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COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TRADE PRACTICES AMENDMENT BILL 1978

EXPLANATORY MEMORANDUM

ON AMENDMENTS TO THE BILL

(Circulated by the Minister for Business and Consumer
Affairs, The Honourable Wal. Fife, M.P.)

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EXPLANATORY MEMORANDUM ON AMENDMENTS TO THE BILL

The amendments which are sought to the Trade Practices Amendment Bill relate principally to the provisions of the Bill which deal with the liability of manufacturers and importers for their goods.

AMENDMENTS TO THE RESTRICTIVE TRADE PRACTICES PROVISIONS OF THE BILL

Amendment (1)

Clause 4

This amendment provides for the test in section 4D of when parties are in competition with each other, to correspond with the test used in sections 45A, 45C and 88.

Amendment (2)

Clause 8

This amendment brings the existing exception of joint ventures for the supply of services into closer correspondence with the existing exception of joint ventures relating to goods.

AMENDMENTS TO THE CONSUMER PROTECTION PROVISIONS OF THE BILL

Amendment (3)

Clause 14

This amendment is to sub-section 74A(1) and alters the definition of "express warranty" to make it clear that the definition refers to an undertaking, assertion or statement in relation to the quality, performance or characteristics of the goods.

Amendment (4)

Clause 14

This amendment is to paragraph 74A(2)(c) and deletes the word "or", which is unnecessary, from line 30.

Amendments (5), (6) and (7)

Clause 14

These amendments are to section 74D and extend a manufacturer's liability, where his goods are of unmerchantable quality, to the successors in title of a consumer who originally acquired the goods.

Amendment (8)

Clause 14

This amendment is to sub-paragraph 74D(2)(a)(i) and will bring the form of words used in that sub-paragraph in line with the form of words used in sub-paragraph 74B(2)(a)(1), paragraph 74C(2)(a) and sub-paragraph 74E(2)(c)(1).

Amendment (9)

Clause 14

This amendment is to sub-section 74F(3) and makes it clear, as is already provided in sub-section 74F(2), that a manufacturer who wishes to exclude his liability in respect of the provision of repair facilities or spare parts must take reasonable steps to give notice that he does not promise that the facilities or parts will be available to those particular consumers acquiring the goods rather than to consumers at large.

Amendments (10) and (11)

Clause 14

These amendments to sub-section 74G(2) are consequential upon Amendment (3) (dealing with the definition of "express warranty") and ensure that the terminology used in sub-section (2) corresponds with the terminology used in the definition of "express warranty" in sub-section 74A(1).

a.

Clause 14

This amendment is to paragraph 74H(a) and clarifies the fact that a seller may be liable under the general law as well as under the Act.

Amendments (13) and (14)

Clause 14

These amendments are consequential upon Amendment (12) and omit the word "also", which will be unnecessary following that amendment, from both sub-paragraphs 74H(b)(i) and (ii).

Amendment (15)

Clause 14

This amendment is to section 74H and makes it clear that the action a seller may institute against a manufacturer, in respect of the latter's liability under the section, is an action for such legal or equitable relief as the seller could have obtained if the manufacturer's liability to the seller had arisen under a contract of indemnity.

Amendment (16)

Clause 14

This amendment substitutes a new section 74J, to provide greater certainty as to the time at which a seller's or a consumer's cause of action under Division 2A will accrue against the manufacturer and the total period for which he will remain liable for his goods.

New sub-section 74J(1) provides that all actions under Division 2A must be commenced within 3 years from the day on which the cause of action accrued.

New sub-section 74J(2) removes uncertainty by prescribing the time at which each cause of action under Division 2A will be deemed to have accrued. In the case of an indemnity action (section 74H) a seller's cause of action will accrue either on the day on which he first made a payment in respect of, or otherwise discharged in whole or in part, his liability to the consumer, or on the day on which the consumer commenced proceedings against him in respect of that liability, whichever is the earlier. In all other cases a consumer's cause of action against a manufacturer will accrue on the day on which the consumer first became aware, or ought reasonably to have become aware, that the goods, or the

New sub-section 74J(3) imposes an absolute limit on the time within which a seller or consumer may commence an action against a manufacturer under Division 2A. This limit is 10 years from the day of the first supply of the relevant goods to a consumer.

Amendment (17)

Clause 14

This amendment is to proposed section 74K and is consequential upon Amendment (18). Section 74K renders void any term of a contract that attempts to exclude, restrict or modify a person's liability under Division 2A. The effect of this amendment will be that a term of a contract between a manufacturer and a seller, whereby the manufacturer accepts a greater liability to indemnify a seller than that imposed by proposed new sub-section 74L(1), will not be rendered void by section 74K.

Amendment (18)

Clause 14

This amendment substitutes a new section 74L in the Bill, dealing with the limitation of a manufacturer's liability to indemnify a seller under section 74H.

This amendment will prescribe for all manufacturers of goods covered by the Act which are of a kind not ordinarily acquired for personal, domestic or household use or consumption, a statutory minimum level of liability to indemnify a seller under section 74H. The prescribed limit will not apply if:

- (i) the seller established that the limitation is not fair or reasonable (sub-sections 74L(2) and (3)); or
- (ii) the manufacturer contracts with the seller for a greater liability (sub-section 74L(4)).