

I assent.

(L.S.)

UGO MIFSUD BONNICI
President

2nd December, 1994

ACT No. XXVIII of 1994

AN ACT to provide for the establishment and functions of the office of Director of Consumer Affairs and for the establishment of a Consumer Affairs Council and of tribunals to be known as the Consumer Claims Tribunals, and for other matters ancillary or consequent thereto.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART I
Preliminary**

1. (1) This Act may be cited as the Consumer Affairs Act, 1994.

Short title and
commencement.

(2) This Act shall come into force on such date as the Minister responsible for consumer affairs may by notice in the Gazette appoint, and different dates may be so appointed for different provisions and different purposes of this Act.

2. In this Act, unless the context otherwise requires —

Interpretation.

“consumer” means any individual who not in the course of a business, trade or profession, buys or hires goods from a trader or engages the services of a trader against a fee or reward;

“consumer association” means a voluntary body of persons whose principal objective is the promotion of consumer protection or education;

“Council” means the Consumer Affairs Council established under Part II of this Act;

“Department” means the Department of Consumer Affairs;

“Director” means the Director of Consumer Affairs;

“goods” includes any animals of whatever species whether living or dead;

“Minister” means the Minister responsible for consumer affairs;

“permanent resident” means a person in whose favour a permit of residence has been issued in accordance with section 7 of the Immigration Act;

“premises” means any place from where any trade or business is carried out including any stall or vehicle;

“registered consumer association” means a consumer association registered in accordance with Part IV of this Act;

“trader”:

(a) means any person, including any body corporate or unincorporate, who or which in the course of a trade or business sells or hires, or offers to sell or hire, goods or services for a profit or a reward to a consumer;

(b) means a government department, a public corporation, authority or organisation which provides goods or services to consumers for a fee, as the Prime Minister may from time to time designate by notice in the Gazette; and

(c) for the purposes of sections 7, 9, 12 and subsection (3) of section 14, includes any employee or any other person acting for the above;

“Tribunal” means a Consumer Claims Tribunal set up under Part III of this Act.

PART II

Director of Consumer Affairs and the Consumer Affairs Council

Establishment of
office of Director
of Consumer
Affairs.

3. (1) There shall be a Director of Consumer Affairs who shall be a public officer designated by the Prime Minister for that purpose.

(2) The functions of the Director of Consumer Affairs, (hereinafter in this Act referred to as “the Director”) shall be to

implement the policy established by the Minister, either personally or through public officers in the Department of Consumer Affairs and shall include:

(a) to provide information and guidelines to the public on matters affecting the interests of consumers;

(b) to monitor trading practices relating to the provision of goods and services to consumers, and to take measures for the suppression and prevention of any practices which may be detrimental to the interests of consumers;

(c) to investigate complaints from consumers relative to the supply of goods and services and to take such action as is in his power to redress any justified grievance that may come to his notice;

(d) to assist the Consumer Affairs Council in the performance of its functions and duties and to furnish such information as may be required by the Council in relation to the exercise of its duties; and

(e) to perform any other function or duty that is or may be assigned to him under this Act or any other law.

(3) Nothing in this Act shall be construed to give any consumer a right to require the Director to give him advice on any specific or general matter or to act on his behalf and in his interest in any particular matter or dispute with any trader or supplier of services before any court, tribunal or elsewhere.

(4) The Director may in writing authorise any public officer serving with the Department, to perform any of the functions assigned to the Director under this Act or any other law.

4. (1) There shall be established a Council to be designated "the Consumer Affairs Council" having the functions and duties set out in this Act. The Council shall consist of a Chairman, Deputy Chairman and five other members.

Consumer Affairs
Council.

(2) The Minister shall appoint:

(a) the Chairman and four other members from among persons who, because of their experience, qualifications or activities, the Minister considers as being able to contribute towards the promotion of consumer interests;

(b) the Director as Deputy Chairman; and

(c) one member who, because of his experience, qualifications or activities, the Minister considers as being able to state the point of view of traders.

(3) One of the members, other than the Chairman, mentioned in paragraph (a) of subsection (2) of this section shall be appointed after consultation with those consumer associations, if any, registered under Part IV of this Act and the member mentioned in paragraph (c) of the same subsection shall be appointed after consultation with those constituted bodies which the Minister considers to represent the interests of traders.

(4) The appointed members shall hold office for such term, not being more than three years, as may be specified in their letter of appointment and shall be eligible for re-appointment.

(5) Where the seat of any appointed member is vacated before the expiration of the term fixed in his letter of appointment, the Minister shall appoint another person to replace such member for such term, not being a term of more than three years, as the Minister may determine in his letter of appointment.

(6) The Deputy Chairman shall act instead of the Chairman whenever the Chairman is lawfully impeded or is absent from a meeting of the Council.

(7) A person shall not be eligible to be appointed a member of the Council, or to continue to be a member of the Council if such person:

- (a) is a member of the House of Representatives; or
- (b) is a member of a Local Council; or
- (c) is legally incapacitated or interdicted; or
- (d) has been declared bankrupt or has made a composition with his creditors; or
- (e) has been convicted of:
 - (i) any crime affecting public trust; or
 - (ii) theft; or
 - (iii) fraud; or
 - (iv) knowingly receiving property obtained by theft or fraud; or

(v) any offence contemplated in this Act, the Weights and Measures Ordinance, the Customs Ordinance, the Trade Descriptions Act, the Door-to-Door Salesmen Act or any law repealed by any of the said Acts or Ordinances or any law replacing the same.

(8) Notwithstanding any other provision of this section the Minister may at any time terminate the appointment of an appointed

member, if in his opinion such appointed member is unfit to continue in office or has become incapable of properly performing his functions.

(9) The Minister shall appoint an officer serving in the Department to act as non-voting secretary of the Council.

5. (1) It shall be the function of the Council —

Functions of
the Council.

(a) to advise the Minister in the formulation of the policy to be followed by the Director in the exercise of his functions under this or any other law;

(b) to advise and assist the Minister on measures for the promotion and protection of consumer interests;

(c) to monitor and keep under review trading and business practices relating to the supply of goods and services to consumers and to activities related or ancillary thereto;

(d) at the request of the Minister to undertake or commission any study or research which may be necessary to promote consumer protection;

(e) to monitor the working and enforcement of laws that directly or indirectly affect the consumer in Malta;

(f) to draw up and review consumer protection directives and minimum service standards for submission to the Minister;

(g) to monitor the development of consumer associations in Malta, and draw up and review rules of practice for registered consumer associations for submission to the Minister;

(h) to examine and determine whether a consumer association has the requirements to be a registered consumer association in accordance with this Act; and

(i) to perform any other function or duty that may be assigned to it by the Minister or that may be assigned to the Council under this or any other law.

(2) (a) The Council may, with the concurrence of the Minister, from time to time establish such advisory commissions as it may consider necessary to assist it in its functions.

(b) The commissions shall have an advisory and consultative function, and their findings or recommendations shall not be binding on the Council or the Minister.

(c) Each commission established under this subsection shall consist of two or more persons nominated by the Council and an equal number of other persons nominated by organisations or individuals representing the interests of the branch or sector of

trade or business in respect of which the commission is established. A commission shall in each case be chaired by a member of the Council.

(d) A commission shall serve as a channel of communication between the branch or sector of trade or business in respect of which it is established and the Council, and shall endeavour to prevent and resolve possible situations of conflict of views and interests between traders and consumers in that particular branch or sector.

Conduct of
business of
Council.

6. (1) Subject to the provisions of this Act, the Council shall regulate its own procedure.

(2) The Council shall meet as often as necessary but in no case less frequently than once every calendar month. Meetings shall be convened by the Chairman or in his absence the Deputy Chairman, either on his own initiative, or at the request of three other members of the Council.

(3) A quorum at a meeting of the Council shall be constituted by the Chairman, or in his absence the Deputy Chairman, and three other members.

(4) Decisions of the Council shall be taken by majority of votes of the members present and voting, the Chairman shall have an original vote and in the event of equality of votes a second or casting vote.

(5) The Council may act notwithstanding any vacancy among its members.

(6) Any member of the Council who in any matter before the Council has any interest in conflict with his office as member of the Council shall disclose the nature of his interest and withdraw from any meeting of the Council during which the matter is discussed. Any such disclosure shall be recorded in the minutes.

Codes and
Standards.

7. (1) The Minister may after consulting the Council, from time to time, prescribe regulations establishing:

(a) consumer protection directives in relation to the provision of any service, or sale or hire of any goods to consumers;

(b) minimum service standards in relation to the provision of any service to consumers; and

(c) rules of practice for registered consumer associations.

(2) Regulations made under subsection (1) of this section may in particular provide for the consequences, including the right to rescind sales and contracts for the provision of services, and the nullity of particular clauses in contracts of sale or hire, or for the provision of

services which are in contravention of consumer protection directives or where the services are below service standards as may be established; such regulations may in particular provide for offences where the regulations are contravened and the penalty for such offences shall in no case exceed a fine (*multa*) of more than one thousand Maltese liri.

8. (1) The Director may, with the concurrence of the Council, on his initiative or upon a proposal of the Council, make or issue a public statement identifying and giving warnings or information about any of the following:

Public warning statements.

(a) goods that are unsatisfactory or dangerous and persons who supply those goods;

(b) services supplied in an unsatisfactory manner and persons who supply those services;

(c) trading practices detrimental to the interests of consumers and persons who engage in such practices; and

(d) any other matter that adversely affects or may adversely affect the interests of consumers in connection with the acquisition by them of goods or services from traders.

(2) When making a statement as is referred to in subsection (1), the Director shall adhere to the principles of fairness and objectivity.

(3) The Government, the Director and any public officer acting on the instructions or authority of the Director, shall be exempt from any liability for acts done in good faith in pursuance of this section by the Director or any public officer as aforesaid. Such exemption shall extend to all persons publishing, printing, recording, broadcasting or communicating such information by any means whatsoever.

9. (1) A trader shall not without the written consent of the Director make or cause to be made any representation in any visual or aural form, either specifically or by implication, to the effect that:

Name of Council or Department not to be used in advertisement.

(a) any goods or services supplied by any trader have the approval of any authority established under this Act; or

(b) any activity carried out by any trader has the approval, or is conducted with the co-operation or assistance of any authority established under this Act.

(2) Where a trader's name, tradename, trademark, or the designation of any goods or services provided or supplied by a trader, appears in relation to a representation referred to in subsection (1) of this section, that trader shall be deemed for the purposes of this section to have caused the representation to be made unless he proves that the representation was made without his knowledge or connivance.

(3) A trader convicted under this section shall be liable to a fine (*multa*) of not less than fifty Maltese liri and not more than one thousand Maltese liri or a term of imprisonment not exceeding six months or to both such fine and imprisonment.

Liability of trader
for acts of his
employees etc.

10. Where an offence under this Act or any regulation made thereunder is committed by an employee or other person acting on behalf of a trader, the trader shall also be guilty of the offence committed by the employee or other person acting on his behalf unless he can prove that he has exercised all reasonable diligence to prevent the commission of the offence by the employee or other person acting on behalf of the trader.

Confidentiality.

11. (1) A person who is or was at any time a member of the Council or of any advisory commission established under this Act, the Director, or a public officer with the Department shall not, save in the course of his duty or functions under this Act or any other law, or where it is competent to him to do so by reason of a provision of this Act or any other law, directly or indirectly communicate any information that came to his knowledge as a consequence of his holding that appointment or position.

(2) Nothing in subsection (1) of this section shall be construed as prohibiting the Director or any other public officer with the Department from communicating to a consumer whose complaint concerning any matter has been investigated by the Department, information concerning any matter which has come to his cognisance as a result of the investigation.

(3) Without prejudice to any other liability under any other law, any person who acts in breach of this section shall be liable on conviction to a fine (*multa*) of not less than fifty Maltese liri and not more than one thousand Maltese liri, or to a term of imprisonment not exceeding six months, or to both such fine and imprisonment.

Undertakings.

12. (1) Where it appears to the Director that a trader has engaged in conduct that constitutes a breach of, or failure to comply with any regulations made under section 7 or under the provisions of section 9 of this Act, the Director may, at his discretion, instead of instituting proceedings against the trader under the relevant regulation, caution the trader and seek an undertaking in writing from the trader that he shall refrain from the conduct specified in the undertaking for such period not exceeding three years, as may be specified by the Director.

(2) The Director shall not institute proceedings against the trader where the trader shall have ceased to engage in the said conduct and has given the said undertaking.

(3) The Director shall maintain a register of undertakings made under this section, which register shall be kept at the principal office of the Department and the register may be seen by any person at such times as may be established by the Director.

(4) A trader who acts in contravention of an undertaking made in accordance with this section shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) of not less than fifty Maltese liri and not more than one thousand Maltese liri, and shall in any case remain bound by the undertaking for the remaining period of its term.

13. (1) Proceedings for any offence under this Act may only be instituted at the instance of the Director. Proceedings.

(2) In any proceedings referred to in subsection (1) of this section, the Director may, notwithstanding any provision of any other law, conduct the prosecution before the Court of Magistrates.

(3) Should the evidence of the Director be required as part of the case of the prosecution, he shall be heard before any other witness, unless the necessity of his giving evidence arises later in the proceedings.

14. (1) Upon the request even verbal of the aggrieved consumer or of the prosecuting officer on his behalf, the Court shall where the defendant is convicted for an offence against any regulation made under section 7 of this Act, make a compensation order whereby defendant is ordered to pay to the aggrieved consumer as full or partial compensation: Compensation Orders.

(a) a sum not in excess of two hundred and fifty Maltese liri for any pecuniary loss, and

(b) a sum of not less than fifteen Maltese liri and not more than one hundred Maltese liri as moral damages for any pain, distress, anxiety and inconvenience,

suffered by the aggrieved consumer as a result of the offence or arising therefrom.

(2) Any compensation ordered under paragraph (a) of subsection (1) of this section shall be reduced from any amount which may be given in a judgement by a court or tribunal of civil jurisdiction with regard to the same matter.

(3) A request for the making of a compensation order shall not be made where such damages have been settled by agreement with the trader or where the aggrieved consumer has instituted a claim before a court or a tribunal of civil jurisdiction against the defendant in respect of the same matter.

(4) A compensation order made under this section shall be without prejudice to the right of the aggrieved consumer to institute civil action for the recovery of any sum due to him as damages so however that the sum covered by the compensation order shall be reduced from the total sum due by the defendant as damages.

(5) A compensation order made under this section shall be subject to appeal by the defendant in the same manner as an appeal from sentence.

Cap. 12.

(6) When the judgement in which a compensation order is made has become *res judicata*, the said compensation order shall be deemed to be an executive title for the purposes of the Code of Organisation and Civil Procedure and shall be enforceable in the same manner as if it were a judgement of the Court of Magistrates (in each case in its inferior civil jurisdiction) of the island where the Court making the compensation order is situate.

Prime Minister may extend operation of sections 10, 12, 13 and 14 to other laws.

15. (1) The Prime Minister may by Order in the Gazette direct that the provisions of sections 10, 12, 13 and 14 of this Act shall apply to offences under any other law administered by the Director, or under any law whereby maximum prices for goods or services are fixed, or whereby minimum standards are fixed for goods or services.

(2) The provisions of sections 10, 12, 13 and 14 of this Act shall apply to offences under the laws referred to in section 43 of this Act.

PART III

Consumer Claims Tribunal

Establishment of Tribunals.

16. (1) There shall be two Tribunals to be styled "the Consumer Claims Tribunal (Malta)" and "the Consumer Claims Tribunal (Gozo)" respectively.

(2) The Consumer Claims Tribunal (Malta) shall, subject to the provisions of subsection (3) of this section, have jurisdiction to hear and determine consumer claims where the transaction to which the claim refers has taken place in Malta, and shall hold its sittings in such place or places in Malta as the Minister may by Order in the Gazette determine.

(3) The Consumer Claims Tribunal (Gozo) shall have jurisdiction to hear and determine consumer claims where the transaction to which the claim refers has taken place in the Islands of Gozo or Comino, and shall hold its sittings in such place in the Islands of Gozo and Comino as the Minister, in consultation with the Minister responsible for Gozo Affairs, may by Order in the Gazette determine.

(4) For the purposes of subsections (2) and (3) of this section a transaction shall be deemed to have taken place:

(a) in the case of a sale or a service which has been concluded or provided on the premises of the trader, in the island where those premises are situate;

(b) in the case of a sale or a service which has been concluded or provided outside the premises of the trader:

(i) where the sale or the service was contracted by telephone, fax, correspondence or by any mechanical or electronic means of communication, and the trader did not himself approach the consumer and offer the sale of the goods or the supply of the service, in the island where the premises of the trader are situate;

(ii) in all other cases in the island where the goods were delivered or the service provided; so however that where the goods were delivered or the service provided partly in the Island of Malta and partly in the Island of Gozo or in the Island of Comino, or has taken place during a voyage between the Island of Malta and the Island of Gozo or the Island of Comino, both Tribunals shall have jurisdiction.

(5) Where in accordance with the provisions set out in subsection (4) of this section, or in accordance with any rules made under section 27 of this Act, it cannot be determined which Tribunal has jurisdiction, the provisions of the Code of Organisation and Civil Procedure to determine conflict of jurisdiction between the Court of Magistrates (Malta) in its civil jurisdiction and the Court of Magistrates (Gozo) in its inferior civil jurisdiction, shall *mutatis mutandis* apply.

17. (1) Each Tribunal shall be presided by an Arbiter sitting alone: Arbiters.

Provided that more than one Arbiter may be appointed to sit in any of the said Tribunals, but only one Arbiter shall sit in any one case.

(2) Arbiters shall be appointed by the Prime Minister. No person shall be qualified to be appointed Arbiter unless such person:

- (a) is a citizen of Malta over the age of thirty years; and
- (b) holds the warrant and has practised the profession of advocate in Malta for a period of at least five years.

(3) A person shall be disqualified to be appointed Arbiter if such person:

- (a) is a member of the House of Representatives; or
- (b) is a member of a Local Council; or
- (c) is a trader; or
- (d) has been convicted of any of the offences referred to in paragraph (e) of subsection (7) of section 4.

(4) Arbiters shall receive such remuneration as the Prime Minister may by notice in the Gazette determine, and shall not be precluded from the exercise of their respective profession.

(5) Arbiters shall be appointed for a term of three years and shall be eligible to be re-appointed, for a further term or terms of three years each.

(6) In the exercise of his functions under this Act an Arbiter shall not be subject to the control or direction of any other person or authority and may not be removed from office except by the Court of Appeal on an application for that purpose by the Prime Minister on the grounds of misbehaviour or inability to perform his functions by reason of infirmity of body or mind.

(7) The remuneration due to Arbiters and the expenses in connection with the administration of the Tribunals shall be paid out of the Consolidated Fund without the necessity of any further appropriation.

Abstention or
challenge of
Arbiters.

18. An Arbiter shall abstain and may be challenged in the same circumstances as a Judge of the Superior Courts.

Oath taken
by Arbiter.

19. Every person appointed as an Arbiter shall not assume the functions of his office unless and until he has taken before the Attorney General an oath to examine and decide the cases brought before him without delay, with impartiality, and equity according to law.

Jurisdiction of
the Tribunal.

20. (1) A Tribunal shall have jurisdiction to hear and determine claims made by consumers against traders where the value of the claim, exclusive of interests and costs, does not exceed five hundred Maltese liri, and where the claim relates to, arises out of or concerns:—

(a) the purchase or hire of goods by a consumer from a trader; or

(b) the provision of services by a trader to a consumer.

(2) The jurisdiction of a Tribunal shall not be exclusive, and it shall be at the option of the consumer whether to bring an action against a trader before a Tribunal or before the ordinary courts; so however that:—

(a) where an action has been brought before a Tribunal by a consumer, it shall not be competent for the consumer to bring an action arising out of the same claim also before the ordinary court; and

(b) where an action has been brought before the ordinary courts by a consumer, or in a case brought by a trader against a consumer and the consumer sets forth a counter-claim, it shall be lawful for all the parties to the action, where the claim and the counter-claim if any are within the jurisdiction of a Tribunal, by a joint note filed in the records of the case to request that Court to transfer the case to a Tribunal. Thereupon the ordinary court shall through the Registrar transfer a copy of the records of that case to the Tribunal and shall refrain from taking further cognisance of the

case. Registry costs in respect of the case before the ordinary courts shall in any such case be waived, and unless the parties otherwise agree in the note aforesaid, costs shall be determined in a like manner as if the case was withdrawn by the plaintiff:

Provided that a case shall not be transferred to a Tribunal where the value of the claim or counter-claim determined as provided for in subsection (1) of this section exceeds five hundred Maltese liri; and

(c) it shall be lawful for a trader to make a counter-claim against a consumer arising from a matter referred to in subsection (1) of this section before the Tribunal in an action brought against him by a consumer.

21. (1) A Tribunal shall determine the issues in dispute in any claim or counter-claim before it according to the substantive merits and justice of the case, and in accordance with equity:

Determination of disputes before a Tribunal.

Provided that any question of prescription shall be determined according to law.

(2) A Tribunal may, when determining the issues in dispute in any claim or counter-claim before it, order the trader to pay to the consumer a sum of not less than fifteen Maltese liri and not more than one hundred Maltese liri as moral damages for any pain, distress, anxiety and inconvenience.

22. (1) An appeal shall lie from a decision of a Tribunal by means of an application filed within eighteen working days from the date of the decision —

Appeals.

(a) in the case of an appeal from the Consumer Claims Tribunal (Malta) to the Court of Appeal composed in accordance with the provisions of subsection (6) of section 41 of the Code of Organization and Civil Procedure or any provision in substitution thereof; and

(b) in case of an appeal from the Consumer Claims Tribunal (Gozo) to the Court of Appeal composed in accordance with the provisions of subsection (3) (a) of section 50 of the Code of Organization and Civil Procedure or any provision in substitution thereof.

(2) An appeal shall only lie in accordance with subsection (1) of this section where the Tribunal has acted contrary to the rules of natural justice, and such action has seriously prejudiced the rights of the appellant. Where the Court of Appeal finds that the grounds for appeal are justified it shall quash the decision of the Tribunal and shall itself determine the original claim and any counter-claim in accordance with the provisions of section 21.

Procedure.

23. (1) Subject to the provisions of any rules made in accordance with section 27 of this Act and to the provisions of subsection (2) of this section, an Arbiter shall regulate the proceedings before a Tribunal as he thinks best suited to the ends of justice in accordance with the rules of natural justice.

(2) Subject to any rules referred to in subsection (1) hereof, an Arbiter —

(a) shall ensure that a case is decided as far as is reasonably possible on the same day of the hearing;

(b) shall inform himself in any manner he thinks fit and shall not be bound by the rules of best evidence or the rules relative to hearsay evidence if he is satisfied that the evidence before him is sufficiently reliable for him to reach a conclusion on the case before him;

(c) shall refrain as far as possible from appointing technical referees to give expert evidence, and shall where experts are appointed make out a list of points upon which the expert is to give evidence;

(d) shall not be bound to give extensive reasons for his decisions but it shall be sufficient for him to list out the main points upon which his decision is based; and

(e) shall have the same power as a Magistrate sitting in a Court of Magistrates (Malta) in its civil jurisdiction or in the Court of Magistrates (Gozo) in its inferior civil jurisdiction and in particular shall have power to summon witnesses and to administer an oath to witnesses.

(3) No proceedings before a Tribunal shall be invalid because of any non-observance of any formalities if there has been substantial compliance with the rules.

(4) (a) A claim shall, before being presented before a Tribunal, be referred by the party making the claim to the Director who shall try to bring the parties into an agreement on the issues in dispute.

(b) If no agreement is reached on all the issues in dispute within fifteen working days from when the claim was referred to the Director by the party, that party may then present its claim before the Tribunal.

(5) Witnesses shall be paid fees in accordance with the Witnesses (Fees) Ordinance.

(6) The provisions of the Judicial Proceedings (Use of English Language) Act shall apply to a Tribunal. Cap. 189.

24. (1) The provisions of this Part shall apply to claims arising from sales made or services provided after the coming into force of this section, and it shall be a condition of any sale or provision of service after the coming into force of this section that the provisions of this Part shall apply to any claims arising therefrom: Applicability of this Part.

Provided that it shall be lawful for a consumer and a trader to agree that this Part shall also apply to sales made, or services provided, before the coming into force of this section.

(2) It shall not be lawful for the parties to a transaction to which subsection (1) of this section refers, to derogate from any right given to a consumer under this Part.

25. (1) In any award the Arbiter shall determine the costs that any of the parties is to pay to the other and unless special circumstances so warrant, the losing party shall be ordered to pay the costs of the party in whose favour the decision is awarded. Costs and enforcement.

(2) Costs shall be limited to expenses made directly in connection with the case by the party in whose favour the payment of costs is awarded:

Provided that in no case shall costs be awarded in connection with any expenses consisting of legal fees or any fees however so called paid by any of the parties to advocates, legal procurators or any other person assisting the parties before the Tribunal.

(3) A decision of a Tribunal which has become *res judicata* may be enforced by the Court of Magistrates (Malta) in the case of a decision of the Consumer Claims Tribunal (Malta), and by the Court of Magistrates (Gozo) in its inferior civil jurisdiction in the case of the Consumer Claims Tribunal (Gozo) in the same manner as if the decision were a judgement of the respective Court.

26. (1) There shall be a Registry for each Tribunal.

Registry,
Secretary and
Deputy
Secretary.

(2) The records of each Tribunal shall be accessible to all persons, and copies shall be given on payment of the prescribed fee to any person on request.

(3) The acts and records of a Tribunal shall be deposited and kept in any place as the Minister may, with the concurrence of the Minister responsible for justice, by Order in the Gazette establish.

(4) The Minister shall appoint a Secretary to each Tribunal from among public officers serving with the Department.

(5) The Secretary shall subject to such rules as may be made under this Part, have the same functions in relation to the Tribunal as the Registrar of the Courts and the Archivist of the Courts have in relation to the Superior Courts.

(6) The Minister shall also appoint Deputy Secretaries from among public officers serving with the Department who shall, subject to rules made as aforesaid, have such duties as are assigned to them by the Secretary in general and in particular as are performed by Deputy Registrars in the Superior Courts.

(7) Before assuming the functions of their office, a Secretary and a Deputy Secretary shall take and subscribe to an oath before a Commissioner for Oaths to perform their duties fairly and impartially according to law.

Rules.

27. The Minister may, with the concurrence of the Minister responsible for justice, make rules for the better functioning of the Tribunals established under this Part and may without prejudice to the generality hereof make rules:

(a) setting out the procedure before the Tribunals or in appeals from the Tribunals;

(b) establishing the forms that are to be used in proceedings before the Tribunals or in appeals from the Tribunals;

(c) establishing rates of costs in proceedings before the Tribunals;

(d) establishing the fees that may be due to the Registry of the Tribunal;

(e) setting out the duties of the Secretaries and Deputy Secretaries; and

(f) prescribing anything that may or is to be prescribed in accordance with this Part.

PART IV

Consumer Associations

Requirements for registrations.

28. A registered consumer association is a consumer association which satisfies the Council that it complies with the following requirements:

(a) that the association has a minimum paid up membership of two hundred and fifty members of majority age who are citizens of Malta or permanent residents in Malta;

(b) that the statute of the association states in substance that the principal object of the association is to promote consumer protection, and to guide, inform and educate consumers;

(c) that the statute makes provision for the association to be managed by persons freely elected by the members of the association in an election which is held at least once every calendar year;

(d) that the association does not have the making of profit as one of its objects; and

(e) that the association is independent of any other association, organisation or grouping whose principal object is not the protection of consumers.

29. (1) Any consumer association wishing to be recognised as a registered consumer association shall submit to the Council the following:

Application for recognition.

(a) an application on the appropriate form issued under the authority of the Council;

(b) a complete updated copy of its statute duly certified by the person who holds the most senior executive post with the association;

(c) a list of the association's members including their respective addresses and identity card numbers; and

(d) the official address of the association.

(2) The Council shall at its earliest opportunity examine and verify whether the association satisfies the requirements laid down in section 28 of this Act. Where these requirements are satisfied, the Council shall register the applicant as a registered consumer association, and shall issue a certificate to the association confirming the registration of the said association and the date thereof.

(3) Where the Council determines that an association does not satisfy the requirements for registration, it shall within fourteen days from the date of its decision give notice thereof in writing to the applicant giving the grounds for such a decision.

(4) The Council may refuse to register a consumer association under a name or designation which it considers to be offensive or otherwise undesirable.

(5) A certificate issued by the Council to the effect that a particular consumer association is a registered consumer association which complies with all the requirements laid down under subsection (1) of this section, shall be valid and conclusive evidence of the fact for all intents and purposes of law.

(6) No fees shall be charged in connection with the registration of a consumer association with the Council.

Register of
consumer
associations.

30. (1) The Council shall keep a register of all registered consumer associations, stating their names, dates of registration, number of members and any other particulars the Council may deem appropriate.

(2) The register shall be open to inspection by any person free of charge at any time and place as may be determined by the Council:

Provided that the identity of the members of a registered consumer association shall not be open to public scrutiny.

Obligation to
keep records
of members.

31. Every registered consumer association shall keep a fully updated record of the names, addresses and identity card numbers of its members.

Obligation to
submit
information to
Council.

32. (1) A registered consumer association shall submit to the Council all such returns and information on its membership and activities as the Council may from time to time require. Without prejudice to the foregoing, each registered consumer association shall in every calendar year not later than the end of March lodge with the Council a return of its membership as at the 31st December of the previous year.

(2) A registered consumer association shall provide the Council with a copy of any amendments to its statute, which copy must be duly certified by the person holding the most senior executive post with the association. Any such amendment must be notified to the Council within fourteen days of its approval by the said association.

Council to
publish annual
list.

33. As soon as practicable after the lapse of each successive calendar year but not later than the end of May of each year, the Council shall publish for general information in the Gazette a list of the registered consumer associations duly registered as on the 31st December of the previous year.

False or
misleading
statement etc.

34. Any person who knowingly or recklessly makes a false or misleading statement or declaration or otherwise gives any false or misleading information to the Council under any of the provisions of this Part shall on conviction be liable to a fine (*multa*) of up to one thousand Maltese liri or to a term of imprisonment not exceeding six months or to both such fine and imprisonment.

Exemption and
privileges.

35. A registered consumer association shall enjoy the rights benefits, privileges and exemptions granted by this Part for so long as it remains so registered and continues to comply with the requirements of this Part.

36. (1) Notwithstanding the provisions of any other law, a registered consumer association and any of its officials acting on its behalf shall be exempt from any liability or responsibility whether civil or criminal, in respect of any publication, statement or other communication or activity, which is *bona fide* and is intended solely for the better information, education or protection of consumers. Such exemption shall extend to all persons publishing, printing, recording, broadcasting or communicating such information by any means whatsoever.

Exemption from liability.

(2) For the purposes of subsection (1) of this section, a publication, statement, communication or activity shall be deemed to be *bona fide* when it is not made or undertaken recklessly or maliciously, adheres to the principles of fairness and objectivity, and is not in contravention of any rules of practice made in accordance with paragraph (c) of subsection (1) of section 7 of this Act.

(3) Any person alleging bad faith by a registered consumer association shall have the burden of proving such allegations.

37. (1) A registered consumer association may in its own name make reports or complaints to the competent authority on any breach of this Act, any law administered by the Director or any such laws or regulations as the Prime Minister may from time to time determine by notice published in the Gazette.

Registered Consumer Associations and prosecutions.

(2) In any prosecution by the competent authority made following a report or complaint under subsection (1) of this section, a representative of the association shall be called to give evidence on the facts known to the association about the complaint or report and indicate to the Court any evidence in respect of the charge of which it may be aware.

(3) In the course of the criminal proceedings made as a result of a report or complaint by the association, an official authorised by the association for this purpose shall be entitled to participate and assist in the prosecution of the said offences.

38. A registered consumer association shall be exempt from the payment of income tax.

Exemption from Income Tax.

39. The Minister may, acting on the advice of the Council, grant to any registered consumer associations such assistance and facilities as he may deem fit from time to time in order to enable them to exercise their functions.

Assistance to registered consumer associations.

40. (1) The Council may whenever it considers it to be necessary, consult with registered consumer associations on any matter relating to or arising from the supply of goods and services to consumers.

Consultation and initiatives with registered consumer associations.

(2) The Council may also undertake initiatives or campaigns jointly with registered consumer associations as it deems fit from time to time.

Cancellation of registration.

41. The Council shall cancel the registration of a registered consumer association in any of the following cases where:

- (a) a request for cancellation is made by the association;
- (b) it is satisfied that the association no longer complies with any of the requirements laid down in section 28 of this Act;
- (c) for any reason, the statute regulating the association is not in conformity with the provisions of this Part;
- (d) it is satisfied that the association has ceased to exist or to function;
- (e) it is satisfied that sufficient proof exists that the registration of the association had been procured by fraud, negligence or serious mistake;
- (f) the association or anyone acting on its behalf is convicted under section 34 of this Act; or
- (g) the association has repeatedly acted in breach of any rules of practice made under paragraph (c) of subsection (1) of section 7 of this Act, or has in any matter of gravity acted even once in breach of such rules.

Other consumer associations.

42. Nothing in this Part shall be construed as obstructing or limiting the right of persons to set up associations for the protection and promotion of consumer interests without qualifying in terms of section 28 of this Act. In such a case an association which is not registered shall not have any right to consultation, assistance or recognition from the Council, or to any other right, privilege or exemption conferred by this Part upon registered consumer associations.

PART V

Miscellaneous

Director to administer certain laws.

Cap. 39.
Cap. 313.
Cap. 317.

43. The Director shall be responsible for the administration of the Weights and Measures Ordinance, the Trade Descriptions Act and the Door-to-Door Salesmen Act.

Repeal of Cap. 293.

44. The Consumer Protection Act is hereby repealed.

Amendment of certain laws.

45. The enactments set out in the First Column of the Schedule to this Act shall have effect subject to the amendments set out in the Second Column of the said Schedule.

SCHEDULE

(Section 45)

First Column	Second Column
Code of Police Laws, Cap. 10.	In subsection (1) of section 189 for the words “at the Police Office” there shall be substituted the words “at the office of the Director of Consumer Affairs”.
Civil Code, Cap. 16.	In section 1431 for the words “one month” there shall be substituted the words “six months”.
Weights and Measures Ordinance, Cap. 39.	(a) For the words “Commissioner of Police” wherever they occur in the Ordinance there shall be substituted the words “Director of Consumer Affairs”; (b) for the words “Minister responsible for the Police” there shall be substituted the words “Minister responsible for consumer affairs”.
Trade Descriptions Act, Cap. 313.	(1) (a) For the words “consumers’ organisation” wherever they occur in the Act there shall be substituted the words “registered consumer association”; (b) for the words “Department of Trade” wherever they occur in the Act there shall be substituted the words “Department of Consumer Affairs”. (2) Section 2 shall be amended as follows: (a) the definition of “consumers’ organisation” shall be deleted; (b) for the definition of “Minister” there shall be substituted the following: ““Minister” means the Minister responsible for consumer affairs;”; (c) after the definition of the word “premises” there shall be inserted the following definition: ““registered consumer association” means a consumer association registered in accordance with the provisions of the Consumer Affairs Act, 1994.”.
Door-to-Door Salesmen Act, Cap. 317.	(1) Section 2 shall be amended as follows: (a) for the definition of the word “Director” there shall be substituted the following:

““Director” means the Director of Consumer Affairs;”;

(b) for the definition of the word “Minister” there shall be substituted the following:

““Minister” means the Minister responsible for consumer affairs;”.

(2) (a) In paragraph (g) of section 3 the words “other than contracts for the provision of insurance” shall be deleted.

(b) The provisions of paragraph (a) above shall be deemed to have come into force on the 1st January, 1992.

Passed by the House of Representatives at Sitting No. 338 of the 15th November, 1994.

RICHARD J. CAUCHI
Clerk to the House of Representatives

LAWRENCE GONZI
Speaker

