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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TRADE PRACTICES AMENDMENT BILL 1984

EXPLANATORY MEMORANDUM

(Circulated by Authority of the
Minister for Employment and Industrial
Relations the Hon. Ralph Willis, M.P.,
on behalf of the Attorney-General)

OUTLINE

The purpose of this Bill is to amend the Trade Practices Act 1974 to repeal the secondary boycott provisions (sections 45D and 45E), to widen the coverage of the resale price maintenance ("RPM") provisions to include RPM by non-suppliers, and to provide that agreements or provisions relating to marketing or pricing practices, resulting from the settlement of secondary boycott disputes under new Division 5A of Part III of the Conciliation and Arbitration Act 1904, shall remain subject to the Trade Practices Act 1974. The Conciliation and Arbitration Amendment Bill (No. 2) 1984, which will commence at the same time as this Bill, provides for the settlement of secondary boycott disputes through the Conciliation and Arbitration Commission.

NOTES ON INDIVIDUAL CLAUSESClauses 1 and 2

These clauses provide for the short title and for the legislation to come into operation on a day to be fixed by Proclamation.

Clause 3

Paragraphs 3(a), (b) (c) and (e) are consequential on the repeal of sections 45D and 45E by sub-clause 4(1).

Paragraph 3(d) incorporates into paragraph 6(2)(g) of the Principal Act (referring to the additional operation of the Act) a reference to new sub-section 96(3B) (non-corporation engaging in RPM) to make clear that new sub-section 96(3A)

operates independently of sub-section 96(3B). This is designed to ensure that, for reasons of constitutional power, those provisions of the Principal Act which relate to non-corporations engaging in RPM can be severed from those relating to corporations.

Clause 4 : Repeal of sections 45D and 45E

Sub-clause 4(1) repeals sections 45D and 45E. Sub-clause 4(2) will prohibit the institution of proceedings for contraventions of the two repealed sections after commencement of the legislation. Any existing proceedings will be unaffected by the repeal.

Clause 5

Agreements resulting from the settlement of industrial disputes pursuant to Division 5A of the Conciliation and Arbitration Act 1904 by the Conciliation and Arbitration Commission, which relate to marketing and pricing practices will remain subject to the Principal Act.

Clause 6

A new sub-section 76(2) is substituted in the Principal Act and there is a consequential amendment to sub-section 76(1). The repeal of sections 45D and 45E makes superfluous existing sub-section 76(2) (orders for pecuniary penalty cannot be made against persons for contravening sections 45D or 45E).

New sub-section 76(2) removes from the scope of section 76, the new provisions (paragraph 96(3C) (a) and (b)) constituting RPM. The effect of this will be that pecuniary penalties cannot be awarded against corporations or persons who contravene the new RPM provisions.

Clause 7 : Repeal of Section 80AA

Section 80AA of the Principal Act provides for the stay of injunctions made in respect of sections 45D and 45E conduct. Section 80AA is consequentially repealed. A transitional provision enables the staying of any pending injunctions as if the repealed sections were still in force.

Clauses 8 and 9

Damages under section 82 or ancillary orders under section 87 are not to be available in respect of the new RPM provisions.

Clauses 10 and 11

Sub-sections 88(7) and 88(7A) of the Principal Act empower the Trade Practices Commission to grant an authorization in respect of conduct which may have contravened repealed sections 45D and 45E. Since sub-sections 88(7) and 88(7A) will become redundant with the repeal of sections 45D and 45E, they should be removed and reference to them in section 90 deleted.

Clause 12 : Resale Price Maintenance

At present only suppliers may be principals in RPM contraventions yet non-suppliers may be equally capable of forcing adherence to minimum reselling prices. New sub-section 96(3C) extends the Principal Act to non-suppliers by specifying two additional types of conduct as constituting RPM, namely where a person makes it known that he will hinder or prevent the flow of goods, or where he actually engages in that conduct, to bring about RPM.

The new provisions are in a similar format to the existing RPM provisions. New sub-sections 96(3A) and 96(3B) follow the scheme of sub-sections 96(1) and 96(2) respectively of the Principal Act. Adoption of separate sub-sections where the principal is a corporation, and where the principal is not a corporation (but the object is), aims at achieving the widest coverage within constitutional limitations.

New sub-sections 96(8) and 96(9) extend sub-sections 96(4), (6) and (7) of the Principal Act (definition provisions) to apply to new sub-section 96(3C).





