s. 4(3), 4(5) and 4(6) came into operation 1 June 1985: *Gaz.* 30 May 1985, p. 1801; s. 4(1) came into operation 14 March 1986: *Gaz.* 13 March 1986, p. 540; s. 4(2) came into operation 1 January 1989: *Gaz.* 22 September 1988, p. 1114; s. 4(4) had not come into operation at the date of this reprint.

²Came into operation 26 October 1987: *Gaz.* 24 September 1987, p. 940.

³Came into operation 9 June 1988: *Gaz.* 9 June 1988, p. 1869.

Repeal of certain Acts

4. (1) The *Sale of Furniture Act, 1904-1975*, is repealed.
- (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.*¹
- (5) The *Footwear Regulation Act, 1969-1972*, is repealed.
- (6) The *Flammable Clothing Act, 1973*, is repealed.

Interpretation

5. (1) In this Act, unless the contrary intention appears—

“the Council” means the Trade Standards Advisory Council established under Part II of this Act:

“dangerous goods” means goods declared under Part III to be dangerous goods:

“dangerous services” means services declared under Part III to be dangerous services:

“defect notice” means a notice issued under section 27a:

“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:

* * * * *

“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:

“premises” means—

- (a) any land, building or place;

or

- (b) a part of premises:

“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:

¹S. 4(4) had not been brought into operation at the date of this reprint.

“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,

and “supplier” has a corresponding meaning:

“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.

Act binds Crown

6. This Act binds the Crown.

Saving of other remedies

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

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

PART II

ADMINISTRATION

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 six 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;
 - (ca) one shall be appointed from a panel of three persons nominated by associations that, in the opinion of the Minister, represent the interests of suppliers of goods;
 - (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.

Allowances and expenses

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

Quorum, etc.

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.

(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.

Validity of acts of 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.

Functions 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 the declaration of goods to be dangerous goods, or the declaration of services to be dangerous services.

DIVISION II—GENERAL

Standards officers

14. (1) The Governor may, by notice published in the *Gazette* appoint any person employed in the Public Service of the State 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, for purposes connected with the exercise, performance or discharge of any power, function or duty under this Act—

(a) (i) enter and inspect any premises at any reasonable time;

or

(ii) stop and inspect any vehicle;

(b) during the course of the inspection of any premises or vehicle—

(i) require any person found in the premises or vehicle to answer any question;

(ii) inspect any goods, articles or substances found in the premises or vehicle;

(iii) open any container, package or other item found in the premises or vehicle;

(iv) seize and remove anything that constitutes evidence of an offence against this Act;

(v) on payment or tender of a reasonable price for any goods found in the premises or vehicle, remove the goods from the premises or vehicle;

(vi) inspect, examine, analyse and test any goods;

(vii) take photographs, films or video recordings;

(viii) take measurements and make notes;

(ix) require any person to produce any plans, specifications, books, papers or other documents or records;

(x) search for any plans, specifications, books, papers or other documents or records;

(xi) examine, copy and take extracts from any plans, specifications, books, papers or other documents or records;

and

(xii) give such directions as are reasonably necessary for, or incidental to, the effective exercise of 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) Subject to subsection (5), 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 is not required to answer a question or to produce a plan, specification, book, paper or other document or record under this section if the answer or the production of the plan, specification, book, paper or other document or record would result in or tend towards his or her self-incrimination.

(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.

(7a) Where any plan, specification, book, paper or other document or record is seized and removed under this section, the person from whom it was seized, and any other person authorized by him or her, is entitled to inspect it at any reasonable time.

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

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

or

(b) proceedings are instituted within that period but the defendant is not subsequently convicted,

the person from whom the goods were seized is entitled to recover the goods, or, if the goods have been destroyed or damaged, or have deteriorated, to recover from the Minister as a debt 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.

Minister may require information

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—

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

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

(ba) any services should be declared to be dangerous services;

or

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

(2) Subject to subsection (3), 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

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

Penalty: One thousand dollars.

(3) A person is not required to furnish information under this section if the production of the information would result in or tend towards his or her self-incrimination.

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.

Cost of testing

18. (1) Where—

(a) goods are declared to be dangerous goods;

or

(b) services are declared to be dangerous services,

the Minister may recover as a debt from a manufacturer or supplier of the goods or from a supplier of the services the reasonable cost of any examination, analysis or test that led to the declaration.

(2) Where—

(a) goods are found not to comply with an applicable safety standard;

or

(b) services are found not to comply with an applicable safety standard,

the Minister may recover as a debt from a manufacturer or supplier of the goods or from a supplier of the services the reasonable cost of any examination, analysis or test that led to that finding.

(3) Where a person provides (in contravention of this Act) materially inaccurate information in relation to goods or services, the Minister may recover as a debt from that person the reasonable cost of any examination, analysis or test carried out for the purpose of testing the accuracy of the information.

(4) The court by which a person is convicted of an offence against this Act may, on the application of the Minister, order payment of any amount that the Minister is entitled to recover from the convicted person under this section.

(5) The Minister must, before proceeding to recover costs from a person under this section, supply to the person a statement setting out details of the examination, analysis or test that was carried out and the costs that were incurred.

(6) In any proceedings for the recovery of the cost of carrying out an examination, analysis or test to which this section applies, a certificate apparently signed by the Minister—

(a) certifying that the Minister supplied a statement in accordance with subsection (5) on a date specified in the certificate;

or

(b) certifying the amount of the costs,

will be accepted, in the absence of proof to the contrary, as proof of the matter so certified.

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
SAFETY STANDARDS

Duty to comply with trade standards

22. (1) A person must not, in the course of a trade or business—

(a) manufacture or supply goods that do not comply with an applicable safety standard;

or

(b) supply goods in contravention of an applicable safety standard.

Penalty: \$10 000.

(2) A person must not, in the course of a trade or business—

(a) supply a service that does not comply with an applicable safety standard;

or

(b) supply a service contrary to an applicable safety standard.

Penalty: \$10 000.

Safety standards

23. (1) Safety standards are directed at preventing or minimizing risk of injury or impairment of health.

(2) Safety standards may be promulgated by the Governor in the form of regulations.

(3) Safety standards may—

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

(b) regulate the nature and quality of services of any kind and the manner in which they are to be performed;

(c) prohibit the supply of particular kinds of goods or services to persons of less than a specified age;

(d) prescribe precautions to be taken in relation to the supply of particular kinds of goods or services (either generally or when they are supplied to particular classes of persons);

(e) prohibit the supply of particular kinds of goods unless instructions are supplied, or adequate instruction is given, in their installation, alteration or use;

and

(f) make any other reasonable provision that is desirable to prevent or minimize risk of injury or impairment of health.

Manufacture or supply of dangerous goods or services

24. (1) A person must not, in the course of a trade or business, manufacture or supply dangerous goods.

Penalty: \$10 000.

(2) A person must not, in the course of a trade or business, supply dangerous services.

Penalty: \$10 000.

Declaration of dangerous goods and services

25. (1) The Minister may, by notice in the *Gazette*—
- (a) declare specified goods, or goods of a specified class, to be dangerous goods;
 - (b) declare specified services, or services of a specified class, to be dangerous services;
- or
- (c) vary or revoke a declaration under this section.
- (2) A declaration cannot be made under this section unless the Minister is satisfied—
- (a) that the declaration is necessary in order to avert risk of injury or impairment of health;
- and
- (b) that it is not appropriate in the circumstances to deal with the matter by the prescription of safety standards.

Compensation

26. (1) A person to whom dangerous goods, or goods that do not comply with an applicable safety standard, are supplied is entitled to recover from the supplier—
- (a) compensation for any damage suffered by the person in consequence of a dangerous characteristic of the goods, or the failure to comply with an applicable safety standard;
 - (b) where the goods are returned to the supplier or where they cannot be returned because they have been consumed or destroyed—any amount paid by the person for the goods;
 - (c) where the goods are returned—any reasonable expenses incurred by the person in or in connection with the return of the goods.
- (2) A person to whom dangerous services, or services that do not comply with an applicable safety standard, are supplied is entitled to recover from the supplier—
- (a) compensation for any damage suffered by the person in consequence of a dangerous characteristic of the services, or the failure to comply with an applicable safety standard;
- and
- (b) any amount paid by the person for the services.
- (3) The rights conferred by this section cannot be excluded or limited by contract.
- (4) If in proceedings for compensation under this section it is established that the person claiming compensation contributed to his or her damage or loss, that fact must be reflected in any award of compensation to that person.

Temporary bans

- 26a. (1) Where it appears to the Minister—
- (a) that goods of a particular kind may be dangerous;
- or
- (b) that services of a particular kind may be dangerous,

the Minister may on the recommendation of the Council, by notice in the *Gazette*, place a temporary ban (for a period not exceeding three months specified in the notice) on the manufacture or supply of those goods, or the supply of those services, while the Minister investigates whether they should be declared to be dangerous.

(2) The Minister may, on the recommendation of the Council, by further notice in the *Gazette*—

(a) extend the period of the ban (but not so that the total period of the ban exceeds six months);

or

(b) vary or revoke the ban.

(3) While the ban is in force, a person must not, in the course of a trade or business, manufacture or supply goods, or supply services, that are subject to the ban.

Penalty: \$10 000.

(4) The Minister must take reasonable steps to bring the publication of a notice under subsection (1) or (2) to the attention of manufacturers or suppliers who are known by the Minister to be affected by the notice.

Warnings

27. (1) The Minister may take any action to warn the public against risks, or potential risks, associated with—

(a) goods or services that do not comply with an applicable safety standard;

(b) goods or services that have been supplied in contravention of an applicable safety standard;

(c) dangerous goods or services;

or

(d) goods or services that are subject to a temporary ban.

(2) For the purposes of subsection (1), the Minister may publish the trade name or description of goods or services and identify manufacturers or suppliers by name.

PART IIIA
DEFECT NOTICES**Issue of defect notices**

27a. (1) Where—

- (a) goods are supplied in the course of trade or commerce after the commencement of this Part;
 - (b) the goods—
 - (i) are dangerous goods;
 - (ii) do not comply with an applicable safety standard;
 - or
 - (iii) are such as may cause injury;
- and
- (c) it appears to the Minister that insufficient action has been taken to avert danger to those to whom the goods have been supplied (or to other persons who may come into possession of the goods),

the Minister may issue a defect notice to the supplier.

(2) A defect notice is a notice that identifies a defect in, or dangerous characteristic of, the goods to which it applies and directs the supplier to do one or more of the following—

- (a) to take action to recall the goods in accordance with directions contained in the notice and on the return of the goods—
 - (i) to repair the goods;
 - (ii) to replace the goods;
 - or
 - (iii) to refund to the person who returns the goods any amount paid by the person for the goods;
- (b) to disclose to the public, or a specified section of the public, in the manner and within the period specified in the notice—
 - (i) the nature of the defect in, or dangerous characteristic of, the goods;
 - (ii) the circumstances in which the use of the goods is dangerous;and
 - (iii) where appropriate—procedures for disposing of the goods;
- (c) to inform the public, or a specified section of the public, in the manner and within the period specified in the notice, that the supplier undertakes to do whichever of the following the supplier thinks appropriate:
 - (i) to repair the goods;
 - (ii) to replace the goods;
 - (iii) to refund to a person who returns the goods any amount paid by the person for the goods.

(3) A defect notice may be issued to a supplier—

(a) personally;

(b) by post;

or

(c) if the notice is addressed to suppliers of a particular class—by publication in the *Gazette* and in a newspaper circulating generally in the State.

(4) The Minister must take reasonable steps to bring the publication of a notice under subsection (3)(c) to the attention of suppliers who are known by the Minister to be affected by the notice.

(5) Where goods are to be repaired in pursuance of a defect notice, the supplier must, on delivery of the goods for repair, cause the goods to be repaired so that—

(a) any defect in, or dangerous characteristics of, the goods identified in the notice is remedied;

and

(b) if there is a safety standard in respect of the goods—the goods comply with that standard.

(6) Where goods are to be replaced in pursuance of a defect notice, the supplier must replace the goods with similar goods that—

(a) do not have the defect or dangerous characteristic identified in the notice;

and

(b) if there is a safety standard applicable to the goods—comply with that standard.

(7) The cost of the repair or replacement of goods under subsection (5) or (6) (including any necessary transportation costs) must be borne by the supplier.

(8) Where a refund of the amount paid for goods is to be made in pursuance of a defect notice, the supplier must, subject to subsection (9), make such a refund in full.

(9) If the goods were acquired from the supplier more than 12 months before the date of the application for the refund, the amount of the refund may be reduced by an appropriate amount to allow for the use of the goods.

(10) The cost of the return of goods under subsection (8) (including any necessary transportation costs) must be borne by the supplier.

(11) If a supplier—

(a) fails to comply with a defect notice;

(b) supplies goods to which a defect notice relates while the notice remains in force;

or

(c) fails to comply with a requirement of this section,

the supplier is guilty of an offence.

Penalty: \$10 000.

Opportunity for conference to be afforded

27b. (1) Where the Minister proposes to publish a defect notice in relation to goods, the Minister must publish a notice in the *Gazette* and in a newspaper circulating generally in the State containing—

- (a) a draft of the proposed defect notice;
 - (b) a summary of the reasons for the proposed publication of the defect notice;
- and
- (c) an invitation to any person who supplies or proposes to supply goods of the relevant kind to request the Council, within a period specified in the notice (which must be a period of at least 10 days from the date of publication), to hold a conference in relation to the proposed publication of the defect notice.

(2) The Minister must take reasonable steps to bring the publication of a notice under subsection (1) to the attention of suppliers who are known by the Minister to be suppliers of goods of the relevant kind.

(3) If no request for a conference is made within the period stipulated in the invitation or such longer period as the Council may allow, the Council must notify the Minister accordingly.

(4) If a request for a conference is made within the relevant period, the Council must appoint a time and place for the holding of the conference, and give notice of the time and place so appointed to the Minister and to the supplier.

(5) At a conference under this section—

- (a) the Council will be represented by a member or members nominated by the Chairman;
 - (b) each supplier who requested a conference is entitled to be present or to be represented;
 - (c) any other person whose presence at the conference is considered by the Council to be appropriate is entitled to be present or to be represented;
 - (d) the Minister or the Minister's nominees are entitled to be present;
- and
- (e) the procedure to be followed will be as determined by the Council.

(6) The Council must allow the parties to the conference—

- (a) reasonable access to information on the basis of which the publication of a defect notice is proposed;
- and
- (b) a reasonable opportunity to make representations on the question of whether the defect notice should be published.

(7) As soon as is practicable after the conclusion of a conference the Council must recommend that—

- (a) the Minister publish a defect notice in terms of the draft notice;
 - (b) the Minister publish the defect notice with specified modifications;
- or
- (c) the Minister refrain from publishing the defect notice.

(8) If the Minister decides not to publish a defect notice, the Minister must give notice of that decision in the *Gazette* and in a newspaper circulating generally in the State.

Notification of voluntary recall

27c. (1) Where a supplier voluntarily takes action to recall goods because the goods will or may cause injury, the supplier must, within two days after taking that action, give notice in writing to the Minister—

- (a) stating that the goods are subject to recall;
- (b) setting out the nature of the defect in, or dangerous characteristic of, the goods; and
- (c) setting out the action that the supplier intends to take on the recall.

(2) A person who fails to comply with subsection (1) is guilty of an offence.

Penalty: \$10 000.

Action not to affect insurance contracts

27d. The liability of an insurer under a contract of insurance insuring a supplier against risk of loss related to defects in goods supplied by the supplier is not affected by the fact that the supplier gives to—

- (a) the Council;
 - (b) the Minister or any other agency or instrumentality of the Crown;
- or

(c) any officer or employee of the Crown or any of its agencies or instrumentalities, information relating to goods to which the contract of insurance relates.

PART IV

QUALITY STANDARDS

Goods and services to which this Part applies

28. The Part applies to—

- (a) goods of a class declared by regulation to be a class of goods to which this Part applies;
- (b) services of a class declared by regulation to be a class of services to which this Part applies.

Compliance with quality standards

29. (1) A person must not, in the course of a trade or business, manufacture or supply goods to which this Part applies that do not comply with an applicable quality standard.

Penalty: \$2 000.

(2) A person must not, in the course of a trade or business, supply a service to which this Part applies that does not comply with an applicable quality standard.

Penalty: \$2 000.

Quality standards

30. (1) Quality standards are directed at ensuring—

- (a) that goods to which this Part applies are reasonably fit for the purpose for which such goods are ordinarily used;
- (b) that services to which this Part applies are reasonably fit for the purpose for which such services are ordinarily supplied.

(2) Quality standards may be promulgated by the Governor in the form of regulations.

(3) Quality standards may—

- (a) regulate the design, construction, composition, materials, contents, finish, performance or other characteristics of goods;
- (b) regulate the nature and quality of services and the manner in which they are to be supplied;
- (c) make any other provision relating to the quality of goods or services.

Warnings

31. (1) The Minister may take any action to warn the public—

- (a) that goods that do not comply with an applicable quality standard have been supplied to the public;

or

- (b) that services that do not comply with an applicable quality standard have been supplied to the public.

(2) For the purposes of subsection (1), the Minister may publish the trade name or description of goods or services and identify manufacturers or suppliers by name.

PART V
INFORMATION STANDARDS

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.

PART VI

PACKAGING STANDARDS

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

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.

Penalty: Five thousand dollars.

Packaging standards

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.

(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
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.

Contracts not avoided for breach of Act

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.

Evidence by certificate

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.

(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.

Evidentiary provisions

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.

(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.

Offences by bodies corporate

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 due to act or default of other person

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—

(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) A person who suffers loss through the failure of a manufacturer or supplier to comply with a provision of this Act is entitled to compensation from the manufacturer or supplier (or jointly from them both) for the loss.

(2) Any such compensation may be recovered in the same way as damages for a tort.

(3) If in proceedings for the compensation it is established that the person claiming compensation contributed to his or her loss, that fact must be reflected in any award of compensation to that person.

(4) A court by which a manufacturer or supplier is convicted of an offence may, on application by a person claiming to have suffered loss in consequence of the offence, order the convicted person to pay to that person an amount fixed by the court by way of compensation under this section.

Statutory remedies to be non-exclusive

44a. The remedies for which this Act provides are not mutually exclusive; hence, the fact that a person seeks or obtains one such remedy does not preclude that person from pursuing or obtaining another or others.

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.

APPENDIX

Legislative History

| | |
|-----------------|---|
| Section 3: | repealed by 26, 1988, s. 3 |
| Section 5(1): | definition of "dangerous goods" substituted by 26, 1988, s. 4(a) definition of "dangerous services" inserted by 26, 1988, s. 4(a) definition of "defect notice" inserted by 26, 1988, s. 4(a) definition of "materially inaccurate" repealed by 26, 1988, s. 4(b) definition of "premises" inserted by 26, 1988, s. 4(c) definition of "supply" amended by 26, 1988, s. 4(d) |
| Section 8(2): | amended by 26, 1988, s. 5 |
| Section 13: | amended by 26, 1988, s. 6 |
| Section 14(1): | amended by 26, 1988, s. 7 |
| Section 15(1): | substituted by 26, 1988, s. 8(a) |
| Section 15(4): | amended by 26, 1988, s. 8(b) |
| Section 15(5): | substituted by 26, 1988, s. 8(c) |
| Section 15(7a): | inserted by 26, 1988, s. 8(d) |
| Section 15(8): | substituted by 26, 1988, s. 8(d) |
| Section 16(1): | amended by 26, 1988, s. 9(a) |
| Section 16(2): | amended by 26, 1988, s. 9(b) |
| Section 16(3): | substituted by 26, 1988, s. 9(c) |
| Section 18: | substituted by 26, 1988, s. 10 |
| Section 22: | substituted by 26, 1988, s. 11 |
| Section 23: | substituted by 26, 1988, s. 12 |
| Section 24: | substituted by 26, 1988, s. 13 |
| Section 25: | substituted by 26, 1988, s. 14 |
| Section 26: | substituted by 26, 1988, s. 15 |
| Section 26a: | inserted by 26, 1988, s. 15 |
| Section 27: | substituted by 26, 1988, s. 16 |
| | Part IIIA comprising ss. 27a - 27d and heading inserted by 26, 1988, s. 17 |
| Sections 28-30 | substituted by 26, 1988, s. 18 |
| Section 31: | repealed by 43, 1987, s. 24; inserted by 26, 1988, s. 18 |
| Section 44: | substituted by 26, 1988, s. 19 |
| Section 44a: | inserted by 26, 1988, s. 19 |