



New South Wales

Fair Trading Amendment Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

The following Bills are cognate with this Bill:

Home Building Amendment Bill 1998

Landlord and Tenant (Rental Bonds) Amendment (Penalty Notices) Bill 1998

Motor Vehicle Repairs Amendment Bill 1998

Property, Stock and Business Agents Amendment (Penalty Notices) Bill 1998

Residential Tenancies Amendment Bill 1998

Retirement Villages Amendment Bill 1998

Overview of Bill

The object of this Bill is to amend the *Fair Trading Act 1987* as follows:

- (a) to provide for the enforcement by the Supreme Court of written undertakings provided by persons to the Director-General of the Department of Fair Trading in connection with the Director-General's functions under the Act,
 - (b) to allow consumers adversely affected by a contravention of a code of practice for fair dealing to apply to the Commercial Tribunal for an order without the need to obtain consent from the Director-General or a prescribed person.
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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 [1] inserts proposed section 73A to provide for the enforcement by the Supreme Court of written undertakings provided by persons to the Director-General of the Department of Fair Trading in connection with the Director-General's functions under the Act (other than those under Part 7 relating to codes of practice). The proposed section is in similar terms to sections 87B and 87C of the *Trade Practices Act 1974* of the Commonwealth relating to the enforcement of written undertakings under that Act. Functions under Part 7 are excluded as the Part already contains provisions for the giving of enforceable undertakings.

Schedule 1 [2] and [3] amend section 78A to remove the requirement that the consent of the Director-General or another person prescribed by the regulations must be obtained prior to a consumer adversely affected by a contravention of a code of practice applying to the Commercial Tribunal for an order.

First print



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New South Wales

Fair Trading Amendment Bill 1998

No. , 1998

A Bill for

An Act to amend the *Fair Trading Act 1987* relating to the enforcement of written undertakings given to the Director-General of the Department of Fair Trading, and to applications to the Commercial Tribunal concerning contraventions of codes of practice.

See also *Home Building Amendment Bill 1998*, *Landlord and Tenant (Rental Bonds) Amendment (Penalty Notices) Bill 1998*, *Motor Vehicle Repairs Amendment Bill 1998*, *Property, Stock and Business Agents Amendment (Penalty Notices) Bill 1998*, *Residential Tenancies Amendment Bill 1998*, *Retirement Villages Amendment Bill 1998*.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Fair Trading Amendment Act 1998*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

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 73A

Insert after section 73:

- 73A Enforcement of undertakings** (TPA ss 87B and 87C) 5
- (1) The Director-General may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the Director-General has a function under this Act (other than a function in connection with Part 7). 10
 - (2) The person may withdraw or vary the undertaking at any time, but only with the consent of the Director-General. The consent of the Director-General is required even if the undertaking purports to authorise a withdrawal or variation of the undertaking without that consent. 15
 - (3) If the Director-General considers that the person who gave the undertaking has breached any of its terms, the Director-General may apply to the Supreme Court for an order under subsection (4).
 - (4) If the Supreme Court is satisfied that the person has breached a term of the undertaking, the Court may make all or any of the following orders: 20
 - (a) an order directing the person to comply with that term of the undertaking,
 - (b) an order directing the person to pay to the State an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach, 25
 - (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach, 30
 - (d) any other order that the Court considers appropriate. 35

[2] Section 78A Orders on application of affected person

Omit section 78A (1). Insert instead:

- (1) A person may apply to the Commercial Tribunal for an order under this section if:
 - (a) the person is a consumer in respect of whom a prescribed code of practice applies, and 5
 - (b) the application relates to a contravention or alleged contravention of the code of practice that has adversely affected the person.

[3] Section 78A (3) and (4) 10

Omit the subsections.