

FAIR TRADING (AMENDMENT) ACT 1989 No. 167

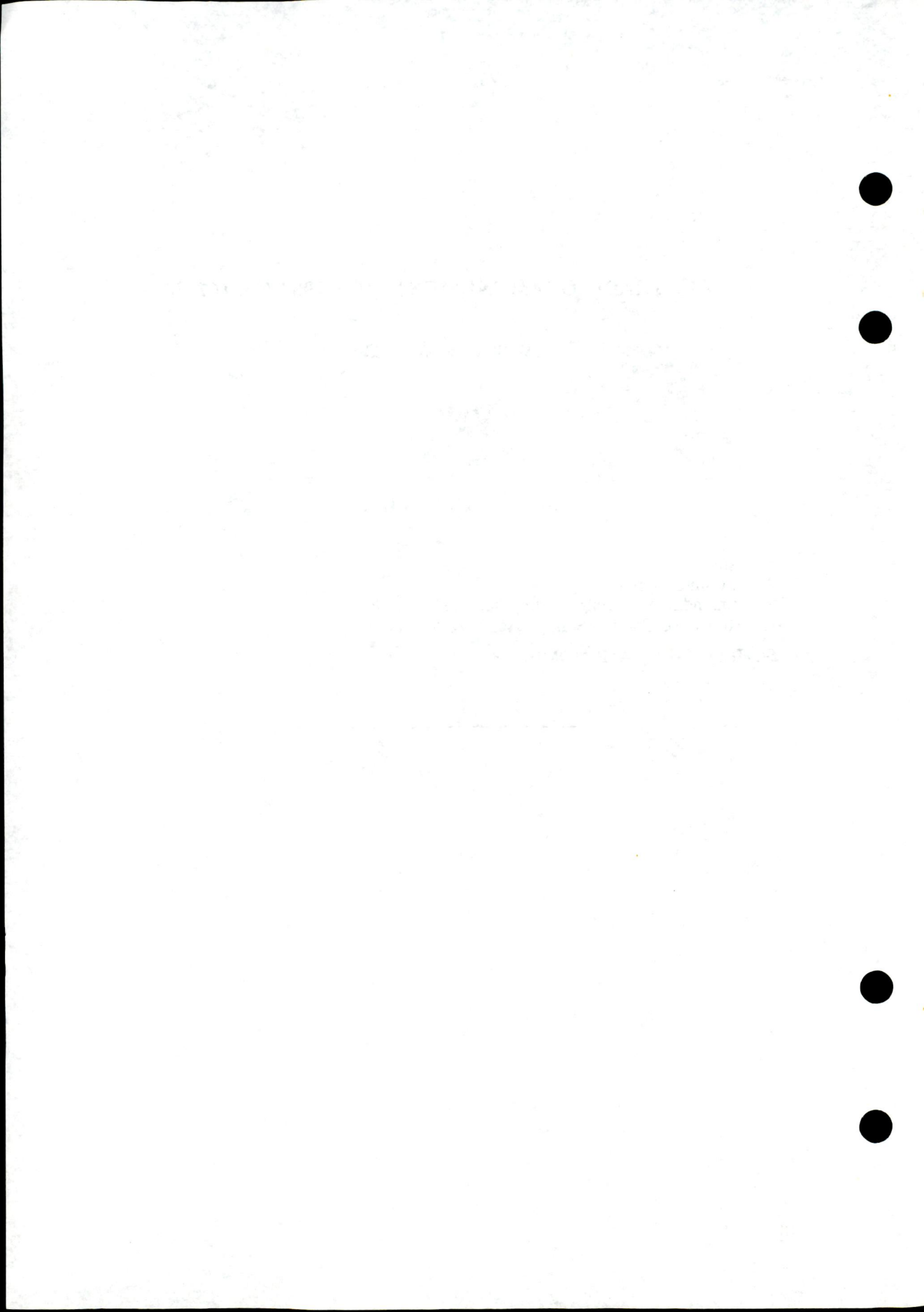
NEW SOUTH WALES



TABLE OF PROVISIONS

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2. Commencement
3. Amendment of Fair Trading Act 1987 No. 68
4. Repeal of Trading Stamps Act 1972 No. 44

SCHEDULE 1 - AMENDMENTS



FAIR TRADING (AMENDMENT) ACT 1989 No. 167

NEW SOUTH WALES



Act No. 167, 1989

An Act to amend the Fair Trading Act 1987 with respect to trading stamp schemes and similar schemes; to repeal the Trading Stamps Act 1972; and for other purposes. [Assented to 14 December 1989]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Fair Trading (Amendment) Act 1989.

Commencement

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

Amendment of Fair Trading Act 1987 No. 68

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

Repeal of Trading Stamps Act 1972 No. 44

4. The Trading Stamps Act 1972 is repealed.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

- (1) After Part 5, insert:

**PART 5A - TRADING STAMP SCHEMES
AND SIMILAR SCHEMES**

Definitions

60A. (1) In this Part:

"stamp" includes any coupon, voucher, token or similar device, but does not include money.

(2) For the purposes of this Part, a "trading stamp scheme" is an arrangement by which:

- (a) a purchaser of goods or services (in this Part called the "primary goods or services") is given one or more stamps as a consequence of the purchase; and
- (b) stamps obtained in that way are able to be traded:
 - (i) for additional goods or services (in this Part called the "secondary goods or services") supplied by persons under the arrangement; or

SCHEDULE 1 - AMENDMENTS - *continued*

- (ii) for some discount, concession or advantage in connection with obtaining goods or services so supplied.

Unlawful trading stamp schemes

60B. (1) A trading stamp scheme is unlawful unless:

- (a) the supplier of the secondary goods or services is a person carrying on a genuine business of supplying those goods by retail, or of supplying those services, otherwise than under the scheme; or
- (b) it is lawful according to subsection (2).

(2) A trading stamp scheme is lawful:

- (a) if, under the scheme, the supplier of the primary goods or services is the supplier of the secondary goods or services; or
- (b) if the stamps form part of, or are contained in, a newspaper or other periodical; or
- (c) if it is prescribed by the regulations as a lawful trading stamp scheme.

Other unlawful schemes

60C. (1) The regulations may declare a scheme of a kind described in the regulations to be an unlawful scheme.

(2) A regulation is not to be made for the purposes of this section except on the recommendation of the Commissioner, who must be satisfied that the scheme concerned:

- (a) operates in a way similar to a trading stamp scheme; and
- (b) is likely:
 - (i) to have an inflationary effect on retail prices; or
 - (ii) to promote unfair competition between a retailer who is a participant in the scheme and one who is not; or

SCHEDULE 1 - AMENDMENTS - *continued*

(iii) to be prejudicial, in any other respect, to fair trading or to the public interest.

(3) A declaration, in a regulation made for the purposes of this section, that it was made on the recommendation of the Commissioner is *prima facie* evidence that the recommendation was duly made.

(4) A scheme may be declared to be an unlawful scheme even though, while operating in a way similar to a trading stamp scheme, it employs some electronic means or other technique in addition to, or instead of, the issue of stamps.

(5) Except to the extent to which the scheme is rendered lawful by or under section 60B (2), a scheme declared by the regulations to be an unlawful scheme is to be regarded, for the purposes of this Part, as an unlawful trading stamp scheme.

Offences

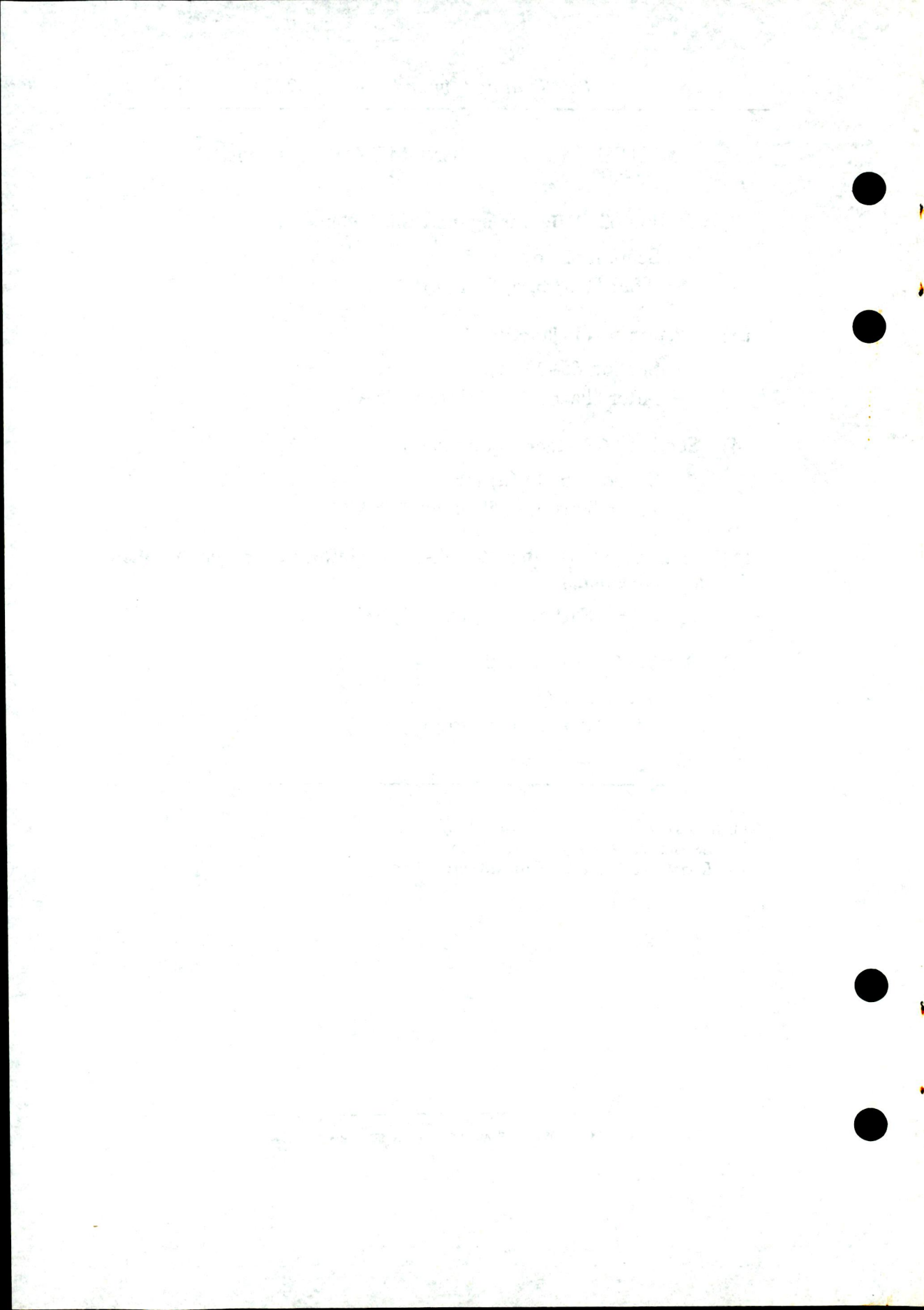
60D. A person must not:

- (a) act as a promoter of an unlawful trading stamp scheme; or
- (b) deliver or offer to deliver to another person any stamps or equipment intended for use in an unlawful trading stamp scheme; or
- (c) supply any goods or services in exchange for stamps or credits, or partly in exchange for stamps or credits, in accordance with an unlawful trading stamp scheme; or
- (d) publish an advertisement, or cause an advertisement to be published, which is intended or apparently intended:
 - (i) to induce persons to obtain, give out or trade stamps or credits in accordance with an unlawful trading stamp scheme; or
 - (ii) otherwise to further the promotion or operation of such a scheme.

SCHEDULE 1 - AMENDMENTS - *continued*

- (2) Section 62 (**Offences against this Act**):
Section 62 (6):
After "Part 3, 4, 5", insert ", 5A".
- (3) Section 65 (**Injunctions**):
Section 65 (1) (a):
After "Part 3, 4, 5", insert ", 5A".
- (4) Section 66 (**Other injunctions**):
Section 66 (1) (a) (i):
After "Part 3, 4, 5", insert ", 5A".
- (5) Section 67 (**Order to disclose information or publish advertisement**):
After "Part 3, 4, 5", insert ", 5A".
- (6) Section 71 (**Defences**):
Section 71 (1):
After "Part 3, 4, 5", insert ", 5A".

[*Minister's second reading speech made in -
Legislative Assembly on 12 October 1989
Legislative Council on 16 November 1989*]



FIRST PRINT

FAIR TRADING (AMENDMENT) BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Fair Trading Act 1987 with respect to trading stamp schemes and similar schemes. The Bill provides for the repeal of the Trading Stamps Act 1972, the provisions of which are superseded by those contained in the Bill.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day or proclaimed days.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Principal Act.

Clause 4 repeals the Trading Stamps Act 1972.

SCHEDULE 1 - AMENDMENTS

Trading stamp schemes and similar schemes

Schedule 1 (1) inserts a new Part 5A into the Principal Act. The new provisions may be summarised as follows:

Proposed section 60A provides definitions of "stamp" and "trading stamp scheme". The meanings are essentially the same as in the Trading Stamps Act 1972.

Fair Trading (Amendment) 1989

Proposed section 60B provides that (with the exceptions mentioned in subsection (2)) a trading stamp scheme is unlawful unless the person who redeems the stamps is carrying on a genuine business of providing the kinds of goods or services for which the stamps may be redeemed.

Proposed section 60C allows regulations to be made under the Principal Act declaring schemes that are similar in operation to trading stamp schemes to be unlawful. A regulation of this kind can only be made if the Commissioner for Consumer Affairs is satisfied that the scheme concerned is inflationary, or unfair to traders, or otherwise contrary to fair trading or the public interest.

Proposed section 60D creates certain offences in relation to the promotion, operation and advertisement of unlawful trading stamp schemes and the supply of equipment for use in such schemes. By the operation of proposed section 60C (5), the same offences are created in respect of a scheme declared unlawful by the regulations.

Injunctions

Schedule 1 (2) and (3) amend sections 62 and 65 of the Principal Act to enable a contravention, or an apprehended contravention, of the new Part 5A to be restrained by injunction in the Supreme Court. The amendment made by Schedule 1 (4) is consequential.

Disclosure of information

Schedule 1 (5) amends section 67 of the Principal Act. The effect is to enable the Supreme Court to order a person who has contravened the provisions of the new Part 5A to make certain public or private disclosures of information in relation to the person's activities.

Defences

Schedule 1 (6) amends section 71 of the Principal Act to afford miscellaneous defences to a person charged with an offence arising from a contravention of the new Part 5A.

FIRST PRINT

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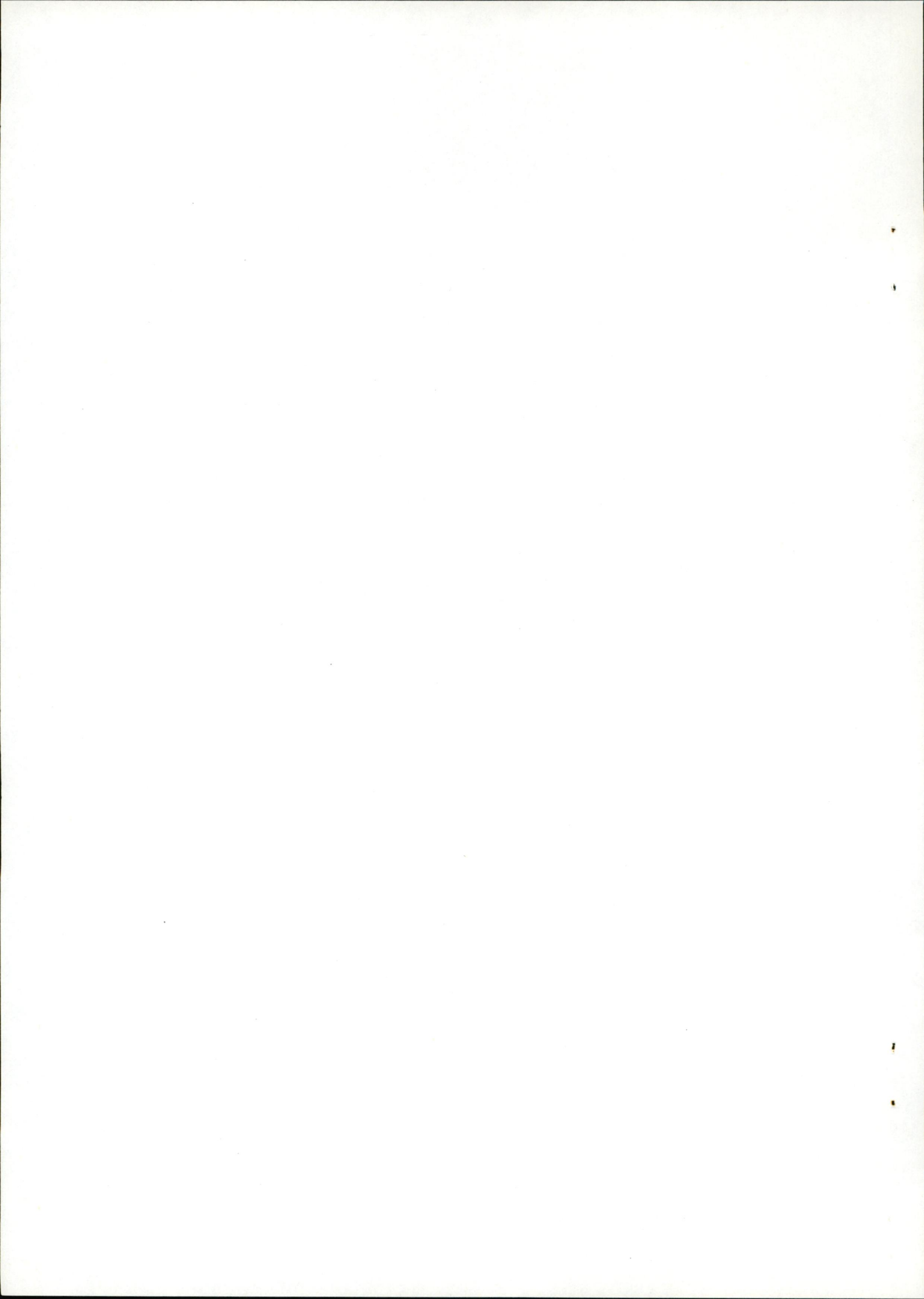
NEW SOUTH WALES



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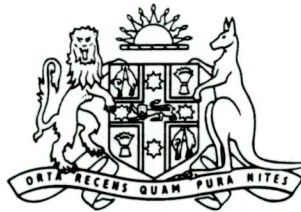
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SCHEDULE 1 - AMENDMENTS



FAIR TRADING (AMENDMENT) BILL 1989

NEW SOUTH WALES



No. , 1989

A BILL FOR

An Act to amend the Fair Trading Act 1987 with respect to trading stamp schemes and similar schemes; to repeal the Trading Stamps Act 1972; and for other purposes.

Fair Trading (Amendment) 1989

The Legislature of New South Wales enacts:

Short title

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(Sec. 3)

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SCHEDULE 1 - AMENDMENTS - *continued*

- (ii) for some discount, concession or advantage in connection with obtaining goods or services so supplied.

Unlawful trading stamp schemes

60B. (1) A trading stamp scheme is unlawful unless:

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- (b) it is lawful according to subsection (2).

(2) A trading stamp scheme is lawful:

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60C. (1) The regulations may declare a scheme of a kind described in the regulations to be an unlawful scheme.

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- (a) operates in a way similar to a trading stamp scheme; and
- (b) is likely:
 - (i) to have an inflationary effect on retail prices; or
 - (ii) to promote unfair competition between a retailer who is a participant in the scheme and one who is not; or

SCHEDULE 1 - AMENDMENTS - *continued*

- (iii) to be prejudicial, in any other respect, to fair trading or to the public interest.

(3) A declaration, in a regulation made for the purposes of this section, that it was made on the recommendation of the Commissioner is *prima facie* evidence that the recommendation was duly made.

(4) A scheme may be declared to be an unlawful scheme even though, while operating in a way similar to a trading stamp scheme, it employs some electronic means or other technique in addition to, or instead of, the issue of stamps.

(5) Except to the extent to which the scheme is rendered lawful by or under section 60B (2), a scheme declared by the regulations to be an unlawful scheme is to be regarded, for the purposes of this Part, as an unlawful trading stamp scheme.

Offences

60D. A person must not:

- (a) act as a promoter of an unlawful trading stamp scheme; or
- (b) deliver or offer to deliver to another person any stamps or equipment intended for use in an unlawful trading stamp scheme; or
- (c) supply any goods or services in exchange for stamps or credits, or partly in exchange for stamps or credits, in accordance with an unlawful trading stamp scheme; or
- (d) publish an advertisement, or cause an advertisement to be published, which is intended or apparently intended:
 - (i) to induce persons to obtain, give out or trade stamps or credits in accordance with an unlawful trading stamp scheme; or
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SCHEDULE 1 - AMENDMENTS - *continued*

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- (6) Section 71 (**Defences**):
Section 71 (1):
After "Part 3, 4, 5", insert ", 5A".
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