

FAIR TRADING (AMENDMENT) ACT 1990 No. 85

NEW SOUTH WALES



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FAIR TRADING (AMENDMENT) ACT 1990 No. 85

NEW SOUTH WALES



Act No. 85, 1990

An Act to amend the Fair Trading Act 1987 to make further provision with respect to codes of practice. [Assented to 7 December 1990]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Fair Trading (Amendment) Act 1990.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Fair Trading Act 1987 No. 68

3. The Fair Trading Act 1987 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

- (1) Section 5 (**Meaning of "consumer"**):

After section 5 (3), insert:

(4) In Part 7 and section 81, the meaning of "consumer" is affected by section 73A.

- (2) Section 66 (**Other injunctions**):

From section 66 (1) (a) (iv), omit "section 78", insert instead "Part 7".

- (3) Section 73A:

Before section 74, insert:

Extended meaning of "consumer"

73A. (1) In this Part and in section 81 (Allegation as to consumer), "**consumer**" includes a person who acquires an interest in land (whether or not from a supplier) used or intended to be used, or apparently intended for use, for commercial purposes.

(2) In this section, "**commercial purposes**" does not include a farming undertaking (within the meaning of section 5).

SCHEDULE 1—AMENDMENTS—*continued*

(4) Section 78A:

After section 78, insert:

Orders on application of affected person

78A. (1) A person may apply to the Commercial Tribunal for an order under this section if:

- (a) the person is a consumer in respect of whom a prescribed code of practice applies and the application relates to a contravention or alleged contravention of the code of practice which has adversely affected the person; and
- (b) the application is made with the consent of the Commissioner or a person prescribed as a consent authority for the purposes of applications to the Commercial Tribunal in respect of the prescribed code of practice.

(2) On an application under this section, the Commercial Tribunal may, if satisfied that a person has contravened a prescribed code of practice, order the person to do either or both of the following:

- (a) discontinue the contravention;
- (b) take specified action to rectify the consequences of the contravention.

(3) The regulations can provide that the holder for the time being of a specified office is to be a consent authority for the purposes of such an application, including an office in an organisation or association representing consumers or suppliers in the field with which the relevant code of practice is concerned.

(4) In proceedings before the Commercial Tribunal under this section, a certificate, purporting to have been signed by the Commissioner or a person prescribed as a consent authority for the purposes of the application concerned and certifying as to the granting of consent to the application, is evidence of that consent.

SCHEDULE 1—AMENDMENTS—*continued*

(5) If the Commercial Tribunal is satisfied that a contravention to which an application under this section relates was by a body corporate and occurred with the consent or connivance of a person who, at the time of the contravention, was a director of the body corporate or a person concerned in its management, the Commercial Tribunal may make, in addition to any other order:

- (a) an order prohibiting the person from continuing to consent to, or to connive at, the contravention; or
- (b) an order prohibiting the person from consenting to, or conniving at, a like contravention by any other body corporate of which the person is a director or in the management of which the person is concerned.

(6) An order under this section may be made subject to such conditions (whether as to the duration of the order or otherwise) as the Commercial Tribunal thinks fit including:

- (a) conditions as to the future conduct of the person affected; and
- (b) conditions specifying the action to be taken by the person to rectify the consequences of the contravention the subject of the application under this section.

(7) This section does not apply in respect of a code of practice unless the regulations state, or the code of practice itself states, that this section applies to the code of practice.

(5) Section 79 (**Variation or discharge of orders**):

At the end of section 79, insert:

(2) The Commercial Tribunal may, on the application of the Commissioner, the person on whose application the order was originally made or any person against whom the order was made, vary or discharge an order made under section 78A.

SCHEDULE 1—AMENDMENTS—*continued*

(6) Section 79A:

After section 79, insert:

Jurisdictional overlap

79A. (1) The Commercial Tribunal has no jurisdiction to hear or determine an issue arising under an application **made** to it under this Part if:

- (a) the issue is the subject of a dispute in proceedings before a court unless those proceedings have been stayed under this section; or
- (b) the issue has been decided by a court in proceedings in which the issue was in dispute.

(2) A decision by a court is to be disregarded for the purposes of subsection (1) if:

- (a) a court of record has, on a judicial review, quashed or declared invalid the decision, or the proceedings in which it was made, on the ground that the court had no jurisdiction to hear and determine the issue; or
- (b) the decision has been otherwise overturned.

(3) If a court before which proceedings are pending becomes aware that an issue that is the subject of a dispute in the proceedings is an issue arising under an application to the Commercial Tribunal under this Part, the court may stay the proceedings if of the opinion that the issue would be more appropriately determined by the Commercial Tribunal under this Part.

(4) In this section:

“**court**” means a court, tribunal, board, or other body or person authorised by law, or by consent of parties, to decide or resolve, whether through arbitration or conciliation or other means, any issue that is in dispute.

*[Minister's second reading speech made in—
Legislative Assembly on 15 November 1990
Legislative Council on 28 November 1990]*
