

**CONSUMER PROTECTION ACT.**

**New South Wales**



ANNO OCTAVO DECIMO

**ELIZABETHÆ II REGINÆ**

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**Act No. 28, 1969.**

**An Act to constitute a Consumer Affairs Council and to confer on it certain powers; to provide for the appointment of a Commissioner for Consumer Affairs and the establishment of a Consumer Affairs Bureau; to make provisions with respect to the description and advertising of goods; to make provision for securing minimum standards of safety in respect of certain goods; to prohibit certain trade practices; to repeal the Oil-burning Appliances Act, 1965, and certain other enactments; and for purposes connected therewith. [Assented to, 9th April, 1969.]**

**BE**

No. 28, 1969

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

## PART I.

## PRELIMINARY.

Short title and commencement.

1. (1) This Act may be cited as the "Consumer Protection Act, 1969".

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Division of Act.

2. This Act is divided as follows :—

PART I.—PRELIMINARY—ss. 1–5.

PART II.—CONSUMER PROTECTION AUTHORITIES—  
ss. 6–18.

DIVISION 1.—*Interpretation*—s. 6.

DIVISION 2.—*Consumer Affairs Council*—ss. 7–12.

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PART III.—ADVERTISING AND DESCRIPTION OF GOODS—  
—ss. 19–34.

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DIVISION 2.—*Trade Descriptions*—ss. 20–31.

DIVISION 3.—*False or Misleading Advertisements*—  
s. 32.

DIVISION 4.—*General*—ss. 33, 34.

PART IV.—SAFE DESIGN AND CONSTRUCTION OF  
GOODS—ss. 35–41.

DIVISION 1.—*Interpretation*—s. 35.

DIVISION 2.—*General Goods*—ss. 36–39.

DIVISION 3.—*Refrigerators, Ice-Chests, Ice-Boxes and  
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PART VI.—MISCELLANEOUS PROVISIONS—*ss.* 55–59.

SCHEDULES.

3. (1) The several Acts mentioned in Schedule One to this Act are to the extent therein expressed hereby repealed. Repeals and savings.

(2) All regulations made or deemed to have been made—

- (a) under the Factories, Shops and Industries Act, 1962, as subsequently amended, for the purposes of Part VIII of that Act, as so amended, being regulations in force at the commencement of this Act, shall be and continue in force under this Act and be deemed to have been made under Division 2 of Part III of this Act and any goods or any class or description of goods to which those regulations apply shall be deemed to be prescribed goods for the purposes of that Division; and
- (b) under the Oil-burning Appliances Act, 1965, as subsequently amended, being regulations in force at the commencement of this Act, shall be and continue in force under this Act and any class or description of goods to which those regulations apply shall be deemed to be a class or description of goods, prescribed for the purposes of Part IV of this Act,

and shall be deemed to have been made under this Act.

4. (1) This Act shall be read and construed as operating to the full extent of, but so as not to exceed, the legislative powers of the State, to the intent that where any provision of this Act, or the application of any such provision to any person, subject-matter or circumstance, would, but for this section, have been construed as being in excess of those powers, it shall be a valid provision to the extent to which

**it**

**No. 28, 1969** it is not in excess of those powers, and the remainder of this Act and the application of the provision to other persons, subject-matters or circumstances shall not be affected.

(2) Where any provision of this Act or the regulations is inconsistent with any provision of the Plant Diseases Act, 1924, Fertilizers Act, 1934, Agricultural Seeds Act, 1921, Dairy Industry Act, 1915, Fruit Cases Act, 1912, Pest Destroyers Act, 1945, Stock Foods and Medicines Act, 1940, Marketing of Primary Products Act, 1927, Milk Act, 1931, Pure Food Act, 1908, Poisons Act, 1966, Radioactive Substances Act, 1957, Explosives Act, 1905, Inflammable Liquids Act, 1915, Electricity Development Act, 1945, Local Government Act, 1919, or any Act amending or replacing any such Act, or with any provision of any regulation or ordinance made thereunder, the provision of that Act, or of that regulation or ordinance shall prevail.

- Definitions.** 5. In this Act, except in so far as the context or subject-matter otherwise indicates or requires—
- “goods” includes anything that is the subject of trade, manufacture or merchandise;
  - “inspector” means an inspector appointed under this Act and includes the Chief Inspector within the meaning of the Factories, Shops and Industries Act, 1962, as subsequently amended;
  - “prescribed” means prescribed by this Act or the regulations;
  - “regulations” means regulations made or deemed to have been made under this Act;
  - “sell” includes exhibit, expose or have in possession for sale, or for any purpose of advertisement or trade;
  - “Under Secretary” means the Under Secretary of the Department of Labour and Industry and includes any person acting in that position.

*Consumer Protection.***PART II.****No. 28, 1969****CONSUMER PROTECTION AUTHORITIES.****DIVISION 1.—*Interpretation.*****6. In this Part—****Definitions.**

“Bureau” means the Consumer Affairs Bureau established under this Part;

“consumers” means persons who buy or hire goods otherwise than for re-sale or letting on hire or in the course of a trade or business carried on by those persons or for whom services are rendered for fee or reward otherwise than in the course of a trade or business carried on by those persons;

“Council” means the Consumer Affairs Council constituted under this Part.

**DIVISION 2.—*Consumer Affairs Council.***

7. (1) There shall be constituted a Consumer Affairs Council which shall consist of such number, not being less than six or more than ten, of persons as may be appointed by the Governor.

Constitution  
of Council.

(2) Of the members of the Council—

- (a) one shall be an officer of the Department of Labour and Industry;
- (b) at least five shall be appointed to represent the interests of consumers; and
- (c) the remaining members shall be appointed from persons experienced in any of the fields of manufacture, retailing, distribution, advertising, or other aspects of trade or commerce.

**8.**

*Consumer Protection.***No. 28, 1969**Chairman  
of Council.

**8.** (1) The member appointed pursuant to paragraph (a) of subsection two of section seven of this Act shall be the Chairman of the Council and shall preside at all meetings of the Council at which he is present, but if he is unable to attend any meeting of the Council the Minister may appoint another officer of the Department of Labour and Industry to attend and act for the Chairman at the meeting.

(2) Any such other officer so appointed, when so acting, shall be deemed to be the Chairman of the Council.

Alternative  
member.

**9.** (1) The Governor may appoint an alternative member to represent the interests of consumers, or having experience as referred to in paragraph (c) of subsection two of section seven of this Act, as the case may require, to act in the place of any member, other than the Chairman, during his illness or absence.

(2) An alternative member appointed under subsection one of this section shall, when acting as an alternative member, be deemed to be a member of the Council.

Term of  
office.

**10.** Unless he otherwise ceases to be a member of the Council, a member of the Council other than the Chairman shall hold office for a term of three years and shall be eligible for reappointment.

Provisions  
applying  
to the  
Council.

**11.** (1) The procedure for the calling of meetings of the Council and for the conduct of business at those meetings shall, subject to the regulations, be as determined by the Council.

(2) The Council shall cause minutes of its proceedings and decisions at its meetings to be kept.

(3) At any meeting of the Council a quorum shall consist of the Chairman or person acting in his place together with such number of members (of whom at least one

shall

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shall be a member referred to in paragraph (b) of subsection two of section seven of this Act), other than the Chairman, as is equal to the lowest whole number that is not less than one-half of the number for the time being of those other members. No. 28, 1969

(4) Subject to subsection five of this section, the decision of the majority of members present at any meeting at which a quorum is present shall be the decision of the Council.

(5) The Chairman or person acting in his place at any meeting of the Council shall have a deliberative vote and, in the event of an equality of votes, a casting vote.

(6) A member of the Council, other than the Chairman, ceases to hold office as such a member and there is a casual vacancy in his office—

- (a) if he dies;
- (b) if he becomes a mentally ill person, a protected person, or an incapable person, within the meaning of the Mental Health Act, 1958, as subsequently amended;
- (c) if he resigns his office by writing under his hand addressed to the Governor;
- (d) if he becomes bankrupt, compounds with his creditors or makes any assignment of his estate for their benefit;
- (e) if he is removed from office by the Governor.

(7) On the occurrence of a casual vacancy in the office of a member of the Council, other than the Chairman, the Governor may appoint a person representing the like interests or having experience as referred to in paragraph (c) of subsection two of section seven of this Act, as the case may require, to fill the vacant office for the residue of the term of office of the person whose office has been vacated.

(8)

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(8) A member of the Council shall be entitled to receive such travelling expenses, and, except in the case of the Chairman, shall, if the terms of his appointment so provide, be entitled to receive such fees for attending meetings and transacting business of the Council as may be fixed by the Governor.

(9) The provisions of the Public Service Act, 1902, as subsequently amended, shall not apply to or in respect of the appointment of any member of the Council, and any such member shall not, in his capacity as such a member, be subject to the provisions of that Act during his term of office.

(10) No act or proceeding of the Council shall be invalidated or prejudiced by reason only of the fact that at the time the act or proceeding was done, taken or commenced, there was a vacancy in the office of any member of the Council.

(11) All acts and proceedings of the Council shall, notwithstanding the subsequent discovery of any defect in the appointment of any member thereof, or that any member was disqualified to act, be as valid as if the member had been duly appointed and was qualified to act and had acted as a member of the Council, and as if the Council had been properly and fully constituted.

Functions of  
Council.

**12.** (1) The Council may and, if required by the Minister to do so, shall investigate and make recommendations to the Minister in relation to any matters that concern the need for or the desirability of legislative or administrative action in the interests of consumers.

(2) The Council may co-operate or affiliate with other organisations that have power to make investigations of the nature referred to in subsection one of this section.

DIVISION



*Consumer Protection.*DIVISION 3.—*Consumer Affairs Bureau.*

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13. There shall be appointed under and in accordance with the provisions of the Public Service Act, 1902, as subsequently amended, a Commissioner for Consumer Affairs.

Commissioner for Consumer Affairs.

14. In the event of the absence from duty of the Commissioner for Consumer Affairs the Minister may appoint an officer of the Department of Labour and Industry to act as Commissioner for Consumer Affairs during that absence and the officer so appointed shall, when so acting, be deemed to be the Commissioner for Consumer Affairs.

Acting Commissioner for Consumer Affairs.

15. There shall be established within the Department of Labour and Industry a Consumer Affairs Bureau which shall operate under the direction and control of the Commissioner for Consumer Affairs.

Consumer Affairs Bureau.

16. The functions of the Bureau shall be—

- (a) to advise persons in relation to the provisions of this Act and the regulations, and of any other legislation administered by the Department of Labour and Industry and relating to the protection of consumers, and to take and initiate action for remedying infringements of those provisions, whether on complaint or otherwise;
- (b) to such extent as the Minister may from time to time direct or approve—
  - (i) to give other advice to persons in respect of matters affecting or relating to their interests as consumers;
  - (ii) to receive complaints from persons as to fraudulent or unfair trade or commercial practices in relation to goods or services and, where appropriate, to refer any such complaint to that government department

Functions of Consumer Affairs Bureau.

or

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or instrumentality which it considers best able to take action or furnish advice in the matter; and

- (iii) in respect of matters affecting the interests of consumers, to conduct research, to collect, collate and disseminate information, and to encourage or undertake educational work.

DIVISION 4.—*General.*

Liability of members and officers.

17. A member of the Council, the Commissioner for Consumer Affairs and any officer of the Bureau shall not be personally liable, and the Crown shall not be liable, for any act done or default made or statement issued by the Council, the Commissioner for Consumer Affairs or an officer of the Bureau in good faith in the course of the operations of the Council or of the Bureau.

Annual report.

18. The Chairman of the Council shall on behalf of the Council submit to the Minister annually, for presentation to Parliament, a report on the activities of the Council and of the Bureau.

## PART III.

## ADVERTISING AND DESCRIPTION OF GOODS.

DIVISION 1.—*Interpretation.*

Definitions. cf. Act No. 43, 1962, ss. 4 (1) and 121.

19. In this Part and in Schedule Two to this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“Australia” includes any territory under the authority of the Commonwealth of Australia;

“false trade description” means a trade description which by reason of anything contained therein or omitted therefrom is false or likely to mislead in a material

respect

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respect as regards the goods to which it is appended, No. 28, 1969  
and includes every alteration of a trade description  
whether by way of addition, effacement, or other-  
wise, which makes the description false, or likely  
to mislead in a material respect;

“label” includes band or ticket;

“prescribed goods” means any goods belonging to a class  
or description of goods in respect of which a trade  
description has been prescribed under Division 2  
of this Part;

“trade description”, in relation to any goods, means any  
description, statement, indication, or suggestion,  
direct or indirect, as to—

- (a) the nature, number, quantity, quality,  
purity, class, grade, measure, gauge, size, or  
weight of the goods;
- (b) the State, country, or place in or at which  
the goods, or any portions or constituents  
thereof, were made or produced;
- (c) the manufacturer or producer of the goods  
or the person by whom they were selected,  
packed, graded, or in any way prepared for  
the market;
- (d) the mode of manufacturing, producing,  
selecting, packing, grading or otherwise pre-  
paring the goods;
- (e) the material or ingredients of which the  
goods are composed or from which they are  
derived; or
- (f) the goods being the subject of an existing  
patent, privilege, or copyright;

and includes the use of any figure, word, trade  
name, trade style, or mark which, according to the  
custom of the trade, is commonly taken to be an  
indication of any of the above matters.

DIVISION

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DIVISION 2.—*Trade Descriptions.*Prescribing  
of trade  
descriptions.

**20.** (1) The Governor may make regulations prescribing in respect of any class or description of goods a trade description to be used in relation to goods of that class or description.

(2) A regulation under subsection one of this section shall not prescribe a trade description that discloses trade secrets of manufacture or preparation except in a case where, on the ground that the disclosure is necessary for the protection of the health or well-being of the public, the Minister so recommends.

Trade  
description  
to be  
appended  
to certain  
goods.  
cf. Act No.  
43, 1962,  
s. 122.

**21.** (1) No person shall sell any prescribed goods unless there is conspicuously appended thereto, or if so prescribed, to any covering, label or thing used in connection therewith, in such manner as is prescribed, the prescribed trade description relating to those goods.

(2) Any person who contravenes the provisions of subsection one of this section is guilty of an offence against this Act.

(3) Where the trade description appended to any prescribed goods is contained in any document, card, label or other thing capable of being detached from the goods, the document, card, label, or thing shall be signed by the vendor of the goods or by some person authorised to sign on his behalf, and shall be given to the purchaser at the time of the sale.

(4) If any such document, card, label or thing is not so signed or is not so given to the purchaser of the goods, the vendor of the goods is guilty of an offence against this Act.

Evidence  
in prosecu-  
tions under  
this  
Division.  
cf. Act No.  
43, 1962,  
s. 123.

**22.** In any prosecution for an offence under this Division—

(a) production of any document, card, label or thing referred to in subsection three of section twenty-one of this Act shall, upon proof that it was given

to

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to the purchaser at the time of the sale of the goods No. 28, 1969  
 the subject of the charge, be conclusive evidence  
 that the goods were sold as goods to which the trade  
 description contained in such document, card, label  
 or thing was appended; and

- (b) proof that the document, card, label or thing was signed by some person apparently employed at the place of business at which the goods were sold shall be conclusive evidence that the person signing it was authorised to do so on behalf of the vendor.

**23.** (1) Any person who appends any false trade description to any goods (whether or not they are prescribed goods) is guilty of an offence against this Act unless he proves that he acted without intent to deceive and without intent to defraud. False trade descriptions. cf. Act No. 43, 1962, s. 124.

(2) Any person who sells any goods (whether or not they are prescribed goods) to which a false trade description is appended is guilty of an offence against this Act unless he proves that—

- (a) having taken all reasonable precautions against committing an offence under this subsection, he had at the time of the commission of the alleged offence no reason to suspect that the trade description was false; and
- (b) on demand made by or on behalf of the informant or by an inspector he gave all the information in his power with respect to the identity and whereabouts of the person from whom he obtained the goods and the circumstances in which he obtained them.

(3) Nothing in this section shall—

- (a) affect the operation of section twenty-one of this Act; or
- (b) apply to or in respect of the appending of a trade description to any goods by a person being in the ordinary course of his business engaged by another person to append a trade description to those goods.

**24.**

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Alteration  
of trade  
description.  
cf. Act No.  
43, 1962,  
s. 125.

24. (1) Any person, being a manufacturer, dealer, or trader, who, except to the extent and in the manner prescribed, alters by effacement or otherwise any trade description which has been appended to goods (whether or not they are prescribed goods) under or in compliance with any Act or Commonwealth Act is guilty of an offence against this Act unless he proves he acted without intent to deceive and without intent to defraud.

(2) Any person who sells goods (whether or not they are prescribed goods) when a trade description which has been appended thereto under or in compliance with any Act or Commonwealth Act has been, except to the extent and in the manner prescribed, altered by any person by effacement or otherwise is guilty of an offence against this Act unless he proves that he acted without intent to deceive and without intent to defraud.

(3) Nothing in this section shall—

- (a) affect the operation of section twenty-one of this Act; or
- (b) apply to or in respect of an alteration of a trade description by a person being in the ordinary course of his business engaged by another person to alter that trade description.

Offence in  
course of  
business.  
cf. Act No.  
43, 1962,  
s. 126.

25. Any person who—

- (a) being in the ordinary course of his business engaged by another person to append a trade description to any goods (whether or not they are prescribed goods), appends a false trade description to those goods; or
- (b) being in the ordinary course of his business engaged by another person to alter a trade description which has been appended under or in compliance with any Act or Commonwealth Act to any goods

(whether

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(whether or not they are prescribed goods), alters such description by effacement or otherwise, except to the extent and in the manner prescribed, No. 28, 1969

is guilty of an offence against this Act, unless he proves that—

- (c) he was not interested in the goods by way of profit or commission dependent on the sale of the goods;
- (d) he took reasonable precautions against committing the offence charged;
- (e) he had at the time of the commission of the alleged offence no reason to suspect that the trade description was false, or that the alteration was contrary to this Act, as the case may be; and
- (f) on demand made by or on behalf of the informant or by an inspector, he gave all the information in his power with respect to the identity and whereabouts of the person on whose behalf the trade description was appended or altered and the circumstances in which he was engaged by that person to append or to alter it, as the case may be.

**26.** (1) For the purposes of sections twenty-three, twenty-four and twenty-five of this Act a trade description shall be deemed to be appended to goods if it is—

- (a) appended to the goods themselves, or to any covering, label, or thing used in connection with the goods;
- (b) used, otherwise than in a statement referred to in section thirty-two of this Act—
  - (i) in any manner likely to lead to the belief that it describes or designates the goods; or

Appending trade description. cf. Act No. 43, 1962, s. 127.

(ii)

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- (ii) whether in a catalogue or otherwise, in any manner in connection with or for the purpose of the sale of the goods,

and shall be deemed to be appended to goods or to any covering, label, or thing used in connection with goods if it is woven, impressed, embossed, or otherwise worked into or annexed or affixed to, or is written or printed on the goods, covering, label, or thing, as the case may be.

(2) Nothing in this section shall affect the operation of section twenty-one of this Act, or of any regulation relating to the manner in which a trade description shall be appended to any goods, covering, label or thing.

False representations as to Royal Warrant.  
cf. Act No. 43, 1962, s. 128.

**27.** Any person who falsely represents that any goods (whether or not they are prescribed goods) are made by a person holding a Royal Warrant or for the service of Her Majesty or of any Government department or have been tested or inspected by or on behalf of Her Majesty or any Government department, is guilty of an offence against this Act and liable to a penalty not exceeding one hundred dollars.

Marking of furniture.  
cf. Act No. 43, 1962, s. 132.

**28.** (1) Without limiting the operation of any other provision of this Division, the provisions contained in Schedule Two to this Act shall have effect for the purpose of regulating the stamping of furniture manufactured or prepared in or imported into New South Wales.

(2) The regulations may in respect of any matter relating to the stamping of furniture amend the provisions of Schedule Two to this Act, and those provisions as from time to time so amended shall be deemed to be Schedule Two to this Act.

Powers of court on conviction under this Division.  
cf. Act No. 43, 1962, s. 129 (2).

**29.** (1) Where a person is convicted of an offence under this Division in respect of the sale of any goods to which any false trade description is appended the court before which

he



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he is convicted may, in addition to any penalty or punishment imposed, order that the defendant, within a period to be specified in the order—

- (a) refund to the purchaser of the goods an amount equivalent to the purchase money paid in respect thereof; or
- (b) supply to the purchaser goods in accordance with the trade description referred to in the charge or, if he is unable to supply such goods, refund an amount equivalent to the purchase money paid in respect of the goods the subject of the charge.

(2) The provisions of section eighty-two of the Justices Act, 1902, as subsequently amended, shall, mutatis mutandis, apply to and in respect of any amount so ordered to be paid and the persons against whom the order is made.

**30.** (1) Where any person engaged in the business of selling by retail any goods (whether or not they are prescribed goods) has been convicted three times within five years of an offence (whether of the same or different kinds) under this Division the Industrial Commission of New South Wales, upon application made as in this section provided, may, by order, prohibit such person from engaging, for such period as the Commission may determine, in such business of selling by retail any goods as the Commission may determine.

Power to prohibit carrying on of business by persons convicted of numerous offences.  
cf. Act No. 43, 1962, s. 130.

(2) An application for an order under this section may be made by the Minister or by an inspector authorised in that behalf by the Minister.

(3) An authority to make any such application purporting to have been signed by the Minister shall be prima facie evidence of the inspector's authority to make the application without proof of the Minister's signature.

(4) Any person who engages in a business in contravention of an order made under this section is guilty of an offence against this Act.

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Savings.  
cf. Act No.  
43, 1962,  
s. 131.**31.** Nothing in this Division shall—

- (a) exempt any person from any action, suit, or other proceeding which might but for the provisions of this Division be brought against him;
- (b) entitle any person to refuse to make discovery or answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against that person in any prosecution for an offence under this Division;
- (c) render liable to prosecution or punishment any employee of an employer resident in Australia who bona fide acts in obedience to the instructions of that employer and on demand by or on behalf of the informant or by an inspector has given full information as to the identity and whereabouts of his employer; or
- (d) affect the operation of Division 3 of this Part.

DIVISION 3.—*False or Misleading Advertisements.*Penalty for  
publishing  
or causing  
to be  
published  
any false  
advertisement  
to promote the  
sale of  
goods.  
cf. Act No.  
43, 1962,  
s. 133.**32.** (1) Any person who publishes or causes to be published any statement which—

- (a) is intended or apparently intended by that person or any other person to promote the sale, disposal or letting on hire of any goods; and
- (b) is to his knowledge false or misleading in any material particular,

is guilty of an offence against this Act.

(2) A statement shall be deemed to be published within the meaning of this section if it is—

- (a) inserted in any newspaper or any other publication printed or published in New South Wales;

(b)

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- (b) publicly exhibited— No. 28, 1969
- (i) in, on, over or under any building, vehicle or place (whether or not a public place and whether on land or water) ; or
  - (ii) in the air in view of persons being or passing in or on any street or public place ;
- (c) contained in any document gratuitously sent or delivered to any person or thrown or left upon premises in the occupation of any person ;
- (d) broadcast by wireless transmission or by television ;  
or
- (e) made verbally.

(3) In any proceedings under this section against any person for publishing any such statement or causing it to be published, if it is proved that the statement was false or misleading in any material particular, the person who published the statement or caused it to be published shall be deemed to have published it or to have caused it to be published with knowledge of its falsity or misleading character, as the case may be, unless he proves that having taken all reasonable precautions against committing an offence under this section he had reasonable grounds to believe and did believe that the statement was true and had no reason to suspect that the statement was false or misleading.

(4) No prosecution shall be instituted against the printer, publisher, or proprietor of any newspaper or the licensee of any commercial broadcasting station or commercial television station or against any person acting under the authority of any such person for the publication in any such newspaper or for the broadcasting by wireless transmission or by television from such station, as the case may be, of any statement in contravention of this section unless—

- (a) the printer, publisher, proprietor or licensee has been warned by an inspector of the falsity or misleading character of the statement or of any other statement

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statement substantially the same as the first-mentioned statement and that the publication thereof is an offence under this section; and

- (b) the printer, publisher, proprietor or licensee has on any one day after the receipt of the warning published or broadcast by wireless transmission or by television or authorised or permitted the publication or broadcasting of the statement or any such other statement in any issue of any newspaper printed or published by him in New South Wales or from any commercial broadcasting station or commercial television station of which he is the licensee, as the case may be.

(5) In this section "newspaper" includes any periodical publication and "licensee", "commercial broadcasting station" and "commercial television station" have the meanings ascribed thereto in the Broadcasting and Television Act 1942 of the Parliament of the Commonwealth of Australia, or any Act amending or replacing that Act.

(6) Notwithstanding any proceedings against any person for an offence under this section (whether resulting in a conviction or otherwise) that person shall remain liable to all civil proceedings in like manner as if the proceedings for an offence had not been taken.

(7) This section shall be read and construed as in aid of and not in derogation of any enactment or law relating to false or misleading advertisements or other statements.

DIVISION 4.—*General.*

33. An inspector, at any reasonable time—

- (a) may, for the purposes of this Part, enter any place where any goods (whether or not they are prescribed goods) are manufactured, prepared, or sold, or offered for hire, or any place where he has reason to believe that any such goods are manufactured, prepared, or sold, or offered for hire:
- (b)

Powers of inspectors.  
cf. Act No. 43, 1962,  
s. 134.

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- (b) may inspect any such goods in any such place; No. 28, 1969
- (c) may examine with respect to matters under this Part any person employed or engaged in any such place;
- (d) may, in any such place, take any such goods, whether manufactured or partly manufactured, paying a just price for them, or take samples of materials used in their manufacture; or
- (e) may make such examination and inquiries as he thinks necessary to ascertain whether the requirements of this Part are being complied with.

34. In any prosecution for an offence under this Part, the production of a certificate of the result of any analysis, where the certificate purports to have been signed by the Government Analyst or one of his officers, shall unless the defendant requires the analyst or officer to be called as a witness be prima facie evidence of the facts stated in the certificate without proof of the signature or official character of the person appearing to have signed it. Certificate of analyst. cf. Act No. 43, 1962, s. 135.

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**PART IV.**

SAFE DESIGN AND CONSTRUCTION OF GOODS.

DIVISION 1.—*Interpretation.*

35. In this Part, except in so far as the context or subject-matter otherwise indicates or requires— Definitions.

“component part” includes an accessory;

“credit-sale agreement” means an agreement for the sale of goods under which the whole or part of the purchase price is payable by instalments;

“hire-purchase

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“hire-purchase agreement” means a letting of goods with an option to purchase;

“sell”, without limiting the generality of that expression in section five of this Act, includes let under a hire-purchase agreement or on hire or have in possession for the purpose of any such letting.

DIVISION 2.—*General Goods.*

Safety requirements and instructions. (cf. 9 & 10 Eliz. 2, c. 40, s. 1.)

**36.** (1) The Governor may, for the purpose of preventing or reducing risk of death, personal injury or disease, make regulations for or with respect to imposing with respect to any prescribed class or description of goods—

- (a) requirements, whether as to the composition of contents, design, construction, finish or packing of, or otherwise relating to, goods of that class or description or any component part thereof;
- (b) requirements for securing that goods of that class or description or any component part thereof are in the prescribed manner (if any) marked with or accompanied by any prescribed warning or instructions or any warning or instructions of a prescribed nature.

(2) Requirements may be imposed under this section with respect to all goods of a prescribed class or description and either generally or in prescribed circumstances, and regulations under this section may make different provision for different cases.

(3) A class or description of goods may be prescribed under this section notwithstanding that the goods are for use only as component parts of other goods (whether or not those other goods are goods of a prescribed class or description).

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37. (1) Subject to the provisions of this section, no person shall sell any goods in respect of which or a component part of which any requirements of regulations made under section thirty-six of this Act are in force unless all requirements of the regulations relating to the goods or component part are complied with.

No. 28, 1969  
Prohibition  
on sale,  
etc. of  
goods not  
complying  
with regu-  
lations  
under s. 36.  
(cf. 9 and  
10, Eliz. 2,  
c. 40, s. 2.)

(2) Subject to the provisions of this section, no person shall sell a component part in respect of which no requirements have been prescribed under section thirty-six of this Act but which is intended for, but not embodied in, any goods in respect of which any such requirements are in force, unless, if the component part were embodied in the goods, any requirement of the regulations, so far as the requirement relates to that part of the goods, applicable to the goods would be complied with.

(3) The foregoing provisions of this section shall not apply to a person—

- (a) where he reasonably believes that the goods or component parts will not be used in New South Wales;
- (b) in the case of a sale under a credit-sale agreement or a letting under a hire-purchase agreement, if he has at no time had possession of the goods or component parts and only became the owner thereof at or after the time of entering into the agreement;
- (c) where he is selling the goods or component parts as scrap, that is to say, for the value of the materials of which the goods or parts are composed and not for use as finished articles; or
- (d) in the case of goods or component parts which have been damaged by, or in consequence of, fire or flooding, where he is selling the goods or component parts to a person who carries on a business of buying

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buying damaged goods and repairing or reconditioning them for resale, or to a person by whom the goods or parts were insured against damage;

- (e) in a case of letting on hire, where the letting is incidental to the letting of premises;
- (f) in a case of possession for the purpose of letting on hire, where possession is for the purpose of a letting which is to be incidental to the letting of premises;
- (g) in any case of letting, where the letting was lawful at the time when it began.

(4) Unless regulations under section thirty-six of this Act otherwise provide, subsections one and two of this section shall not, in respect of any requirement relating to the manufacture of goods or a component part of goods, apply in relation to goods or component parts manufactured in or imported into New South Wales before the imposition of the requirement, or if it is so provided by such regulations shall not apply in relation to any such goods or component parts until a prescribed date.

(5) Regulations under section thirty-six of this Act may contain such other exemptions from the operation of subsections one and two of this section, applicable in such cases, as may be prescribed.

Enforcement  
of s. 37.  
(cf. 9 and  
10, Eliz. 2,  
c. 40, s. 3.)

**38.** (1) Any obligation imposed by or under section thirty-seven of this Act on any person not to sell any goods or component part is a duty which is owed by him to any other person who may be affected by the contravention of or non-compliance with the requirement in question, and a breach of that duty is actionable (subject to the defences and other incidents applying to actions for breach of statutory duty).

(2)



*Consumer Protection.*

(2) Any person who contravenes section thirty-seven <sup>No. 28, 1969</sup> of this Act is guilty of an offence against this Act.

(3) It shall be a sufficient defence to a prosecution for an offence under this section by reason of a contravention of or failure to comply with any requirement imposed under section thirty-six of this Act in relation to the goods or component part in question if the person charged proves that he had reasonable cause to believe that all such requirements were satisfied.

39. An inspector may at any reasonable time—

Powers of  
inspectors.

- (a) enter any place where any goods belonging to a class or description in respect of which regulations have been made under section thirty-six of this Act or component parts of any such goods are sold or kept for any purpose of advertisement or trade, or where he has reasonable cause to believe that any such goods or parts are sold or so kept;
- (b) inspect any such goods or component parts in that place;
- (c) take any such goods, or any component part apparently intended for, but not embodied in, any such goods, found in any such place, paying a just price for the goods or part;
- (d) examine with respect to matters under this Division any person employed or engaged in any such place;  
or
- (e) make such examination and inquiries as he thinks necessary to ascertain whether the requirements of this Division are being complied with.

DIVISION

No. 28, 1969

DIVISION 3.—*Refrigerators, Ice-Chests, Ice-Boxes and Freezers.*

Prohibition on sale of certain refrigerators, ice-chests, ice-boxes and freezers.  
cf. Act No. 43, 1962, s. 142.

**40.** (1) Where a person sells any of the following articles, that is to say, any refrigerator, ice-chest, ice-box, or freezer, and the article has in it a compartment of a capacity of one and one-half cubic feet or more, such person is guilty of an offence against this Act unless the compartment is so constructed or equipped that every door or lid of the compartment can be opened easily from the inside of the compartment when any lock or catch that can be operated from the outside of the compartment is fastened.

(2) In any prosecution for an offence under subsection one of this section—

- (a) in relation to a refrigerator, ice-chest or ice-box, it shall be a defence if the defendant proves that the refrigerator, ice-chest or ice-box was manufactured in or imported into New South Wales before the first day of January, one thousand nine hundred and sixty-one; or
- (b) in relation to a freezer, if the defendant proves that the freezer was manufactured in or imported into New South Wales before the appointed day,

but the defendant shall be liable to pay the costs incurred on behalf of the prosecution unless he has given reasonable notice to the informant that he will rely on that defence.

(3) In paragraph (b) of subsection two of this section "appointed day" means such day as may be appointed by the Governor for the purposes of this section and notified by proclamation published in the Gazette.

Powers of inspectors.  
cf. Act No. 43, 1962, s. 143.

**41.** An inspector may at any reasonable time—

- (a) enter any place where refrigerators, ice-chests, ice-boxes or freezers are sold or where he has reasonable cause to believe that refrigerators, ice-chests, ice-boxes or freezers are sold;

(b)

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- 
- (b) inspect any refrigerators, ice-chests, ice-boxes or freezers in any such place; No. 28, 1969
  - (c) examine with respect to matters under this Division any person employed or engaged in any such place;
  - (d) make such examination and inquiries as he thinks necessary to ascertain whether the requirements of this Division are being complied with.
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## PART V.

## COLLUSIVE PRACTICES.

42. (1) In this Part of this Act, except in so far as the context or subject-matter otherwise indicates or requires— Definitions. (cf. Vic. 7353, s. 2.)

“agreement” includes any arrangement or understanding whether enforceable by legal proceedings or not and whether or not it was intended to be enforceable by legal proceedings;

“auction” means an auction in New South Wales at which any goods, land or other property, or any rights or privileges, is or are submitted to auction;

“authorised officer” means any person appointed by the Commissioner to be an authorised officer for the purposes of this Act;

“collusive bidding agreement” means—

- (a) an agreement by two or more persons for the submission of a joint bid at an auction; or
- (b) any other agreement that has the purpose or effect of preventing or restricting competition among all or any of the parties in respect of bidding at an auction or auctions,

whether

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whether the agreement was made before, or is made after, the commencement of this Act and whether or not the agreement relates expressly or exclusively to bidding;

“collusive tendering agreement” means—

- (a) an agreement by two or more persons for the submission of identical tenders or a joint tender for the supply or acquisition of goods or services; or
- (b) any other agreement that has the purpose or effect of preventing or restricting competition among all or any of the parties in respect of tendering for the supply or acquisition of goods or services,

whether the agreement was made before, or is made after, the commencement of this Act and whether or not the agreement relates expressly or exclusively to tendering;

“Commissioner” means the Commissioner for Trade Practices appointed under this Part;

“Court” means the Industrial Commission;

“document” includes a book or writing;

“Industrial Commission” means the Industrial Commission of New South Wales;

“joint bid” means a bid made by two or more persons jointly, and includes a bid (whether made in the name of one person or in the names of two or more persons) made with the intention that, if the bid is successful, the property, rights or privileges bid for will or may be shared by two or more persons;

“joint tender” means a tender by two or more persons jointly for the supply or acquisition of goods or services, and includes a tender (whether made in the name of one person or in the names of two or more persons) made with the intention that, if the

tender

*Consumer Protection.*

tender is successful, the supply or acquisition of No. 28, 1969 the goods or services, or the goods or services acquired, as the case may be, will or may be shared by two or more persons;

“services” includes the rights or benefits that are to be provided under an agreement for—

- (a) the performance of work (otherwise than under a contract of service), whether with or without the supply of goods;
- (b) the provision of, or the use of enjoyment of, facilities for amusement, entertainment, recreation or instruction; or
- (c) the conferring of rights or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;

“supply” includes —

- (a) in relation to goods—supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and
- (b) in relation to services—provide, grant or confer,

and “supplied” and “supplier” have corresponding meanings;

“tender” means an offer for the supply or acquisition of goods or services made in response to an invitation;

“trade association” means an association, body or organisation (whether incorporated or not) formed, existing or conducted for the purpose of furthering, or for purposes that include or are conducive to the furthering of, the business or professional interests of all or any of its members, but does not include—

- (a) a partnership; or
- (b) an association, body or organisation the only members of which are companies related to each other.

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## (2) For the purposes of this Part—

- (a) an arrangement or understanding, whether formal or informal and whether express or implied, shall be deemed to be an agreement;
- (b) a reference to an agreement shall be read as including a reference to any agreement made outside New South Wales;
- (c) where a person is a party to an agreement under which that person undertakes, or is or may be required to ensure, that a corporation which that person is in a position to control will do an act or thing, or which provides for the doing of an act or thing by such a corporation—
  - (i) that corporation shall be deemed to be a party to the agreement; and
  - (ii) the agreement shall be deemed to require the corporation to do that act or thing,and, for the purposes of this paragraph, a corporation that is the holding company of another corporation shall be deemed to be in a position to control that other corporation;
- (d) where, under an agreement, a party is subject to an obligation, or may be subjected to a penalty or disadvantage, if he fails to comply with conditions, or privileges or benefits are or are to be conferred upon a party only if he complies with conditions, that person shall be deemed to be required by that agreement to comply with those conditions;
- (e) an act or thing done by a party to an agreement shall be deemed to have been done in pursuance of a requirement of the agreement where—
  - (i) he would have contravened that requirement if he had not done that act or thing;  
or

(ii)

*Consumer Protection.*

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- (ii) that requirement was applicable in relation <sup>No. 28, 1969</sup> to the doing of that act or thing and the act or thing was done consistently with that requirement;
- (f) a reference to a corporation being the holding company of another corporation or to corporations being related one to another, shall be read as having the same meaning as a similar reference would have in the Companies Act, 1961, as subsequently amended;
- (g) a reference to the supply or acquisition of goods shall be read as including a reference to agreeing to supply or acquire goods;
- (h) a reference to the acquisition of goods shall be read as including a reference to the acquisition of property in, or rights in relation to, goods in pursuance of a supply of the goods;
- (i) a reference to the supply or acquisition of services shall be read as including a reference to agreeing to supply or acquire services;
- (j) a reference to the supply or acquisition of goods shall be read as including a reference to the supply or acquisition of goods together with services; and
- (k) entering into an agreement, refusing to enter into an agreement, or refraining from entering into an agreement shall be deemed to be doing an act or thing.

## 43. (1) A person who—

- (a) makes, or joins in the making of, a tender in accordance with a collusive tendering agreement; or

(b)

Collusive  
tendering  
and bidding  
to be  
offences.  
(cf. Vic.  
7353, s. 3.)

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- (b) in pursuance of a collusive tendering agreement, abstains from making a tender,

is guilty of an offence against this Act and liable to a penalty not exceeding four thousand dollars or to imprisonment for a period not exceeding twelve months or to both such penalty and imprisonment.

(2) It is a defence to a prosecution for an offence under subsection one of this section if the court is satisfied that the defendant made or joined in the making of a tender in accordance with a collusive tendering agreement or abstained from making a tender pursuant to a collusive tendering agreement at the request of, or with the prior consent of, the person to whom the tender was made.

- (3) A person who—

- (a) bids, or joins in the making of a bid, at an auction in accordance with a collusive bidding agreement;  
or  
(b) in pursuance of a collusive bidding agreement, abstains from attending an auction or from bidding, or from making a further bid, at an auction,

is guilty of an offence against this Act and liable to a penalty not exceeding four thousand dollars or to imprisonment for a period not exceeding twelve months or to both such penalty and imprisonment.

(4) It is a defence to a prosecution under subsection three of this section if the court is satisfied that the defendant acted at the request of or with the prior consent of the vendor.

(5) For the purposes of subsections three and four of this section any act done by an agent in accordance with, or in pursuance of, an agreement made by his principal (including an agreement made by the agent within the scope of his agency) shall be deemed to have been done by the principal and not by the agent.



*Consumer Protection.***44.** For the purposes of this Part—

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- (a) where an association, body or organisation (whether or not it is a trade association), or a person representing an association, body or organisation, is a member of another association, body or organisation, every member of the first-mentioned association, body or organisation shall be deemed to be a member of the last-mentioned association, body or organisation; As to trade associations. (cf. Vic. 7353, s. 4.)
- (b) where a person is a member of an association, body or organisation in the capacity of representative of another person (including a corporation), that other person shall be deemed to be a member of that association, body or organisation;
- (c) the constitution of a trade association shall be deemed to be an agreement to which all persons who, for the time being, are members of the trade association are parties;
- (d) where a direction by or on behalf of a trade association has been given to, or was intended to affect the conduct of, all or any of its members, it shall be conclusively presumed that the direction was authorised by the constitution of the trade association and that those members were required by that constitution to comply with it; and
- (e) an agreement made by a trade association shall be deemed to be an agreement to which all members of the trade association from time to time are parties and by which those members agreed to do all acts and things that, under the agreement, are to be done by them or that the trade association is to cause, require or recommend them to do.

**45.** For the purposes of this Act there shall be appointed, under and in accordance with the provisions of the Public Service Act, 1902, as subsequently amended, a Commissioner for Trade Practices. Commissioner for Trade Practices.

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No. 28, 1969 **46.** In the event of any absence from duty of the Commissioner for Trade Practices the Minister may appoint an officer of the Department of Labour and Industry to act as Commissioner for Trade Practices during that period of absence and the officer so appointed shall, when so acting, be deemed to be the Commissioner for Trade Practices.

Acting Commissioner for Trade Practices.

Commissioner may require furnishing of information and production of documents.  
(cf. Vic. 7353, s. 5.)

**47.** (1) Where the Commissioner has reason to believe that a person (including a corporation) is capable of giving information or producing documents relating to matters that constitute, or may constitute, a collusive tendering agreement or a collusive bidding agreement he may, by notice in writing, require that person—

- (a) to furnish to him, by writing signed by that person, or, in the case of a corporation, by a competent officer of the corporation, within the time and in the manner specified in the notice, any such information; or
- (b) to produce to him, or to a person specified in the notice acting on his behalf, in accordance with the notice, any such documents.

(2) A person who—

- (a) refuses or fails to comply with a notice under this section to the extent that he is capable of complying with it; or
- (b) in purported compliance with such a notice, knowingly furnishes information that is false or misleading,

is guilty of an offence against this Act and liable to a penalty not exceeding one thousand dollars or to imprisonment for a period not exceeding three months or to both such penalty and imprisonment.

(3) A person is not excused from furnishing information or producing a document in pursuance of this section on the ground that the information or document might tend to incriminate

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incriminate him, but his answer to any question asked in the notice, or his furnishing of any other information in pursuance of the notice, is not admissible in evidence against him in any criminal proceedings, other than proceedings under this Part. No. 28, 1969

48. (1) The Commissioner, or a person authorised by him, may inspect all documents produced in pursuance of a notice under section forty-seven of this Act, and may make copies of or take extracts from those documents. Copying and impounding of documents.  
(cf. Vic. 7353, s. 6.)

(2) The Commissioner may, for the purposes of this Part, take, and retain for as long as is necessary for those purposes, possession of any document produced in pursuance of a notice under section forty-seven of this Act, but the person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Commissioner to be a true copy, and such a certified copy shall be received in all courts as evidence as if it were the original.

(3) Until such a certified copy is supplied, the Commissioner shall, at such times and places as he thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of or take extracts from the document.

49. Every person who aids, abets, counsels or procures or is in any way knowingly concerned in the commission of an offence under this Part shall be deemed to have committed the like offence and may be proceeded against and punished accordingly. Aiding, abetting, &c.  
(cf. Vic. 7353, s. 7.)

50. (1) If any person is convicted of an offence under this Part, any member of the Industrial Commission may, upon application by or on behalf of the Minister, grant an injunction restraining the convicted person and his servants or agents from the repetition or continuance of the offence of which he has been convicted. Power to enjoin convicted persons.  
(cf. Vic. 7353, s. 8.)

(2)

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(2) Any person who does any act or thing in disobedience of such an injunction is guilty of an offence against this Act and liable to a penalty not exceeding one thousand dollars for each day during which the offence continues.

Evidentiary provisions.  
(cf. Vic. 7353, s. 9.)

51. (1) In any prosecution for an offence under this Part any document containing—

- (a) any minute, note, record or memorandum of any proceedings at any meeting of a trade association or of the persons or of any of the persons alleged to have been parties or privy to the collusive tendering agreement or collusive bidding agreement; or
- (b) any entry purporting to be a copy of or extract from any such document,

shall, upon proof that it was produced by, or came from the custody of, those persons or any of them, or of a responsible officer or a representative of those persons or of any of them—

- (i) be admissible in evidence against those persons; and
- (ii) be evidence that the matter and things thereby appearing to have been done by those persons or any of them were so done, and that any person thereby appearing to have been present at the meeting was so present.

(2) In any prosecution for an offence under this Part any document or anything purporting to be a copy of or extract from any document containing any reference to any matter or thing alleged to be done in contravention of this Part, shall, upon proof that it was produced by or came from the custody of a person charged with the offence, or a responsible officer or representative of that person—

- (a) be admissible in evidence against that person; and

(b)

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- (b) be evidence of the matters and things thereby appearing, and that the document or, in the case of a copy, that the original thereof was written, signed, despatched and received by the persons by whom it purports to have been written, signed, despatched and received, and that any such copy or extract is a true copy of or extract from the original of or from which it purports to be a copy or extract.

**52.** (1) This Part does not apply to the making of a tender or abstaining from making a tender for the supply of goods to a person carrying on business outside the Commonwealth of Australia for the purpose of that person's business outside the Commonwealth or to the supply of services outside the Commonwealth.

Non-appli-  
cation of  
Part.  
(cf. Vic.  
7353,  
s. 10.)

(2) An agreement is not a collusive tendering agreement or collusive bidding agreement for the purposes of this Part to the extent that—

- (a) the agreement is between corporations that are related to each other;
- (b) the agreement is between partners, in relation to competition between a partner and the partnership;
- (c) the agreement relates to tendering or bidding otherwise than in the course of, or in connection with, a business; or
- (d) the agreement is authorised by the regulations or is of a class of agreements so authorised.

(3) An agreement is not a collusive tendering agreement or collusive bidding agreement for the purposes of this Part by reason only of—

- (a) any provision of the agreement relating to the remuneration, conditions of employment, hours of work or working conditions of employees;

(b)

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- (b) any provision of the agreement obliging a person to comply with or apply standards prepared or approved by the Standards Association of Australia, or by any prescribed association or body;
- (c) in the case of an agreement for or in respect of—
  - (i) a licence granted or to be granted by the proprietor, licensee or owner of a patent, registered design or copyright or by a person who has applied for a patent or for the registration of a design; or
  - (ii) an assignment of a patent, registered design or copyright or of the right to apply for a patent or for the registration of a design, any condition of the licence or assignment relating exclusively to—
    - (iii) the invention to which the patent or application for a patent relates or articles made by the use of that invention;
    - (iv) goods in respect of which the design is or is proposed to be registered and to which it is applied; or
    - (v) the work to which the copyright relates;
- (d) in the case of an agreement authorising the use of a certification trade mark—any provision included in the agreement in accordance with rules applicable under Part XI of the Trade Marks Act 1955–1966 of the Commonwealth; or
- (e) in the case of an agreement between the registered proprietor of a trade mark other than a certification trade mark and a person authorised by the agreement to use the trade mark subject to registration as a registered user under Part IX of the Trade Marks Act 1955–1966 of the Commonwealth—any provision of the agreement with respect to the kinds, qualities or standards of goods bearing the mark that may be produced or supplied.

(4)

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(4) A collusive tendering agreement shall not be implied with respect to any agreement for the supply of goods by reason only of the fact that a person has in making or in joining in making the tender complied with—

- (a) the requirements of an agreement between that person and the manufacturer, wholesaler or other supplier of the goods to him which determines the price at which the goods may be resold by him; or
- (b) the requirements of any Act or law which determines the price at which the goods may be sold by him.

**53.** (1) Notwithstanding the provisions of the Industrial Arbitration Act, 1940, as subsequently amended, all proceedings for offences against this Act arising under this Part shall be taken before a court consisting of a single member of the Industrial Commission and shall be commenced by information filed in the office of the Industrial Registrar.

(2) The regulations made under the Industrial Arbitration Act, 1940, as subsequently amended, may make provision for or with respect to the practice and procedure with respect to any such proceedings.

(3) For the purpose of exercising jurisdiction under this Part, the judgment of the member of the Industrial Commission or of the Industrial Commission in Court Session on appeal shall have force and effect as a judgment of the Supreme Court in its common law jurisdiction and shall be so recorded by the Prothonotary.

**54.** (1) An appeal shall lie to the Industrial Commission in Court Session from the decision of any member given in any proceedings under this Part.

(2) The procedure for appeal shall be in the manner prescribed by the regulations made under the Industrial Arbitration Act, 1940, as subsequently amended.

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**PART**

## PART VI.

## MISCELLANEOUS PROVISIONS.

*Inspectors.* **55.** (1) The Governor may appoint inspectors for carrying into effect the provisions of this Act.

(2) Every inspector shall be provided by the Minister with a certificate of his appointment.

(3) An inspector, on exercising in any place any power conferred on him by this Act, shall, if so requested by any person apparently in charge of such place or of any work carried out therein, produce the certificate of his appointment as an inspector.

(4) Notwithstanding any other provision of this Act, an inspector shall not have any authority under this Act to enter a dwelling-house or other residential premises, or the land used in connection therewith, unless some manufacture or trade is carried on therein.

(5) Any person who—

- (a) refuses or wilfully delays the admission of any inspector in the exercise by him of his powers under this Act; or
- (b) wilfully obstructs any inspector in the exercise by him of any such power; or
- (c) fails to comply with the request of an inspector made under any such power; or
- (d) conceals any person from an inspector or prevents any person from appearing before or being examined by an inspector or attempts so to conceal or prevent any person,

is guilty of an offence against this Act and liable to a penalty not exceeding one hundred dollars.



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**56.** (1) Proceedings for an offence against this Act may be taken and prosecuted by any person acting with the authority of the Minister or, in the case of an offence under Part III or Schedule Two to this Act, by a person so acting or by the secretary of an industrial union of employers or employees registered under the Industrial Arbitration Act, 1940, as subsequently amended, whose members are engaged in the industry concerned. No. 28, 1969  
Proceedings.

(2) In a prosecution for any such offence, an authority to prosecute, purporting to have been signed by the Minister, shall be prima facie evidence of such authority without proof of the Minister's signature.

(3) All proceedings for offences under Parts III and IV and this Part of this Act and Schedule Two to this Act may be disposed of summarily before a stipendiary magistrate or an industrial magistrate appointed under the Industrial Arbitration Act, 1940, as subsequently amended.

(4) The provisions of the Industrial Arbitration Act, 1940, as subsequently amended, and the regulations made thereunder relating to proceedings before an industrial magistrate and to appeals from an industrial magistrate to the Industrial Commission of New South Wales shall apply mutatis mutandis to proceedings before a stipendiary magistrate or an industrial magistrate for offences against this Act or the regulations.

(5) The informant may conduct his case himself or by his counsel, attorney or an agent duly authorised by him in writing or, in a case where the informant is an inspector, by an officer of the Department of Labour and Industry.

**57.** (1) Any person who is guilty of an offence against this Act is, where no other penalty is provided, liable for a first offence to a penalty not exceeding two hundred dollars or to imprisonment for a period not exceeding six months or to both such penalty and imprisonment, for a second offence to a penalty not exceeding three hundred dollars or to imprisonment

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**No. 28, 1969** imprisonment for a period not exceeding twelve months or to both such penalty and imprisonment and for a third or subsequent offence to a penalty not exceeding five hundred dollars or to imprisonment for a period not exceeding twelve months or to both such penalty and imprisonment.

(2) Where a person convicted of an offence against this Act or the regulations is a body corporate, every person who at the time of the commission of the offence was a director or officer of the body corporate shall be deemed to have committed the like offence and be liable to the pecuniary penalty or imprisonment provided by this Act for that offence, unless he proves that the offence was committed without his knowledge or that he used all due diligence to prevent the commission of the offence.

Evidentiary provisions.  
cf. Act No. 43, 1962, s. 148.

**58.** In a prosecution for an offence against this Act a statement purporting to be signed by the Under Secretary—

- (a) that a certificate or permit of the description specified in the statement has or has not been issued pursuant to the Factories, Shops and Industries Act, 1962, as subsequently amended, or the regulations made thereunder to any person, or in respect of any premises, specified in the statement, and, where a certificate or permit has been so issued, as to the date of issue of and particulars contained in such certificate or permit; or
- (b) that at any date or during any period specified in the statement a certificate or permit of the description specified in the statement issued pursuant to the Factories, Shops and Industries Act, 1962, as subsequently amended, or the regulations made thereunder to any person, or in respect of any premises, specified in the statement was or was not in force or operative,

shall be prima facie evidence of the matter contained in such statement without proof of the signature or of the official character of the person by whom the statement purports to have been signed.

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**59.** (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act. No. 28, 1969  
Regulations.

(2) A regulation made under this Act shall—

- (a) be published in the Gazette;
- (b) take effect on and from the date of publication or a later date specified in the regulation; and
- (c) be laid before each House of Parliament within fourteen sitting days of that House after the date of publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

(3) If either House of Parliament passes a resolution of which notice has been given within fifteen sitting days of that House after a regulation has been laid before it, disallowing the regulation or any part thereof, the regulation or part thereupon ceases to have effect.

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Sec. 3.

## SCHEDULES.

## SCHEDULE ONE.

No. of Act.	Name of Act.	Extent of Repeal.
1965, No. 13	Oil-burning Appliances Act, 1965	The whole.
1962, No. 43	Factories, Shops and Industries Act, 1962	The matter relating to Part VIII and Part X in section two. Parts VIII and X. The words "Provided that proceedings for an offence under Division 1 of Part VIII of this Act may be taken and prosecuted by an inspector or secretary of an industrial union as aforesaid, or by any person whose rights are impaired." in subsection one of section one hundred and forty-five. Schedules Four and Five.

Sec. 28.  
(cf. Act No.  
43, 1962,  
Sch. 5.)

## SCHEDULE TWO.

## MARKING OF FURNITURE.

1. All furniture manufactured or sent out of any factory shall be legibly and permanently stamped.

2. All furniture manufactured or prepared either wholly or partly in New South Wales shall as soon as it has been so nearly completed as to permit the stamp being placed on it, and before it is sent out or removed from the building, premises, or place in which it is so manufactured or prepared, and all furniture imported into New South Wales shall be legibly and permanently stamped with a stamp of an indelible permanent ink, or stain, or impression.

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3. Such stamp shall set forth in legible type the distinguishing number or letter or combination of same (herein called the maker's mark) assigned by the Chief Inspector, within the meaning of the Factories, Shops and Industries Act, 1962, as subsequently amended, to each manufacturer of furniture corresponding with the true name and address of such manufacturer, as appearing in a register made and kept by the Chief Inspector for the purpose. If such furniture was only partly manufactured or prepared by such manufacturer, the words "partly prepared by" shall be stamped above the maker's mark of such manufacture.

4. Such stamp shall be placed on some part of such furniture, and on each movable part thereof where it can be clearly and easily seen and read at a distance of not less than five feet. A drawer shall not, for the purposes of this clause, be deemed to be a movable part of furniture.

5. Every occupier of a factory or shop who delivers or causes to be delivered to a purchaser any new furniture which is not stamped pursuant to this Schedule is guilty of an offence against this Act.

6. All furniture imported into New South Wales for the purpose of sale shall be stamped by the importer or consignee or buyer for the purposes of re-sale thereof within forty-eight hours after such furniture has been unpacked, with a stamp on such furniture in accordance with this Schedule.

7. The provisions of this Act with regard to the stamping of furniture shall not be deemed to be complied with in the case of wardrobes, sideboards, tables, washstands, bookcases, cabinets, hall stands, hall seats, dinner waggons, bedsteads, chairs, seats, church altars, cupboards, pedestals, meat safes, chiffoniers, kitchen dressers, chests of drawers and commodes unless each of the letters with which such articles are stamped is at least one-half of an inch long by one-eighth of an inch wide and, where the regulations prescribe the manner of such stamping of such articles, unless such articles are stamped in the manner prescribed.

8. Every person who—

- (a) wholly or partly manufactures or prepares furniture and who fails or omits to cause such furniture to be stamped as in this Schedule provided; or
- (b) exposes for sale or sells or delivers after sale or lets on hire any furniture wholly manufactured or prepared by persons other than himself or his immediate employees and stamps the same with his own stamp; or
- (c) on any furniture wholly or partly made by persons other than himself or his immediate employees places a stamp implying or stating that such furniture was made by himself only; or

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- (d) falsely stamps any furniture ; or
- (e) exposes for sale or sells or offers for sale or delivers after sale or lets on hire any furniture which is not stamped pursuant to this Schedule or which he knows to be falsely stamped ; or
- (f) removes or obliterates or obscures or erases from or alters or adds to or attempts to remove or obliterate or obscure or erase from or alter or add to any stamp on any furniture,

is guilty of an offence against this Act.

9. Every occupier of a factory or shop, and the agents and servants of such occupier shall whenever so required by an inspector point out to such inspector where any article of furniture in such factory or shop is stamped in accordance with the provisions of this Schedule.

Every person who contravenes the provisions of this clause is guilty of an offence against this Act and liable to a penalty not exceeding one hundred dollars.

10. Any person who offers for sale or offers to let on hire any article of furniture shall show the stamp referred to in this Schedule to any person seeking to purchase or hire any article of furniture.

11. The secretary of a registered industrial union of employers or employees in the furniture industry or an officer authorised by him in writing shall, in relation to factories wherein furniture is wholly or partly manufactured or repaired, shops wherein furniture is sold or offered or exposed for sale, parts of such factories or shops, and premises and places which such secretary or officer has reasonable cause to believe are used as such factories or shops, have the like powers as are conferred upon an inspector by section thirty-three of this Act.

12. Where the regulations prescribe the position in which any stamp referred to in this Schedule shall be placed on furniture or any type of furniture, such stamp shall be placed in the position so prescribed.

13. Furniture manufactured in or imported into New South Wales before the commencement of this Act and which was stamped before that commencement pursuant to and in accordance with Schedule Five to the Factories and Shops Act, 1912-1960, or Schedule Five to the Factories, Shops and Industries Act, 1962, as subsequently amended, shall be deemed to be stamped pursuant to and in accordance with this Schedule.

14. Any maker's mark assigned by the Chief Inspector, within the meaning of the Factories and Shops Act, 1912-1960, or the Factories, Shops and Industries Act, 1962, as subsequently amended, under paragraph 3 of Schedule Five to either such Act and any register of any such marks kept by him under paragraph 3 of Schedule

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Five to either such Act, shall be deemed to be a maker's mark assigned, or a register kept, as the case may be, by the Chief Inspector for the purposes of clause 3 of this Schedule. **No. 28, 1969**

15. In this Schedule—

“factory” has the meaning ascribed thereto in subsection one of section four of the Factories, Shops and Industries Act, 1962, as subsequently amended;

“occupier” has the meaning ascribed thereto by that subsection;

“shop” has the meaning ascribed thereto by subsection one of section nine of that Act.

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