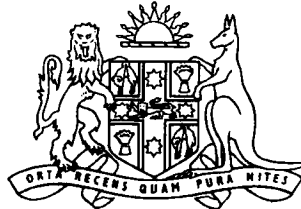


First print



New South Wales

Fair Trading Amendment (Substantiation of Claims) Bill 2000

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* to give the Director-General of the Department of Fair Trading the power to require persons who publish, or cause to be published, statements promoting the supply of goods or services or the sale or grant of interests in land to substantiate claims or representations made in those statements.

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

Schedule 1 Amendments

Schedule 1 [3] inserts proposed Division 3A into Part 2 of the *Fair Trading Act 1987*. **Proposed section 23A** gives effect to the object of the Bill outlined above. The power of the Director-General to require substantiation of a claim or representation in a statement is to be exercised by service on the person of a notice in writing. The person must comply with the notice (within the time required by the notice) by replying to the Director-General in writing stating whether or not the person can provide information substantiating the claim or representation concerned and, if the person can provide such information, by providing such information as the person is reasonably able to provide.

Proposed section 23B provides that, for the purposes of the proposed Division, where a person publishes or causes to be published a statement advertising goods or services for supply at a specified price, the statement is taken to include a representation that the person will be able to offer the goods or services for supply at the advertised price for a period, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

Proposed section 23C (1) makes it an offence to fail to comply with a notice under proposed section 23A. **Proposed section 23C (2)** makes it an offence if, in replying to a notice, a person provides information that is false or misleading in a material particular. However, it is a defence to a prosecution under proposed section 23C (2) if the defendant proves that he or she did not know and could not reasonably be expected to have known that the information was false or misleading.

Proposed sections 23D, 23E and 23F are consequential provisions. **Proposed section 23D** provides that a person is not excused from providing information in compliance with a notice under proposed section 23A on the ground of self incrimination. However any information provided by a person in compliance with such a notice is inadmissible in criminal proceedings against the person other than

proceedings under the proposed Division. **Proposed section 23E** provides that the proposed Division does not prevent action being taken under other provisions of the *Fair Trading Act 1987* or under any other law in relation to a claim or representation made in a published statement. **Proposed section 23F** provides that the proposed Division does not apply to persons whose business it is to publish or arrange for the publication of advertisements where the statement concerned was received in the ordinary course of business. This section will exempt newspaper publishers, broadcasters and other persons who facilitate advertising as part of their business from the application of the proposed Division.

Proposed section 23G is a transitional provision. It provides that the proposed Division will not apply to statements published before the commencement of the Division.

Schedule 1 [1] and **[2]** make consequential amendments to sections 21 (Inspection of documents by Director-General and others) and 22 (Preservation of secrecy) of the *Fair Trading Act 1987*.



New South Wales

Fair Trading Amendment (Substantiation of Claims) Bill 2000

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Fair Trading Act 1987 No 68	2
Schedule 1 Amendments	3



New South Wales

Fair Trading Amendment (Substantiation of Claims) Bill 2000

No. , 2000

A Bill for

An Act to amend the *Fair Trading Act 1987* to make provision for the substantiation of claims and representations in certain statements; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Fair Trading Amendment (Substantiation of Claims) Act 2000</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Fair Trading Act 1987 No 68	8
The <i>Fair Trading Act 1987</i> is amended as set out in Schedule 1.	9
	10

Schedule 1 Amendments

1

(Section 3)

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[1] Section 21 Inspection of documents by Director-General and others

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Omit “section 20” wherever occurring in section 21 (1) and (2).

4

Insert instead “section 20 or 23A”.

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[2] Section 22 Preservation of secrecy

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Omit “section 20” wherever occurring in section 22 (1) (a), (2) and (4) (a).

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Insert instead “section 20 or 23A”.

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[3] Part 2, Division 3A

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Insert after Division 3 of Part 2:

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Division 3A Substantiation of claims and representations

11

23A Power to require substantiation of claims and representations

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(1) The Director-General may require a person who, in trade or commerce, published or caused to be published a statement promoting, or apparently intended to promote, the supply of goods or services or the sale or grant of an interest in land, to substantiate a claim or representation (express or implied) made in the statement.

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(2) Such a requirement is to be made by notice in writing served on the person.

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(3) The notice must:

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(a) indicate the claim or representation to which the notice applies, and

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Fair Trading Amendment (Substantiation of Claims) Bill 2000

Schedule 1 Amendments

- (b) require compliance with the notice within a specified time, and 1
 - (c) indicate what the person must do to comply with the notice (as provided by subsection (4)), and 2
 - (d) indicate that it is an offence to fail to comply with the notice within the required time. 3
 - (4) To comply with the notice, the person must within the time required by the notice: 4
 - (a) reply in writing to the Director-General stating whether or not the person can provide information substantiating the claim or representation concerned, and 5
 - (b) provide to the Director-General such information substantiating the claim or representation as the person is reasonably able to provide. 6
 - (5) The Director-General may, by a further notice in writing served on the person, extend or further extend the time within which the notice must be complied with. 7
- 23B Implied representation that goods or services will be able to be supplied at advertised price** 8
- (1) When a person, in trade or commerce, publishes or causes to be published a statement advertising goods or services for supply at a specified price, the statement is taken to include a representation that the person will be able to offer the goods or services for supply at the advertised price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement. 9
 - (2) Accordingly, a notice under section 23A can relate to such a representation. 10
 - (3) The representation applies only for the purposes of this Division. 11

(4) The claims and representations to which a notice under section 23A can apply are not limited by this section.	1 2
23C Offence of failing to comply with notice	3
(1) A person who fails to comply with a notice under section 23A is guilty of an offence. Maximum penalty: 50 penalty units.	4 5 6
(2) A person who, in purported compliance with a notice under section 23A, provides any information to the Director-General that is false or misleading in a material particular is guilty of an offence. Maximum penalty: 50 penalty units.	7 8 9 10 11
(3) It is a defence to a prosecution under subsection (2) if the defendant proves that the defendant did not know and could not reasonably be expected to have known that the information was false or misleading.	12 13 14 15
23D Self incrimination	16
(1) A person is not excused from providing information in compliance with a notice under section 23A on the ground that the information may tend to incriminate the person.	17 18 19
(2) Any information provided by a person (whether a natural person or a corporation) in compliance with a notice under section 23A is inadmissible in criminal proceedings against the person other than proceedings for an offence under this Division.	20 21 22 23 24
23E Division does not prevent other action being taken	25
This Division does not prevent action being taken under any other provision of this Act or any other law in relation to a claim or representation made in a published statement.	26 27 28
23F Certain publishers not affected	29
This Division does not apply to a person whose business it is to publish or arrange for the publication of advertisements in respect of the publication of a statement by the person that was received for publication in the ordinary course of that business.	30 31 32 33

Fair Trading Amendment (Substantiation of Claims) Bill 2000

Schedule 1 Amendments

23G Transitional

This Division does not apply to any statement published before
the commencement of this Division.

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