

# CONSUMER PROTECTION AMENDMENT BILL

## EXPLANATORY NOTE

THIS Bill amends the Consumer Information Act 1969.

*Clause 1* relates to the Short Title.

*Clause 2* changes the name of the principal Act to the Consumer Protection Act 1969.

*Clause 3* provides that section 6 of the principal Act, which relates to the labelling of packages, shall not apply in respect of regulations made under the new section 10B (see *clause 4*) unless the regulations expressly provide that the section shall apply.

*Clause 4* inserts new sections 10A to 10H in the principal Act relating to safety requirements and instructions.

*New section 10A* defines various terms used in the new sections.

*New section 10B* empowers the Governor-General to make regulations imposing requirements in respect of goods for the purpose of preventing or reducing the risk of death, personal injury, or disease, or for the purpose of preventing or reducing the risk of damage to property.

Unless an immediate regulation is necessary to prevent or reduce the risk of death, personal injury, or disease, the subject-matter of proposed regulations must be referred to the Commerce Commission or an advisory committee for an inquiry and report before they are made.

Regulations made under this section may not come into force earlier than 6 months after their notification in the *Gazette* unless an immediate regulation is necessary to prevent or reduce the risk of death, personal injury, or disease.

The section does not apply to food, drugs, or medical devices.

*New section 10c* empowers the Commerce Commission by order to prohibit the sale of any goods if in its opinion the prohibition is immediately necessary to prevent or reduce the risk of death or serious personal injury.

Where any distributor, wholesaler, or retailer has in his possession for resale any goods to which an order relates, the Commission may—

- (a) In the order permit the resale of those goods subject to such conditions as it thinks fit; or
- (b) If it considers it just and equitable to do so, by the same or a subsequent order require the return of the goods to the person who supplied them and further order that the purchase price and, if the Commission thinks fit, any costs and expenses incurred in the purchase

and return of the goods, shall be recoverable from the person who supplied the goods as a debt due by that person to the distributor, wholesaler, or retailer, as the case may be.

Every order may at any time be renewed, amended, or revoked by the Commission.

Every order made by the Commission (including renewal and amending orders) will be deemed to have been revoked—

- (a) On the expiry of a period of 1 month after the date of its publication in the *Gazette*, unless it is sooner renewed:
- (b) On the coming into force of any regulation made under section 10B which relates to the same goods or component parts of goods as the order.

Any manufacturer, importer, or distributor of any goods or of any component part of any goods which are or is the subject of an order may appeal against the whole or any part of the order to the Administrative Division of the Supreme Court.

The powers conferred on the Commerce Commission may not be exercised in respect of food, drugs, or medical devices or any goods which are already prohibited from being sold under section 10E.

*New section 10D* provides that failure to comply with an order made under section 10C shall be an offence.

*New section 10E* prohibits the sale of goods not complying with regulations made under section 10B.

The prohibition does not apply to a person—

- (a) If he reasonably believes that the goods or component parts will not be used in New Zealand:
- (b) In the case of 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 at or after the time of entering into the agreement:
- (c) If he is selling the goods or component parts as scrap:
- (d) In the case of goods or component parts which have been damaged, where he is selling the goods or component parts to a person who carries on a business of 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, if the letting is incidental to the letting of premises:
- (f) In a case of possession for the purpose of letting on hire, if 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.

It is a sufficient defence to a prosecution for an offence against this section by reason of a contravention of or failure to comply with any requirement imposed under section 10B 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.

*New section 10F* provides that every person who commits an offence against section 10D or section 10E is liable on summary conviction—

- (a) In the case of an individual, to a fine not exceeding \$1,000, and, if the offence is a continuing one, to a further fine not exceeding \$100 for every day or part of a day during which the offence has continued:
- (b) In the case of a body corporate, to a fine not exceeding \$5,000, and, if the offence is a continuing one, to a further fine not exceeding \$500 for every day or part of a day during which the offence has continued.

*New section 10g* empowers the Supreme Court, on the application of the Attorney-General, to grant an injunction restraining any person from engaging in any course of conduct, or doing any act, that constitutes or would constitute—

- (a) A contravention of any regulation for the time being in force under section 10b;
- (b) Attempting to contravene any such regulation;
- (c) Aiding, abetting, counselling, or procuring a person to contravene any such regulation; or
- (d) Inducing, or attempting to induce, a person, by any means, to contravene any such regulation.

*New section 10h* provides that where a person is convicted of an offence against section 10e, or where the Supreme Court grants an injunction under section 10g, the Court may make such orders as it thinks fit to redress any loss or damage suffered by any person or persons as a result of any act or course of conduct to which the proceedings relate or any like act done, or like course of conduct engaged in, by the defendant.

The orders that may be made include, but are not limited to—

- (a) An order declaring the whole or any part of a contract or of a collateral arrangement relating to a contract to be void and, if the Court thinks fit, to have been void either *ab initio* or at all times on and after such date as is specified in the order, being a date on or before that on which the order is made:
- (b) An order varying a contract or such an arrangement in such manner as is specified in the order and, if the Court thinks fit, declaring the contract or arrangement to have had effect as so varied on and after such date as is specified in the order, being a date on or before that on which the order is made:
- (c) An order directing the refund of money paid, the return of goods, and the recovery of any costs and expenses incurred in the purchase or possession or return of the goods:
- (d) An order directing the payment to a person who has suffered loss or damage of the amount of the loss or damage:
- (e) An order directing the detention and forfeiture of goods or the rectification of any defect in any goods.

*Clause 5* amends section 12 of the principal Act, which relates to advisory committees.

The amendment provides that every advisory committee appointed to advise the Minister on any matter relating to the implementation of the new section 10b shall invite submissions from any organisation that appears to it to represent any class or classes of manufacturers or distributors whose interests might be directly affected by the matter referred to the advisory committee, and from any organisation that appears to it to represent consumers or a class of consumers of the goods in question.

*Clause 6* amends section 13 of the principal Act, which relates to the powers of investigation vested in the Minister.

The amendment provides that for the purposes of any investigation conducted by the Minister to ascertain whether an offence against the Act has been committed, the Minister may require any person in the business of selling goods to make available, free of charge, to a person nominated by the Minister, specified goods or samples of goods, in his possession or under his control, for inspection, testing, or examination.

*Clause 7* extends the consultation procedure set out in section 19 of the principal Act to alleged offences relating to regulations made under the new section 10B.

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*Hon. Mr Adams-Schneider*

## CONSUMER PROTECTION AMENDMENT

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### A BILL INTITULED

#### An Act to amend the Consumer Information Act 1969

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,  
5 as follows:

1. **Short Title**—This Act may be cited as the Consumer Protection Amendment Act 1976, and shall be read together with and deemed part of the Act heretofore known as the Consumer Information Act 1969\* (hereinafter referred to as  
10 the principal Act).

2. **Altering Long Title and Short Title of principal Act**—  
(1) The principal Act may hereafter be cited as the Consumer Protection Act 1969.

\*1969, No. 12

No. 118—1

(2) The principal Act is hereby amended by repealing the Long Title, and substituting the following Long Title:

**“An Act to make provision for the protection of consumers”.**

(3) The Short Title of the principal Act is hereby consequentially amended by omitting the word “Information”, and substituting the word “Protection”. 5

(4) Every reference in any enactment, Order in Council, or notice to the Short Title of the said Act is hereby consequentially amended by omitting the word “Information”, and substituting the word “Protection”. 10

**3. Method of labelling**—Section 6 of the principal Act is hereby amended by adding the following subsection:

“(4) Nothing in this section shall apply in respect of any regulations made under section 10B of this Act unless it is expressly provided in those regulations that this section shall apply.” 15

**4. Safety requirements and instructions**—The principal Act is hereby further amended by inserting, after section 10, the following sections: 20

**“10A. Interpretation**—In this section and in sections 10B to 10H of this Act, unless the context otherwise requires,—

“‘Commerce Commission’ or ‘Commission’ means the Commerce Commission constituted under the Commerce Act 1975: 25

“‘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 agreement’ has the same meaning as in the Hire Purchase Act 1971: 30

“‘Sale’, without limiting or affecting the meaning of that expression in section 2 of this Act, includes a disposal of goods under a credit sale agreement or a hire purchase agreement, or hire, or possessing for the purpose of selling under any such agreement or for the purpose of hire; and ‘to sell’ has a corresponding meaning. 35

“10B. **Safety requirements**—(1) Subject to the provisions of this section, the Governor-General may, for the purpose of preventing or reducing the risk of death, personal injury, or disease, or for the purpose of preventing or reducing the risk of damage to any property, from time to time by Order in Council make regulations imposing, in respect of any class or description of goods specified in the regulations,—

5 “(a) Requirements, whether as to the composition, contents, design, construction, finish, or packing of, or otherwise relating to, goods of that class or description or any component part thereof:

10 “(b) Requirements 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.

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

20 “(3) A class or description of goods may be specified in regulations made 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 specified class or description).

25 “(4) Subject to subsection (6) of this section, regulations shall not be made under this section, except regulations revoking previous regulations either in whole or in part, unless the Minister has referred the subject-matter of the proposed regulations for inquiry and report to—

30 “(a) The Commerce Commission in accordance with section 11 of this Act; or

35 “(b) An advisory committee appointed by him under section 12 of this Act—

and the Minister shall have regard to the report of the Commission or, as the case may be, the advisory committee before recommending that any such regulations be made.

40 “(5) Subject to subsection (6) of this section, all regulations made under this section shall specify the date on which they shall come into force, being a date not earlier than 6 months after the date of their notification in the *Gazette*, except in the case of regulations revoking previous regulations either in whole or in part.

“(6) Nothing in subsection (4) or subsection (5) of this section shall prevent the Minister from making any recommendation that regulations be made, or shall prevent any such regulations being made, to come into force immediately upon their notification in the *Gazette* if, in the Minister’s opinion, an immediate regulation is necessary to prevent or reduce the risk of death, personal injury, or disease. 5

“(7) Nothing in subsection (1) of this section shall apply in respect of any food, drug, or medical device.

“10c. **Commerce Commission may prohibit sale of dangerous goods**—(1) Subject to the provisions of this section, the Commerce Commission may at any time by order published in the *Gazette* and in such other manner (if any) as it thinks fit, prohibit, either absolutely or conditionally, the sale or disposition in New Zealand of any goods or any component part of any goods if in its opinion such absolute or conditional prohibition is immediately necessary to prevent or reduce the risk of death or serious personal injury. 10 15

“(2) Any order under this section may be—

“(a) Made in respect of goods of a particular kind, class, or description; 20

“(b) Of general application to all goods specified or referred to therein;

“(c) Limited in its application to goods belonging to or in the possession of any person; or 25

“(d) Otherwise limited in any manner the Commission thinks fit.

“(3) Where any distributor, wholesaler, or retailer has in his possession for resale any goods to which any such order relates, the Commission may— 30

“(a) In the order permit the resale of those goods subject to such conditions as it thinks fit; or

“(b) If it considers it just and equitable to do so, by the same or a subsequent order require the return of the goods to the person who supplied them and further order that the purchase price and, if the Commission thinks fit, any costs and expenses incurred in the purchase and return of the goods, shall be recoverable from the person who supplied the goods as a debt due by that person to the distributor, wholesaler, or retailer, as the case may be. 35 40



“(4) In any order made under this section, the Commission may include such provisions as it thinks necessary or desirable for the proper administration of the order or to ensure compliance with its terms.

5 “(5) Any such order, while it is in force, may at any time be renewed, amended, or revoked by the Commission by a subsequent order published in the *Gazette*.

“(6) Every order made under this section, other than a revocation order, shall be deemed to have been revoked—

10 “(a) On the expiry of a period of 1 month after the date of its publication in the *Gazette*, unless it is sooner renewed:

“(b) On the coming into force of any regulation made under section 10B of this Act which relates to  
15 the same goods or component parts of goods as the order.

“(7) Any manufacturer, importer, or distributor of any goods or of any component part of any goods which are or is  
20 the subject of an order made under this section may appeal against the whole or any part of the order as if it were an order made under section 22 of the Commerce Act 1975; and the provisions of sections 42, 45, and 46 of that Act shall, with the necessary modifications, apply in respect of every such appeal.

25 “(8) Pending the determination of any appeal under subsection (7) of this section, the order in respect of which the appeal was made shall remain in force unless it is sooner revoked or deemed to have been revoked.

“(9) The powers conferred on the Commerce Commission  
30 by this section shall not be exercised in respect of—

“(a) Any food, drug, or medical device; or

“(b) Any goods which by virtue of any regulations for  
35 the time being in force under section 10B of this Act are prohibited from being sold either absolutely or conditionally under section 10E of this Act.

“10D. Failure to comply with order an offence—Every person commits an offence against this Act who, without  
40 lawful justification or excuse, does any act in contravention of or fails to comply in any respect with any obligation or duty imposed on him by any order made under section 10C of this Act.

“10E. Prohibition on sale of goods not complying with regulations—(1) Subject to the provisions of this section, no person shall sell any goods in respect of which or in respect of a component part of which any requirements of regulations made under section 10B of this Act are in force unless all requirements of the regulations relating to the goods or component parts are complied with. 5

“(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 10B of this Act but which is intended for incorporation in, but not at the time of sale incorporated in, any goods in respect of which any such requirements are in force, if the incorporation of that component part in the goods would result in the goods failing to comply with the regulations. 10 15

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

“(a) If he reasonably believes that the goods or component parts will not be used in New Zealand:

“(b) In the case of 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: 20 25

“(c) If 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 in the form in which they are sold:

“(d) In the case of goods or component parts which have been damaged, where he is selling the goods or component parts to a person who carries on a business of buying damaged goods and repairing or reconditioning them for resale, or to a person by whom the goods or parts were insured against damage: 30 35

“(e) In a case of letting on hire, if the letting is incidental to the letting of premises:

“(f) In a case of possession for the purpose of letting on hire, if possession is for the purpose of a letting which is to be incidental to the letting of premises: 40

“(g) In any case of letting, where the letting was lawful at the time when it began.

“(4) Unless regulations made under section 10B of this Act otherwise provide, subsections (1) and (2) of this section shall not, in respect of any requirement relating to the manufacture of goods or a component part of goods, apply  
5 in relation to goods or component parts manufactured in or imported into New Zealand before the imposition of the requirement.

“(5) Every person commits an offence against this Act who contravenes subsection (1) or subsection (2) of this  
10 section.

“(6) It shall be a sufficient defence to a prosecution for an offence against this section by reason of a contravention of or failure to comply with any requirement imposed under section 10B of this Act in relation to the goods or component  
15 part in question if the person charged proves that he had reasonable cause to believe that all such requirements were satisfied.

“10F. Penalties—(1) Every person who commits an offence against section 10D or section 10E of this Act shall be liable  
20 on summary conviction—

“(a) In the case of an individual, to a fine not exceeding \$1,000, and, if the offence is a continuing one, to a further fine not exceeding \$100 for every day  
25 or part of a day during which the offence has continued:

“(b) In the case of a body corporate, to a fine not exceeding \$5,000, and, if the offence is a continuing one, to a further fine not exceeding \$500 for every day or  
30 part of a day during which the offence has continued.

“(2) If any body corporate is convicted of an offence against section 10D or section 10E of this Act, every director and every officer concerned in the management of the body corporate shall be guilty of the offence if it is proved that  
35 the act or omission that constituted the offence took place with his authority, permission, or consent.

“10G. Injunctions with respect to contraventions of product safety regulations—(1) The Supreme Court may, on the application of the Attorney-General, grant an injunction re-  
40 straining any person from engaging in any course of conduct, or doing any act, that constitutes or would constitute—

“(a) A contravention of any regulation for the time being in force under section 10B of this Act;

“(b) Attempting to contravene any such regulation;

“(c) Aiding, abetting, counselling, or procuring a person to contravene any such regulation; or

“(d) Inducing, or attempting to induce, a person, by any means, to contravene any such regulation.

“(2) If, in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1) of this section.

“(3) The Court may rescind or vary any injunction granted under subsection (1) or subsection (2) of this section.

“(4) Subject to the provisions of this section and of section 10H of this Act, the procedure in respect of any proceeding under this section shall be in accordance with rules of Court.

“(5) Nothing in this section shall limit the liability of any person to be prosecuted for an offence against subsection (1) or subsection (2) of section 10E of this Act; and, where a finding of any fact is made by the Court in proceedings under this section in which a person has been found to have contravened any regulations for the time being in force under section 10B of this Act, that finding shall be evidence of that fact in the absence of proof to the contrary and the finding may be proved by production of a document under the seal of the Court from which the finding appears.

“10H. **Ancillary orders**—(1) Where a person is convicted of an offence against section 10E of this Act, or where the Supreme Court has granted an injunction under section 10G of this Act, the Court before which the person is convicted or, as the case may be, the Supreme Court, may, subject to subsection (3) of this section, make such orders as it thinks fit to redress any loss or damage suffered by any person or persons as a result of any act or course of conduct to which the proceedings relate or any like act done, or like course of conduct engaged in, by the defendant.

“(2) The orders that may be made under subsection (1) of this section include, but are not limited to—

- 5 “(a) An order declaring the whole or any part of a contract or of a collateral arrangement relating to a contract to be void and, if the Court thinks fit, to have been void either *ab initio* or at all times on and after such date as is specified in the order, being a date on or before that on which the order is made:
- 10 “(b) An order varying a contract or such an arrangement in such manner as is specified in the order and, if the Court thinks fit, declaring the contract or arrangement to have had effect as so varied on and after such date as is specified in the order, being a date on or before that on which the order is made:
- 15 “(c) An order directing the refund of money paid, the return of goods, and the recovery of any costs and expenses incurred in the purchase or possession or return of the goods:
- 20 “(d) An order directing the payment to a person who has suffered loss or damage of the amount of the loss or damage:
- “(e) An order directing the detention and forfeiture of goods or the rectification of any defect in any goods.
- 25 “(3) Nothing in this section shall limit or affect section 5 of the Accident Compensation Act 1972.”

**5. Advisory committees**—Section 12 of the principal Act is hereby amended by adding the following subsections:

- 30 “(2) Every advisory committee appointed under this section for the purpose of advising the Minister on any matter concerning the implementation of section 10B of this Act shall invite submissions from any organisation that appears to it to represent any class or classes of manufacturers or distributors whose interests might be directly affected by the
- 35 matter referred to the advisory committee, and from any organisation that appears to it to represent consumers or a class of consumers of the goods in question.

- 40 “(3) Subject to any regulations for the time being in force under this Act, every such committee may regulate its own procedure.”

**6. Powers of investigation**—Section 13 of the principal Act is hereby amended by adding the following subsection:

“(4) For the purposes of any investigation conducted by the Minister to ascertain whether an offence against this Act has been committed, the Minister may require any person in the business of selling goods to make available, free of charge, to a person nominated by the Minister, specified goods or samples of goods, in his possession or under his control, for inspection, testing, or examination. 5

**7. Consultation procedure**—(1) Section 19 (1) of the principal Act is hereby amended by inserting, after the word “advertisement”, the words “or for an offence relating to any regulations made under section 10B of this Act”. 10

(2) Section 19 (4) of the principal Act is hereby amended by inserting, after the word “label”, the words “, or an alleged 15 offence relating to any regulations made under section 10B of this Act,”.