

Passed by both Houses



New South Wales

# Fair Trading Amendment Bill 2006

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2006*



New South Wales

## **Fair Trading Amendment Bill 2006**

Act No , 2006

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An Act to amend the *Fair Trading Act 1987* to make further provision with respect to the extraterritorial application of that Act, advertising, false billing, the powers of the Commissioner for Fair Trading and Advisory Councils; and for other purposes.

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*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

*Chairman of Committees of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Fair Trading Amendment Act 2006*.

**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.

**4 Amendment of Motor Vehicle Repairs Act 1980 No 71**

The *Motor Vehicle Repairs Act 1980* is amended as set out in Schedule 2.

**5 Repeal of Act**

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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## Schedule 1      Amendment of Fair Trading Act 1987

(Section 3)

### [1]    Section 5A

Insert after section 5:

#### 5A    Extraterritorial application

- (1) This Act is intended to have extraterritorial application in so far as the legislative powers of the State permit.
- (2) Without limiting subsection (1), this Act extends to conduct either in or outside the State that:
  - (a) is in connection with goods or services supplied in the State, or
  - (b) affects a person in the State, or
  - (c) results in loss or damage in the State.

### [2]    Section 19A Powers of search and seizure under search warrant

Insert after section 19A (6):

- (6A) The Director-General may order that anything seized by an investigator under the authority of a search warrant issued under this section be sold, destroyed or otherwise disposed of, if:
  - (a) the thing is no longer required to be retained as evidence in proceedings for an offence against this or any other Act, and
  - (b) the person who had lawful possession of the thing before it was seized cannot be found or does not wish to have the thing returned.
- (6B) If the thing is disposed of by way of sale, the proceeds of sale are to be paid to the Treasurer for payment into the Consolidated Fund.

### [3]    Section 20 Power to obtain information, documents and evidence

Insert at the end of section 20 (1) (b):

- , or
- (c) a matter that is the subject of a complaint received by the Director-General under section 9 (1) (c), or
  - (d) a matter that is the subject of an investigation by the Director-General under section 9 (2).

**[4] Section 20 (2)**

Insert “or the Director-General” after “An investigator”.

**[5] Section 20 (2) (a) and (b)**

Insert “or the Director-General” after “an investigator” wherever occurring.

**[6] Section 20 (6) and (7)**

Insert after section 20 (5):

- (6) Despite section 8 of this Act, the Director-General may only delegate his or her functions under this section to a person who is an officer.
- (7) If requested to do so by a person required to comply with a notice given under this section by a delegate of the Director-General, the delegate must provide the person with evidence of that person’s identity and evidence of the delegation that enables the delegate to give the notice.

**[7] Section 25B Membership**

Insert “not less than 6, but not more than” before “16 members” in section 25B (1).

**[8] Section 25B (2) (b)**

Insert “not less than 5, but not more than” before “15 persons”.

**[9] Part 2, Division 6, heading**

Omit “Trade” from the heading to Division 6 of Part 2.

Insert instead “Vehicle Industry”.

**[10] Part 2, Division 6**

Omit “Trade” wherever occurring from the Division.

Insert instead “Vehicle Industry”.

**[11] Section 25E Membership**

Insert “not less than 6, but not more than” before “16 members” in section 25E (1).

**[12] Section 25E (2) (b)**

Insert “not less than 5, but not more than” before “15 other persons”.

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**[13] Section 25H Membership**

Insert “not less than 6, but not more than” before “16 members” in section 25H (1).

**[14] Section 25H (2) (b)**

Insert “not less than 5, but not more than” before “15 persons”.

**[15] Section 25N Membership**

Insert “not less than 6, but not more than” before “16 members” in section 25N (1).

**[16] Section 25N (2) (b)**

Insert “not less than 5, but not more than” before “15 persons”.

**[17] Section 58 Assertion of right to payment for unsolicited goods or services, or for making entry in directory**

Omit “and not stating as prominently (or more prominently) that no claim is made to the payment, or to payment of the price or charge, as the case may be” from section 58 (5) (e).

Insert instead “, and the invoice or document does not contain a warning statement complying with subsection (5A)”.

**[18] Section 58 (5A)**

Insert after section 58 (5):

(5A) For the purposes of subsection (5) (e), a warning statement must:

- (a) be printed in upper case and a type not smaller than 18 point and be located at the top of the first page of the invoice or document, and
- (b) state “THIS IS NOT A BILL. YOU ARE NOT REQUIRED TO PAY ANY MONEY.”.

**[19] Section 58A**

Insert after section 58:

**58A Assertion of right to payment for unauthorised advertisements**

- (1) A person must not, in trade or commerce, assert a right to payment from another person for an advertisement relating to the other person, or the profession, business, trade or occupation of the other person placed in a publication, unless the person asserting the right knows, or has reasonable cause to believe, that the other person has authorised in writing the placement of the advertisement.
- (2) A person is not liable to make any payment to another person, and is entitled to recover by action in a court of competent jurisdiction against another person any payment made by the person to the other person, in full or part satisfaction of a charge for the placement of any such advertisement unless the first-mentioned person has authorised in writing the placement of the advertisement.
- (3) For the purposes of this section, a person is taken to assert a right to a payment if that person:
  - (a) makes a demand for the payment or asserts a present or prospective right to the payment, or
  - (b) threatens to bring any legal proceedings with a view to obtaining the payment, or
  - (c) places or causes to be placed on a list of debtors or defaulters the name of the person against whom the right to payment is being asserted, or threatens to do so, with a view to obtaining the payment, or
  - (d) invokes or causes to be invoked any other collection procedure, or threatens to do so, with a view to obtaining the payment, or
  - (e) sends any invoice or other document stating the amount of the payment or setting out the charge for the placing of the advertisement, and the invoice or document does not contain a warning statement complying with subsection (4).
- (4) For the purposes of subsection (3) (e), a warning statement must:
  - (a) be printed in upper case and a type not smaller than 18 point and be located at the top of the first page of the invoice or document, and

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- (b) state “THIS IS NOT A BILL. YOU ARE NOT REQUIRED TO PAY ANY MONEY.”.
- (5) For the purposes of this section, a person is taken to have given written authorisation for the placement of an advertisement only if:
- (a) a document authorising the placing of the advertisement has been signed by the person or by another person (not being the publisher) authorised by that person, and
  - (b) a copy of the signed document has been given to the person before the right to payment of a charge is asserted, and
  - (c) the document specifies:
    - (i) the name of the publication, the area of circulation of the publication and the total number of copies of the publication to be circulated, and
    - (ii) the name and business address of the publisher, and
    - (iii) the name and address of the person on whose behalf the publication is published, and
    - (iv) particulars of the advertisement, and
    - (v) the date or dates on which the advertisement is to appear in the publication, and
    - (vi) the amount of the charge for the placement of the advertisement or the basis on which the charge is, or is to be, calculated.
- (6) For the purposes of this section, an invoice or other document purporting to have been sent by or on behalf of a person is taken to have been sent by the person unless the contrary is established.
- (7) This section does not apply to a publication that is published by a person if the person is:
- (a) a large proprietary company or a subsidiary of such a company or a listed corporation or a subsidiary of such a corporation, or
  - (b) the publisher of any publication that has an audited circulation of 10,000 copies or more per week, or a person which is a related body corporate to such a person, or
  - (c) a servant of the Crown, a body corporate which represents the Crown or a local council, or
  - (d) any other person prescribed by the regulations.

- (8) In a proceeding against a person in respect of a contravention of this section, the burden lies on the defendant of proving that the defendant knew or had reasonable cause to believe that the other person had authorised the placement of the advertisement.
- (9) In this section:
- audited circulation* in relation to a publication, means the circulation of that publication as confirmed by the most recent audit of the publication by a body approved by the Director-General.
- large proprietary company* has the same meaning as in the *Corporations Act 2001* of the Commonwealth.
- listed corporation* has the same meaning as in the *Corporations Act 2001* of the Commonwealth.
- subsidiary* has the same meaning as in the *Corporations Act 2001* of the Commonwealth.
- (10) This section does not apply in relation to the making of an entry in a directory.

**[20] Section 93**

Insert after section 92:

**93 Disposal of property**

- (1) The Director-General may order that anything that the Director-General has obtained in the course of an investigation under this Act (other than anything seized by an investigator under the authority of a search warrant issued under section 19A) be sold, destroyed or otherwise disposed of, if:
- (a) the thing is not required to be retained as evidence in proceedings for an offence against this or any other Act, and
- (b) the person who had lawful possession of the thing before it came into the Director-General's possession cannot be found or does not wish to have the thing returned.
- (2) If the thing is disposed of by way of sale, the proceeds of sale are to be paid to the Treasurer for payment into the Consolidated Fund.

**[21] Schedule 5 Savings and transitional provisions**

Insert in appropriate order in the Schedule:

**11G Fair Trading Amendment Act 2006**

- (1) A person who, immediately before the commencement of Schedule 1 [10] to the *Fair Trading Amendment Act 2006*, held office as a member of the Motor Trade Advisory Council ceases to hold office on that commencement.
- (2) A person who ceases to hold office because of this clause is not entitled to any remuneration or compensation because of so ceasing to hold office.
- (3) A reference in any Act (other than this Act) or in any instrument made under any Act to the Motor Trade Advisory Council is to be read as a reference to the Motor Vehicle Industry Advisory Council established under this Act.

**[22] Schedule 5**

Insert at the end of clause 12 (1) to the Schedule:

*Fair Trading Amendment Act 2006* (but only to the extent that it amends this Act)

## **Schedule 2 Amendment of Motor Vehicle Repairs Act 1980**

(Section 4)

**[1] Section 4 Definitions**

Omit the definitions of *committee*, *Council* and *member* from section 4 (1).

**[2] Sections 9, 10, 13 and 84 (1) (b) and (c) and Schedule 1**

Omit the provisions.

**[3] Section 70**

Omit the section. Insert instead:

**70 Delegation**

The Authority may delegate the exercise of any function of the Authority under this or any other Act (other than this power of delegation) to any person employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable the Authority to exercise its functions.

**[4] Section 84 Protection from liability**

Omit “member,” from section 84 (1).

**[5] Section 84 (3)**

Omit “member or other” wherever occurring.

**[6] Schedule 5 Savings and transitional provisions**

Insert at the end of clause 1 (1) to the Schedule:

*Fair Trading Amendment Act 2006* (but only to the extent that it amends this Act)

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[7] **Schedule 5, Part 5**

Insert at the end of the Schedule:

**Part 5 Provision consequent on enactment of Fair Trading Amendment Act 2006**

**14 Provision consequent on Fair Trading Amendment Act 2006**

- (1) In this clause, *former Council* means the Council of the Motor Vehicle Repair Industry Authority as constituted under section 9 immediately before the repeal of that section by the *Fair Trading Amendment Act 2006*.
- (2) A person who, immediately before the repeal of section 9 of this Act by the *Fair Trading Amendment Act 2006*, held office as a member of the former Council ceases to hold office on that repeal.
- (3) A person who ceases to hold office because of this clause is not entitled to any remuneration or compensation because of so ceasing to hold office.
- (4) Subject to the regulations, a reference in any Act (other than this Act) or in any instrument made under any Act to the former Council is to be read as a reference to the Motor Vehicle Industry Advisory Council established under the *Fair Trading Act 1987*.