



REPUBLIC OF NAURU

# CONSUMER PROTECTION BILL 2023

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No. of 2023

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A Bill for an Act to provide for consumer protection, establishment of the Consumer Protection Authority and for other related purposes.

Certified: [ ]

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Enacted by the Parliament of Nauru as follows:

## PART 1 – PRELIMINARY

### 1 Short title

This Act may be cited as the *Consumer Protection Act 2023*.

### 2 Commencement

This Act commences on certification by the Speaker.

### 3 Objective

The objective of this Act is to:

- (a) protect the rights and interests of consumers;
- (b) provide standards for the safety of consumer goods and services;
- (c) establish the Consumer Protection Authority; and
- (d) prohibit restrictive business conduct and practices and misleading conduct by businesses.

### 4 Interpretation

In this Act:

**'business'** has the same meaning given to it under the *Business Licences Act 2017*;

**'consumer'** means:

- (a) a person who acquires goods for consumption from a person; or
- (b) a person who uses services provided by a person;

**'Consumer Protection Authority'** or **'Authority'** means the Authority established under Section 5;

**'corporation'** includes a subsidiary, statutory corporation or partnership;

**'Department'** means the Department of Finance;

**'goods'** means personal property of any kind whether tangible or intangible;

**'government agency'** includes a department or an instrumentality of the Republic;

**'maximum margin'** means the percentage of maximum profit based on the actual cost of goods for fixing the wholesale or retail prices;

**'Minister'** means the Minister responsible for Finance;

***‘maximum retail price’***, as determined under this Act in relation to goods or services, means the maximum price payable on the sale of such goods or the provision of such services, by retail;

***‘maximum wholesale price’***, as determined under this Act in relation to goods or, means the maximum price payable on the sale of such goods, by wholesale;

***‘person’*** includes a corporation which in the course of the person’s business sells goods or provides services to consumers;

***‘price’*** includes any valuable consideration, whether direct or indirect; and

***‘Secretary’*** means the Secretary for Finance.

## **PART 2 – CONSUMER PROTECTION AUTHORITY**

### **5 Consumer Protection Authority**

- (1) The Consumer Protection Authority is established.
- (2) The Authority shall be responsible to the Minister.
- (3) The Authority shall be a body corporate with perpetual succession and shall have a common seal.
- (4) The Authority may:
  - (a) sue and be sued;
  - (b) enter into a contract and other legal obligation;
  - (c) acquire, hold, manage and dispose of real or personal property; and
  - (d) exercise a power and perform a function, duty and responsibility of a corporation.
- (5) The Authority shall be independent and impartial in the exercise of its powers and performance of its functions.

### **6 Members of the Authority**

- (1) The Authority shall consist of 3 members who are appointed by the Cabinet.
- (2) The members appointed under subsection (1) shall consist of the following:
  - (a) a Chairperson, who is to be appointed on the recommendation of the Minister;
  - (b) a member, who is to be appointed on the recommendation of the Nauru Chamber of Commerce; and
  - (c) a member of the community, who shall be appointed on the recommendation of the Secretary.

(3) The members shall hold office for a term of 3 years and may be eligible for reappointment.

## **7 Criteria for appointment of members of the Authority**

(1) The Chairperson shall be a person who:

- (a) is independent and is of good character;
- (b) has knowledge of trade, commerce and business;
- (c) has a qualification or experience in trade, commerce and business; and
- (d) is not disqualified under subsection (3).

(2) A person shall not be appointed under Section 6(2)(b) and (c) unless he or she meets the following criteria:

- (a) is of good character;
- (b) has knowledge including technical knowledge and experience in trade, commerce and business including consumer protection; and
- (c) is not disqualified under subsection (3).

(3) No person under subsections (1) and (2) shall be eligible to be appointed or remain as a member of the Authority if he or she:

- (a) is an undischarged bankrupt or is insolvent in or outside of the Republic;
- (b) holds an elected office in the Republic;
- (c) has been convicted of an offence punishable by imprisonment for a term of 1 year or more; and
- (d) is unable to perform the functions or exercise powers under this Act as a consequence of any physical or mental impairment.

## **8 Removal of a member**

A member appointed under Section 6 may be removed by the Cabinet where he or she:

- (a) becomes disqualified under Section 7(3);
- (b) contracts any services for personal gain at a special or discounted cost from any person;
- (c) commits a serious breach of the terms and conditions of appointment; or
- (d) fails to perform the functions or exercise the powers under this Act.

## **9 Remuneration of the members**

The Minister in consultation with the Cabinet shall fix the remuneration, sitting allowance or other benefits for the members of the Authority.

**10 The Head of the Authority**

The Chairperson shall be:

- (a) the head of the Authority; and
- (b) responsible for the administration and management of the Authority.

**11 Delegation of the powers and functions of the Authority**

- (1) The Minister may on the recommendation of the Authority in writing delegate with or without any conditions to the Chairperson any or all of the Authority's administrative or operational functions or powers under this Act.
- (2) The power to make any decision or order vested in the Authority under this Act shall not be delegated.

**12 Disclosure of interest**

- (1) Where a member has any interest relating to a business, the member shall disclose the details of his or her interest as soon as practicable after the member becomes aware that he or she has an interest.
- (2) A disclosure under subsection (1), shall be recorded in the minutes of the meeting of the Authority and the member shall:
  - (a) after the disclosure, not take part in any deliberation or decision of the Authority in respect of that matter; and
  - (b) be disregarded for the purposes of constituting a quorum of the Authority in that deliberation or decision.

**13 Finance of the Authority**

The funds of the Authority shall consist of monies appropriated by the Parliament and such funds shall be expended for the purposes of the performance of the functions and the exercise of powers under this Act.

**14 Annual report and accounts**

- (1) The Authority shall prepare and publish an annual report of its activities during the preceding financial year containing:
  - (a) the financial and administrative performance of its functions and exercise of its powers including an assessment of its progress in achieving the objective under Section 3;
  - (b) its activities and progress in respect of the performance of its functions and the exercise of its powers under this Act;

- (c) nature or summary of determinations, orders or decisions made under this Act;
  - (d) nature of complaints, investigations and enforcement of decisions or orders; and
  - (e) such other relevant matters.
- (2) The annual report shall contain audited accounts of the income or expenditure of the Authority.
- (3) The Authority shall provide a copy of its annual report to the Minister who shall table it in Parliament as soon as practicable after receiving the report.
- (4) After the annual report is tabled in Parliament under subsection (3), the Authority shall publish the annual report on its website or by any other electronic form accessible to the public.

**15 Staff of the Authority**

- (1) The Authority shall consist of the Chairperson and such other staff as may be necessary.
- (2) The staff of the Authority shall be appointed by the members.

**16 Code of conduct of the Authority**

The members and the staff of the Authority shall be bound by the prescribed Code of Conduct of the Authority.

**17 Functions of the Authority**

- (1) The Authority shall:
- (a) advise the Minister on consumer protection matters;
  - (b) monitor and enforce compliance with this Act;
  - (c) conduct research and investigation into matters affecting consumers;
  - (d) receive, consider and investigate complaints from consumers;
  - (e) take such action as may be appropriate upon receiving complaints;
  - (f) determine complaints made under this Act;
  - (g) collect, compile, analyse and publish information in relation to any business;
  - (h) provide information to consumers on their rights as consumers and any other public awareness programmes for consumers;



- (i) review the prices of goods and services and make the relevant recommendations to the Minister;
  - (j) conduct a survey of the prices of goods and services and to publish from the findings of such survey including information on the methods and principles used to determine prices that are issued in price orders; and
  - (k) perform such other functions as the Minister may direct.
- (2) The Authority may refer to a relevant government agency, a report it receives where the Authority deems that such report requires the enforcement of compliance with any written law.

**18 Powers of the Authority**

The Authority shall exercise all such powers that are necessary to perform its functions under this Act.

**19 Meetings of the Authority**

- (1) The Authority shall regulate the procedure for its meetings.
- (2) The Chairperson shall appoint the time and place for any meeting of the Authority and shall serve notice of such meeting to all the members.
- (3) A meeting of the Authority may be held by a quorum of 2 members.
- (4) Each member has one vote and the decision of the Authority shall be by majority votes.
- (5) In a meeting of the Authority where only 2 members are present and a majority decision is not reached, the Authority shall re-constitute with the 3 members to reconsider its decision.

**PART 3 – RESTRICTIVE BUSINESS CONDUCT AND PRACTICES**

**20 Contracts, arrangements or understanding substantially lessening competition prohibited**

- (1) A person shall not in the course of business enter into a contract, arrangement or understanding containing a provision that:
  - (a) has the purpose of substantially lessening competition in a market; or
  - (b) has the effect or is likely to have the effect of substantially lessening competition in a market.
- (2) A person shall not in the course of business give effect to a provision of a contract, arrangement or understanding that:
  - (a) has the purpose of substantially lessening competition in a market; or

- (b) has the effect or is likely to have the effect of substantially lessening competition in a market.
- (3) Subsection (2) applies to a contract, arrangement or understanding whether entered into before or after the commencement of this Act.
- (4) No provision of a contract, arrangement or understanding whether entered into before or after the commencement of this Act is enforceable where the contract, arrangement or understanding:
  - (a) has the purpose of substantially lessening competition in a market; or
  - (b) has the effect or likely to have the effect of substantially lessening competition in a market.
- (5) A person who contravenes subsection (1), commits an offence and is liable upon conviction:
  - (a) for an individual, to a fine not exceeding \$10,000; or
  - (b) for a corporation, to a fine not exceeding \$50,000.

**21 Contracts, arrangements or understanding with associated persons or subsidiaries substantially lessening competition prohibited**

- (1) A person in the course of business shall not on the person's own or on behalf of an associated person or subsidiary enter into a contract, arrangement or understanding that:
  - (a) has the purpose of substantially lessening competition in a market; or
  - (b) has the effect or is likely to have the effect of substantially lessening competition in a market.
- (2) Subsection (1) applies to a contract, arrangement or understanding whether entered into before or after the commencement of this Act.
- (3) No contract, arrangement or understanding whether entered into before or after the commencement of this Act is enforceable where such contract, arrangement or understanding:
  - (a) has the purpose of substantially lessening competition in a market; or
  - (b) has the effect or is likely to have the effect of substantially lessening competition in a market.
- (4) For the purposes of this Section, 2 or more persons are deemed to be associated with each other in relation to a contract, arrangement or understanding where an associate is under an obligation in pursuance of the contract, arrangement or understanding, whether formal or informal to act in

accordance with the directions, instructions or wishes of the other associate in relation to such contract, arrangement or understanding.

- (5) A person who contravenes subsection (1), commits an offence and is liable upon conviction:
  - (a) for an individual, to a fine not exceeding \$10,000; or
  - (b) for a corporation, to a fine not exceeding \$50,000.

## **22 Exclusive contract, arrangement or understanding prohibited**

- (1) A person shall not in the course of business, either on the person's own or on behalf of an associated person or subsidiary enter into or give effect to an exclusive contract, arrangement or understanding:
  - (a) to sell or offer to sell goods, provide services, give or offer to give a discount, rebate or credit in relation to the goods being sold or services being provided by that person on the condition that:
    - (i) the person to whom the goods being sold to or services being provided to, agrees not to acquire goods or services from another person;
    - (ii) the person to whom the goods being sold to or services being provided to, agrees not to acquire goods or services from another person at a particular price; or
    - (iii) the person to whom the goods being sold to or services being provided to agrees not to re-supply such goods or provide services to a person or particular class of persons; or
  - (b) by refusing to:
    - (i) sell goods or provide services to another person; or
    - (ii) sell goods or provide services to another person at a particular price.
- (2) For the purposes of this Section, 2 or more persons are deemed to be associated with each other in relation to a contract, arrangement or understanding where an associate is under an obligation in pursuance of the contract, arrangement or understanding, whether formal or informal to act in accordance with the directions, instructions or wishes of the other associate in relation to such contract, arrangement or understanding.
- (3) A person who contravenes subsection (1), commits an offence and is liable upon conviction:
  - (a) for an individual, to a fine not exceeding \$10,000; or

(b) for a corporation, to a fine not exceeding \$50,000.

**23 Price fixing contract, arrangement or understanding prohibited**

- (1) A person shall not in the course of business:
  - (a) enter into a contract, arrangement or understanding that contains or makes provision for price fixing of goods or services; or
  - (b) give effect to a contract, arrangement or understanding that has the effect of price fixing.
- (2) Price fixing shall be deemed to have occurred, where 2 or more persons in the course of business enter into a contract, arrangement or understanding which has or has the likely effect of fixing, controlling or maintaining prices of goods or services for sale or resale.
- (3) A person who contravenes subsection (1), commits an offence and is liable upon conviction:
  - (a) for an individual, to a fine not exceeding \$10,000; or
  - (b) for a corporation, to a fine not exceeding \$50,000.

**24 Resale price maintenance prohibited**

- (1) A person shall not in the course of business engage in the practice of resale price maintenance.
- (2) For the purposes of this Section, a person engages in the practice of resale price maintenance, if the person, as a supplier:
  - (a) makes it known to another person that the goods shall not be sold for resale unless the other person agrees not to sell the goods less than a price specified by the supplier;
  - (b) induces, or attempts to induce, another person not to sell goods, at a price less than the price specified by the supplier;
  - (c) by a third person, directly or indirectly, induces or attempts to induce another person not to sell goods at a price less than the price specified by the supplier;
  - (d) enters or offers to enter into a contract, arrangement or understanding, for the supply of goods to another person with a provision that the other person shall not sell the goods at a price less than a price specified by the supplier; or
  - (e) withholds the supply of goods to another person for the reason that the other person:

- (i) has not agreed to the condition contained in paragraph (a); or
  - (ii) has sold, or is likely to sell, goods supplied to him or her by the supplier or third person at a price less than the price specified by the supplier.
- (3) For the purposes of subsection (2) a person, as a supplier or a person on behalf of the supplier:
- (a) makes it known to another person, in respect of any goods, that the price below which those goods are not to be sold shall be deemed to have been specified, by the supplier;
  - (b) provides a set form, method or formula by which the price of goods is capable of being ascertained or calculated, such price shall be deemed to have been specified by the supplier; or
  - (c) makes a statement to another person, of a price that is likely to be understood by that person as the price below which goods are not to be sold, such price shall be deemed to have been specified by the supplier.
- (4) For the purposes of this Section:
- (a) anything done by a person acting on behalf of, or by arrangement with the supplier, shall be deemed to have been done by the supplier; and
  - (b) **'sale'** includes advertise for sale, display for sale, offer for sale and **'sell,'** **'selling'** and **'sold'** have corresponding meanings.
- (5) A person who contravenes subsection (1), commits an offence and is liable upon conviction:
- (a) for an individual, to a fine not exceeding \$10,000; or
  - (b) for a corporation, to a fine not exceeding \$50,000.

## 25 **Misuse of market power**

- (1) A person with a substantial degree of power in a market, shall not in the course of business take advantage of such power for the purpose of:
- (a) eliminating or substantially harming a competitor's business in such market;
  - (b) preventing the entry of a person into such market; or
  - (c) deterring or preventing a person from engaging in competitive conduct in such market.
- (2) A person shall be deemed for the purposes of this Section to have a substantial degree of power in a market where 1 or more other persons, each

of which are related to the person, together have a substantial degree of power in such market.

- (3) In determining the degree of power that a person has in a market, the court shall have regard to the extent to which the conduct of the person in such market, is constrained by the conduct of:
  - (a) competitors or potential competitors of the person; or
  - (b) persons to whom or from whom such person sells, acquires goods or provides services in that market.
- (4) In this Section:
  - (a) a reference to power is a reference to market power;
  - (b) a reference to a market is a reference to a market for similar goods or services; and
  - (c) a reference to power in relation to conduct in a market, is a reference to power or to conduct in that market either as a supplier or as an acquirer of goods or provider of services in such market.
- (5) Without limiting this Section, a person may be deemed to have taken advantage of its power for a purpose referred to in subsection (1) notwithstanding that after all the evidence has been considered, the existence of that purpose is ascertainable by inference from the conduct of such person or of any other person or from other relevant circumstances.
- (6) A person who contravenes subsection (1), commits an offence and is liable upon conviction:
  - (a) for an individual, to a fine not exceeding \$10,000; or
  - (b) for a corporation, to a fine not exceeding \$50,000.

## **26**

### **Black marketing**

- (1) A person shall not in the course of business sell any goods for the purpose of resale, unless the person is satisfied:
  - (a) that such goods are required by a person in good faith for the legitimate purposes of his or her business; and
  - (b) in particular, that the effect of the transaction, whether by itself or taken in conjunction with transactions of the same or of a similar nature, is not to increase or does not intend to increase the price to a person of the goods in excess of a fair and reasonable price.
- (2) A person who contravenes subsection (1), commits an offence and is liable upon conviction:

- (a) for an individual, to a fine not exceeding \$10,000; or
- (b) for a corporation, to a fine not exceeding \$50,000.

**27 Hoarding and profiteering**

- (1) A person shall not in the course of business do an act that is deemed to be hoarding or profiteering.
- (2) For the purposes of this Section:
  - (a) an act is deemed as **'hoarding'** where a person:
    - (i) buys and stores or retains in the person's possession any specified goods;
    - (ii) has purchased, acquired or intends to purchase or acquire, any goods in quantities substantially greater than in the normal course of business; or
    - (iii) has in the person's possession or under the person's control any goods and has failed on demand to supply in the normal course of business; and
  - (b) an act is deemed as **'profiteering'** where a person hoards goods to maximise profit by selling or intending to sell such goods at a price exceeding the price at the time the goods were acquired or sold in the ordinary course of business by the person.
- (3) A person who contravenes subsection (1) commits an offence and is liable upon conviction:
  - (a) for an individual, to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding 6 months or to both; or
  - (b) for a corporation, to a fine not exceeding \$100,000.

**PART 4 – MISLEADING CONDUCT**

**28 Misleading public as to nature of goods**

- (1) A person shall not in the course of business engage in conduct that is likely to or misleads the public as to the nature, manufacture, characteristics, the suitability for a purpose or quantity of goods.
- (2) A person who contravenes subsection (1), commits an offence and is liable upon conviction:
  - (a) for an individual, to a fine not exceeding \$10,000; or
  - (b) for a corporation, to a fine not exceeding \$50,000.

**29 Misleading public as to nature of service**

- (1) A person shall not in the course of business engage in conduct that is likely to mislead the public as to the nature, characteristics, suitability for a purpose or quality of services.
- (2) A person who contravenes subsection (1), commits an offence and is liable upon conviction:
  - (a) for an individual, to a fine not exceeding \$10,000; or
  - (b) for a corporation, to a fine not exceeding \$50,000.

**30 False or misleading representation**

- (1) A person shall not in the course of business falsely represent that:
  - (a) the goods or services are of a particular kind, standard, quality, grade, quantity, composition, style or model or have had a particular previous use;
  - (b) services are supplied by any particular person or by any person with a particular trade, qualification or skill;
  - (c) a particular person has agreed to acquire goods or services;
  - (d) goods are new, reconditioned or that they were manufactured, produced, processed or reconditioned at a particular time;
  - (e) goods or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses or benefits; or
  - (f) a person has any sponsorship, approval, endorsement or affiliation.
- (2) A person shall not in the course of business make a false or misleading representation:
  - (a) with respect to the price of any goods or services;
  - (b) concerning the need for any goods or services;
  - (c) concerning the existence, exclusion or effect of a condition, warranty, guarantee, right or remedy; or
  - (d) concerning the place of origin of goods.
- (3) A person who contravenes subsection (1) or (2), commits an offence and is liable upon conviction:
  - (a) for an individual, to a fine not exceeding \$10,000; or



- (b) for a corporation, to a fine not exceeding \$50,000.

## **PART 5 – PRICE OF GOODS AND SERVICES**

### **31 Prices to be displayed**

- (1) A person shall in the course of business:
  - (a) display the price for goods intended for sale by affixing or noting the price on the goods;
  - (b) display the price for goods intended for sale by displaying the price on the shelf or stand on which the goods are displayed for sale; or
  - (c) display the price for goods intended for sale or services offered in a place visible to a consumer.
- (2) A person shall in the course of business display in the person's place of business, a notice specifying the maximum price of goods and services available for sale in his or her place of business, in respect of which a price order applies under this Act.
- (3) A person who contravenes subsection (1) or (2), commits an offence and is liable upon conviction:
  - (a) for an individual, to a fine not exceeding \$10,000; or
  - (b) for a corporation, to a fine not exceeding \$50,000.

### **32 Person to issue receipt**

- (1) A person shall in the course of business issue a receipt to a consumer, which shall contain the:
  - (a) date of sale;
  - (b) description of the goods sold;
  - (c) quantity of goods sold;
  - (d) price paid for such goods; and
  - (e) nature of the transaction whether wholesale or a retail sale.
- (2) A person shall in the course of business issue a receipt to a consumer containing the information under subsection (1) with the necessary modifications where the receipt is provided for a service.
- (3) A person who contravenes subsection (1) or (2), commits an offence and is liable upon conviction:
  - (a) for an individual, to a fine not exceeding \$10,000; or

- (b) for a corporation, to a fine not exceeding \$50,000.

**33**

**Price of goods or services may be fixed by the Minister**

- (1) The Minister may on his or her own deliberation or acting on the advice of the Authority, by a Notice published in the Gazette issue a price order to fix:
  - (a) the maximum wholesale or retail prices at which goods may be sold or at which any services may be provided; and
  - (b) the maximum margins which a person may apply when determining the wholesale or retail price of goods and services.
- (2) A price order under subsection (1) may direct that a maximum price or maximum margin shall not exceed a specified sum or may prescribe the manner in which the maximum price or maximum margin shall be ascertained and may:
  - (a) fix different maximum prices and maximum margins for the same class of goods or services having regard to the terms upon which the conditions and circumstances in which the goods are produced, imported or sold or the services are provided; and
  - (b) prescribe alternative methods or principles by which the maximum price or maximum margin may be ascertained for the same or different classes of goods or services, including, but not limited to, determining maximum margins or prices by percentage or by other form, method or formula.
- (3) When making a price order under subsection (1), the Minister shall have regard to:
  - (a) the need to allow consumers to have ready access to the goods and services at reasonable market prices;
  - (b) the cost of importing, making, producing or supplying the goods or services including cost occasioned by the form of delivery through air freight or sea freight;
  - (c) the desirability of encouraging greater efficiency in relation to importing, making, producing or supplying the goods or services;
  - (d) the need to ensure a reasonable rate of return on any investment made by the person in relation to the goods or services;
  - (e) the borrowing, capital and cash flow requirements of persons making, producing, selling or providing the goods or services;
  - (f) the effect of any proposed price order on general price inflation over the medium term;

- (g) the economic and social impact of any proposed price order; or
  - (h) any other matters the Minister considers relevant.
- (4) A price order under subsection (1), may contain such incidental and supplementary provisions as are necessary or expedient for the purposes of the price order including provisions requiring the keeping of records, by a person of matters relevant to the operation of the price order.
- (5) A price order made under subsection (1) takes effect on the date specified in the price order or if no date is specified, on the date of the publication of the price order in the Gazette.
- (6) A price order made under subsection (1) ceases to have effect:
- (a) on a date specified in the price order;
  - (b) at the end of a specified period commencing on the date on which the price order takes effect; or
  - (c) on the occurrence of a specified act or event, but otherwise continues in operation until revoked by the Minister in accordance with this Act.

**34 Extension of price order**

The Minister may extend a price order before it ceases to have effect, by notice published in the Gazette.

**35 Revocation of price order**

- (1) The Minister may revoke a price order prior to it ceasing to have effect by a Notice published in the Gazette.
- (2) The revocation of a price order takes effect from the date specified in the notice or if no date is specified, from the date of publication of the Notice in the Gazette.

**36 Monitoring prices**

The Authority shall monitor the compliance of the prices of goods and services, that are subject to a price order.

**37 Temporary rationing**

- (1) Where necessary the Minister may, issue a rationing order by a notification in the Gazette or a specific direction to a person in business to ration the sale of any goods to consumers that are or likely to be in short supply.
- (2) Without limiting the generality of subsection (1), the Minister may:
- (a) restrict the maximum quantity of any good which a person may sell to a consumer; or

- (b) prohibit a person from selling specified goods to another person or to a class of persons.

## **PART 6 – STANDARDS OF GOODS AND SERVICES**

### **38 Standards of goods**

- (1) The Minister may, on the advice of the Authority, prescribe standards to provide for product safety or quality for any specified goods of any class or description, and may include standards relating to:
  - (a) performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of goods;
  - (b) testing of the goods during or after the completion of manufacture or processing;
  - (c) form and content of markings, labelling, warnings or instructions to accompany the goods;
  - (d) equipment or accessories to be supplied with the goods including any specific instructions or directions provided by the manufacturer or producer;
  - (e) minimum quality or grade which goods of a specified class are required to comply with;
  - (f) measures that a person shall take to ensure that goods do not become hazardous through improper handling or storage; or
  - (g) such other safety standards, measures or specifications as are reasonably necessary to prevent or reduce any risk or injury to a person, damage to property or equipment.
- (2) A person shall not in the course of business sell or offer to sell goods that do not comply with the prescribed standards.
- (3) A person who contravenes subsection (2), commits an offence and is liable upon conviction:
  - (a) for an individual, to a fine not exceeding \$10,000; or
  - (b) for a corporation, to a fine not exceeding \$50,000.

### **39 Recall of goods**

- (1) The Minister may, on the advice of the Authority, issue a recall of goods order requiring a person to recall the goods in the manner specified in the order and within the time specified in the order.

- (2) Where an order has been issued under subsection (1), the Minister may by Notice published in the Gazette inform the public or a specified category of persons:
  - (a) the nature of any defect in the goods for which the order was issued;
  - (b) the method for disposing the goods; and
  - (c) that the person undertakes to:
    - (i) replace the goods; or
    - (ii) refund to the consumer, the price paid for such goods.

#### **40 Compliance with recall of goods order**

- (1) Where an order under Section 39 is in force relating to goods, the person:
  - (a) shall comply with the requirements and directions in the order; and
  - (b) for goods identified as defective, shall not sell such goods.
- (2) A person who contravenes subsection (1), commits an offence and is liable upon conviction:
  - (a) for an individual, to a fine not exceeding \$10,000; or
  - (b) for a corporation, to a fine not exceeding \$50,000.

#### **41 Standards of services**

- (1) The Minister may on the advice of the Authority prescribe minimum standards for services provided to consumers.
- (2) A person shall not in the course of business provide services that do not comply with the prescribed standards.
- (3) A person who contravenes subsection (2), commits an offence and is liable upon conviction:
  - (a) for an individual, to a fine not exceeding \$10,000; or
  - (b) for a corporation, to a fine not exceeding \$50,000.
- (4) To avoid doubt, standards prescribed under this Section shall not apply to a member of a body or profession which body or profession is regulated under other written law.

#### **42 Cessation of services**

- (1) The Minister may, on the advice of the Authority, issue a cessation of services order requiring a person to cease providing a service.

- (2) An order issued under subsection (1) shall specify:
  - (a) the service that is to cease;
  - (b) the period for which the service is to cease; and
  - (c) any remedial action that a person shall comply with.
- (3) Where an order has been issued under subsection (1), the Minister may where he or she deems it to be in the best interest of the public publish a Notice in the Gazette or inform a specified category of persons, the:
  - (a) service for which a cessation of services order has been issued; and
  - (b) remedial action to which the person providing the service has been ordered to comply.

**43 Compliance with a cessation of services order**

- (1) Where an order under Section 42 is in force, the person who is the subject of an order shall:
  - (a) cease to provide such service; and
  - (b) comply with any other requirements of the order.
- (2) A person who contravenes subsection (1), commits an offence and is liable upon conviction:
  - (a) for an individual, to a fine not exceeding \$10,000; or
  - (b) for a corporation, to a fine not exceeding \$50,000.

**PART 7 – CONSUMER COMPLAINTS**

**44 Complainant and respondent**

For the purposes of this Part:

- (a) **'complainant'** means a consumer who makes a complaint against another person and includes a person who in the course of business acquires goods:
  - (i) for the purpose of re-selling such goods; or
  - (ii) for the purpose of using such goods to provide a service; and
- (b) **'respondent'** means the person against whom the complaint is made.

**45 Complainant may lodge a complaint**

- (1) A complainant may lodge a complaint to the Authority that a respondent has contravened a provision of this Act, regulations or standards.
- (2) A complaint shall be in the prescribed form.

**46 Notice of complaint**

When a complaint is lodged under Section 45, the Authority shall notify the respondent of the complaint within the prescribed time.

**47 Notice of determination of the complaint**

The Authority shall inform the complainant and the respondent of the time and place of the hearing and give details of such notice in the prescribed form.

**48 Determination of complaint**

- (1) The Authority shall where necessary after an investigation, hear and determine a complaint for a claim of loss, damages or for a refund payable under this Act.
- (2) Where the Authority determines that a person has contravened one or more provisions of this Act, the Authority may make the following orders:
  - (a) return of the goods without any loss of money paid by the complainant;
  - (b) refund of any consideration or money paid by the complainant;
  - (c) relating to damages;
  - (d) refer the determination to the Registrar of Business Licences under the *Business Licences Act 2017*, with a recommendation to suspend or cancel the business licence or registration;
  - (e) refer the determination to the Director of Public Prosecutions for prosecution of offences under this Act or regulations as appropriate; or
  - (f) any such orders as may be necessary so that the provisions of the Act are complied with by a person in the course of business.
- (3) In determining a complaint, the Authority shall give the respondent, an opportunity to be heard in person or by a representative on his or her behalf.

**49 Practice and procedure**

- (1) The Authority may establish the practice and procedure for investigation, hearing and determination of any complaints under this Act.
- (2) The practice and procedure referred to in subsection (1) may be prescribed by the Cabinet.

## **PART 8 – ENFORCEMENT**

### **50 Appointment of authorised officers**

- (1) The Minister may by Notice in the Gazette, appoint authorised officers for the purposes of this Act, on the recommendation of the Authority.
- (2) An authorised officer appointed under this Section shall act under the directions or instructions of the Authority.
- (3) An authorised officer appointed under this Section, except a police officer shall be issued with an identification card signed by the Minister.
- (4) An authorised officer appointed under this Section shall produce his or her identification card on request.
- (5) Where an authorised officer fails to produce his or her identification card as required under subsection (4), he or she shall not exercise any powers under this Act.

### **51 Powers of authorised officers**

- (1) An authorised officer who has reasonable cause to believe that there has been or is a contravention of this Act, may enter any premises and:
  - (a) inspect any goods found;
  - (b) require any person carrying on a business on the premises or employed in or connected to the business to:
    - (i) produce books, documents, cash registers, computers or other equipment for use of storing stocks, sales or prices data relating to the business; and
    - (ii) permit the authorised officer to take copies of any book or document, or data stored on cash registers, computers or other equipment;
  - (c) examine any procedure in relation to the production of goods, including arrangements for carrying out a test connected with the production of such goods;
  - (d) seize and detain goods for testing;
  - (e) seize and detain goods, documents, books, cash registers, computers or other equipment for use of storing stocks, sales or prices data which the authorised officer believes may be required as evidence; and
  - (f) require any person having control over a container to break open any container and if the person does not comply, the authorised officer may do so himself or herself.



- (2) An authorised officer who in exercise of the powers under subsection (1), shall provide an inventory or list of items seized.
- (3) An authorised officer shall prepare a report on the powers exercised under this Section and submit such report to the Authority.
- (4) The procedure by which the powers under this Section are exercised may be prescribed.
- (5) An authorised officer has the power to carry out an investigation directed by the Authority.

## **52 Forfeiture by order of the Authority**

The Authority may where it is satisfied that a person is hoarding or profiteering goods, make an order that the goods be forfeited and on publication of the order in the Gazette, the goods are forfeited to the Republic.

## **53 Seizure and disposal of forfeited goods**

- (1) Where goods have been forfeited on an order issued under Section 52, a police officer or authorised officer may:
  - (a) seize the goods that are the subject of the order;
  - (b) store any such goods in a place approved for such purpose by the Authority; and
  - (c) sell or dispose of the goods to persons, at such times, in such manner and on terms and conditions as the Authority directs.
- (2) Where forfeited goods have been sold under subsection (1)(c), the proceeds of the sale of the goods shall be paid into the Treasury Fund.

## **54 Power to obtain information**

- (1) The Authority or an authorised officer, may require a person to:
  - (a) furnish information that the Authority or the authorised officer requires;
  - (b) produce all documents in the person's custody or under the person's control relating to the person's business; or
  - (c) answer any question put to him or her, in relation to any goods or services or to any other matter arising under this Act.
- (2) The Authority or an authorised officer, shall by written notice require, the information to be provided or the question to be answered, in writing and at the place specified in the notice.

- (3) This Section has effect notwithstanding any law relating to privilege, including legal professional privilege.

**55 Failing or refusing to provide information**

- (1) A person commits an offence where he or she is required under Section 54 to provide information or answer a question and he or she:
- (a) refuses or fails to provide the information or to answer the question; or
  - (b) provides information or an answer that is false in any particular.
- (2) A person who contravenes subsection (1), commits an offence and is liable upon conviction:
- (a) for an individual, to a fine not exceeding \$10,000 or an imprisonment term not exceeding 12 months or to both; or
  - (b) for a corporation, to a fine not exceeding \$50,000.

**56 Offences against authorised officer**

- (1) A person shall not:
- (a) hinder or obstruct an authorised officer in the performance of his or her duties or the exercise of any powers under this Act;
  - (b) induce or incite any other person to hinder or obstruct an authorised officer acting in accordance with this Act;
  - (c) by words or conduct falsely represent that he or she is an authorised officer or impersonate an authorised officer;
  - (d) fail to provide information to an authorised officer in the course of the duties of the authorised officer under this Act;
  - (e) refuse to give access to records to an authorised officer in accordance with this Act;
  - (f) refuse to give assistance to an authorised officer in accordance with this Act; or
  - (g) provide false or misleading information to an authorised officer in the course of the duties of the authorised officer under this Act.
- (2) A person who contravenes subsection (1), commits an offence and is liable upon conviction:
- (a) for an individual, to a fine not exceeding \$10,000; or
  - (b) for a corporation, to a fine not exceeding \$50,000.

57

### **Fixed Penalty Notice**

- (1) The Cabinet may make regulations prescribing:
  - (a) offences for which fixed penalties shall be imposed;
  - (b) a fixed penalty for each corresponding prescribed fixed penalty offence;
  - (c) the Fixed Penalty Notice which an authorised officer may serve to an offender for an offence for which a fixed penalty is prescribed;
  - (d) a time frame for the payment of a fixed penalty;
  - (e) procedure for the prosecution of and additional penalty to be imposed by the court on offenders defaulting to pay the prescribed penalty in accordance with the Fixed Penalty Notice;
  - (f) procedures for dealing with Fixed Penalty Notices; and
  - (g) any other matters necessary for the effective enforcement of Fixed Penalty Notices.
- (2) An authorised officer or police officer may issue a Fixed Penalty Notice to a person who commits an offence under this Act.

58

### **Requirements for a Fixed Penalty Notice**

- (1) A Fixed Penalty Notice shall not be served more than 14 days after the day on which the offence is alleged to have been committed.
- (2) The authorised officer or police officer who issues a Fixed Penalty Notice shall cause a signed copy of the notice to be placed before the Revenue Office and District Court as specified in the notice not later than 7 days after the notice is issued.
- (3) Where a Fixed Penalty Notice served upon a person has not been accepted by payment of the fixed penalty within 21 days of the date of the Fixed Penalty Notice, the notice shall be regarded for all purposes as a summons issued under the *Criminal Procedure Act 1972*.
- (4) A person who is issued a Fixed Penalty Notice by an authorised officer or a police officer shall accept its service by signing for the service of the Fixed Penalty Notice.
- (5) A person who contravenes subsection (4) commits an offence and is liable upon conviction to a fine not exceeding \$5,000.

59

### **Evidence of acceptance of a Fixed Penalty Notice**

In any proceedings, a certificate signed by the Registrar of Courts, an authorised officer or a police officer that the fixed penalty is or is not paid shall, unless the contrary is proved, be conclusive evidence of the matters stated in the certificate.

**60 Offences by a corporation**

- (1) Where an offence is committed by a corporation, the person who, at the time of the commission of the offence, was a director or officer of the corporation is liable for committing the offence.
- (2) Subsection (1) does not apply if a director or officer proves that the offence was committed without his or her knowledge, or that he or she used all due diligence to prevent the commission of the offence.

**61 Application of Criminal Procedure Act 1972**

The *Criminal Procedure Act 1972* applies *mutatis mutandis* to any matter or proceedings under this Act.

**62 Prosecution does not bar civil proceedings**

No proceeding or conviction for any offence punishable under this Act, shall prevent a person from instituting a civil proceeding for a remedy to which the person aggrieved by the offence may be entitled to.

**PART 9 – MISCELLANEOUS**

**63 Protection from liability**

The Minister, Authority, Secretary and authorised officers are not liable for any loss or damage arising from or be subject to any criminal prosecution and civil claims for the exercise of a power or performance of a function in good faith under this Act or any other written law.

**64 Jurisdiction of the court**

- (1) The District Court shall have jurisdiction to hear, try and determine any civil or criminal proceedings instituted in respect of any contravention, offence or other matter arising under this Act.
- (2) In addition to any other penalty that it may impose for a breach of a provision of this Act, the court may, if it thinks fit:
  - (a) order the forfeiture of any money or goods in respect of which an offence against this Act has been committed; and
  - (b) order the cancellation or suspension of the business licence or revocation of the business registration of a person convicted of an offence by the Registrar of Business Licences, Business names, Corporation or Partnership.

**65 Regulations**

- (1) The Cabinet may make regulations prescribing all matters necessary or convenient to be prescribed to give effect to this Act.
- (2) Without limiting subsection (1), the Cabinet may make regulations to provide for:

- (a) marking and display of goods;
- (b) the manner in which complaints may be made and investigations conducted; and
- (c) information that a person is required to provide to a consumer relating to price fixed for goods or services.

**66 Repeal**

The *Prices Regulation Act 2008* is repealed.

**67 Savings**

- (1) The Price Orders currently in force under the *Prices Regulation Act 2008* continue as if they were made under this Act.
- (2) Any act, appointment, decision, regulation, order, declaration, action, status or capacity that existed under the repealed *Prices Regulation Act 2008* continues in force so as to carry out, complete such act or decision, order, declaration, action or unless such status or capacity is revoked under the provisions of this Act.