

No. 41 of 1975

AN ORDINANCE

Relating to Manufacturers Warranties.

I, THE GOVERNOR-GENERAL of Australia, acting with the advice of the Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1973*.

Dated this thirtieth day of October, 1975.

JOHN R. KERR
Governor-General.

By His Excellency's Command,

GORDON M. BRYANT
Minister of State for the Capital Territory.

MANUFACTURERS WARRANTIES ORDINANCE 1975

1. This Ordinance may be cited as the *Manufacturers Warranties Ordinance 1975*.* Short title.
2. This Ordinance shall come into operation on such date as is fixed by the Minister by notice published in the *Gazette*. Commencement.
3. (1) In this Ordinance, unless the contrary intention appears— Interpretation.
 - “express warranty” means an undertaking, assertion or statement in relation to manufactured goods (including an undertaking, assertion or statement in an advertisement or in a brochure or other literature designed to promote sale or use of the goods) by the manufacturer or a person acting on his behalf, the natural tendency of which is to induce a reasonable purchaser to purchase the goods;
 - “goods” includes all chattels personal, other than things in action and money;
 - “manufactured goods” means goods manufactured for sale or disposal to consumers;
 - “manufacturer”, in relation to manufactured goods, means—
 - (a) a person by whom, or on whose behalf, the goods are manufactured or assembled;
 - (b) a person who holds himself out to the public as the manufacturer of the goods;

* Notified in the *Australian Government Gazette* on 31 October 1975.

(c) a person who causes or permits his name, the name in which he carries on business, or his brand, to be attached to or endorsed on the goods or on any package or other material accompanying the goods in a manner or form that leads reasonably to the inference that he is the manufacturer of the goods; or

(d) where the goods are imported into Australia and the manufacturer does not have a place of business in Australia—the importer of the goods;

“person” includes a body corporate;

“purchase” includes take on hire;

“sell” includes let out on hire;

“seller”, in relation to manufactured goods, means any person who sells the goods to a consumer;

“statutory warranty” means a warranty that arises by virtue of this Ordinance;

“Territory” includes the Jervis Bay Territory.

(2) This Ordinance—

(a) applies to goods that are manufactured either within or outside the Territory;

(b) does not apply to or in relation to goods that are manufactured before the date fixed under section 2; and

(c) subject to section 6, does not apply to or in relation to manufactured goods that are sold directly by the manufacturer to the consumer.

(3) For the purposes of this Ordinance—

(a) a person who acquires goods shall be taken to be a consumer of the goods if the goods are of a kind ordinarily acquired for private use or consumption and the person does not acquire the goods, or hold himself out as acquiring the goods, for the purposes of resale; and

(b) a reference to a consumer, in relation to manufactured goods, includes a reference to any person who derives title to the goods through or under the consumer.

(4) A reference in the definition of “express warranty” to manufactured goods is a reference to manufactured goods that—

(a) are sold in the Territory to a consumer; or

(b) are delivered, after being sold to a consumer, to that consumer in the Territory.

Statutory
warranties.

4. (1) Subject to this section, where manufactured goods—

(a) are sold in the Territory to a consumer; or

(b) are delivered, after being sold to a consumer, to that consumer in the Territory,

the manufacturer warrants—

(c) that the goods are of merchantable quality;

- (d) where the consumer expressly makes known to the manufacturer, directly or through the seller, the particular purpose for which the goods are being acquired—that the goods are reasonably fit for that purpose, whether or not that is a purpose for which the goods are commonly sold, except where the circumstances show that the consumer does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the manufacturer;
- (e) where there is a term in the contract, expressed or implied, between the seller and the consumer to the effect that the goods are sold by reference to a sample—
 - (i) that the bulk will correspond with the sample in quality; and
 - (ii) that the goods will be free from any defect, rendering them unmerchantable, that would not be apparent on reasonable examination of the sample;
- (f) where the goods are sold by description—that the goods will correspond with the description and, if the sale is by reference to a sample as well as by description, that the bulk of the goods will correspond with the sample and that the goods will correspond with the description; and
- (g) where the goods are of a kind that is likely to require repair or maintenance—that spare parts will be available for a reasonable period after the date of manufacture.

(2) Subject to sub-section (3), goods are of merchantable quality if they are as fit for the purpose or purposes for which goods of that kind are ordinarily purchased as it is reasonable to expect, having regard to—

- (a) any description applied to the goods by the manufacturer;
- (b) the price received by the manufacturer for the goods (if relevant); and
- (c) all the other relevant circumstances.

(3) A manufacturer of goods is not liable upon his statutory warranty as to the merchantable quality of the goods—

- (a) if the goods are not of merchantable quality by reason of—
 - (i) an act or default of the consumer or some other person (not being the manufacturer or his servant or agent); or
 - (ii) a cause independent of human control, occurring after the goods have left the control of the manufacturer;
- (b) as regards defects specifically drawn to the consumer's attention before the contract for the sale of the goods is made; or
- (c) where the consumer examines the goods before the contract for the sale of the goods is made—as regards defects which that examination ought to reveal.

(4) A manufacturer of goods is not liable upon his statutory warranty as to the availability of spare parts if the unavailability arose from circumstances that the manufacturer could not reasonably be expected to have foreseen.

(5) Without limiting the generality of sub-section (4), an industrial stoppage may, for the purposes of that sub-section, constitute a circumstance that a manufacturer could not reasonably be expected to have foreseen.

(6) A manufacturer of goods is not liable upon his statutory warranty relating to the sale of goods by description in respect of a description applied to the goods by a person other than the manufacturer.

(7) A manufacturer of goods is not liable upon his statutory warranty relating to the sale of goods by sample where—

- (a) the sample was not supplied by the manufacturer;
- (b) the sale by sample is made without the express or implied concurrence of the manufacturer; or
- (c) the failure to comply with the warranty is due to circumstances that were beyond the control of the manufacturer and that he could not reasonably be expected to have foreseen.

Right of consumer to sue manufacturer.

5. (1) Where an express warranty or a statutory warranty is not complied with in relation to manufactured goods, a consumer may, by action, recover against the manufacturer damages for breach of warranty in all respects as if the action were for breach of warranty under a contract between the manufacturer and the consumer.

(2) The right conferred by this section is in addition to, and not in derogation of, any other right of action that may be available to the consumer, whether against the manufacturer or otherwise.

Application to sales by manufacturer.

6. The provisions of this Ordinance with respect to—

- (a) express warranties; and
 - (b) the warranty relating to the availability of spare parts,
- apply to and in relation to manufactured goods that are sold directly by the manufacturer to the consumer.

No contracting out.

7. (1) Subject to sub-section (2), it is not competent for a manufacturer to exclude or limit his liability, or to limit the consumer's right of action, or for a consumer to waive his rights, arising by virtue of an express or statutory warranty.

(2) Where a manufacturer takes reasonable steps to ensure that a consumer purchasing manufactured goods will effectively receive notice at the time the goods are purchased that the manufacturer does not undertake that spare parts will be available for the repair of the goods, no liability attaches to the manufacturer on the ground that the spare parts are not available.

(3) A manufacturer who purports to exclude or limit a liability, or a right, under an express or statutory warranty that he is not competent to exclude or limit by reason of this section is guilty of an offence against this Ordinance and punishable, on conviction, by a fine not exceeding \$1,000.

8. Where a seller of manufactured goods incurs liability to a consumer for breach of a condition or warranty implied by law, the seller may, by action against the manufacturer, recover an amount sufficient to indemnify him for that liability if the consumer could, by virtue of a statutory warranty, have recovered against the manufacturer damages in respect of that breach.

Right of seller to recover against manufacturer.

9. (1) Where an advertisement or other publication is published containing an assertion that would, if made by a manufacturer or a person acting on his behalf, constitute an express warranty in respect of manufactured goods, it shall be presumed, in proceedings under this Ordinance, that the assertion was made by the manufacturer or a person acting on his behalf unless the manufacturer proves that he did not cause or permit the publication of the advertisement or other publication.

Evidentiary provisions.

(2) Where, in proceedings under this Ordinance, a question arises whether goods were manufactured before or after the date fixed under section 2, it shall be presumed, unless the contrary is established, that the goods were manufactured after that date.

(3) Where the name, business name or brand or a person is attached to or endorsed on goods, or a package or other material in or with which the goods are sold, and the name or brand appears in a manner or form that leads reasonably to the inference that that person is the manufacturer of the goods, it shall be presumed, unless the contrary is established, that the person has caused or permitted the name, business name or brand to be attached to or endorsed on the goods, package or material in that manner or form.

10. The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters that are required or permitted by this Ordinance to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

Regulations.