



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES
TRADE PRACTICES AMENDMENT
(PERSONAL INJURIES
AND DEATH) BILL 2003

Consideration of Senate Message

SPEECH

Tuesday, 2 December 2003

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date Tuesday, 2 December 2003
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Questioner
Speaker Cox, David, MP

Source House
Proof No
Responder
Question No.

Mr COX (Kingston) (4.26 pm)—Labor believes that this House should accept the amendments to the Trade Practices Amendment (Personal Injuries and Death) Bill 2003 which have been passed by the Senate. The bill is part of a package of measures introduced following the rapid increase in public liability and professional premiums. Its intention is to prevent the recovery of damages where conduct breaches the unfair practices provisions of the Trade Practices Act and results in personal injury or death. The most important consumer protection provision in the act is section 52, which prohibits corporations from engaging in misleading and deceptive conduct. The rationale for the amendment is that, following the state tort law reforms, plaintiff lawyers will structure their claims to come within the TPA to avoid the caps and thresholds which apply under state law. In other words, the government feels that plaintiffs will engage in forum shopping.

Labor has consistently stressed the need for Commonwealth action to support the efforts of the state and territory governments to reduce public liability premiums. Labor has always emphasised, however, that any reforms must reflect the need to ensure that consumers are adequately protected and that the legislative response is proportionate to the size of the problem. If this bill is enacted in its present form, a company that misleads a consumer in a way that causes injury or death will not be liable to pay any compensation under the Trade Practices Act. Labor does not believe that this bill is a proportionate response to the possibility of forum shopping. Claims under the TPA for personal injury are rare. The act can in no way be blamed for any blow-out in costs from personal injury litigation.

Notwithstanding this fact, the government has argued that the toughening of negligence laws by the states will encourage plaintiffs to explore using the Trade Practices Act. The government argues that it is easier to bring an action under the TPA than under negligence law because strict liability applies. The major problem with this argument is that section 52 has been a strict liability provision since 1974, when the Trade Practices Act was introduced for the first time. If it were significantly easier to bring claims under the TPA than under negligence law, surely we would have seen more use of it as the basis for personal injury claims. An action under section 52 for misleading and deceptive conduct is different to an action in negligence, but there is no evidence that it is easier.

There are a number of reasons why Labor believes that it is necessary for the TPA to cover personal injury and why compensation cannot simply be left to the law of negligence. Firstly, the Senate committee investigating the bill heard evidence of several plausible scenarios where the removal of the right to bring an action under part V, division 1, could result in consumers being left without a remedy. Examples included cases involving defective products or where defendants had destroyed crucial evidence. The Trade Practices Act serves as a vital safety net in these rare cases.

More generally, witnesses such as the ACCC, the Australian Consumers Association and even the Law Council of Australia emphasised the contribution made by the Trade Practices Act to creating a culture of care in the Australian business community. Fundamentally, Labor does not believe that there is any reason to completely excuse companies who engage in misleading and deceptive conduct that causes personal injury or death from the consequences of their actions.

Nevertheless we do recognise that there is a theoretical possibility that claims that would otherwise be brought under negligence law may be brought under the TPA as a result of the state reforms. Labor do not believe that this bill is a proportionate response to the size of that problem. In Labor's view, the key problem is not that it is easier to bring an action under the TPA than under negligence law; rather, it is that personal injury damages are capped under state and territory law but not under the Trade Practices Act. If forum shopping is to emerge at some future stage, this will be the driver.

Labor believes that the amendments moved by the Senate address this danger. These amendments are based on a proposal by the ACCC. They ensure that the damages awarded for personal injury under the unfair practices provisions of the Trade Practices Act are aligned with those available under the relevant state or territory civil

liability laws. These amendments have the benefit of reducing the motivation for plaintiffs to seek to evade restrictions under state and territory law while still providing consumers with a measure of protection under the Trade Practices Act and maintaining incentives for companies to minimise risks. The Senate amendments represent a proportionate response to the possibility of forum shopping and should be supported by the House.