



New South Wales

Fair Trading Amendment Bill 2006

Explanatory note

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

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *Fair Trading Act 1987* (the **Principal Act**) and certain related legislation.

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 that gives effect to the amendments to the *Fair Trading Act 1987* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the consequential amendments to the *Motor Vehicle Repairs Act 1980* set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Fair Trading Act 1987

Schedule 1 [1] inserts proposed section 5A into the Principal Act to make it clear that the Principal Act is intended to have extraterritorial application in so far as the legislative powers of the State permit. The proposed section also makes it clear that the Principal Act extends to conduct either in or outside the State that:

- (a) is in connection with goods or services supplied in the State, or
- (b) affects a person in the State, or
- (c) results in loss or damage in the State.

Schedule 1 [2] inserts proposed section 19A (6A) into the Principal Act to provide that the Director-General (see note below) may order that anything seized by an investigator under the authority of a search warrant issued under section 19A be sold, destroyed or otherwise disposed of, if:

- (a) the thing is no longer required to be retained as evidence in proceedings for an offence against the Principal Act or any other Act, and
- (b) the person who had lawful possession of the thing before it was seized cannot be found or does not wish to have the thing returned.

If the thing is disposed of by way of sale, the proceeds of sale are to be paid to the Treasurer for payment into the Consolidated Fund.

Note. In section 4 (1) of the Principal Act, *Director-General* is defined to mean:

- (a) the Commissioner for Fair Trading, Department of Commerce, or
- (b) if there is no such position in the Department—the Director-General of the Department.

(See also the related amendment inserting proposed section 93 into the Principal Act by **Schedule 1 [20]** below.)

Schedule 1 [3] amends section 20 (Power to obtain information, documents and evidence) of the Principal Act to provide that the power in that section to obtain information, documents and evidence may be used in relation to:

- (a) matters that are the subject of a complaint received by the Director-General under section 9 (1) (c) of the Principal Act, and
- (b) matters that are the subject of an investigation by the Director-General under section 9 (2) of the Principal Act (being investigations into the laws in force, and other matters, relating to the interests of consumers and other matters relating to the interests of consumers that are referred to the Director-General by the Minister for Fair Trading).

Schedule 1 [4] and [5] amend section 20 (2) of the Principal Act to provide that the functions under that subsection may be exercised by the Director-General.

Schedule 1 [6] inserts proposed section 20 (6) and (7) into the Principal Act to provide that:

- (a) the Director-General may only delegate his or her functions under section 20 to a person who is an officer within the meaning of the Principal Act (basically, a public servant or other person engaged by the Director-General), and
- (b) if requested to do so by a person required to comply with a notice given under section 20 by a delegate of the Director-General, the delegate must provide the person with evidence of that person's identity and evidence of the delegation that enables the delegate to give the notice.

Schedule 1 [7] and [8] amend section 25B of the Principal Act to provide that the Fair Trading Advisory Council is to consist of not less than 6, but not more than 16, members of whom one is to be the Director-General (or a nominee of the Director-General) and not less than 5, but not more than 15, are to be appointed by the Minister for Commerce as having, in the opinion of the Minister, expertise or qualifications appropriate to the Council's functions (as consumer or industry representatives or otherwise).

Schedule 1 [9] and [10] amend various provisions in Division 6 of Part 2 of the Principal Act to change the name of the Motor Trade Advisory Council to the Motor Vehicle Industry Advisory Council. (See also the abolition of the Council of the Motor Vehicle Repair Industry Authority by **Schedule 2** below).

Schedule 1 [11] and [12] amend section 25E of the Principal Act to provide that the Motor Vehicle Industry Advisory Council is to consist of not less than 6, but not more than 16, members of whom one is to be the Director-General (or a nominee of the Director-General) and not less than 5, but not more than 15, are to be appointed by the Minister for Commerce as having, in the opinion of the Minister, expertise or qualifications appropriate to the Council's functions (as consumer or industry representatives or otherwise).

Schedule 1 [13] and [14] amend section 25H of the Principal Act to provide that the Property Services Advisory Council is to consist of not less than 6, but not more than 16, members of whom one is to be the Director-General (or a nominee of the Director-General) and not less than 5, but not more than 15, are to be appointed by the Minister for Commerce as having, in the opinion of the Minister, expertise or qualifications appropriate to the Council's functions (as consumer or industry representatives or otherwise).

Schedule 1 [15] and [16] amend section 25N of the Principal Act to provide that the Retirement Villages Advisory Council is to consist of not less than 6, but not more than 16, members of whom one is to be the Director-General (or a nominee of the Director-General) and not less than 5, but not more than 15, are to be appointed by the Minister for Fair Trading as having, in the opinion of the Minister, expertise or qualifications appropriate to the Council's functions (as consumer or industry representatives or otherwise).

Schedule 1 [17] and [18] amend section 58 of the Principal Act (that relates to demands for unsolicited goods or unsolicited services or entries in directories) to provide that, for the purposes of that section, a person is taken to assert a right to payment for unsolicited goods or unsolicited services, or of a charge for the making of an entry in a directory, if the person sends any invoice or other document stating the amount of the payment or setting out the price of the goods or services or the charge for the making of the entry and does not include in the invoice or document a warning statement that:

- (a) is printed in upper case and a type not smaller than 18 point and is located at the top of the first page of the invoice or document, and
- (b) states “THIS IS NOT A BILL. YOU ARE NOT REQUIRED TO PAY ANY MONEY.”.

Schedule 1 [19] inserts proposed section 58A into the Principal Act to provide that it is an offence to assert a right to payment for certain unauthorised advertisements. The proposed section is similar to the current provisions of section 58 of the Principal Act that prohibit a person asserting a right to payment for unauthorised entries in directories. The proposed section will not apply to publications published by:

- (a) a large proprietary company or a subsidiary of such a company or a listed corporation or a subsidiary of such a corporation, or
- (b) the publisher of any publication which has an audited circulation of 10,000 copies or more per week, or a person which is a related body corporate to such a person, or
- (c) a servant of the Crown, a body corporate which represents the Crown or a local council, or
- (d) any other person prescribed by the regulations under the Principal Act.

Contravention of the proposed section will be an offence (see section 62 of the Principal Act) carrying a maximum penalty of:

- (a) in the case of a person other than a body corporate—200 penalty units (currently \$22,000), or
- (b) in the case of a body corporate—1,000 penalty units (currently \$110,000).

Contravention of the proposed section may also give rise to civil remedies (see section 68 of the Principal Act).

Schedule 1 [20] inserts proposed section 93 into the Principal Act to provide that the Director-General may order that anything that the Director-General has obtained in the course of an investigation under the Principal Act (other than anything seized by an investigator under the authority of a search warrant issued under section 19A) be sold, destroyed or otherwise disposed of, if:

- (a) the thing is not required to be retained as evidence in proceedings for an offence against the Principal Act or any other Act, and

- (b) the person who had lawful possession of the thing before it came into the Director-General's possession cannot be found or does not wish to have the thing returned.

If the thing is disposed of by way of sale, the proceeds of sale are to be paid to the Treasurer for payment into the Consolidated Fund.

Schedule 1 [21] inserts proposed clause 11G into Schedule 5 (Savings and transitional provisions) to the Principal Act to provide that:

- (a) a person who, immediately before the amendment of Division 6 of Part 2 of the Principal Act by this proposed Act, held office as a member of the former Motor Trade Advisory Council ceases to hold office on that amendment, and
- (b) a member who ceases to hold office because of this proposed clause is not entitled to any remuneration or compensation because of so ceasing to hold office.

Schedule 1 [22] amends clause 12 (1) of Schedule 5 (Savings and transitional provisions) to the Principal Act to enable regulations of a savings and transitional nature consequent on the enactment of the proposed Act to be made.

Schedule 2 Amendment of Motor Vehicle Repairs Act 1980

Schedule 2 [1]–[5] amend various provisions of the *Motor Vehicle Repairs Act 1980* to abolish the Council of the Motor Vehicle Repair Industry Authority.

Schedule 2 [6] amends clause 1 (1) of Schedule 5 (Savings and transitional provisions) to the *Motor Vehicle Repairs Act 1980* to enable regulations of a savings and transitional nature consequent on the enactment of the proposed Act to be made (but only to the extent that it amends the *Motor Vehicle Repairs Act 1980*).

Schedule 2 [7] inserts proposed clause 14 into Schedule 5 (Savings and transitional provisions) to the *Motor Vehicle Repairs Act 1980* to deal with certain savings and transitional issues consequent on the abolition of the Council of the Motor Vehicle Repair Industry Authority.