



## Fair Trading Amendment Bill.

### Second Reading

**The Hon. TONY KELLY** (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister Assisting the Minister for Natural Resources (Lands)) [5.02 p.m.]: I move:

That this bill be now read a second time.

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

#### Leave granted.

The Bill I introduce today builds on the previous amending legislation passed by the Parliament in July last year, which, among other important reforms, strengthened the enforcement powers under the *Fair Trading Act 1987*.

This Bill has a similar focus in that it aims to increase the efficiency and effectiveness of Fair Trading compliance and enforcement activities.

A new section 9A will be inserted in the Act to clarify powers currently inferred by the Fair Trading Act and the Department of Fair Trading Code of Practice and make such powers explicit and transparent. These provisions will facilitate the exchange of information between the Office of Fair Trading and other agencies, subject to privacy considerations. The powers to disclose and receive information will be limited to investigative, law enforcement, licensing, disciplinary and complaint handling functions, as well as probity assessments and reference checks and similar information to protect the interests of consumers. The Commissioner for Fair Trading will be empowered to enter appropriate agreements regarding the release and exchange of information and to refer matters to, and receive matters from, other law enforcement and regulatory bodies, and to undertake joint investigations.

In terms of trading, we live in a borderless society. Now, more than ever before, there is a need for co-operation between agencies, states and other nations in order to give the consumers in New South Wales the protection they expect from this government. Technology has acted to increase the speed and coverage of major scams and government needs the power to prevent and respond to those scams.

I am, of course, mindful of the legitimate concerns about privacy considerations in respect of personal information. The Fair Trading Privacy Code of Practice, gazetted on 30 June 2000, currently provides relevant exemptions from the Information Protection Principles of the *Privacy and Personal Information Protection Act 1998*. The Bill is consistent with that Code of Practice and will facilitate interagency cooperation, reduce duplication between agencies and enhance efficiency in law enforcement functions.

The enforcement powers under the Fair Trading Act will be further enhanced by a new Section 19A, which will allow an investigator, having reasonable grounds for believing that a contravention of the Act has occurred, to apply to an authorised justice for a search warrant to enter any place, search for and seize anything that the investigator reasonably believes will provide evidence of a contravention.

My colleagues in this House might be surprised that investigators do not already have such powers, which would appear essential for the enforcement of laws that set out to protect consumers from being defrauded by unscrupulous operators. Hardly a week goes by without news of a scam which has been uncovered by the Office of Fair Trading, or their interstate counterparts.

These powers are being added to the statute since current powers under the Act do not reflect the reality of the marketplace. The Act requires a two tiered approach, where initially, investigators can enter premises but can only inspect and make copies of documents and inspect and buy goods found on the premises. This is essentially a provision used in the past to test the seriousness of any matter.

Clearly, most businesses today use computers and this is not recognised in the current drafting. Any evidence stored in a computer could disappear before the investigators returned. The loss of computerised records is a critical concern for the Office of Fair Trading.

I will give an example of the inadequacy of that approach. In an application to the Supreme Court for injunctions and other orders against the first internet-based pyramid selling scheme operating in this State, orders were sought requiring the defendant to deliver up their personal computer to OFT for computer forensic examination.

The Court refused to exercise its discretion to make the order on the basis that OFT had no powers to seize articles, and the Office of Fair Trading was denied the opportunity to look at the scam program being used by the promoter.

These provisions are not only aimed at computerised records. In another example of the need for these provisions, a trader was subject to a compliance program under which toys and specified other products were required to be removed from sale and tested to the appropriate Australian Standard. However, examples of unsafe or non-compliant toys were subsequently detected in the defendant's stores. On one occasion, the defendant refused to sell the item to an investigator and the powers in section 19 were rendered ineffective.

It is clearly not appropriate for enforcement powers to be reliant on the co-operation of the trader under investigation, as this could effectively subvert the operation of the law.

The Bill therefore will enhance the capacity for investigators to prevent scams and the circulation of dangerous goods by operators whose intention is non-compliance.

The proposed powers to seize evidence of a contravention of the Act are to be subject to the requirements of the Search Warrants Act 1985. In addition, OFT will be required to return anything seized for evidentiary purposes to the owner, if it is no longer needed for evidence, unless it is unlawful to possess it.

A new Part 5D also aims to make compliance activity more effective, as well as giving greater certainty to legitimate businesses. I refer to the replacement of the current provisions which prohibit pyramid selling with provisions drafted on behalf of all states and territories as well as the Federal government by the Parliamentary Counsel's Committee. Pyramid selling is prohibited in all fair trading law. It is a sales scheme that concentrates on recruiting new salespeople into the scheme rather than selling products or services. It is often intentionally disguised as a multi-level marketing scheme, which is a legitimate business.

The new provisions will make interpretation easier and enforcement more effective. They will be consistent with the *Trade Practices Act* and the ACT Fair Trading Act. The majority of the other states and territories also have consistent changes on their legislative agendas. The benefits of consistent legislation are undeniable in our borderless marketplace.

These amendments will further improve the effectiveness of the Government's efforts to ensure fair trading in this State.

I commend the Bill to the House.

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