
CHAPTER 337C
CONSUMER PROTECTION

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SUMMONS TO WITNESS

CHAPTER 337C

CONSUMER PROTECTION

An Act to make provision for the greater protection of consumers, to establish a consumer protection commission and for the functions and powers of that commission and related matters. *7 of 2006*

[Assent 26th May, 2006]

[Commencement 1st July, 2006] *S.I. 25/2006.*

1. This Act may be cited as the Consumer Protection Act. *Short title.*

2. (1) In this Act —

“Consumer” in relation to —

(a) any goods, means —

(i) a natural person who acquires or enters a contract to acquire goods for his own private use or consumption; and

(ii) a commercial undertaking that purchases consumer goods;

(b) any services or facilities, means any person who employs or wishes to be provided with the services or facilities (otherwise than for the purposes of any business of his); or

(c) any accommodation, means any person who wishes to occupy the accommodation (otherwise than for the purposes of any business of his);

“Consumer Commission” means the Consumer Protection Commission established by section 3;

“consumer protection policy” means the aims of the Minister for consumer protection as published by the Minister from time to time which may include the enhanced rights and remedies available to the consumer;

“goods” has the meaning ascribed thereto in the Sale of Goods Act; *Ch. 337.*

Interpretation and application of Act.

“Minister” means the Minister responsible for Consumer Affairs;

“provider” in relation to —

- (i) any goods, means any person who sells goods; or
- (ii) any services or facilities, means any person who provides services or facilities.

(2) Subject to subsection (1), this Act shall apply to all persons involved in trade or business whether through the purchasing or vending of goods or services.

(3) The Minister may by order, subject to affirmative resolution, exempt categories of trade or business from the application of this Act.

Establishment of
Consumer
Commission.
First Schedule.

3. (1) There is established for the purposes of this Act a body to be called the Consumer Commission.

(2) The First Schedule has effect as to the constitution of the Consumer Commission and otherwise in relation thereto.

Functions and
powers of the
Consumer
Commission.

4. (1) The functions of the Consumer Commission shall be to —

- (a) advise the Minister generally in relation to consumer issues;
- (b) formulate and implement standards in relation to the consumer protection policy;
- (c) carry out, at the request of a consumer who has been adversely affected, such investigations in relation to the sale of goods or the provision of services as will enable it to determine whether the goods were sold or the services were provided in contravention of this Act and thereafter to make such report and recommendations in connection therewith as it thinks fit to the Minister;
- (d) carry out, on its own initiative, such other investigations in relation to the availability of goods of any class or description as it thinks fit and make such report and recommendations as it thinks fit to the Minister;
- (e) promote the development of organizations formed for the protection of the consumer;
- (f) collect, compile, analyze and publish information in relation to any trade or business;

- (g) provide information to consumers on their rights as consumers and any other form of consumer education;
- (h) resolve disagreements between consumers and providers; and
- (i) carry out such other functions as the Minister may assign to the Consumer Commission from time to time.

(2) In carrying out its functions, the Consumer Commission has the power to do all such acts as appear to it to be requisite, advantageous or convenient for or in connection with carrying out its functions or to be incidental to their proper discharge and may carry on any activities in that behalf either alone or in association with any other person or body.

5. The Minister may, after consultation with the Consumer Commission, give to the Consumer Commission a written direction, as to government policy that is to be applied by the Consumer Commission in the exercise of its powers and the performance of its duties, and the Consumer Commission shall give effect to that direction.

Directions.

6. The funds and resources of the Consumer Commission shall consist of—

Funds and resources of the Consumer Commission.

- (a) such moneys as may from time to time be placed at its disposition for the purposes of this Act by Parliament;
- (b) all other moneys and other property which may in any manner become payable to, or vested in the Consumer Commission in respect of any matter incidental to its functions.

7. (1) A complaint may be made to the Consumer Commission by a person who claims to have suffered a disadvantage in relation to the acquisition of goods or services.

Complaints.

- (2) Where the complainant —
 - (a) is a minor, the complaint may be made by his parent or guardian;
 - (b) is unable to act for himself by reason of infirmity or any other cause or has died, the complaint may be made by a member of his family or his personal representative.

(3) A complaint to the Consumer Commission may be made orally or in writing.

(4) The Consumer Commission may, upon the request of a complainant specified in subsection (2), assist that complainant in the event that litigation is contemplated.

(5) Where litigation is contemplated by the complainant in relation to a complaint that was not in writing, the Consumer Commission shall require the complainant to produce a written version of the complaint signed by the complainant.

Discretion not to
conduct
investigation.

8. (1) The Consumer Commission may determine whether to undertake or continue an investigation under this Act and in particular, but without prejudice to the generality of the foregoing, may refuse to undertake or continue any investigation if it is of the opinion that —

- (a) the complaint is frivolous or vexatious or not made in good faith;
- (b) the complainant is guilty of unreasonable delay in the making of his complaint;
- (c) the complainant does not have a sufficient interest in the subject-matter of the complaint;
- (d) the subject-matter of the complaint should more appropriately be dealt with by another body; or
- (e) having regard to all the circumstances of the case, no investigation or further investigation is necessary.

(2) Where the Consumer Commission decides not to undertake or continue the investigation of a complaint, it shall, in writing, inform the complainant of that decision and give reasons therefor.

Power to
investigate not
precluded.

Constitution.

9. (1) The Consumer Commission shall not be precluded from conducting an investigation in respect of any matter by reason only that it is open to the complainant to apply to the court for redress under Article 28 of the Constitution.

(2) If any question arises as to whether the Consumer Commission has jurisdiction to investigate any case or class of case under this Act, the Consumer Commission may apply to the court for a declaration determining that question.

(3) The fact that an action is commenced in any court in connection with a matter under investigation by the Consumer Commission shall not, unless the court otherwise directs, preclude such investigation.

10. (1) The Consumer Commission may summon any person to attend before the Consumer Commission in relation to an investigation being conducted by it and to give evidence or to produce any document in his possession or under the control of such person.

Summoning persons to give evidence.

(2) A summons under this section —

(a) shall be in the form prescribed in the Second Schedule; and

Second Schedule.

(b) may be served by a constable, or a bailiff.

11. (1) All persons summoned to attend and give evidence or to produce a document before the Consumer Commission are —

Obligations of persons summoned.

(a) entitled, in respect of such evidence or the disclosure of any communication or the production of any such document, to the same right or privilege as before a court of law;

(b) entitled to be paid their expenses, including traveling expenses, at the rates as are determined for witnesses who are entitled to have their expenses paid from public funds.

(2) Any person who —

(a) without sufficient cause, fails or refuses to attend before the Consumer Commission in obedience to a summons under this Act, or fails or refuses to produce any document which he was required by such summons to produce;

(b) being a witness, leaves the Consumer Commission without the permission of the Consumer Commission;

(c) being a witness, refuses, without sufficient cause, to answer any question put to him by or with the permission of the Consumer Commission; or

(d) wilfully obstructs or interrupts the proceedings of the Consumer Commission,

commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars.

Paper, book, record or document as evidence.

12. In all legal proceedings, any paper, book, record or document produced to the Consumer Commission pursuant to section 10 shall be received as *prima facie* evidence of the truth of the statements contained therein.

Accounts.

13. (1) The Consumer Commission shall keep proper accounts and shall prepare an annual statement of accounts in a form satisfactory to the Minister, being a form which shall conform with established accounting principles.

(2) The accounts of the Consumer Commission shall be audited annually by auditors appointed by the Consumer Commission with the approval of the Minister from among members of The Bahamas Institute of Chartered Accountants.

Annual reports and estimates.

14. (1) The Consumer Commission shall, in each year —

- (a) on or before the 31st day of May, submit to the Minister a report of its activities during the twelve months ending on the 31st day of March in that year, including a statement of its accounts audited in accordance with section 13;
- (b) on or before the 30th day of April, submit to the Minister for his approval its estimates of revenue and expenditure for the financial year next following.

(2) The Minister shall cause copies of reports submitted pursuant to subsection (1)(a) together with the annual statement of accounts and auditor's report thereon to be laid on the Table of the House of Assembly.

Minister to restrict imports, etc.

15. (1) Subject to subsection (3), the Minister may, by Order —

- (a) prohibit the importation or exportation of goods of any class or description of goods from or to any country;
- (b) prohibit the importation or exportation of goods or any class or description of goods from or to any country except under the authority of a licence granted by the Minister;
- (c) regulate the distribution, purchase or sale of goods or any class or description of goods;
- (d) subject to section 16 provide for the recall of certain goods which are dangerous or hazardous

to safety and the refund or remission by the vendor of the purchase price paid;

- (e) provide for the furnishing by persons carrying on or employed in connection with any trade or business of information concerning all or any of the elements of the cost or of the sale price of goods or any class or description of goods bought or sold whether by wholesale or retail in such trade or business;
 - (f) require the provision and maintenance, at places at which goods are offered for sale by retail, of means whereby persons wishing to purchase any of those goods may ascertain the weight or measurement thereof.
- (2) Without prejudice to the generality of subsection (1)(f), the Minister may by Order, require —
- (a) that the prices of those goods shall be marked on the goods or on any container in or from which they are sold; and
 - (b) that persons shall not be obstructed in any attempt to ascertain at the place at which they wish to purchase any of those goods, the weight or measurement thereof.
- (3) Subsection (1) shall not authorize the Minister to make an Order regulating the exportation or importation of any goods which may be regulated by the following Acts —
- (a) the Animal Contagious Diseases Act; Ch. 246.
 - (b) the Export Control Regulations Act; Ch. 299.
 - (c) the Fisheries Resources (Jurisdiction and Conservation) Act; Ch. 244.
 - (d) the Food Act; Ch. 236.
 - (e) the Import Control Regulations; Ch. 298.
 - (f) the Plants Protection Act. Ch. 250.
- 16.** (1) Subject to sections 19 and 20 where — Compulsory recall of goods.
- (a) a provider supplies goods on or after the commencement of this Act; and
 - (b) it appears to the Minister that the goods are goods of a kind which will or may cause injury to any

person and that the provider has not taken satisfactory action to prevent the goods causing injury to any person,

the Minister may, by notice in writing published in the Gazette, require the provider to do one or more of the following —

- (aa) take action within the period specified in the notice to recall the goods;
- (bb) disclose to the public, or to a class of persons specified in the notice, in the manner and within the period specified in the notice, one or more of the following —
 - (i) the nature of a defect in, or a dangerous characteristic of, the goods specified in the notice;
 - (ii) the circumstances, being circumstances specified in notice, in which the use of the goods is dangerous; and
 - (iii) procedures for disposing of the goods specified in the notice;
- (cc) inform the public, or class of persons specified in the notice, in the manner and within the period specified in the notice, that the provider undertakes to do whichever of the following the provider thinks is appropriate —
 - (i) except where the notice specifies a dangerous characteristic of the goods, repair the goods;
 - (ii) replace the goods;
 - (iii) refund to a person to whom the goods were supplied, whether by the provider or by another person, the price of the goods,

within the period specified in the notice.

(2) The Minister may by notice published in the Gazette give directions as to the manner in which the

provider is to carry out a recall of goods required under subsection (1).

(3) Where the provider under subsection (1) undertakes to repair goods, the provider shall cause the goods to be repaired so that any defect in the goods specified in the notice under subsection (1) is remedied.

(4) Where the provider under subsection (1) undertakes to replace goods, the provider shall replace the goods with like goods which, if a defect in, or a dangerous characteristic of, the first-mentioned goods was specified in the notice under subsection (1), do not have that defect or characteristic.

(5) Where the provider under subsection (1) undertakes to repair goods or replace goods, the cost of the repair or replacement, including any necessary transportation costs, shall be borne by the provider.

(6) Where goods are recalled, whether voluntarily or in accordance with a requirement made by the Minister under subsection (1), a person who has supplied or supplies any of the recalled goods to another person outside The Bahamas shall, as soon as practicable after the supply of those goods, give notice in writing to that other person, addressed to his last known address —

- (a) stating that the goods are subject to recall; and
- (b) if the goods contain a defect or have a dangerous characteristic, setting out the nature of that defect or characteristic.

(7) Where a person is required under subsection (6) to give notice in writing to another person, the first-mentioned person shall, within 14 days after giving that notice, provide the Minister with a copy of that notice.

(8) A person who contravenes subsection (7) commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars.

17. (1) Where a notice under section 16(1) is in force in relation to a person, he —

- (a) shall comply with the requirements and directions in the notice; and
- (b) shall not, where the notice specifies a defect in, or a dangerous characteristic of, the goods, supply goods of the kind to which the notice relates which have that defect or characteristic.

Compliance with goods recall notice.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

Loss or damage caused by contravention of goods recall notice.

18. Where —

- (a) a person contravenes section 16 by —
- (i) supplying goods of a kind in relation to which a notice under section 16(1) is in force; or
 - (ii) failing to comply with the requirements of such notice; and
- (b) another person suffers loss or damage by reason of a defect in or a dangerous characteristic of, the goods or by reason of not having particular information as to a characteristic of the goods,

that other person shall be deemed for the purposes of this Act to have suffered the loss or damage by the supplying of the goods, or by the failure of the first-mentioned person to comply with the notice, as the case may be.

Consultation to be held in certain cases.

19. (1) Subject to section 20, where the Minister proposes to publish a notice under section 16(1) in relation to goods of a particular kind, the Minister shall prepare —

- (a) a draft of the notice that he proposes to publish; and
- (b) a summary of his reasons,

and shall, by notice published in the Gazette, invite any person, in this section referred to as a “provider”, who supplied or proposes to supply goods of that kind to notify the Minister, within the period, in this section referred to as “the relevant period”, of 10 days commencing on the day specified in the last-mentioned notice, being not earlier than the day on which that notice is published in the Gazette, whether the provider wishes the Minister to hold a consultation in relation to the proposed publication of the first-mentioned notice.

(2) A notice published under subsection (1) shall set out a copy of the draft notice under section 16(1) and a copy of the summary of the reasons for the proposed publication of the notice.

(3) If no provider notifies the Minister in writing within the relevant period, or within such longer period as the Minister allows, that the provider wishes the Minister

to hold consultations in relation to the proposed publication of the notice under section 16(1), the Minister shall proceed to take such action under section 16 as he thinks fit.

(4) If a provider notifies the Minister in writing within the relevant period, or within such longer period as the Minister allows, that the provider wishes the Minister to hold consultations in relation to the proposed publication of the notice under section 16(1), the Minister shall appoint a day (being not later than 14 days after the end of that period), time and place for the holding of the consultation, and give notice of the day, time and place so appointed to each provider who so notified the Minister.

(5) At a consultation under this section —

- (a) the Minister or a person or persons nominated in writing by the Minister is or are entitled to be present;
- (b) each provider who notified the Minister in accordance with subsection (4) is entitled to be present or to be represented;
- (c) any other person whose presence at the consultation is considered by the Minister to be appropriate is entitled to be present or to be represented; and
- (d) the procedure to be followed shall be as determined by the Minister.

(6) The Minister shall cause a record of proceedings at a consultation under this section to be kept.

(7) The Minister shall, as far as is practicable, ensure that each person who, in accordance with subsection (5), is entitled to be present or who is representing such a person is given a reasonable opportunity at the consultation to present his case and, in particular, to inspect any documents which the Minister proposes to consider for the purpose of making a decision after the conclusion of the consultation, other than any documents that contain particulars of a secret formula or process, and to make submissions in relation to those documents.

(8) As soon as is practicable after the conclusion of a consultation in relation to the proposed publication of a notice under section 16(1), the Minister shall proceed to consider what action he should take under section 16.

Exception in case of danger to public.

20. (1) Where it appears to the Minister that goods of a particular kind create an imminent risk of death, serious illness or serious injury, the Minister may, immediately, by notice published in the Gazette, publish a notice in relation to the goods under section 16(1).

(2) Where the Minister publishes a notice in the Gazette under subsection (1) —

- (a) in a case where the notice is published before the Minister takes any action under section 16(1) in relation to goods of a particular kind, section 18 does not apply in relation to the action that the Minister may take under section 16(1) in relation to goods of that kind; or
- (b) in any other case, any action taken by the Minister under section 16(1) in relation to goods of a particular kind ceases to have effect and, if a consultation had, under section 18, been arranged or had commenced, the Minister may publish the notice under section 16(1) without regard to the action taken under section 18.

Information to consumer.

21. (1) At any time before payment is made for any item of goods of, or above a prescribed value (whether sold as used or unused), a provider shall provide, both orally and in writing, all information in the English Language to the consumer concerning the goods being sold including, where applicable, the origin, price in the currency of The Bahamas, care terms, components, hazards, proper use, assembling, installation, weight and size of the goods and where chargeable, the professional fees of the provider being charged in respect of the goods.

(2) Where a provider fails to comply with subsection (1) he shall, notwithstanding anything to the contrary in the warranty document, be responsible for any damage done to the goods by the consumer that can be directly attributed to the consumer's lack of information.

Measurement of goods.

22. (1) A consumer shall at all times be entitled to check the weight, volume or other measurement of the goods sought to be purchased where the weight, volume or other measurement of the goods materially affects or determines the price thereof.

(2) For the purposes of subsection (1), any provider of any good that is sold by reference to its weight, volume or other measurement shall provide appropriate

measurement standards in accordance with the Weights and Measures Act for use by the consumer at the time of purchase. Ch. 338.

(3) A provider commits an offence if in selling or purporting to sell any goods by weight or other measurement or by number, he knowingly delivers or causes to be delivered to the consumer, a lesser quantity than that purported to be supplied or that corresponds with the price charged.

23. (1) Where a consumer purchases goods or services from a provider, the provider shall give to the consumer a receipt showing — Receipt to be given to consumer.

- (a) the amount paid by the consumer;
- (b) the date on which the purchase is made or the service is rendered;
- (c) a description of the goods sold or services rendered;
- (d) the professional fees charged; and
- (e) such other information as the Minister may by regulations prescribe.

(2) At any time subsequent to the purchase, the receipt issued by the provider shall be adequate proof of the purchase of the goods or services and may be used for the purposes of refund in any of the circumstances specified in this Act.

(3) A provider who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars.

24. (1) A provider shall issue explicit warranties in relation to his goods or services, as the case may be, whether the goods are new or used, and whether the service offered is the repair of any appliance, furniture, equipment or other goods. Warranties.

(2) Any warranty given by the manufacturer (whether local or foreign) and attached to any goods or services sold or provided as the case may be, in The Bahamas shall be deemed to extend to the provider in The Bahamas who shall be liable to the consumer in relation to such warranty.

(3) Where a provider is liable only for the free replacement of parts under a warranty agreement, the

provider shall not require the consumer to use the services of the provider in effecting the repairs to the equipment.

(4) Implied warranties in the absence of explicit warranties shall apply to the sale of all used goods and to the repair of all goods.

(5) In the absence of an explicit warranty which shall be at the discretion of the provider, an implied warranty of six months on parts and labour shall, subject to the standard conditions of warranties attach to the transaction.

Damage resulting from use service or goods.

25. (1) Subsection (2) applies in any case where a provider —

- (a) undertakes to provide a consumer with a good or service upon payment of a fee thereof;
- (b) provides the declared benefit attached to the service or use of the good; and
- (c) inadvertently causes bodily injury or pecuniary loss to be sustained by the consumer, independent of all other causes or contributory negligence.

(2) The provider shall, upon presentation of a substantiated claim by the consumer —

- (a) undertake to pay the consumer all reasonable costs incurred or to be incurred by the consumer in correcting the damage so caused; and
- (b) initiate all such compensation within a period not exceeding seven days after the complaint is received at the registered, regional or local offices of the provider.

(3) A provider shall not be relieved of liability if —

- (a) the consumer fails to avail himself of some other good or service that may be recommended by the provider of the primary good or service as a supplementary good or service; or
- (b) has provided complementary goods or services which fail to function well or cause damage or other loss.

(4) A provider who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars.

Damaged goods sold to consumer.

26. (1) A provider who sells a consumer any good that, due to no apparent negligence or abuse by the

consumer within the comprehensive warranty period, fails to provide to the consumer the benefit and uninterrupted enjoyment for which it was intended, shall be responsible for its replacement or repair at no cost to the consumer.

(2) The provider shall, in the event of repair of the good referred to in subsection (1) —

- (a) return the good to the consumer in a fully repaired and functional state within ten days of receipt of the good for replacement or repair; or
- (b) if the good is not returned to the consumer within the period of ten days, provide the consumer with a temporary substitute of comparative value for the consumer's uninterrupted use and enjoyment until such time as the consumer's good is replaced or repaired and returned.

27. (1) Subject to subsections (3) and (4), where a consumer is encouraged to acquire goods by the provider's declaration and description of the goods and the consumer subsequently discovers that those goods are defective in a material particular from that intended to be purchased, the consumer may return the goods to the provider.

Return of defective goods.

(2) The provider shall immediately offer to the consumer, in exchange for the returned goods, monetary compensation of the goods or such other amount as may be agreed between the consumer and the provider.

(3) Refunds on goods returned to a provider pursuant to subsection (1) shall only be made where the goods are returned to the provider in the condition purchased or with minimal damage resulting from reasonable exposure in the normal course of the consumer's use of the goods prior to discovery of the material difference between the goods received and the goods that the consumer requested.

(4) A consumer who acquires a good that in every way is similar or identical to the one requested or described and declared by the provider shall not be entitled to a refund if, having left the place from which the provider sold the good, the consumer for any reason decides that he no longer wants it.

28. (1) Subsection (2) shall apply in any case where —

Return of electrical goods.

- (a) a consumer purchases any electrical good, believing it to be fully operational; and

(b) upon attempting to use it, the consumer discovers that it is faulty or non-functional.

(2) The consumer shall, upon returning the good to the provider, be entitled to —

(a) an exchange of the faulty good for a new functional similar good free of cost; or

(b) a refund of the amount paid for the good if the provider is unable to establish that the good was damaged as a direct result of the consumer's actions.

Approved and non-approved services.

29. (1) Subject to subsection (2), a provider shall only provide such services as are approved by the consumer and shall not require a consumer to sign an open-ended commitment to pay for services which, in addition to those contracted, may, in the provider's opinion, be necessary or appropriate.

(2) The provider's authority to provide services not approved by the consumer shall be restricted to ten per cent of the value of the approved services.

(3) A provider who offers a repair service shall —

(a) disclose to the consumer any and all additional related repairs that he deems necessary for the consumer to enjoy reasonably long and uninterrupted use of the repaired good; and

(b) obtain a written indemnity for the consumer if the consumer chooses to require the provider to effect the recommended repairs.

Businesses offering repair services.

30. Businesses which offer repair services to consumers shall keep records stating —

(a) the name, address and telephone number of the consumer;

(b) a reasonably accurate description of the good to be repaired; including any identification number or mark;

(c) the replacement value of the good in its present state as agreed with the consumer;

(d) an estimate of the labour and other costs to be paid by the consumer in respect of the repairs to be effected;

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- (e) the date on which the good was received for repair; and
 - (f) the date on which the good will be ready for delivery, and a copy of such information shall be given to the consumer before the repairs are commenced.

31. (1) No person shall, in the course of trade or business, engage in conduct that is misleading or deceptive or is likely to mislead or deceive. Misleading or deceptive conduct.

(2) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars.

32. (1) No person shall, in the course of trade or business engage in conduct that is likely to mislead the public as to the nature, manufacturing process, characteristics, suitability for a purpose or quantity of goods or services, as the case may be. Misleading public as to the nature, etc., of goods or services.

(2) Any person who contravenes subsection (1) commits an offence is liable on summary conviction to a fine not exceeding two thousand dollars.

33. (1) No person shall, in the course of trade or business in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services — False or misleading representation.

(a) falsely represent that —

- (i) the goods or services are of a particular kind, standard, quality, grade, quantity, composition, style, or model, or have had a particular history or particular previous use; or
- (ii) services are of a particular kind, standard, quality, or quantity, or that they are supplied by any particular person or by any person of a particular trade, qualification, or skill;
- (iii) a particular person has agreed to acquire goods or services;
- (iv) goods are new, reconditioned, or that they were manufactured, produced, processed, reconditioned at a particular time;
- (v) goods or services have any sponsorship, approval, endorsement, performance

characteristics, accessories, uses or benefits;
or

- (vi) a person has any sponsorship, approval, endorsement, or affiliation;
- (b) make a false or misleading representation —
 - (i) with respect to the price of any goods or services;
 - (ii) concerning the need for any goods or services;
 - (iii) concerning the existence, exclusion, or effect of a condition, warranty, guarantee, right or remedy; or
 - (iv) concerning the place of origin of goods.

(2) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

Non-delivery of
goods or services
on contracted
date.

- 34.** (1) Where it can be proven that a provider —
- (a) has contracted to provide goods or services;
 - (b) pursuant to that contract, has received a deposit in cash or kind; and
 - (c) on the contracted delivery date, is unable to deliver such goods or services without reasonable excuse or is unable to demonstrate that such goods are in a reasonably advanced state of production,

that provider shall be deemed to have acted in a fraudulent manner and is liable to be prosecuted in relation thereto.

(2) A provider who is convicted of an offence under subsection (1) is liable on summary conviction to a fine not exceeding five thousand dollars.

Advertising

35. (1) No person shall in the course of trade, advertise at a specified price, goods or services which that person does not —

- (a) intend to offer for supply; or
- (b) have reasonable grounds for believing can be supplied by that person at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which

the person carries on business and the nature of the advertisement.

(2) Any person who has advertised goods or services at a specified price shall offer such goods or services at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

(3) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

36. (1) An advertised delivery date for new, used and repaired goods shall form part of the contractual agreement between the provider and the consumer.

Advertised
delivery date.

(2) Where a provider fails to meet the advertised delivery date, the provider, as the case may be, shall refund to the consumer all moneys paid, plus an amount equal to ten per cent of the amount deposited for each week that the goods are not delivered commencing after a period of (not more than) fourteen days after the advertised delivery date.

37. No person shall demand or accept payment or other consideration for goods or services, if at the time of the demand or acceptance, that person —

Conditions for
payment.

- (a) does not intend to supply the goods or services;
- (b) intends to supply goods or services which are materially different from the goods or services in respect of which the payment or other consideration is demanded or accepted; or
- (c) does not have reasonable grounds to believe that the goods or services will be supplied within any specified period, or if no period is specified, within a reasonable time.

38. Upon the conviction of a provider of an offence the court may order the provider to pay to the —

Court may order
payment of
damages or costs.

- (a) consumer, by way of damages, a sum representing the costs incurred by that consumer as a result of the offence, and
- (b) Consumer Commission such sum as represents the costs incurred in relation to the prosecution of the offence.

Breach of duty or obligation.

39. In relation to any breach of duty or obligation, it is immaterial for any purpose of this part whether the breach was inadvertent or intentional, or whether liability for it arises directly or vicariously.

Excluding or restricting liability by contract.

- 40.** (1) A person shall not by reference to —
- (a) any term of a contract;
 - (b) a notice given to persons generally; or
 - (c) particular persons,

exclude or restrict his liability for death or personal injury resulting from negligence.

(2) In the case of other loss or damage, a person shall not so exclude or restrict his liability for negligence except in so far as the term or notice satisfied the requirement of reasonableness as provided for in section 17.

(3) Where a term of a contract or notice purports to exclude or restrict liability for negligence, the fact that that person agrees with it or is aware of it is not of itself to be taken as indicating his voluntary acceptance of any risk.

Reliance upon contractual provisions where breach.

- 41.** No party to a contract shall —
- (a) when he is in breach of contract, exclude or restrict his liability in respect of the breach; or
 - (b) claim to be entitled to render —
 - (i) a contractual performance substantially different from that which was reasonably expected of him; or
 - (ii) no performance in respect of the whole or any part of his contractual obligation, except in so far as the contract term satisfies the requirement of reasonableness.

Indemnity subject to reasonableness.

42. A consumer shall not in reference to any term of a contract be made to indemnify another person (whether a party to the contract or not) in respect of liability that may be incurred by the other person for negligence or breach of contract, except in so far as the term of the contract satisfies the test of reasonableness.

Loss or damage from defective goods or negligence of manufacturer.

- 43.** (1) In the case of goods of a type ordinarily supplied for private use or consumption, where loss or damage —
- (a) arises from the goods proving defective while in consumer use; or

- (b) results from the negligence of a person concerned in the manufacture or distribution of the goods,

liability for the loss or damage shall not be excluded or restricted by reference to any contract term or notice contained in or operating by reference to a guarantee of the goods.

- (2) For the purposes of this section —
 - (a) goods are to be regarded as “in consumer use” when a person is in possession of them for use, otherwise than exclusively for the purposes of a business; and
 - (b) anything in writing is a guarantee if it contains or purports to contain some promise or assurance (however worded or presented) that defects will be made good by complete or partial replacement, or by repair, monetary compensation or otherwise.

44. Liability for breach of the obligations arising from —

Effect of Sale of Goods and Hire Purchase Act.

- (a) section 13 (implied undertaking as to title, etc) and 16 (implied conditions as to quality or fitness) of the Sale of Goods Act, and
- (b) sections 9 and 11 of the Hire Purchase Act, shall not be excluded or restricted by reference to any contract term.

Ch. 337.

Ch. 342.

45. (1) Where, for the purpose of reliance upon it, a contract term has to satisfy the requirement of reasonableness, it may be found to do so and be given effect accordingly notwithstanding that the contract has been terminated either by breach or by a party electing to treat it as repudiated.

Satisfying reasonableness where contract terminated.

(2) Where on a breach the contract is nevertheless affirmed by a party entitled to treat it as repudiated, such affirmation does not of itself exclude the requirement of reasonableness in relation to any term of a contract.

46. (1) The requirement for reasonableness in relation to a contract term, is that the term is a fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties when the contract was made.

Reasonableness.

(2) The requirement of reasonableness in this Act in relation to a notice (not being a notice having contractual effect), is that the notice should be fair and reasonable to allow reliance on it, having regard to all the circumstances when the liability arose or (but for the notice) would have arisen.

(3) Subsection (4) applies in any case where, by reference to a contract term or notice, a person seeks to restrict liability to a specified sum of money, and the question arises (under this or any other Act) whether the term or notice satisfies the requirement of reasonableness.

(4) Regard shall be had in particular (but without prejudice to subsection (2) in the case of a contract term) to —

- (a) the resources which the person could expect to be available to him for the purpose of meeting the liability if it arises; and
- (b) how far it was open to that person to cover himself by insurance.

(5) It is for those claiming that a contract term or notice satisfies the requirement of reasonableness to show that it does.

Alternative
dispute
resolution.

47. Any written contract formed between a consumer and a provider shall include a clause providing for the parties to attempt to settle their disagreements through mediation by the Consumer Commission before taking the matter to court.

Goods or
services acquired
by installment.

48. (1) This section applies to any case where a provider contracts to provide a consumer with a good or service over an extended period of time, and that provider contracts to receive periodic payments from the consumer for the good or service.

- (2) The provider shall —
 - (a) be required to present an accurate claim for the exact amount of, or the exact percentage of, the total value of the good or service actually received to date by the consumer; and
 - (b) upon presentation of such accurate claim, be entitled to void the contract if payment in full is not made within a reasonable time after the presentation of the claim, or by a pre-determined payment date which forms part of the contract.

(3) In the event that the provider is unable to present an accurate claim, the provider may act in accordance with subsection (4).

(4) The provider may —

- (a) present the consumer with an estimated claim; and
- (b) if the estimated claim is reasonably accurate, request that the consumer pay the estimated amount on the conditions specified in subsection (5).

(5) The conditions referred to in subsection (4) are that —

- (a) where the amount estimated is greater than the accurate claim, the amount paid by the consumer will be credited to the amount owing at the next time that an accurate claim is presented; and
- (b) the provider shall under no circumstances, be able to void the contract or impose any penalty therein contained in the event of breach by the consumer, solely on the ground that the estimated amount has not been paid by the consumer, either in full or in part.

(6) A provider who presents an estimated claim for any good or service shall be required to present an accurate claim no later than 90 days after presentation of the estimate.

(7) Subsection (6) shall apply notwithstanding that the consumer of the good or service does not pay the estimated amount claimed or pays it in full or in part.

49. (1) Where a service is provided to a consumer —

- (a) the provider is deemed to be providing the consumer with a benefit under the relevant contract; and
- (b) the provisions of subsection (2) shall apply where a fee is collected from the consumer for that service.

Apportionment
of payments
where service not
received.

(2) The provider shall —

- (a) be liable to make a full refund to the consumer, if for reasons not attributable to the consumer, the benefit is not received by the consumer; or

- (b) where the benefit is received only in part —
 - (i) refund a proportionate part of the fees collected; or
 - (ii) subject to subsection (3), be entitled to receive a similar proportionate part of the fees if not yet paid.

(3) Subsection (2) shall not apply in any case where the consumer contracts to pay the provider the prescribed fee regardless of whether the consumer receives the benefit.

(4) The provider who offers a service to the consumer shall —

- (a) be required to stipulate the extent of the benefit that shall be deemed to be attached to the service; and
- (b) provide the consumer with an appropriate warranty that —
 - (i) the benefit shall be enjoyed for a reasonable time, subject to the fulfillment of such conditions attached by the provider as may be reasonable to the consumer's enjoyment of that benefit; and
 - (ii) in the absence of the enjoyment of the benefit, the provider shall again provide the service free of cost to the consumer.

Purporting to act on a Bill of Sale.

- 50.** (1) A provider commits an offence if he —
- (a) acts on the powers contained in a Bill of Sale of chattel pledged by a consumer; and
 - (b) employs any person other than a constable, or a bailiff to recover any or all of the chattels pledged in the Bill of Sale to the provider in the event of default in repayment of a loan.

(2) A provider who commits an offence under subsection (1) shall, upon summary conviction be liable to a fine not exceeding five thousand dollars.

(3) A provider commits an offence if he, in taking action to recover any or all of the chattels pledged by the consumer in the Bill of Sale to the provider in the event of default in repayment of a loan, carries out an act of seizure although the consumer's indebtedness to the provider has

already been discharged or is currently being serviced in accordance with existing contractual provisions.

(4) A provider who commits an offence under subsection (3) shall, upon summary conviction be liable to a fine not exceeding one thousand dollars.

(5) The court may order a provider convicted of an offence under subsection (3) to pay the consumer an amount equal to ten times the market value of the chattels seized plus an amount of fifty dollars per day for every day that the consumer has been deprived of the use and enjoyment of those chattels.

(6) The court may order a provider convicted of an offence to compensate the consumer for all expenses reasonably incurred as a result of the breach and the legal action.

(7) A person commits an offence who —

- (a) not being a Bailiff, purports to be a Bailiff; or
- (b) being a Bailiff, wrongfully seizes the chattels of a consumer.

(8) A person who commits an offence under subsection (7) shall upon summary conviction be liable to a fine not exceeding five thousand dollars.

(9) The Court may order a person convicted of an offence under subsection (8) to pay the consumer an amount equal to ten times the market value of the chattels seized plus an amount of fifty dollars per day for every day that the consumer has been deprived of the use and enjoyment of those chattels.

(10) Any bailiff or person purporting to be a bailiff who —

- (a) threatens to seize the chattels of a consumer under the powers contained in a Bill of Sale although the consumer's indebtedness to the provider has already been discharged; or
- (b) recklessly damages the chattels of a consumer while exercising distraint,

commits an offence and shall, upon summary conviction be liable to a fine not exceeding five thousand dollars.

51. (1) All providers acting individually or collectively, and offering goods or services to consumers

Registration of providers.

for purchase, shall be appropriately registered as companies, partnerships, co-operatives, sole proprietorships or informal commercial operators.

(2) The instruments of registration and licence where applicable, or any official number or identification mark issued by the relevant authorities shall be conspicuously displayed by the provider for viewing by the consumer.

(3) A provider who fails to comply with the provisions of this section commits an offence and is liable on summary conviction to a fine of one thousand dollars.

Regulations.

52. The Minister may make regulations for the purposes of giving effect to the provisions of this Act.

FIRST SCHEDULE (Section 3(2))

1. (1) The Consumer Commission shall consist of a chairman, a deputy chairman and not less than five nor more than nine other members appointed by the Governor-General on the advice of the Minister from persons appearing to be qualified in the areas of law, industry, commerce, agriculture, banking and finance, transportation, administration or organization of workers.

Constitution of the Consumer Commission.

(2) The Permanent Secretary of the Ministry responsible for Consumer Affairs or a person designated by the Permanent Secretary shall be an ex officio member of the Consumer Commission.

2. A member of the Consumer Commission other than the ex officio member shall hold office for such period, not exceeding three years as the instrument of appointment may direct, but such member shall be eligible for reappointment.

Tenure.

3. The Minister shall appoint a chairman and a deputy chairman of the Consumer Commission from among members appointed under paragraph 1 and if the chairman is absent or unable to act, the deputy chairman shall act as chairman during the time the absence or inability continues.

Chairman and deputy chairman.

4. A member of the Consumer Commission other than the ex officio member, may at any time resign his office by instrument in writing addressed to the Minister and from the date of receipt by the Minister of the instrument that member shall cease to be a member of the Consumer Commission.

Resignation.

5. The Governor-General on the advice of the Minister may, by instrument in writing remove a member of the Consumer Commission upon being satisfied that the member —

Removal.

- (a) is an undischarged bankrupt;
- (b) is, for whatever reason permanently incapable of performing the duties of a member;
- (c) has neglected the duties of a member or has engaged in misconduct; or
- (d) has been convicted of an indictable offence.

Publication.

6. The appointment, removal, death or resignation of a member to the Consumer Commission shall be notified in the Gazette.

Remuneration.

7. There shall be paid to the chairman and other members of the Consumer Commission such remuneration, if any, as the Minister may determine.

Meetings.

8. (1) The Consumer Commission shall meet as often as may be required for the performance of its functions, but in any event, shall meet at least once a month.

(2) The chairman, or in his absence the deputy chairman, shall preside at all meetings of the Consumer Commission.

(3) The chairman, or in his absence the deputy chairman, and three other members of the Consumer Commission shall form a quorum.

(4) The decisions of the Consumer Commission are by a majority of votes and in any case in which the voting is equal, the member presiding at the meeting shall have, in addition to an original vote, a casting vote.

(5) Minutes of each meeting in proper form are to be kept by the secretary or any officer the Consumer Commission may appoint for that purpose, and confirmed by the Consumer Commission at the next meeting and signed by the chairman or a member of the Consumer Commission designated by the chairman as the case may be.

(6) The Consumer Commission may co-opt any one or more persons to attend any particular meeting of the Consumer Commission for the purpose of assisting or advising the Consumer Commission in any matter with which the Consumer Commission is dealing, but no co-opted person has the right to vote.

(7) Where a quorum is present, the validity of any proceeding of the Consumer Commission shall not be affected by any vacancy amongst the members thereof by any defect in the appointment of a member.

Authority to regulate its proceedings.

9. Subject to this Schedule, the Consumer Commission has the power to regulate its proceedings.

SECOND SCHEDULE (Section 10(2)(a))

SUMMONS TO WITNESS

To :(name of person summoned and his or her address, if known)

You are hereby summoned to appear before the Consumer Commission, established under the Consumer Protection Act, at (place) on the day of ato'clock and to give evidence respecting (state the matter).

(If the person summoned is to produce any documents, add) And you are required to bring with you (specify the papers, books, records and documents required).