



New South Wales

Fair Trading Amendment (Enforcement and Compliance Powers) 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*:

- (a) to enable the Director-General of the Department of Fair Trading to suspend, in certain circumstances, a licence, permit or other authority under any Act administered by the Minister for Fair Trading, and
- (b) to clarify the scope of a power conferred by section 19 of the Act to inspect and copy documents.

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] amends section 8 of the Act to prevent delegation by the Director-General of the Department of Fair Trading of the power to be conferred by proposed section 64A (inserted by Schedule 1 [3]).

Schedule 1 [2] amends section 19 of the Act in relation to the power conferred by that section to inspect and copy documents evidencing a contravention of the Act. The amendment makes it clear that the power extends to documents evidencing a contravention of any legislation administered by the Minister for Fair Trading.

Schedule 1 [3] inserts a new section 64A into the Act to allow the Director-General to suspend a licence, permit or other authority granted or issued under any legislation administered by the Minister for Fair Trading, in circumstances where the Director-General is satisfied that the holder of the authority concerned is engaging in (and is likely to continue to engage in) conduct that warrants urgent suspension of the authority because of a significant danger to persons or property.

The suspension lasts for up to 60 days and may be renewed.

The suspension power conferred by the new section is additional to suspension powers already provided for in legislation administered by the Minister for Fair Trading.

Decisions of the Director-General under the proposed section are open to review by the Administrative Decisions Tribunal.

First print



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Fair Trading Amendment (Enforcement and Compliance Powers) Bill 2000

No. , 2000

A Bill for

An Act to amend the *Fair Trading Act 1987* with respect to the suspension of certain licences, permits and authorities and the investigation of alleged contraventions of consumer protection legislation.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Fair Trading Amendment (Enforcement and Compliance Powers) 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

Schedule 1 Amendments

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(Section 3)

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[1] Section 8 Delegation by Director-General

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Insert after section 8 (2):

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- (3) This section does not apply to the functions of the
Director-General under section 64A.

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[2] Section 19 Powers of entry

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Insert “or any other legislation administered by the Minister” after “this Act”
in section 19 (4).

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[3] Section 64A

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Insert after section 64:

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64A Suspension of licences

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- (1) In this section, *licence* means any licence, permit or other
authority granted or issued (whether before or after the
commencement of this section) under any legislation
administered by the Minister, and *licensee* means the holder of
the licence, permit or authority.

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- (2) If the Director-General is of the opinion that there are
reasonable grounds to believe that:

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- (a) a licensee has engaged in conduct that, under legislation
administered by the Minister, constitutes grounds for
suspension or cancellation of the licence, and

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- (b) it is likely that the licensee will continue to engage in
that conduct, and

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- (c) there is a danger that a person or persons may suffer
significant harm, or significant loss or damage, as a
result of that conduct unless action is taken urgently,

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the Director-General may, by notice served on the licensee,
suspend the licence for a period of not more than 60 days
specified in the notice, commencing on service of the notice.

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Schedule 1 Amendments

- (3) A notice under subsection (2) has effect according to its terms, whether or not the licensee has been afforded an opportunity to be heard as to whether the licence should be suspended. 1
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- (4) Within 7 days after a licence has been suspended under this section, the licensee must: 4
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- (a) lodge the suspended licence at an office of the Department of Fair Trading, or 6
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- (b) if unable to lodge the suspended licence, lodge at an office of the Department of Fair Trading a statement signed by the licensee and providing accurate and complete details of why the licence cannot be lodged. 8
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- Maximum penalty: 10 penalty units. 12
- (5) If, during the suspension of a licence under this section, the Director-General is satisfied that the facts and circumstances that gave rise to the suspension have so altered that the suspension should be terminated, it is the duty of the Director-General, by further notice specifying the date of termination, to terminate the suspension without delay and restore the licence to the licensee. 13
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- (6) Without affecting the generality of subsection (2): 20
- (a) a second or subsequent notice may be served on a licensee under that subsection in respect of conduct of the kind to which that subsection refers, and 21
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- (b) any such notice may be served during a period of suspension of the licence concerned. 24
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- (7) This section has effect despite the provisions of any other Act, and the power conferred by this section is in addition to, and does not limit or displace, a power conferred by or under any other Act that authorises the Director-General or any other person to suspend or cancel a licence or take other action in respect of a licence or in respect of the conduct concerned. 26
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Amendments

Schedule 1

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- (8) A licensee may apply to the Administrative Decisions Tribunal
for a review of a decision of the Director-General under this
section. 1
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