

31. Any trader who, in the course of a trade or business, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services—

False representations.

- (a) falsely represents that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model ;
- (b) falsely represents that goods are new ;
- (c) represents that goods or services have sponsorship, approval, performance, characteristics accessories, uses or benefits they do not have ;
- (d) represents that such trader has a sponsorship approval or affiliation he does not have ;
- (e) makes false or misleading statements concerning the existence of, or amounts of price reduction or price increase ;
- (f) makes false or misleading statements concerning the need for any goods, services, replacements or repairs ; or
- (g) makes false or misleading statements concerning the existence or effect of any warranty or guarantee,

shall be guilty of an offence under this Act.

32. (1) In every contract for the supply of goods or for the provision of services by any person in the course of a business of supply of such goods or provisions of such services to a consumer, there is an implied warranty that—

Warranties in relation to the supply of goods or services.

- (a) the services will be provided with due care and skill ;
- (b) that any materials supplied in connection with provision of such services will be reasonably fit for the purpose for which they are supplied ;
- (c) the goods supplied or services provided will be in conformity with the standards and specifications determined under section 12 of this Act ; and

- (d) the goods supplied will be reasonably fit for the purpose for which they are supplied.

(2) Where a trader or any person other than a trader supplies any goods or provides any service to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the trader or other person of any particular purpose for which the goods or services are required or the result that he desire the service to achieve, there is an implied warranty that the services provided under the contract for the provision of such services and any materials supplied in connection with those services will be reasonably fit for that purpose or are of such a nature and quality that they might reasonably be expected to achieve that result, except where circumstances show the consumer does not rely, or that it is unreasonable for him to rely, on the trader's or such other person's skill or judgement.

(3) A consumer aggrieved by the breach of an implied warranty as provided for in subsection (1) or (2) may make a complaint to the Authority in writing against such breach within one month of the supply of such goods or the provision of such services as the case may be, or the supply of materials supplied in connection with the provision of those services.

(4) At any inquiry held into a complaint made under subsection (3), the Authority shall give the trader or other person against whom the complaint is made, an opportunity of being heard either in person or by an agent on his behalf.

(5) Where after the inquiry the Authority is of opinion that a breach of an implied warranty has taken place, it shall order the trader or other person to pay compensation to the aggrieved party or refund the amount paid for the supply of such goods or provision of such services as the case may be, and for the supply of any materials in connection with the provision of those services, within such period as shall be specified in the order.

(6) An order under subsection (5) shall be made in writing and communicated to such trader or other person by registered post.

(7) Where a trader or any other person against whom an order is made under subsection (5) fails or refuses to pay such compensation or to refund the amount required to be paid as the case may be, within the period specified in the order, such sum may, on application being made in that behalf by the Authority to the Magistrate's Court having jurisdiction over the place of business or residence of the trader or such other person against whom the order was made, be recovered in like manner as a fine imposed by such court, notwithstanding that such sum may exceed the amount of a fine which that Court may, in the exercise of its ordinary jurisdiction impose.

33. At the request of the Minister, the Authority shall carry out a public sector and private sector efficiency study and submit a report to the Minister. It shall be the duty of the Minister to place such report before Parliament.

Public efficiency reports.

PART III

PROMOTION OF COMPETITION AND CONSUMER INTEREST

34. (1) The Authority may either of its own motion or on a complaint or request made to it by any person, any organization of consumers or an association of traders, carry out an investigation with respect to the prevalence of any anti-competitive practice.

Authority to carry out investigations into anti-competitive practices.

(2) It shall be the duty of the Authority to complete an investigation under subsection (1), within one hundred days of its initiation.

35. For the purpose of section 34, an anti-competitive practice shall be deemed to prevail, where a person in the course of business, pursues a course of conduct which of itself or when taken together with a course of conduct pursued by persons associated with him, has or is intended to have or is likely to have the effect of restricting, distorting or preventing competition in connection with the production, supply or acquisition of goods in Sri Lanka or the supply or securing of services in Sri Lanka.

Anti-competitive practice.

Provisions
relating to an
investigation
under section 34.

36. (1) The Authority may give to all persons including representatives of associations or organisations of consumers interested in a matter which forms the subject of an investigation under section 34, an opportunity of being heard and of producing such evidence, oral or documentary, as in the opinion of the Authority is relevant to such matter.

(2) For the purpose of conducting an investigation under section 33, the Authority shall have all the powers of a District Court—

- (a) to issue notices and require the attendance of any witness ;
- (b) to require the production of documents or records ;
and
- (c) to administer any oath or affirmation to any witness.

(3) Where any person—

- (a) without sufficient reason publishes any statement or does anything during the progress or after the conclusion of any investigation, which may bring the Authority or any member thereof into disrepute ; or
- (b) interferes with the lawful process of the Authority ;
or
- (c) in the course of an investigation—
 - (i) fails without cause, to appear before the Authority at the time and place specified in any notice issued by the Authority to such person ; or
 - (ii) refuses to be sworn or affirmed or having been duly sworn or affirmed refuses or fails without cause, to answer any questions put to him relating to the matter being investigated by the Authority ; or

- (iii) refuses or fails without cause, to produce and show to the Authority any document or record which is in his possession or control, and which in the opinion of the Authority is relevant to the matter being investigated by the Authority,

such person shall be guilty of an offence of contempt against or in disrespect of the Authority and shall be punishable for such offence by the Court of Appeal.

(4) Where the Authority determines that a person had committed any offence of contempt against or in disrespect of its authority, the Authority may cause the Director-General to transmit to the Court of Appeal a certificate setting out its determination and every such certificate shall be signed by the Chairman of the Authority.

(5) In any proceedings for the punishment of an offence of contempt which the Court of Appeal may think fit to take cognisance of as provided in subsection (3), any document purporting to be a certificate signed and transmitted to the Court of Appeal under subsection (4), shall be *prima facie* evidence of the facts stated in the determination set out therein, and be conclusive evidence that such determination was made by the Authority.

37. (1) Upon the conclusion of an investigation under section 34, the Authority may make an application to the Council for purpose of determining on such matter.

Authority to make an application to the Council.

(2) The application referred to in subsection (1), shall be made in writing and shall be in such form as may be prescribed for that purpose.

38. Where upon conclusion of an investigation by the Authority under section 34, the Authority decides not to make an application to the Council under section 37 in respect of such investigation, the person, any organisation of consumers or association of traders, as the case may be, on whose complaint or request such investigation was carried out, may by application in writing addressed to the Council, request the Council to—

Council to entertain applications made by any person or association of traders.

- (a) call upon the Authority to submit to the Council its report on the investigation ; and
- (b) hear and determine such application, where the Council is of opinion that there is sufficient material in the report to warrant the Council to take up such application for determination.

PART IV

CONSUMER AFFAIRS COUNCIL

Establishment and constitution of a Consumer Affairs Council.

39. (1) There shall be established for the purpose of this Act a Council to be known as the “Consumer Affairs Council”.

(2) The Council shall consist of the following persons who shall be appointed by the Minister :—

- (a) one person who has had wide experience in the field of commercial law ;
- (b) one person who has had wide experience in the management of business enterprises ; and
- (c) an economist with wide experience in trade practices and consumer affairs.

(3) The members of the Council shall hold office for a period of three years and the Minister shall nominate one of the members to be its Chairman.

(4) The members of the Council shall be paid such remuneration as may be determined by the Minister, in consultation with the Minister in charge of the subject of Finance.

(5) There shall be appointed a Secretary to the Council who shall be responsible for maintaining records of all proceedings of the Council, and for sending out any notices required to be sent by the Council under this Act.