

[Act 1999 No 23]



New South Wales

Year 2000 Information Disclosure Bill 1999

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The object of this Bill is to protect persons from civil liability for certain statements concerning the processing of dates beyond 1 January 2000 and, for that purpose, to exempt certain contracts, arrangements and understandings from the operation of certain restrictive trade practices provisions of the *Competition Code of New South Wales*. The Bill is complementary to similar legislation enacted, or to be enacted, in the Commonwealth and in other States and Territories.

* Amended in committee—see table at end of volume.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act is taken to have commenced on 27 February 1999. That date was the date of commencement of the *Year 2000 Information Disclosure Act 1999* of the Commonwealth.

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 provides that the proposed Act is to bind the Crown.

Part 2 Year 2000 disclosure statements

Clause 5 recognises two kinds of Year 2000 disclosure statement, namely, an original Year 2000 disclosure statement and a republished Year 2000 disclosure statement.

Clause 6 defines an original Year 2000 disclosure statement to be a statement, made after the commencement of the proposed section and before 1 July 2001:

- (a) that relates to Year 2000 processing, and
- (b) that states that it is such a statement, and
- (c) that gives notice of the fact that such a statement attracts the protection of the proposed Act and of the corresponding laws of other jurisdictions.

A particular form of words (identical to the form prescribed by the corresponding Commonwealth Act) is declared to satisfy the requirements of the proposed section as to the form in which such a statement must be made.

Clause 7 defines a republished Year 2000 disclosure statement to be a statement made after the commencement of the proposed section before 1 July 2001, being a statement that consists of the republication, retransmission, reproduction, recital or reading aloud of an original Year 2000 disclosure statement.

Part 3 Protection from civil liability

Clause 8 is the first of two core provisions in the proposed Act. It states that no civil action lies against a person for or in relation to any matter or thing arising out of, or incidental to, the making of a Year 2000 disclosure statement and that such a statement is not admissible as evidence against a person in a civil action to which the person is a party.

Clause 9 sets out certain circumstances in which the rules in proposed section 8 do not apply. Briefly, those circumstances are as follows:

- (d) where the statement is deliberately false or misleading,
- (e) where the statement is made under a contractual obligation and the civil action relates to the contract,
- (f) where the statement is made to a consumer in circumstances giving rise to a consumer claim under Commonwealth or State consumer protection legislation,
- (g) where the civil action consists of proceedings for injunctive or declaratory relief, proceedings for the enforcement of statutory duties or proceedings for infringement of copyright, trade marks, designs or patents.

The clause also sets out certain circumstances in which the rules in proposed section 8 do not apply.

Clause 10 provides that the defence afforded by proposed clause 8 applies only if the defendant gives notice to the plaintiff of the grounds of that defence before pleading it.

Clause 11 deals with the circumstances in which a corporation and its directors, employees and agents, may be taken to have knowledge that a particular statement was false or misleading.

Part 4 Presumption against amendment of contracts

Clause 12 provides that the making of a Year 2000 disclosure statement is taken not to amend, alter or vary a contract unless the contract so provides or the parties to the contract so agree and that such action cannot affect the operation of a condition or warranty that is taken to form part of a contract by virtue of the provisions of another Act.

Part 5 Exemption from section 45 of Competition Code

Clause 13 is the second core provision of the proposed Act. It excludes from the operation of section 45 of the *Competition Code of New South Wales* contracts, arrangements and understandings entered into, or proposed to be entered into, before 1 July 2001 in relation to Year 2000 processing. The prohibitions against certain restrictive trade practices will consequently not apply to any such contract, arrangement or understanding.

Part 6 Miscellaneous

Clause 14 empowers the Governor to make regulations for the purposes of the proposed Act.