

Passed by both Houses



New South Wales

Fair Trading Amendment (Substantiation of Claims) Bill 2000

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2000*



New South Wales

Fair Trading Amendment (Substantiation of Claims) Bill 2000

Act No , 2000

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.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Fair Trading Amendment (Substantiation of Claims) Act 2000*.

2 Commencement

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

3 Amendment of Fair Trading Act 1987 No 68

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

Schedule 1 Amendments

(Section 3)

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

Omit “section 20” wherever occurring in section 21 (1) and (2).
Insert instead “section 20 or 23A”.

[2] Section 22 Preservation of secrecy

Omit “section 20” wherever occurring in section 22 (1) (a), (2) and (4) (a).
Insert instead “section 20 or 23A”.

[3] Part 2, Division 3A

Insert after Division 3 of Part 2:

Division 3A Substantiation of claims and representations

23A Power to require substantiation of claims and representations

- (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.
- (2) Such a requirement is to be made by notice in writing served on the person.
- (3) The notice must:
 - (a) indicate the claim or representation to which the notice applies, and

- (b) require compliance with the notice within a specified time, and
 - (c) indicate what the person must do to comply with the notice (as provided by subsection (4)), and
 - (d) indicate that it is an offence to fail to comply with the notice within the required time.
- (4) To comply with the notice, the person must within the time required by the notice:
 - (a) reply in writing to the Director-General stating whether or not the person can provide information substantiating the claim or representation concerned, and
 - (b) provide to the Director-General such information substantiating the claim or representation as the person is reasonably able to provide.
- (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.

23B Implied representation that goods or services will be able to be supplied at advertised price

- (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.
- (2) Accordingly, a notice under section 23A can relate to such a representation.
- (3) The representation applies only for the purposes of this Division.

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- (4) The claims and representations to which a notice under section 23A can apply are not limited by this section.

23C Offence of failing to comply with notice

- (1) A person who fails to comply with a notice under section 23A is guilty of an offence.

Maximum penalty: 50 penalty units.

- (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.

- (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.

23D Self incrimination

- (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.

- (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.

23E Division does not prevent other action being taken

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.

23F Certain publishers not affected

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.

23G Transitional

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