



Fair Trading Legislation (Repeal and Amendment) Bill 2015 (Proof)

Fair Trading Legislation (Repeal and Amendment) Bill 2015

Extract from NSW Legislative Council Hansard and Papers Tuesday 23 June 2015 (Proof).

FAIR TRADING LEGISLATION (REPEAL AND AMENDMENT) BILL 2015

Page: 14

Second Reading

Debate resumed from 3 June 2015.

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for Multiculturalism) [3.16 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have my second reading speech incorporated in *Hansard*.

Leave granted.

Introduction & Vision for Better Regulation Portfolio:

I am pleased to introduce the Fair Trading Legislation (Repeal and Amendment) Bill 2015.

This bill provides for the repeal of four Acts, three of which are surplus to current regulatory needs; and amends the Fair Trading Act to include the consumer claims jurisdiction for the NSW Civil and Administrative Tribunal.

I am pleased that NSW Fair Trading has taken the lead in proposing areas of red tape reduction and where unnecessary regulation can be removed as Fair Trading has accumulated around 40 pieces of legislation which it administers.

At its core the Innovation and Better Regulation portfolio is about protecting consumers, reducing the regulatory burden for businesses and modernising the way Government interacts with its citizens.

We want to encourage more businesses from interstate to set up shop in NSW and we will encourage them to do so by reducing red tape.

Within the Department of Finance, Services and Innovation the Government wants to work to reduce the regulatory burden on businesses and consumers and we will be looking close for unnecessary laws, regulations and fees which can be repealed from our statute books.

The NSW Government has a 'one-on, two-off' policy for reducing regulation and red tape, which commenced on 4 April 2011.

Over the last four years, this 'one-on, two-off' policy has made clear this Government's commitment to reducing red tape and regulatory burdens on businesses here in NSW.

The results speak for themselves:

- We have repealed over 220 legislative burdens since April 2011 and introduced only 47 to deliver a ratio of 1 on, 5 off.
- These reductions in Red Tape will save businesses up to \$750 million by June of this year.
- NSW is now first in Australia's economic performance rankings, up from number 8 under those opposite;
- NSW has enjoyed 15 months of positive business confidence;
- NSW is the fastest growing economy in Australia that has stimulated more growth and jobs;
- The NSW Liberals & Nationals have balanced the Budget, we have secured the triple-A credit rating and our policies have helped to create over 145,000 jobs since April 2011;

The NSW Government will continue to take action to reduce red tape across Government, and I look forward to further announcements about how we will tackle red tape and burdensome regulation at a later date.

Reform Process:

The processes that lead to the repeal of these four acts commenced at the beginning of 2013 with an issues paper setting out potential repeals.

NSW Fair Trading received submissions from affected industries and peak bodies including The Law Society of NSW, The NSW Tenants Union, Fitness Australia and the Real Estate Institute of NSW.

As a result of that consultation, this bill has been prepared and proposes to repeal the

- HomeFund Commissioner Act 1993,
- Fitness Services (Pre-paid fees) Act 2000,
- Landlord and Tenant Act 1899, and
- Consumer Claims Act 1998.

HomeFund Commissioner's Act 1993:

In relation to the HomeFund Commissioner's Act, the Commissioner's Office was established on 10 May 1993 to deal with complaints from people who had mortgages under the now defunct HomeFund scheme.

By December 1993, about half of all HomeFund borrowers had re-financed and all complaints were resolved by 30 June 1997.

The appointment of the last HomeFund Commissioner ended on 31 December 1997 and the HomeFund Commissioner's Office was abolished in June the following year.

The repeal of this Act would not impact on the still operational HomeFund Restructuring Act 1993, which is substantially administered by the Minister for Finance and Services. Some provisions of that Act that have been administered by NSW Trading are to be repealed.

This presents no impediment to the immediate repeal of the HomeFund Commissioner's Act.

Fitness Services (Pre-paid Fees) Act 2000:

The purpose of the Fitness Services (Pre-paid Fees) Act 2000 is to prescribe minimum consumer protection requirements, including trust fund provisions, when consumers pay in advance for

fitness services—exercise classes, fitness assessments, gym memberships and so on.

The Act sought to reduce the risk of consumer loss by limiting the maximum period for pre-paid fitness services fees to 12 months. Where the supply of fitness services has not yet commenced, the Act requires that pre-paid fees be held in a trust account. Where services are not provided within three months, pre-paid fees must be refunded.

Since the Australian Consumer Law commenced in January 2011, it has addressed the consumer protection issues identified for pre-paid fees for fitness services.

Of particular relevance is the Australian Consumer Law prohibition on accepting payment when there is no intention to supply the goods or services or there are reasonable grounds for believing the supplier will not be able to supply within the time specified (section 36); and the guarantee that services will be supplied within a reasonable time (section 62). The Australian Consumer Law also prohibits unfair contract terms in standard form contracts and unfair practices, additional protections for consumers of fitness services.

Breaches of these relevant sections of The Australian Consumer Law also carry far greater penalties than those prescribed in the Fitness Services (Pre-Paid Fees) Act 2000. Where breaches of the previous act carries a maximum penalty of 40 penalty units (now \$4,400), the Australian Consumer Law states that:

Breaches of the ACL's criminal offences are subject to criminal fines of a maximum of \$1.1 million for a body corporate and \$220,000 for person other than a body corporate.

The Australian Consumer Law enables the repeal of industry-specific regulation, such the Fitness Services (Pre-Paid Fees) Act 2000, as consumer protection is clearly more completely provided by the national and modern law.

Apart from the general consumer protections in force under the Australian Consumer Law, the fitness industry practices associated with the introduction of the Act are no longer prevalent. The majority of fitness contracts no longer require substantial pre-payment; and the voluntary Fitness Industry Code of Practice prohibits pre-payments beyond 12 months. The potential consumer detriment that the trust fund provisions of the Act were designed to prevent is no longer substantial and does not warrant the associated significant administrative costs in the maintenance of trust accounts.

Given that this proposal will remove existing trust fund requirements; this proposal incorporates clear and identifiable reductions in regulatory burden which contribute towards meeting the Government's red tape reduction targets.

The Government estimates that the repeal of the Fitness Services (Pre-paid Fees) regime would reduce costs for 1,050 Fitness Service businesses across NSW. Currently they have to open a trust account, keep pre-paid fees in that account and manage the accounts (keep records and provide receipts etc).

These reforms are expected to save The Fitness Industry NSW \$75,600 per year in compliance costs as well as saving 3,150 hours per year that would otherwise have been spent keeping records and filling out paperwork.

Some savings and transitional provisions are made for the protection of any monies that have been pre-paid for the provision of a fitness service, under an agreement made immediately before the repeal.

Accordingly, there is no impediment preventing an immediate repeal of this Act.

Landlord and Tenant Act 1899:

The Landlord and Tenant Act 1899 once applied to all tenancies in NSW. The Act was effectively replaced by specific and modern residential tenancies legislation initially by Residential Tenancies Act 1987, and, later, the Residential Tenancies Act 2010.

A number of provisions contained within the Act have been repealed over the years and the act now only contains a small number of provisions, mainly dealing with eviction processes in the Local Courts. The modern day tenancy laws (most recently updated in 2010) provide for eviction through the NSW Civil and Administrative Tribunal, rather than through the courts.

The Act has no practical application or relevance in today's society where there are specific laws dealing with residential, retail, agricultural and other forms of tenancies.

Whilst the Property Law Committee of the Law Society of NSW suggested that there was utility in maintaining some sections of the Act during the consultation process, the Chief Magistrate of the Local Courts has advised that cases under the Act are very rare.

The Chief Magistrate provided details of only five matters under this Act in the last five years to 2013, each of which appear to have been misguided applications with none proceeding to hearing and all being settled out of court.

An example of this is a matter brought to Sutherland Local Court in 2007 which related to a commercial premise which the landlord claimed to have lawfully re- entered and taken possession of under the lease before the tenant had re-entered and resumed possession. The matter was considered a misguided application of the act and was subsequently settled after the return date.

Consumer Claims Act 1998:

This bill repeals the Consumer Claims Act and transfers the essential provisions of that Act to the Fair Trading Act 1987 in order to preserve the existing jurisdictional coverage of the NSW Civil and Administrative Tribunal for consumer claims.

The consumer claims jurisdiction is a vital limb for a consumer protection regime. It gives consumers access to low-cost dispute resolution where a trader has failed to supply a goods or service as promised.

In Victoria, the equivalent provisions for Tribunal jurisdiction are included in the primary consumer protection legislation of Victoria, the Australian Consumer Law and Fair Trading Act 2012. It is considered that this is an excellent model for NSW.

For the purposes of the jurisdiction, a consumer claim is defined as

- a claim by a consumer for the payment of a specified sum of money, or
- a claim by a consumer for the supply of specified services, or
- a claim by a consumer for relief from payment of a specified sum of money, or
- a claim by a consumer for the delivery, return or replacement of specified goods or goods of a specified description, or a claim by a consumer for a combination of two or more of the remedies that I have referred to, that arises from a supply of goods or services by a supplier to the consumer, whether under a contract or not, or
- that arises under a contract that is collateral to a contract for the supply of goods or services.

This proposal also includes a minor modification that is made to the term 'banker' and references to administrative agencies and persons as a consequence of the merger with the Fair Trading Act and the use of similar words in that Act. However, those changes have been kept to the minimum necessary in order to preserve the existing jurisdiction to hear a consumer claim and to update the provisions consistently with contemporary drafting conventions.

Where the repealed Act provided a procedural order power which the Tribunal has under the Civil and Administrative Act 2013, it is not duplicated. An example of such a procedural power that will now reside in the Tribunal's Act is the power to make orders with conditions.

This is an uncontroversial proposal as it consolidates the low-cost dispute resolution aspect of our consumer protection regime into a single overarching Act—the Fair Trading Act 1987.

Minor & Consequential Amendments:

Other changes which amend the legislation and make references consistent with the Government Sector Employment Act 2013 commence on 1 July 2015 when the Department of Finance, Services and Innovation comes into being.

Conclusion:

The bill provides for the commencement of the repeal of the Fitness Services (Pre-paid fees) Act 2000, the Consumer Claims Act 1998 and the related amendments as appointed by proclamation. The Landlord and Tenant Act 1899 will be repealed 5 years after the day on which the relevant section commences or on an earlier day as appointed by proclamation. The repeal of the HomeFund Commissioner Act 1993 will commence on assent.

I am pleased to speak to the Government's commitment to remove redundant and duplicative regulatory requirement through the Fair Trading Legislation (Repeal and Amendment) bill 2015.

I commend the bill to the House.