



ANNO TRICESIMO SEPTIMO

ELIZABETHAE II REGINAE

A.D. 1988

No. 26 of 1988

An Act to amend the Trade Standards Act, 1979.

[Assented to 21 April 1988]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Trade Standards Act Amendment Act, 1988*.
- (2) The *Trade Standards Act, 1979*, is in this Act referred to as "the principal Act".

Commencement

2. (1) This Act will come into operation on a day to be fixed by proclamation.
- (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.

Repeal of s. 3

3. Section 3 of the principal Act is repealed.

Interpretation

4. Section 5 of the principal Act is amended—
 - (a) by striking out the definition of "dangerous goods" in subsection (1) and substituting the following definitions:
 - "dangerous goods" means goods declared under Part III to be dangerous goods;
 - "dangerous services" means services declared under Part III to be dangerous services;
 - "defect notice" means a notice issued under section 27a.;
 - (b) by striking out the definition of "materially inaccurate";
 - (c) by inserting after the definition of "packaging standard" in subsection (1) the following definition:

“premises” means—

- (a) any land, building or place;
- or
- (b) a part of premises;

and

- (d) by inserting at the end of the definition of “supply” the passage ‘and “supplier” has a corresponding meaning’.

Establishment of Council

5. Section 8 of the principal Act is amended—

- (a) by striking out from subsection (2) “five” and inserting “six”;
- and
- (b) by inserting after paragraph (c) of subsection (2) the following paragraph:

(ca) one shall be appointed from a panel of three persons nominated by associations that, in the opinion of the Minister, represent the interests of suppliers of goods;

Functions of the Council

6. Section 13 of the principal Act is amended by striking out “or the declaration of goods to be dangerous goods” and substituting “the declaration of goods to be dangerous goods, or the declaration of services to be dangerous services”.

Standards officers

7. Section 14 of the principal Act is amended by inserting in subsection (1) “employed in the Public Service of the State” after “any person”.

Powers of standards officer

8. Section 15 of the principal Act is amended—

- (a) by striking out subsection (1) and substituting the following subsection:

(1) A standards officer may, for purposes connected with the exercise, performance or discharge of any power, function or duty under this Act—

- (a) (i) enter and inspect any premises at any reasonable time;
- or
- (ii) stop and inspect any vehicle;

- (b) during the course of the inspection of any premises or vehicle—

- (i) require any person found in the premises or vehicle to answer any question;
- (ii) inspect any goods, articles or substances found in the premises or vehicle;
- (iii) open any container, package or other item found in the premises or vehicle;
- (iv) seize and remove anything that constitutes evidence of an offence against this Act;
- (v) on payment or tender of a reasonable price for any goods found in the premises or vehicle, remove the goods from the premises or vehicle;

- (vi) inspect, examine, analyse and test any goods;
 - (vii) take photographs, films or video recordings;
 - (viii) take measurements and make notes;
 - (ix) require any person to produce any plans, specifications, books, papers or other documents or records;
 - (x) search for any plans, specifications, books, papers or other documents or records;
 - (xi) examine, copy and take extracts from any plans, specifications, books, papers or other documents or records;
- and
- (xii) give such directions as are reasonably necessary for, or incidental to, the effective exercise of powers under this section.;
- (b) by striking out from subsection (4) "A" and substituting "Subject to subsection (5), a";
- (c) by striking out subsection (5) and substituting the following subsection:
- (5) A person is not required to answer a question or to produce a plan, specification, book, paper or other document or record under this section if the answer or the production of the plan, specification, book, paper or other document or record would result in or tend towards his or her self-incrimination.;
- (d) by striking out subsection (8) and substituting the following subsections:
- (7a) Where any plan, specification, book, paper or other document or record is seized and removed under this section, the person from whom it was seized, and any other person authorized by him or her, is entitled to inspect it at any reasonable time.
- (8) Where any goods are seized and removed under this section and—
- (a) proceedings are not instituted for an offence against this Act in relation to the goods within three months of their seizure;
- or
- (b) proceedings are instituted within that period but the defendant is not subsequently convicted,
- the person from whom the goods were seized is entitled to recover the goods, or, if the goods have been destroyed or damaged, or have deteriorated, to recover from the Minister as a debt the market value of the goods at the time of their seizure.

Minister may require information

9. Section 16 of the principal Act is amended—

- (a) by inserting after paragraph (b) of subsection (1) the following paragraph:
 - (ba) any services should be declared to be dangerous services;;
 - (b) by striking out from subsection (2) "A" and substituting "Subject to subsection (3), a";
- and

(c) by striking out subsection (3) and substituting the following subsection:

(3) A person is not required to furnish information under this section if the production of the information would result in or tend towards his or her self-incrimination.

Repeal of s. 18 and substitution of new section

10. Section 18 of the principal Act is repealed and the following section is substituted:

Cost of testing

18. (1) Where—

(a) goods are declared to be dangerous goods;

or

(b) services are declared to be dangerous services,

the Minister may recover as a debt from a manufacturer or supplier of the goods or from a supplier of the services the reasonable cost of any examination, analysis or test that led to the declaration.

(2) Where—

(a) goods are found not to comply with an applicable safety standard;

or

(b) services are found not to comply with an applicable safety standard,

the Minister may recover as a debt from a manufacturer or supplier of the goods or from a supplier of the services the reasonable cost of any examination, analysis or test that led to that finding.

(3) Where a person provides (in contravention of this Act) materially inaccurate information in relation to goods or services, the Minister may recover as a debt from that person the reasonable cost of any examination, analysis or test carried out for the purpose of testing the accuracy of the information.

(4) The court by which a person is convicted of an offence against this Act may, on the application of the Minister, order payment of any amount that the Minister is entitled to recover from the convicted person under this section.

(5) The Minister must, before proceeding to recover costs from a person under this section, supply to the person a statement setting out details of the examination, analysis or test that was carried out and the costs that were incurred.

(6) In any proceedings for the recovery of the cost of carrying out an examination, analysis or test to which this section applies, a certificate apparently signed by the Minister—

(a) certifying that the Minister supplied a statement in accordance with subsection (5) on a date specified in the certificate;

or

(b) certifying the amount of the costs,

will be accepted, in the absence of proof to the contrary, as proof of the matter so certified.

Repeal of s. 22 and substitution of new section

11. Section 22 of the principal Act is repealed and the following section is substituted:

Duty to comply with trade standards

22. (1) A person must not, in the course of a trade or business—

(a) manufacture or supply goods that do not comply with an applicable safety standard;

or

(b) supply goods in contravention of an applicable safety standard.

Penalty: \$10 000.

(2) A person must not, in the course of a trade or business—

(a) supply a service that does not comply with an applicable safety standard;

or

(b) supply a service contrary to an applicable safety standard.

Penalty: \$10 000.

Repeal of s. 23 and substitution of new section

12. Section 23 of the principal Act is repealed and the following section is substituted:

Safety standards

23. (1) Safety standards are directed at preventing or minimizing risk of injury or impairment of health.

(2) Safety standards may be promulgated by the Governor in the form of regulations.

(3) Safety standards may—

(a) regulate the design, construction, composition, materials, contents, finish, performance or other characteristics of any kind of goods;

(b) regulate the nature and quality of services of any kind and the manner in which they are to be performed;

(c) prohibit the supply of particular kinds of goods or services to persons of less than a specified age;

(d) prescribe precautions to be taken in relation to the supply of particular kinds of goods or services (either generally or when they are supplied to particular classes of persons);

(e) prohibit the supply of particular kinds of goods unless instructions are supplied, or adequate instruction is given, in their installation, alteration or use;

and

(f) make any other reasonable provision that is desirable to prevent or minimize risk of injury or impairment of health.

Repeal of s. 24 and substitution of new section

13. Section 24 of the principal Act is repealed and the following section is substituted:

Manufacture or supply of dangerous goods or services

24. (1) A person must not, in the course of a trade or business, manufacture or supply dangerous goods.

Penalty: \$10 000.

(2) A person must not, in the course of a trade or business, supply dangerous services.

Penalty: \$10 000.

Repeal of s. 25 and substitution of new section

14. Section 25 of the principal Act is repealed and the following section is substituted:

Declaration of dangerous goods and services

25. (1) The Minister may, by notice in the *Gazette*—

- (a) declare specified goods, or goods of a specified class, to be dangerous goods;
- (b) declare specified services, or services of a specified class, to be dangerous services;

or

- (c) vary or revoke a declaration under this section.

(2) A declaration cannot be made under this section unless the Minister is satisfied—

- (a) that the declaration is necessary in order to avert risk of injury or impairment of health;

and

- (b) that it is not appropriate in the circumstances to deal with the matter by the prescription of safety standards.

Repeal of s. 26 and substitution of new sections

15. Section 26 of the principal Act is repealed and the following sections are substituted:

Compensation

26. (1) A person to whom dangerous goods, or goods that do not comply with an applicable safety standard, are supplied is entitled to recover from the supplier—

- (a) compensation for any damage suffered by the person in consequence of a dangerous characteristic of the goods, or the failure to comply with an applicable safety standard;
- (b) where the goods are returned to the supplier or where they cannot be returned because they have been consumed or destroyed—any amount paid by the person for the goods;
- (c) where the goods are returned—any reasonable expenses incurred by the person in or in connection with the return of the goods.

(2) A person to whom dangerous services, or services that do not comply with an applicable safety standard, are supplied is entitled to recover from the supplier—

- (a) compensation for any damage suffered by the person in consequence of a dangerous characteristic of the services, or the failure to comply with an applicable safety standard;

and

- (b) any amount paid by the person for the services.

(3) The rights conferred by this section cannot be excluded or limited by contract.

(4) If in proceedings for compensation under this section it is established that the person claiming compensation contributed to his or her damage or loss, that fact must be reflected in any award of compensation to that person.

Temporary bans

26a. (1) Where it appears to the Minister—

- (a) that goods of a particular kind may be dangerous;

or

- (b) that services of a particular kind may be dangerous,

the Minister may on the recommendation of the Council, by notice in the *Gazette*, place a temporary ban (for a period not exceeding three months specified in the notice) on the manufacture or supply of those goods, or the supply of those services, while the Minister investigates whether they should be declared to be dangerous.

(2) The Minister may, on the recommendation of the Council, by further notice in the *Gazette*—

(a) extend the period of the ban (but not so that the total period of the ban exceeds six months);

or

(b) vary or revoke the ban.

(3) While the ban is in force, a person must not, in the course of a trade or business, manufacture or supply goods, or supply services, that are subject to the ban.

Penalty: \$10 000.

(4) The Minister must take reasonable steps to bring the publication of a notice under subsection (1) or (2) to the attention of manufacturers or suppliers who are known by the Minister to be affected by the notice.

Repeal of s. 27 and substitution of new section

16. Section 27 of the principal Act is repealed and the following section is substituted:

Warnings

27. (1) The Minister may take any action to warn the public against risks, or potential risks, associated with—

(a) goods or services that do not comply with an applicable safety standard;

(b) goods or services that have been supplied in contravention of an applicable safety standard;

(c) dangerous goods or services;

or

(d) goods or services that are subject to a temporary ban.

(2) For the purposes of subsection (1), the Minister may publish the trade name or description of goods or services and identify manufacturers or suppliers by name.

Insertion of new Part IIIA

17. The following Part is inserted after Part III:

PART IIIA

DEFECT NOTICES

Issue of defect notices

27a. (1) Where—

(a) goods are supplied in the course of trade or commerce after the commencement of this Part;

(b) the goods—

(i) are dangerous goods;

(ii) do not comply with an applicable safety standard;

or

(iii) are such as may cause injury;

and

(c) it appears to the Minister that insufficient action has been taken to avert danger to those to whom the goods have been supplied (or to other persons who may come into possession of the goods),

the Minister may issue a defect notice to the supplier.

(2) A defect notice is a notice that identifies a defect in, or dangerous characteristic of, the goods to which it applies and directs the supplier to do one or more of the following—

(a) to take action to recall the goods in accordance with directions contained in the notice and on the return of the goods—

(i) to repair the goods;

(ii) to replace the goods;

or

(iii) to refund to the person who returns the goods any amount paid by the person for the goods;

(b) to disclose to the public, or a specified section of the public, in the manner and within the period specified in the notice—

(i) the nature of the defect in, or dangerous characteristic of, the goods;

(ii) the circumstances in which the use of the goods is dangerous;

and

(iii) where appropriate—procedures for disposing of the goods;

(c) to inform the public, or a specified section of the public, in the manner and within the period specified in the notice, that the supplier undertakes to do whichever of the following the supplier thinks appropriate:

(i) to repair the goods;

(ii) to replace the goods;

(iii) to refund to a person who returns the goods any amount paid by the person for the goods.

(3) A defect notice may be issued to a supplier—

(a) personally;

(b) by post;

or

(c) if the notice is addressed to suppliers of a particular class—by publication in the *Gazette* and in a newspaper circulating generally in the State.

(4) The Minister must take reasonable steps to bring the publication of a notice under subsection (3) (c) to the attention of suppliers who are known by the Minister to be affected by the notice.

(5) Where goods are to be repaired in pursuance of a defect notice, the supplier must, on delivery of the goods for repair, cause the goods to be repaired so that—

(a) any defect in, or dangerous characteristics of, the goods identified in the notice is remedied;

and

(b) if there is a safety standard in respect of the goods—the goods comply with that standard.

(6) Where goods are to be replaced in pursuance of a defect notice, the supplier must replace the goods with similar goods that—

(a) do not have the defect or dangerous characteristic identified in the notice;

and

(b) if there is a safety standard applicable to the goods—comply with that standard.

(7) The cost of the repair or replacement of goods under subsection (5) or (6) (including any necessary transportation costs) must be borne by the supplier.

(8) Where a refund of the amount paid for goods is to be made in pursuance of a defect notice, the supplier must, subject to subsection (9), make such a refund in full.

(9) If the goods were acquired from the supplier more than 12 months before the date of the application for the refund, the amount of the refund may be reduced by an appropriate amount to allow for the use of the goods.

(10) The cost of the return of goods under subsection (8) (including any necessary transportation costs) must be borne by the supplier.

(11) If a supplier—

(a) fails to comply with a defect notice;

(b) supplies goods to which a defect notice relates while the notice remains in force;

or

(c) fails to comply with a requirement of this section,

the supplier is guilty of an offence.

Penalty: \$10 000.

Opportunity for conference to be afforded

27b. (1) Where the Minister proposes to publish a defect notice in relation to goods, the Minister must publish a notice in the *Gazette* and in a newspaper circulating generally in the State containing—

(a) a draft of the proposed defect notice;

(b) a summary of the reasons for the proposed publication of the defect notice;

and

(c) an invitation to any person who supplies or proposes to supply goods of the relevant kind to request the Council, within a period specified in the notice (which must be a period of at least 10 days from the date of publication), to hold a conference in relation to the proposed publication of the defect notice.

(2) The Minister must take reasonable steps to bring the publication of a notice under subsection (1) to the attention of suppliers who are known by the Minister to be suppliers of goods of the relevant kind.

(3) If no request for a conference is made within the period stipulated in the invitation or such longer period as the Council may allow, the Council must notify the Minister accordingly.

(4) If a request for a conference is made within the relevant period, the Council must appoint a time and place for the holding of the conference, and give notice of the time and place so appointed to the Minister and to the supplier.

(5) At a conference under this section—

(a) the Council will be represented by a member or members nominated by the Chairman;

(b) each supplier who requested a conference is entitled to be present or to be represented;

(c) any other person whose presence at the conference is considered by the Council to be appropriate is entitled to be present or to be represented;

(d) the Minister or the Minister's nominees are entitled to be present;

and

(e) the procedure to be followed will be as determined by the Council.

(6) The Council must allow the parties to the conference—

(a) reasonable access to information on the basis of which the publication of a defect notice is proposed;

and

(b) a reasonable opportunity to make representations on the question of whether the defect notice should be published.

(7) As soon as is practicable after the conclusion of a conference the Council must recommend that—

(a) the Minister publish a defect notice in terms of the draft notice;

(b) the Minister publish the defect notice with specified modifications;

or

(c) the Minister refrain from publishing the defect notice.

(8) If the Minister decides not to publish a defect notice, the Minister must give notice of that decision in the *Gazette* and in a newspaper circulating generally in the State.

Notification of voluntary recall

27c. (1) Where a supplier voluntarily takes action to recall goods because the goods will or may cause injury, the supplier must, within two days after taking that action, give notice in writing to the Minister—

(a) stating that the goods are subject to recall;

(b) setting out the nature of the defect in, or dangerous characteristic of, the goods;

and

(c) setting out the action that the supplier intends to take on the recall.

(2) A person who fails to comply with subsection (1) is guilty of an offence.

Penalty: \$10 000.

Action not to affect insurance contracts

27d. The liability of an insurer under a contract of insurance insuring a supplier against risk of loss related to defects in goods supplied by the supplier is not affected by the fact that the supplier gives to—

(a) the Council;

(b) the Minister or any other agency or instrumentality of the Crown;
or

(c) any officer or employee of the Crown or any of its agencies or instrumentalities,

information relating to goods to which the contract of insurance relates.

Repeal of ss. 28 to 30 and substitution of new sections

18. Sections 28 to 30 of the principal Act are repealed and the following sections are substituted:

Goods and services to which this Part applies

28. The Part applies to—

(a) goods of a class declared by regulation to be a class of goods to which this Part applies;

(b) services of a class declared by regulation to be a class of services to which this Part applies.

Compliance with quality standards

29. (1) A person must not, in the course of a trade or business, manufacture or supply goods to which this Part applies that do not comply with an applicable quality standard.

Penalty: \$2 000.

(2) A person must not, in the course of a trade or business, supply a service to which this Part applies that does not comply with an applicable quality standard.

Penalty: \$2 000.

Quality standards

30. (1) Quality standards are directed at ensuring—

(a) that goods to which this Part applies are reasonably fit for the purpose for which such goods are ordinarily used;

(b) that services to which this Part applies are reasonably fit for the purpose for which such services are ordinarily supplied.

(2) Quality standards may be promulgated by the Governor in the form of regulations.

(3) Quality standards may—

(a) regulate the design, construction, composition, materials, contents, finish, performance or other characteristics of goods;

(b) regulate the nature and quality of services and the manner in which they are to be supplied;

(c) make any other provision relating to the quality of goods or services.

Warnings

31. (1) The Minister may take any action to warn the public—

(a) that goods that do not comply with an applicable quality standard have been supplied to the public;

or

(b) that services that do not comply with an applicable quality standard have been supplied to the public.

(2) For the purposes of subsection (1), the Minister may publish the trade name or description of goods or services and identify manufacturers or suppliers by name.

Repeal of s. 44 and substitution of new sections

19. Section 44 of the principal Act is repealed and the following sections are substituted:

Compensation

44. (1) A person who suffers loss through the failure of a manufacturer or supplier to comply with a provision of this Act is entitled to compensation from the manufacturer or supplier (or jointly from them both) for the loss.

(2) Any such compensation may be recovered in the same way as damages for a tort.

(3) If in proceedings for the compensation it is established that the person claiming compensation contributed to his or her loss, that fact must be reflected in any award of compensation to that person.

(4) A court by which a manufacturer or supplier is convicted of an offence may, on application by a person claiming to have suffered loss in consequence of the offence, order the convicted person to pay to that person an amount fixed by the court by way of compensation under this section.

Statutory remedies to be non-exclusive

44a. The remedies for which this Act provides are not mutually exclusive; hence, the fact that a person seeks or obtains one such remedy does not preclude that person from pursuing or obtaining another or others.

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

D. B. DUNSTAN, Governor