TRADE PRACTICES AMENDMENT BILL 1980

Date Introduced: 21 April 1980
House: House of Representatives
Presented by: Hon. R.J. Hunt, M.P., Minister for Transport

Short Digest of Bill

Purpose

To provide more effective safeguards for Australia's shippers in the negotiation of the terms and conditions of our outwards liner shipping services.

Background

Most of Australia's overseas liner cargoes are carried by vessels operating within the framework of shipping Conferences. A shipping Conference is a group of vessel operators who carry cargo on the same or similar routes and agree to charge the same rates. The existence of Conferences means that shippers are provided with more regular services at predictable freight rates. Conferences have operated to and from Australia since the 1880s and 17 such Conferences exist at present. Conferences provide shipowners with cartel-type power.

Existing legislation is contained in Part X of the Trade Practices Act, 1974 (the Act). Part X provides for the exemption of liner shipping from the general provisions of Part IV in exchange for certain obligations. These include the requirement to register details of outwards Conference agreements with the Government. Shipping lines can also be required to give the Minister an undertaking to negotiate the terms and conditions of the carriage of liner cargoes with the designated shipper body, the Australian Shippers' Council. In the event that the provisions of Part X are not complied with, the Governor-General in Council may disapprove a Conference agreement or "declare" an individual shipowner not to be party to a Conference Agreement. The effect of disapproval or "declaration" is to render a shipowner liable to a fine.

In March 1977 the then Minister for Transport, Mr. Nixon, announced a major review of Part X as certain deficiencies had become apparent. The review report was tabled in Parliament in November 1977 and an interdepartmental committee was established to report to the government...
on the review. Following extensive discussions with interested parties it was announced in May 1979 that legislation would be introduced to amend the existing provisions relating to overseas cargo shipping.

The proposed amendments do not alter the general policy of the Government which is to provide a legislative framework within which shippers and shipowners may hold negotiations. The amendments to Part X have the aim of strengthening the shippers' negotiating position. It is hoped this will be achieved by increasing the obligations on outwards liner shipping to provide the Government with information on developments in the industry.

Main Provisions

Clause 4 repeals section 112 of the Act which contained legal uncertainties. It is replaced with a new section 112 which exempts the conduct of all shipowners from the provisions of Part IV (ss.46-51 dealing with restrictive trade practices) other than section 45D (secondary boycotts). The exemption applies only to conduct related to the carrying on of the business of overseas cargo shipping. The exemption does not extend to severable land-based activities engaged in by a shipowner.

Clause 5 inserts a new section 114A to provide a penalty ($1,000) for a person who promotes the business of a shipowner who has failed to comply with section 114. Section 114 requires a shipowner to be represented in Australia by an agent and to provide an address for legal services.

Clause 6 repeals and replaces s.115 to substitute a Director of Shipping Agreements for the present Clerk of Shipping Agreements. The Director is appointed under normal public service procedures and not, as is the present Clerk, by the Governor-General. A number of consequential amendments have been made because of this new Director position (see clauses 3, 7-11, 14 and 16).

Clause 12 inserts section 121A to allow, in certain circumstances, access by the Trade Practices Commission (TPC) to Conference agreements. The TPC may require production of a document where it has reason to believe that examination of the document would be of assistance to it in the performance of its duties, powers and functions under the Act. If such access is obtained, TPC officers will face confidentiality provisions similar to those applying to the Director of Shipping Agreements.

Clause 13 expands section 122 to require a party to
a Conference agreement to furnish an annual report to the Minister on shipping activities in the past year and expectations for the coming year. Furthermore the Minister is to be advised of the intention by a party to a Conference to negotiate with shippers outside the designated shipper body. It is proposed that Regulations will specify that this will only be required if the commodity concerned amounts to approximately 5% or more of the trade.

Clause 17 amends sub-section 128(1) to require the same type of information from individual shipowners as clause 13 requires from Conference members.

Clause 14 amends section 123 to provide that before an order may be made to disapprove a Conference agreement, the Minister or his representative is required to hold consultations with shipowners and other interested parties. However the requirement to refer a matter to the Trade Practices Tribunal prior to disapproval is repealed.

Clause 18 amends section 129 to require consultations, similar to those required by clause 14, to be undertaken before the Governor-General may "declare" a shipowner. Clauses 15 and 19 amend sections 124 and 130 to increase the penalties for certain actions taken following the disapproval of an agreement or the declaration of a shipowner (from $50,000 to $100,000).

Clause 20 inserts three new divisions into the Act.

Division 4A (ss.131A-131G) provides safeguards for shippers in negotiating a loyalty agreement with shipowners. Under a loyalty agreement a shipper is given contract freight rates which are lower than non-contract rates in return for shipping all his goods with the contracting shipowner. The new Division details the actions of shipowners that enable the Governor-General to disallow loyalty agreements. The provisions require consultation prior to any disallowance.

Division 4B (s.131H) requires designated shipper bodies to provide the Minister with additional annual reports to those already supplied. These are expected to enable the Minister to assess the industry from the shipper's viewpoint.

Division 4C (ss.131J-131R) provides for action to be taken against vessels owned by foreign Governments if this becomes necessary in order to protect Australia's trading interests. Ships owned by foreign Governments generally perform a useful competitive service but the lack of commercial restraints means that such shipping could be
used to disrupt orderly Conference services. In the unlikely event of this happening the Division enables the prohibition of the carriage of Australian goods on such vessels.