

No. 22 of 1993.

Consumer Affairs Council Act 1993.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 22 of 1993.

Consumer Affairs Council Act 1993.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Consumer Affairs Council Act 1993,

Being an Act to provide for the regulation of goods and services to consumers and the protection of consumer interests by establishing a Consumer Affairs Council and making provision for its composition, functions and powers and for related purposes.

PART I. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution* namely—

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to privacy conferred by Section 49 of the *Constitution*; and
- (c) the right to freedom of information conferred by Section 51 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public safety, public welfare and public health.

(2) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this law relates to a matter of national interest.

2. INTERPRETATION.

In this Act, unless the contrary intention appears—

“**authorized officer**” means an authorized officer appointed under Section 26;

“**Chairman**” means the Chairman of the Council appointed under Section 10;

“**consumer**” means any person who acquires or uses goods or services for personal, domestic or household use or consumption;

“**Committee**” means a Committee of the Council established under Section 16;

“**Council**” means the Consumer Affairs Council established by Section 5;

“**Deputy Chairman**” means the Deputy Chairman of the Board appointed under Section 10;

“**Executive Director**” means the Executive Director of Consumer Affairs appointed under Section 20;

“**member**” means a member of the Council appointed under Section 8;

“**service**” means—

- (a) any service supplied or carried on by any person or body of persons, incorporated or unincorporated, engaged in an industrial, commercial, business, profit-making or remunerative undertaking or enterprise (including a professional practice); or
- (b) any right or privilege for which remuneration is payable in the form of royalty, stumpage, tribute or other levy based on volume or value of goods produced; or
- (c) any right under an agreement—
 - (i) for the hiring of goods; or
 - (ii) for the hire, use or occupation of any wharf or dock; or
 - (iii) for the provision of lodging; or
- (d) any right under an agreement (not being a lease) or licence for the hiring of a hall; or
- (e) any benefit under a contract of work and labour, or of work and labour and the supply of materials;

“**this Act**” includes the Regulations.

3. DECLARATION OF STATE CONSUMER POLICY.

It is the policy of the State to protect the rights and interests of consumers and to monitor standards for the ethical conduct of those engaged in the production and distribution of goods and services.

4. CONSUMERS’ RIGHTS.

(1) The State recognizes that consumers, in their capacity as consumers, have the following rights:—

- (a) right to safety;

- (b) right to choice;
- (c) right to consumer education;
- (d) right to information;
- (e) right to representation;
- (f) right to redress.

(2) The recognition of the rights under Subsection (1) does not confer or imply any liability on the State in respect of these rights or the enforcement of these rights.

PART II. – CONSUMERS AFFAIRS COUNCIL.

Division 1.

Establishment, Functions and Powers.

5. ESTABLISHMENT OF CONSUMERS AFFAIRS COUNCIL.

(1) The Consumers Affairs Council is hereby established.

(2) The Council–

(a) is a corporation with perpetual succession; and

(b) shall have a seal; and

(c) may acquire, hold and dispose of property; and

(d) may sue or be sued in its corporate name.

(3) All courts, Judges and persons acting judicially shall take judicial notice of the seal of the Council affixed to a document and shall presume that it was duly affixed.

6. FUNCTIONS OF THE COUNCIL.

The functions of the Council are–

(a) to formulate and submit to the Minister policies in the interests of consumers; and

(b) to consider and examine and, where necessary, advise the Minister on the consolidation or updating of legislation providing protection to the consumer in the following areas:–

(i) public health;

(ii) trade and commerce;

(iii) motor vehicles and motor vehicle insurance;

(iv) price surveillance and control;

(v) services;

(vi) such other areas as may be relevant; and

(c) to liaise with Departments and other agencies of Government on matters relating to consumer protection legislation; and

(d) to receive and consider complaints from consumers on matters relating to the supply of goods and services; and

(e) to investigate any complaint received under Paragraph (d) or, where appropriate, refer the complaint to the appropriate authority and ensure that action is taken by the Council or by the authority to whom the complaint was referred; and

- (f) to make available to consumers general information affecting the interests of consumers; and
- (g) to liaise with business, commercial and professional bodies and associations in order to establish codes of practice to regulate the activities of their members in their dealings with consumers; and
- (h) to advise consumers of their rights and responsibilities under laws relating to consumer protection; and
- (i) to promote and participate in consumer education activities; and
- (j) to research into issues affecting consumers and propose appropriate measures to address such issues; and
- (k) to encourage the development of organizations and associations established for the purpose of furthering the interests of consumers, and to liaise and consult with them on the development of consumer policy and on issues of consumer interest; and
- (l) to establish appropriate systems whereby consumer claims can be considered and redressed; and
- (m) to liaise with consumer organizations, consumer affairs authorities and consumer protection groups overseas and to exchange information on consumer issues with those bodies; and
- (n) to arrange for the representation of consumers in court proceedings relating to consumer matters; and
- (o) to do all other things relating to consumer affairs; and
- (p) such other functions as are conferred on the Council by this Act and any other law.

7. POWERS OF THE COUNCIL.

The Council has, in addition to the powers specifically conferred on it by this Act or any other law, power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

Division 2.

Membership etc., of the Consumer Affairs Council.

8. COMPOSITION OF THE COUNCIL.

- (1) The Council shall consist of 10 members as follows:—
- (a) the Departmental Head of the Department responsible for finance matters or his nominee, *ex officio*; and
 - (b) the Departmental Head of the Department responsible for health matters or his nominee, *ex officio*; and

- (c) the Departmental Head of the Department responsible for trade and industry matters or his nominee, *ex officio*; and
- (d) the Departmental Head of the Department of the Attorney-General or his nominee, *ex officio*; and
- (e) the Executive Director, *ex officio*; and
- (f) one member nominated by the Papua New Guinea Chamber of Commerce; and
- (g) one member nominated by the Papua New Guinea Trade Union Congress; and
- (h) one member nominated by the National Council of Women; and
- (i) one member nominated by the Papua New Guinea Association of Accountants; and
- (j) one member nominated by the Papua New Guinea Council of Churches; and
- (k) one member nominated by the Papua New Guinea Journalists Association.

(2) The members nominated or referred to in Subsection (1)(f) to (k) inclusive—

- (a) shall be appointed by the Minister by notice in the National Gazette; and
- (b) shall be appointed for a period not exceeding three years; and
- (c) are eligible for re-appointment; and
- (d) shall hold office on such terms and conditions as are determined under the *Boards (Fees and Allowances) Act 1955*.

(3) A nominee referred to in Subsection 1(a) to (d) inclusive shall be of a level not less than that of an Assistant Secretary in the Public Service or the equivalent.

9. ALTERNATE MEMBERS.

(1) For each of the members appointed under Section 8(1)(f) to (k), inclusive, an alternate member shall be appointed in the same way and subject to the same conditions as the member for whom he is the alternate.

(2) In the event of the absence or inability of the member for whom he is the alternate to act in relation to a matter or to exercise and perform his powers, functions, duties and responsibilities under this Act, the alternate member has and may exercise and perform all the powers, functions, duties and responsibilities of the member, and this Act applies accordingly.

(3) Except as provided in Subsection (2), an alternate member may, unless the Council otherwise directs, attend all meetings of the Council, but shall not take part in debate, vote on any matter or be counted towards a quorum.

(4) An alternate member is entitled to receive independently all notices, papers, minutes of meetings and other relevant information to which members are entitled.

10. CHAIRMAN AND DEPUTY CHAIRMAN.

(1) The Minister shall, by notice in the National Gazette, appoint one of the *ex officio* members to be the Chairman of the Council and any other member to be the Deputy Chairman of the Council each for a period of three years.

(2) The Chairman and Deputy Chairman shall hold office as Chairman and Deputy Chairman until the expiration of their respective appointments or until they cease to be members, whichever first occurs.

11. LEAVE OF ABSENCE.

The Minister may grant leave of absence to a member on such terms and conditions as the Minister determines.

12. VACATION OF OFFICE.

(1) A member, other than an *ex officio* member, may resign his office by writing signed by him and delivered to the Minister.

(2) If a member, other than an *ex officio* member—

- (a) becomes permanently incapable of performing his duties; or
- (b) resigns his office in accordance with Subsection (1); or
- (c) is absent, except with the consent of the Minister under Section 11, from three consecutive meetings of the Council; or
- (d) fails to comply with Section 15; or
- (e) becomes bankrupt, or applies to take the benefit of any law for the benefit of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (f) is convicted of an offence punishable under a law by a term of imprisonment, or by death, and as a result of the conviction is sentenced to imprisonment or death,

the Minister shall terminate his appointment.

(3) The Minister may, at any time, by written notice, advise a member, other than an *ex officio* member, that he intends to terminate his appointment on the grounds of inefficiency, incapacity or misbehaviour.

(4) Within 14 days of the receipt of a notice under Subsection (3), the member may reply in writing to the Minister, who shall consider the reply, and, where appropriate, terminate the appointment.

(5) Where the member referred to in Subsection (3) does not reply in accordance with Subsection (4), his appointment is terminated.

13. VACANCY NOT TO AFFECT POWERS OR FUNCTIONS.

The exercise of a power or the performance of a function of the Council is not invalidated by reason only of a vacancy in the membership of the Council.

14. MEETINGS OF THE COUNCIL.

(1) The Council shall meet as often as the business of the Council requires, and at such times and places as the Chairman directs, but in any event not less frequently than once in every three months.

(2) Five members jointly, but not exclusively, may convene a meeting of the Council.

(3) At a meeting of the Council—

- (a) five members constitute a quorum; and
- (b) the Chairman, or in his absence the Deputy Chairman, shall preside, and if both the Chairman and Deputy Chairman are absent, the members present shall appoint, from among their own number, a chairman for that meeting; and
- (c) matters arising shall be decided by a majority of the votes of the members present and voting; and
- (d) the person presiding has a deliberative, and in the event of an equality of votes on any matter, also a casting vote.

(4) The Council shall cause minutes of its meetings to be recorded and kept.

(5) Subject to this Act, the procedures of the Council are as determined by the Council and shall be determined at the first meeting of the Council and amended as required from time to time.

15. DISCLOSURE OF INTEREST BY MEMBERS.

(1) A member who has a direct or indirect interest in a matter being considered or about to be considered by the Council shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Council.

(2) A disclosure under Subsection (1), shall be recorded in the minutes of the Council, and the member—

- (a) shall not take part, after the disclosure, in any deliberation or decision of the Council in relation to the matter; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Council for any such deliberation or decision.

16. COMMITTEES.

(1) The Council may, from time to time, establish Committees to advise the Council on such matters as the Council considers necessary.

(2) In establishing a Committee under Subsection (1), the Council may—

(a) appoint such persons (including members of the Council) as it considers necessary; and

(b) specify the functions and procedures of the Committee.

(3) A member of a Committee who is not a member of the Council may receive fees and allowances under the *Boards (Fees and Allowances) Act 1955*.

17. DIRECTIONS BY MINISTER.

The Minister may, after consultation with the Council or otherwise, give to the Council such directions, not inconsistent with this Act, as he considers fit, as to the exercise and performance by the Council of its powers, duties and functions under this Act, and the Council shall give effect to all such directions.

18. DELEGATION.

(1) The Council may, subject to such conditions or restrictions as it thinks fit, delegate to the Chairman or to the Executive Director or to a Committee all or any of its powers, functions and duties under this Act, except this power of delegation, and any power, function or duty so delegated may be exercised or performed by the Chairman or the Executive Director or such Committee, as the case may be, in the name and on behalf of the Council.

(2) The Council may, subject to such conditions or restrictions as it thinks fit, delegate to any employee all or any of its functions and duties under this Act except this power of delegation and any power, function or duty so delegated may be exercised or performed by such employee in the name and on behalf of the Council.

19. REPORTS.

(1) The Council shall furnish to the Minister—

(a) on 31 March in each year, a report on the progress and the performance of the Council in relating to its functions for the preceding year; and

(b) such other reports in relation to the functions of the Council as are requested by the Minister.

(2) As soon as practicable after he has received the report referred to in Subsection (1)(a), the Minister shall forward the report to the Speaker for presentation to the Parliament.

Division 3.

Staff.

20. EXECUTIVE DIRECTOR.

(1) There shall be an Executive Director of Consumer Affairs who—

- (a) shall be appointed by the Minister by notice in the National Gazette; and
- (b) shall be appointed for such period not exceeding four years as the Minister determines; and
- (c) is eligible for re-appointment; and
- (d) is the chief executive officer of the Council; and
- (e) is the head of the staff of the Secretariat.

(2) Subject to the *Salaries and Conditions Monitoring Committee Act 1988*, the terms and conditions of appointment and service of the Executive Director are as determined by the Minister.

(3) Where an officer of the Public Service is appointed to be the Executive Director, his service as Executive Director shall be counted as service in the Public Service for the purpose of determining his rights (if any) in respect of—

- (a) leave of absence on the grounds of illness; and
- (b) furlough, or pay in lieu of furlough (including pay to the dependants on the death of the Officer).

21. FUNCTIONS OF THE EXECUTIVE DIRECTOR.

(1) The Executive Director shall—

- (a) manage the affairs of the Council in accordance with the policy and direction of the Council; and
- (b) advise the Council on any matters concerning the Council referred to him by the Chairman; and
- (c) carry out and perform the duties required of him under this Act and his contract of employment.

(2) The Executive Director has such other duties as the Council may from time to time determine.

22. STAFF OF THE COUNCIL.

(1) The Executive Director may appoint to be employees of the Council such persons as he considers necessary for the purpose of giving effect to this Act.

(2) The Executive Director and the employees appointed under Subsection (1) constitute the staff of the Council.

(3) Subject to the *Salaries and Conditions Monitoring Committee Act 1988*, the terms and conditions of appointment and service of the employees of the Council are as determined by the Council.

(4) The Executive Director shall direct the employees of the Council.

(5) Where an employee of the Council was, immediately before his appointment, an officer of the Public Service, his service as an employee of the Council shall be counted as service in the Public Service for the purpose of determining his rights (if any) in respect of—

- (a) leave of absence on the grounds of illness; and
- (b) furlough or pay in lieu of furlough (including pay to dependants on the death of the officer).

23. TEMPORARY AND CASUAL EMPLOYEES.

(1) The Executive Director may appoint such temporary and casual employees as are necessary for the purposes of this Act.

(2) Employees appointed under Subsection (1) shall be employed on such terms and conditions as the Council determines.

24. CONTRACTS OF EMPLOYMENT.

The Executive Director and each employee of the Council shall be employed under a contract of employment which—

- (a) in the case of the Executive Director, shall be executed by the Chairman on behalf of the Council and by the Executive Director; and
- (b) in the case of an employee, shall be executed by the Executive Director on behalf of the Council and by the employee concerned.

PART III. – FINANCE.

25. APPLICATION OF *PUBLIC FINANCES (MANAGEMENT) ACT 1995*.

(1) Part VIII of the *Public Finances (Management) Act 1995* applies to and in relation to the Council.

(2) For the purposes of Section 59(1) of the *Public Finances (Management) Act 1995*, tenders shall be publicly invited and contracts taken by the Council for all works, supplies and services the estimated cost of which exceeds K100,000.00.

PART IV. – GENERAL POWERS OF THE CONSUMER AFFAIRS COUNCIL.

26. AUTHORIZED OFFICERS.

The Executive Director may, by notice in the National Gazette, appoint an employee or employees of the Council to be an authorized officer or authorized officers for the purposes of this Part.

27. OBTAINING INFORMATION GENERALLY.

(1) The Executive Director, or an authorized officer, may require a person–

- (a) to furnish him with such information as he requires; or
- (b) to answer any question put to him,

in relation to any goods or services or to any other matter arising under this Act where that information is required in connection with and is relevant to the functions of the Council under this Act.

(2) The Executive Director or an authorized officer may require the information required under Subsection (1)(a) to be given, or the question required under Subsection (1)(b) to be answered, on oath, and orally or in writing, and for that purpose may administer an oath.

(3) The Executive Director, or an authorized officer may, by written notice, require the information to be given, or the question to be answered, in writing and at the place specified in the notice.

(4) A person who, when required under this section, to furnish information or answer a question–

- (a) refuses or fails to furnish the information or to answer the question; or
- (b) gives information or makes an answer that is false in any particular,

is guilty of an offence.

(5) A person is not obliged to answer orally any question unless he has first been informed by the Executive Director or the authorized officer asking the question that he is required to answer by virtue of this section.

28. ENTER AND SEARCH.

(1) In the exercise of the duties and functions of the Council, the Executive Director or an authorized officer may–

- (a) enter and search any premises; and
- (b) inspect any documents, books and papers; and
- (c) inspect and take any samples of any stocks, or specific goods or any other goods.

(2) In the exercise of the duties and functions of the Council, the Executive Director or an authorized officer may–

(a) impound or retain any documents, books or papers produced to him or inspected by him under Section 27; and

(b) make copies or abstracts of them or of entries in them,

but the person entitled to them is entitled within a reasonable time, to a copy certified as correct by the Executive Director.

(3) A copy certified in accordance with Subsection (2) shall be received in all courts as evidence of validity equal to the original.

(4) A person who prevents or attempts to prevent the Executive Director or an authorized officer from—

(a) entering any premises; or

(b) inspecting any documents, books and papers; or

(c) inspecting or taking samples of any stocks or any goods; or

(d) making copies of abstracts of or of entries in any documents, books and papers,

is guilty of an offence.

29. SUMMONING WITNESSES, ETC.

(1) The Executive Director or an authorized officer may—

(a) summon witnesses; and

(b) take evidence on oath; and

(c) require the production of documents and books and papers.

(2) A witness summoned under Subsection (1) shall be paid such fees and allowances as are prescribed.

(3) A person who, having been summoned as a witness under Subsection (1) fails, without lawful cause, to appear in obedience to the summons is guilty of an offence.

(4) A witness before the Executive Director or an authorized officer, whether summoned to appear or not, who, without lawful cause, refuses—

(a) to be sworn or to make an affirmation; or

(b) to produce documents, books or papers; or

(c) to answer questions that he is lawfully required to answer,

is guilty of an offence.

PART V. – OFFENCES AND PENALTIES.

30. PROSECUTION OF OFFENCES.

(1) An offence against this Act may be prosecuted summarily or on indictment, but an offender is not liable more than once in respect of the same offence.

(2) An offence against this Act shall not be prosecuted summarily without the written consent of the Public Prosecutor or a person authorized in writing for the purpose by the Public Prosecutor.

(3) For the purposes of the trial of a person for an offence against this Act, the offence shall be deemed to have been committed–

- (a) in the place in which it was actually committed; or
- (b) at any place in which the person may be.

31. GENERAL PENALTIES, ETC.

(1) The penalty for an offence against this Act is–

- (a) if the offence is prosecuted summarily—a fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months;
- (b) if the offence is prosecuted on indictment—a fine not less than K3,000.00 or imprisonment for a term not exceeding two years.

(2) In addition to any other punishment that it may impose, a court may, if it thinks fit, order the forfeiture to the State of any money or goods in respect of which an offence has been committed.

32. OFFENCE BY CORPORATIONS.

Where a person convicted of an offence against this Act is a corporation, every person who, at the time of the commission of the offence, was a Director or an officer of the corporation, shall be deemed to be guilty of the offence, unless he proves that the offence was committed without his knowledge, or that he used all due diligence to prevent the commission of the offence.

33. RECOGNIZANCES.

(1) Where a person is convicted of an offence against this Act, in addition to or in substitution for any punishment provided for the offence, the court before which he is convicted may require him to enter into recognizance, with or without sureties, to comply with this Act, or with the order, notice, direction or requirement in relation to which the offence was committed.

(2) If a person fails to comply with an order of the court requiring him to enter into recognizance, the court may order him to be imprisoned for a term not exceeding six months.

34. SEIZURE AND DISPOSAL OF FORFEITED GOODS.

(1) Where goods have been forfeited under Section 31, an authorized officer may on behalf of the State—

- (a) seize any goods that he has reasonable cause to believe are forfeited; and
- (b) store any such goods in a place approved by the Executive Director; and
- (c) sell or otherwise dispose of the goods to such persons or bodies, at such times, in such manner and on such terms and conditions as the Executive Director directs.

(2) Where forfeited goods have been sold, the Executive Director may, under special circumstances, direct that the whole or any portion of the proceeds of the sale of the goods, less any expenses incurred in connection with seizure, storage and sale, be returned to the person who was the owner of the goods before the forfeiture.

35. ENFORCEMENT OF ORDERS FOR REFUNDS.

(1) Where an order is made by a court, a certificate of the order in the prescribed form:—

- (a) shall be granted by the clerk of the court; and
- (b) may be presented for registration to the proper officer of a court having jurisdiction in civil proceedings to the amount of the order; and
- (c) shall be registered by that officer.

(2) From the date of registration, a certificate under Subsection (1)—

- (a) is a record of the court in which it is registered; and
- (b) has the same force and effect in all respect as a judgement of that court; and
- (c) may be presented for registration to the proper officer of a court having jurisdiction in civil proceedings to the amount of the order,

and the same proceedings (including insolvency proceedings) may be taken on the certificate as if the order has been a judgement in favour of the purchaser or of the person to whom the service was supplied.

(3) The cost of registration of a certificate under Subsection (1) and of other proceedings under Subsection (2) shall be deemed to be payable under the certificate.

PART VI. – MISCELLANEOUS.

36. HEAD OFFICE.

(1) The head office of the Council shall be at such place in the country as the Council from time to time decides.

(2) Until the Council decides the place at which the head office shall be situated, the head office shall be within the National Capital District.

37. SYMBOL OF THE COUNCIL.

(1) The Council shall have the exclusive right to the use of any symbol or representation it may select or devise and thereafter display or exhibit in connection with its activities or affairs.

(2) A person, who uses a symbol or representation identical with that of the Council, or which so resembles the symbol or representation of the Council so as to deceive or cause confusion, or to be likely to deceive or to cause confusion, is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or to imprisonment for a term not exceeding 6 months or to both.

38. PRESERVATION OF SECRECY.

(1) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do so by any court or under the provisions of any written law, no member, officer, employee, staff or agent of the Council and no member of a Committee shall disclose any information relating to the affairs of the Council or of any person which has been obtained by him in the performance of his duties or the exercise of his functions.

(2) A person, who contravenes Subsection (1), is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or to imprisonment for a term not exceeding six months or to both.

39. ATTORNEY.

The Council may, by instrument, appoint a person (whether within or outside the country) to be its attorney and, subject to the instrument, a person so appointed may do any act or exercise or perform any power or function which he is authorized by the instrument to do, exercise or perform.

40. SERVICE OF PROCESS.

Any notice, summons, writ or other process required to be served on the Council may be served by being left at the head office of the Council or, in the case of notice, by post.

41. REGULATIONS.

The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular for prescribing penalties of fines not exceeding K3,000.00 for offences against the regulations and for prescribing fees for any services provided by the Council.

Office of Legislative Counsel, PNG