

Ref: FTMIN19/73

Statement of Regulatory Intent

Fair Trading Act 1987 – Section 86AB – Provision of information about complaints not affected by non-disclosure agreement

This is a Statement of Regulatory Intent regarding the compliance and enforcement approach of NSW Fair Trading to section 86AB of the *Fair Trading Act 1987* (the Act). This section commenced on 28 February 2019. This reform is part of the Better Business Reforms package.

Section 86AB of the Act provides that any terms in a non-disclosure agreement are void to the extent that they limit a consumer's ability to provide details of a complaint to NSW Fair Trading about the supply of goods or services. Any terms in non-disclosure agreements entered into prior to 28 February 2019 will also be void in so much as they limit a consumer's right to lodge a complaint.

Non-disclosure agreements entered into from 28 February 2019 will require suppliers to inform consumers of their ongoing right to lodge a complaint with Fair Trading. Penalties apply for failure to disclose a consumer's rights before, or at the time of, entering into the agreement. The maximum penalty is 200 penalty units (\$22,000) for a corporation or 40 penalty units (\$4,400) for any other case).

This amendment aims to increase transparency in the market and assist in the enforcement of NSW consumer protection laws.

Transitional arrangements apply from 28 February 2019 to 1 September 2019

Fair Trading recognises that businesses will need time to adapt their operational requirements to the new law, including updating non-disclosure agreement templates, compliance manuals and staff training.

To help businesses to adapt, Fair Trading will take an educational approach to compliance and enforcement focused on educating businesses and raising consumer awareness. This approach will apply for six months.

This means that, during this period, Fair Trading will not penalise businesses that have been identified as failing to comply with the requirements of section 86AB. However, Fair Trading expects businesses who are made aware of the new law to take appropriate steps to inform their customers of their right to lodge a complaint and commence changes to their operations.

More information

Fair Trading will evaluate and assess appropriate enforcement action according to the regulatory compliance and enforcement approach as set out in its [Compliance and Enforcement Policy](#).

More information about this reform and the Better Business Reforms is available on the Fair Trading website at <http://www.fairtrading.nsw.gov.au>

