

**THE OFFICIAL GAZETTE 4<sup>TH</sup> APRIL, 2006**  
**LEGAL SUPPLEMENT — C**

**BILL No. 18 of 2006.**

*Wednesday 5<sup>th</sup> April, 2006*

PARLIAMENT OFFICE  
Public Buildings,  
Georgetown,  
Guyana.

5<sup>th</sup> April, 2006.

The following Bill which will be introduced in the National Assembly is published for general information.

*S. E. Isaacs,*  
Clerk of the National Assembly.



**GUYANA**

**BILL No. 18 of 2006**

**CONSUMER PROTECTION BILL 2006**

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**A BILL**  
Intituled

AN ACT to promote and protect consumer interests in relation to the supply of goods and services, to establish a Consumer Affairs Commission and a Consumer Fair Trading Tribunal, and for related purposes.

A.D. 2006 Enacted by the Parliament of Guyana:-

**PART 1**  
**PRELIMINARY**

**Short title.** 1. This Act may be cited as the Consumer Protection Act 2006.

**Interpretation.** 2. (1) In this Act, -

“acquire” in relation to -

- (a) goods, includes obtaining by way of gift, purchase, or exchange, the taking on lease, hire or hire-purchase; and
- (b) services, includes accepting the provision of services;

“advertisement” means any form of communication made to the public or a section of the public for the purpose of promoting goods or services;

“business” includes a professional practice or any other undertaking -

- (a) that is carried on for gain or reward; or
- (b) in the course of which goods or services are supplied otherwise than free of charge;

“Commission” means the Consumer Affairs Commission established by section 4(1);

“conditional sale agreement” means an agreement for the sale of goods under which —

- (a) the purchase price or a part of it is payable by installments; and
- (b) the property in the goods is to remain in the supplier, notwithstanding that the purchaser is to be in possession of the goods until conditions specified in the agreement (such as the payment of installments) are fulfilled;

“consumer” in relation to —

- (a) any goods, means any person who acquires or wishes to acquire the goods for his own private use or private consumption; and
- (b) any services, means any person who engages or wishes to be provided with the services otherwise than for the purpose of any business of that person;

“Consumer Director” means the Consumer Director appointed by the Commission under paragraph (5) of Schedule I;

**Schedule 1**

“damage” means —

- (a) loss of or damage to any property, including immovable property;
- (b) pecuniary loss; or
- (c) death or personal injury.

“deposit” means a deposit in cash or kind;

“document” includes electronic records;

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“goods” includes any kind of property (other than immoveable property, securities, money or things in action) regardless whether the property is used or unused;

“guarantor” in relation to a person to or for whom goods or services are supplied, includes a person who undertakes to indemnify the supplier against any loss which that supplier may incur in respect of the supply of the goods or provision of the services to or for the first-mentioned person;

“hire-purchase agreement” means an agreement for the bailment of goods under which —

- (a) the bailee may buy the goods; or
- (b) the property in the goods will or may pass to the bailee according to conditions specified in a hire-purchase agreement;

“manufacturer’s warranty” means the standard warranty issued by a manufacturer (whether local or foreign) in relation to a good;

“negligence” includes the breach of —

- (a) any obligation, arising from the expressed or implied terms of a contract, to take reasonable care to exercise reasonable skill in the performance of the contract;
- (b) any common law duty to take reasonable care or exercise reasonable skill in the performance of a contract;

“Registrar” means the Registrar of the Consumer Fair Trading Tribunal;

“Secretary” means the Secretary appointed by the Commission under paragraph (5) of Schedule I;

“service” —

- (a) includes -
  - (i) the undertaking and performance for gain or reward of engagements for any matter other than the supply of goods;
  - (ii) the rendering of services to order;
  - (iii) the provision of services by making them available to potential users; and
  - (iv) a service described in any of paragraphs (a) to (c) of section 4(1) of the Public Utilities Commission Act 1999; and
- (b) includes the repair of any appliance, furniture, equipment or other good; but
- (c) excludes the rendering of any service under a contract of employment or apprenticeship, whether the contract is express or implied, and whether the contract is oral or in writing;

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“supplier” means -

- (a) any seller of goods or services; or
- (b) any person providing a service;

“trade or commerce” means trade or commerce —

- (a) within Guyana or
- (b) between Guyana and any place outside Guyana.

(2) In this Act, a reference to —

- (a) the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to,



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goods in pursuance of a supply of the goods;

- (b) the supply or acquisition of goods or services includes—
  - (i) a reference to an agreement to supply or acquire goods or services;
  - (ii) a reference to the supply or acquisition of goods or services together with other property or other services or both.

(3) For the purpose of this Act —

- (a) it is immaterial whether any person supplying goods or services has a place of business in Guyana;
- (b) any goods or services supplied wholly or partly outside Guyana, if they are supplied in accordance with arrangements made in Guyana, whether orally or by delivery of documents in Guyana or correspondence posted from or to addresses in Guyana, shall be treated as goods or services supplied to or for persons in Guyana;
- (c) in relation to the supply of goods under a hire-purchase agreement, credit sale agreement, or conditional sale agreement, the person conducting any antecedent negotiations and the owner or supplier shall be treated as a person supplying or seeking to supply the goods;
- (d) any reference to —
  - (i) a person to or for whom goods or services are supplied shall be construed as including a reference to any guarantor of that person;
  - (ii) the terms or conditions on or subject to which goods or services are supplied shall be construed as including a reference to the terms or conditions on or subject to which any person undertakes to act as the

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guarantor;

- (e) goods or services supplied by a person carrying on a business shall be taken to be supplied in the course of that business if payment for the supply of the goods or services is made or required by law or otherwise, to be made.

Application to  
public utilities.

3. (1) In this section, -

“public utility” has the meaning given to it by section 4 of the Public Utilities Commission Act 1999;

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“Public Utilities Commission” means the commission of that name established under the Public Utilities Commission Act 1999.

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- (2) Subject to **subsection (3)**, this Act applies to public utilities.

(3) Neither the Commission nor the Minister may exercise a function under **this Act** in relation to a public utility except after consultation with the Public Utilities Commission and notwithstanding anything in this Act, no function that is essentially a function of, or which has over the time been discharged by, the Public Utilities Commission shall be discharged by the Commission.

- (4) In this section “consultation” has the same meaning as defined in article 232 of the Constitution.

## PART 2

### CONSUMER AFFAIRS COMMISSION

Establishment of  
Consumer Affairs  
Commission.

4. (1) There is established a body corporate to be known as the Consumer Affairs Commission.

Schedule 1

- (2) The provisions of **Schedule 1** have full effect.

**Object of Commission.** 5. The object of the Commission is to promote and protect consumer interests in relation to the supply of goods and services.

**Functions of Commission.**

6. (1) The functions of the Commission are —

- (a) to investigate, in accordance with **Part 3**, any complaint by a consumer, and form an opinion about whether any provision of **Part 4, 5, or 6** has been breached;
- (b) to encourage the establishment and growth of an organisation described in **section 73**;
- (c) to provide information to consumers on their rights and to enable them to make informed choices;
- (d) to implement education programmes for the benefit of consumers and suppliers;
- (e) to initiate any investigation and collect, compile, analyse, and disseminate any information it considers desirable or necessary in pursuance of its object;
- (f) to mediate any disagreement brought to it under **section 72**;
- (g) to make reports and recommendations to the Minister, where requested by the Minister or where the Tribunal thinks fit;
- (h) to institute, participate in, or support proceedings before the Tribunal or any court as necessary or desirable to administer and enforce this Act, including to bring prosecutions where the Commission thinks fit.

(2) The Commission shall take any other action it thinks fit arising from the exercise of any of its functions in any particular case.

General powers of Commission. 7. The powers of the Commission as a corporate body includes the powers to enter into any transaction and do anything else which, in the opinion of the Commission, is necessary to ensure the proper or effective discharge of its functions.

### PART 3 INVESTIGATION OF COMPLAINTS

Meaning of investigation. 8. In **this Part**, “investigation” means an investigation by the Commission of a complaint made under **section 9**.

Complaints to Commission. 9. (1) Any person who claims to have been adversely affected in relation to the acquisition of goods or services may make a complaint to the Commission.

(2) Where the complainant -

- (a) is under the age of eighteen years;
- (b) is unable to act for himself for any reason; or
- (c) has died,

the complaint may be made by the complainant’s personal representative, a member of the complainant’s family, or any other person considered by the Commission to be suitable.

(3) A complaint to the Commission shall be made in writing.

Discretion not to investigate. 10. (1) The Commission may determine whether to undertake or continue an investigation of a complaint.

(2) Without limiting the generality of **subsection (1)**, the Commission may refuse to undertake or continue any investigation if it considers that -

- (a) the subject-matter of the complaint is trivial;
- (b) the complaint is frivolous or vexatious or not made in good faith;

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- (c) the complainant has delayed for too long the making of his complaint;
- (d) the complainant does not have a sufficient interest in the subject-matter of the complaint;
- (e) the subject-matter of the complaint should more appropriately be dealt with by another body or another forum; or
- (f) having regard to all the circumstances of the case, no investigation or further investigation is necessary.

(3) If the Commission decides not to undertake or continue the investigation of a complaint, it shall inform the complainant in writing of that decision and the reasons for it.

Power to investigate not precluded by other redress.

11. (1) The Commission shall not be precluded from conducting an investigation in respect of any matter by reason only that it is open to the complainant to apply to any court or tribunal for redress.

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

Power to summon persons to give evidence.

12. (1) The Commission may at any time, in relation to an investigation, summon any person —

- (a) to attend and give evidence before the Commission; or
- (b) to produce any document in the possession or under the control of that person.

(2) A summons under **this section** —

- (a) shall be in the form set out in **Schedule 2**; and
- (b) may be served by —

Schedule 2

- (i) any member of the Police Force;
- (ii) any bailiff; or
- (iii) any other person authorised by the Commission.

Obligation and entitlement of person summoned.

13. (1) A person summoned under **section 12** shall –
- (a) enjoy the same rights and privileges as persons summoned by the High Court, in respect of attendance before the Commission, the giving of evidence, and the production of documents, including in respect of disclosure of any communication; and
  - (b) be paid his expenses (including traveling expenses) by the Commission, at the rates prescribed for witnesses in civil proceedings before the High Court.

(2) The Commission may, if it thinks fit in any particular case, disallow the whole or any part of the expenses referred to in **subsection (1) (b)**.

- (3) No person shall –
- (a) without sufficient cause, fail to obey a summons issued by the Commission under **section 12**;
  - (b) being a witness before the Commission, leave the Commission without its permission;
  - (c) being a witness before the Commission, without sufficient cause refuse to answer any question put to that person by or with the permission of the Commission; or
  - (d) wilfully obstruct or interrupt the proceedings of the Commission.

14. In all proceedings before the Commission, any document produced to the Commission in response to a summons issued under **section 12** shall be received as *prima facie* evidence of the truth of the statements contained in the document.

#### PART 4

#### DUTIES OF SUPPLIERS

- (1) Every supplier shall, before payment is made for any goods v the supplier to a consumer, provide to the consumer in English all

information available to the supplier concerning the goods being sold including, where applicable, the origin, price, care, terms, components, hazards, proper use, assembly, installation, weight, and size of those goods.

(2) Where the consumer believes that he fully understands the information referred to in **subsection (1)**, the supplier shall ask the consumer to sign a statement to the effect that the information was given to the consumer and the consumer understands that information.

(3) Where a supplier fails to comply with **subsection (1) or (2)** he shall, notwithstanding anything to the contrary in any warranty given to the consumer, be liable for any damage done to the goods that can be directly attributed to the consumer's lack of information.

**Measurement of goods.**

16. (1) A consumer is entitled to check the weight, volume, or other measurement of any goods that the consumer intends to purchase where the price of those goods is determined or materially affected by the measurement.

(2) For the purposes of **subsection (1)**, where goods are sold by reference to their weight, volume, or other measurement, the supplier shall provide for use by the consumer at the time of purchase appropriate measuring equipment that meets standards imposed by law.

(3) In selling or purporting to sell any goods by weight, volume, or other measurement, no supplier shall deliver to the consumer a quantity of those goods that is less than that —

- (a) purported to be supplied; or
- (b) corresponding to the price charged.

(4) **Subsection (3)** does not apply where the difference between the quantity delivered, and that purported to be supplied or corresponding to the price charged, may reasonably be regarded as trivial.

**Receipts to be given to consumers.**

17. (1) When a supplier sells goods or services to a consumer, the supplier shall give to the consumer a receipt showing—

- (a) the amount paid by the consumer;

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- (b) the date on which the purchase is made;
- (c) a description of the goods or services sold; and
- (d) any other information prescribed by regulations.

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(2) The receipt —

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- (a) shall be regarded as adequate proof of the purchase of the goods or services; and
- (b) may be used for the purposes of obtaining a refund in any of the circumstances for refund specified in **this Act**.

**Warranties.**

18. (1) Every supplier shall issue an explicit warranty in relation to any good or service sold or provided to a consumer.

(2) Subject to subsection (7), where a manufacturer's warranty is attached to any good sold, or any good provided in the course of a service, the supplier of that good or service -

- (a) shall be deemed to have issued that manufacturer's warranty as an explicit warranty by the supplier to the consumer; and
- (b) shall, notwithstanding any geographical limitations in that warranty, be liable to the consumer under that warranty as if the supplier were the manufacturer.

(3) The liability of a supplier under **subsection (2)** does not affect or limit his liability under any other warranty issued by him to the consumer.

(4) Where a supplier is liable only for the free replacement of parts under any warranty applicable to goods, the supplier shall not require the consumer to use the services of the supplier in effecting repairs to the goods.

(5) Any goods sold or provided by a supplier to a consumer shall, in the absence of an explicit warranty issued by the supplier to the consumer, be subject to an implied warranty of 6 months on parts and labour.

(6) The warranty referred to in **subsection (5)** is subject to any conditions and limitations that can reasonably be implied into a standard warranty for goods of that nature.



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(7) For the removal of doubt it is hereby declared that notwithstanding this section nothing in this Act shall be taken as relieving the manufacturer of his primary liability, as the law stands, for the warranty issued by him.

- Damage resulting from use of service or goods.**
19. (1) Subsection (2) applies in any case where a supplier-
- (a) undertakes to provide a consumer with good or a service upon payment of a fee for it;
  - (b) provides the declared benefit attached to the service or use of the good; and
  - (c) inadvertently causes bodily injury or pecuniary loss to be sustained by the consumer, independent of all other causes or contributory negligence.
- (2) The supplier shall be liable in damages to the consumer and shall, upon, presentation of a claim by the consumer -
- (a) undertake to pay the consumer all reasonable costs incurred or to be incurred by the consumer in correcting the damage so caused; and
  - (b) initiate all such compensation within a period not exceeding seven days after the complaint is received at the registered, regional or local offices of the supplier.
- (3) A supplier shall not be relieved of the liability if -
- (a) the consumer fails to avail himself of some other good or service that may be recommended by the supplier of the primary good or service as a supplementary or complementary good or service;
  - (b) the consumer has provided complementary goods or services which failed to function or cause the damage or other loss.

Return of  
defective goods.

20. (1) This section applies where a supplier sells a good to a consumer and -

- (a) the good fails to provide to the consumer the benefit and uninterrupted enjoyment for which it was intended; and
- (b) the consumer returns the good to the supplier.

(2) Subject to **subsection (4)**, the supplier shall at no cost to the consumer -

- (a) replace the good within fourteen days of the good being returned to the supplier; or
- (b) repair the good in accordance with **subsection (3)**

(3) Where the supplier chooses to repair the good under **subsection (2)(b)**, the supplier shall -

- (a) return the good to the consumer in a fully repaired and functional state within fourteen days of the good being returned to the supplier; or
- (b) if it is not returned to the consumer within that period, provide the consumer with a temporary substitute of comparative value for the consumer's uninterrupted use and enjoyment until the consumer's good is either replaced, or repaired and returned.

(4) **Subsection (2) -**

- (a) does not apply if there is evidence of apparent neglect or abuse by the consumer in relation to the good; and
- (b) in any event, is subject to conditions and limitations (if any) contained in any explicit warranty issued by the supplier to the consumer at the time the good was sold to the consumer.

Return of  
materially  
different goods.

21. (1) Where a consumer is encouraged to acquire a good by the supplier's declaration and description of the good, and the consumer subsequently discovers that the good acquired by that consumer is different

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in a material particular from that intended to be acquired, subject to **subsections (2) and (3), -**

- (a) the consumer may return the good acquired to the supplier; and
- (b) the supplier shall immediately give to the consumer in exchange for the returned good, monetary compensation to the value of that good or another amount agreed between the consumer and supplier.

(2) **Subsection (1)** does not apply unless the good is returned to the supplier in the condition in which it was purchased or with minimal damage resulting from reasonable exposure in the normal course of the consumer's use of the good before discovery of the material difference between the good received and the good that the consumer requested.

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

**Return of  
electrical goods.**

22. (1) This section applies where -

- (a) a consumer buys an electrical good, believing it to be fully functional and operational;
- (b) upon attempting to use it, the consumer discovers that it is faulty or non-functional; and
- (c) the consumer returns the good to the supplier.

(2) Unless the supplier establishes that the good was damaged as a direct result of neglect or abuse by the consumer, the supplier shall -

- (a) exchange the good, free of cost, for a new and similar good that is functional and not faulty; or
- (b) refund the amount paid by the consumer for the good.

- Supplier to provide requested services.** 23. (1) No supplier shall –
- (a) provide a service to a consumer that is not requested by the consumer; or
  - (b) require a consumer to sign an open-ended commitment to pay for services that, in addition to those requested, may in the supplier's opinion be necessary or appropriate.
- (2) A supplier that offers or provides a repair service to a consumer shall –
- (a) disclose to the consumer any additional related repairs that he considers necessary for the consumer to enjoy reasonably long and uninterrupted use of the repaired good; and
  - (b) obtain a written indemnity from the consumer if that consumer chooses not to request the supplier to carry out the recommended repairs.
- Repair providers to keep records.** 24. (1) Every supplier who offers a repair service to a consumer shall keep a written record containing –
- (a) the consumer's name, address and telephone number;
  - (b) a reasonably accurate description of the good to be repaired including any identification number or mark;
  - (c) the good's replacement value in its present state as agreed with the consumer;
  - (d) an estimate of the labour and other costs to be paid by the consumer in respect of the repairs to be effected;
  - (e) the date on which the good –
    - (i) is received for repair, and
    - (ii) will be ready for collection or delivery after repair.

(2) The supplier shall give the consumer a copy of the record specified in **subsection (1)** before starting the repairs.

Goods and  
services acquired  
by installment.

25. (1) This section applies where a supplier contracts to provide a consumer with a good or service over a period of time in return for periodic payments from the consumer for the good or service.

(2) The supplier shall –

(a) present a claim for the exact amount of, or the exact percentage of, the total value of the good or service actually received to date by the consumer; and

(b) upon presenting the claim to the consumer, be entitled to terminate the contract if payment in full is not made within a reasonable time of that presentation or by a pre-determined payment date that forms part of the contract.

(3) If the supplier is unable to present a claim as required under **subsection (2)(a)**, the supplier may –

(a) present the consumer with an estimated claim; and

(b) if the estimated claim is reasonably accurate, request the consumer to pay the estimated amount on the condition that the amount paid will be credited to the amount owing at the next date that an accurate claim is presented.

(4) Any supplier who presents an estimated claim for a good or service shall present an accurate claim no later than 90 days after presentation of the estimate.

(5) **Subsection (4)** applies even if the consumer of the good or service does not pay the estimated amount or pays it in full or in part.

Where consumer  
does not get  
benefit of services.

26. (1) Where, under a contract, a supplier provides a service for a fee to a consumer, the supplier –

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- (a) is deemed to be providing the consumer with a benefit under the contract; and
- (b) shall stipulate the extent of the benefit that the consumer should receive, subject to the fulfilment by the customer of specified conditions that are reasonable for the customer's enjoyment of that benefit.

(2) Subject to **subsection (3)**, -

- (a) if, for reasons not attributable to the consumer, the benefit is received only in part by the customer, the

supplier shall refund or rebate a proportionate part of the fees to the consumer; and

- (b) if, for reasons not attributable to the consumer, the benefit is not received at all by the consumer, the supplier shall make a full refund or rebate to the consumer.

(3) Instead of making a refund or rebate under **subsection (2)**, the supplier may, with the written consent of the consumer, provide the service again free of cost to the consumer.

(4) Neither **subsection (2)** nor **(3)** applies in any case where the consumer contracts to pay the supplier the fee regardless of whether the consumer receives the benefit.

Provisions of this Part not limited.

27. No provision of **this Part** limits or affects any other provision of this Part.

## PART 5

### UNFAIR TRADE PRACTICES

Misleading or deceptive conduct.

28. No person shall, in trade or commerce as a supplier, engage in conduct that is or is likely to be misleading or deceptive.

False  
representations.

29. No person shall, in trade or commerce as a supplier, —

- (a) falsely represent that goods are of a particular kind, standard, quality, grade, quantity, composition, style or model or have had a particular history or a particular previous use;
- (b) falsely represent that services are of a particular kind, standard, quality, quantity, value, or grade, or that they are supplied by a particular person or by persons of a particular trade, qualification, or skill;
- (c) falsely represent that goods are new or reconditioned, or were manufactured, produced, processed, or reconditioned at a particular time;
- (d) falsely represent that a particular person has agreed to acquire goods or services;
- (e) • represent that goods or services have sponsorship, approval, endorsement, performance characteristics, accessories, uses, or benefits that they do not have;
- (f) represent that a person has a sponsorship, approval, endorsement, or affiliation that that person does not have;
- (g) make a false or misleading representation concerning the price of any goods or services;
- (h) make a false or misleading representation concerning the need for any goods, services, replacements, or repairs, or concerning the availability of facilities for the repair of goods or the availability of spare parts for goods;
- (i) make a false or misleading representation concerning the place of origin of goods; or
- (j) make a false or misleading representation concerning the existence, exclusion, or effect of a condition, warranty, guarantee, right, or remedy relating to goods or services.

- Non-delivery of goods or services.** 30. (1) No supplier shall contract to provide a good or service to a consumer with intent to defraud the consumer.
- (2) No supplier shall accept a deposit in cash or kind under a contract to provide a good or service to a consumer unless, on the contracted delivery date, the supplier -
- (a) delivers the good or service; or
  - (b) demonstrates to the consumer that efforts to deliver the good or service are reasonably advanced.
- Bait advertising.** 31. (1) No person shall, in trade or commerce as a supplier, advertise for supply at a specified price goods or services -
- (a) that he does not intend to offer for supply; or
  - (b) that he has no reasonable grounds for believing that he can supply,
- at that specified price, for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the supplier carries on business and the nature of the advertisement.
- (2) A person who, in trade or commerce as a supplier, has advertised goods or services for supply at a specified price shall supply those goods or services at the specified price, for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the supplier carries on business and the nature of the advertisement.
- (3) Neither **subsection (1)** nor **subsection (2)** applies where -
- (a) a person has a limited stock of goods or a limited capacity to supply services; and
  - (b) the person states in the advertisement that that person's stock of the goods, or (as the case may be) that person's capacity to supply the services, is limited.
- Advertised delivery date.** 32. (1) Where -
- (a) a supplier has advertised a date or period for delivery



of any goods (including any goods repaired by the supplier); and

- (b) a consumer has entered into a contract with, and given a deposit to the supplier to deliver those goods,

that date or period shall form part of the contract between the supplier and the consumer.

(2) If the goods are not delivered to the consumer by that date or within that period, the supplier shall, at the election of that consumer, either –

- (a) refund the deposit and terminate the contract for those goods; or
- (b) deliver those goods by another date or within another period agreed with the consumer and rebate the consumer an amount equal to twenty percent of the deposit, for each week after the advertised date or advertised period that the goods remain undelivered.

(3) Neither **subsection (1)** nor **(2)** applies to a supplier who, within seven days of receiving the deposit, terminates the contract by –

- (a) giving written notice to the consumer; and
- (b) refunding the deposit.

**Demanding and accepting payment.**

33. No supplier shall demand or accept payment or other form of compensation from a consumer for goods or services, if at the time of the demand or acceptance, the supplier –

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

- Provisions of this Part not limited. 34. No provision of **this Part** limits or affects any other provision of this Part.
- Court may order damages and costs. 35. A court convicting a person for an offence (under **section 74(1)**) of contravening or failing to comply with any provision of **this Part**, may in addition to any other penalty that may be imposed under **this Act**, order the supplier to do all or any of the following –
- (a) refund to a consumer any deposit paid by the consumer;
  - (b) pay to a consumer, by way of damages, a sum representing the costs and expenses reasonably incurred as a result of the contravention or failure, including the costs of any legal proceedings (including proceedings before the Commission) arising from that contravention or failure;
  - (c) pay to the Commission a sum representing the costs and expenses incurred by the Commission in relation to the prosecution of the offence.

## PART 6

### UNFAIR CONTRACTS

- Interpretation of this Part. 36. In **this Part**, -
- (a) “contract” means any contract between a consumer and a supplier for the supply of goods or services;
  - (b) “contractual term” means any term of a contract; and
  - (c) a reference to a breach of duty or obligation refers to any kind of breach, regardless whether the breach was inadvertent or intentional, and regardless whether liability for the breach arises directly or vicariously
- Requirement of reasonableness. 37. (1) For the purposes of **this Part**, a contractual term satisfies the requirement of reasonableness only if the term is a fair and reasonable one to

be included in the contract, having regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties when the contract was made.

(2) For the purposes of **this Part**, a notice (not being a notice having contractual effect) satisfies the requirement of reasonableness only if it is fair and reasonable to allow reliance on the notice, having regard to all the circumstances obtaining when a liability arises or (but for the notice) would have arisen.

(3) Where a person seeks to restrict liability to a specified sum of money by reference to a notice or contractual term, and the question arises (under **this** or **any other Act**) as to whether the term or notice satisfies the requirement of reasonableness, the following (without limiting **subsection (1) or (2)**) shall be taken into account —

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

(4) The onus of proving that a notice or contractual term satisfies the requirement of reasonableness lies on the person who claims that it does.

Effect of  
termination or  
affirmation on  
requirement of  
reasonableness.

38. (1) For the purposes of **this Part**, a contractual term may be determined to satisfy the requirement of reasonableness notwithstanding that the contract has been terminated for breach or by a party electing to treat the contract as repudiated.

(2) Where a contract is breached, and the party entitled to treat it as repudiated affirms the contract, the affirmation does not preclude the requirement of reasonableness applying to a term of the contract under a provision of **this Part**.

Excluding or  
restricting  
liability for  
negligence.

39. (1) Subject to **subsection (2)**, no person may exclude or restrict his liability for negligence in respect of goods or services provided to a consumer by reference to —

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- (a) a contractual term;
- (b) a notice given to persons generally; or
- (c) a notice given to particular persons.

(2) A person may exclude or restrict his liability for loss or damage (other than death or personal injury) resulting from negligence by reference to a term or notice referred to in **subsection (1)** to the extent that the term or notice satisfies the requirement of reasonableness.

(3) Notwithstanding **subsection (2)**, a person shall not be regarded as voluntarily accepting the risk by reason only that the person is aware of, or agrees to, a notice or contractual term purporting to exclude or restrict liability for negligence.

Reliance on  
contract.

40. No supplier who is party to a contract may, by reference to a term of the contract, —

- (a) exclude or restrict his liability in respect of breach of a contractual obligation; or
- (b) claim to be entitled to render —
  - (i) a contractual performance substantially different from that which was reasonably expected of him; or
  - (ii) no performance in respect of the whole or any part of a contractual obligation,

except to the extent that the contractual term satisfies the requirement of reasonableness.

Indemnity.

41. No consumer may, by reference to any contractual term, be made to indemnify another person (whether or not a party to the contract) in respect of liability that may be incurred by the other person for negligence or breach of contract, except to the extent that the contractual term satisfies the requirement of reasonableness.

Guarantee cannot  
exclude liability.

42. (1) In this section, -

“consumer goods” means goods of a type ordinarily supplied for private use or private consumption;

“guarantee” means any statement in writing that contains or purports to contain a promise or assurance (however worded or presented) that defects will be made good by complete or partial replacement, or by repair, monetary compensation, or otherwise.

(2) No person may, by reference to a guarantee, exclude or restrict his liability for loss or damage arising from consumer goods proving defective while in consumer use, where the defect is caused by the negligence of a person concerned in the manufacture or distribution of consumer goods.

(3) For the purposes of **subsection (2)**, consumer goods are to be regarded as being in consumer use when a person is using them, or is in possession of them for use, otherwise than exclusively for the purpose of business.

(4) **Subsection (2)** has effect notwithstanding any other provision to the contrary in **this Part**.

Statutory  
condition or  
warranty.

43. (1) No person may, by reference to a contractual term, exclude or restrict his liability for breach of an obligation arising from a condition or warranty implied or imposed by any written law.

(2) In **subsection (1)**, “contractual term” excludes a condition or warranty of the kind referred to in that subsection.

(3) For the avoidance of doubt, the reference in **subsection (1)** to a warranty imposed by any written law includes a manufacturer’s warranty deemed under **section 18(2)** to be a warranty issued by the supplier.

Effect of term or  
notice in breach  
of this Part.

44. A guarantee, notice, or contractual term purporting to exclude or restrict liability in breach of any provision of **this Part** is unenforceable against a consumer.

**PART 7**  
**ENFORCEMENT AND REMEDIES**

**Establishment of  
Tribunal.  
Schedule 3**

45. (1) For the purposes of this Act, there is hereby established a Tribunal to be known as the Consumer Fair Trading Tribunal.

(2) Schedule 3 has effect with respect to the composition of the Tribunal and otherwise in relation thereto.

**Jurisdiction of  
Tribunal.**

46. (1) Subject to this Part the Tribunal has all the powers and authority vested in the High Court in the exercise of its civil jurisdiction.

(2) The Chairman, an advisory member or the Registrar shall not enter upon the duties of his office unless he has taken and subscribed the oath of office set out in the Constitution before a magistrate or justice of the peace.

**Decisions of  
Tribunal.**

47. (1) Subject to subsection (2), the Chairman alone shall decide all questions of law and of fact and shall make all decisions and determinations and give all directions required to be made or given by the Tribunal and any decision, determination or direction of the Chairman shall be deemed to be a decision, determination or direction of the Tribunal.

(2) Where a question of law arises in proceedings before the Tribunal the Chairman may, if he thinks fit (whether on application made by any party to the proceedings or not), reserve the question in the form of a special case for the opinion of the Court of Appeal.

**Sanctions of  
advisory  
members.**

48. The Advisory members shall not participate in the making of any decision or determination or the giving of any direction by the Tribunal, but -

(a) may assist the Chairman in any way he may require in carrying out the functions of the Tribunal; and

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- (b) may advise the Chairman on any matter other than a question of law.

**Appearances.** 49. A party to any proceedings before the Tribunal may appear and be heard -

- (a) in person;  
(b) by counsel; or  
(c) with leave of the Tribunal by any other person approved by the Tribunal.

**Power of the Tribunal to summon and examine witnesses.**

50. (1) The Tribunal shall have the power of a Judge of the High Court to summon witnesses, and to call for the production of books, plans and other documents, and to examine witnesses and parties concerned on oath.

(2) A summons for the attendance of a witness or other person, or the production of documents, shall be in such form as may be prescribed by the Minister by regulations, shall be signed by the registrar and shall be served in the same manner as a notice.

(3) Every person summoned to attend and give evidence, or to produce books, or documents at any sitting of the Tribunal, shall be bound to obey the summons served upon him as fully in all respects as a witness is bound to obey a subpoena issued from the High Court, and shall be entitled to like expenses as if he had been summoned to attend the High Court on a civil trial and such expenses shall be paid by the party summoning the witness.

(4) Every person, referred to in subsection (3), refusing or omitting, without sufficient cause, to attend at the time and place mentioned in the summons served on him, and every such person attending but leaving a sitting of the Tribunal without the permission of the Chairman or refusing without sufficient cause to answer, or answer fully and satisfactorily to the

best of his knowledge and belief, all questions put to him by the Chairman or refusing or omitting without sufficient cause to produce any book or documents in his possession or under his control and mentioned or referred to in the summons served on him, and every person who shall, at any sitting of the Tribunal, wilfully insult the Chairman, any advisory member or the Registrar or wilfully interrupt the proceedings of the Tribunal shall be liable on summary conviction to a fine of five thousand dollars and to imprisonment for six months.

(5) Any witness, who shall wilfully give false evidence in proceedings before the Tribunal concerning the subject matter of the proceedings, shall be guilty of perjury and shall be liable to be prosecuted and punished accordingly.

- Taking evidence.** 51. Evidence material to any proceeding before the Tribunal –
- (a) may be given orally or in writing; and
  - (b) shall, if the Tribunal so requires, be given on oath or affirmation.
- No costs allowable.** 52. Costs shall not be allowed to or against any party to proceedings before the Tribunal.
- Procedure of Tribunal.** 53. Subject to this Act and to the Rules of Court the Tribunal may regulate its own procedure and may make rules for that purpose.
- Registrar** 54. (1) There shall be appointed a Registrar of the Tribunal and such other staff as are necessary for the purposes of this Act.
- (2) The Registrar shall keep a register containing the particulars of all proceedings before the Tribunal and of all determinations and orders made by the Tribunal.
- (3) The register kept by the Registrar pursuant to subsection (2) may be inspected at any reasonable time and by any person on demand.



**Orders of the  
Tribunal.**

55. (1) Where the Tribunal is satisfied that a supplier has engaged in conduct that contravenes any provision of this Act or the regulations made thereunder, it may issue an order prohibiting the supplier from engaging in such conduct.

(2) In addition to making an order under subsection (1) the Tribunal may, if it appears desirable to do so, by order prohibit the supplier from entering in the course of business into contracts with consumers unless the contracts are in such form or comply with such terms and conditions as the Tribunal may specify.

(3) Where on the hearing of an application it appears to the Tribunal desirable to do so, the Tribunal may make an interim order —

- (a) prohibiting the supplier from engaging in such conduct as is complained of in the application;
- (b) prohibiting the supplier from entering into contracts with consumers unless the contracts are in such form or  
comply with such terms and conditions as the Tribunal specifies.

**Consent or  
connivance.**

56. (1) Where the Consumer Director makes an application to the Tribunal for an order in respect of a supplier who is a body corporate and on the hearing of that application the Tribunal is satisfied —

- (a) that the supplier has repeatedly contravened any provision of this Act; and
- (b) that conduct has been so engaged in with the consent or connivance of a person who is concerned or takes part in the management of that body corporate,

it may, in addition to any other order it may make under section 55 or 57, make an order prohibiting that person from consenting to or conniving at the engaging in such conduct by that body corporate or any other body corporate in which he holds a management position.

**Amendment of application.**

57. (1) The Tribunal may in any proceedings under this Act where it considers it desirable to do so, make an order referred to as a cease and desist order, restraining the supplier from engaging in the conduct complained of.

(2) A supplier who contravenes the provisions of a cease and desist order is guilty of an offence.

**Illegality etc. of contracts.**

58. (1) Subject to this section, a contract entered into by a supplier is not illegal, void or unenforceable by reason only that it contravenes or does not comply with an order of the Tribunal.

(2) A party to any contract that contravenes or does not comply with an order of the Tribunal may at any time within three months after the date on which the contract was entered into make application in the prescribed form to the Tribunal for an order under subsection (3) in respect of that contract.

(3) Where on the hearing of an application under subsection (2), it appears to the Tribunal desirable to do so, the Tribunal may make an order declaring that the contract or any term therein to which the application relates is void and the Tribunal may make an order that any goods, chattels, moneys or other consideration delivered by or on behalf of any party to the contract are recoverable.

**Power to impose conditions.**

59. Where the Tribunal makes an order it may impose in such order, conditions (whether as to the duration of the order or otherwise) as it thinks fit.

**Application by Director.**

60. (1) The Consumer Director may make an application in the prescribed form for an order under subsection (2)(a) or (b).

(2) Where on the hearing of an application under subsection (1) it appears to the Tribunal desirable to do so, the Tribunal may make one of the following orders as it considers appropriate, that is –

- (a) an order discharging the order previously made by the Tribunal; or

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(b) an order varying the order previously made by the Tribunal in any specified particular.

(3) In subsection (2) the reference to orders previously made by the Tribunal includes a reference to such orders as varied by the Tribunal pursuant to this section.

**Duties of Registrar on receipt of application.**

61. Where any person makes an application to the Tribunal under this Act the Registrar shall -

(a) cause notice of the application and its particulars to be given, as soon as is practicable, to -

(i) in the case of an application made by the Consumer Director, the supplier against whom the application is made;

(ii) in the case of an application made by a party to a contract under section 58(2), the other party to the contract; and

(iii) in the case of an application made by the Consumer Director under section 60, the person in respect of whom the Tribunal has previously made the order; and

(b) arrange a day, time and place for the hearing of the application and shall cause notice of that day, time and place to be given to the applicant and to any other person to whom notice is required to be given under paragraph (a) at least ten clear days before the date of the hearing of the application.

**Withdrawal of application**

62 (1) Any person who makes an application to the Tribunal may at any time prior to the final determination by the Tribunal of that application and whether before or after the Tribunal has entered upon a hearing of the application withdraw that application.

(2) Where the Consumer Director withdraws an application made by him after the Tribunal has entered upon a hearing of that application, any order

made by the Tribunal shall cease to have effect and shall be deemed never to have had effect.

**Amendment of application**

63. The Tribunal may, at any time in the course of proceedings before it, make such amendment to the application to which the proceedings relate as it thinks fit, whether at the request of the person who made the application or of its own motion with the approval of that person.

**Adjournment of hearing**

64. (1) The Tribunal may from time to time adjourn the hearing of an application to such times and places and for such purposes as it considers necessary.

(2) The Registrar shall cause notice of the time and place to which the hearing of an application is adjourned to be given as soon as is practicable to any person to whom notice of the application was given by Registrar under section 61(a) and who was present or represented at the hearing when the Tribunal granted the adjournment.

**Constitution of Tribunal.**

65. (1) The Tribunal shall, at all times throughout the hearing, of an application made to it, be constituted by the same Chairman and advised by the same advisory members.

(2) If the hearing by the Tribunal of any application is interrupted, before the final determination of the application by the death, incapacity, removal or resignation of any of the advisory members who constitute the Tribunal, the hearing of the application shall, unless the Chairman (of his own motion or on the application of any party to the proceedings) otherwise orders, be recommenced before a newly constituted Tribunal.

**Determination of questions of law by Court of Appeal.**

66. (1) The Court of Appeal shall give its opinion on a question of law referred to it under section 47 (2).

(2) Where a question of law arising in proceedings before the Tribunal

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has been reserved for the opinion of the Court of Appeal the Tribunal shall not-

- (a) make a decision to which the question is relevant until the Court of Appeal has given its opinion on the question of law; or
- (b) proceed in a manner or make a decision that is inconsistent with the opinion of the Court of Appeal on the question of law.

(3) Where a question of law arises in proceedings before the Tribunal and is not reserved for the opinion of the Court of Appeal under section 47(2), a party to the proceedings may appeal to the Court of Appeal against the determination of that question of law and if such party does so appeal he shall within a period of twenty-eight days give notice in writing of such appeal and of the grounds thereof to the other party or to any person who appeared for that party (as the case may be) in the proceedings before the Tribunal.

(4) The Court of Appeal may amend at any time a notice of appeal under subsection (3).

(5) On the hearing of an appeal the Court of Appeal shall make such order as is just and may either dismiss the appeal or reverse or vary the determination appealed from and may direct that the proceedings in which the question of law arose be re-heard or further heard by the Tribunal and may make such order with respect to the costs of the appeal as the Court of Appeal thinks proper.

(6) Where the Court of Appeal orders proceedings to be re-heard or further heard by the Tribunal under subsection (5), the proceedings shall, unless the Court of Appeal otherwise determines, be re-heard or further heard by the Tribunal constituted by the same Chairman and with the same advisory members who heard and determined the proceedings in which the question of law arose.

**Determination  
and orders of  
Tribunal final.**

67. (1) Subject to sections 60 and 66, a determination made by the Tribunal in any proceedings before it and any order made by the Tribunal in such

proceedings shall be final and binding on all parties to the proceedings and no appeal shall lie in respect thereof.

(2) Subject to subsection (1) where the Tribunal makes an order in proceedings before the Tribunal, the Registrar shall file in the Registry of the High Court a copy of the order certified by the Chairman of the Tribunal, and on being filed the order shall have the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the High Court.

Publication of  
orders of  
Tribunal.

68. Where in any proceedings before it the Tribunal makes an order the Registrar shall cause to be published the particulars of such order in a local daily newspaper.

Injunctive Relief.

69. The Tribunal may in proceedings instituted under this Act grant relief by way of injunction.

Actions for  
damages.

70. (1) The Tribunal may award damages to a person who has suffered loss or damage by an act of another person that has been done in contravention of this Act.

(2) Any action for the award of damages may be commenced at any time within three years after the date on which the cause of action accrued.

## PART 8

### MISCELLANEOUS

Recovery of  
chattels pledged  
in bill of sale.

71. (1) This section applies where, under a bill of sale, a consumer pledges to chattel to any person in the event of default in repayment of a loan.

(2) No person shall, in taking action to recover the chattel in the event of default in repayment of the loan —

- (a) employ or engage any person other than a bailiff to seize the chattel;
- (b) unless he is a bailiff, purport to be a bailiff in seizing the chattel;
- (c) threaten, carry out, or cause to be carried out a seizure of the chattel, where the consumer's indebtedness to the supplier has already been disregarded or is currently being

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serviced in accordance with existing contractual provisions;

or

(d) recklessly damage the chattel while exercising distraint.

(3) A court convicting any person of an offence (under section 74(1) of contravening or failing to comply with subsection (2) may, in addition to any other penalty that may be imposed under this Act, order the person –

- (a) to compensate the consumer for all or any part of the costs and expenses reasonably incurred as a result of the contravention or failure, including the costs or any legal proceedings (including proceedings before the Commission) arising from that contravention or failure;
- (b) to pay to the consumer an amount equal to ten times the market value of any chattel seized and, in addition, five thousand dollars per day for every day that the consumer has been deprived of the use and enjoyment of the chattel.

**Alternative  
dispute resolution  
by Commission.**

72. Any contract between a consumer and a supplier may include a clause providing for the parties to attempt to settle any disagreement through mediation by the Commission before taking the matter to court, and the parties may, in accordance with the clause, bring any such disagreement to the Commission to be mediated.

**Criteria for  
organizations  
purporting to  
provide services  
for protection of  
consumers.**

73. Any person purporting to provide services for the protection of consumers shall be a duly registered, non-profit organization the purpose of which is to –

- (a) promote and protect consumer rights;
- (b) represent the collective interests of consumers before judicial or administrative bodies;
- (c) represent consumers' interests to government and enterprises supplying or distributing goods or providing services;

- (d) collect, process and disseminate objective information for the benefit of consumers.

**Offences and penalties.**

74. (1) Every person commits an offence and is liable on conviction to a fine of five hundred thousand dollars and a term of imprisonment of two years who contravenes or fails to comply with any of the following –

- (a) section 13(3) (obligation and entitlement of person summoned);
- (b) section 16(3) (duly to give correct measurement);
- (c) section 17(1) (receipts to be given to consumers);
- (d) section 19(2) (damage from use of service or good);
- (e) section 28 (misleading or deceptive conduct);
- (f) section 29 (false representations);
- (g) section 30(1) or (2) (non-delivery of goods or services);
- (h) section 31(1) (bait advertising);
- (i) section 71(2) (recovery of chattels pledged in bill of sale);

(2) A prosecution for any offence against this Act or any regulation made under it may be brought either summarily or on indictment, at the election of the person bringing the prosecution.

(3) Where a prosecution for an offence against this Act or any regulation made under it is brought summarily, the complaint in respect of the offence may be laid at any time within one year after the time when the matter of the complaint arose.

(4) Subsection (3) has effect notwithstanding section 6 of the Summary Jurisdiction (Procedure) Act.

(5) The penalty for an offence under this Act not mentioned in this section shall not exceed the penalty specified in subsection (1).

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**Regulations.**

75. (1) The Minister may make regulations –

- (a) to regulate the distribution, purchase, or sale of goods or any class or description of goods;
- (b) to provide for the recall of goods or services, or any class or description of goods or services, that are dangerous or



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hazardous to safety and for the refund or rebate by the supplier of any price or fee paid for those goods or services;

- (c) to require persons carrying on or employed in connection with any trade or business to furnish information concerning all or any of the elements of the cost or sale price of goods or any class or description of goods bought or sold in such trade or business, whether by wholesale or retail;
- (d) to require the provision and maintenance, at each place at which goods are offered for sale by retail, of means by which prospective purchasers of any of those goods may ascertain the weight, volume, or other measurement of those goods;
- (e) to create an offence for the breach of any regulation made under this Act and to prescribe penalties that may be imposed (not exceeding the penalties specified in section 74(1)) on summary conviction or conviction on indictment of any person for the offence; and
- (f) for giving full effect to the provisions of this Act and for the due administration of those provisions.

(2) Without limiting the generality of subsection (1)(d), a regulation may require —

- (a) that the prices of goods shall be marked on the goods or on any container in or from which they are sold; and
- (b) the prospective purchasers shall not be obstructed in any attempt to ascertain the weight, value, or other measurement of any goods.

(3) No regulation may be made under subsection (1)(a) in relation to any goods if the distribution, purchase, or sale of those goods is or may be regulated under or by virtue of the provisions of any other written law.

- Transitional provision in respect of certain guarantees and contracts.
76. Nothing in Part 6 has any application, before the first anniversary of the commencement of this Act, to -
- (a) a guarantee issued to a consumer before the commencement of this Act; or
  - (b) a contract entered into before the commencement of this Act.

## SCHEDULE 1

### Section 4(2)

#### PROVISIONS RELATING TO CONSUMER AFFAIRS COMMISSION

- Interpretation.
1. In this Schedule, "member" means the Chairman, the Vice-Chairman, or any other member of the Commission.
- Constitution of Commission.
2. (1) The Commission shall be made up of a Chairman, a Vice-Chairman, and no fewer than five nor more than nine other members, each appointed by the Minister by instrument in writing.
- (2) No person may be appointed a member unless he is qualified by virtue of his knowledge of or experience in consumer affairs, trade, finance, economics, accounting, business management or law.
- (3) A member may be appointed to serve in a full-time, part-time, or periodic capacity, as may be required to fulfil the objects of **this Act**.
- (4) The Consumer Director shall publish in the *Gazette* the names of all members of the Tribunal as first constituted and every change in its membership.
- Duration of office of members.
3. (1) Each member shall be appointed for a term specified in his instrument of appointment, not exceeding three years.
- (2) The Minister may at any time by written notice to a member revoke the appointment of the member for incompetence, disability, bankruptcy, neglect of duty, or misconduct, proven to the satisfaction of the Minister.

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(3) A member may at any time resign by giving the Minister a signed notice of resignation, which, in the case of any member other than the Chairman, shall be transmitted through the Chairman.

(4) A member is eligible for reappointment.

Remuneration  
and allowances,  
of members.

4. Each member of the Commission shall be paid, out of the funds of the Commission, the remuneration, if any, and allowances determined of the Minister in respect of the office held.

Consumer  
Director and  
other staff of  
Commission.

5. (1) The Commission shall appoint a Consumer Director, a Secretary, and other staff necessary for the purpose of **this Act**.

(2) The Consumer Director, the Secretary and the other staff –

(a) shall be employed on terms and conditions set by the Commission.

(b) shall be paid, out of the funds of the Commission, the remuneration and allowances determined by the Commission in respect of the office held.

(3) The Minister responsible for the public service may, subject to conditions he may impose, approve of the appointment by the Commission of any public officer in the service of the Government to any office with the Commission and any public officer so appointed shall, in relation to pension, gratuity, and other allowance, and to other rights as a public officer, be treated as continuing in the service of the Government.

(4) The Consumer Director shall be the chief executive officer of the Commission and shall be responsible to the Commission for –

(a) carrying out the policy of the Commission;

(b) directing the day-to-day business of the Commission;

(c) directing the other staff of the Commission; and

(d) carrying out his other functions under this Act.

(5) The Commission may delegate to any of its staff the exercise on the Commission's behalf of any of its functions under **this Act**.

(6) The Consumer Director may delegate to any person the exercise on the Consumer Director's behalf of any of his functions under this Act.

Procedures for meetings.

6. (1) The Commission shall meet at times necessary or expedient for the transaction of business, and meetings shall be held at the places and times and on the days determined by the Commission.

(2) The quorum of the Commission necessary to transact business is, including the presiding member at a meeting, five.

(3) The Secretary shall keep minutes of each meeting.

(4) Subject to **this Act**, the Commission may regulate its own proceedings.

Seal of the Commission.

7. (1) The seal of the Commission —

(a) shall be kept in the custody of the Secretary; and

(b) shall be affixed to a document only when authorised by a resolution of the Commission.

(2) The seal of the Commission shall be authenticated by the signatures of the Secretary and either the Chairman or any other member authorised by the Commission to act in that behalf.

(3) A document issued or made by the Commission (other than one required by law to be under seal) or a decision of the Commission may be signified under the hand of the Secretary, the Chairman, or any other member authorised by the Commission to act in that behalf.

Protection of members.

8. (1) No member shall be liable for any act done or omitted to be done by the Commission in the course of carrying out its functions, except where the member has acted in bad faith.

(2) Where a member is exempt from liability by reason only of **subparagraph (1)**, the Commission is liable to the extent that it would be if that member were an employee or agent of the Commission.

Disclosure of interest.

9. (1) Any member whose interest is likely to be affected (directly or indirectly) by a decision of the Commission on any matter shall disclose to the Commission the nature of the interest as soon as the relevant facts come to his knowledge.

(2) The Secretary shall record any disclosure under **subparagraph (1)** in the minutes of the Commission kept under **paragraph 6(3)** or otherwise in the Commission's records.

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(3) The member making the disclosure shall not be present during and shall not take part in any deliberation or decision of the Commission on the matter.

**Funds of Commission.** 10. The funds of the Commission comprise -

- (a) money appropriated by Parliament and paid to the Commission for the purposes of the Commission;
- (b) other money or property lawfully received by the Commission for the purposes of the Commission; and
- (c) income derived from any money or other property of the Commission.

**Accounts and audits.** 11.(1) The Commission shall keep accounts of its transactions to the satisfaction of the Minister and the Auditor General shall audit these accounts annually.

(2) The Commission may at any time appoint an independent auditor to examine and report on its accounts.

**Annual report and estimates.** 12.(1) In this section, "financial year" means -

- (a) the calendar year; or
- (b) where the Commission's accounts are, with the permission of the Minister, kept by reference to a financial year different from the calendar year, that financial year.

(2) No later than four months after the end of each financial year, the Commission shall submit to the Minister a report containing -

- (a) an account of its activities during the financial year in the detail directed by the Minister; and
- (b) a statement of the Commission's audited accounts.

(3) The Minister shall as soon as practicable, and in any event no later than six months after the end of that financial year, give to the Clerk of the National Assembly for laying before the National Assembly -

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- (a) the report referred to in **subparagraph (2)**; and
- (b) a copy of the auditor's report on the Commission's accounts for that financial year following the audit under **paragraph 11(1)**.

(4) The Commission shall, no later than eight months after each financial year, submit to the Minister for his approval the Commission's estimates of revenue and expenditure for the next following financial year.

Exemption from income tax. 13. The income of the Commission shall be exempt from income tax.

## SCHEDULE 2

*Section 12(2)*

### FORM OF SUMMONS BY CONSUMER AFFAIRS COMMISSION

To: *[name of person summoned, and his occupation and address, if known]*

You are summoned to appear before the Consumer Affairs Commission at *[place]* on *[date]* at *[time]* and to give evidence about *[subject matter]*.

*(If the person summoned is to produce any documents, add):*

You are also required to bring with you *[specify the papers, books, records, and other documents required]*.

Failure to obey this summons without sufficient cause is an offence against the Consumer Protection Act 2006.

Given under the hand of the *[Corporate Secretary or the Chairman or any other member of the Commission authorised by the Commission]* this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

## SCHEDULE 3

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## CONSUMER FAIR TRADING TRIBUNAL

1. The Tribunal shall be constituted by a Chairman assisted by not more than five advisory members drawn from the panel mentioned in paragraph 4, representing the interests of the consumer and of the supplier.
2. The Tribunal shall have an official seal and all summonses, orders and other process issuing out of the Tribunal shall be sealed or stamped with the official seal.
3. The Chairman —
  - (a) shall be appointed by the President from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court or who are qualified to be appointed as any such judge;
  - (b) shall hold office for such term as may be specified in his letter of appointment and receive such salary and allowances being not less than the salary and allowances paid to a Judge of the High Court.
4. (1) There shall be a panel of advisors appointed by the Minister representing the interests of suppliers and consumers.
  - (2) The members of the panel —
    - (a) shall hold office for such period not exceeding three years as is specified in their letters of appointment but shall be eligible for re-appointment;
    - (b) shall be paid such remuneration and allowances as the Chairman may determine.
5. A person appointed under paragraph 4 shall not sit with the Tribunal during the consideration of a case —
  - (a) in which the person appeared as the representative of a party;

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- (b) with which the person is or may be directly or indirectly concerned; or

6. (1) A member of the panel who has an interest in a matter before the Tribunal shall when he becomes aware of that interest disclose in writing that interest to the Chairman.

(2) If the Chairman considers the interest to be of a material nature, he shall disqualify the member from assisting the Tribunal during the consideration of the matter in which he has such interest.

### EXPLANATORY MEMORANDUM

This Bill provides for the promotion and protection of consumer interests in relation to the supply of goods and services and sets up a Consumer Affairs Commission and a Consumer Protection Tribunal.

This Bill is divided into 8 Parts and has 3 Schedules.

**Part 1 (Preliminary)** sets out the short title, defines expressions used in the Bill, and provides that, when enacted, the Bill subject to certain conditions may apply to public utilities.

**Part 2 (Consumer Affairs Commission)** sets up the Consumer Affairs Commission and specifies the Commission's object and functions. **Schedule 1** sets out the constitution of the Commission and other related matters.

**Part 3 (Investigation of Complaints)** sets out the procedure to be followed by the Commission in investigating complaints by consumers. The Commission is empowered to summon witnesses, using the form set out in **Schedule 2**, to attend before the Commission, give evidence, and produce documents.

**Part 4 (Duties of Suppliers)** imposes several duties on suppliers, including —

- (a) giving consumers information about goods;
- (b) providing measuring equipment to consumers when selling goods by reference to measurements;
- (c) giving receipts and explicit warranties to consumers;



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- (d) compensating consumers for damage caused by goods during normal use;
- (e) replacing or repairing defective goods;
- (f) giving refunds for goods that are materially different from those requested;
- (g) providing exchanges or refunds in the case of faulty electrical goods;
- (h) providing only services that are requested by consumers;
- (i) keeping records about repairs and giving a copy to consumers before starting repairs;
- (j) presenting accurate claims for payment of instalments by consumers; and
- (k) giving refunds or rebates when a consumer does not receive a benefit attached to a contracted service.

**Part 5 (Unfair Trade Practices)** bans a range of misleading or deceptive conduct in relation to the supply of goods or services, including -

- (a) false or misleading representations or conduct liable to mislead the public about goods or services;
- (b) advertising goods or services at a special price unless the supplier intends to supply those goods or services at that price; and
- (c) accepting consideration for goods or services where the supplier does not intend to supply those goods or services, or where the supplier intends to supply materially different goods or services.

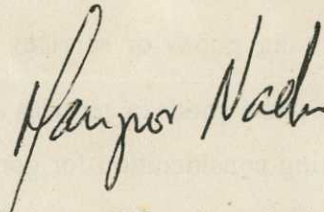
**Part 6 (Unfair Contracts)** prevents suppliers from excluding or restricting their liability by reference to a contractual term or a notice, unless the term or notice is fair and reasonable. Excluding or restricting liability for death or personal injury arising from negligence, is unlawful. Suppliers also cannot contract out of a condition or warranty imposed or implied by a written law. A contractual term, a notice, or a guarantee in breach of **this Part** will be unenforceable against a consumer.

**Part 7 (Enforcement and Remedies)** sets up the Consumer Fair Trading Tribunal and gives it power to make a range of orders to enforce this Act. **Schedule 3** sets out the constitution of the Tribunal and related matters. The Consumer Director on behalf of the Commission can apply for orders against a supplier to prohibit further breaches of this Act or regulations made under it.

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Any person who suffers damage from a breach of this Act or any regulation made under it can apply for an order of damages against the person responsible for the breach. **This Part** also sets out procedures for applications to the Tribunal.

**Part 8 (Miscellaneous)** regulates the recovery of chattels pledged in a bill of sale, provides for mediation by the Commission in certain cases, and restricts the provision of consumer protection services. It also creates offences and specifies penalties relating to certain provisions of this Act. The Minister is given power to make regulations for a wide range of matters. **This Part** also provides for a transitional period, before the provisions of **Part 6** apply to contracts or guarantees entered into before the commencement of this Act.



**Minister of Tourism, Industry, and Commerce**