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COMMONWEALTH OF AUSTRALIA

THE SENATE

TRADE PRACTICES (BOYCOTTS) AMENDMENT BILL 1980

EXPLANATORY MEMORANDUM

(Circulated by the Attorney-General and Minister representing the Minister for Business and Consumer Affairs, Senator the Honourable Peter Durack, Q.C.)

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Trade Practices Act 1974: to extend the operation of section 45D, which prohibits certain secondary boycotts; to provide a new prohibition - section 45E - which prohibits a person from agreeing with a union either that he will cease to continue dealings with another person or will continue dealings only if the other person accepts new restrictions on his freedom to trade; and to give the Federal Court power to stay an injunction under section 45D or 45E to allow conciliation to take place.

The Bill also provides for a number of associated technical amendments.

Constitutional Base

Clause 3 provides the widest constitutional basis for the operation of the new provisions.

Extension of Section 45D (Secondary Boycotts)

Clause 4 extends sub-section 45D(1) to cover, so far as is constitutionally possible, situations in which the "target" of a secondary boycott is not a corporation.

Agreements Etc. with Unions Not to Continue to Deal

Clause 5 inserts a new section 45E which prohibits a person who has been accustomed, or is under an obligation, to supply goods or services to or acquire goods or services from a second person from making a contract or arrangement or arriving at an understanding with a union or union officer if the contract, arrangement or understanding contains a provision having one or two purposes.

The first is where the provision has the purpose of preventing or hindering dealings between the first and second persons.

The second is where the provision has the purpose of allowing continuation of supply or acquisition but subject to 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.

New sub-section 45E(2) provides for an exception where the second person has consented in writing to the contract arrangement or understanding.

New sub-section 45E(3) ensures the constitutionality of the new section.

New sub-section 45E(4) makes it sufficient that the necessary purpose be one of the purposes of the provision rather than a substantial purpose.

New sub-sections 45E(5) to 45E(8) provide an extended definition of "a person who has been accustomed to supply or acquire goods or services".

New sub-section 45E(9) prohibits giving effect to a contract arrangement or understanding containing a provision prohibited by sub-section (1), whether the contract arrangement or understanding was made before or after the commencement of this Bill.

New sub-section 45E(10) dispenses with the necessity for the second person's consent to be in writing in the case of contracts etc. entered into before the coming into force of this Bill.

New sub-section 45E(11) prevents any unintended effects on the other provisions of Part IV of the Act.

Stay of Injunctions

Clause 6, by the insertion of new section 80AA, gives the Federal Court, on the application of a party or the Minister, a discretion to stay the operation of an injunction or interim injunction under section 45D or 45E if it considers that to do so would be likely to facilitate the settlement of the dispute by conciliation

and is, in all the circumstances, just.

Where the dispute is settled by conciliation, the Court is not permitted by sub-section 80AA(5) to make any order as to the costs of proceedings for grant or rescission of the injunction.

Exceptions

Clause 7 provides for a technical amendment to ensure that new section 45E is treated in the same way as section 45D.

Pecuniary Penalties

Clause 8 provides for individuals not to be liable for pecuniary penalties for contravention of new section 45E.

Authorization

Clause 9 provides that authorization may be available for conduct prohibited by new section 45E.

Clause 10 provides that the test for authorization of conduct under the new section 45E should be the same as for section 45D.