

Fair Trading Amendment Bill 2004

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* as follows:

- (a) to expressly authorise the Commissioner for Fair Trading (called “the Director-General” in the Act) to disclose information to, and receive information from, fair trading agencies, law enforcement agencies and other relevant agencies,
- (b) to empower investigators, under the authority of a search warrant, to enter and search any place (which includes a vehicle) for evidence of a contravention of the Act and to seize anything that is connected with any such contravention,
- (c) to replace the current provisions that regulate pyramid selling with provisions that mirror those contained in the *Trade Practices Act 1974* of the Commonwealth,
- (d) to make other miscellaneous amendments of a minor or consequential nature.

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 amendments to other Acts in Schedule 2.

Schedule 1 Amendment of Fair Trading Act 1987

Exchange of information with other agencies

Schedule 1 [1] expressly authorises the Director-General to disclose information to, and receive information from, other fair trading agencies and law enforcement agencies in Australia and overseas as well as certain agencies that exercise functions with respect to matters affecting the interests of consumers. The information that may be the subject of an information sharing arrangement under proposed section 9A will be limited to certain matters (such as investigations, law enforcement or complaints) that relate to the functions of the Director-General or other agency concerned.

Powers of entry, search and seizure under search warrant

At present, section 19 of the Act empowers an investigator to enter any place or land where goods are manufactured, prepared or supplied (or where services are supplied or arranged) and exercise certain powers such as taking goods for which the investigator pays a fair price. Section 19 also presently empowers an investigator, with the written authority of the Director-General, to enter certain premises and to inspect, and make copies of or take extracts from, documents evidencing conduct in contravention of the Act.

In addition to these existing powers of entry and inspection, **Schedule 1 [3]** will empower an investigator, under the authority of a search warrant, to enter and search any place (which will include a vehicle, vessel or aircraft for the purposes of the proposed section 19A) and seize anything that the investigator believes on reasonable grounds is connected with a contravention of a provision of the Act. Provision is made for the return of anything seized that is not required as evidence in proceedings for an offence.

Schedule 1 [2] is a consequential amendment that requires an investigator who

is exercising powers under a search warrant issued under proposed section 19A to show his or her identification as an investigator if required to do so.

Prohibition on pyramid selling

Pyramid selling is a sales scheme that concentrates on recruiting new sales people into the scheme rather than selling products. At present, section 56 of the Act prohibits certain pyramid selling schemes. The *Trade Practices Act 1974* of the Commonwealth was amended in 2002 to include new provisions in relation to pyramid selling.

Schedule 1 [4] omits section 56, and in its place, **Schedule 1 [5]** inserts proposed Part 5D which contains provisions that mirror the Commonwealth's new pyramid selling provisions. **Schedule 1 [6] and [7]** make consequential amendments.

Miscellaneous amendments

Schedule 1 [8] restates the defences provided by section 71 (1) (a) and (b) of the Act to exclude certain information (namely, information in the nature of legal advice on the legal consequences of conduct) from the type of information to which the defence applies. As a result of the amendment, which is in keeping with recent amendments to the corresponding provisions of the *Trade Practices Act 1974* of the Commonwealth, the defence will be restricted to a reasonable mistake of fact, including a mistake of fact (not law) caused by reasonable reliance on information supplied by another person. **Schedule 1 [9]** is a consequential amendment.

Schedule 1 [10] inserts savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 1 [11] inserts a power to make savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 2 Amendment of other Acts

Schedule 2 amends certain legislation in connection with the search warrant power to be inserted by Schedule 1 [3] to the proposed Act.