

[Act 2000 No 5]



New South Wales

Fair Trading Amendment (Substantiation of Claims) Bill 2000

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Fair Trading Act 1987* to give the Director-General of the Department of Fair Trading the power to require persons who publish, or cause to be published, statements promoting the supply of goods or services or the sale or grant of interests in land to substantiate claims or representations made in those statements.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Fair Trading Act 1987* set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [3] inserts proposed Division 3A into Part 2 of the *Fair Trading Act 1987*. **Proposed section 23A** gives effect to the object of the Bill outlined above. The power of the Director-General to require substantiation of a claim or representation in a statement is to be exercised by service on the person of a notice in writing. The person must comply with the notice (within the time required by the notice) by replying to the Director-General in writing stating whether or not the person can provide information substantiating the claim or representation concerned and, if the person can provide such information, by providing such information as the person is reasonably able to provide.

Proposed section 23B provides that, for the purposes of the proposed Division, where a person publishes or causes to be published a statement advertising goods or services for supply at a specified price, the statement is taken to include a representation that the person will be able to offer the goods or services for supply at the advertised price for a period, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

Proposed section 23C (1) makes it an offence to fail to comply with a notice under proposed section 23A. **Proposed section 23C (2)** makes it an offence if, in replying to a notice, a person provides information that is false or misleading in a material particular. However, it is a defence to a prosecution under proposed section 23C (2) if the defendant proves that he or she did not know and could not reasonably be expected to have known that the information was false or misleading.

Proposed sections 23D, 23E and 23F are consequential provisions. **Proposed section 23D** provides that a person is not excused from providing information in compliance with a notice under proposed section 23A on the ground of self incrimination. However any information provided by a person in compliance with such a notice is inadmissible in criminal proceedings against the person other than

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proceedings under the proposed Division. **Proposed section 23E** provides that the proposed Division does not prevent action being taken under other provisions of the *Fair Trading Act 1987* or under any other law in relation to a claim or representation made in a published statement. **Proposed section 23F** provides that the proposed Division does not apply to persons whose business it is to publish or arrange for the publication of advertisements where the statement concerned was received in the ordinary course of business. This section will exempt newspaper publishers, broadcasters and other persons who facilitate advertising as part of their business from the application of the proposed Division.

Proposed section 23G is a transitional provision. It provides that the proposed Division will not apply to statements published before the commencement of the Division.

Schedule 1 [1] and **[2]** make consequential amendments to sections 21 (Inspection of documents by Director-General and others) and 22 (Preservation of secrecy) of the *Fair Trading Act 1987*.