
Policy developments

Financial sector reform

In June 1998 the Parliament passed a number of Bills designed to implement many of the recommendations of the Financial System Inquiry. The various pieces of legislation came into effect on 1 July 1998. Among other things, they introduce new regulatory arrangements in the financial sector.

Consumer protection regulation

The Financial Sector Reform (Amendment and Transitional Provisions) Act establishes the Australian Securities and Investment Commission (ASIC) as the Commonwealth agency responsible for consumer protection and market integrity in the financial services sector. ASIC is formed from the existing Australian Securities Commission, but has been given additional functions and funding.

Consumer protection provisions similar to those in Parts IVA and V of the Trade Practices Act have been included in the Australian Securities and Investments Commission Act (ASIC Act) by the Financial Sector Reform (Consequential Amendments) Act. The consumer protection provisions in the ASIC Act apply to the supply or possible supply of financial services, and ASIC will be responsible for enforcing those provisions.

At the same time new provisions have been inserted into the Trade Practices Act. These limit the extent to which the consumer protection provisions of the Act will apply to financial services, and therefore limit the ACCC's role in consumer protection in this sector. New ss 51AAB and 51AF provide that ss 51AA and 51AB (unconscionable conduct) and all provisions in Part V (consumer protection) will not apply to the supply or possible supply of financial services.

For the purposes of both the ASIC Act and the Trade Practices Act, a financial service means 'a service that consists of providing a financial product, or is otherwise supplied in relation to a financial product'. Financial products are:

- facilities for taking money on deposit ... made available in the course of conducting a banking business;
- securities;
- futures contracts;
- contracts of insurance;
- retirement savings accounts; and
- superannuation interests.

Credit and foreign exchange contracts are not included in the definition of financial services, and will therefore continue to be covered by the Trade Practices Act rather than the ASIC Act.

The recent small business amendments to the Trade Practices Act (s. 51AC — unconscionable conduct in business transactions, and Part IVB — industry codes) are not mirrored in the ASIC Act. They will continue to apply to the whole of the financial services sector through the Trade Practices Act.

The State and Territory Fair Trading Acts will also continue to apply to the financial services sector.

In addition to the functions that have been assigned to it under the ASIC Act, the consumer protection functions of the former Insurance and Superannuation Commission and Australian Payments System Council have also been transferred to ASIC.

Competition regulation

The reforms passed by the Parliament do not change the current regulatory arrangements for competition matters in the financial services sector. Part IV of the Trade Practices Act (the competition provisions) will continue to apply to both the financial services sector and to the general economy. The ACCC will continue to administer these provisions.

ACCC/ASIC cooperation

On 17 July 1998 the Commission and ASIC signed a cooperation agreement whereby the two agencies will refer complaints to each other if appropriate, exchange information that is permitted by law and, if required, undertake joint responses to problems in the market. Complaints may be referred, for example, if the conduct complained of involves both financial and non-financial services or if it involves both consumer protection and competition issues. Copies of the agreement are available from the ASIC Infoline on 1300 300 630 and the ACCC's website.

Prudential regulation

Before 1 July 1998 prudential regulation in the financial services sector was institutionally based, with separate agencies regulating the activities of each class of institution. The Australian Prudential Regulatory Authority Act, however, establishes a single agency with responsibility for financial safety across all industries requiring prudential regulation — deposit-taking, life and general insurance, and superannuation.

The Australian Prudential Regulatory Agency (APRA) came into existence on 1 July 1998, and it immediately has responsibility for prudential regulation of insurance companies, superannuation funds, and banks.

Prudential regulation of credit unions and building societies is currently the responsibility of State and Territory Governments. However, it is understood that negotiations are currently proceeding with a view to transferring that prudential function to APRA in the near future.

Other changes

Other changes that resulted from the passage of this package of financial sector legislation include:

- the Reserve Bank of Australia (RBA) has been given a new regulatory role in respect of payments systems;
- the RBA has also been given increased oversight and regulatory control over purchased payment facilities (including travellers' cheques, stored value cards, and stored value systems for use over the Internet);
- changes have been made to the manner in which industry levies are imposed and collected; and
- the rules about shareholdings in financial sector companies have been clarified and amended.

Country of origin amendments

On 15 July 1998 the Commonwealth Government passed the Trade Practices Amendment (Country of Origin Representations) Bill 1998, dealing with country of origin labelling on goods.

The provisions will come into force following Royal Assent and enactment by the Government, which is expected shortly.

The changes are contained in a new division of Part V of the Act — Division 1AA — comprising ss 65AA to 65AN.

The country of origin representations amendments are in the form of defences to allegations of breaches of ss 52 or 53(eb). A person seeking to rely on the defence bears the evidentiary burden of proving the substance of the claimed defence. The defences relate only to country, not place, of origin.

Made in ...

The defence to be satisfied by general representations about the country of origin of goods (e.g. 'Made in Australia', 'Made in Hong Kong', 'Australian Made', logos, pictorial representations, overall impression of the representation) is twofold.

If:

- goods are substantially transformed in a country; and
- 50 per cent or more of the cost of production of the goods was carried out in that country

a corporation does not breach ss 52 or 53(eb) by reason only of making a representation that the origin of the goods is that country.

The definition of substantial transformation and the method of calculating the cost of production or manufacture of goods are set out in Subdivision B of the new Division 1AA.

Product of ...

The defence to be satisfied by representations that goods are the product of a particular country (e.g. 'product of', 'produce of' or 'produced in') is quite strict.

If:

- each significant ingredient or significant component of the goods originated from; and
- all, or virtually all, of the production processes of the goods took place in a particular country

a corporation does not breach ss 52 or 53(eb) by reason only of making a representation that the goods were produced in that country.

The provisions do not define what is meant by 'significant' or by 'all, or virtually all'. The Explanatory Memorandum to the Bill says that a significant component or ingredient is related to the nature of the good, and gives the example of apple/cranberry juice. The apple juice and the cranberry juice are integral to the nature of the juice and must therefore be sourced from Australia to legitimately carry the label 'product of Australia'. However, a preservative that was imported could be added to the juice without affecting this claim, as the preservative would be insignificant in terms of

weight, volume and value and it does not go to the nature of the good.

Prescribed logos

The new provisions allow for the prescription by regulation of a logo, or logos, to represent certain proportions of content between 51 per cent and 100 per cent. This will establish a legislatively based scheme to replace the former Advance Australia Foundation green/gold kangaroo logo scheme.

Compliance education

The Commission will run a compliance and education program about the new provisions, which will include seminars aimed at key industries, government and community agencies and consumers. The Commission will also be alert for possible test cases for the new provisions.

Product safety standard on cots

From 30 June 1998 all children's household cots must meet a new mandatory product safety standard. Household cots have been identified as a significant cause of infant injury. All cots, including new and secondhand, must conform to the new standard.

The new standard requires the elimination of gaps from the cot where a child could become trapped and protrusions that could snag clothing, possibly leading to death by strangulation or hanging.

The new mandatory product safety standard is declared under the Trade Practices Act and will be enforced by the ACCC together with the State and Territory Fair Trading and Consumer Affairs agencies under mirror State/Territory legislation.