

FAIR TRADING AMENDMENT BILL 1994

EXPLANATORY NOTE

GENERAL OUTLINE

Objectives of the Legislation

This proposal seeks to amend the *Fair Trading Act 1989* (“the Act”) by inserting new provisions which relate to a range of matters, namely:

- To provide for interim prohibition orders in respect of the supply of dangerous or undesirable goods or services
- To extend the ambit of the Act to cover transactions in land
- To provide a statutory basis for enforceable codes of practice.
- To insert a number of miscellaneous amendments.

Reasons for the Bill

This Bill seeks to remedy certain perceived defects in the present Fair Trading Act, as well as up-dating the drafting of the Act generally to conform with the practices and policies of the Office of the Parliamentary Counsel.

The insertion of a provision relating to interim orders prohibiting or restricting the supply of dangerous or undesirable goods or services is designed to overcome problems occasioned by the potentially lengthy process presently necessitated by the requirements of the Act in relation to permanent prohibition orders issued under section 85. Other Australian jurisdictions have a statutory basis for such interim orders which are appropriate in circumstances of urgency.

The fact that the *Land (Fair Dealings) Act 1988* came into effect prior to the *Fair Trading Act 1989* meant that the latter Act did not cover transactions in land from a consumer protection perspective. Such provisions remained at that time with the former Act. However, in the intervening period, it has become clear that certain consumer transactions

may not be covered by either Act, given the range of matters which the Land (Fair Dealings) Act covers. There are certain transactions relating to representations in connection with subject to finance clauses in land contracts which potentially come within this category. Therefore, in order to remove such loopholes and to streamline and unify consumer protection legislation generally, it has been determined that land transactions should be subject to the ordinary and uniform requirements contained in the Fair Trading Act. In this way, land transactions will be on the same footing as those pertaining to goods and services generally and, consequently, the Fair Trading Act may be characterised as a code of consumer protection legislation.

Contemporary business regulation requires a certain degree of flexibility and codes of practice are emerging as a device which can be tailored to address issues arising in a wide variety of business regulation situations. Further, Consumer Affairs Ministers at their meeting in July 1992 agreed that all Australian jurisdictions would seek to have provisions in place on which enforceable codes of practice could be based.

Estimated Cost for Government Implementation

There will be no cost to Government in implementing the proposed legislation.

Consultation

In addition to the Department of Business, Industry and Regional Development (DBIRD), a wide range of consumer groups, including the Australian Federation of Consumer Organisations (AFCO) and the Queensland Consumers' Association, were consulted during the development of various proposals contained in the Bill.

The Business Regulation Review Unit within DBIRD supported the particular proposals on which it was consulted, especially with reference to codes of practice and interim prohibition orders in respect of dangerous goods and services.

Matters relating to statutorily enforceable codes of practice, given their relevance to the types of orders which may be made by Courts, were referred to the Litigation Reform Commission, as required by section 75 of the *Supreme Court of Queensland Act 1991*.

NOTES ON PROVISIONS

Clause 1 Sets out the short title to the Act.

Clause 2 States that this legislation amends the *Fair Trading Act 1989* (“the Act”).

Clause 3(1) Inserts definitions for the expressions, “code of practice”, “consumer”, “Court” and “interest”.

Clause 3(2) Amends the definition of the term “inspector”, the effect of which is to remove certain obsolete references to other legislation.

Clause 4 Inserts a new definition of the expression “consumer”, principally made necessary by the fact that the ambit of the Fair Trading Act will now be extended to cover transactions in land.

Clause 5 Inserts new provisions into section 28 of the Act in relation to meetings of the Consumer Safety Committee, namely:

- it reduces the quorum from three-quarters of the members to a simple majority.
- The Consumer Safety Committee is empowered to hold meetings by telephone, closed circuit television or any other type of communication.

Clause 6 Adds, in effect, the concept of value to the list of matters in respect of which it is prohibited to make a false or misleading representation concerning goods or services.

Clause 7 Inserts a new section 40A into the Act, in relation to proscribing false representations and other misleading or offensive conduct in relation to land, the effect of which provision is to transfer the substantive elements of section 3 of the to-be repealed *Land (Fair Dealing) Act 1988* to the Fair Trading Act. The types of conduct in relation to land transactions prohibited in this way are listed in the new provision.

Clause 8 Ensures that a trader who supplies and installs a product, for example, wall cladding, ceramic tiles etc, cannot evade responsibility under a warranty by offering a warranty on the goods only while not covering the installation.

Clause 9 Amends the heading to part 4 of the Act to reflect the fact that part 4 now also includes provisions relating to codes.

Clause 10 Amends section 82 of the Act to require suppliers at all levels of commercial transactions, for example, manufacturers, importers, wholesalers and retailers, to comply with prescribed information standards, whereas previously only retailers were covered by this requirement.

Clause 11 Allows for interim orders to be made prohibiting or restricting the supply of dangerous or undesirable goods or services and sets out the requirements and procedure to be followed for such orders.

Clause 12 Provides that a code of practice may be prescribed to regulate fair dealing between suppliers and consumers.

Clause 13 Provides that a breach of a prescribed code of practice does not constitute an offence against the Act.

Clause 14 Allows for an application to be made for an injunction in the event of a contravention of a prescribed code of practice.

Clause 15 Provides that a person who suffers loss or damage as a result of a contravention of an injunction granted under section 98 may recover damages in respect of that loss.

Clause 16 Allows consumers to seek compensation under section 100 in respect of loss or damage occasioned by a contravention of a code of practice.

Clause 17 Provides an entitlement to recover the costs of testing outlaid by the Commissioner for Consumer Affairs in determining whether goods or services are hazardous in cases where they are found so to be.

Clause 18 Provides that claims against product liability or product recall insurance are not to be prejudiced solely on the grounds that the insured suppliers have co-operated by providing information to the Minister, the Consumer Safety Committee or to a departmental inspector about the supply or possible supply of goods, for example, information which is compulsorily required pursuant to section 90 of the Act.

Clause 19 Provides that a certificate issued by the Commissioner under section 103A(5) in relation to certain matters concerning the examination of goods or services which have been tested is evidence of the matters contained in that certificate.

Clause 20 Repeals the *Land (Fair Dealings) Act 1988*.

SCHEDULE

MINOR AMENDMENTS

Clause 1 Omits the second sentence of section 2(2) of the Act, which provision has been rendered superfluous by the general provisions contained in the *Acts Interpretation Act 1954*.

Clause 2 Expands the definition of the expression “services” in section 5 of the Act to explicitly provide that the term includes “rights about, and interests in, real or personal property”.

Clauses 3—9 Insert appropriate headings to the specified sub-sections in section 5 of the Act.

Clause 10 Re-numbers those sub-sections in section 5 as separate sections.

Clause 11 Omits the requirement that members of the Consumer Affairs Council be appointed by Gazette notice, the effect of which is that they be appointed by Governor in Council.

Clause 12 Omits superfluous words from section 9(4) of the Act.

Clause 13 Removes the requirement that the chairperson of the Consumer Affairs Council be appointed by Gazette notice.

Clause 14 Removes the requirement from section 10(2)(c) that the Governor in Council in removing the chairperson of the Consumer Affairs Council from office does so by Gazette notice.

Clause 15 Amends section 11(3) of the Act. It specifies the times and situations when the deputy chairperson is to act as the chairperson of the Consumer Affairs Council.

Clause 16 Omits the requirement that deputy members of the Consumer Affairs Council are to be appointed by Gazette notice.

Clause 17 Amends section 12(3) of the Act and specifies the times and situation when a deputy member may attend a meeting and act as an appointed member of the Consumer Affairs Council.

Clause 18 Removes a requirement in section 13(1)(d) that the removal of a member of a Consumer Affairs Council from office by the Governor in Council be by Gazette notice.

Clause 19 Omits the requirement in section 13(3) that an appointment to a vacancy in the membership of the Consumer Affairs Council be made by the Governor in Council by Gazette notice.

Clause 20 Omits section 15 (“Validity of proceedings”), as the matters provided for in that section are now contained in the *Acts Interpretation Act 1954*, for example, section 26 of that Act.

Clause 21 In effect, omits the substantive provisions of section 16(2) of the Act, which matters are now provided for in legislation regulating the public service.

Clause 22 Omits section 22(2), which provision is now superfluous.

Clause 23 Omits the requirement for the Minister to appoint members of the Consumer Safety Committee by Gazette notice.

Clause 24 Omits superfluous words relating to the re-appointment of members of the Consumer Safety Committee.

Clause 25 Omits section 29 (“Validity of Acts”) as these matters are now covered by the general provisions in the *Acts Interpretation Act 1954*, for example, section 26 of that Act.

Clause 26 In effect, omits section 30(2) as the matters covered in that sub-section are now provided for in the legislation regulating the public service.

Clause 27 Simplifies the drafting of section 36(2).

Clauses 28—42 Provide for specific penalties in respect of particular offences as the general penalty provision in the Act, section 92(2) is to be repealed, pursuant to clause 53 of this Schedule.

Clause 43 Inserts a new definition of the expression “consumer” in section 57(1) for the purposes of division 4 of the Act, which definition relates to the definition of that expression in section 6.

Clauses 44—46 Provide specific penalties for separate offences under the listed sections.

Clause 47 Omits a penalty provision at the end of section 78(2) which should have been expressed to refer to section 78(1).

Clauses 48—51 Provide for specific penalties for offences against the listed sections in place of the general penalty.

Clause 52 Omits the penalty appearing at the end of section 91(2), which provision should have been expressed to refer to section 91(1).

Clause 53 Omits the general penalty provision in section 92(2) which is now superfluous as particular penalties have been prescribed in reference to specific offences throughout the Act.

Clause 54 Re-drafts the regulation making power contained in section 113.

Clause 55 Omits section 114 (“Repeals, savings, amendments”) which matters are now provided for in the *Acts Interpretation Act 1954*.