

REPUBLIC OF KIRIBATI
(No. 11 of 2001)

I assent,

Beretitenti
2000

**AN ACT TO PROVIDE FOR CONSUMER PROTECTION AND
ADMINISTRATION, RIGHT OF THE CONSUMER, FAIR TRADING AND
STATUTORY WARRANTIES AND FOR CONNECTED PURPOSES**

Commencement: 2000

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti.

PART I
PRELIMINARY

Short title and commencement

1. The Act may be cited as the Consumer Protection Act, 2000, and shall come into operation on such date as the Minister may, by notice appoint.

Interpretation

2. (1) In this Act, unless the context otherwise requires:

“consumer” means a person or enterprise that acquires goods or services from any supplier, including a manufacturer, trader, or provider of services or advice;

“defect” means, in relation to goods, any goods that do not comply with stated characteristics mentioned on the goods themselves, on the wrapping of the goods or on information leaflets included with the goods and/or do not comply with product safety or quality standards adopted in Kiribati or have characteristics which may harm users if used in ways generally accepted as normal in Kiribati;

"enterprise" means any activity being carried on in Kiribati under its own name, whether licensed or not, or incorporated or not, or owned by I-Kiribati or not;

“goods” include the supply of utilities, including gas, electricity, water and telecommunications;

“inspector” means a person appointed as inspector under section 5;

“Ministry” means a department or agency of the Government for the time being responsible for dealing with consumer affairs in Kiribati;

“manufacturer” means any person or enterprise, based in Kiribati or anywhere else who—

- (a) makes an article or goods;
- (b) assembles or joins any article or goods, whether by chemical process or by other means;
- (c) adapts any article or goods; or
- (d) processes or transforms any produce or product into another product;

"service" includes, under a contract or otherwise—

- (a) the provision of advice, guidance or information; or
- (b) the repair or maintenance of goods, equipment or buildings; or
- (c) the provision, granting or conferring of any rights, benefits, privileges and facilities in relation to:
 - (i) the performance of work (including work of a professional nature), whether with or without the supply of goods; or
 - (ii) a contract for, or involving the provision of gas, electricity, water or telecommunications; or
 - (iii) the provision, or making available for use of facilities for amusement, entertainment, recreation or instruction; or
 - (iv) the conferring of rights, benefits or privileges for which remuneration is payable in the form of royalty, levy or similar exaction;

“trader” means any person or enterprise carrying on business as—

- (a) an importer of goods or services for the purpose of sale or supply;
- (b) an exporter of goods in pursuance of a contract for sale or supply, and includes a person or enterprise who sells or supplies goods or services;
- (c) an exporter of goods in pursuance of a contract for sale or supply, and includes a person or enterprise who sells or supplies goods or services;
- (d) wholesale to any other traders or manufacturers; or
- (e) retail to consumers.

PART II ADMINISTRATION OF ACT

Administration

3. The Minister, acting in accordance with the advice of the Cabinet shall be responsible for the due administration and implementation of this Act.

Functions of the Minister

4. The Minister, acting in accordance with the advice of the Cabinet, shall have the following functions:
 - (a) to advise any person or enterprise in relation to the provisions of this Act and of any other legislation administered by the Ministry;
 - (b) to make available to consumers, and persons or institutions dealing with consumers, general information with respect to:
 - (i) this Act and other legislation administered by the Minister,
 - (ii) matters affecting the interests of consumers;
 - (c) to receive complaints from any person, representative of consumers, or enterprise or representative of enterprises on matters relating to the supply of goods or services (including fraudulent or unfair practices) and deal with any such complaint in such a manner as the Minister considers appropriate;
 - (d) to monitor the compliance to the Act by persons and enterprises providing consumers with goods and services;
 - (e) to investigate any matter which either is the subject of a complaint or has come to the notice of the Minister as a result of its own monitoring actions; the investigation may be deputed to another public authority, or any other body, that the Minister considers to be best able to carry out the investigations and provide advice in relation to the complaint;
 - (f) to take action for remedying infringements by attempting to secure compliance by the transgressor with the provisions of this Act or by instigating legal proceedings if compliance is not forthcoming or the infringement is, in the opinion of the Minister, serious or a repeated infringement; or
 - (g) to provide a written response to every complaint received by the Minister, detailing the complaint, the view of the Minister about the complaint, the investigations undertaken, the findings of the investigation and the actions taken in response to those findings.
- (2) Where a complaint is received or a suspected infringement has been noticed, following the Minister's own monitoring activities, the Minister may, even if the infringement is being dealt with or has been dealt with by another public authority or another body:

- (a) start investigations of the complaint or suspected infringement; or
- (b) refer the complaint or suspected infringement to a public body or any other body for investigation.

Appointment of inspectors

5. (1) The Beretitenti, acting in accordance with the advice of the Public Service Commission may appoint one or more persons to be inspectors for the purposes of this Act.
- (2) The Minister shall provide an inspector with a certificate of identity as an inspector with the powers of investigation provided under this Act.
 - (3) An inspector who exercises, in any place or on any property, a function conferred by this Act, shall produce his certificate of identification if requested so to do by a person apparently in charge there or apparently in charge of any work being carried on there.
 - (4) An inspector shall produce his certificate of identity if requested so to do by a person required to comply with the requirements of this Act.

Powers of entry

6. (1) The powers of an inspector conferred by this section shall be exercised for the purposes of this Act only, and not for any other purpose.
- (2) The power to enter a place or land conferred by this section does not include a power to enter a place that is a dwelling house or other residential premises unless:
 - (a) the owner or occupier consents; or
 - (b) some manufacture, business, service or trade is carried on there.
 - (3) An inspector may, at a reasonable time –
 - (a) enter any place that he believes, on reasonable grounds, to be a place where –
 - (i) goods are manufactured, prepared or supplied; or
 - (ii) services are supplied or arranged; or
 - (b) inspect any goods or partly manufactured goods and make such other inspections as he considers to be necessary;
 - (c) take any goods or partly manufactured goods for which he pays a fair price;
 - (d) take a sample of anything from which goods are manufactured or produced in that place for which he offers to pay a fair price and will pay, if requested to do so;
 - (e) make inquiries of any person employed in that place; or

- (f) inspect and make, or arrange for the making of, copies of records required to be kept by or under this Act or any other law in respect of such a business.
- (4) No inspector shall exercise the powers conferred by subsection (3) unless -
- (a) reasonable notice has been given to the owner or occupier of land, building or dwelling house or other residential premises; and
 - (b) a search warrant has been obtained in accordance with subsection (5).
- (5) The provisions of sections 101 and 102 of the Criminal Procedure Code or any successor legislation shall apply to the issuance of a warrant under this section.

Powers to obtain documents

7. (1) The Minister, acting in accordance with the advice of the Cabinet shall have the power to demand either sight of the original, or a certified copy by a lawyer or commissioner of oath of any statutory returns, balance sheets, accounting documents, lists of inventories, documents of trade and any other documents, letters or information, whether or not relating to the business of a person or enterprise which is the subject of an investigation.
- (2) A person who is investigated under this Act shall be entitled to receive a copy in writing of the matters demanded under subsection (1).
- (3) Failure to provide the demanded documents within 7 days from the first request, or within such further period as may be deemed reasonable by the Minister is an offence under this Act.

Obstruction of officers

8. (1) A person who –
- (a) hinders or obstructs an inspector who is appointed under this Act to carry out an investigation in a manner that interferes with the performance of the duties of the inspector; or
 - (b) assaults an inspector; or
 - (c) being the occupier or person in charge of any place or premises entered by an inspector, fails to provide all reasonable facilities and assistance for the effective exercise of the inspector powers under this Act,

commits an offence and shall be liable on conviction to a fine not exceeding \$1500 or to imprisonment for a term not exceeding one year, or to both.

Obtaining information generally

9. (1) The Minister, acting in accordance with the advice of the Cabinet, may require a

person –

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

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

- (2) The Minister may require the information required to be given, or the question required to be answered, on oath, and orally or in writing, and for that purpose may administer an oath.
- (3) The Secretary, or another officer authorised by the Minister 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 material particular,

commits an offence against this Act and shall be liable on conviction to a fine not exceeding \$1000 or to imprisonment for a term not exceeding 6 months or to both.

Summoning witnesses, etc.

10. (1) The Secretary may –

- (a) summons 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 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 commits an offence against this Act and shall be liable on conviction to a fine not exceeding \$1000 or to imprisonment for a term not exceeding 6 months or to both.
- (4) A witness before the Secretary 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,

commits an offence against this Act and shall be liable on conviction to a fine not exceeding \$1000 or to imprisonment for a term of 6 months or to both.

Preservation of secrecy

11. (1) Except for the purposes of the performance of his duties or the exercise of his functions under this Act, or when lawfully required to do so by any court or under the provisions of any written law, no inspector, officer, employee, agent of the Ministry shall disclose any information relating to the affairs of the Ministry or of any person which has been obtained by that inspector, officer, employee, or agent in the performance of his duties or the exercise of his functions under this Act.

(2) A person who contravenes subsection (1) commits an offence against this Act and shall be liable on conviction to a fine not exceeding \$1500 or to imprisonment for a term not exceeding 1 year or to both.

PART III CONSUMER PROTECTION

Approved standards

12. (1) The Minister, acting in accordance with the advice of the Cabinet, may by regulations, prescribe product safety or quality standards for any specified kind of goods (hereinafter in this Act referred to as an "approved standard").

(2) An approved standard for goods shall consist of such requirements as to:

- (a) the performance, composition, contents, methods of manufacture or processing, design, construction, finish, or packaging of the goods;
- (b) the testing of the goods during, or after the completion of, manufacture or processing;
- (c) the form and context of markings, labelling, warnings or instructions to accompany the goods;
- (d) the equipment or accessories to be supplied with the goods;
- (e) the minimum quality, contents or performance, which the goods are required to surpass;
- (f) the measures that manufacturers, traders or suppliers should take to ensure that goods do not become hazardous through improper handling or storage; or
- (g) other such safety standards, measures or specifications, as are reasonably necessary to prevent or reduce risk or injury to persons or damage to property or equipment.

Prohibition of the supply of goods below approved standards

13. (1) No person shall supply or trade goods in relation to which there is an approved standard, unless the goods comply with the standard.

(2) If a person supplies goods in contravention of subsection (1) and a consumer suffers loss or damage due to a defect in, or a dangerous characteristic of the goods, or by not having particular information in relation to the goods, the consumer who suffers the loss or damage shall be deemed, for the purposes of this Act to have suffered it due to the goods not having complied with the approved standard.

Complaints regarding goods traded below the approved standards

14. (1) The Secretary may inquire into complaints regarding the manufacture or sale of any goods which do not conform to the approved standard or specification prescribed under this Act, pursuant to section 12.

(2) Any complaint under subsection (1) shall be made to the Secretary in writing so as to reach him within fourteen days of such a sale.

(3) At any inquiry held into such a complaint, the Secretary shall give the manufacturer, trader or supplier against whom the complaint is made an opportunity of being heard either in person or by an agent on his behalf.

(4) If, after an inquiry, the Secretary is of the opinion, that a manufacture or sale has been made of any goods not conforming to the approved standards or specifications prescribed under this Act, the Secretary may by order require the manufacturer or trader to pay compensation to the aggrieved party or to replace such goods or to refund the amount paid for such goods.

(5) An order made under subsection (4) shall be made in writing and communicated to the person against whom it is directed by registered post or by personal delivery to his place of work.

(6) Where any person fails or refuses to comply with an order made under this section, such person commits an offence against this Act.

Product recall

15. (1) The Minister may make an order, requiring a manufacturer or importer or trader of defective goods to do one or more of the following:

(a) recall the goods in the manner, and within the time, specified in the order;

(b) disclose to the public, or to a section of the public, as specified in the order, in the manner and within the period so specified, one or more of the following:

(i) the nature of any defect in the goods identified in the order,

(ii) the circumstances in which the use of the good is dangerous, or

(iii) the manner of disposing of the good;

- (c) notify the public or a group so specified in the manner and within the period specified in the order, that the manufacturer, importer or trader undertakes to do whichever of the following the manufacturer or trader thinks is appropriate:
 - (i) except where the order identifies a dangerous characteristic of the goods, repair the goods;
 - (ii) replace the goods; or
 - (iii) refund to the person to whom the goods were supplied, the price of the goods.

Denial of possession of any article for the purposes of trade or the conditional sale of goods

- 16.** (1) No trader who has in his possession or custody or under its control a supply of particular goods for the purpose of trade, whilst the Minister shall have designated the goods as a priority and prohibited its hoarding according to section 15, shall:
- (a) deny the possession of these goods; or
 - (b) offer these goods for sale only subject to any condition, other than the condition that the buyer shall pay the price of such goods forthwith.

Traders to display price and stale date information

- 17.** (1) Every trader shall exhibit conspicuously, in his place of business, a notice specifying the maximum retail or wholesale price, as the case may be, of single purchases of all goods available for sale in his place of business.
- (2) Every trader shall exhibit on or with goods that have a “best before” or “use before” date that date and shall not obliterate that date or allow goods to be sold on which such a date has been obliterated.
- (3) Every trader who contravenes subsections (1) or (2) commits an offence against this Act.

Traders to issue receipts

- 18.**(1) Every trader who sells any goods shall on demand, issue to the purchaser thereof a receipt on which is inscribed:
- (a) the date of sale;
 - (b) the quantity of the goods purchased;
 - (c) the price paid for the quantity purchased; and
 - (d) the nature of the transaction, this is to say, whether the sale was by cash, cheque, credit card, or on credit.

- (2) Every trader who sells any goods in contravention of subsection (1) commits an offence against this Act.

Traders to display consumer notices

- 19.** (1) Every trader shall exhibit conspicuously, in his place of business, a notice board for the display of any notice, written direction or warning issued by the Minister, under this Act, which relates to any goods or services traded therein.
- (2) Every trader shall affix, or cause to be affixed, on this notice board, any notice or written direction or warning issued by the Minister to such traders under this Act
- (3) Any person who removes, alters, obliterates, erases, or defaces such notices, directions or warnings, other than a person acting under the direction or authority of the Minister, commits an offence against this Act.

PART IV FAIR TRADING AND STATUTORY WARRANTIES

Misleading or deceptive conduct by traders

- 20.** No person shall, in the course of a trade or business, engage in conduct that is misleading or deceptive or is likely to mislead or deceive any purchaser or possible purchaser and any person who contravenes this section commits an offence against this Act.

Warranty for services

- 21.** (1) In every contract for the supply by a trader or professional of services to a consumer, there is an implied warranty that the services will be rendered with due care and skill and that any materials supplied in connection with these services will be reasonably fit for the purpose for which they are supplied.

(2) Where –

- (a) a trader or professional supplies services in the course of a business to a consumer; and
- (b) the consumer, expressly or by implication, makes known to the trader or professional any particular purpose,

for which the services are required or the results he desires that the services will achieve, there is an implied warranty that the services supplied, as well as any materials supplied under the contract, will be reasonably fit for the purpose, or are of such a nature and quality that they might reasonably be expected to achieve that result, except where circumstances show that the consumer did not rely, or that it was unreasonable for him to rely, on the trader's or professional's skill or judgement.

(3) In this section:

- (a) "services" include services by way of:

- (i) the construction, maintenance, repair, treatment, processing, cleaning or altering of buildings, equipment or other goods; or
 - (ii) the distribution of equipment or goods; or
 - (iii) the transportation of equipment or goods; and
- (b) a “professional” includes persons or enterprises who provide services consisting of advice, guidance, or recommendations.

Misleading conduct by providers of services

22. No person shall engage, in trade or commerce, in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purposes or the quality of any services, and any person who contravenes this section commits an offence against this Act.

Inventories of parts of goods sold

23. (1) Any manufacturer or trader in goods shall ensure that he maintains at all times a reasonable quantity of spares or replacements for goods, including machinery, vehicles and mechanical and electrical goods, supplied by him to consumers, including such goods sold by him up to at least one year previously.

(2) If a manufacturer or trader in goods is unable to ensure that he will be able to maintain a reasonable inventory of spares or replacements for such goods supplied by him for up to one year, then he must warn intending purchasers of the fact and, display a notice in a prominent place that the buyer will be at risk.

(3) An inspector may at any reasonable time enter the place where the manufacturer or trader carries on his selling activities in order to view whether or not –

- (a) a warning notice, referred to in subsection (2) is prominently displayed; or
- (b) the invoices and receipts of buyers do not have the printed warning, referred to in subsection (2); or
- (c) such a notice is not prominently displayed,

he may search any premises used or reasonably supposed to be used for the manufacture or storage of spare or replacement parts and may inspect and take records of any stocks of goods found there.

(4) The definition of reasonable inventories, referred to in this section, is based on the value of –

- (a) spares or replacements being 10% of the value of the goods for which they relate; and
- (b) the imported price, including overseas carriage, insurance and shipment, but

before any import taxes, duties or levies have been applied.

- (5) Any manufacturer or trader who fails to warn purchasers under this section commits an offence against this Act.

Misleading statements about products and business activities

- 24.** (1) No person shall, in trade or commerce, make a representation that is false or misleading in a material particular, particularly concerning the profitability or risk or any other material aspect of any business activity that the person has represented as one that can be, or can be to a considerable extent, carried on at or from any place of residence.
- (2) Where a person in trade or commerce invites, whether by advertisement or otherwise, other persons to engage or participate in a business activity which requires of these persons the performance of work, or the investment of money or the performance of work associated with the investment, the inviter shall not make, with respect to the profitability or risk or any other material aspect of the business activity, a representation that is false or misleading in any material particular.
- (3) Any person who makes any representation that is false or misleading under this section commits an offence against this Act.

Misleading statements about after sales services

- 25.** No manufacturer or trader shall, in relation to the sale of any goods, engage in conduct that is liable to mislead the consumer into believing that after-sales-service is available for the particular goods, unless he has in place suitable facilities for the provision of such services and any manufacturer or trader who contravenes this section commits an offence against this Act.

PART V ENFORCEMENT AND REMEDIES

General penalties

26. (1) Where –

- (a) a Court convicts a person of any offence against any provisions of this Act; and
- (b) no penalty is provided in the provision of this Act under which such person was convicted,

the Court convicting such person may impose –

- (i) in the case of the first offence for a natural person, a fine not exceeding \$5000 or to imprisonment for a term not exceeding 5 years or to both; and
- (ii) in the case of a second or subsequent offence for a natural person to a fine not exceeding \$10000 or to imprisonment for a term not exceeding 10 years or to both; and;

- (iii) in the case of the first offence for a corporation, to a fine not exceeding \$10000 or to imprisonment for a term not exceeding 10 years; and
 - (iv) in the case of a second or subsequent offence for a corporation, to a fine not exceeding \$20,000 or a term of imprisonment not exceeding 20 years or to both;
 - (v) in all cases where a customer or competitor has lost financially as a result of the actions of the convicted person in contravention of this Act, the Court may order that the customer or competitor may receive damages from the person amounting up to five times their loss;
 - (vi) in all cases where a customer or another person has incurred physical injury as a result of the actions of the convicted person or corporation in contravention of this Act:
 - (aa) the Court may order that the customer or the other person may receive damages reflecting at least the loss of income incurred as determined by the Court;
 - (bb) the convicted person and, in the case of a corporation, the owners, directors or managers of the corporation, if it can be shown that the injury was incurred through their negligence or recklessness, may be imprisoned by the Court for a period not exceeding 10 years.
- (2) The Court, which convicts any person or corporation of an offence under this Act, may order the forfeiture of any goods in respect of which the offence was committed.
 - (3) The Court which convicts any person or corporation of an offence under this Act which involved customers being at risk physically or health-wise or being at physical or financially risk may make an Order that such a person or the owners or directors or managers of the corporation shall not carry on the business of, or be involved in a corporation engaged in, selling or offering for sale any goods in the course of any trade or business for such a period as may be specified in the Order.
 - (4) Any person who contravenes an Order of Court under subsection (3) commits an offence and shall be liable on conviction to a fine not exceeding \$7000 or to imprisonment for a term not exceeding 7 years or to both.

Where, an offence under this Act, is committed by a body of persons or enterprise

27. The following persons shall be guilty of an offence under this Act once the facts making up the offence have been proved –

- (a) if a body of persons or enterprise is a body corporate, every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of that body corporate; or
- (b) if a body of persons or enterprise is other than a body corporate, every person

who at the time of the commission of the offence was a member of that body or who managed it in some way;

unless that person proves that the offence was committed without that person's knowledge or connivance and that he/she exercised all such due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the person's functions and in the circumstances.

Liability of principals for offences of agents or employees

28. Where any offence, under this Act, is committed by an agent or employee of any manufacturer or trader or service provider, such an offence shall be deemed to have been committed by the manufacturer, trader, or service provider, unless he proves that the offence was committed without his knowledge and in contravention of the written guidelines provided to the agent or employee.

Protection of officers of the Ministry

29. No proceeding shall be instituted against any officer or other person appointed under this Act for any action, which is done in good faith or is purported to be done by him in the performance of his duties or the discharge of his functions under this Act.

Regulations

30. (1) The Minister may make regulations for giving effect to the principles and provisions of this Act and, without prejudice to the generality of the foregoing power such regulations may provide for:

- (a) the manner in which complaints may be made and investigations conducted;
- (b) information that a manufacturer or trader or service provider is required to provide to a consumer for charges made for services provided; or
- (c) any other matter required by this Act to be prescribed.

CONSUMER PROTECTION BILL 2000

EXPLANATORY MEMORANDUM

Taking into consideration the interests and needs of consumers and recognising that consumers often face more powerful forces in commerce in terms of financial strength, educational levels, and bargaining skills, the Government is of the view that consumers should have the right of protection from hazardous and sub-standard products, dubious business practices, exploitive situations.

The Bill seeks to achieve the above objects in an effort to promote better and fairer economic and social development and protect the rights of consumer's in the Republic of Kiribati. However, the Bill does not attempt to penalise the honest entrepreneur and enterprise, it is not anti-commercial, rather by creating a level playing field for enterprise to operate in and creating the means to control monopolistic practices, the Bill is pro-business.

The Bill is divided into five parts –

- Part I deals with preliminary matters and definitions.
- Part II deals with general matters of administration of the Bill.
- Part III prescribes standards and defines offences and deals with remedies and penalties.
- Part IV prescribes fair-trading and statutory warranties.
- Part V deals with enforcement and remedies, and regulations.

Michael N. Takabwe
Attorney General
22 June 2000