



ANNO TRICESIMO SEXTO

# ELIZABETHAE II REGINAE

A.D. 1987

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No. 43 of 1987

An Act to amend the Prices Act, 1948, and certain other related Acts; and to repeal the Door to Door Sales Act, 1971, the Fair Credit Reports Act, 1974, the Mock Auctions Act, 1972, the Pyramid Sales Act, 1973, the Trading Stamp Act, 1980, the Unfair Advertising Act, 1970, and the Unordered Goods and Services Act, 1972.

[Assented to 30 April 1987]

The Parliament of South Australia enacts as follows:

## PART I

### PRELIMINARY

1. This Act may be cited as the “Statutes Amendment (Fair Trading) Act, 1987”. Short title.
2. (1) This Act shall come into operation on a day to be fixed by proclamation. Commencement.  
 (2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

## PART II

### AMENDMENT OF THE PRICES ACT, 1948

3. The Prices Act, 1948, is in this Part referred to as “the principal Act”. Principal Act.
4. The Long Title to the principal Act is amended by striking out “and to regulate certain practices respecting the sale of goods and supply of services”. Amendment of Long Title.
5. Section 3 of the principal Act is amended— Amendment of s. 3— Interpretation.

(a) by striking out from subsection (1) the definition of “authorized officer” and substituting the following definition:

“authorized officer” means a person who is an authorized officer under section 6;

(b) by striking out from subsection (1) the definition of “consumer”;

(c) by striking out from subsection (1) the definition of “the Commissioner” and substituting the following definition:

“the Commissioner” means the Commissioner for Prices;

and

(d) by striking out subsection (2).

Repeal of ss. 4, 5,  
7, 8, 9 and 10  
and substitution  
of new sections.

6. Sections 4, 5, 7, 8, 9 and 10 of the principal Act are repealed and the following sections are substituted:

Commissioner for  
Prices.

4. (1) There shall be a Commissioner for Prices.

(2) The Commissioner shall be a person employed in the Public Service of the State.

Administration of  
this Act.

5. (1) The Commissioner has the administration of this Act.

(2) In the administration of this Act, the Commissioner is subject to direction by the Minister.

Authorized  
officers.

6. (1) The following persons are authorized officers for the purposes of this Act:

(a) the Commissioner;

and

(b) any person appointed under subsection (2).

(2) The Minister may, on the recommendation of the Commissioner, appoint persons employed in the Public Service of the State to be authorized officers for the purposes of this Act.

Delegations.

7. (1) The Commissioner may delegate to a person employed in the Public Service of the State or, with the Minister’s consent, to a person not so employed any of the Commissioner’s powers under this Act or any other Act.

(2) The Minister may delegate any of the Minister’s powers under this Act.

(3) A delegation under this section—

(a) must be in writing;

(b) may be made subject to such conditions as the delegator thinks fit;

(c) if made to the holder of a specified office or position, empowers any person for the time being holding or acting in that position to exercise the delegated powers;

(d) is revocable at will;

and

(e) does not prevent the delegator from acting personally in any matter.

(4) In any proceedings, an apparently genuine certificate purporting to be signed by the Minister or the Commissioner (as the case requires) containing particulars of a delegation under this section shall, in the absence of proof to the contrary, be accepted as proof of the particulars.

8. A person shall not divulge or communicate information Secrecy. acquired by reason of being, or having been, employed or engaged in, or in connection with, the administration of this Act, except—

- (a) with the consent of the person to whom the information relates;
- (b) in connection with the administration of this Act;
- (c) to a member of the police force of this State or of the Commonwealth or another State or a Territory of the Commonwealth;
- (d) to a person concerned in the administration of another law of the State, or a law of the Commonwealth or another State or a Territory of the Commonwealth, relating to the control of prices;

or

(e) for the purposes of legal proceedings.

Penalty: \$10 000.

9. (1) For the purposes of this Act, an authorized officer may Obtaining of information. require any person—

- (a) to answer any questions, orally or in writing;
  - (b) to verify the answer to a question by statutory declaration;
- or
- (c) to produce books or documents.

(2) A person shall not—

(a) refuse or fail to comply with a reasonable requirement made under this section;

or

(b) give, in response to a question put under this section, an answer that is false in a material particular.

Penalty: \$10 000.

(3) A person is not required to answer a question or to produce a book or document if the answer or the production of the book or document would result in or tend towards self-incrimination.

10. (1) For the purposes of this Act, an authorized officer may Entry and inspection. at any reasonable time—

- (a) enter and search any premises or land;
- (b) make any inspection, conduct any test and take any samples;

and

(c) take any books or documents.

(2) Where an authorized officer takes any book or document under this section, the officer—

(a) may retain the book or document—

(i) for so long as is necessary to enable it to be inspected and copies of, or extracts from, it to be made or taken;

and

(ii) if the book or document is required for legal proceedings, until the conclusion of those proceedings;

and

(b) while any such book or document is in the officer's possession, must permit the person entitled to it to inspect it at any reasonable time and must, on request, furnish to that person a copy of the book or document certified as a true copy by the Commissioner.

(3) In any proceedings an apparently genuine copy of any book or document, taken by an authorized officer pursuant to this Act, certified by the Commissioner to be a true copy of the original is proof of the existence of the original and its contents.

(4) The powers conferred by subsection (1) must be exercised so as to avoid any unnecessary disruption of, or interference with, the conduct of business or performance of work.

(5) An authorized officer must produce to the person (if any) affording the officer entry to premises or land under this section a certificate of authority issued to the authorized officer by the Commissioner.

Repeal of ss. 18a and 18b.

7. Sections 18a and 18b of the principal Act and the heading appearing immediately before section 18a of the principal Act are repealed.

Repeal of s. 32.

8. Section 32 of the principal Act is repealed.

Repeal of ss. 33a, 33b, 33c, 33d and 33e.

9. Sections 33a, 33b, 33c, 33d and 33e of the principal Act and the heading appearing immediately before section 33a of the principal Act are repealed.

Repeal of s. 49a.

10. Section 49a of the principal Act is repealed.

Repeal of schedule.

11. The schedule to the principal Act is repealed.

### PART III

#### AMENDMENT OR REPEAL OF OTHER ACTS

Amendment of Builders Licensing Act, 1986.

12. The Builders Licensing Act, 1986, is amended—

(a) by striking out from subsection (1) of section 4 the definition of "the Commissioner" and substituting the following definition:

"the Commissioner" means the Commissioner for Consumer Affairs;;

(b) by striking out section 43;

and

(c) by striking out from subsection (3) of section 51 “the Prices Act, 1948,” and substituting “the Fair Trading Act, 1987,”.

**13. The Consumer Credit Act, 1972, is amended—**

Amendment of  
Consumer Credit  
Act, 1972.

(a) by striking out from section 5 the definition of “the Commissioner” and substituting the following definition:

“the Commissioner” means the Commissioner for Consumer Affairs;;

(b) by striking out section 8;

and

(c) by striking out sections 10, 11 and 12.

**14. The Consumer Transactions Act, 1972, is amended—**

Amendment of  
Consumer  
Transactions Act,  
1972.

(a) by striking out from section 5 the definition of “the Commissioner” and substituting the following definition:

“the Commissioner” means the Commissioner for Consumer Affairs;;

and

(b) by inserting after section 6 the following section:

6a. (1) The Commissioner has the administration of this Act.

Administration of  
Act.

(2) In the administration of this Act, the Commissioner is subject to direction by the Minister.

**15. The Door to Door Sales Act, 1971, is repealed.**

Repeal of Door to  
Door Sales Act,  
1971.

**16. The Fair Credit Reports Act, 1974, is repealed.**

Repeal of Fair  
Credit Reports  
Act, 1974.

**17. The Land Agents, Brokers and Valuers Act, 1973, is amended by striking out from subsection (3) of section 101 “the Prices Act, 1948,” and substituting “the Fair Trading Act, 1987,”.**

Amendment of  
Land Agents,  
Brokers and  
Valuers Act,  
1973.

**18. The Misrepresentation Act, 1971, is amended by striking out subsection (7) from section 4.**

Amendment of  
Misrepresentation  
Act, 1971.

**19. The Mock Auctions Act, 1972, is repealed.**

Repeal of Mock  
Auctions Act,  
1972.

**20. The Pyramid Sales Act, 1973, is repealed.**

Repeal of  
Pyramid Sales  
Act, 1973.

**21. The Second-hand Goods Act, 1985, is amended—**

Amendment of  
Second-hand  
Goods Act, 1985.

(a) by striking out from section 4 the definition of “the Commissioner for Consumer Affairs”;

and

(b) by striking out from subsection (3) of section 35 “the Prices Act, 1948,” and substituting “the Fair Trading Act, 1987,”.

Amendment of  
Second-hand  
Motor Vehicles  
Act, 1983.

22. The Second-hand Motor Vehicles Act, 1983, is amended by striking out from subsection (1) of section 5 the definitions of “authorized officer” and “the Commissioner” and substituting the following definitions:

“authorized officer” means a person who is an authorized officer under the Fair Trading Act, 1987:

“the Commissioner” means the Commissioner for Consumer Affairs..

Amendment of  
Trade  
Measurements  
Act, 1971.

23. Section 33 of the Trade Measurements Act, 1971, is repealed.

Amendment of  
Trade Standards  
Act, 1979.

24. Section 31 of the Trade Standards Act, 1979, is repealed.

Repeal of Trading  
Stamp Act, 1980.

25. The Trading Stamp Act, 1980, is repealed.

Amendment of  
Travel Agents  
Act, 1986.

26. The Travel Agents Act, 1986, is amended—

(a) by striking out from the definition of “authorized officer” in section 3 “the Prices Act, 1948,” and substituting “the Fair Trading Act, 1987,”;

and

(b) by striking out sections 27 and 28.

Repeal of Unfair  
Advertising Act,  
1970.

27. The Unfair Advertising Act, 1970, is repealed.

Repeal of  
Unordered Goods  
and Services Act,  
1972.

28. The Unordered Goods and Services Act, 1972, is repealed.

## SCHEDULE

The Prices Act, 1948, is further amended as follows:

Section Amended	How Amended
Section 2	Delete this section.
Section 3 (1)	Delete "unless the context otherwise requires" and substitute "unless the contrary intention appears".
Definition of "landed cost"	Delete this definition.
Definition of "price"	Delete this definition and substitute: "price" includes the value of any non-pecuniary consideration (whether direct or indirect):.
Definition of "rate"	Delete this definition.
Definition of "retail"	Delete this definition and substitute: "retail" connotes a sale for the purposes of consumption or use:.
Definition of "service"	Delete this definition and substitute: "service" means a service supplied on a commercial basis, and includes— (a) any such service available from the Crown or a statutory authority (including transport and the supply of water, gas or electricity); (b) a right to a service:.
Definition of "the Minister"	Delete this definition. Insert the following definitions: "to sell" includes to offer for sale: "to supply" includes to offer to supply:.
Definition of "wholesale"	Delete this definition and substitute: "wholesale" connotes a sale for the purpose of resale.
Section 3 (3)	Delete this subsection.
Section 3	Insert subsections as follows: (2) For the purposes of this Act, a person offers goods for sale if that person— (a) publishes a price for the goods in a price list; (b) exposes the goods for sale, or apparently for sale, in a shop or elsewhere; (c) quotes a price for the sale of the goods; or (d) otherwise suggests or implies that the goods are for sale. (3) For the purposes of this Act, a price may be expressed as a rate. (4) Nothing in this Act authorizes regulation or control of the price for which an employee provides a service for an employer.
Section 11a	After "he" insert "or she".
Section 12	Delete this section and substitute: 12. (1) A person who sells declared goods in the course of a business shall keep— (a) proper accounts of— (i) the costs of producing or acquiring the goods for sale; and (ii) the price at which the goods are sold; (b) any accounts or records required by the regulations; and (c) such other accounts and records as the Commissioner may require. (2) A person who supplies declared services in the course of a business shall keep—

Accounts and records in relation to declared goods and services.

Section Amended	How Amended
	<p>(a) proper accounts of—</p> <p>(i) the costs incurred in providing the services;</p> <p>and</p> <p>(ii) the price at which the services are supplied;</p> <p>(b) any accounts or records required by the regulations;</p> <p>and</p> <p>(c) such other accounts and records as the Commissioner may require.</p> <p>(3) The Commissioner may, by notice in writing, require a person who sells declared goods, or supplies declared services, in the course of a business to keep such accounts and records as are specified in the notice.</p> <p>(4) Accounts and records required to be kept under this section must be kept until the Commissioner authorizes their destruction.</p>
Section 13 (1)	Delete "such prices committees as he deems necessary" and substitute "prices committees".
Section 13 (2)	Delete "shall" first occurring and substitute "must". Delete "shall have" and substitute "has".
Section 15	<p>Delete this section and substitute:</p> <p>15. (1) A member of a committee holds office for such term of office, and on such conditions, as are determined by the Governor.</p> <p>(2) The Governor may dismiss a member of a committee for—</p> <p>(a) neglect of duty;</p> <p>(b) dishonesty;</p> <p>or</p> <p>(c) incapacity to perform official duties satisfactorily.</p>
Period and conditions of appointment of committee.	
Section 17 (2)	<p>Delete this subsection and substitute:</p> <p>(2) A decision carried by a majority of the votes cast by the members present at a meeting of a committee is a decision of the committee.</p>
Section 17 (3)	<p>Delete this subsection and substitute:</p> <p>(3) Each member present at a meeting of a committee is entitled to one vote on a question before the committee and in the event of an equality of votes the chairman has an additional casting vote.</p>
Section 19	<p>Delete this section and substitute:</p> <p>19. The Governor may, by proclamation—</p> <p>(a) declare goods of a specified kind to be declared goods;</p> <p>(b) declare services of a specified kind to be declared services;</p> <p>(c) vary or revoke a declaration previously made under this section.</p>
Power to declare goods and services.	
Section 21a	Delete this section.
Section 22	Delete "shall include" and substitute "includes".
Section 22aa (1)	Delete subsection (1) but retain the definition of "grapes" transferring it to section 3 (1).
Section 22aa (2) and (3)	Transpose these subsections so as to become subsections of section 3.
Section 22a (4)	Delete "his capacity as such" and substitute "that capacity".



Section Amended	How Amended	
Section 22b (3)	Delete "and the like proceedings may be taken upon any such order as if it had been an order of the court in favour of the seller".	
Section 22b (5)	Delete this subsection and substitute: (5) For the purposes of this section, a person is vicariously liable for the act of an agent or employee unless it is proved that the person could not, by the exercise of reasonable diligence, have prevented that act.	
Section 22b (6)	Delete this subsection.	
Section 22c (2)	Delete this subsection.	
Section 22e	Delete this section and substitute: 22e. Sections 22a, 22b, 22c and 22d do not apply in relation to the sale of grapes by a member of a registered co-operative to the co-operative.	
Minimum price provisions do not apply to certain sales.	Section 24 (1)	Delete "rate" and substitute "price".
	Section 24 (2) (a)	Delete "rates" and substitute "prices".
Sales and supplies at prices above fixed maximum.	Section 25	Delete this section and substitute: 25. (1) A person shall not sell any declared goods or supply any declared services at a price greater than the maximum price fixed under this Act in relation to those goods or services. (2) Where a court finds a defendant guilty of an offence against subsection (1) it may (in addition to any penalty imposed by the court) order the defendant to repay the difference between the price actually received, and the maximum price that could lawfully have been charged, for the goods or services. (3) For the purposes of this section, a person is vicariously liable for the act of an agent or employee unless it is proved that the person could not, by the exercise of reasonable diligence, have prevented that act.
	Section 26 (1)	Delete "or rate" wherever it occurs. Delete "rate or".
	Section 26 (2)	Delete this subsection.
Sections 27 and 28	Delete these sections and substitute: 27. (1) Where the maximum wholesale price of goods of a particular class is fixed by an order under this Act a wholesaler who is not subject to the order but who purchases goods of that class from a wholesaler who is subject to the order shall not, without the consent of the Minister, re-sell the goods by wholesale at a price greater than the maximum permitted by the order. (2) Where the maximum retail price of goods of a particular class is fixed by an order under this Act, a person who is not subject to the order but who purchases goods of that class from a person who is subject to the order shall not, without the consent of the Minister, re-sell the goods by retail at a price greater than the maximum permitted by the order.	
Maximum prices not to be evaded by use of intermediaries.	Section 29 (1)	Delete "in custody or under his control".
	Section 29 (2) (b)	Delete this paragraph and substitute: (b) after making reasonable provision for private consumption or use, for satisfying subsisting contractual obligations and for ordinary business requirements, the defendant did not have a sufficient quantity of the declared goods to supply the quantity demanded;
Section 29 (2) (c)	Delete this paragraph and substitute: (c) the defendant was a wholesale trader in the declared goods and the person who demanded the goods was not a person who would normally be entitled to the supply of the goods on a wholesale basis;	

Section Amended	How Amended
Section 30	Delete this section and substitute: 30. Where declared goods are to be offered for sale in a package or container, a person shall not, without the written consent of the Minister, alter the size of the package or container prior to the retail sale of the goods.
Alteration of container size.	
Section 31	Delete "or rate, whether by way of premium or otherwise howsoever, than the maximum price or rate" and substitute "than the maximum price".
Section 33	Delete this section.
Section 43 (1)	Delete "according to its tenor".
Section 43 (2)	Delete "of goods or rates for services shall" and substitute "must".
Section 44	Delete this section and substitute: 44. A proclamation or order under this Act comes into operation on the date of its publication in the <i>Gazette</i> or on a later date specified in the proclamation or order.
Commencement of proclamations and orders.	
Section 46	Delete "for the defendant to prove that he" and substitute "to prove that the defendant".
Section 47	Delete this section and substitute: 47. A certificate signed by the Commissioner stating— (a) that a particular price was fixed under this Act in relation to declared goods or declared services; and (b) that the price was in force on a specified day, is proof, in the absence of proof to the contrary, of the facts stated.
Proof of fixing of prices.	
Section 47a	Delete this section and substitute: 47a. A notice required or permitted to be given or served under this Act may be given or served personally or by post.
Service of notices.	
Section 48	Delete this section.
Section 50	Delete this section and substitute: 50. (1) A person who contravenes or fails to comply with a provision of this Act is guilty of a summary offence. (2) A person who is guilty of an offence against this Act is, where no other penalty is prescribed, liable to a penalty not exceeding \$2 000 or imprisonment for 6 months.
Offences.	
Section 51	Insert subsection as follows: (3) A regulation may be of general or limited application.
Section 52	Delete this section.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor