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I assent,



CUTHBERT M SEBASTIAN

Governor-General.

8th December 2003.

SAINT CHRISTOPHER AND NEVIS

No. 9 of 2003

AN ACT to provide for the rights and obligations of consumers, sellers and supplier of goods and services; and to provide for related or incidental matters.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the National Assembly of Saint Christopher and Nevis, and by the authority of the same as follows:

PART I—PRELIMINARY

1. This Act may be cited as the Consumer Affairs Act, 2003. Short title.
2. (1) In this Act, unless the context otherwise requires, Interpretation.
 - “agricultural produce” means any produce, whether of the soil or otherwise, of stock-farming or of fisheries;
 - “Board” means the Board of Directors of the Bureau established under section 71;
 - “Bureau” means the Consumer Affairs Bureau established under section 69;
 - “Bureau of Standards” means the National Bureau of Standards set up by section 3 of the National Bureau of Standards Act, 1999; Act No. 7.
 - “Chairperson” means the Chairperson of the Board; and the Vice-Chairperson shall be construed accordingly;
 - “consumer” means a person who is either
 - (a) a person to whom goods are intended to be supplied in the course of business carried on by a supplier or potential supplier; or

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(b) a person for whom services are supplied in the course of a business carried on by the supplier or potential supplier; and

the person does not seek to receive the goods or services in the course of a business carried on by him, except that the term consumer, in respect to unfair contract terms, shall be limited to a natural person;

“consumer goods” mean goods which are ordinarily intended for private use or consumption, not being

(a) aircraft, other than hang-gliders, or motor vehicles;

(b) dangerous drugs within the meaning of Drugs (Prevention of Misuse) Act;

(c) tobacco;

“Court” includes the High Court;

“Director” means the Director of Consumer Affairs Bureau appointed under section 77 of this Act;

“document” includes

(a) anything on which there is writing;

(b) a map, plan, drawing or photograph;

(c) anything from which sound or visual images are capable, with or without the aid of a device, of being reproduced, including a part of that document, a copy, reproduction or duplicate of the document or part thereof; and

(d) a record, a security, any electronic data, computer programme, computer tape, computer disc and microfilm;

“enterprise” means any person or type of organisation, other than a non-profit organisation, involved in the production or the trade in goods, or the provision of services, except a person who works under a contract of employment, or hold office as director or secretary of a company;

“goods” mean any kind of property, other than real property, money, securities or choses in action;

“Minister” means the Minister responsible for consumer affairs;

“price” includes any charge or fee;

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“producer” means, in relation to a product,

- (a) the person who manufactured it;
- (b) in the case of a substance which has been won or abstracted, the person who won or abstracted it;
- (c) in the case of a product which is attributable to an industrial or other process having been carried out, the person who carried out that process;

“product” includes, any good, and a product which is comprised in another product, whether by virtue of being a component part or raw material or otherwise;

“ service” includes a service of any description, whether industrial, trade, professional or otherwise;

“supply” includes,

- (a) in relation to goods, supply or re-supply by way of gift, sale, exchange, lease, hire, or hire-purchase;
- (b) in relation to services,
 - (i) the performance of professional or non-professional engagements for any matter,
 - (ii) the rendering of services to order,
 - (iii) the provision of services by making them available to potential users,

other than the rendering of services under a contract of employment; and “supplier” shall be construed according;

“trade” means any trade, business, industry, profession, or occupation relating to the supply of goods or services;

“safe” in relation to goods, means that there is no risk, or no risk apart from one reduced to a minimum, that any of the following will, whether immediately or after a definite or indefinite period, cause the death of or any personal injury to any person:

- (a) the goods;
- (b) the keeping, use or consumption of the goods;

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- (c) the assembly of any of the goods which are, or are to be, supplied unassembled;
- (d) the emission or leakage from the goods or, as a result of the keeping, use or consumption of the goods, from anything else; or
- (e) the reliance on the accuracy of any measurement, calculation or other reading made by, or by means of the goods; and

“tobacco” includes any tobacco product within the meaning of the Sale of Food and Drugs Act, and any article or substance containing tobacco and intended for oral or nasal use.

(2) For the purposes of this Act, any references to the keeping, use, or consumption of any goods in the definition of “safe” shall be references to the

- (a) keeping, use, or consumption of the goods by the persons by whom, and in all or any of the ways or circumstances in which they might reasonably be expected to be kept, used or consumed;
- (b) keeping, use, or consumption of the goods either alone or in conjunction with other goods with which they might reasonably be expected to be kept, used or consumed.

Application of Act.

3. (1) This Act shall apply to

- (a) persons acting in trade or commerce; and
- (b) statutory corporations and Government Departments while acting in the course of trade or business.

(2) Sections 32, 33, and 34 shall apply to transactions conducted between an enterprise and a consumer who is a natural person.

(3) Notwithstanding any other provision of this Act, consumers shall be entitled to the rights conferred by this Act, in relation to the supply of water and electricity, to both existing and future consumers.

(4) Subject to subsection (3), nothing in this Act shall apply to a contract made before the date on which this Act comes into operation.

PART II – WARRANTIES ETC

Title etc.

4. (1) In a contract for the sale or supply of goods, other than a contract to which subsection (2) of this section applies, there shall be an implied warranty that the

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- (a) seller has the right to sell or supply the goods at the time the property is to pass;
- (b) goods are free from any undisclosed encumbrances;
- (c) consumer shall enjoy quiet possession of the goods.

(2) Where it appears from the terms of a contract or where it can be inferred from the circumstances of the contract that the intention is that the supplier is to transfer only such title as he or a third party may have, then there shall be an implied warranty that.

- (a) all charges or encumbrances known to the supplier and not known to the consumer have been disclosed to the consumer before the making of the contract; and
- (b) the supplier, in case where the parties to the contract intend that the supplier should only transfer such title as a third person may have, to that person, and anyone claiming through or under a charge or encumbrance disclosed or known to the consumer before the contract is made, shall not disturb the consumer's quiet possession of the goods.

5. (1) Where there is a contract for the sale or supply of goods by the goods sold shall correspond with the description.

Supply by description and sample.

(2) Where the supply of goods is by reference to a sample as well as by description it shall not be sufficient that the bulk of goods correspond with the sample if the goods do not also correspond with the description.

(3) Where the supply of goods is by reference to a sample the bulk of goods supplied shall correspond with the sample.

(4) A consumer of the goods referred to in subsections (2) and (3) shall be given a reasonable opportunity by the seller to compare the goods supplied with the sample before accepting the goods.

(5) The provisions of this section shall not apply to a sale by auction or competitive tender.

(6) A contract for the supply of goods is not prevented from being a supply by description for the purpose of subsection (1) if the goods when exposed for sale or hire are selected by the consumer.

6. (1) Where a supplier supplies goods to a consumer there shall be an implied warranty that the goods are satisfactory quality, except that this warranty shall not be implied

Implied warranties as to quality and fitness.

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- (a) where defects are specifically drawn to the attention of the consumer before the contract is made; or
- (b) if the consumer examines the goods before the contract is made as regards defects which that examination ought to reveal.

(2) Where a supplier supplies goods to a consumer in the course of trade or commerce and the consumer, expressly or by necessary implication, makes known to the seller or the person by whom any antecedent negotiations are conducted any particular purpose for which the goods are being acquired, there shall be implied in the contract for supply of goods that the goods are fit for that purpose, whether or not that is the purpose for which the goods are commonly supplied.

(3) The warranty referred to in subsection (2) shall not be implied where the circumstances show that the consumer does not rely or that it is unreasonable for him to rely on the skill or judgment of the supplier or the person by whom any antecedent negotiations are made.

(4) The provisions of this section shall not apply to a sale by auction or competitive tender.

(5) Where a contract for the supply of goods, expressly or by necessary implication, is to the effect that the goods are to be supplied by reference to sample, there shall be implied in that contract a warranty that the

- (a) the bulk of the goods correspond in quality with the sample;
- (b) consumer shall have a reasonable opportunity of comparing the bulk of the goods with the sample; and
- (c) goods shall be free from any defect rendering them unsatisfactory if the defects would not be apparent on reasonable examination.

(6) Where goods are supplied to a consumer there shall be an implied warranty that the goods are unused, unless before the consumer accepts the goods

- (a) the supplier discloses to the consumer that the goods are not unused; or
- (b) the consumer knows or ought to know that the goods are not unused or are likely not to be unused.

(7) For the purposes of subsection (6), goods are unused notwithstanding that they have been used by the supplier or any other

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person to test, prepare or deliver them, if they have not been so used to an unreasonable extent.

7. (1) Goods of any kind are of satisfactory quality within the meaning of this Part if they are as fit for the purposes for which goods of that kind are commonly bought as it is reasonable to expect having regard to

References to quality etc.

- (a) any description applied to them;
- (b) the price, if relevant;
- (c) that state or condition of the goods or services;
- (d) the durability of the goods;
- (e) freedom from minor defects;
- (f) safety and price of the goods and services;
- (g) any representations made by the seller or supplier of services; and
- (h) any other relevant circumstance.

(2) For the purposes of sections 4, 5, 6, 7, 10, 11, 12, and 13, a reference to a contract does not include a contract made before the coming into force of this Act.

8. (1) An express warranty made by a manufacturer in a document relating to goods shall bind the manufacturer if, in connection with the supply of the goods to a consumer, the document is given by the supplier to the consumer with the actual or apparent authority of the manufacturer.

Express warranty by manufacturer.

- (2) An express warranty which
 - (a) is included in a document relating to goods;
 - (b) purports to have been made by the manufacturer of the goods; and
 - (c) is given to a consumer by a supplier of the goods;

shall be presumed to have been made by the manufacturer, unless that presumption is rebutted by evidence to the contrary.

(3) Where there is evidence that a document that contains an express warranty by a manufacturer in respect of goods was given to a consumer by a supplier in connection with the supply of the goods to the consumer, it shall be presumed that the document was given to the consumer with the authority of the manufacturer, unless that presumption is rebutted by evidence to the contrary.

(4) Section 28(1) gives a consumer a right of redress against a manufacturer where goods fail to comply with an express warranty that is binding on the manufacturer by virtue of this section.

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Express warranty
by a supplier.

9. (1) Where an express warranty is stated on a label or packaging attached to or accompanying goods supplied by the supplier to a consumer, the supplier shall be bound by the express warranty unless the supplier made it clear to the consumer that he or she does not accept the warranty.

(2) Subject to subsection (3), a supplier of goods shall be bound by an express warranty contained in an advertisement originating from or carried out by the manufacturer of the goods if the supplier expressly or impliedly adopts the express warranty.

(3) Notwithstanding that a supplier may not be bound by an express warranty by virtue of subsection (1) or (2), any descriptive statement that appears on a label or on a packaging attached to or accompanying goods or in an advertisement referred to in subsection (2) shall form part of the description of the goods for the purposes of section 5.

(4) Section 28(1) gives a consumer a right of redress against a supplier where goods fail to comply with an express warranty that is binding on the manufacturer by virtue of this section.

Warranties in
relation to the
supply of
services.

10. (1) In a contract for the supply or provision of services to a consumer there shall be an implied warranty that the services shall be rendered with due care and skill.

(2) Where, in a contract for the supply or provision of services to a consumer, any materials are supplied in connection with those services there shall be an implied warranty that the materials are fit for the purpose for which they are supplied

(3) Where a supplier supplies services to a consumer and the consumer, expressly or by necessary implication, makes known to the supplier any particular purpose for which the services are required or the result that he desires the services to achieve, there shall be an implied warranty that the services supplied under the contract shall be of such a nature and quality that they are expected to achieve that result.

(4) Where, in a contract for the supply or provision of services to a consumer, a supplier supplies to the consumer any materials in connection with those services and the consumer, expressly or by necessary implication, makes known to the supplier any particular purpose for which the materials are required, there shall be an implied warranty that the materials are fit for that purpose.

(5) The warranty referred to in subsection (2) and (4) shall not be implied where circumstances show that the consumer does not rely, or that it is unreasonable for him to rely, on the supplier's skill or judgment.

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(6) The provisions of this section shall not apply to contracts for the supply of services by way of competitive tender.

(7) Except as expressly provided in this Part, nothing in this Part shall be taken to limit, restrict or otherwise affect any right or remedy a person would have had if this Part had not been enacted.

11. Where, in any contract for the supply or sale of goods or services, no price is agreed upon by the parties to the contract, the goods or services shall be charged at a reasonable price.

Contract price.

12. Where, in a contract for the sale of goods or services, no time for the performance and completion of the contract is provided for, then the contract shall be performed and completed within a reasonable time.

Time of completion of contract.

13. (1) The doctrine of privity of contract shall not extend to the transactions referred to in sections 4, 5, 6, and 7 of this Act.

Restriction on the doctrine of privity of contract.

(2) A person who derives any title in goods or services from a consumer shall enjoy the same rights in respect to the breach of services specified under this part.

14. (1) Subject to subsection (7), where goods fail to comply with the provisions of this Part, the consumer may exercise the remedies specified in sections 15, 18, 19, and this section.

Remedies against supplier.

(2) Where the failure can be remedied, the consumer may require the supplier to remedy the failure within a reasonable time in accordance with section 15.

(3) Where a supplier who is required to remedy a failure refuses or neglects to do so, or does not succeed in doing so within a reasonable time, the consumer may

- (a) have the failure remedied elsewhere and obtain from the supplier all reasonable costs incurred in having the failure remedied; or
- (b) subject to section 16, reject the goods in accordance with section 18.

(4) Where the failure cannot be remedied or is of a substantial character within the meaning of section 17, the consumer may

- (a) subject to section 16, reject the goods in accordance with section 18; or
- (b) obtain from the supplier damages in compensation for any reduction in value of the goods below the price paid or payable by the consumer for the goods.

(5) In addition to the remedies set out in subsections (2), (3), and (4), the consumer may obtain from the supplier damages for any

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loss or damage to the consumer resulting from the failure (other than loss or damage through reduction in value of the goods) which was reasonably foreseeable as being liable to result from the failure.

(6) Damages referred to in subsection (4) may include a sum in respect of any personal injury, distress, inconvenience, disappointment or vexation reasonably suffered as a result of the failure, except that this subsection shall only apply where

- (a) the damage cannot be remedied or is of substantial character, and the consumer opts to obtain damages from the supplier; and
 - (b) the supplier has been given adequate notice and an opportunity to respond promptly.
- (7) Notwithstanding subsection (1), where
- (a) the manufacturer, or a servant or agent of the manufacturer, makes a representation, other than a statement on any packaging or label, in respect of goods; and
 - (b) the goods would have complied with the warranty set out in section 6 if that representation had not been made;

there is no right of redress against the supplier under this Act in respect of the failure of the goods to comply with that warranty.

Options of supplier who has been required to provide remedy.

15. (1) A supplier who is required to provide a remedy under section 14(2) may comply with the requirement

- (a) by
 - (i) repairing the goods, in case where the failure does not relate to title;
 - (ii) curing any defect in title, in a case where the failure relates to title; or
- (b) by replacing the goods with goods of identical type; or
- (c) where the supplier cannot reasonably be expected to repair the goods, by providing a refund of any money paid or other consideration provided by the consumer in respect of the goods.

(2) Where a consumer obtains goods to replace defective goods pursuant to subsection (1), the replacement goods shall, for the purposes of this Act, be deemed to be supplied by the supplier and the implied warranties and obligations arising under this Act consequent upon a supply of goods to a consumer shall apply to the replacement goods.

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(3) A refund referred to in subsection 1(c) means a refund in cash of the money paid or the value of any other consideration provided, or both, as the case may require.

16. (1) The right to reject goods conferred by this Act shall not apply if

Loss of right to reject goods.

- (a) the right is not exercised within a reasonable time within the meaning of subsection (2);
- (b) the goods have been disposed of by the consumer, or have been lost or destroyed while in the possession of a person other than the supplier or an agent of the supplier;
- (c) the goods were substantially damaged after delivery to the consumer for reasons not related to their state or condition at the time of supply; or
- (d) the goods have been attached to or incorporated in any real or personal property and they cannot be detached or isolated without damaging them.

(2) In section (1)(a), the term “reasonable time” means a period from the time of supply of the goods in which it would be reasonable to expect the defect to become apparent having regard to

- (a) the type of goods;
- (b) the use to which a consumer is likely to put them;
- (c) the length of time for which it is reasonable for them to be used;
- (d) the amount of use to which it is reasonable for them to be put before the defect becomes apparent.

(3) This section applies notwithstanding section 36 of the Sale of Goods Act.

Cap. 348.

17. For the purposes of section 14, a failure to comply with an implied warranty is of a substantial character in any case where

Meaning of “failure of a substantial character”.

- (a) the goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure;
- (b) the goods depart in one or more significant respects from the description by which they were supplied or, where they were supplied by reference to a sample, from the sample;
- (c) the goods are substantially unfit for a purpose which goods of the type in question are commonly supplied

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or, where section 8(1) applies, the goods are unfit for a particular purpose made known to the supplier or represented by the supplier to be a purpose for which the goods would be fit, and the goods cannot easily and within a reasonable time be remedied to make them fit for such purpose;

- (d) the goods are not of acceptable quality within the meaning of section 7 because they are unsafe; or
- (e) the goods are not unused in accordance with section 6(6).

Manner of
rejecting goods.

18. (1) The consumer shall exercise the right to reject goods under this Act by notifying the supplier of the consumer's decision to reject the goods and of the ground or grounds for rejection.

(2) Where the consumer exercises the right to reject goods, the consumer shall return the rejected goods to the supplier unless,

- (a) because of the
 - (i) nature of the failure to comply with the warranty in respect of which the consumer has the right to reject the goods; or
 - (ii) size or height or method of attachment, the goods cannot be returned or removed or transported without significant cost to the consumer, in which case the supplier shall collect the goods at the expense of the supplier; or
- (b) the goods have already been returned to, or retrieved by, the supplier.

(3) Where the ownership in the goods passes to the consumer before the consumer exercises the right of rejection, the ownership in the goods shall revert to the supplier when the supplier receives the notification mentioned in section (1).

Options of
consumer who
rejects goods.

19. (1) Where the consumer exercises the right to reject goods, he or she may choose to have either

- (a) a refund of any money paid or other consideration provided by him or her in respect of the rejected goods; or
- (b) goods of the same type and of similar value to replace the rejected goods, where such goods are reasonably available to the supplier as part of the stock of the supplier;

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and the supplier shall make provision accordingly.

(2) A refund referred to in subsection (1)(a) means a refund in cash of the money paid or the value of any other consideration provided, or both, as the case may require.

(3) The obligation to refund is not satisfied by permitting the consumer to acquire goods from the supplier.

(4) Where a consumer obtains goods to replace rejected goods pursuant to subsection (1)(b), the replacement goods shall, for the purposes of this Act, be deemed to be supplied by the supplier, and the warranties and obligations arising under this Act consequent upon a supply of goods to a consumer shall apply in relation to the replacement goods.

20. (1) Where a service supplied to a consumer fails to comply with a warranty set out in section 10, the consumer may exercise the remedies specified in this section.

Right of redress where service does not comply with a warranty.

(2) Where the failure can be remedied, the consumer may require the supplier to remedy the failure within a reasonable time.

(3) Where the supplier who is required to remedy a failure refuses or neglects to do so, or does not succeed in doing so within a reasonable time, the consumer may

- (a) have the failure remedied elsewhere and recover from the supplier all reasonable costs incurred in having the failure remedied; or
- (b) subject to section 23, cancel the contract for the supply of the service in accordance with section 25.

(4) Where the failure cannot be remedied or is of a substantial character within the meaning of section 24, the consumer may

- (a) subject to section 23, cancel the contract for the supply of the service in accordance with section 25; or
- (b) obtain from the supplier damages in compensation for any reduction in value of the product of the service below the charge paid or payable by the consumer for the service.

(5) In addition to the remedies set out in subsections (2) and (3), the consumer may obtain from the supplier damages for any loss or damage (including personal injury, distress, inconvenience, disappointment or vexation to the consumer reasonably resulting from the failure but excluding loss or damage through reduction in value of the

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product of the service) which was reasonably foreseeable as being liable to result from the failure.

Exceptions to right of redress under section 20.

21. Notwithstanding section 20, there is no right of redress against a supplier under this Act in respect of a service or any product resulting from a service which fails to comply with a warranty set out in section 10 only because of

- (a) an act or default or omission of, or any representation made by, any person other than the supplier or a servant or agent of the supplier; or
- (b) a cause independent of human control.

Goods supplied in connection with a service.

22. Nothing in section 20 limits or affects the rights of a consumer under this Part where goods are supplied in connection with a service.

Cancellation where Service is incidental to supply of goods.

23. Where the service to be supplied under the contract is merely incidental to the supply of goods, the consumer cannot cancel the contract under this Act if he or she has or had the right to reject the goods under section 14.

Meaning of “failure of a substantial character”.

24. For the purposes of section 20(4), a failure to comply with a warrant is of a substantial character in a case where

- (a) the service would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure;
- (b) the product of the service is substantially unfit for a purpose for which services of the type in question are commonly supplied and the product cannot easily and within a reasonable time be remedied to make it fit for the purpose;
- (c) if the warranty as to fitness applies, the product of the service is unfit for a particular purpose, or is of such a nature and quality that the product of the service cannot be expected to achieve any particular result, made known to the supplier, and the product cannot easily and within a reasonable time be remedied to make it fit for the particular purpose or to achieve the particular result; or
- (d) the product of the service is unsafe.

Rules relating to cancellation.

25. (1) The cancellation by a consumer of a contract for the supply of a service does not take effect

- (a) before the time at which the cancellation is made known to the supplier; or

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- (b) where it is not reasonably practicable to communicate with the supplier, before the time at which the consumer indicates, by means which are reasonable in the circumstances, his or her intention to cancel the contract.

(2) Subject to subsection (3), the cancellation may be made known by words, or by conduct indicating an intention to cancel, or both, and it is not necessary to use any particular form of words so long as the intention to cancel is made known.

(3) Where it is reasonably practicable to communicate with the supplier, subsection (2) has effect subject to any provision in the contract for the supply of a service requiring notice of cancellation in writing.

26. (1) Where a consumer cancel a contract for the supply of a service under this Act,

Effect of
cancellation.

- (a) the consumer is entitled to recover from the supplier a refund of any money paid or other consideration provided in respect of the service unless a court or the Tribunal orders that the supplier may retain the whole or part of the money paid or other consideration provided by the consumer;
- (b) so far as the contract has been performed at the time of the cancellation, no party shall be, by reason of the cancellation, divested of any property transferred or money paid pursuant to the contract, except as otherwise provided in paragraph (a);
- (c) so far as the contract remains unperformed at the time of the cancellation, no party shall be obliged or entitled to perform it further.

(2) Nothing in subsection (1) shall affect

- (a) the right of a party to recover damages in respect of a misrepresentation or the repudiation or breach of a contract by another party;
- (b) the right of the consumer to recover damages under subsection (4)(b) or (5) of section 20; or
- (c) the right of the consumer under this Act to reject goods supplied in connection with a service.

27. Nothing in this Part limits or affects

Savings.

- (a) any rule of law or any enactment which imposes on the supplier a duty that is stricter than imposed by this Part;

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- (b) any rule of law whereby any term not inconsistent with this Part is to be implied in a contract for the supply of a service;
- (c) any enactment which defines or restricts the rights, duties, or liabilities arising in connection with a service of any description, or any rule of law conferring immunity from suit on an attorney-at-law for work done in the course of, or in connection with, proceedings before any court or tribunal.

Right of redress
against a
manufacturer.

28. (1) Subject to subsection (2), a consumer shall have a right of redress against a manufacturer of goods where goods fail to comply with the warranties set out in sections 5, 6, and 8 of this Act.

(2) Notwithstanding subsection (1), a consumer shall have no right of redress against a manufacturer under this Act in respect of goods which

- (a) fail to comply with section 6 by reason only of
 - (i) an act or default or omission of, or any representation made by, any person other than the manufacturer or a servant or agent of the manufacturer;
 - (ii) a cause independent of human control occurring after the goods left the control of the manufacturer;
 - (iii) the price charged by the supplier being higher than the manufacturer's recommended retail price or the average retail price; or
- (b) fail to comply with section 5 by reason only of
 - (i) an act or default or omission of any person, other than the manufacturer or a servant or agent of the manufacturer;
 - (ii) a cause independent of human control occurring after the goods left the control of the manufacturer.

Remedies against
a manufacturer.

29. (1) Subject to subsection (3), where a consumer has a right of redress under this Part, the consumer or a person who acquires the goods from or through the consumer, may obtain damages from the manufacturer

- (a) for any reduction, subject to paragraph (b), resulting from the failure, being a reduction in the value of the goods below the price paid or payable

by the consumer for the good, or below the average retail price of the goods at the time of supply, whichever is lower;

- (b) for any loss or damage (including personal injury distress, inconvenience, disappointment or vexation to the consumer or that other person reasonably resulting from the failure but excluding loss or damage through a reduction in value of the goods) which was reasonably foreseeable as being liable to result from the failure.

(2) Subject to subsection (3), where the consumer or a person who acquires the goods from or through the consumer, is entitled by an express warranty given by the manufacturer to require the manufacturer to remedy a failure by repairing the goods or replacing them with goods of identical type, no action shall be commenced under subsection (1)(a) unless the consumer or that other person has required the manufacturer to remedy the failure and the manufacturer refuses or neglects to remedy the failure, or does not succeed in remedying the failure within a reasonable time.

(3) This section does not apply to a person who acquires goods from or through a consumer unless that person fails within paragraph (b) of the definition of “consumer” in section 2.

PART III – UNFAIR CONTRACT TERMS

30. (1) Subject to subsection (6), this Part shall apply to any term of a contract concluded between a supplier and a consumer where the term has not been individually negotiated.

Unfair terms to which the Act applies.

(2) Where a term of a contract is in plain and intelligible language, no assessment shall be made of the fairness of the term that

- (a) defines the main subject matter of the contract; or
- (b) concerns the adequacy of the price or remuneration, as against the goods or services sold or supplied.

(3) For the purposes of this Part, a term shall be regarded as not having been individually negotiated where the term shall have been drafted in advance and the consumer has not been able to influence the substance of the term.

(4) Notwithstanding that a specific term or certain aspects of the term in a contract has or have been individually negotiated, this Part shall apply to the rest of the contract if an overall assessment of the contract indicates that it is a pre-formulated standard contract.

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(5) The burden of proving that a term of a contract was individually negotiated shall lie on the seller or supplier who claims that such term was individually negotiated.

- (6) The provision of this Part shall not apply to
- (a) a contract relating to employment;
 - (b) a contract relating to succession rights;
 - (c) a contract relating to right under family law;
 - (d) a contract relating to the incorporation and organisation of companies or partnerships;
 - (e) any term incorporated in order to comply with or which reflects
 - (i) statutory or regulatory provisions of Saint Christopher and Nevis, or
 - (ii) the provisions of principles of international conventions to which Saint Christopher and Nevis is a party.

Meaning of unfair term.

31. (1) Subject to subsections (2) and (3), “unfair term” means a term in a contract which, contrary to the requirement of good faith, causes a significant imbalance in the parties’ rights and obligations under the contract to the detriment of the consumer.

(2) In order to assess the unfair nature of a contract, the assessment shall be made taking into account

- (a) the nature of the good or services for which the contract was concluded;
- (b) all the circumstances attending the conclusion of the contract as at the time of the conclusion of the contract;
- (c) all the other terms of the contract or of another contract on which the term is dependent.

(3) In determining whether a term of a contract satisfies the requirements of good faith regard shall be had, in particular, to the following matters:

- (a) the strength of the bargaining positions of the parties;
- (b) whether the consumer had an inducement to agree to the term;
- (c) whether the goods or services were sold or supplied to the special order of the consumer; and
- (d) the extent to which the seller or supplier has dealt fairly and equitably with the consumer.

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(4) A non-exhaustive list of indicative terms of contracts that may be regarded as unfair for the purposes of this Act is set out in the First Schedule to this Act.

First Schedule.

32. (1) No unfair term of a contract concluded with a consumer by a seller or supplier shall be binding on the consumer.

Unfair terms of a contract not binding on the consumer.

(2) The contract shall continue to bind the parties if it is capable of continuing in existence without the unfair term.

33. (1) A supplier shall ensure that any written term of a contract is expressed in plain and intelligible language.

Construction of written contracts.

(2) Where there is doubt about the meaning of a written term of a contract, the interpretation most favourable to the consumer shall prevail.

PART IV – UNFAIR TRADE PRACTICES

34. (1) This section shall apply to transactions between business enterprises that fall under a monetary threshold prescribed by the Minister by regulations made under Act.

Engaging in unconscionable conduct.

(2) Subject to subsection (3), a business enterprise shall not, in the course of trade or commerce, engage in conduct that is, in all the circumstances, unconscionable.

(3) The conduct referred to in subsection (2) must be in connection with

- (a) supply or possible supply of goods or services to another business enterprise; or
- (b) acquisition or possible acquisition of goods or services from another business enterprise.

(4) Where a business enterprise engages in conduct prohibited by this section, a party who is a victim of the conduct or the Bureau may institute legal proceedings against that business enterprise in accordance with this Act.

(5) For the purposes of this section, the factors that may be taken into account to determine whether a business enterprise is or has engaged in conduct which is unconscionable include the following:

- (a) the relative bargaining strengths of the parties;
- (b) whether, as a result of the stronger party's conduct, the other party was required to meet conditions not reasonably necessary to protect the stronger party's legitimate interest;

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- (c) whether the party in a weak bargaining position could understand the documentation used;
- (d) the use of any undue influence, pressure, or unfair tactics by the stronger party;
- (e) how much the weak party would have had to pay or charge, and under what circumstances, to buy or sell identical or equivalent goods or services from or to another supplier;
- (f) the extent to which the stronger party's conduct was consistent with its conduct in similar transactions with other business enterprise;
- (g) the requirements of any applicable industry code, or other code, if the weak party acted in the reasonable belief that the stronger party would comply with it;
- (h) the extent to which the stronger unreasonably failed to disclose
 - (i) any intended conduct that might affect the interests of the weak party, or
 - (ii) any risks to the weak party arising from that conduct which the stronger party should have foreseen would not be apparent to the weak party;
- (i) the extent to which the stronger party was willing to negotiate with the weak party the terms of any supply contracts;
- (j) the extent to which each party acted in good faith.

(6) For the purposes of this section, the court shall not have regard to any circumstances that were not reasonably foreseeable at the time of the conduct.

(7) Where a business enterprise is found to have engaged in unconscionable conduct prohibited under this section, the Court may grant to the party that was a victim of the unconscionable conduct one or more of the following relief:

- (a) an injunction to cease conduct;
 - (b) compensation for damages;
 - (c) declaring the contract void in whole or in part;
 - (d) requiring a refund of money or return of property;
- and

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(e) such other relief as the court may see fit.

(8) Where a business enterprise is found to have engaged in unconscionable conduct prohibited under this section the Tribunal may grant to the party that was a victim of the unconscionable conduct one or more of the following relief:

- (a) compensation for damages;
- (b) declaring the contract void in whole or in part;
- (c) varying the contract or arrangement;
- (d) requiring that specified services be supplied; and
- (e) requiring a refund of money or return of property.

35. (1) A supplier shall not, in connection with the promotion of supply or sale of goods or services, engage in conduct that is misleading or deceptive, or is likely to mislead or deceive.

Misleading or
deceptive
conduct.

(2) Nothing in this Part shall be construed as limiting the generality of the provisions of subsection (1) of this section.

(3) Where a supplier engages in the conduct referred to in subsection (1)

- (a) the Bureau may apply to court for an injunction to restrain the supplier from continuing to engage in that conduct; and
- (b) a person who suffers loss as a result of the conduct may seek redress from court in form of damages.

36. A supplier shall not, in connection with the supply or possible supply of goods or services, or in connection with the promotion of the supply or use of goods or services.

False
representation.

- (a) falsely represent that the
 - (i) goods are of a particular standard, quality, value, grade, composition, style, or model,
 - (ii) goods have had a particular history or particular previous use,
 - (iii) services are of a particular standard, quality, value or grade; or
 - (iv) services are supplied by a particular person or by a person of a particular trade, qualification or skill;
- (b) falsely represent that the
 - (i) goods are new,

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- (ii) goods are reconditioned, or
- (iii) goods were manufactured, produced, processed, or reconditioned at a particular time;
- (c) represent that goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits they do not have;
- (d) represent that the supplier has a sponsorship, approval or affiliation it does not have;
- (e) make false or misleading representation concerning the existence of, or amount of, price reductions;
- (f) make false or misleading representation concerning the need for any goods, services, replacements or repairs, including the availability of facilities for the repair of goods or the availability of spare parts for goods;
- (g) falsely represent that a particular person has agreed to acquire the goods or services;
- (h) make a false or misleading representation or statements concerning the place of origin of the goods;
- (i) make false or misleading representation or statements concerning the existence, exclusion or effect of any warranty, guarantee, right, or remedy.

Offering gifts and prizes.

37. A supplier shall not,
- (a) in connection with the supply or possible supply of goods or services; or
 - (b) in connection with the promotion of the supply or use of goods or services;

offer gifts, prizes, or other items with the intention of not providing the goods or services on the terms offered.

Bait advertising.

38. A supplier shall not advertise for the supply of goods or services at a special price if the supplier does not intend to supply the goods or services at that price for a reasonable period, and in reasonable quantities having regard to the nature of the advertisement.

Referral selling.

39. A supplier shall not induce a person to acquire goods or services on the basis of a representation that the person shall, after the contract for the acquisition of the goods or services is made, receive a rebate, commission, or other benefit in return for giving the supplier names of prospective customers or otherwise assisting the supplier to supply goods or services to other persons, if receipt of the rebate, commission, or other benefit is contingent on an event occurring after the contract is made.

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40. A supplier shall not accept payment or other consideration for goods or services where, at the time of the acceptance, the supplier intends
- Falsely accepting payment.
- (a) not to supply the goods or services; or
 - (b) to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is accepted.
41. A supplier shall not make a false or misleading statement concerning the profitability, risk, or any other material aspect of any business activity that the supplier has represented as one that can be, or can be to a considerable extent, carried on at a person's place of residence.
- Misleading statements on profitability etc.
42. (1) No person shall, in trade or commerce, sell goods to which more than one price is appended at a price that is greater than the lower, or lowest, of the prices.
- Dual pricing.
- (2) In subsection (1), a reference to a price appended to goods includes a reference to a price
- (a) that is
 - (i) annexed or affixed to; or
 - (ii) written, printed, stamped or located on, or otherwise applied to;

the goods or any band, ticket, covering, label, reel or thing used in connection with the goods;
 - (b) that is used in connection with the goods or anything on which the goods are mounted for display or exposed for sale;
 - (c) that is determined on the basis of anything encoded on or in relation to the goods;
 - (d) that is published in relation to the goods in a catalogue available to the public if
 - (i) a time specified in the catalogue as the time after which the goods will not be sold at that price and that time has not passed; or
 - (ii) in any other case, the catalogue may reasonably be regarded as not out of date; or
 - (e) that is in any other way represented in a manner from which it may reasonably be inferred that the price represented is a price applicable to the goods.

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(3) Where a price appended to goods is written, stamped or located wholly or partly over another price appended to the goods, all the prices are, for the purposes of subsection (1), prices appended to the goods.

- (4) It shall be a defence if an accused person shows that
- (a) the contravention in respect of which the prosecution was instituted was due to
 - (i) the act or default of another person, other than a director, employee or agent of the accused person; or
 - (ii) an accident or to some other cause beyond the control of the accused person; and
 - (b) the accused person had taken all reasonable precautions and exercised due diligence to avoid the contravention.

Coercion.

43. A supplier shall not use undue force, harassment or coercion, in connection with the supply of goods or services to a consumer or the payment for goods or services by a consumer.

Pyramid selling.

44. (1) A supplier who is in anyway involved in a trading scheme to which this section applies shall not, in respect of a consumer who is a participant in that trading scheme, or who has applied or been invited to become a participant in the scheme, request payment to or for the benefit of the supplier, being payment that the consumer is induced to make by reason that a prospect is held out of him of receiving payments or other benefits in respect of the introduction, whether by himself or by another person, of other consumers who become participants in that trading scheme.

(2) A supplier referred to in subsection (1) shall not hold out to any person the prospect of receiving payments or other benefits in respect of the introduction, whether by himself or by another person, of other persons to become participants in the trading scheme, in an attempt to induce the person,

- (a) if he is already a participant in that trading scheme, to make any payment to or for the benefit of the promoter or any of the promoters or for the benefit of a participant in that trading scheme; or
 - (b) if he is not already a participant in that trading scheme, to become such a participant and to make a payment of a kind mentioned in paragraph (a).
- (3) For the purposes of subsections (1) and (2),

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- (a) a prospect of a kind mentioned in those subsections shall be deemed to be held out to a person whether or not it is held out so as to confer on him a legally enforceable right;
 - (b) in determining whether an inducement or an attempt to induce is made by holding out a prospect of a kind mentioned in those subsections, it shall be sufficient if a prospect of that kind constitutes or would constitute a substantial part of the inducement; and
 - (c) any reference to the making of a payment to or for the benefit of a person shall be construed as including the making of a payment partly to or for the benefit of one or more other persons.
- (4) For the purposes of this section, a scheme is a trading scheme to which this section applies if the scheme includes the following elements:
- (a) the goods or services, or both, are to be provided by the person promoting the scheme or, in the case of a scheme promoted by two or more persons acting in concert are to be provided by one or more of those persons; and
 - (b) the goods or services so provided are to be supplied to or for other persons under transactions effected by persons, other than the promoter or any of the promoters, who participates in the scheme.
- (5) For the purposes of subsection (4),
- (a) a scheme shall be deemed to include the element referred to in paragraph (b) of subsection (4) whether the transactions referred to in that paragraph are to be effected by participants in the capacity of servants or agents of the promoter or of one of the promoters or in any other capacity;
 - (b) a scheme includes any arrangement made in connection with the carrying on of a business, whether or not those arrangements are made or recorded wholly or partly in writing; and
 - (c) any reference to the provision of goods or services by a person shall be construed as including a reference to the provision of goods or services under arrangements to which that person is a party.

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Unsolicited
goods.

45. (1) A supplier shall not assert a right to payment from a consumer for unsolicited goods or services.

(2) Subsection (1) shall not apply in relation to the assertion of a right to payment from a person for unsolicited goods or services if the person ordinarily uses like goods or services in the course of his profession, business, trade or occupation.

(3) A supplier shall not assert a right to any payment of a charge for the making in a directory of an unauthorised entry relating to the person or to his profession, business, trade or occupation.

(4) Subject to section 29 of this Act, a person shall not be liable to make any payment to a supplier, and shall be entitled to recover against a supplier any payment made to the supplier in full or part satisfaction of a charge for the making of any unauthorised entry in a directory.

(5) For the purpose of this section, a supplier shall be deemed to assert a right to a payment from a person for unsolicited goods or a charge for the making of any unauthorised entry in a directory if the supplier

- (a) make a demand for the payment or asserts a present or prospective right to the payment;
- (b) threatens to bring any legal proceedings with a view to obtaining the payment;
- (c) places or causes to be placed the name of the person on a list of defaulters or debtors, or threatens to do so with a view to obtaining the payment;
- (d) invokes or causes to be invoked any other collection procedure or threatens to do so with a view to obtaining the payment; or
- (e) sends any invoice or other documents stating the amount of the payment or setting out the price of the goods or the charge of the making of the entry and not stating as prominently or more prominently that no claim is made to the payment, or to payment of the price or charge, as the case may be.

(6) A person shall not, for the purposes of this section, be taken to have authorised the making of an entry in a directory unless

- (a) the communication was made orally or by means of electronic communication or if in writing was signed by the person or by another person authorised by him;

- (b) a copy of the document is given to the person before the right to payment of a charge for the making of the entry is asserted; and
 - (c) the document specifies
 - (i) the name of the directory;
 - (ii) the name and address of the person publishing the directory;
 - (iii) particulars of the entry;
 - (iv) the amount of the charge for the making of the entry or the basis on which the charge is or is to be calculated;
 - (v) the duration of the authorisation.
- (7) Subsections (3) and (4) shall not apply to or in relation to a payment if the payment relates to
- (a) a contract that is made before the coming into force of this Act; or
 - (b) a contract that is made on or after the coming into force of this Act by reason of the acceptance after that date of an offer that was made before that date.
- (8) In any proceedings against a supplier in respect of contravention of this section the burden of proving that the supplier had reasonable cause to believe that there was a right to payment, or that the supplier knew or had reasonable cause to believe that the person had authorised the making of the entry shall lie on the supplier.
- (9) In this section,
- “directory” does not include a newspaper published in good faith as a newspaper at regular intervals or a publication published, or to be published, by or under the authority of the Government;
 - “making”, in relation to an entry in a directory, means including or arranging of the entry.
- (10) It shall be a defence for the supplier to show,
- (a) in a case of criminal proceedings under subsection (1), that he had reasonable cause to believe that there was a right to payment;
 - (b) in a case of criminal proceedings under subsection (3), that he had reasonable cause to believe that there was a right to payment;

(11) In any proceedings under this Part, in relation to the publication of an advertisement, it shall be a defence if the defendant establishes that he is a person whose business is publishing and arranging for the publication of advertisements and that he received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to a contravention of any provision of this Part.

Liability of recipient.

46. (1) Where a person is supplied unsolicited goods by a supplier, the goods shall be deemed to be a gift from the supplier to the recipient.

(2) A person to whom unsolicited goods are supplied by a supplier shall not be liable to make any payment for the goods received by him from the supplier.

Offences and penalties under this Part.

47. (1) A person who contravenes any provisions of sections 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45 commits an offence and is liable, on summary conviction, notwithstanding the limit placed on the jurisdiction of the Court,

- (a) in the case of an individual, to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding 6 months or both; and
- (b) in the case of a body corporate, to a fine not exceeding fifty thousand dollars.

(2) Where a body corporate is convicted of an offence under this Act, any director or officer of the body corporate who knowingly authorised, permitted or acquiesced in the act or omission that constituted the offence also commits an offence and is liable, on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or both.

PART V – PRODUCT LIABILITY

Liability in relation to supply of products.

48. For the purposes of this part, a person who supplies any product in which products are comprised, whether by virtue of being component parts or raw materials or otherwise shall not be treated by reason only of his supply of the product as supplying any of the products so comprised.

Liability for defects.

49. (1) Subject to the provisions of this Part, where any damage is caused wholly or partly by a defect in a product, any of the following persons shall be liable for the damage:

- (a) the producer of the product;
- (b) any person who;

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- (i) by putting his name on the product, or
 - (ii) by using a trade mark or other distinguishing mark in relation to the product, has held himself out to be the producer of the product; or
 - (c) any person who imported the product into the country.
- (2) Where any damage is caused wholly or partly by a defect in a product, the person who supplied the product shall be liable for the damage if
- (a) the person who suffered the damage requests the supplier to identify one or more of the persons specified in subsection (1) in relation to the product;
 - (b) the request is made within a reasonable time after the damage has occurred; and
 - (c) the supplier fails, within a reasonable time after receiving the request, either to comply with the request or to identify the person who supplied the product to him.
- (3) Subsections (1) and (2) shall not apply to a person in respect of any defect in any game or agricultural produce if the supply of the game or produce by that person to another was at a time when the game or produce had not undergone an industrial process.
- (4) Where two or more persons are liable by virtue of this Part for the same damage, their liability shall be joint and several.
- (5) This section shall apply without prejudice to any liability arising otherwise than by virtue of the provisions of this Part.

50. (1) Subject to the provisions of this section, there is a defect in a product, for the purposes of this Part, if the safety of the product is not the safety persons are generally entitled to expect.

Inferred defects.

(2) For the purposes of subsection (1) of this section, “safety”, in relation to a product, includes safety with respect to products comprised in that product, and safety in the context of risks of damage to property or to risks of death or personal injury.

(3) In determining the persons who are generally entitled to expect, in relation to a product, the safety referred to in subsection (1) regard shall be had to all the circumstances and the following factors:

- (a) the manner in which and the purposes for which the product is marketed, its get-up, the use of any mark

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in relation to the product and any instructions for, or warnings with respect to, doing or refraining from doing anything with or in relation to the product;

- (b) what might reasonably be expected to be done with or in relation to the product; and
- (c) the time when the product was supplied by its producer to another;

and nothing in this section shall require a defect to be inferred from the fact alone that the safety of a product which is supplied after that time is greater than the safety of the product in question.

Damage giving rise to liability.

51. (1) Subject to the provisions of this section, in this Part, “damage” means death or personal injury to any person or any loss of or damage to any property, including land.

(2) A person shall not be liable under section 49 of this Act in respect of any defect in a product for the loss of or any damage to the product which was supplied with the product in question comprised in it.

(3) A person shall not be liable under section 49 of this Act for any loss of or damage to any property which, at the time of the loss or damage,

- (a) is not of a description of property ordinarily intended for private use, occupation or consumption; and
- (b) is not intended by the person suffering the loss or damage mainly for private use, occupation or consumption.

(4) For the purposes of this Part, in determining a person who has suffered any loss of, or damage to, property and when the loss or damage occurred, the loss or damage shall be regarded as having occurred at the earliest time at which a person with an interest in the property had knowledge of the material facts about the loss or damage.

(5) For the purposes of subsection (4), material facts about any loss or damage to property are such facts as would lead a reasonable person with an interest in the property to consider the loss or damage sufficiently serious to justify instituting proceedings for damages against a defendant who does not dispute liability and is able to satisfy a judgment debt.

(6) For the purposes of subsection (4), a person’s knowledge includes knowledge which he might reasonably have been expected to acquire from facts

- (a) observable or ascertainable by him; or

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- (b) ascertainable by him with help of appropriate expert advice which it is reasonable for him to seek;

except that a person shall not be taken by virtue of this subsection to have knowledge of a fact ascertainable by him only with the help of expert advice unless he failed to take all reasonable steps to obtain and, where appropriate, to act on that advice.

52. (1) For the purposes of the Fatal Accidents Act, any damage for which a person is liable under section 49 of this Act shall be deemed to have been caused by that person's wrongful act, neglect or default.

Application of
Fatal Accident
Act, Cap. 27.

(2) Where

- (a) a person's death is caused wholly or partly by a defect in a product;
- (b) a person dies after suffering from damage caused wholly or partly by a defect in a product;
- (c) a request pursuant to section 49(2)(a) is made to a supplier of the product
 - (i) by that person's personal representatives, or
 - (ii) in the case of a person whose death is caused wholly or partly by the defect, by any dependant or relative of that person; and
- (d) the conditions specified in section 49(2)(b) and (c) are satisfied in relation to that request;

this Part shall, for the purposes of the Fatal Accidents Act, have effect as if the liability of the supplier to that person under that subsection does not depend on that person having requested the supplier to identify certain persons or on the said conditions having been satisfied in relation to a request made by that person.

(3) Where any damage is caused partly by a defect in a product and partly by the fault of the person suffering the damage, the Fatal Accident's Act shall have effect as if the defect were the fault of every person liable under the provisions of this part for the damage caused by the defect.

53. The liability of a person by virtue of this Part to a person who has suffered damage caused wholly or partly by a defect in a product, or to a dependant or relative of such a person shall not be limited or excluded by any contract term, by any notice, or by any other provision.

Prohibitions on
exclusions from
liability.

54. The Crown shall not, as regards it's liability under this Part, be bound by this Part further than the Crown is made liable in tort or in reparation under the Crown Proceedings Act.

Application of
Act to Crown.
Cap 22.

PART VI – CONSUMER SAFETY

General safety requirements.

55. (1) A supplier shall not
- (a) supply any consumer goods which fail to comply with the general safety requirements;
 - (b) offer or agree to supply any goods referred to in paragraph (a); or
 - (c) expose or possess the goods referred to in paragraph (a) for supply.
- (2) For the purposes of this section, consumer goods shall not be in compliance with the general safety requirements if the goods are not reasonably safe having regard to all the circumstances, and in addition, regard shall be had to the following factors:
- (a) the manner in which, and the purposes for which, the goods are being or would be marketed;
 - (b) the design of the goods;
 - (c) the use of any mark in relation to the goods;
 - (d) any instructions or warnings which are given or would be given with respect to the keeping, use or consumption of the goods;
 - (e) any standards of safety published by any person whether for the goods or a description which applies to the goods in question or for matters relating to goods of that description; and
 - (f) the existence of any means by which it would have been reasonable for the goods to have been made safer.
- (3) For the purposes of this section consumer goods shall not be regarded as not being in compliance with the general safety requirements in respect of
- (a) anything which is shown to be attributable to compliance with any requirement imposed by or under any other enactment;
 - (b) any failure to do more in relation to any matter than is required by
 - (i) any safety regulations with respect to that matter;
 - (ii) any provision of another enactment imposing such requirements with respect to that matter as are designated for the purpose of this subsection by such an enactment.

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56. (1) A supplier shall not supply goods that are intended to be used, or are of a kind likely to be used, by a consumer, being goods of a kind in respect of which a consumer product safety standard has been prescribed, if those goods do not comply with the prescribed standard.

Product safety standards.

(2) Where

- (a) the supplier of goods contravenes this section;
- (b) a person suffers loss or damage by reason of a defect in the goods or by reason of his not having particular information in relation to the goods; and
- (c) the person would not have suffered the damage if the goods had complied with the safety standards;

the person shall be deemed, for the purpose of this Act, to have suffered the loss or damage by the supply of the goods.

57. (1) A supplier shall not supply goods that are intended to be used, or are of a kind likely to be used by a consumer, being goods of a kind in respect of which a consumer product information standard is prescribed unless the supplier complies with the prescribed standard in relation to those goods.

Product information standards.

(2) Where

- (a) the supplier of goods contravenes this section;
- (b) a person suffers loss or damage by reason of his not having particular information in relation to the goods; and
- (c) the person would not have suffered the damage if the goods had complied with the safety standards;

the person shall be deemed, for the purpose of this Act, to have suffered the loss or damage by the supply of the goods.

58. (1) The Minister may, after consulting the National Bureau of Standards, make consumer safety regulations to ensure that goods are safe or that inappropriate information is not provided in respect of goods.

Consumer safety regulations.

(2) Notwithstanding the generality of subsection (1), consumer safety regulations may contain provisions

- (a) with respect to the performance, composition or contents, design, construction, finish, or packaging of goods to which this section applies;

- (b) with respect to the giving, refusal, alteration, or cancellation of approvals of goods or of standards for goods;
- (c) with respect to the conditions that may be attached to any approval given under the regulations;
- (d) prescribing the fees to be paid on the giving or alteration of any approval under the regulations and on the making of an application for an approval or alteration;
- (e) with respect to appeals against refusals, alterations or cancellations of approvals given under the regulations and against the conditions contained in approvals;
- (f) requiring goods to which this section applies to be approved under the regulations or to conform to the requirements of the regulations or to descriptions or standards specified in or approved under the regulations;
- (g) with respect to the testing or inspection of goods to which this section applies, including provision for determining the standards to be applied in carrying out any test or inspection;
- (h) with respect to the ways of dealing with goods which do not satisfy a test required under the regulations or a standard connected with a procedure so required;
- (i) requiring a mark, warning, instruction, or any other information relating to goods to be put on or to accompany the goods or to be used or provided in some other manner in relation to the goods, and for ensuring that inappropriate information is not given in relation to the goods either by means of misleading marks or otherwise;
- (j) prohibiting persons from supplying, or offering to supply, agreeing to supply, exposing for supply, or possessing for supply, goods to which this section applies and component parts and raw materials for such goods;
- (k) requiring information to be given to such persons as may be specified in the regulations for the purpose of enabling those persons to exercise any function conferred on them by the regulations.

- (3) Consumer safety regulations may
 - (a) contain different provisions for different cases;
 - (b) provide for exemptions from any provisions of the regulations
 - (c) contain such supplemental, consequential and transitional provisions as the Minister considers appropriate.
- (4) This section shall apply to goods other than
 - (a) growing crops and things comprised in land by virtue of being attached to it;
 - (b) water, food and fertilizers;
 - (c) dangerous drugs within the meaning of the Drugs (Misuse of Drugs) Act, 1986.

PART VII – RECALL OF GOODS

59. (1) Subject to sections 62 and 64, where a supplier supplies consumer goods on or after the coming into force of this Act, and the Minister, acting on the advice of the National Bureau of Standards, is satisfied that the goods are goods of a kind which will or may cause injury to any person and that the supplier has not taken satisfactory action to prevent the goods causing injury to any person, the Minister may, by written notice, require the supplier to do one or more of the things set out in subsection (2).

Compulsory recall of goods.

- (2) The supplier may be required to
 - (a) take action within the period specified in the notice to recall the goods;
 - (b) disclose to the public, or to a class of persons specified in the notice, in the manner and within the period specified in the notice, one or more of the following:
 - (i) the nature of a defect in, or a dangerous characteristic of, the goods specified in the notice;
 - (ii) the circumstances, being circumstances specified in the notice, in which the use of the goods is dangerous;
 - (iii) procedures for disposing of the goods specified in the notice;
 - (c) inform the public, or a class of persons specified in the notice, in the manner and within the period

specified in the notice, that the supplier undertakes to do whichever of the following the supplier thinks is appropriate:

- (i) except where the notice specifies a dangerous characteristic of the goods, repair the goods;
- (ii) replace the goods;
- (iii) refund to a person to whom the goods were supplied, whether by the supplier or by another person, the price of the goods;

within the period specified in the notice.

(3) The Minister may, by notice published in the Gazette, give directions as to the manner in which the supplier is to carry out a recall of goods required under subsections (1) and (2).

(4) Where the supplier, under subsection (2) undertakes to repair goods, the supplier shall cause the goods to be repaired so that any defect in the goods specified in the notice under subsections (1) and (2) is remedied.

(5) Where the supplier, under subsections (1) and (2) undertakes to replace goods, the supplier shall replace the goods with like goods which, if a defect in, or a dangerous characteristic of, the goods was specified in the notice under subsection (1), do not have that defect or characteristic.

(6) Where the supplier, under subsections (1) and (2) undertakes to repair goods or replace goods, the cost of the repair or replacement, including any necessary transportation costs, shall be borne by the supplier.

(7) Where goods are recalled, whether voluntarily or in accordance with a requirement made by the Minister under subsections (1) and (2) a person who supplied or supplies any of the recalled goods to another person outside the Federation shall, as soon as practicable after the supply of those goods, give a notice in writing to that other person

- (a) stating that the goods are subject to recall; and
- (b) if the goods contain a defect or have a dangerous characteristic, setting out the nature of that defect or characteristic.

(8) Where a supplier is required under subsection (7) to give a notice in writing to another person, that supplier shall, within 10 days after giving the notice, provide the Minister with a copy of that notice.

(9) A supplier who is given a notice in accordance with the provisions of this section shall comply with the provisions of the notice within a period of seven days from the date of the issue of the notice.

(10) A person who contravenes any provision of this section commits an offence and is liable, on conviction, to pay a fine of EC\$100.00 per day in respect of which the contravention continues.

(11) The provisions of subsection (9) are to be exercised without prejudice to any other legal rights that are available to a consumer affected by the failure of the supplier to comply with the provisions of this section.

60. Where a notice given under section 59(1) is in force in relation to a supplier he or she

Compliance with goods recall notice.

- (a) shall comply with the requirements and directions given in the notice; and
- (b) shall not, in trade or commerce,
 - (i) where the notice specifies a defect in, or a dangerous characteristic of, the goods, supply goods of the kind to which the notice relates which have that defect or characteristic;
 - (ii) in any other case, supply goods of the kind to which the notice relates.

61. Where

Loss or damage caused by contravention of goods recall notice.

- (a) a supplier contravenes section 60 by
 - (i) supplying goods of a kind in relation to which a notice under section 59(1) is in force; or
 - (ii) failing to comply with the requirements of such a notice; and
- (b) any person suffers loss or damage by reason of a defect in, or a dangerous characteristic of, the goods or by reason of not having particular information as to a characteristic of the goods;

that person shall, for the purposes of this Act, be deemed to have suffered that loss or damage by the supply of the goods, or by the failure of the supplier to comply with the notice, as the case may be.

62. (1) Subject to section 64, where the Minister proposes to publish a notice under section 59(1) in relation to goods of a particular kind, the Minister shall prepare a draft of the notice that he or she proposes to publish, and a summary of his reasons.

Conferences to be held in certain cases.

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(2) The Minister shall, by written notice, invite the supplier who supplied or proposes to supply goods of the kind referred to in subsection (1) to notify the Minister, within the period specified in the notice whether the supplier wishes the Minister to hold a conference in relation to the proposed publication of the draft notice.

(3) A notice published under subsection (2) shall set out a copy of the draft notice under section 59(1) and a copy of the summary of the reasons for the proposed publication of the notice.

(4) Where the supplier does not notify the Minister in writing within the specified period, or within such extended period as the Minister may allow, that the supplier wishes the Minister to hold a conference in relation to the proposed publication of the notice under section 59(1), the Minister shall proceed to take such action under section 59 as he or she thinks fit.

(5) Where the supplier notifies the Minister in writing within the specified period, or extended period, that the supplier wishes the Minister to hold a conference in relation to the proposed publication of the notice under section 59(1), the supplier shall attend the meeting within seven days of the date of the invitation at such time and place as the Minister may appoint.

(6) At a conference under this section

- (a) the Minister or a person or persons nominated in writing by the Minister is or are entitled to be present;
- (b) the supplier who notified the Minister in accordance with subsection (5) is entitled to be present or to be represented;
- (c) any other person whose presence at the conference is considered by the Minister to be appropriate is entitled to be present or to be represented; and
- (d) the procedure to be followed shall be as determined by the Minister.

(7) The Minister shall cause a record of proceedings at a conference under this section to be kept.

(8) The Minister shall, as far as is practicable, ensure that each person who, in accordance with subsection (6), is entitled to be present or who is representing such a person at a conference is given a reasonable opportunity at the conference to present his or her case and, in particular, to inspect any documents which the Minister proposes to consider for the purpose of making a decision after the conclusion of the

conference, other than any document that contains particulars of a secret formula or process, and to make submissions in relation to those documents.

63. As soon as is practicable, after the conclusion of a conference in relation to the proposed publication of a notice under section 59(1), the Minister shall proceed to consider what action he or she should take under section 59(1)

Action after conclusion of conference.

64. (1) Where it appears to the Minister, acting on the advice of the National Bureau of Standards, that goods of a particular kind create an imminent risk of death, serious illness or serious injury, the Minister shall, without delay, publish in the media a notice in terms of section 59 in relation to the goods.

Exceptions in cases of danger to the public.

(2) Where the Minister publishes a notice in the media under subsection (1),

- (a) in a case where the notice is published before the Minister takes any action under section 62(1) in relation to goods of a particular kind, section 62 does not apply in relation to the action that the Minister may take under section 59(1) in relation to goods of that kind; or
- (b) in any other case, any action taken by the Minister under section 62(1) in relation to goods of a particular kind ceases to have effect and, if a conference had, under section 62, been arranged or had commenced, the Minister may publish the notice under section 59(1) without regard to the action taken under section 62.

65. (1) Where the Minister or an officer authorised by the Minister for the purposes of this section (in this section referred to as an “authorised officer”) has reason to believe that a person who, in trade or commerce, supplies consumer goods of a particular kind which may cause injury to any person is capable of furnishing information, producing documents or giving evidence relating to goods of that kind, the Minister or the authorised officer may, by notice in writing served on that person, require him

Power to obtain information, documents and evidence.

- (a) to furnish to the Minister or to the authorised officer, and within the time specified in the notice, the information;
- (b) to produce to the Minister or to the authorised officer, in accordance with such reasonable requirements as are specified in the notice, the documents; or

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- (c) in person or by his or her representative to appear before the Minister or the authorised officer at such reasonable time and place as are specified in the notice to give evidence, either orally or in writing, and produce the documents.

(2) Where the authorised officer has reason to believe that consumer goods will or may cause injury to a person, he or she may, for the purposes of ascertaining whether goods of that kind will or may cause injury to any person, enter any premises in or from which he or she has reason to believe that a person supplies goods of that kind in trade or commerce and

- (a) inspect goods of that kind;
- (b) take samples of goods of that kind;
- (c) inspect any documents relating to goods of that kind and make copies of, or take extracts from, those documents; or
- (d) inspect equipment used in the manufacturing, processing or storage of goods of that kind.

(3) The powers of the authorised officer under subsection (2) shall not be exercised except

- (a) pursuant to a warrant issued subsection (5); or
- (b) in circumstances where the exercise of those powers is required without delay in order to protect life or public safety.

(4) The authorised officer may apply to a magistrate for the issue under subsection (5) of a warrant to exercise the powers of an authorised officer under subsection (2) in relation to premises.

(5) Where an application is made to a magistrate under subsection (4), he or she may issue a warrant authorising the authorised officer named in the warrant, with such assistance as the officer thinks necessary and if necessary by force, to enter the premises specified in the warrant and to exercise the power of the authorised officer under subsection (2) in relation to those premises.

(6) A magistrate shall not issue a warrant under subsection (5) unless

- (a) an affidavit is furnished to the magistrate setting out the grounds on which the issue of the warrant is being sought;
- (b) the applicant or some other person gives to the magistrate such further information (if any) as he

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or she may require concerning the grounds on which the issue of the warrant is being sought; and

- (c) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (7) A warrant issued under subsection (5) shall
- (a) specify the purpose for which the warrant is issued;
 - (b) state whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;
 - (c) include a description of the kind of goods authorised to be inspected or sampled; and
 - (d) specify a day, not being later than 7 days on which the warrant is issued, at the end of which the warrant ceases to have effect.
- (8) Where the authorised officer takes samples under subsection (2)(b), he or she shall pay a reasonable price for the goods sampled.
- (9) A person who
- (a) refuses or fails to comply with a notice given under this section to the extent that he or she is capable of complying with it; or
 - (b) in purported compliance with such a notice furnishes information or gives evidence that, to his knowledge, is false or misleading in a material particular;
- commits an offence.
- (10) A person who refuses or fails to provide the authorised officer, acting in accordance with subsection (2), with all reasonable facilities and assistance for the effective exercise of the authorised officer's powers under that subsection commits an offence.
- (11) Any information furnished or evidence given by a person under this section, any document produced by a person under this section, and any information, evidence or document obtained under this section, is not admissible in evidence against that person
- (a) in any proceedings instituted by that person;
 - (b) in any other proceedings, other than proceedings against that person for a contravention of a provision of this section.

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Voluntary recall of goods.

66. (1) Where a person voluntarily takes action to recall goods because the goods will or may cause injury to any person, he or she shall, within 2 days after taking that action, give a notice in writing to the Minister

- (a) stating that the goods are subject to recall; and
- (b) setting out the nature of the defect in, or dangerous characteristics of, the goods.

(2) A person who contravenes subsection (1) commits an offence.

Suppliers to be given notice in certain cases.

67. (1) Where the Minister publishes a notice in the *Gazette* under section 62(1) or 64(1), he or she shall, within 2 days after the publication of the notice, or, if it is not practicable to do so within that period, as soon as practicable after the end of that period, either

- (a) cause a copy of the notice to be given to each person who, to the knowledge of the Minister, supplies goods of the kind to which the notice relates; or
- (b) cause a copy of the notice to be published in every local newspaper circulating in the Federation.

(2) A failure to comply with subsection (1) in relation to a notice does not invalidate the notice.

Certain actions not to affect insurance contracts.

68. The liability of an insurer under a contract of insurance with a person, being a contract relating to

- (a) the recall of goods supplied or proposed to be supplied by that person;
- (b) that person's liability with respect to possible defects in goods supplied or proposed to be supplied by that person;

shall not be affected by reason only that that person gives to the Minister or to a public officer information relating to any goods supplied or proposed to be supplied by that person.

PART VIII – BUREAU OF CONSUMER AFFAIRS

Establishment of Bureau of Consumer Affairs

Bureau of Consumer Affairs.

69. (1) There is established a Bureau to known as the Consumer Affairs Bureau, which Bureau shall be a body corporate with perpetual succession and a common seal.

- (2) The Bureau may
 - (a) sue and be sued in its corporate name; and
 - (b) acquire, hold and dispose of any property.

70. (1) The Bureau shall be responsible for implementing the policy established by the Ministry responsible for commerce and consumer affairs, and without prejudice to the generality of the foregoing, the responsibilities of the Bureau shall include, in particular,

- (a) carrying out, on its own initiative or at the request of any person, such investigations in relation to the conduct of business as will enable the Bureau to determine whether any person is engaged in practices that are in contravention of this Act;
- (b) providing information and guidelines to the public on the functions of the Bureau and obligations of consumers and business enterprises under this Act;
- (c) receiving and evaluating complaints and taking appropriate action in relation thereto;
- (d) promoting fair and honest trade policies;
- (e) promoting and monitoring Codes of Practice and maintaining a register of prescribed Codes;
- (f) educating and assisting consumers generally in resolving complaints;
- (g) promoting compliance with the provisions of this Act;
- (h) conducting research, collecting, and collating information in respect of consumer affairs;
- (i) advising the Minister generally on consumer affairs;
- (j) liaising with other regional and international consumer agencies to facilitate redress in cross-border dispute;
- (k) acting as Saint Christopher and Nevis's competent authority for consumer affairs in Caricom; and
- (l) performing any other function or duty imposed or assigned to the Bureau under this act or any other enactment.

(2) The Bureau shall, for the purpose of carrying out the duties conferred on it by subsection (1), any other provision of this Act, and any other law have power to, among other things,

- (a) obtain information from persons under investigation;
- (b) hold public and private hearings and inquiries;

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- (c) summons witness;
- (d) administer oaths and receive evidence;
- (e) require documents to be verified by affidavit;
- (f) enter, search and seize;
- (g) make test purchases;
- (h) inspect goods; and
- (i) recommend to the Minister of Finance that any person's licence be suspended or cancelled where such person is found to be in gross violation of any provision of this Act or any other law that relates to this Act.

Board of Directors of the Bureau

Board of the
Bureau.

71. (1) The Bureau shall, for the purpose of carrying out its duties and powers under this Act and subject to subsection (2), have a Board of Directors consisting of not less than five and not more than seven members.

(2) Of the members of the Board referred to in subsection (1),

- (a) one of them shall be the Director of the Standards Bureau; and
- (b) the other shall be the Director of Consumer Affairs of the Bureau, except that the Director shall be an *ex officio* member of the Board.

(3) Other than the persons referred to in subsection (2), members of the Board shall be appointed from persons with expertise, qualifications, and experience in business, commerce, consumer affairs, economics, law, and other related disciplines.

(4) The members of the Board referred to in subsection (3) shall be appointed by the Minister, with the approval of Cabinet, and shall be appointed on such terms and conditions as may be specified in their respective instruments of appointment.

(5) The Minister shall, by instrument, appoint from among members of the Board a Chairperson and Vice-Chairperson, respectively, upon such terms and conditions as may be specified in their instruments of appointment.

(6) The names of the Chairperson and of all members of the Board as first constituted and every change in the membership of the Board shall be published in the *Official Gazette*.

Tenure of members
of the Board.

72. (1) The Chairperson and Vice-Chairperson shall hold office for a period not exceeding five years, as may be specified in their instruments of appointment, but shall be eligible for re-appointment.

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(2) The other members, except the Director of the standards Bureau and the *ex officio* member, shall hold office for a period not exceeding four years, but shall be eligible for re-appointment.

73. Members of the Board, other than the Director of the Standards Bureau and the *ex officio* member, shall be paid such remuneration and allowances as the Minister may, with the approval of Cabinet, determine.

Remuneration of members of the Board.

74. (1) The Board shall carry out the functions conferred on the Bureau by this Act or any other enactment, and shall exercise all the powers conferred on the Bureau by this Act or any other enactment.

Functions etc of the Board.

(2) The Board may delegate any of its functions to the Director, a member of the Board, or member of staff of the Board, except that the delegation shall not preclude the Board from carrying on that function.

75. (1) The Board shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such place and time and on such days as the Board may determine.

Meetings etc of the Board.

(2) The Chairperson may, at any time, call a special meeting of the Board within seven days of a requisition for that purpose addressed to him by any three members.

(3) The Chairperson shall preside at all meetings of the Board at which he is present, and in case of the Chairperson's absence the Vice-Chairperson shall preside at the meeting, and in case of the absence of both the Chairperson and Vice-Chairperson, the members present and forming a quorum shall elect one of their number to preside at the meeting.

(4) The decisions of the Board shall be by a majority of votes, and in addition to an original vote, the Chairperson or other person presiding at any meeting of the Board shall have a casting vote in any case in which the voting is equal.

(5) The Second Schedule to this Act shall have effect in relation to meetings of the Board and other matters as are specified in that Schedule.

Second Schedule.

(6) Subject to the provisions of this section and to the Regulations made under this Act, the Board may regulate its own procedure.

76. The Minister may, from time to time, give to the Board directions of a general nature as to the policy to be followed in the exercise or discharge of its functions, and the Board shall give effect to those directions.

Policy directions to the Board.

Administration of the Bureau

Director of
Consumer Affairs of
the Bureau.

77. (1) There shall be a Director of Consumer Affairs of the Bureau who shall, in that capacity, be the chief executive officer of the Bureau.

(2) The Director shall be appointed by the Minister from among persons with previous management experience and knowledge of the local business environment and consumer affairs and other related experience, and shall be appointed on such terms and conditions as may be specified in his instrument of appointment.

(3) The Director shall be an *ex officio* member of the Board.

(4) The Director shall exercise such powers and perform such duties as are conferred or imposed on him by this Act, the regulations made under this Act, and by the Board, and without prejudice to the generality of the foregoing provisions the Director shall be responsible to the Board,

- (a) for the day to day administration of the Bureau;
- (b) for executing the decisions of the Board;
- (c) for ensuring that business enterprises comply with the provisions of this Act;
- (d) for the control of the resources of the Bureau, supervision, and management of the staff of the Bureau; and
- (e) generally for promoting the objectives of the Bureau.

Staff of the Bureau.

78. (1) For the purpose of staffing the departments of the Bureau, the Board may, with the approval of the Minister, appoint and employ such skilled and qualified staff as are necessary for the efficient functioning of the Bureau.

(2) The Governor-General may, on the recommendation of the Public Service Commission, transfer any officer in the public service to any office in the service of the Bureau subject to such conditions as he may impose.

Engagement of
specialists etc.

79. (1) The Bureau may, with the approval of Cabinet, engage or contract the services of such specialist persons as may be necessary for the performance of the functions of the Bureau.

(2) The Bureau may, with the approval of Cabinet, solicit for technical assistance in the form of expatriates and other related assistance from regional and international bodies for the purpose of enabling the Bureau to carry out its functions.

Pensions and Gratuity

Payment of
pension etc to
staff of the Bureau.

80. (1) The Governor-General may, on the recommendation of the Board and with the advice of Cabinet, declare, by notice published in the *Gazette*, any office in the service of the Bureau to be a pensionable office within the meaning of the Pensions Act.

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(2) An employee whose office is not declared a pensionable office in accordance with the provisions of subsection (1) shall be paid a gratuity computed in accordance with the principles followed when computing gratuity for non-pensionable employees in the public service of Saint Christopher and Nevis.

(3) Any pension, gratuity, or other allowance payable to any officer or other employee in respect of his employment with the Bureau shall be a charge on the funds of the Bureau.

81. (1) Any officer or employee in the public service who is transferred to any office in the service of the Bureau shall, in relation to pension, gratuity or other allowance, be deemed to have been at all times in the service of the Government while so employed.

Pension for officers transferred from the public service.

(2) Any pension, gratuity, or other allowance payable to any officer or employee referred to in subsection (1) shall be paid from the funds of the Bureau in accordance with the provisions of subsection (3).

(3) Any pension, gratuity, or other allowance payable to any officer or employee referred to in subsection (1) shall be computed on the basis of the salary scale of the officer immediately prior to his retirement or termination of services.

(4) The Bureau shall pay to the Government an annual or lump sum, as the case may be, which sum shall bear the same proportion to the pension, gratuity, or allowance as the aggregate amount of the pensionable emoluments drawn by the officer or employee from the funds of the Bureau bears to the total amount of pensionable emoluments received by the officer or employee during his total pensionable service in the public service.

Finances of the Bureau

82. The funds of the Bureau shall consist of

- (a) annual grants appropriated by the National Assembly;
- (b) fees chargeable by the Bureau by virtue of section 61;
- (c) interest received by the Bureau on moneys invested by virtue of section 57;
- (d) donations and grants from international organisations and other agencies; and
- (e) loans.

Sources of funds of Bureau.

83. The Bureau may, with the approval of the Minister, and subject to the regulations made under this Act, from time to time, by way of loans, raise such sums of money as it considers expedient for the purpose of discharging its functions under this Act.

Borrowing powers of Bureau.

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Investment of
surplus funds.

84. (1) Subject to the directions of the Minister, all moneys of the Bureau not immediately required for the purposes of the Bureau may be invested in such securities as may be approved either generally or specifically by the Minister responsible for finance.

(2) In giving the directions referred to in subsection (1) the Minister shall act in accordance with the advice of Cabinet.

(3) The Bureau may, with the approval of the Minister responsible for finance, sell all or any of its securities.

Keeping of
accounts of the
Bureau.

85. The Bureau shall keep proper books of accounts and accounts relating to its functions under this Act, and the books of accounts shall be kept in such manner and form as the Minister responsible for finance may direct.

Audit.

86. The books of accounts and accounts of the Bureau shall be audited annually by an auditor appointed annually by the Board and approved by the Minister.

Report.

87. The Bureau shall, every year, make a report to the Minister detailing the activities carried out by the Bureau during the year in question and such report shall contain a financial statement certified by the auditor.

PART IX – RESOLUTION OF DISPUTES

Submission of
complaints.

88. (1) A person who is aggrieved by conduct engaged in by a supplier or seller in the course of business, which conduct the person considers unfair or which otherwise contravenes the provisions of this Act may, upon payment of the prescribed fee, submit a complaint to the Bureau.

(2) The Bureau may waive the fee payable under subsection (1) upon being satisfied that it is desirable to do so.

(3) A complaint made under this section shall be in writing, and if made orally shall be reduced in writing, and be addressed to the Director of Consumer Affairs Bureau.

(4) This section does not affect the right of any person to enforce in a court of law a complaint referred to in this section except that the person shall not institute proceedings in both the Tribunal and a court in respect of the same complaint.

Evaluation of
complaints.

89. (1) Upon receipt of a complaint the Bureau shall determine the action to be taken on the complaint and may require the complainant to submit such additional information as the Bureau may require.

(2) The Bureau may refuse to take action, in relation to a complaint, on any of the following grounds:

- (a) that the complaint is trivial, frivolous or vexatious or not made in good faith;

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- (b) where the complainant does not have a sufficient interest in the complaint;
- (c) where the complainant fails or refuses to submit further particulars requested by the Director;
- (d) if the conduct complained of, in the opinion of the Bureau, does not constitute conduct which is not fair and reasonable in the public interest or in contravention of any provision of this Act;
- (e) where the complaint should more appropriately be dealt with by the disciplinary committee of a professional body or by a court in the exercise of its criminal jurisdiction.

90. Where the Bureau refuses to take action under section 89(2), a consumer or consumer organisation may, either refer the matter to arbitrators or apply to the Court for the determination of the matter.

Refusal of Bureau to take action.

91. Where the Bureau is of the opinion that a supplier is engaged in conduct that does not necessitate instituting any proceedings under this Act the Bureau may demand a written undertaking from the supplier to the effect that the supplier shall desist from that kind of conduct, and the written undertaking shall be enforceable in a court of law.

Written undertakings.

92. (1) The Bureau may, on its own initiative or upon a request of any person, institute criminal or civil proceedings in respect of any contravention or breach of the provisions of this Act.

Institution of actions under this Act.

(2) Nothing in this section shall be deemed to limit the private right of action available to an individual to enforce his rights under the provisions of this Act.

93. (1) There is established a Tribunal to be known as the Consumer Claims Tribunal.

Establishment of Tribunal.

(2) The Tribunal shall consist of five members appointed by the Governor-General, acting in accordance with the recommendation of the Judicial and Legal Services Commission, upon such terms and conditions as may be specified in their instruments of appointment.

(3) No person shall qualify for appointment as a member of the Tribunal unless that person has qualifications and/or experience in law, economics, business or consumer affairs, except that the person appointed as Chairperson shall be legally qualified.

(4) The Governor-General, acting in accordance with the recommendation of the Judicial and Legal Services Commission, shall in accordance with the provisions of subsection (3), appoint a Chairperson of the Tribunal from among members of the Tribunal.

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(5) Where a member of the Tribunal is temporarily absent or is temporarily incapacitated such that the member is not able to discharge his or her duty, the Governor-General, acting in accordance with the recommendation of the Judicial and Legal Services Commission, may, by notice published in the *Gazette*, appoint a suitable person to act in the member's place.

(6) The Minister shall publish in the *Gazette* notice of a person appointed member of the Tribunal.

Duration of office of a member of the Tribunal.

94. (1) A member of the Tribunal shall hold office for a period not exceeding three years, except that the member shall be eligible for re-appointment.

(2) A member of the Tribunal shall vacate office in accordance with the provisions of sections 95 and 96 of this Act.

Resignation of a member of the Tribunal.

95. (1) A member of the Tribunal may, at any time, and in writing, resign from the Tribunal and the member's resignation shall be addressed to the Governor-General.

(2) The Minister shall publish in the *Gazette* notice of every resignation of a member of the Tribunal.

Termination of membership of a member of the Tribunal.

96. (1) The office of a member of the Tribunal shall become vacant if

- (a) the member dies;
- (b) the member's term of office expires;
- (c) the member resigns in accordance with section 95;
- (d) the member is convicted of an indictable offence; or
- (e) the member is removed from office in accordance with the provisions of subsection (2).

(2) The Governor-General, acting in accordance with the recommendation of the Judicial and Legal Services Commission, may remove a member from the Tribunal if the Governor-General is satisfied that the member

- (a) is permanently incapable of performing his or her duties;
- (b) has engaged in dishonourable conduct;
- (c) is incompetent;
- (d) has neglected his or her duty; or
- (e) is bankrupt.

(3) A member of the Tribunal shall not be removed from office except as provided by this section.

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(4) The Minister shall publish in the *Gazette* notice of every member whose office falls vacant in accordance with the provisions of this section.

97. (1) The Minister of Finance may direct what sums of money shall be paid by way of remuneration

Remuneration of a member of the Tribunal.

- (a) to a member of the Tribunal; and
- (b) to a person appointed to assist the Tribunal.

(2) The Minister may also direct payment of any other expenses consequent upon the discharge of the functions of the Tribunal.

(3) Any payment directed to be made under this section shall be made out of moneys voted for the purpose by Parliament.

98. (1) The function of the Tribunal is to enforce the rights conferred upon consumers by Parts II, III, V and VI of this Act, and to exercise the jurisdiction specified in subsection (2) of this section and Part IV of this Act.

Functions and jurisdiction of the Tribunal.

(2) The jurisdiction of the Tribunal is

- (a) to determine complaints made to it in accordance with this Act where the value of the subject-matter of the complaint does not exceed the sum of \$30,000; and
- (b) to make awards and other decisions in accordance with the powers conferred on it by this Act.

(3) The awards and costs to be made by the Tribunal under this Act shall not exceed \$30,000.

(4) The Tribunal shall not have jurisdiction to hear and determine any criminal matter that arises out of the contravention of any provision of this Act.

(5) Notwithstanding subsection (2), the monetary value of a dispute may be increased where the parties to a dispute agree, in writing, to

- (a) extend the monetary jurisdiction of the Tribunal in respect to that dispute;
- (b) abandon part of their claims in order to bring the claim within the jurisdiction of the Tribunal.

99. The Tribunal shall not hear and determine a complaint unless it is satisfied that the Bureau has made all reasonable efforts to obtain redress for the complainant and has failed to obtain such redress.

Bureau to try to settle.

100. (1) The Tribunal shall meet on such occasions as may be expedient for the hearing and determination of disputes, and at such places and times as the Tribunal may determine.

Sitting of the Tribunal.

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(2) The Tribunal shall, for the purpose of exercising its jurisdiction, normally consist of a Chairperson and two other members.

(3) The Minister of Justice and Legal Affairs shall, by regulations, prescribe the procedure to be followed by the Tribunal in hearing and determining disputes referred to it.

(4) There shall be appointed a Registrar of the Tribunal who shall be a public officer.

Appeals.

101. A person who is dissatisfied with the decision of the Tribunal may appeal against the decision to a Court of Appeal within fourteen days from the day the decision is made, and the appeal so made shall be on a question or point of law only.

Enforcement orders.

102. (1) Where the Bureau finds that a supplier is engaged in conduct that is contrary to the provisions of this Act the Bureau may apply, in the prescribed form, to a Court for any of the following orders

- (a) an injunction restraining the supplier from engaging in conduct that is in breach of the Act;
- (b) a corrective advertising order directing the supplier to disclose correct information to the public or to publish a correct advertisement.

(2) Where the Bureau successfully institutes criminal proceedings arising out of this Act against a seller or supplier as a result of loss or damage suffered by a consumer the Court shall, on the application of the Bureau, and without instituting civil proceedings, award compensation to the consumer who has suffered loss or damage as a result of the breaches of the Act.

PART X – GENERAL PROVISIONS

Prohibition Notices etc

Prohibitions notices etc.

103. (1) The Bureau of Standards may:

- (a) serve on any person a notice prohibiting that person from
 - (i) supplying;
 - (ii) offering to supply;
 - (iii) agreeing to supply;
 - (iv) exposing for supply; or
 - (v) possessing for supply;

any goods which the Bureau considers unsafe, and which are described in the notice;

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- (b) serve on any person a notice requiring that person, at his own expense, to publish in a form and manner and on occasions specified in the notice, a warning about any goods supplied by that person which the Bureau of Standards considers to be unsafe, and are described in the notice.

(2) The consumer safety regulations shall have effect with respect to prohibition notices and notices to warn and the Bureau of Standards may prescribe the manner in which information is to be given to any person.

(3) The Bureau of Standards may, where it gives a consent for the purposes of a prohibition notice, impose such conditions on the doing of anything for which the consent is required as the Bureau of Standards considers appropriate.

104. (1) If the Minister or the Bureau of Standards, as the case may be, considers that, for the purpose of deciding whether to

- (a) make, vary or revoke any safety regulations;
- (b) serve, vary or revoke a prohibition notice; or
- (c) serve or revoke a notice to warn;

the Minister or the Bureau of Standards requires information which another person is likely to be able to furnish, the Minister or the Bureau of Standards may serve on the person a notice under this section.

(2) A notice served on any person under this section may require that person

- (a) to furnish to the Minister within a period specified in the notice such information as is so specified;
- (b) to produce such records as are specified in the notice at a time and place so specified and to a person appointed by the Minister for the purpose to take copies of the records at that time and place.

(3) A person commits an offence if he

- (a) refuses or fails, without reasonable cause, to comply with a notice served on him under this section; or
- (b) in purporting to comply with a requirement which by virtue of subsection (2)(a) is contained in the notice
 - (i) furnishes information which he knows is false in a material particular; or
 - (ii) recklessly furnishes information which is false in a material particular;

Power to obtain information.

and is liable, on summary conviction, to a fine not exceeding ten thousand dollars.

Restrictions on disclosure of information.

105. (1) Subject to subsection (2), no information with respect to any particular business which is obtained by virtue of this Act shall as long as that business continues to be carried on, be disclosed without the consent of the person for the time being carrying on that business.

(2) Subsection (1) shall not apply to any disclosure of information which is made for the purpose of

- (a) facilitating the performance by the Minister or the Bureau of any of their functions under this Act; or
- (b) any legal proceedings.

(3) A person who contravenes this section commits an offence and is liable on summary conviction, to a fine not exceeding five thousand dollars.

Defences in civil proceedings

Defences in civil proceedings.

106. In any civil proceeding under this Act against a supplier in respect of a defect in a product, it shall be a defence for the supplier to show

- (a) that the defect is attributable to compliance with a requirement imposed by or under any enactment;
- (b) that the supplier did not at any time supply or sell the product to another;
- (c) that the following conditions are satisfied, that is to say;
 - (i) that the only supply of the product to another by the supplier was otherwise than in the course of a business of the supplier;
 - (ii) that section 34(2) does not apply to the supplier or applies to him by virtue only of things done otherwise than with a view to profit;
- (d) that the defect did not exist in the product at the relevant time;
- (e) that the state of scientific and technical knowledge at the relevant time was not such that a produce of products of the same description as the product in question might be expected to have discovered the defect if it had existed in his products while they were under his control; or
- (f) that the defect

- (i) constituted a defect in a product referred to as “the subsequent product” in which the product in question had been comprised; and
- (ii) was wholly attributable to the design of the subsequent product or to compliance by the producer of the product in question with instructions given by the producer of the subsequent product.

Defences in criminal proceeding

107. (1) Subject to the provisions of subsection (2), in any criminal proceedings under this Act, it shall be a defence if the defendant establishes

Defences in
criminal
proceedings.

- (a) that the contravention in respect of which the proceedings are instituted was due to
 - (i) a mistake;
 - (ii) reliance on information supplied by another person;
 - (iii) the act or default of another person;
 - (iv) an accident or some other cause beyond his control; and
- (b) that he took reasonable precautions and exercised due diligence to avoid the contravention.

(2) Where a person relies on any defence provided by sub-paragraph (ii) or (iii) of paragraph (a) of subsection (1) he shall first obtain leave of the Court in order to rely on the defence, unless before the day on which the hearing of the proceedings commences, he served on the person who instituted the proceedings a notice in writing giving such information that would identify or assist in the identification of the other person as was then in his possession.

(3) In any criminal proceedings under this Act, in relation to the supply of goods that did not comply with a consumer product safety standard or in relation to which the supplier did not comply with a consumer product information standard, it shall be a defence if the defendant establishes

- (a) that the goods were acquired by him for the purposes of re-supply and were so acquired from a person who carried on in the Federation a business of supplying such goods otherwise than as the agent of a person outside the Federation; and

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- (b) that he did not know, and could not with reasonable diligence have ascertained, that the goods did not comply with that standard or that he had not complied with that standard or that he had not complied with that standard in relation to the goods as the case may be; or
- (c) that he relied in good faith on a representation by the persons from whom he acquired the goods that a consumer product safety standard or a consumer product information standard, as the case may be, had not been prescribed in respect of the goods.

(4) No person shall, without leave of the Court, be entitled to rely on any defence provided by subsection (3), unless that person has within such time as is prescribed by rules of the Court, served on the person who instituted the proceedings a notice in writing identifying the person from whom he acquired the goods.

(5) In any proceedings against a supplier for an offence under this Act in respect of any goods it shall be a defence for that person if he establishes

- (a) that he reasonably believed that the goods would not be used or consumed in the Federation;
- (b) that the following conditions were satisfied, that is to say,
 - (i) that he supplied the goods,
 - (ii) that he offered or agreed to supply the goods,
 - (iii) that he exposed or possessed the goods for supply, as the case may be, in the course of carrying on a retail business; and
 - (iv) that at the time he supplied the goods or agreed or offered to supply them or exposed or possessed them for supply, he neither knew nor had reasonable grounds for believing that the goods were not in conformity with the general safety requirements;
- (c) that the terms on which he supplied the goods or agreed or offered to supply them or in the case of goods which he exposed or possessed for supply, the terms on which he intended to supply them,

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- (i) indicated that the goods were not supplied or to be supplied as new goods,
 - (ii) provided for, or contemplated, the acquisition of an interest in the goods by the persons supplied or to be supplied.
- (6) For the purposes of subsection (4)(b), goods are supplied in the course of carrying on a retail business if
- (a) they are supplied in the course of carrying on a business of making a supply of consumer goods available to persons who generally acquire them for private use or consumption, whether or not they are themselves acquired for a person's private use or consumption; and
 - (b) the descriptions of goods the supply of which is made available in the course of that business do not, to a significant extent, include manufactured or imported goods which have not been previously supplied in the Federation.

Establishing intention of body corporate

108. (1) Where, in any proceedings under this Act in respect of any conduct engaged in by a body corporate, it is necessary to establish the intention of the body corporate, it is sufficient to show that a servant or agent of the body corporate by whom the conduct was engaged in had that intention.

Conduct by servants or agents.

(2) Any conduct engaged in on behalf of a body corporate by a director, agent or servant of the body corporate or by any other person at the direction or with the consent or agreement, whether express or implied, of a director, agent or servant of the body corporate shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.

Codes of Practice

109. (1) Subject to this section, a Code of Practice may be mandatory or voluntary.

Mandatory and voluntary codes of practice.

(2) The Minister may, by Order, declare any Caricom Code of Practice adopted by the Bureau as a national Code of Practice and any other Code of Practice primarily intended to protect the consumer in any aspect to be mandatory.

(3) The Minister shall, before making the Order under subsection (2), give at least thirty days notice published in the *Gazette* and in a daily newspaper published in the Federation, of his intention to

make the Order, and the notice shall contain the date on which it is intended that the Code of Practice shall become mandatory.

Regulations

Regulations.

110. (1) The Minister may, after consulting the Bureau of Standards and other organisations representing interests likely to be affected by the proposed regulations, make regulations generally for giving effect to the provisions of this Act, and without limiting the generality of subsection (1), the Minister may

- (a) prescribe a consumer product safety standard consisting of such requirements as to
 - (i) performance, composition, content, design, construction, finish or packing of the goods, and
 - (ii) the form and content of markings, labelling, warnings or instructions to accompany the goods, as is reasonably necessary to prevent or reduce risk of injury to persons using the goods;
- (b) prescribe a consumer product information standard consisting of such requirements as to
 - (i) the disclosure of information relating to the performance, composition, content, design, construction, finish, or packing of the goods; and
 - (ii) the form and manner in which the information is to be disclosed on or with the goods;

as is reasonably necessary to give persons using the goods accurate information as to the quantity, quality, nature, or value of the goods.
- (c) in relation to a notice to warn any goods to which that section or any growing crops or things comprised in land by virtue of being attached to it.

(2) Regulations made under this section shall be laid before the National Assembly.

Conflict of laws.

Act No. 6 of 1991.

Act No. 6 of 1983.

111. Where the provisions of this Act are in conflict with the provisions of the Banking Act, 1991 or the Eastern Caribbean Central Bank Act, 1983, the provisions of this Act shall prevail.

SCHEDULES***First Schedule***

(Section 31(4))

An Indicative and Illustrative List of Terms which may be regarded as Unfair

1. Terms which have the effect of
 - (a) excluding or limiting the legal liability of a seller or supplier in the event of the death of the consumer or personal injury to the latter resulting from an act or omission of the seller or supplier;
 - (b) inappropriately excluding or limiting the legal rights of the consumer vis-a-vis the seller or supplier or another party in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations, including the option of off-setting a debt owed to the seller or supplier against any claim which the consumer may have against him;
 - (c) making an agreement binding on the consumer whereas provision of services by the supplier is subject to a condition whose realisation depends on his own will alone;
 - (d) permitting the seller or supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract without providing for the consumer to receive compensation of an equivalent amount from the seller or supplier where the latter is the party cancelling the contract;
 - (e) requiring any consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation;
 - (f) authorising the seller or supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the seller or supplier to retain the sums paid for services not yet supplied by him where it is the seller or supplier himself to dissolve the contract;
 - (g) enabling the seller or supplier to terminate a contract of indeterminate duration without reasonable notice, except where there are serious grounds for doing so;
 - (h) automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express his desire to extend the contract is unreasonably early;

- (i) irrevocably binding the consumer to terms which he had no real opportunity of becoming acquainted before the conclusion of the contract;
 - (j) enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract;
 - (k) enabling the seller or supplier to alter unilaterally without a valid reason any characteristics of the product or service to be provided;
 - (l) providing for the price or goods to be determined at the time of delivery or allowing a seller of goods or supplier of services to increase the price without, in both cases, giving the consumer the corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded;
 - (m) giving the seller or supplier the right to determine whether the goods or services supplied are in conformity with the contract, or giving the seller or supplier the exclusive right to interpret any term of the contract;
 - (n) limiting the seller's or supplier's obligation to respect commitments undertaken by his agents or making his commitments subject to compliance with a particular formality;
 - (o) obliging the consumer to fulfil all his obligations where the seller or supplier does not perform his;
 - (p) giving the seller or supplier the possibility of transferring his rights and obligations under the contract, where this may serve to reduce the guarantees for the consumer, without the consumer's agreement;
 - (q) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract.
2. Scope of sub-paragraph 1(g), (j) and (l)
- (1) Sub-paragraph 1(g) is without hindrance to terms by which a supplier of financial services reserves the right to terminate unilaterally a contract of indeterminate duration without

- notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof immediately.
- (2) Sub-paragraph 1(j) is without hindrance to terms by which
 - (a) a supplier of financial services reserves the right to alter the rate of interest payable by the consumer or due to the consumer, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof at the earliest opportunity and the latter are free to dissolve the contract immediately;
 - (b) a seller or supplier reserves the right to alter unilaterally the conditions of a contract of indeterminate duration, provided that he is required to inform the consumer with reasonable notice that the consumer is free to dissolve the contract.
 - (3) Sub-paragraph 1(l) is without hindrance to price indexation clauses, where lawful, provided that the method by which prices vary is explicitly described.
 - (4) Sub-paragraphs 1(g), (j) and (l) shall not apply to:
 - (a) transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the seller or supplier does not control;
 - (b) contracts for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency.

Second Schedule

(Section 77(4))

1. (1) The Board shall meet at least once in each quarter and at such times as may be necessary or expedient for the transaction of the business of the Board.
- (2) The Chairperson shall give at least ten days' notice in writing of every meeting of the Board to each member of the Board, and shall specify in such notice the business to be dealt with at such meeting.
- (3) The proceedings at every meeting of the Board shall be recorded in a minute book and shall, subject to any amendments that may be made, be confirmed by the Board at the subsequent meeting.

Meetings and
procedure of.

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Custody and use
of seal.

2. (1) The seal of the Bureau shall be kept in the custody of the Director or of the Chairperson as the Board may determine.

(2) The affixing of the seal of the Bureau to any instrument shall be authenticated by the Chairperson or in his absence, the Vice-Chairperson, and the Director.

(3) All documents, other than those required to be under seal, made by, and all decisions of, the Board may be signified under the hand of the Chairperson or Director.

Committees.

3. (1) The Board may establish committees to assist it in the performance of its functions and may co-opt such persons, whether or not they are connected with the Bureau, as it thinks fit, to be members of the committees.

(2) The Chairperson of a committee referred to in sub-paragraph (1) of this paragraph shall be a member of the Board.

(3) The Board may assign to a committee referred to in sub-paragraph (1) such of the Board's functions as it thinks fit, but shall not be divested of any function that it may have assigned to a committee.

(4) The Bureau may amend or revoke any decision made by a committee.

(5) The Members of any committee may, out of the funds of the Bureau, receive such remuneration and allowances as the Board may determine, with the concurrence of the Minister.

(6) Subject to the provisions of this paragraph, a committee may regulate its own procedure.

WALFORD V GUMBS
Speaker.

Passed by the National Assembly this 29th day of October 2003.

JOSÉ LLOYD
Clerk of the National Assembly.