TRADE PRACTICES (BOYCOTTS) AMENDMENT BILL 1980

Date Introduced: 13 May 1980
House: House of Representatives
Presented by: Hon. R.V. Garland, Minister for Business and Consumer Affairs

Short Digest of Bill

Purpose
To amend the secondary boycotts provisions of the Trade Practices Act 1974.

Background
In March this year the Transport Workers Union and Amoco Aust. Ltd. made an alleged agreement to stop supplying Leon Laidley Pty. Ltd. with petroleum. This followed a secondary boycott of Leon Laidley Pty. Ltd. by the TWU and a subsequent injunction brought against the TWU by Leon Laidley Pty. Ltd. in the Federal Court.

This bill seeks to prevent such collusion between union and companies.

Main Provision

Clause 3 extends the operation of the Trade Practices Act by amending s.6. The constitutional validity of this Act is based primarily on the corporations power of the Commonwealth. This clause seeks to allow the extension of the operation of s.45D to prohibit secondary boycotts of non-corporate persons. This would allow the section to have much wider operation if other constitutional powers, apart from the corporations power, could be relied on. Clause 4 amends s.45D of the Principal Act to enable that section to cover situations in which the 'target' of a secondary boycott is not a corporation.

Clause 5 inserts a new s.45E to prevent a person who has been accustomed, or is under an obligation to supply or acquire goods or services from a second person from making a contract, arrangement or understanding with a third person if such a contract contains a provision having one of two purposes. The first purpose is preventing or hindering dealings between the first and second persons. The second is allowing the continuation of supply or acquisition but with new conditions as to the persons to whom or the manner
in which or the terms upon which the second person may supply any goods or services.

Proposed sub.s.45E(2) allows an exception where the second person has consented in writing to the contract arrangement or understanding.

Sub-section 45E(3) provides that one of the people involved in the prohibited action has to be a corporation. This is to ensure the constitutional validity of s.45E. However the provision can be read as applying to non-corporations if constitutionally valid under another head of power (see proposed paragraph 6(2) (eb)). Clause 6 inserts a new s.46UA which gives the Federal Court, on the application of one of the parties or the Minister, a discretion to stay the operation of an injunction that has been imposed under s.45D or s.45E, if it considers that to do so would facilitate settlement of the dispute by conciliation. The proposed new Division 5A of the Conciliation and Arbitration (Boycotts) Amendment Bill 1980 gives the Conciliation and Arbitration Commission the power to conciliate over disputes arising from the operation of s.45D or s.45E of the Trade Practices Act. A court, tribunal or authority of a State or Territory may also be given the power to conciliate under a State Act in respect of a dispute arising from the operation of s.45D or s.45E. There is no indication at present of any of the States passing such legislation.

Finance, Industries, Trade & Development Group

16 May 1980

LEGISLATIVE RESEARCH SERVICE