TRADE PRACTICES AMENDMENT BILL 1978

Date Introduced: 13 April 1978
House: House of Representatives
Presented by: Hon. W.C. Fife, M.P.,
Minister for Business and
Consumer Affairs

Short Digest of Bill

Purpose

To amend the Trade Practices Act 1974 in three main respects: first, joint venture pricing of services is exempted from the absolute prohibition on price fixing; second, a specific prohibition on false or misleading job advertisements is included; third, the consumer protection provisions are extended to cover manufacturers and importers of goods.

Background

The Trade Practices Act 1974 and its operation was extensively investigated by the Swanson Review Committee which reported to the Government in August 1976. The Report recommended substantial amendments to the Act. The majority of the recommendations were acted on and came into effect as the Trade Practices Amendment Act on 1 July 1977. Since this time the Government has had, according to the Second Reading Speech, "a continuing program of study and monitoring of the effect of that Act on conduct in the Australian market place". Further amendments to the Act were introduced in November 1977. These related to the consumer protection provisions of the Act. Now the Government has introduced further amendments. The inclusion of provisions covering manufacturers and importers of goods was recommended by the Swanson Committee but had not previously been acted upon. Other provisions are inserted to rectify problems that have arisen in the Act's operation and administration.

Provisions

The Bill contains amendments to both the restrictive trade practices provisions (Part IV) of the Act and the consumer protection provisions (Part V). In addition there are a number of amendments to other parts of the Act.

The important change to Part IV of the Act is contained in clause 8 of the Bill. This amends s.45A(2)(b) of the Act by providing
that a joint venture for the supply of services is exempted from the absolute prohibition on price-fixing agreements. This was amended in order to be consistent with s.45A(2)(a) relating to a joint venture for the supply of goods. The amendment is made retrospective to 1 July 1977.

Clauses 11 and 14 of the Bill make significant amendments to Part V of the Act. Clause 11 inserts s.53B which makes a corporation liable for any false or misleading statement in an advertisement relating to employment. Clause 14 inserts "Division 2A - Actions against Manufacturers and Importers of Goods". This insertion extends the reach of the Act to cover manufacturers and importers who in most cases were not caught by the existing consumer protection provisions. Actions can now be brought against manufacturers and importers in respect of supplying goods not reasonably fit for that purpose (new s.74B), not corresponding with the descriptions (new s.74C), of unmerchantable quality (new s.74D), not corresponding with samples (new s.74E), not providing facilities for spares and parts (new s.74F) and not complying with an express warranty (new s.74G). In addition, a seller can bring an action against a manufacturer or importer in cases where a consumer has suffered damage as a result of a breach of a warranty (new s.74H). The liability which may arise through the operation of this new Division 2A cannot be excluded or modified (new s.74K).

Other amendments made by the Bill include the following:

- the Minister may consent to a member of the Trade Practices Commission engaging in paid employment outside the duties of his office (clause 6)
- the Minister may appoint a person to act as Registrar or Deputy Registrar of the Trade Practices Tribunal (clause 7)
- amendment to the definition of "exclusionary provision" in s.4D (clause 4)
- minor changes to the provisions relating to authorisation and notification (clauses 16-19).

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