

[Act 1997 No 82]



New South Wales

Fair Trading Legislation Amendment Bill 1997

Explanatory note

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

Overview of Bill

- 1 The object of this Bill is to amend and consequentially repeal legislation administered by the Minister for Fair Trading so as to provide for the further integration of functions and services under the legislation within the Department of Fair Trading.
- 2 By a combination of past administrative action and past legislative amendment, various agencies within the administration of the Minister for Fair Trading have been effectively integrated into the Department of Fair Trading.
- 3 However, various statutory structures and entities continue to operate independently under the legislation by which they were created.

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

- 4 The Bill furthers the process of integration by:
- (a) transferring statutory functions that are presently exercised by various statutory bodies to the Director-General of the Department, and
 - (b) abolishing those bodies and establishing advisory councils with advisory functions, and
 - (c) abolishing various independently structured statutory accounts and replacing them with new accounts within the Departmental framework.
- 5 The Bill also:
- (a) creates a Fair Trading Advisory Council, which is to have a general advisory role, and
 - (b) restates the power of the Director-General to delegate functions, in light of the new arrangements, and
 - (c) makes various minor amendments, including amendments by way of statute law revision.
- 6 The Bill achieves these results by amending the following Acts:
- *Fair Trading Act 1987*
 - *Conveyancers Licensing Act 1995*
 - *Home Building Act 1989* (formerly *Building Services Corporation Act 1989*)
 - *Motor Dealers Act 1974*
 - *Property, Stock and Business Agents Act 1941*
 - *Valuers Registration Act 1975*
- and by repealing the *Property Services Council Act 1990*.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clauses 3-8 are formal provisions giving effect to the Schedules of amendments.

Clause 9 repeals the *Property Services Council Act 1990*. This Act established the Property Services Council with advisory functions and substantive functions (some of which are exercisable by the General Manager). The advisory functions will be exercised by the Property Services Advisory Council to be established under the *Fair Trading Act 1987* as to be amended by the proposed Act, while the substantive functions will be exercised by the Director-General.

Schedule 1 Amendment of Fair Trading Act 1987

In summary, the amendments to that Act proposed by this Schedule are as follows:

- (a) to establish the following advisory councils:
- Fair Trading Advisory Council
 - Motor Trade Advisory Council
 - Property Services Advisory Council
 - Home Building Advisory Council
- (b) to restate the power of the Director-General to delegate functions, so as to make express reference to other legislation under which the Director-General has functions, to simplify the power to delegate by relying on the delegation provisions contained in section 49 of the *Interpretation Act 1987*, and to empower sub-delegation as contemplated by that section.

Schedule 2 Amendment of Conveyancers Licensing Act 1995

In summary, the amendments to that Act proposed by this Schedule are as follows:

- (a) to transfer the exercise of functions of the Property Services Council to the Director-General
- (b) to make amendments consequential on amendments proposed to be made to the *Property, Stock and Business Agents Act 1941*.

Schedule 3 Amendment of Home Building Act 1989

The *Home Building Act 1989* was formerly called the *Building Services Corporation Act 1989*.

In summary, the amendments to that Act proposed by this Schedule are as follows:

- (a) to abolish the Home Building Advisory Council
- (b) to establish a Building Insurance Fund to hold money received by the Fair Trading Administration Corporation in connection with BSC Insurance.

Schedule 4 Amendment of Motor Dealers Act 1974

In summary, the amendments to that Act proposed by this Schedule are as follows:

- (a) to transfer the exercise of functions of the Motor Dealers Council to the Director-General
- (b) to abolish the Motor Dealers Council.

Schedule 5 Amendment of Property, Stock and Business Agents Act 1941

In summary, the amendments to that Act proposed by this Schedule are as follows:

- (a) to transfer the exercise of functions of the Property Services Council (and its General Manager) to the Director-General
- (b) to abolish:
 - Property Services Council Statutory Interest Account
 - Property Services Council Compensation Fund
 - Property Services Council Administration Account
- (c) to establish:
 - Property Services Statutory Interest Account
 - Property Services Compensation Fundin the accounting records of the Department of Fair Trading

- (d) to abolish administration fees that are currently payable to the Property Services Council Administration Account, consequent on the proposed abolition of that Account
- (e) to rewrite provisions relating to:
 - claims against the Compensation Fund
 - examination of accounts of licensees and former licensees.

Schedule 5 [15] enables regulations to be made to require information to be furnished in relation to trust accounts kept under the *Property, Stock and Business Agents Act 1941*. This will assist in establishing whether obligations regarding payment of interest on trust accounts are being fully complied with.

Schedule 6 Amendment of Valuers Registration Act 1975

In summary, the amendments to that Act proposed by this Schedule are to transfer the exercise of functions of the Property Services Council (and its General Manager) to the Director-General.