



New South Wales

Fair Trading Amendment Act 1998 No 55

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Fair Trading Amendment Act 1998 No 55

Act No 55, 1998

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. [Assented to 30 June 1998]

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

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

(Section3)

[1] Section 73A

Insert after section 73:

73A Enforcement of undertakings (TPA ss 87B and 87C)

- (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).
- (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.
- (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:
 - (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,
 - (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.
 - (d) any other order that the Court considers appropriate.

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

Omit section 78A (1). Insert instead:

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

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

Omit the subsections. Insert instead:

- (4) In proceedings before the Commercial Tribunal under this section, a certificate, purporting to have been signed by the Director-General and certifying as to the granting of approval to the application, is evidence of that approval.

[Minister's second reading speech made in—
Legislative Assembly on 29 April 1998
Legislative Council on 3 June 1998]