

Queensland



ANNO VICESIMO TERTIO

ELIZABETHAE SECUNDAE REGINAE

No. 8 of 1974

**An Act to amend the Consumer Affairs Act 1970–1973 in
certain particulars**

[ASSENTED TO 18TH APRIL, 1974]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title and citation. (1) This Act may be cited as the *Consumer Affairs Act Amendment Act 1974*.

(2) In this Act the *Consumer Affairs Act 1970–1973* is referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Consumer Affairs Act 1970–1974*.

2. Amendment of s. 3. Section 3 of the Principal Act is amended by—

(a) omitting the reference “PART III—TRADE PRACTICES (ss. 24–36);” and substituting the reference “PART III—TRADE PRACTICES (ss. 24–36G);”;

(b) adding after the reference “*Division 3—Misrepresentation;*” the reference “*Division 4—Warranties;*”.

3. Amendment of s. 34. Section 34 of the Principal Act is amended by omitting from subsection (2) the words "prescribed goods or to provide prescribed services" and substituting the words "or provide goods or services (other than such goods or services as are prescribed)".

4. New Division 4 Part III. The Principal Act is amended by inserting after section 36 the following heading and sections:—

" Division 4—Warranties

36A. Meaning of term "warranty". Save when a contrary intention appears, the term "warranty" when used in this division means a representation (by whatever name called) communicated to a consumer in connexion with a supply of goods or a provision of services, at or about the time when the goods are supplied or the services are provided, to the effect that a person will (unconditionally or on specified conditions)—

- (a) repair or replace the goods or part thereof; or
- (b) provide afresh or rectify the services or part thereof; or
- (c) recompense the consumer, wholly or partially,

in the event that the goods or services or part thereof prove to be defective, and includes any document by which such representation is evidenced.

36B. Requirements of warranty. A warranty—

- (a) shall be so worded as to express as tersely as possible, clearly and accurately the act or acts required to be performed by the person by whom it is issued to honour the warranty, and the act or acts required to be performed by the consumer to entitle him to claim that the warranty should be honoured;
- (b) shall clearly and prominently specify the name and place of business of the person by whom it is issued;
- (c) shall clearly specify the period or periods within which a defect must appear in the goods or services to which it relates if the consumer is to be entitled to claim that the warranty should be honoured;
- (d) shall clearly specify the procedure for claiming that the warranty should be honoured.

36C. Benefits under warranty additional to legal rights. (1) The issue of a warranty, its communication to a consumer, or its completion by or on behalf of a consumer shall not have the effect of negating any contractual warranty or condition, express or implied, that affects the goods or services to which the warranty communicated to the consumer relates.

(2) A warranty shall clearly state that the benefits thereby conferred on the consumer are in addition to all other rights and remedies had by the consumer in law in respect of the goods or services to which it relates.

This subsection applies only in respect of a warranty issued by a person whose principal place of business is in Queensland.

36D. Offence to issue warranty lacking prescribed particulars.

Where there is communicated to a consumer a warranty that is not in accordance with the provisions of this division that are applicable to it—

- (a) the person who communicates the warranty to the consumer thereby commits an offence against this Act; and
- (b) the person who issued the warranty that is so communicated by such issue commits an offence against this Act, which for the purpose of laying and prosecuting a charge thereof, shall be deemed to have been committed on the date on which the warranty is so communicated.

36E. Use as warranties of deficient documents prohibited.

(1) A document—

- (a) that bears a heading that includes the word “warranty” or the word “guarantee” or any derivative of either word; or
- (b) that contains the word “warranty” or the word “guarantee” or any derivative of either word in such a manner as to be reasonably likely to induce a consumer who reads the same to believe that the document purports to be a warranty,

shall not be given to a consumer in connexion with a supply of goods unless the document expresses a warranty that applies in respect of every major component of the goods.

(2) Where a document is given to a consumer in contravention of subsection (1),

- (a) the person who gives the document to the consumer thereby commits an offence against this Act; and
- (b) the person who issued the document so given by such issue commits an offence against this Act, which, for the purpose of laying and prosecuting a charge thereof, shall be deemed to have been committed on the date on which the document is so given.

36F. Belief that warranty will be honoured. (1) A person shall not communicate to a consumer a warranty unless he has at the time of communication an honest and reasonable belief that the business affairs of the person who issues or issued the warranty are such as to raise a reasonable expectation that the warranty will be honoured according to its terms if the goods or services to which it relates should prove to be defective.

(2) Subsection (1) applies whether or not the person who communicates the warranty to a consumer is identical with the person who issues or issued the warranty.

36G. Definition of persons associated with warranty. For the purposes of this division—

- (a) the person who communicates a warranty to a consumer shall, subject to section 45, be taken to be the person who gives to a consumer, in connexion with a supply

of goods or provision of services, any card or document that expresses or purports to express a warranty or who represents orally to a consumer that the goods or services in question are goods or services to which a warranty relates;

- (b) the person who issues a warranty shall be taken to be the person who, according to the warranty communicated to a consumer, makes the representation that constitutes the warranty.”.

5. Amendment of s. 37. Section 37 of the Principal Act is amended by, in subsection (1)—

- (a) inserting after the words “ or disease ” the words “ or deception of consumers,”;

- (b) omitting provision (c) and substituting the following provision:—

- “(c) requirements that containers of goods of that class or description, being goods to be used as food of man or beast, or that any label attached to or used in connexion with containers of such goods be marked (in the prescribed manner, if any be prescribed) to show the components of those goods and such other particulars of those goods (other than weight or measure thereof) as are prescribed.”.

6. Amendment of s. 44. Section 44 of the Principal Act is amended by omitting from subsection (5) the word “ or ” where it secondly occurs and substituting the word “ and ”.

7. Amendment of s. 46. Section 46 of the Principal Act is amended by adding at the end thereof the following provision:—

- “(c) whether or not the offence is one defined in section 32, if it is proved that a statement or advertisement was published by any means referred to in subsection (3) of that section it shall be deemed, until the contrary is proved, that the statement or advertisement was so published by or at the direction of the person whose trade or business appears from the statement or advertisement or from the circumstances in which it is so published to be that sought to be benefited by the statement or advertisement.”.

8. Amendment of s. 51. Section 51 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

- “(1) The Governor in Council may make regulations, not inconsistent with this Act, to provide for—

- (a) particulars to be shown in any advertisement for the supply or provision of goods or services;
- (b) prevention of false or misleading statements or advertisements made or published in connexion with any business;
- (c) warranties that may be issued or communicated to a consumer in connexion with the supply or provision of prescribed goods or services or with any business and rights and obligations that are to arise from a warranty either generally or in respect of particular warranties;

- (d) suppression of practices in the conduct of or in connexion with any trade or business, which practices are, in the opinion of the Commissioner, undesirable having regard to the interests of consumers;
- (e) facilitation of proof of any matter material to any proceeding taken under or for the purpose of this Act;
- (f) forms to be used for the purposes of this Act and the purposes for which they are to be used;
- (g) matters required or permitted by this Act to be prescribed;
- (h) matters that are, in the opinion of the Governor in Council, necessary or desirable to be prescribed for the proper administration of this Act or to achieve the objects and purposes of this Act.

The regulations may provide for the attestation of any fact, document or form by means of an affidavit on oath or statutory declaration under *The Oaths Acts 1867 to 1960*.

The term "warranty" when used in provision (c) of this subsection has the meaning assigned to that term when used in Division 4 of Part III of this Act."