



*Tonga*

# **CONSUMER PROTECTION ACT**

**Chapter 17.04**

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# CONSUMER PROTECTION ACT

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## CONSUMER PROTECTION ACT

### AN ACT TO MAKE PROVISION FOR THE PROTECTION OF THE CONSUMER AND FOR THE ESTABLISHMENT OF FAIR TRADE PRACTICES AND FOR OTHER MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO<sup>1</sup>

Commencement [2nd July 2001]<sup>2</sup>

## PART I - PRELIMINARY

### 1 Short title

This Act may be cited as the Consumer Protection Act.

### 2 Interpretation

In this Act, unless the context otherwise requires —

“**consumer**” means a person who acquires goods or services from a manufacturer or trader;

“**defect in relation to goods**” or “**defective goods**” means goods that do not comply with a product safety or quality standard as prescribed by regulations for goods and includes new or second-hand goods that are in the particular circumstances dangerous or unfit for use;

“**division**” means the Consumer Affairs Division established under section 4;

“**goods**” means any consumer goods of whatever nature sold for valuable consideration and includes, the sale of gas, electricity, water and communications;

“**living modified organism**” has the same meaning as under the Biosafety Act;<sup>3</sup>

“**manufacturer**” means any person who —

- (a) makes any goods;
- (b) assembles or joins any; or
- (c) adapts for sale or repairs any goods;

“**Minister**” means the Minister responsible for commerce;<sup>4</sup>

“**National Biosafety Advisory Committee**” means the National Biosafety Advisory Committee established under section 5 of the Biosafety Act;<sup>5</sup>

“**services**” include any rights, benefits privileges and facilities that are, or are to be provided, granted or conferred under —

- (a) a contract for or in relation to —
  - (i) the performance of work (including work of a professional nature), whether with or without the supply of goods;
  - (ii) the provision of gas, electricity, water or communications;
  - (iii) the provision, or making available for use, of facilities for amusement, entertainment, recreation or instruction; or
  - (iv) the conferring of rights, benefits or privileges for which remuneration is payable in the form of royalty, levy or similar payment;

“**trader**” means any person carrying on business as —

- (a) an importer of goods for the purposes of sale or supply;
- (b) an exporter of goods in pursuance of a contract of sale or supply;  
and includes —
  - (i) a person who sells or supplies goods wholesale to any other trader or consumer; and
  - (ii) a person who sells or supplies goods at retail rates to consumers;
- (c) a person who supplies services.

### **3 Act binds the Crown**

This Act binds the Crown.

## PART II - ADMINISTRATION

### 4 Establishment of Consumer Affairs Division and appointment of Director and other officers

- (1) There shall be established a Consumer Affairs Division, which shall consist of —
  - (a) a Director; and
  - (b) such other officers as may be appointed under subsection (2).
- (2) Any appointment made under subsection (1) shall be in accordance with the Government Act.

### 5 Guiding matters

In the exercise of its functions under this Act, the Division shall have special regard to the following matters —

- (a) the protection of the interests of consumers;
- (b) the responsibility of the manufacturer or trader to ensure that goods offered to consumers meet certain reasonable demands of durability, utility and reliability and are suited for the purpose for which they are intended;
- (c) the efficient operation of any person or body engaged in the production of goods or the provision of services or in any activity connected with or incidental to the production of goods or the provision of services;
- (d) to establish and maintain legal or administrative measures to enable consumers to obtain redress through procedures that are expeditious, fair, inexpensive and accessible;
- (e) the need to develop, strengthen and maintain a strong consumer policy for the protection of consumers in accordance with the economic and social circumstances of the country; and
- (f) other objectives of economic and social policy of the Government.

### 6 Functions of the Division

- (1) The Division may —
  - (a) advise any person in relation to the provisions of this Act and take action for remedying infringements of, or for securing compliance with those provisions;
  - (b) make available to consumers and persons dealing with consumers general information with respect to matters affecting the interests of consumers;

- (c) receive complaints from any person or consumer groups on matters relating to the manufacture and supply of goods or services, and deal with any such complaint in such manner as the Division considers appropriate;
  - (d) investigate the matter the subject of a complaint received under paragraph (c) or refer the complaint to any other body, that the Division considers appropriate to take necessary action, or provide advice in relation to the complaint; and
  - (e) make known by publication or otherwise the rights and obligations arising under laws relating to the interests of consumers.
- (2) The Director shall report annually to the Minister of functions performed by the Division pursuant to subsection (1).
- (3) Where a complaint is received under subsection (1)(c), the Division may —
- (a) investigate the complaint even if it has been referred to another body; or
  - (b) refer the complaint to any other body, even if an investigation of the matter has been commenced or completed by the Division.

## **7 Appointment of investigators**

- (1) The Minister may by notice in the Gazette appoint any officer as an investigator for the purposes of this Act and shall provide the officer with a certificate of identity as an investigator.
- (2) An investigator who exercises a function conferred by section 8 or 9 shall produce his certificate of identification if requested so to do by a person apparently in charge there or apparently in charge of any work being carried on there or any person required to comply with the requirements of section 8.

## **8 Powers of entry**

An investigator may enter any place that he believes on reasonable grounds to be a place where goods are manufactured, prepared or supplied or a place where services are supplied or arranged or any other business or trade is carried on and —

- (a) inspect any goods or partly manufactured goods and make such other inspections as he considers to be necessary for the purposes of this Act;
- (b) take any goods or partly manufactured goods on payment by him of a fair price if he wishes to examine them further for the purposes of this Act;
- (c) take a sample of anything from which goods are manufactured or prepared in that place;
- (d) make an inquiry necessary for the purposes of this Act of any person employed or present in that place; or



- (e) inspect and take copies of any record required under this Act to be kept in respect of such business:

Provided that he shall only enter such place in exercise of his powers under this section at any time that the goods are being manufactured or prepared, the services are being supplied or arranged or other business or trade is being carried out or between the hours of 9am and 4pm.

## 9 Power to call for documents

- (1) The Director shall have the power to call for any returns, balance sheets, accounting documents, inventories and other information from any manufacturer or trader if the Director considers it necessary for the purposes of this Act.
- (2) When the Director calls for anything under subsection (1), he shall state the time within which such thing shall be produced to him but such time shall not be less than 3 days.
- (3) If the manufacturer or trader fails within the time specified to supply anything called for by the Director under subsection (1), the Director may apply *ex parte* to the Supreme Court for a production order.

## 10 Preservation of secrecy

- (1) Except as provided by subsection (2), a person engaged in the administration of this Act shall not disclose to any person any information or evidence given, of the contents of any document produced pursuant to section 9 without the written permission of the Minister given in relation to the disclosure.
- (2) The Minister shall only grant the permission referred to in subsection (1) after he has given an opportunity for the manufacturer or trader to make any representations and having considered them he is satisfied that to do so would be in the public interest.
- (3) It is not a contravention of subsection (1) if, in any legal proceedings a person discloses any information, evidence or contents referred to in that subsection in answering a question that a person is compellable to answer in those proceedings.

## 11 Obstruction of officers

Any person who —

- (a) hinders, obstructs or interferes with an officer in the performance of his duties;
- (b) assaults an officer; or

- (c) being the occupier or person in charge of any place entered by an officer under a power conferred by this Act, fails to provide the officer with all reasonable facilities and assistance for the effective exercise of the officer's powers under this Act,

commits an offence and shall be liable on conviction to a fine not exceeding \$1,000 or to imprisonment not exceeding one year or to both.

## **PART III - CONSUMER PROTECTION**

### **12 Approved standards**

- (1) The Minister may by regulations prescribe approved standards for any goods after such consultation as he deems necessary.
- (2) Approved standards for goods may include requirements as to —
- (a) performance, composition, contents, manufacture, processing, design, construction, finish or packaging of the goods;
  - (b) the testing of the goods during, or after the completion of, manufacture or processing;
  - (c) the form and content of markings, labels, warnings or instructions to accompany the goods;
  - (d) equipment or accessories to be supplied with the goods,
  - (e) minimum quality or grade;
  - (f) measures that manufacturers or traders should take to ensure safe and proper handling or storage; and
  - (g) such other safety standards, measures or specifications, as are reasonably necessary to prevent or reduce risk of injury to person or damage to property or equipment,

provided that if a good is or contains a living modified organism the approved standards applied to it shall comply with any standards or conditions set by the National Biosafety Advisory Committee.<sup>6</sup>

### **13 Prohibition on manufacture and supply of goods below the approved standard**

- (1) A person shall not manufacture, supply or trade goods in relation to which there is an approved standard, unless the goods comply with the standard.
- (2) If a person supplies goods in contravention of subsection (1) and a consumer suffers loss or damage due to a defect in, or a dangerous characteristic of, the goods, or by inadequate information in relation to the goods, the consumer

shall be deemed, for the purposes of the Act to have suffered the loss or damage as the result of failure to comply with the approved standards.

#### **14 Complaints regarding sale of goods below the approved standard**

- (1) The Director may inquire into complaints regarding the manufacture or sale of any goods that do not conform to an approved standard.
- (2) Any complaint under subsection (1) shall be made to the Director in writing within 14 days of such sale.
- (3) When inquiring into such complaint, the Director shall give the manufacturer or trader against whom such complaint is made an opportunity to answer the complaint.
- (4) Where the Director is of the opinion, after inquiry, that a manufacture or sale has been made of any goods not conforming to the approved standard he shall order the manufacturer or trader to pay compensation to the aggrieved party or to replace such goods or to refund the amount paid for such goods within a specified period.
- (5) An order made under subsection (4) shall be made in writing and served on the manufacturer or trader.

#### **15 Failure to comply with order an offence**

Subject to the provisions of section 35, where any manufacturer or trader fails or refuses to comply with an order made under subsection (4) of section 14, such manufacturer or trader shall be guilty of an offence under this Act.

#### **16 Product recall**

The Minister may order a manufacturer or trader of defective goods to do one or more of the following —

- (a) recall the goods in a manner and within a time specified in the order;
- (b) disclose to the public, or to a class of persons specified in the order, in a manner and within a period specified —
  - (i) the nature of any defect in the goods identified in the order;
  - (ii) the circumstances in which the use of the goods is dangerous; or
  - (iii) the manner for disposing of the goods;
- (c) notify the public or a class of persons specified in the order in a manner and within a period specified in the order, that the manufacturer or trader undertakes to do whichever of the following is appropriate —
  - (i) except where the order identifies a dangerous characteristic of the goods, repair the goods;

- (ii) replace the goods; or
- (iii) refund to the person to whom the goods were supplied, the full price of the goods.

### **17 Refusal to sell goods to be an offence**

- (1) Any trader who refuses to sell goods in his possession or custody or under his control for the purposes of trade commits an offence.
- (2) In any prosecution under subsection (1), it shall be a sufficient defence for the accused to prove —
  - (a) that on the occasion in question he supplied a reasonable quantity of the goods or did not have a sufficient quantity in his possession to supply the quantity; or
  - (b) that he carried on business in the goods as a wholesale trader only, and that the sale of the quantity demanded by the buyer would have been contrary to the normal practice of a wholesale business.

### **18 Denial of possession of any article for purposes of trade or the sale of such article subject to any condition to be an offence**

Any trader who has in his possession or custody or under his control any goods for the purposes of trade and who —

- (a) denies the possession of such goods; or
- (b) offers such goods for sale subject to a condition requiring the purchase of any other goods or the making of any payment in respect of any service or to any other condition other than the condition that the buyer shall pay the price of such goods,

commits an offence.

### **19 Hoarding of goods by any trader to be an offence**

- (1) Any trader who conceals in his place of business or in any other place any goods in such quantity as is, in the opinion of the Director, in excess of the normal personal requirement of such trader commits an offence.
- (2) Any trader who has in his possession or custody or under his control in his place of business or in any other place, any goods in such quantity as is, in the opinion of the Director, in excess of —
  - (a) the quantity required for his personal consumption and of the members of the household; or
  - (b) the requirements of the normal trading activity of such trader,commits an offence.

**20 Trader to issue receipts to purchasers**

Every trader who sells any goods shall on demand, issue to the purchaser thereof a receipt setting out —

- (a) the date of the sale;
- (b) the quantity of goods sold;
- (c) the price paid for such quantity; and
- (d) whether the sale was wholesale or retail.

**21 Trader to furnish notice board**

- (1) Every trader shall provide in a place clearly visible to the public in his place of business a notice board for the display of any notice, direction or warning issued by the Director.
- (2) Every trader shall affix or cause to be affixed on such notice board any notice, direction or warning issued to such trader by the Director under this Act.
- (3) Any person who removes, alters, obliterates, erases or defaces such notice, direction or warning without the authority of the Director commits an offence.

**22 Misleading or deceptive conduct**

Any trader or person who, in the course of a trade or business, engages in conduct that is misleading or deceptive or is likely to mislead or deceive or is intended to mislead or deceive commits an offence.

**23 False representations**

Any trader or person who, in the course of a trade or business, in connection with the supply or use of goods or services —

- (a) falsely represents that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or mode;
- (b) falsely represents that goods are new;
- (c) falsely represents that goods or services have sponsorship, approval, performance, characteristic, accessories, uses or benefits;
- (d) falsely represents that such trader has a sponsorship approval or affiliation;
- (e) makes false or misleading statements concerning the need for any goods, services, replacements or repairs; or
- (f) makes false or misleading statements concerning the existence or effect of any warranty or guarantee,

commits an offence.

## 24 Exclusive dealing

- (1) Any trader who, in the course of a trade or business, except with the written approval of the Director granted in the interest of the national economy, engages in the practice of exclusive dealing, commits an offence.
- (2) A trader engages in the practice of exclusive dealing if such trader —
  - (a) supplies any goods or services;
  - (b) charges a price for the supply of any goods or services; or
  - (c) gives or allows a discount, allowance, rebate or credit in relation to the supply of any goods or services,

on the condition, or subject to a contract, arrangement or understanding, that the person to whom such trader supplies goods or services —

- (i) shall not, or shall to a limited extent only, acquire goods or services from a competitor of such trader; or
- (ii) in the case where such trader supplies goods —
  - (aa) shall not, or shall to a limited extent only, supply any of the goods to particular persons or to persons included in a particular class of persons; or
  - (bb) shall not, or shall to a limited extent only, in particular places supply any of the goods to other persons; or
- (d) requires, as the condition of the supply to a person of goods or services of a kind that he could not lawfully supply but for the issue or grant to the trade of a licence, permit, authority or registration under any written law, that the person acquire all or part of his requirements of other goods or services directly or indirectly from such trader; or
- (e) requires, as a condition of the supply to a person of goods or services, that the person acquire all or a part of his requirements of other goods or services directly or indirectly from a second person.

## 25 Price discrimination

- (1) Any trader who, in a trade or business, discriminates between purchasers of goods of like grade and quality in relation to —
  - (a) the prices charged for the goods;
  - (b) any discounts, allowances, rebates or credits given in relation to the supply of the goods;
  - (c) the provision of services or facilities in respect of the goods; or
  - (d) the making of payments for services or facilities provided in respect of the goods,

if the discrimination is of such magnitude or is of such a recurring or systematic character that it is likely to have the effect of substantially

lessening competition in a market for goods, being a market in which the trader supplies goods, commits an offence.

- (2) The provisions of subsection (1) shall not apply if —
  - (a) only reasonable allowance is made for differences in the cost or likely cost of manufacture, distribution, sale or delivery resulting from the different places to which, methods by which or quantities in which goods are supplied to the purchasers; or
  - (b) the act was done in good faith to meet a price or benefit offered by a competitor of the trader.
- (3) In any proceeding for the contravention of the provisions of subsection (1), the burden of proving that the subsection does not apply is on the party asserting it.
- (4) Any person who, in a trade or business —
  - (a) knowingly induces or attempts to induce a trader to discriminate in a manner prohibited by subsection (1); or
  - (b) enters into any transaction that to his knowledge would result in his receiving the benefit of a discrimination that is prohibited by that subsection;commits an offence.
- (5) In any proceeding against a person under subsection (4), it shall be sufficient defence for a person to establish that he reasonably believed, by reason of subsection (2), the discrimination concerned was not prohibited.

## 26 Warranties in relation to the supply of services

- (1) In every contract for the supply of services by a trader to a consumer there shall be an implied warranty that the services shall be rendered with due care and skill and that any materials used or supplied in connection with those services shall be reasonably fit for the purpose for which they are used or supplied.
- (2) Where a trader supplies services to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the trader any particular purpose for which the services are required or the results he desires the services to achieve, there is an implied warranty that the services supplied under the contract for the supply of the services and any materials supplied in connection with those services shall be reasonably fit for that purpose or are of such a nature and quality that they might reasonably be expected to achieve that result, except where circumstances show the consumer does not rely, or that it is unreasonable for him to rely, on the trader's skill or judgment.
- (3) In this section, "services" include services by way of —

- (a) the construction, maintenance, repair, treatment, processing, cleaning or alteration of goods; or
- (b) the distribution of goods; or
- (c) the transportation of goods.

## **27 Monopolisation**

- (1) A trader who, either by himself or with any other person, is in a position substantially to control a market for goods or services shall not do any act by virtue of being in that position with the intent —
  - (a) to eliminate or to substantially lessening competition in that market or in another market;
  - (b) to prevent the entry of a person into that market or into another market; or
  - (c) to deter or prevent a person from engaging in competitive behaviour in that market or in another market.
- (2) For the purposes of this section, reference to a trader being in a position substantially to control a market for goods and services includes a reference to a trader who, by reason of his share of the market combined with availability of technical knowledge, raw materials or capital, has power to determine the prices or control the production or distribution, of a substantial part of the goods or services in the market.

## **28 Certain misleading conduct in relation to services**

Any trader who, in trade or commerce, engages in any conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any services, commits an offence.

## **29 Misleading conduct about after sales service**

Any manufacturer or trader who in relation to the sale of any goods engages in conduct that is liable to mislead the consumer into believing that after sales service is available for the particular goods, unless he has in place suitable facilities for the provision of such services, commits an offence.



## PART IV - ENFORCEMENT AND REMEDIES

### 30 Offences and penalties

- (1) Every person who acts in contravention of any provision of this Act or any regulation made thereunder commits an offence. Every person who commits an offence for which no other penalty is provided under this Act shall be liable on conviction —
  - (a) in the case of a first offence to a fine not exceeding \$3,000 or to imprisonment for a period not exceeding 1 year or to both such fine and imprisonment; and
  - (b) in the case of a subsequent offence to a fine not exceeding \$7,000 or to imprisonment for a period not exceeding 2 years or to both such fine and imprisonment.
- (2) The court which convicts any person of an offence under this Act may order the forfeiture of any goods in respect of which the offence was committed.
- (3) The court which convicts any person of an offence under this Act may order that such person shall not carry on the business of providing any service or selling or offering for sale any goods for such period as may be specified in the order.
- (4) Any person who contravenes an order of court under subsection (3) commits an offence.

### 31 Prosecuting authority

- (1) Prosecutions under this Act may be brought —
  - (a) by or on behalf of the Attorney General;
  - (b) by a member of the police; or
  - (c) by or on behalf of the Director.
- (2) A person referred to in subsection (1)(b) or (c), whether or not a law practitioner, may lay, institute or conduct any charge, information, complaint or other proceeding arising under this Act, subject to any directions issued by the Attorney General.

### 32 Liabilities of certain persons in respect of offences committed by bodies corporate or unincorporate

Where an offence under this Act is committed by a body of persons —

- (a) if the body of persons is a body corporate, every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of that body corporate; or

- (b) if the body of persons is other than a body corporate, every person who at the time of the commission of the offence was a member of that body,

shall be deemed to have committed that offence unless he proves that the offence was committed without his knowledge or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions and in all the circumstances.

### **33 Principal liable for offences of agents and servants**

Where an agent or servant of any manufacturer or trader commits any offence under this Act, such offence shall be deemed to have been committed by such manufacturer or trader unless he proves that such offence was committed without his knowledge.

### **34 Protection of officers**

In any proceedings instituted against any officer, appointed for the purposes of this Act, for any act done or purported to be done by him in the performance of his duties under this Act, it shall be a defence that he acted in good faith.

## **PART V - MISCELLANEOUS**

### **35 Right of review**

- (1) Any manufacturer or trader who is dissatisfied with an order made by the Director under section 14, may, within 14 days apply to the Minister to have the order reviewed.
- (2) The Minister may where an application is made pursuant to subsection (1), confirm, modify or reverse the order under review or any part of that order.

### **36 Regulations**

The Minister with the consent of Cabinet may make regulations for the giving effect to and carrying out the purposes of this Act and may provide for —

- (a) the manner in which complaints may be made and investigations conducted;
- (b) information that a manufacturer or trader is required to provide to a consumer for charges made for services provided; or
- (c) any other thing required by this Act to be prescribed.

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## ENDNOTES

<sup>1</sup> **Act 15 of 2000**

Amended by Act 5 of 2012, commencement 30 July 2012

<sup>2</sup> GS 21/2003

<sup>3</sup> Inserted by Act 26 of 2009

<sup>4</sup> Amended by Act 5 of 2012

<sup>5</sup> Inserted by Act 26 of 2009

<sup>6</sup> Inserted by Act 26 of 2009