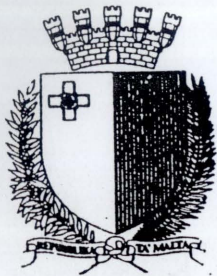


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Rights for the Consumer

AUGUST 1991

PUBLISHED BY THE DEPARTMENT OF INFORMATION
PRINTED AT THE GOVERNMENT PRESS

PRICE 35c

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PRELIMINARY

1. This White Paper presents for public discussion and consultation ideas and proposals for legislative reforms in favour of the consumer. For this reason, proposals have not been presented in the formal and restricted shape of a draft bill. The measures and reforms suggested in this White Paper are expected to stimulate greater interest in matters relating to consumer protection. They should be seen as a point of departure for discussions and consultations with all interested parties.

2. The proposals have taken into consideration the existing laws. These are examined and evaluated and amendments and other reforms suggested, often in detail. Efforts have been made to define a new organizational structure to give these various laws and proposals a common sense of purpose and direction rendering them easier to enforce and consequently more meaningful.

3. The causes of consumer complaints are various and disparate including such matters as shoddy goods and services, deceptive descriptions, false bargains, broken promises, unreturned deposits, unsafe products. The law has not always reacted adequately to all the various forms of trade malpractices that arise, providing consumers with a proper, tangible and speedy remedy.

4. Even the few initiatives directed at improving the consumer's lot were sporadic, inconsistent and with no clear framework, direction or organizational support.

5. Regrettably voluntary consumer associations have not really experienced any consistent or popular success, certainly not to the extent as similar associations have enjoyed in other countries.

6. The Government is therefore proposing to establish a Council which will monitor and influence the operation and enforcement of the various relevant laws; to review critically existing legislation; to enact new legislation; and, for easy reference, to have a substantial part of our consumer legislation incorporated in one single statute.

7. In this vision, the setting up of a central body whose function shall explicitly be that of promoting consumer protection in the various spheres of the law and of informing and guiding the consumer becomes the focal point around which revolve many of the proposals set out in this White Paper. For this reason, the ideas and proposals regarding the setting up of the Consumer Protection Council are presented at the outset.

8. Following a brief description of the organization and functions of the proposed Council, the Paper proceeds to a brief review of the various spheres of commercial activity where the law should intervene to safeguard the legitimate interests of the consumer.

9. At present there are a variety of laws and regulations which directly or indirectly have provided forms of consumer protection or have had the potential to do so. Unfortunately much of this potential remains untapped. Admittedly few of the relevant existing laws and regulations were conceived specifically with the consumer's protection in mind. More often the aim had been to prevent unscrupulous traders from engaging in unfair competition with their rivals, or to maintain public policy. The consumer in these situations benefitted only indirectly and was not provided with any adequate remedy. He could not initiate proceedings to obtain compensation for any loss suffered. At most, he could request the Police authorities to proceed against the offending trader in the criminal courts.

10. In more recent years, consumer protection has become the subject of several legislation initiatives, and the very term 'consumer' has suddenly found itself formally recognized and used in the law itself. Who is the consumer? The term 'consumer' is used to describe a person who purchases goods or services exclusively for private use (including use by friends and family) and not for business purposes. The term is often used interchangeably with such other terms as 'user', 'purchaser', 'shopper', and 'customer'. A company or other commercial enterprise cannot qualify as a consumer, while the acquisition of articles for use in business cannot qualify as consumer transactions.

11. Consumer law is concerned with the consumer as a vital factor of modern society, his position in the market place and his relations with suppliers of goods and services. Consumer law is not directly or primarily concerned with the consumer in his relations with other private persons. Thus in transactions between private persons, where neither party is a trader, consumer law does not come in at all; such transaction would remain governed solely by general private law, which is largely incorporated in our Civil Code. Therefore the definition once given that a consumer is 'everybody all the time' may be a convenient catch-phrase, but it is certainly not precise and requires qualification.

12. Consumer law is of course another convenient term that embodies all those various laws and regulations that deal directly with the consumer's legal rights and remedies. Possibly this term too is a misleading one as it may lead one to think that we are here dealing with a separate category of law.

13. This White Paper is not the appropriate occasion to examine whether consumer law is or should be considered a new field of law, or whether it should simply fit into the traditional classification of civil law and public law. The emphasis here will be on the actual legislation available and on amendment proposals for the creation of a comprehensive, substantive and procedural regulatory framework to ensure a fair-deal to consumers in all their dealings with the business world, comprising primarily manufacturers, traders and suppliers of services.

14. The aim of the law therefore is to seek to deter traders from supplying shoddy goods and services to consumers. If the law fails or hesitates to do so, traders will be encouraged to lower their standards to obtain higher profits. Clearly this goes against the legitimate interests both of consumers and of those honest traders who strive to maintain higher

standards of service and who will find it difficult to compete with dishonest rivals who resort to profitable malpractices.

15. The law should therefore have two complementary aims:

- (a) to defend the legitimate interests of consumers, and
- (b) to protect honest traders against unscrupulous competitors.

Both are equally important in the interest of a system of fair trading.

16. The consumer can look for protection from the Law: private, that is civil or commercial; or public, either administrative or criminal. Private law protection of consumer's rights is at best inadequate, in most instances inexistent. Roman Law - the conceptual basis of our private law - looked at the vendor and the buyer, the supplier and the consumer, as essentially equally armed with rights and bound with obligations. Caveat emptor! Let the buyer beware. The law was not supposed to be grandmotherly and protect him from his own inadvertence. The position had not altered much when the Code Civile, the Napoleonic model for our own Civil Code, was being polished into its near perfect formulation. The seller and the buyer were still taken to be in the same equal socio-economic position. Our code has not yet reflected a society where economically powerful industrial setups or distribution chains are confronting a myriad of individual consumers acquiring in haste. Where the courts have tried some supplements to this general legal improvidence, their efforts, well meant no doubt, at creating protection by audacious over interpretation, have also created confusion and instability of the precise position at law.

17. There have always been criminal laws which produce a vague pattern of protection to the consumer. The Code of Police Laws, the Weights and Measures Ordinance, the Criminal Code and a few other statutes punish a number of malpractices that may be carried out by traders to further their business interests. However the principal aim of these statutes was to promote good order between competing traders and to discourage unfair competition, rather than to protect the consumer. It is only in recent years that criminal law has started to expressly acknowledge the status of the consumer and to safeguard his economic interests.

18. The Civil Law, on the other hand, still does not recognize the figure of the consumer or the notion of a consumer transaction.

CHAPTER I

THE CONSUMER PROTECTION COUNCIL

19. The case for setting up a new public-financed body to promote and protect the consumers' interests rests on at least three considerations:

(1) Consumers as a general category of persons coming from different walks of life and with different needs and outlooks are not organized. They do not converge to promote their interests, to speak with a common voice in support of their views and economic interests.

(2) Voluntary consumers' associations have failed to develop a valid, generally recognized and working alternative organizational structure.

(3) A growing tendency favours the intervention of a Government agency that will not only monitor market practices and investigate consumer grievances but that will have the power to intervene and prohibit specific malpractices as well as the authority to influence policy-making in favour of consumers. It can thus undertake measures to counter trading abuses in the common interest of consumers, who would otherwise have had to seek a remedy in their own name, at their own expense and with their own sole resources.

20. It is therefore proposed that there shall be an authority to be called the **Consumer Protection Council**. The Council shall consist of seven members:

- (a) the Chairman
- (b) two public officers who are actively performing duties relating to consumer protection, one of whom shall be the executive head of the administrative structure of the Council;
- (c) two other members from outside the public service, chosen from amongst consumers.
- (d) two public officers from the Ministry of Trade.

(a) (b) and (c) shall be nominated by the Minister responsible for consumer protection; (d) shall be nominated by the Minister responsible for Trade.

21. The Council's mandate shall include the following:

- i. to monitor and keep under review all commercial activities relating to the supply of goods and services to consumers, collecting all relevant information on such activities and on the terms on which they are offered; and to advise the Minister responsible for Consumer Protection and the Minister responsible for Trade on matters affecting the consumer, including advice on legislative and other measures;
- ii. to investigate and identify products, services or trade practices which directly or indirectly adversely affect consumer interests and to study and recommend counter-measures;
- iii. to guide, assist and educate consumers; and for this reason to prepare and issue reports or other publications on all matters of interest to consumers, to provide

consumers with information to enable them to choose and purchase sensibly and to ignore unsafe or worthless goods, to offer consumers a point of reference for information and assistance in all consumer matters.

- iv. to encourage the formation and development of bona fide consumer associations and other associations active in favour of fair trading.
- v. to monitor developments in consumer law and practice in other countries and to establish fruitful contacts with authorities and other entities which promote the consumers' interests overseas.

22. It is also proposed to grant the Council certain executive powers which would enable it to intervene directly in the market place in respect of a trade practice connected with the supply of goods and services to consumers, in order to be able to carry out its 'watchdog' function. Of course, these executive powers are to be used restrictively in direct and strict relation to the functions and duties of the Council and shall only insofar as to enable the Council to carry out its mandate.

23. The Council shall, in conjunction with the Minister responsible for Consumer Protection and in consultation with the Minister responsible for Trade, be empowered:

- (a) to ban instances of misleading advertising,
- (b) to prohibit the sale of unsafe products and of badly or falsely labelled goods,
- (c) to prohibit the use of specific unfair contractual clauses in consumer contracts, and
- (d) to halt other practices deemed harmful to consumers.

Such practices may refer to the price, mode of payment and other conditions relating to the supply of goods and services, to the manner in which these are communicated to consumers, to all forms of promotion and salesmanship.

24. Prior to the issue of any executive order, the Council may, at its own discretion, decide to issue a formal notification of infringement to the concerned party and, if such notification procedure is followed, it shall not issue an executive order until the expiry of at least seven days from the date of issue of such notification.

25. Although the executive powers to be given to the Council shall be as restricted as possible, they are nevertheless essential for the Council to have powers of intervention particularly to issue orders prohibiting practices identified and defined as being detrimental to consumers and prohibiting products or services which present certain risks or dangers to the consumer's health or safety.

26. Residually, it is also being proposed that the Minister responsible for Consumer Protection may, after having taken the advice of the Consumer Protection Council, and in consultation with the Minister responsible for Trade by legal notice published in the

Government Gazette, declare specific commercial practices as being detrimental to the interests of consumers and to ban any such practices.

27. The Council shall have the power to appoint advisory bodies including a committee to assist it in monitoring the position of the consumer and market practices in Malta. This Committee would review and prepare studies on policies and issues of short-term and long-term interest to the consumer, and report its findings and any requested advice, to the Council.

28. To promote mutual understanding between the Council and the trading community, it is proposed that the Council shall also appoint a number of Commissions to deal with the different spheres of trading activity. The function of these Commissions shall be to act as an open channel of communication between businessmen and the Council, enabling the latter to discover and understand the views of the other side. The existence of this body should reduce the possibility of misunderstandings or conflict while increasing the opportunities for whatever joint cooperation is possible, for discussing and negotiating Codes of Practice as well as legislative proposals and other measures which the Council may be contemplating from time to time. Naturally consumer needs vary in relation to the disparate services offered on the market. Drycleaners and house-builders present different risks and problems. The Consumer Protection Council would, therefore, as a long-term objective, review and monitor these risks and problems presented by the different trades and shall investigate and propose measures which may be taken for the protection of customers in the context of a fair trading system. This task, needless to add, would be a considerable one.

29. There would be one Commission to cover public services and public corporations, such as the Telemalta and Enemalta Corporation. Other commissions would deal with such areas as insurance, banking and travel and it is envisaged that it would be fruitful to have a commission to deal generally with advertising and trade descriptions. Each commission will consist of a chairman, a number of members representing the Consumer Protection Council and an equal number representing the sectors of trade for which the Commission would have been established. The role of the Commissions shall be strictly consultative.

30. As a guardian of consumer interests, the Council shall be assured of appropriate representation on a number of Government bodies and committees whose objectives are of interest to consumers such as the:

- Malta Board of Standards
- Food Standards Board
- Hotels and Catering Establishment Board
- Wine Board
- Air Terminal Users Committee

The presence of a consumer representative on such committees should add stimulus and

sense of purpose to their workings and would ensure that the consumer is not overlooked where official policy is being formulated or considered.

31. In so far as it is within its means and facilities, the Council would carry on or commission research on particular products to establish such matters as product safety and the truthfulness of producers' claims. It shall not be one of the Council's function to involve itself in comparative testing of articles available on the market. The Council should not be perceived as expressing a preference for one brand over another.

32. The Council shall in carrying out its mandate also further the importance of consumer associations recognising their significant contribution that they can make to a system of fair trading in Malta including advising their consumer members and using their good offices to settlement matters of dispute in a trading relationship between trader and consumer. Such associations can carry out a necessary capillary action bringing home to their individual members information, advice and assistance, and providing the Council and the country with direct feedback on the consumer scene as it develops.

33. In fact, voluntary consumer associations should be seen as complementary to the national Consumer Protection Council by, inter alia, performing the following functions:

- (a) articulating consumers' interests with a view to influencing political decisions;
- (b) counter-balancing the power and influence of manufacturers, traders and suppliers of services;
- (c) providing consumer counselling and education;
- (d) testing products and services available on the market and providing shopping tips;
- (e) assisting in achieving a satisfactory settlement of consumer complaints;
- (f) assisting the Consumer Protection Council in enforcing the law.

34. At the end of each year, the Council shall draw up a full and detailed report on its workings and initiatives. Such report shall be laid on the table of the House of Representatives and made available at a reasonable price to the public.

CHAPTER II

CONSUMER PROTECTION ACT 1981

35. This short piece of legislation -made up of seven sections- needs a radical overhaul. It carries a title which promises more than it actually gives. Most provisions of the existing law need to be amended. The principal changes suggested are:

- (a) The Consumer Protection Council is to monitor the working of this law.
- (b) Its provisions should be made applicable to the provision of service, and not remain only effective in relation to goods.

36. Moreover consumer associations should be entitled to institute legal actions and to appear as plaintiffs in judicial proceedings representing the general interest of consumers.

37. Consumer associations will also be invited to nominate a representative to sit on a consumer affairs advisory committee of the Consumer Protection Council.

38. The law should also remove the absolute Ministerial discretion in granting recognition to a consumer organisation and substitute this with clear criteria for the setting up of 'bona fide' associations and their registration with the Consumer Protection Council. Such criteria would be applicable to all equally and they would also be published for general information.

39. The criteria would require a consumer association to have as its principal objects:
- the bona fide promotion of consumer protection and the education and guidance of consumers;
 - to be managed by organs freely elected by the members, in accordance with the principles of democratic representation and periodical elections;
 - to be backed by a sizeable number of consumers ;
 - to be non-profit making;
 - to register and to lodge an updated copy of its statute with the Consumer Protection Council and the Minister of Trade.

The Consumer Protection Council shall ascertain and certify that the established criteria have been met.

CHAPTER III

DOOR-TO-DOOR SALESMEN ACT 1987

40. Another relevant law is the Door-to-door Salesmen Act 1987. The idea of the statute was to control abuses arising from the peddling of various articles by salesmen at the consumer's house. Such salesmen frequently resort to aggressive badgering of the consumer inducing him to spend his hard-earned money on articles he often does not need or understand. The Act introduced the concepts of the right of cancellation and the

so-called 'cooling-off' period.

41. It is proposed to amend this law in order to:

- (a) extend its operation to services rather than just to goods.
- (b) place on the salesperson the obligation to explain to the consumer his legal rights relating to cancellation of the contract.
- (c) enable the consumer to give notice in writing in any form with regard to cancellation, provided that the intention to cancel results clearly rather than having to fill in the specific form currently prescribed.
- (d) provide for disqualification from ever holding such a licence for any person repeatedly found guilty of having acted as an unlicensed door-to-door salesperson.
- (e) introduce a general principle explicitly obliging salesmen not to indulge in coercive practices, exercise undue pressure on customers or resort to deceptive practices.

42. The proposed amendments are aimed at strengthening the existing provisions and they confirm a continuing disfavour with which doorstep contracts are viewed by the law. It is the geographical factor which distinguishes this method of procuring sales, a method which would be more justifiable where distances are great and accessibility to shopping outlets is difficult. The amendments will further ensure that a customer will be able to withdraw from contracts which are a nuisance to him and to retain only those contracts that he would still have agreed to after careful examination.

CHAPTER IV

TRADE DESCRIPTIONS ACT 1986

43. The Trade Descriptions Act was more than merely inspired by the original English statute of 1968, as regards both form and content. The laborious English style of drafting was borrowed lock, stock and barrel, rendering the rules needlessly complicated and often difficult to understand.

44. Some editing would be in order particularly with regard to several provisions which are too closely related to the English situation and are not relevant locally.

45. The 1986 Act gives indirect and inadequate attention to advertising. This may possibly be attributed to the fact that advertising in the United Kingdom is also regulated

through other measures and machinery, such as the Advertising Standards Council and relative codes and standards which is not the case here, except in the recent Broadcasting Law 1991. The borrowed provisions consequently seem weak and inefficient, and reveals the dangers of copying laws outright.

46. The Act will therefore have to be substantially revised particularly to strengthen the regulation of advertising. The Consumer Protection Council would also have the function to monitor and supervise the workings of this legislation.

47. Changes would include the introduction of a clear and concise declaration of rights of consumers in relation to trade descriptions, such as the right to be completely and fairly informed about the essential characteristics of goods and services which are offered to him, and to expect that the information affixed on labels or provided at sales premises is rigorously truthful, accurate and suitably informative on the characteristics, nature and use of the product, and services concerned. Coupled with the proposed new regulatory regime for advertising, these rules should ensure that consumers would receive all relevant information and would not be misled by fake or reckless descriptions or promises.

48. A broad prohibition of *all* false or misleading information about prices will also be introduced. False bargains or price reduction offers would therefore fall within this general prohibition.

CHAPTER V

LABELLING AND MARKING

49. A vital element in any Government's consumer policy is the taking of measures to improve consumer information. In a free market economy traders can generally compete freely so that the consumer may be helped to obtain the best goods for the lowest prices. For this purpose, the consumer has to be placed in a position to evaluate and compare the various offers and consequently make the most rational and advantageous purchases.

50. One finds however that the one-sided, frequently self-serving information by traders may be unsatisfactory for various reasons and may confuse rather than guide consumer choices. The law can intervene to require traders to provide consumers with objective, correct, useful and verifiable information on the goods offered for sale. A proper law on labelling and marking should permit the imposition of rules on quantity standardisation and net contents marking. Price marking is also important, but it is generally already provided for in our legislation.

51. As the law stands in Malta, there are various labelling and marking provisions in force, on the basis of various laws and regulations such as the Supply and Services Act,

the Food, Drugs and Drinking Water Act, the Medical and Kindred Professions Ordinance and the Weights and Measures Ordinance.

52. The diversity of the various enactments and of the authorities empowered to execute them have to be taken into account in any new attempt to streamline and simplify the position regarding labelling and marking of goods. One has to avoid causing duplication and possible inconsistencies.

53. Obviously, in view of the unending variety of available products, any workable approach has to limit itself to a number of rules of general application, leaving the enactment of additional specific requirements for particular products or class of products to the statutory regulatory body. Such disparate articles as canned foods, detergents and cigarettes merit different regulations, mirroring the variety of consumer interests being safeguarded, such as health, safety, product quality and proper use.

54. This will necessitate a substantial extent of delegated authority, which may be too great a responsibility for one body to assume. Consequently it is proposed to retain unchanged the responsibility of the Health Department and other associated bodies, such as the Food Standards Board, for food, pharmaceutical and related products.

55. In this regard, the Consumer Protection Council shall be entrusted with the responsibility to propose to the Minister responsible for Consumer Protection, rules of a general nature applicable for all goods and specific rules for particular classes of products. In carrying out this responsibility the Council would be able to call upon the expertise available in Government and also at the University.

56. The Minister responsible for Consumer Protection acting on the advice of the Consumer Protection Council shall, in consultation with the Minister responsible for Trade, be empowered to issue regulations imposing labelling requirements in respect of any article which is sold or offered for sale to consumers. The regulations can require that the label on a product or its packaging shall indicate such details as may be considered appropriate from time to time.

57. These details may include information and characteristics which can assist the consumer in assessing the value, origin, use and quality of the product.

58. The law shall require labels to be conspicuous, easily discernible and clearly legible.

59. Modern marketing techniques often offer the consumer attractively and glossily packaged articles, where the emphasis is more on the packaging than on the article itself. This mode of deviating the consumer's interest can induce a consumer to purchase goods for the wrong reasons and to pay more than he would otherwise sensibly pay had he been presented with the correct information and presentation. Although there is no doubt that the packaging and wrapping of products shall remain important elements in the marketing of products, and undue legal regulation of creative marketing techniques

would be most improper, the correct emphasis has to remain on the true worth, utility and value of the item being offered for sale.

60. Adequate consumer information must here play an important part, at least in the long term. Consumers have to be guided to examine such articles critically and to avoid making wrong purchases. Under present law, overpackaging by itself is not a violation of any law and does not carry any civil law implications, unless it amounts to fraud or to a false trade description.

61. To counter abuses and deceit arising from such features as excessive packaging of products, the law will state that pre-packaging must not be overdone or designed in such a manner as to mislead or induce the consumer into believing that the package contains more than its actual net weight, size or dimensions.

CHAPTER VI

ADVERTISING

62. The few provisions governing unfair competition in our Commercial Code seek to protect traders not consumers. We also have the Trade Descriptions Act 1986 which makes a criminal offence of misleading or deceptive advertising. However the existing rules are inadequate and there are no provisions for compensation or for any other form of private law remedy.

63. It is proposed to fill this legislative void. Among the main principles that shall inspire the new law against deceptive advertising are:

- (a) the consumer should not be misled;
- (b) all advertised information should be correct;
- (c) the trader should be capable of justifying his factual claims;
- (d) a remedy under the Civil Law should be available;
- (e) provision should be made for the publication of corrective statements at the advertiser's expense.

64. As a general principle, of course, there should not be direct interference or control over the content or method of advertisements, except to prohibit false factual claims and other misleading information. There can be no attempt to restrict or impose rules on fantasy, extravagance and wit. On the other hand an Advertising Code, laying down standards along the lines set in the Broadcasting Act 1991, would be appropriate for all instances whatever the medium (such as advertising in the press or in posters) and it is proposed to enact such a general Advertising Code.

65. In advertising, unlike in labelling regulation would therefore take a different shape: preventing excesses, countering false factual claims, banning comparative advertising, requiring warnings to be inserted in respect of pharmaceutical products, tobacco and other articles which may affect the consumer's health or safety.

66. There are various advertising techniques which though not completely fair, honest or objective, do not quite merit blanket legal prohibition. The consumer knows well enough that advertisements puff products not describe them; that what purports to be the testing of a product is really artificial, and can lead only to a foregone conclusion obvious from the start; that endorsements of products by well-known personalities are usually obtained in return for payment and not motivated by true experience or enjoyment of the product. There is a borderline here nevertheless across which the advertiser in his zeal should not stray.

67. It is proposed to keep the legal control of advertising to a necessary minimum, but to grant the Consumer Protection Council powers to supervise all advertising within the terms of an Advertising Code and to restrain its more undesirable forms.

68. Advertisements should always be prepared with a sense of responsibility towards the consumer. They should not try to exploit weaknesses, fears or superstitions or to exploit credulity or lack of experience or knowledge on any particular matter, and they should not directly or indirectly encourage unsafe behaviour or products and particular care is to be taken when products are directed at children to ensure suitability and safety of the product. Neither should the advertising be "concealed" in a way as to mislead consumers by their omission to disclose that they have been placed by business enterprises. These are some of the principles which would also find their place in an Advertising Code.

69. The law shall additionally prohibit disguised business sales, namely the practice of seeking to sell goods to consumers without disclosing that the goods are being sold in the course of business. The consumer may in this way be induced to believe that he is not transacting with a trader and that consequently his legal rights as a consumer do not apply. The law will therefore oblige any person seeking to sell goods in the course of a business to make this fact clear in any advertisement.

70. The law will also address itself to the issue of whether claims or promises of fact contained in advertisements should be considered as constituting a term of the contractual relationship entered into between the trader and the consumer. It is proposed that the law would state that once a consumer proves that he was induced to enter into the contract by any such factual promise or claim, he will have the right to consider such promise or claim as a contractual undertaking on the part of the trader forming an integral part of the contract with the consumer.

71. A new law regulating methods of commercial advertising is not an attempt at censorship. It is envisaged that remedial action shall be resorted to only in a few isolated cases, where decent limits of competition and correctness of information are violated. Nobody is interested in reducing advertising to a stale narration of cold facts; the

extravagance, wit and humorous exaggeration present in much advertising, must remain untouched, and only be regulated if they degenerate into deception or wrongful misinformation.

CHAPTER VII THE CIVIL CODE

72. The Civil Code is not hostile to the consumer, nor is it friendly. It is simply indifferent. The Code is now over a hundred years old and its drafters had been more concerned with the promotion of freedom of contract and trade than with the emerging figure of the consumer.

73. There are three main areas of the Civil Code which are of interest in any discussion on consumer protection:

- (a) the principles regulating the supply of goods and services;
- (b) the law of contract;
- (c) the principles regulating liability for damage caused by defective products.

Proposals for legislative reforms are being submitted for each one.

CHAPTER VIII SUPPLY OF GOODS AND SERVICES

The Supply of Goods

74. The Civil Code devotes the entire Title VI, comprising sections 1346 to 1484, to the law of sale. The more relevant sections are sections 1424-1432 which deal with the 'warranty in respect of latent defects of the thing sold'.

75. Briefly stated, the law provides that where a purchaser discovers that an article is defective he can go to court and request to have the sale cancelled with a full refund, or else to have a refund of part of the price while keeping the sale in place. To succeed in obtaining either remedy the purchaser has to prove the following elements:

- (a) that the article is defective;
- (b) that the defect is serious;

- (c) that the defect is a hidden defect and not an apparent one;
- (d) that the defect existed when the purchase was made.

76. Additionally the purchaser has to institute court proceedings within one month from the date when the purchaser discovered the defect or could have done so. In the case of immovable property, this period is lengthened to one year. This limitation period is one of forfeiture and not prescription and consequently cannot be suspended and renewed.

77. Experience has repeatedly demonstrated that the forfeiture period is much too short; consumers have time after time failed to obtain a remedy because the one-month period had elapsed. It has sometimes been the case that the consumer effectively brings the defect to the vendor's attention before the expiry of one month, but then fails to take any further action assuming that he has done enough to retain his rights at law.

78. Admittedly there have been cases where the Courts have recognized that where a trader has entered into negotiations to solve a dispute relating to a defective article, he would be thereby entering into a form of personal obligation towards the purchaser, who would therefore not lose all his legal remedies should the one-month period lapse without the dispute being solved. The matter however is very precarious, each case has to be seen in the light of its own circumstances and few hard and fast rules can be drawn with any measure of certainty.

79. It is therefore proposed to effect amendments to the law so that the period of forfeiture will be increased to six months. This should prove to be a long enough period for the purchaser to try to settle his grievance outside the court without endangering his legal remedy.

80. The law permits the vendor to qualify or withdraw the legal guarantee against latent defects, and the purchaser has no legal remedy where the defect is small or was visible at the date of purchase. Neither can the purchaser request that the defective object be repaired or replaced, unless the vendor had bound himself to do so under a so-called 'guarantee' or 'warranty'.

81. As a general rule, a consumer would suffer greater loss and distress where the defect is discovered in an article bought as being "new", rather than in one which is sold as used or second-hand. For this reason it is necessary to distinguish between the two cases and it is proposed to introduce a new legal principle to the effect that where an article being sold is new, then the legal warranty against serious hidden defects cannot be reduced or excluded. Additionally it will be prohibited for the vendor to insert contractual clauses purporting or attempting to reduce or exclude the legal warranty.

82. The related problem of the availability of spare parts and facilities for the repair and servicing of consumer durable goods is a real one. There is no legal duty as such for a business enterprise to provide spare parts and servicing facilities, the two elements of what is usually referred to as "after-sales service".

83. A factor of major importance is the information about after-sales service which is given to the consumer at the time of purchase of the good. The Consumer Protection Council would be entrusted with the reviewing of this matter, enquiring into the current practices of "verbal promises" of after-sales service and indicating specific ways of ensuring that the consumer is, from the time of purchase, properly informed about the after-sales service offered by the trader in relation to that particular product. Indeed the provision of a satisfactory after-sales service is to be a major concern in any discussion on the formulation by the Consumer Protection Council of Codes of Practices with importers and distributors.

The Supply of Services

84. The Civil Code provisions relating to the supply of services are limited to a few inadequate and antiquated rules contained in sections 1633 to 1643. The provisions do not reflect at all the important role which services play in a modern economy, helping consumers to achieve a more comfortable standard of living. Everyday there are numerous persons engaged in providing a disparate variety of services to consumers for profit. Among them we find hair-dressers, house-builders, car-repairers and dry-cleaners.

85. The engagement for the provision of a service to a consumer for a price amounts to a contract no matter how informal the arrangement may have been. There are no formal requirements for the validity of such arrangements, and they are frequently concluded verbally.

86. Besides the present existing provisions in the Civil Code, a number of principles have been adopted by the Court, in the course of cases which have been presented before it. In fact it may be fair to state that the consumer has found most of his protection not in the written rules of the Civil Code but in legal principles introduced by judicial interpretation and practice.

87. Thus we find the Courts declaring

- (a) that a supplier of services guarantees his workmanship and skill to carry out the job properly;
- (b) that a customer is obliged to pay the full price only if the agreed job is executed satisfactorily;
- (c) that no price is payable for a job badly done;
- (d) that a supplier of services is liable even for slight negligence in respect of damage caused to his customer and that public policy does not permit exclusion of liability.
- (e) that a supplier of services must ensure that he can successfully carry out the

required engagement and cannot demand payment for a task which he knew would not serve the customer;

- (f) that a supplier of services should resist his customer's instructions if they are contrary to the rules of his art or trade;
- (g) that a supplier of services has no right of retention ('ius retentionis') over a customer's property unless the task involves the provision of a substantial amount of spare parts or other material, or unless the law expressly provides for such a right.
- (h) a supplier of services should always deliver the customer's property on which he has worked before he can request payment because the customer must have the opportunity to verify that the job has been properly done.

88. It is proposed to formally confirm these principles by incorporating them within the written rules of the Civil Code.

CHAPTER IX

UNFAIR CONTRACT TERMS

89. The Civil Code, enacted in the 19th century, sought to promote freedom of trade by securing freedom of contract. As a general principle, the Code treats all contracting parties as equals, with each being left free to negotiate the terms more beneficial to him. In practice however consumer contracts have evolved quite differently. In the context of the consumer, freedom of contract can mean freedom to contract in an unequal relationship. The consumer finds himself having to choose from preformulated contracts over whose drafting he has exercised no influence. This has spawned a justified concern over unfair and onerous contract terms embodied in standard form contracts. Following the current Government policy of consumer choice, the consumer now finds himself able to choose between different traders. In some circumstances however, in particular in cases of preformulated standardized contracts, this freedom of choice does not necessarily always mean a choice of terms. Such cases reflect a superior bargaining position and constitute what may be considered a misuse of the contractual form.

90. As in other countries of Europe, a legislative reform is therefore being proposed to protect the consumer's legitimate rights in such situations. The consumer is found to be only slightly aware of the meaning and scope of the clauses contained in forms of agreements presented to him and which have been carefully and deliberately drafted by specialist professionals to favour the trader. The terms of the contract can be unfair or improper, sometimes couched in small print and barely intelligible language. Freedom of contract is then used to impose terms reflecting and promoting the superior economic

and organizational resources of the trader.

91. It is proposed to tackle the question of unfair contract terms at two different levels:

(1) The Civil Law would stipulate that certain unfair contract terms unduly detrimental to a consumer's legitimate interest are to be considered null and without effect as if they did not form part of the contract. The law would define clearly which types of terms would come within the range of this provision.

(2) The Consumer Protection Council would have the power to prohibit the use in standard contracts of terms deemed unfair and unduly detrimental to the consumer's legitimate interests.

92. The Council shall therefore have the right to review standard contracts formulated by commercial enterprises, including public corporations or state-owned or controlled enterprises, and shall have power to prohibit the adoption of terms and conditions which are deemed unfair, unreasonable or which unduly prejudice the consumers' legitimate interests. It is envisaged that this power will be used sparingly, cautiously and only after appropriate study and discussions with the interested parties. The Council would adopt a notification procedure that ensures, in the first instance, negotiation on the deletion or dilution of the unfair contractual terms.

93. The law shall define factors to be taken into account for this purpose. These shall include for example whether the wording is clear, precise and legible and whether it has been properly and adequately brought to the customer's notice.

94. Such a system of consumer protection would reflect a basic notion of contractual law as embodied in section 993: "Contracts must be carried out in good faith..." To some extent, one may perhaps also consider this to be a development of section 1003, which provides that where the literal sense of a contract contrasts with the parties' common intention, the latter shall prevail.

CHAPTER X

PRODUCT LIABILITY

95. One can define product liability as the liability of the manufacturer or seller to the consumer or user who suffers damage, physical, economic or both together, as a consequence of a defective product. No specific part of our law deals with this subject which has been the subject of extensive literature these past twenty years.

96. In the present state of the law (see in particular section 1429, Civil Code), the seller, who is aware of a defect in an article being sold, is liable to compensate the purchaser for any damage that the product may cause. If the seller is not aware of the defect, he is not held liable for damages. The onus of proving that the seller was in bad faith is on the purchaser who would very infrequently be able to produce sufficient proof that the seller actually knew of the defect. This is a very unhappy state of affairs for the injured purchaser. No consideration is here given to such factors as whether the seller was negligent or reckless in effecting the sale, or whether on the basis of his superior knowledge and experience he should have detected or at least suspected the presence of a defect. This situation is unsatisfactory from the consumer protection point of view.

97. There is much scope for amendment and improvement in this part of the Code. It is proposed that the professional seller should share the burden of seeing that no defect existed, and so it would be up to the seller to prove that he did not know and could not reasonably have been expected to know about it. Current legal thinking has indeed proceeded even beyond this point and would have such a presumption an absolute, irrebutable one. In effect this would mean that the professional seller of a defective product would be deemed, in all cases, to have been aware of the defect: a situation of strict contractual liability irrespective of fault, so that the purchaser need no longer prove actual knowledge or recklessness.

98. The Civil Code does not contain any special rules on the manufacturer's liability. The general provisions found under the subtitle "Of Torts and Quasi-Torts", primarily sections 1029 to 1038 of the Civil Code, would apply. These provisions establish liability for fault. Without proof of the manufacturer's fault, no liability can be attached to him. This was and still is the basic rule of our law on delictual responsibility for damages.

99. A reform of these rules is called for on the basis of a new principle that the manufacturer should be answerable for the safety of any products which he introduces on the market. The manufacturer organizes and controls the mode and process of production and as such he can adopt the measures and safeguards that can verify that the product is safe and will present no harmful surprises to users.

100. The distributor or seller of the product is not in the same position; he has usually no access to or influence on the production process. He rests on assurances presented by the manufacturer and guarantees to the purchaser that the product is of the quality required by the customer and is defect-free.

101. The moral responsibility of the producer and of the seller are therefore not on an equal footing. The former is primarily responsible for producing an unsafe article and for placing it on the market. The bona fide seller assumes a secondary responsibility for placing the product into circulation throughout his clients' households.

102. Among the major difficulties encountered when considering product liability law proposals are:

- (a) how or even whether the law should differentiate between the responsibility of the manufacturer and the distributor;
- (b) making sure that any such differentiation will not hamper, restrict or otherwise adversely prejudice the injured user's right to quick and adequate redress for loss suffered.

103. It is still extremely difficult to successfully bring an action for damages against a manufacturer particularly because of the extremely stringent burden of proof. Fault arises out of malice or negligence, an actual intention to cause harm or negligence, lack of attention or skill. The injured consumer would have the burden of proving that the manufacturer was at fault in producing the article which caused damage. With the increasing technical complexity of productive organizations, a consumer finds it too difficult to bring satisfactory proof of a specific negligent act by the manufacturer. The consumer would not have the necessary access, skill, knowledge or resources to enable him to pinpoint the manufacturer's fault. Under the present law, a consumer may discover that he has no effective remedy at all in respect of loss occasioned by defective goods. This possible absence of an adequate remedy under the traditional rules explains the various proposals submitted in recent years on product liability legislative reform.

104. Shifting the burden of proof would somewhat facilitate such a consumer action. This shifting of the onus of proof takes place elsewhere such as in section 1511 (Civil Code) regarding the lessee in respect of damage to the thing let, and in section 1630 which refers to the carrier's liability for goods entrusted to his care.

105. This approach would require the consumer to prove merely that the product has caused him harm. It would create a presumption that the harm was caused by the manufacturer's fault and it would instead be up to the manufacturer to prove that he was not negligent or otherwise at fault. The presumption would be a rebuttable one.

106. Indeed legal thinking in the past ten years has progressed from calling for a shifting of the burden of proof to an outright shifting of risk, and therefore strict liability. As a result strict liability is attributed to the manufacturer and no proof of his knowledge or recklessness need be brought by the plaintiff: the manufacturer is deemed to have created the risk by placing the product on the market. Risk of any harm to third parties should be borne by him.

107. Of particular interest is the Product Liability Directive enacted by the Council of the European Community in 1985. Broadly, the Directive promotes the following framework to regulate manufacturer's liability for defective products and consumers' rights in this respect:

- (a) Manufacturers responsible for producing finished products which being defective cause death, personal injury or financial loss shall be subject to strict delictual liability. Accordingly proof that the defective articles caused the damage will be

sufficient to render the manufacturer liable to compensate an injured user. The producer is not allowed to exclude or reduce his liability;

- (b) A product shall be considered as defective when it fails to meet the standard of safety which a person should be entitled to expect, taking into account all the features of the product including its presentation;
- (c) Distributors of defective products which cause personal or financial loss are to be attributed a lower degree of responsibility than manufacturers and so will not, as a general rule, be held strictly liable in delict. There are however three situations which are deemed to justify attaching strict liability also to distributors:
 - i. where they fail to reveal the identity of the manufacturer of the defective products. Here dealers would face a form of substitute liability, which should encourage them to reveal the identity of the producer;
 - ii. where they themselves sell the defective products exclusively under their own distinctive mark or brand name. By presenting himself as the producer, the dealer assumes equivalent legal liability;
 - iii. where they themselves import the defective goods into the country where they were purchased. This avoids leaving the consumer with a legal remedy to be sought in a foreign country.

108. These rules therefore acknowledge the difference in the degrees of responsibility attributable to a manufacturer and to a distributor or dealer, although in particular situations the law then places a distributor on the same plane as a manufacturer. The third exception is of course very relevant to our circumstances as it might otherwise leave an injured person without any effective remedy locally, the manufacturer's place of business being situated outside Malta. Rendering the dealer-importer liable obviously makes it tangibly much easier for a consumer to obtain an adequate remedy.

109. It is proposed to adopt the measures of the Community Directive in legislating on this matter. A particular responsibility is therefore borne by importers of potentially defective products. It would be reasonable to assume that under a strict liability regime, the importer should review his contractual relationship with the foreign producer or supplier to secure adequate guarantees and indemnities to make good for any product liability claims.

110. The regime proposed by the Directive reflects the latest thinking on product liability. It guarantees to the injured person a reasonable opportunity to obtain compensation for injury. New realities demand the revision of the applicable legal norms in line with the considerations made above and with the developments in the Community.

CHAPTER XI

PRODUCT SAFETY

111. It is bad enough for a shopper to find that he has bought a defective article; it is unacceptable that the article endangers his health and safety. There are few specific rules which deal with product safety under our present law.

112. Powers exist under the Medical and Kindred Professions Ordinance 1901 and the Food, Drugs and Drinking Water Act 1972 for measures to be taken in respect of food and drug products which may be detrimental to the consumers' health. The latter statute also imposes hygienic requirements on establishments engaged in the provision of food products to customers. The Quality Control (Exports, Imports and Local Goods) Act 1971 empowers the Malta Board of Standards to prescribe minimum quality standards for imported, exported and local goods.

113. An article can be unsafe in various ways: (a) it can be inherently dangerous; (b) it can become dangerous if employed for an improper purpose or if used recklessly or if sold without adequate directions for use.

114. It is intended that the law should be unhesitating, clear and strict in dealing with the selling of articles which are inherently dangerous. For this purpose the law shall prohibit traders from offering for sale products which can endanger the safety or health of the user even when used in normal or foreseeable circumstances.

115. It is therefore proposed that whether or not the producer or supplier actually knew of the dangers inherent in the product, he would still be considered liable: a strict criminal liability basis would attach to traders who offer such articles for sale.

116. The Consumer Protection Council will also have the function to monitor and investigate products which can fall within the notion of 'unsafe product'. It would do this consequent to complaints and reports and also on the basis of its own initiatives. If the Council, after carrying out the required verifications, establishes that an article being offered for sale is either intrinsically unsafe or is possibly or probably unsafe, the Council shall have the power to take the following action:

- (a) to prohibit outright the sale of the hazardous article and to order its immediate removal from the shelves and shop windows;
- (b) to publish or broadcast warnings or other notices as may be deemed appropriate in any media alerting the public to the risks presented by the hazardous article;
- (c) to order the confiscation or destruction of the offending articles;
- (d) where appropriate and possible, to order the trader involved in the production or

sale to recall the offending article already sold, and to grant the purchaser a full refund of the price irrespective of any conditions of sale to the contrary;

- (e) to have full access to inspect the trader's premises and business records, to take samples and to demand information.

117. There may of course be unsafe services which are offered to the consuming public. Though such cases may be less common than unsafe products, the law will as far as practicable apply equally to goods and services.

118. The new rules on product safety and on product liability and the suggested broadening of labelling and marking requirements, should create a satisfactory framework for the protection of the consumer against unsafe goods and services. It is in fact in this context of unsafe products that one can also appreciate the proposal to delegate residual power to the Consumer Protection Council to impose labelling and marking requirements in respect of any product or of a range of products. A mandatory requirement of proper information and directions for use would reduce the risk factor of such products to the user.

CHAPTER XII

OTHER PROPOSALS

- i. The Trading Stamps Schemes (Restriction) Act 1964
- ii. The Expenditure Levy Act 1990
- iii. Weights and Measures
- iv. Purchasing a House
- v. Codes of Practice

THE TRADING STAMPS SCHEMES (RESTRICTION) ACT 1964

119. It is sometimes suggested that there may be a case for the outright revocation of this statute on the ground that the creation of gift schemes is not in itself harmful to consumers, unless accompanied by such features as false promises of gain, misleading

bargain offers, and reckless indications on the availability of gift items.

120. The view is often aired that trading stamps schemes tend to induce consumers into choosing a particular brand not because of its intrinsic quality but for the amount of stamps attached to it. There is much scope for improved consumer education in this area but consumers will always be free to take bad decisions, to choose wrong products or for the wrong purpose. Another view is that the benefit supposedly reflected by the scheme would be better represented by a reduction in the selling price of the goods involved in the gift scheme.

121. The real question however is whether such schemes are a legitimate marketing exercise, or not. The 1964 Act is a half-measure, permitting some schemes and prohibiting others.

122. The Consumer Protection Council and the Ministry of Trade would undertake the review of the whole matter of trading stamps and other gift schemes, and to use a general power to order the prohibition of any trade malpractices detected in the promotion and practice of a gift scheme.

THE EXPENDITURE LEVY ACT 1990

123. This law does not punish snack bar or restaurant owners who fraudulently charge customers the levy when they are not supposed to. No special offence is contemplated in this particular law. This offence should be introduced as a further protection to the consumer over and above the existing protection against fraud in the Criminal Code.

WEIGHTS AND MEASURES

124. One of the oldest and still vital forms of consumer protection relates to weights and measures, especially by establishing a uniform system and curbing short weight and short measures by traders. The uniform system permits a consumer to compare prices of goods available on the market.

125. The Weights and Measures Ordinance 1921 (Chapter 39) establishes the office of Inspector of Weights and Measures, placing him under the jurisdiction of the Commissioner of Police. In recent years the Inspector of Weights and Measures has been operating from within the Department of Trade and has also been involved in the administration of the Trade Descriptions Act and in handling general consumer complaints received at the Department.

126. With the launching of the Consumer Protection Council it would appear beneficial and logical that the competence over the administration of Weights and Measures

legislation should be re-assigned to the Council in order to avoid needless duplication of functions. Possibly the very designation of the office should be replaced to "Fair Trading Standards Officer" or some other suitable designation.

PURCHASING A HOUSE

127. True enough, in the vast sphere of consumer protection, we are more concerned with the supply of goods and services. The purchase of a house may however very often be the most important and expensive transaction entered into by a consumer throughout his entire life and thus requires consideration.

128. For the sake of completeness therefore it is proposed to consider briefly the acquisition by a consumer of his house. We are not at all interested here of property acquired for purposes of business, investment, or re-sale.

129. Many of the elements involved in acquiring a house come under the law of sale and the law regulating the letting of works and services, the latter where the house is being constructed or finished.

130. In view of the high relative cost of the transaction and the corresponding loss that a person can possibly suffer, it is felt that the Consumer Protection Council should be in a position to ascertain:

- a) that property-dealing enterprises give their non-commercial customers a fair deal;
- b) that estate agents do not indulge in abusive sales methods;
- c) that advertisements and other information defused to promote the selling of a house are substantially truthful and relevant.

131. The Consumer Protection Council should also negotiate a Code of Practice with traders active in property selling.

CODES OF PRACTICE

132. Indeed another tier of consumer protection shall be the task of the Consumer Protection Council to negotiate suitable Codes of Practice with the different sectors of traders involved in the supply of consumer goods and services. These Codes of Practice would aim at creating a framework ensuring quick and practical solutions to disputes. The complete cooperation and good faith of the representatives of the various trading sectors shall be required.

133. It is envisaged that Codes of Practice would deal with the following matters:

- (a) a declaration of the responsibilities to be assumed by the traders participating in the Code;
- (b) a declaration of the consumers' legitimate expectations in respect of transactions entered into with such traders;
- (c) adequate machinery for receiving and hearing complaints from consumers;
- (d) a quick and suitable remedy for a justified complaint;
- (e) effective sanctions against defaulting traders.

134. The Consumer Protection Council shall also monitor continuously the effectiveness of any such Codes as well as the consumers' and traders' perceptions and attitudes on the workings of the Codes.

135. Procedures carried out in virtue of a Code of Practice should be supplementary to, and not in substitution of, the remedies laid down by the law.

136. A measure of experimentation will be necessary in this sphere owing to its novelty on the local scene. Much will depend on the readiness of the trading sectors and the consumers to allow the concept of the Code of Practice to take root, thereby creating a network of Codes promoting a framework for the promotion of mutual trust between consumers and traders, viewing each other as co-participants in the market and not as antagonists.

CHAPTER XIII

PRICING

137. Unfortunately, for many people consumer protection means simply a question of price control and little else. As we have seen elsewhere in this White Paper that is not really the case and we should not restrict ourselves to such a narrow view of this vast and sophisticated matter.

138. Pricing and the issue of abusive pricing remain, however an issue of consumer protection especially, but not exclusively, where price order systems are in operation. Price Control over commodities and goods offered for sale to the general public is principally governed by the Sale of Commodities Regulations of 1972 and the Agricultural Produce Marketing Regulations of 1952.

139. It is the exclusive competence of the Department of Trade to prepare costings and

to fix maximum price and maximum profit margins for commodities. This competence should be properly retained at that Department. The creation of the Consumer Protection Council cannot however fail to affect also this area of consumer concern.

140. Equipped with its group of specialised personnel, the Council is best placed, through its officers, to oversee and to provide for the effective enforcing of price control regulations. This system has a double advantage:

- (a) the Police are relieved of a time-consuming and onerous task that requires specialised training and is very specific;
- (b) the use of human resources is rationalised in that officers of the Council can inspect trade outlets for overall enforcement of consumer protection regulations. This would also be of advantage to the trader in avoiding a multiplicity of inspectors at his place of trade.

141. In other words, the Council will detail a number of its officials to venture into the market place to detect such illegitimate practices as the sale of unsafe or expired products and badly or falsely labelled goods. In addition to these duties, they will also have the responsibility of tracing breaches of price control regulations effecting consumer goods and commodities. Enforcement is thus rationalised, the task being entrusted to one single specialised agency.

142. Authority officials would also assist in, and possibly lead, the prosecution of charges brought against offending traders.

CHAPTER XIV

SMALL CLAIMS COURTS

143. It is often proposed that a proper legal consumer protection regime requires the setting up of special consumer courts or of so-called 'small claims courts' to which an aggrieved consumer could have recourse for a swift and cheap remedy. These tribunals exist elsewhere in Europe and have functioned well in the interests of expediting matters in minor disputes between consumers and traders. A number of issues however need to be carefully dealt with:

- (a) to determine whether such tribunal's jurisdiction should be mandatory or merely voluntary;
- (b) to ensure that both the setting up of the tribunal and its mode of proceeding fall

within the ambit of our constitutional guarantees;

- (c) to avoid creating a mere duplication of the Court of Magistrates whose competence is already limited to a maximum of Lm250.

The idea is clearly interesting in so far as it may give consumers and traders a special jurisdiction for matters of a relatively minor nature and allows for speedy resolution of disputes. The idea is being put forward here for discussion.

CHAPTER XV

A COMPREHENSIVE CONSOLIDATED ACT

144. It is proposed that one single comprehensive Act shall be prepared which shall incorporate most of what can be described as constituting our consumer law. This Act shall incorporate the proposals contained in this White Paper and other useful suggestions which may result from the consultations to follow the publication of this document.

145. The exercise should guarantee for the various laws and regulations a recognizable pattern and sense of direction and purpose, resulting in a properly termed "Consumer Protection Act", a true charter of consumer rights.

146. In view of the far-reaching ambitions of the proposed statute Government proposes to enact its various parts in stages. In this way the more urgently required innovations particularly the setting up of the Consumer Protection Council can be proceeded with immediately in the context of the legislative programme set out in this White Paper.

CONCLUDING NOTE

147. This White Paper tackles the several grave deficiencies in our existing law, and proposes a radical reappraisal of the policies which the law should henceforth strive to achieve.

148. The law must accommodate new principles which safeguard the consumer and which redress the imbalance existing between the individual consumer and manufacturers, suppliers and other traders. It must guarantee adequate remedy to an injured user of a defective product and punish fraudulent tradesmen, but more importantly it must increase the sense of responsibility and quality-consciousness of the manufacturer, the

supplier and other traders who provide services to consumers and reduce the risk of defective products, accidents, contractual injustices or basic poor value for money. The law must concentrate on the prevention of malpractices, of economic and physical harm to consumers.

149. At no point must this improvement in our law, however, be taken to project a situation of conflict between traders and consumers: on the other hand it must be seen as not only a protection of the consumer but also a protection of the fair trader who is honest and conscientious in his business enterprise. The law must be an endorsement of the proper fair trading relationship between traders and consumers: this spirit must lead its norms and their application throughout.

150. Naturally, no amount of legislative reform can automatically transform shoppers into prudent and sensible consumers. Much more than new legal rules is required and this should principally consist of continuous and comprehensive consumer information. In this field there is a lot of scope for initiatives to be undertaken by consumer associations, by the communication media and also by schools and other educational authorities.

151. Since 1987, Government has consistently implemented policies aimed at improving the standard of living of Maltese consumers. Thus, the dismantling of the Bulk Buying System, the removal of the quota system, the reduction of import controls, improvements in the import licensing system where still required, have effectively provided consumers with a real and effective choice in consumer goods at prices that have fallen dramatically in many sectors. Indeed, besides choice for the consumer, price enforcement of direct price orders together with the effects of increased free trade competition in the market have resulted in generally more real control of prices. The current proposals for legislative reforms in the field of consumer protection, therefore, form part of government's commitment and resolution to better the standard of living of consumers in our country.

152. The proposals for legislative reform incorporated in this White Paper now pave the way for the most comprehensive legislative and administrative programme of measures ever passed to protect the interests of consumers in Malta.