

REPUBLIC OF NAURU
CONSUMER PROTECTION BILL 2023
EXPLANATORY MEMORANDUM

The *Consumer Protection Bill 2023* is a Bill for the *Consumer Protection Act 2023*.

This memorandum provides an explanation of the Bill and is only intended to indicate the general effect.

EXPLANATION OF CLAUSES

PART 1 - PRELIMINARY

Clause 1 provides that, once enacted, the short title of the Bill will be the *Consumer Protection Act 2023*.

Clause 2 sets out that the Bill once enacted commences upon certification by the Speaker.

Clause 3 provides for the objective of the Bill. The objective of the Bill is to protect the rights and interests of consumers, provide standards for the safety of consumer goods and services. It establishes the Consumer Protection Authority and prohibits restrictive trade practices and misleading conduct by businesses.

Clause 4 provides for the definition of terms that are used in the Bill. Some of the key terms include a '*person*' which refers to an individual or a corporation which in the course of business sells goods or provides services to a consumer. The term '*business*' is as defined under the *Business Licences Act 2017* which means any form of economic activity, trade, profession, commerce, craftsmanship, calling or other activity carried on for the purpose of generating revenue for gain. The term '*consumer*' means a person who acquires goods for consumption from a '*person*', or who uses services provided by a '*person*'. This clause also defines the term '*maximum margin*' which means the percentage of maximum profit based on the actual cost of goods for fixing the wholesale or retail prices. This is required to ensure that wholesalers and retailers do not apply a general percentage of profit when goods are shipped and air freighted. A lower percentage must be applied when goods are airfreighted as the cost for bringing the same are ultimately borne by the consumers. In either case the profit of the wholesaler or retailer must remain constant.

PART 2 – CONSUMER PROTECTION AUTHORITY

Clause 5 provides for the establishment of the Consumer Protection Authority. The Authority is responsible to the Minister. It is a body corporate with perpetual succession and shall have a common seal. The Authority as a legal entity can initiate and be a party to a legal proceeding, it may enter into contracts or other legal obligation. It may acquire, hold, manage and dispose of real or personal property, perform a power, function, duty and responsibility of a corporation. The Authority shall be independent and impartial in the exercise of its powers and performance of its functions.

Clause 6 provides for the members of the Authority. There shall be 3 members appointed by the Cabinet. The members consist of a Chairperson, who is to be appointed on the recommendation of the Minister, a member, who is to be appointed on the recommendation of the Nauru Chamber of Commerce and a member of the community, who is to be appointed on the recommendation of the Secretary.

Clause 7 provides for the criteria of appointment of members of the Authority. The Chairperson must be a person who is independent and is of good character, has knowledge of trade, commerce and business. The Chairperson must have a qualification or experience in trade, commerce and business. The other members must also be of good character, have knowledge including technical knowledge and experience in trade, commerce and business including consumer protection. A person is disqualified from being a member if the person is an undischarged bankrupt or is insolvent in or outside of the Republic, holds an elected office in the Republic, has been convicted of an offence punishable by imprisonment for a term of 1 year or more and is unable to perform the functions, powers or duties as a consequence of any physical or mental impairment.

Clause 8 provides for the removal of a member. A member appointed under clause 6 may be removed by the Cabinet where the member undertakes or commits any of the matters listed. These are, the member becomes disqualified under clause 7(3), contracts any services for personal gain at a special or discounted cost from a person, commits a serious breach of the terms and conditions of appointment or fails to perform or discharge the functions, powers or duties under the Bill.

Clause 9 provides for the remuneration of the members of the Authority. This clause provides that the Minister in consultation with the Cabinet shall fix the remuneration, sitting allowance or other benefits for the members of the Authority.

Clause 10 provides for the Head of the Authority. The Chairperson is the head of the Authority and as such is responsible for the administration and management of the Authority.

Clause 11 provides for the delegation of the powers and functions of the Authority. 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, duties or

powers under this Act. This clause also provides that the power to make any decision or order vested in the Authority under this Act shall not be delegated.

Clause 12 provides for the disclosure of interest. A member with an interest relating to a business relevant to a matter of discussion or deliberation shall disclose such interest. The disclosure of interest will be recorded in the minutes of meetings of the Authority and the members shall forthwith be excluded from discussion of the relevant matter. The member shall also be disregarded for the purpose of constituting a quorum of the Authority in the deliberation or a decision.

Clause 13 provides for the 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 the Bill.

Clause 14 provides for the annual report and accounts of the Authority. The Authority is required to prepare and publish an annual report of its activities during the preceding financial year containing the financial and administrative performance of its functions and exercise of its powers. This includes an assessment of its progress in achieving the objectives under Clause 3. As a statutory body, the Authority will be required to give a detailed account of its work in accordance with the matters specified in this Clause. The Report must contain the activities and progress in respect of the performance of the Authority's functions, the exercise of its powers, the nature or summary of determinations or decisions made, the nature of complaints, investigations and enforcement of decisions or orders and any other relevant matters. The annual report shall also contain the audited accounts of the Authority. The Authority is required to provide a copy of its annual report to the Minister for tabling in Parliament. Upon its tabling in Parliament, the Authority is required to publish the annual report on its website or by any other electronic form accessible to the public.

Clause 15 provides for the staff of the Authority. The Authority shall consist of the Chairperson and other staff as necessary. The staff is to be appointed by the Authority.

Clause 16 provides for the code of conduct of the Authority. The members and the staff shall be bound by the prescribed Code of Conduct of the Authority.

Clause 17 provides for the functions of the Authority. The Authority's functions are to advise the Minister on consumer protection matters, monitor and enforce the compliance of the Bill. The Authority must also conduct research and investigation into matters affecting consumers. It must, receive, consider and investigate complaints from consumers. It must determine complaints, collect, analyse and publish information in relation to any business. It must provide information to consumers on their rights as consumers and public awareness for consumers. This clause also provides for the Authority to coordinate implementation efforts with other government departments. If the Authority receives a report it deems requiring enforcement of compliance with

another legislation, the Authority may report such non-compliance to another government department. This may occur in a situation where enforcement officers appointed under the Bill encounter breaches of other standards made under written laws that are enforced by other departments.

Clause 18 provides for the powers of the Authority. The Authority has all the powers necessary to perform its functions under the Bill.

Clause 19 provides for the meetings of the Authority. The Authority shall regulate its own meetings. The quorum of the Authority is 2 members. Each member has one vote, and the decisions of the Authority are by majority votes. If no majority decision can be reached, the Authority shall re-constitute with the 3 members to reconsider its decision.

PART 3 – RESTRICTIVE BUSINESS CONDUCT AND PRACTICES

Clause 20 provides that contracts, arrangements or understanding substantially lessening competition are prohibited. This clause prohibits a person in the course of business from entering into a contract, arrangement or understanding with a provision that has the purpose of substantially lessening competition in a market in Nauru. This clause also prohibits giving effect to contracts, arrangements or understanding made that have the effect of likely effect of substantially lessening competition in a market. This clause will apply to any contract, arrangement or understanding made whether before or after the commencement of the Bill. This clause renders all such contracts, arrangements or understanding entered into, unenforceable where such has the purpose of substantially lessening the competition or has the effect or likely to have the effect of substantially lessening competition in a market. This clause promotes fair trading practices by prohibiting such conduct. A person who contravenes the requirements of this provision commits an offence and is liable upon conviction for an individual, a fine not exceeding \$10,000 or for a corporation, a fine not exceeding \$50,000.

Clause 21 provides that a contract, arrangement or understanding with associated persons or subsidiaries substantially lessening competition are prohibited. This clause prohibits associated persons or subsidiaries, from entering into or giving effect to contracts, arrangements or understanding that has the purpose of or effect or likely effect of substantially lessening competition in a market. This clause applies to a contract, arrangement or understanding entered into before or after the commencement of the Bill. It renders all such contracts, arrangements or understanding that were entered into before or after the commencement of the Bill as unenforceable. This clause provides that 2 or more persons are deemed to be associated with each other in relation to a contract, arrangement or understanding where one person is under an obligation in pursuance of the contracts, arrangements or understanding, whether formal or informal to act in accordance with the directions, instructions or wishes of the other person in relation to the contracts, arrangements or understanding. This includes 2 persons associated with each other in relation to a covenant where the persons are corporations. A person who contravenes

the requirements of this provision commits an offence and is liable upon conviction for an individual, to a fine not exceeding \$10,000 or for a corporation, a fine not exceeding \$50,000.

Clause 22 provides that exclusive contracts, arrangements or understanding are prohibited. This clause prohibits a person in the course of business from entering into an exclusive contract, arrangement or understanding to sell goods or provide services on conditions. The conditions include requiring a person not to buy goods or acquire services from another person, whether at a particular price or not. A conditions can also include requiring the person that goods or services are being sold to, not to resupply those goods or provide those services to another person or a particular class of persons. The conditions can also include refusing to sell goods or providing services to another person whether at a particular price or not at all. This clause also provides for what is deemed to be *2 persons associated with each other* for the purpose of this clause. A person who contravenes the requirements of this provision commits an offence and is liable upon conviction for an individual, to a fine not exceeding \$10,000 or for a corporation, a fine not exceeding \$50,000.

Clause 23 provides that a price fixing contract, arrangement or understanding is prohibited. This clause prohibits a person in the course of business from entering into or giving effect to a contract, arrangement or understanding that contains or makes provision for price fixing of goods or services. It provides that fixing shall be deemed, 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. A person who contravenes the requirements of this provision commits an offence and is liable upon conviction for an individual, to a fine not exceeding \$10,000 or for a corporation, a fine not exceeding \$50,000.

Clause 24 provides that resale price maintenance by suppliers is prohibited. Subclause (1) prohibits a person in the course of business from engaging in the practice of resale price maintenance.

Subclause (2) provides as to what constitutes as a person engaging in the conduct of resale price maintenance. The conduct includes, making it known to another person that the goods shall not be sold for re-sale unless the other person agrees not to sell the goods less than the price specified by the supplier. This is an express provision by the supplier not to supply goods. It includes inducing, or attempting to induce another person not to sell goods, at a price less than the price specified by the supplier. This usually occurs between the supplier and a seller. It also includes a supplier through a third person or a middle man inducing or attempting to induce another person not to sell goods at a price less than the price specified by the supplier. It includes a supplier entering 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 the price specified by the supplier. It also includes where a supplier withholds the supply of goods to another person for the reason that the other person has not agreed to withhold selling goods at a price less than that required by the supplier or for the reason that the person intends to sell goods at a price less

than that required by the supplier. This clause also captures how a supplier may set the retail price maintenance at which persons acquiring goods for re-sale must sell such goods. It includes where the supplier directly informs the price.

Subclause (3) provides how a supplier or person on behalf of a supplier makes it known how the resale price is to be maintained.

Subclause (3)(a) provides that this is done where the supplier or person on behalf of the supplier makes it known to another person, that the price of goods must not be sold at a particular price.

Subclause (3)(b) captures the situation where a supplier provides a formula for calculating the retail price maintenance.

Subclause (3)(c) captures the situation where a supplier provides a statement in other ways through general information booklets, advertisements and so forth.

Subclause (4) provides that actions taken on behalf of the supplier either by sale or advertising, displaying or offering for sale will always be deemed to have been done by the supplier irrespective of whoever does it acting on behalf of the supplier.

Subclause (5) provides that a person who contravenes the requirements of this provision commits an offence and is liable upon conviction for an individual, to a fine not exceeding \$10,000 or for a corporation, a fine not exceeding \$50,000.

Clause 25 provides for the prohibition of misuse of market power. Subclause (1) prohibits a person with a substantial degree of power in a market, from in the course of business, taking advantage of such power for the purpose of eliminating or substantially harming a competitor's business in the market, preventing the entry of a person into the market or deterring or preventing a person from engaging in competitive conduct in the market.

Subclause (2) deems that a person has a substantial degree of power in a market where one or more persons each of which is related to the person together have a substantial degree of power in that market.

Subclause (3) provides conditions that the court must consider when determining the degree of power that a person has in a market. It includes the extent to which the conduct of the person in the market, is constrained by the conduct of competitors, potential competitors of the person. It also includes constraints as a result of the conduct of persons to whom or from whom a person sells or acquires goods or services.

Subclause (4) provides clarification as to the meaning of reference to *power*, *market* and *power in relation to conduct in a market*. This is provided for the purpose of the use of these terms in the clause.

Subclause (5) provides that factual circumstances may be inferred from the conduct of a person or relevant circumstances when considering the substantial degree of power of a person in a market.

Subclause (6) provides that a person who contravenes the requirements of this provision commits an offence and is liable upon conviction for an individual, a fine not exceeding \$10,000 or for a corporation, a fine not exceeding \$50,000.

Clause 26 provides for the prohibition of black marketing. This clause provides as to what amounts to black marketing. A person who contravenes the requirements of this provision commits an offence and is liable upon conviction for an individual, to a fine not exceeding \$10,000 or for a corporation, a fine not exceeding \$50,000.

Clause 27 provides that hoarding and profiteering is prohibited. Subclause (1) prohibits a person in the course of business from engaging in conduct that is deemed hoarding or profiteering.

Subclause (2) provides that an act is deemed as *hoarding* when a person:

- (a) buys and stores or retains in the person's possession any specified goods;
- (b) has purchased, acquired or intends to purchase or acquire, any goods in quantities substantially greater than in the normal course of business; or
- (c) 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.

Subclause (2) also provides that an act is deemed as *profiteering* when the 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.

Subclause (3) provides that a person who contravenes the requirements of this provision commits an offence and is liable upon conviction for an individual, to a fine not exceeding \$20,000 or for a corporation, a fine not exceeding \$100,000.

PART 4 – MISLEADING CONDUCT

Clause 28 provides for the prohibition of the conduct of misleading the public as to the nature of goods. Subclause (1) provides that a person must not in the course of business engage in conduct that is likely to or misleads the public as to the nature, manufacture, characteristics or the suitability for a purpose of goods or quantity of goods.

Subclause (2) provides that a person who contravenes the requirements of this provision commits an offence and is liable upon conviction for an individual, to a fine not exceeding \$10,000 or for a corporation, a fine not exceeding \$50,000.

Clause 29 provides for the prohibition of the conduct of misleading the public as to the nature of services. Subclause (1) provides that a person must not in the course of business engage in conduct that is likely to mislead the public as to the nature of services, characteristics of services, suitability for a purpose of services or quantity of services.

Subclause (2) provides that a person who contravenes the requirements of this provision commits an offence and is liable upon conviction for an individual, to a fine not exceeding \$10,000 or for a corporation, a fine not exceeding \$50,000.

Clause 30 provides for the prohibition of false or misleading representation. This clause provides that a person shall not in the course of business falsely represent information in relation to goods or services and such situations are listed in subclauses (1) and (2). A person who contravenes the requirements of this provision commits an offence and is liable upon conviction for an individual, to a fine not exceeding \$10,000 or for a corporation, a fine not exceeding \$50,000.

PART 5 – PRICE OF GOODS AND SERVICES

Clause 31 provides that prices for goods are to be displayed. Subclause (1) provides that a person in the course of business is required to display prices in the manner specified in the clause.

Subclause (2) also requires a person to display in his or her 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.

Subclause (3) provides that a person who contravenes the requirements of this provision commits an offence and is liable upon conviction for an individual, to a fine not exceeding \$10,000 or for a corporation, a fine not exceeding \$50,000.

Clause 32 provides that a person shall in the course of business issue a receipt. Subclause (1) provides that the receipt must be issued to a customer which must contain the date of sale, description of the goods sold, quantity of goods sold, price paid for such goods and nature of the transaction whether wholesale or a retail sale.

Subclause (2) provides that the same requirements apply to a receipt for a service being provided, with the necessary modifications regarding a service being provided.

Subclause (3) provides that a person who contravenes the requirements of this provision commits an offence and is liable upon conviction for an individual, to a fine not exceeding \$10,000 or for a corporation, a fine not exceeding \$50,000.

Clause 33 provides that the Minister may fix the price of goods or services. Subclause (1) provides that the Minister acting on his or her own discretion or acting on the advice of the Authority may by order published in the Gazette fix the maximum wholesale or retail prices at which goods may

be sold or at which services may be provided. The Minister may also fix the maximum margins which a person may apply when determining the wholesale or retail price of goods and services.

Subclause (2) provides that a price order 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. An order may also 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. An order may also 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.

Subclause (3) provides factors that the Minister must consider when making a price order.

Subclause (4) provides that a price order may also contain provisions that are incidental to, necessary or expedient for the purposes of the order.

Subclause (5) provides that a price order commences on the date specified or on the date of publication in the Gazette.

Subclause (6) provides that a price order ceases on a date specified in the order or at the end of a specified period or on the occurrence of a specified act or event or on revocation by the Minister.

Clause 34 provides for the extension of a price order. The Minister may extend a price order before it ceases to have effect, by notice published in the Gazette.

Clause 35 provides that the Minister may revoke a price order prior to it ceasing to have effect by a Notice published in the Gazette. The revocation of an order takes effect from a date specified in the notice or, if no date is specified, from the date of publication of the Notice in the Gazette.

Clause 36 provides that the Authority shall monitor the prices of goods and services including the compliance with a price order.

Clause 37 provides for temporary rationing of goods. The Minister where necessary may by order direct a person in business to ration the sale of any goods to consumers that are or likely to be in short supply. The Minister may restrict the maximum quantity of any good which a person may sell to a consumer or prohibit a person from selling specified goods to another person or to a class of persons.

PART 6 – STANDARDS OF GOODS AND SERVICES

Clause 38 provides for the standards of goods. Subclause (1) enables standards to be prescribed to ensure that goods intended for consumers are not hazardous, unsafe or dangerous. The standards

therefore may prescribe the minimum quality or grade that goods must meet. The matters to be which standards may provide for are specified under this subclause.

Subclause (2) provides that a person is prohibited from selling or offering to sell goods or providing services that do not comply with the prescribed standards.

Subclause (3) provides that a person who contravenes the requirements of this provision commits an offence and is liable upon conviction, for an individual, to a fine not exceeding \$10,000 or for a corporation, a fine not exceeding \$50,000.

Clause 39 provides for the recall of goods. Subclause (1) provides that the Minister may on the advice of the Authority issue a *recall of goods order* requiring an importer or trader of defective goods or services to recall goods.

Subclause (2) provides that the Minister may by Notice inform the public or a specified category of persons, the nature of any defect in the goods for which the order was issued, the method of disposing the goods and that the relevant person undertakes to make restitution to the consumer, replace the goods or refund the consumer.

Clause 40 provides for compliance with recall of goods order. This clause provides that a person must comply with the requirements of a recall of goods order issued by the Minister. A person who contravenes an order commits a strict liability offence and shall be liable to a prescribed fixed penalty.

Clause 41 provides for standards of services. Subclause (1) provides that the Minister may on the advice of the Authority prescribe minimum standards for services provided to consumers.

Subclause (2) also provides that a person must not in the course of business provide services that do not comply with the prescribed standards.

Subclause (3) provides that a person who contravenes the requirements of this provision commits an offence and is liable upon conviction, for an individual, to a fine not exceeding \$10,000 or for a corporation, a fine not exceeding \$50,000.

Subclause (4) provides that to avoid doubt, this clause does not apply to a body that is established or regulated under other written law. This is intended to exclude professional bodies such as the Nauru Law Society the services provided by its members are regulated by the *Legal Practitioners Act 2019*.

Clause 42 provides for a cessation of service order. Subclause (1) provides that the Minister may, on the advice of the Authority, issue a cessation of services order requiring a person to cease providing a service.

Subclause (2) provides that an order issued under subclause (1) must specify the service that is to cease, the period for which the service is to cease and any remedial action that a person shall comply with.

Subclause (3) provides that where an order has been issued under subclause (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 service for which a cessation of services order has been issued and the remedial action that the person providing the service has been ordered to comply with.

Clause 43 provides for the compliance with a cessation of service order. Subclause (1) provides that a person who is the subject of an order issued shall cease to provide the specified service and comply with any other requirements of the order.

Subclause (2) provides that a person who contravenes this provision commits an offence and is liable upon conviction, for an individual, to a fine not exceeding \$10,000 or for a corporation, a fine not exceeding \$50,000.

PART 7 – CONSUMER COMPLAINTS

Clause 44 provides for the definitions of a ‘*complainant*’ and a ‘*respondent*’. A ‘*complainant*’ is a consumer who makes a complaint against another person and includes a person who in the course of business acquires goods, for the purpose of re-selling of such goods or acquires goods for the purpose of using such goods to provide a service. A ‘*respondent*’ means the person against whom the complaint is made.

Clause 45 provides that a consumer may lodge a complaint. A complainant may lodge a complaint to the Authority that a respondent has contravened a provision of this Bill, Regulations or standards. The complaint must be in the prescribed form.

Clause 46 provides for the notice of complaint. When the Authority receives a complaint lodged by a complainant, the Authority must inform the respondent of the complaint within the prescribed time.

Clause 47 provides for the notice of determination of the complaint. This clause requires the Authority to inform the complainant and the respondent of the time and place of the hearing and give details of such notice in the prescribed form.

Clause 48 provides for the determination of a complaint. Subclause (1) provides that 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 the Bill.

Subclause (2) provides where the Authority determines that a person has contravened one or more provisions of the Bill the Authority may make orders requiring the respondent to return the goods

without any loss of money paid by the complainant, refund of any consideration or money paid by the complainant. Orders may also be made relating to damages. The Authority may also 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. It may also refer the determination to the Director of Public Prosecutions to institute proceedings for offences under the Bill or regulations as appropriate. It may also issue any such orders as may be necessary so that the provisions of the Bill are complied with by a person in the course of business.

Subclause (3) provides that the Authority in determining a complaint must give the respondent an opportunity to be heard in person or by a representative of his or her behalf.

Clause 49 provides for the practice and procedure of the Authority. The Authority may establish the practice and procedure for investigation, hearing and determination of any complaints. The practice and procedure shall be prescribed by the Cabinet.

PART 8 - ENFORCEMENT

Clause 50 provides for the appointment of authorised officers. The Minister may by notice appoint authorised officers for the purpose of the Bill on the recommendation of the Authority. An authorised officer appointed must act under the directions or instructions of the Authority. Every authorised officer (except a police officer) is required to be issued with an identification card signed by the Minister. An authorised officer appointed under this clause is required to produce his or her identification card on request. Where an authorised officer fails to produce his or her identification card, he or she shall not exercise any powers under the Bill.

Clause 51 provides for the powers of authorised officers. Subclause (1) provides that authorised officers with reasonable cause to believe that there has been a breach or is likely to be a breach may carry out the necessary powers provided for in the Bill. The powers include, inspection of goods, power to require information to be produced, examine procedures in relation to the production of goods, or arrange for the testing of such goods. Authorised officers are also empowered to seize and detain goods for testing, seize and detain goods or document that may be used as evidence and powers to require any person to break open any container for the purpose of the Bill. An authorised officer is required to inform in writing a person from whom goods or documents are seized, the nature and amount of goods or nature of the documents seized.

Subclause (3) requires an authorised officer to prepare a report detailing what and how powers provided for under this clause, were exercised. The report prepared must be submitted to the Authority. This ensures transparency and accountability in enforcement procedures implemented by authorised officers.

Subclause (4) provides that regulations may further prescribe the procedures to be followed by authorised officers when implementing their powers under this clause.

Subclause (5) provides that an authorised officer has the power to carry out an investigation that is directed by the Authority.

Clause 52 provides for the forfeiture by order of the Authority. This clause provides that the Authority may where it is satisfied that a person is hoarding or profiteering, make an order that the goods or any specified quantity of the goods, be forfeited and, on publication of the order in the Gazette, the goods or the specified quantity of the goods, are forfeited to the Republic.

Clause 53 provides for the seizure and disposal of forfeited goods. Subclause (1) provides that where an order is issued under clause 52, a police officer or an authorised officer may seize the goods that are the subject of the order. The police officer or an authorised officer must store the goods in a place approved for that purpose by the Authority. The goods must then be sold or disposed of in the manner or on terms and conditions that the Authority directs.

Subclause (2) provides that forfeited goods that have been sold, the proceeds from the sale must be paid to the Treasury Fund.

Clause 54 provides for the power to obtain information. Subclause (1) provides that the Authority or an authorised officer may require a person to provide information that the Authority or authorised officer requires. A person may also be required to produce all documents in the person's custody or under the person's control relating to the person's business. A person may also be required to answer any question regarding goods or services or any other matter arising from the enforcement of the Bill

Subclause (2) provides that 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. By requiring a person to provide the written information at the place specified in the notice, this will enable the recording of the information, witnessed by the authorised officer.

Subclause (3) provides that the clause has effect notwithstanding law relating to privilege including legal professional privilege. The intention of this provision is to ensure effective enforcement of the Bill.

Clause 55 provides for the offence of failing or refusing to provide information. Subclause (1) provides for the offence of refusing or failing to provide information or answer a question when required to do so under Clause 54.

Subclause (2) provides that a person who commits the offence under subclause (1) is liable upon conviction, for an individual, to a fine not exceeding \$10,000 or an imprisonment term not exceeding 12 months, or both. A corporation is liable to pay a fine not exceeding \$50,000.

Clause 56 provides for the offences against an authorised officer. Subclause (1) provides for a number of prohibitions. A person must not:

- (a) hinder or obstruct an authorised officer in the performance of his or her duties or the exercise of any powers under the Bill;
- (b) induce or incite any other person to hinder or obstruct an authorised officer acting in accordance with this Bill;
- (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 Bill;
- (e) refuse to give access to records to an authorised officer in accordance with this Bill;
- (f) refuse to give assistance to an authorised officer in accordance with this Bill;
- (g) provide false or misleading information to an authorised officer in the course of the duties of the authorised officer under this Bill.

Subclause (2) provides that a person who contravenes subclause (1) commits an offence. The penalty for a breach of this provision by an individual is a fine not exceeding \$10,000 or for a corporation a fine not exceeding \$50,000.

Clause 57 provides for Fixed Penalty Notices. Subclause (1) provides that the Cabinet may make regulations prescribing the following matters:

- (a) offences for which fixed penalties can 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) the procedure for the prosecution of and additional penalties to be imposed by the court on offenders defaulting to pay the prescribed penalty in accordance with the Fixed Penalty Notice;
- (f) the procedures for dealing with Fixed Penalty Notices; and
- (g) any other matters necessary for the effective enforcement of Fixed Penalty Notices.

Subclause (2) provides that an authorised officer or police officer may issue a Fixed Penalty Notice to a person who commits an offence under the Bill.

Clause 58 provides for the requirements applying to a Fixed Penalty Notice. Subclause (1) provides that a Fixed Penalty Notice must not be served after 14 days has lapsed from the day the offence was alleged to have been committed.

Subclause (2) provides that the authorised officer or police officer who issues a Fixed Penalty Notice must ensure a signed copy of the notice is given to the Revenue Office and the District Court. This must be done within 7 days after the notice is issued.

Subclause (3) provides that 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 is to be regarded for all purposes as a summons issued under the *Criminal Procedure Act 1972*.

Subclause (4) provides that a person issued a Fixed Penalty Notice must accept its service by signing for the service of the Fixed Penalty Notice.

Subclause (5) provides that a person who does not accept the service of a Fixed Penalty Notice commits an offence and is liable upon conviction to a fine not exceeding \$5,000.

Clause 59 provides for evidence of acceptance of a Fixed Penalty Notice. This clause provides that 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.

Clause 60 provides for offences by corporation. This clause provides that 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. However, this provision does not apply if a director or officer proves that the offence was committed without his or her knowledge. This clause also does not apply if the director or officer proves that he or she used all due diligence to prevent the commission of the offence.

Clause 61 provides for the application of the *Criminal Procedure Act 1972*. This clause provides that the *Criminal Procedure Act 1972* applies *mutatis mutandis* to any matter or proceedings under this Bill.

Clause 62 provides that prosecution does not bar civil proceedings. This clause provides that no proceeding or conviction for any offence punishable under the Bill prevents 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

Clause 63 provides for the protection from liability. The Minister, Authority, Secretary and authorised officers are not liable for any loss or damage arising from any civil claims, or be subject

to any criminal prosecution for the exercise of powers, functions or duties done in good faith under the Bill.

Clause 64 provides for the jurisdiction of the court. Subclause (1) provides that the District Court has the jurisdiction to hear, try and determine any civil or criminal proceedings instituted in respect of any matter of cause arising from the implementation of the Bill.

Subclause (2) provides that the court may in addition to a penalty it may impose for a breach of a provision under the Bill, order the forfeiture of any money or goods in respect of an offence committed. It may also order the cancellation or suspension of a business licence or revocation of a business registration of a person or corporation.

Clause 65 provides for the regulation authorising provision. This clause allows the making of regulations that are necessary to give effect to the Bill once passed. It also provides that regulations may be made with regard to the marking and display of goods and the manner in which complaints may be made and investigations conducted. Regulations may also be made regarding information that a person is required to provide to a consumer relating to prices fixed for goods or services.

Clause 66 repeals the *Prices Regulation Act 2008*.

Clause 67 provides for savings provisions. This clause saves the price orders that were made under the repealed *Prices Regulation Act 2008* as if such orders were made under the Bill once it is passed. The Bill also saves any act, appointment, decision, order, declaration, action, status or capacity that existed under the repealed Act. Such price orders, act, appointment, decision, declaration, action, status or capacity will continue as if they were made under the Bill once passed.