

1986

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

EXPLANATORY MEMORANDUM TO

AMENDMENT OF THE TRADE PRACTICES AMENDMENT BILL 1986:

CLAUSES 2, 8, 34, 36, and 48 AND INSERTION OF NEW CLAUSE 14A



TRADE PRACTICES AMENDMENT BILL 1986:

AMENDMENTS TO CLAUSES 2,8,

34, 36 and 48 AND INSERTION OF NEW CLAUSE 14A

Amendment (1) (Clause 2 : Commencement)

This amendment changes the commencement date for the majority of the provisions of the Bill from 1 January 1986 to a date to be fixed by proclamation.

Amendment (2) (Clause 8 : Extended Application of Parts IV and V)

2. This amendment clarifies that the requirement for Ministerial consent for reliance on extraterritorial conduct in a s.82 action applies regardless of whether the proceedings are instituted under s.82 or initiated under another section of the Act and a claim under s.82 is made subsequently.

Amendment (3) (New Clause 14A : Contracts, Arrangements or Understandings Restricting Dealings or Affecting Competition)

3. This amendment extends the operation of the exclusion in sub-s.45(6) so that it prevents s.45, and in particular its prohibition on exclusionary provisions (s.40), from applying to arrangements which, while coming within the definition of exclusive dealing in s.47, do not contravene that section because they do not have the purpose or the effect of substantially lessening competition (sub-s.47(10)).

Amendment (4) (Clause 34 : Product Safety and Product Information)

4. This amendment clarifies that s.65R only applies to supplier corporations (except in those limited circumstances in which s.6 gives the Act an extended application). It also makes clear that such suppliers need only notify the Minister of voluntary recalls of goods where the goods are recalled because they will or may cause injury, that is where they have a health or safety related defect. For example, the section does not require a paint manufacturer to inform the Minister of a recall of paints that were wrongly tinted.

Amendment (5) (Clause 34 : Product Safety and Product Information)

5. This amendment omits para. (c) from sub-s. 65R(1). Para. (c) is considered unnecessary, because if a good does not comply with a consumer product safety standard it will have a defect or dangerous characteristic which must be disclosed because of para. (b).

Amendment (6) (Clause 34 : Product Safety and Product Information)

6. This amendment inserts new ss.65S and 65T in Division 1A. S.65S provides that, where the Minister publishes a notice in the Gazette under ss.65B, 65J, 65L or 65M, the Minister is also required to send a copy of the notice to all suppliers who, to the knowledge of the Minister, supply goods of the

kind to which the notice relates, or to have published a copy of the notice in a newspaper with appropriate circulation. Where the goods to which the notice relates are only supplied by a few suppliers, clearly it is practicable to send a copy of the notice to those suppliers. Where, however, the goods are sold in supermarkets throughout Australia, it would not be feasible to send a notice to each supplier, and the only practicable course would be to publish the notice in a national newspaper. This amendment seeks to ensure that suppliers are made aware that a notice has been published in the Gazette, so that they may take appropriate action.

7. The new s.65T provides that a supplier's claim under his product liability or product recall insurance will not be affected merely because the supplier provides information to the responsible authorities about goods supplied or proposed to be supplied by the supplier. This is intended to ensure that suppliers are not discouraged from voluntarily providing information to Government authorities about the safety of their goods.

Amendment (7) (Clause 36 : Liability for loss or damage from breach of certain contracts)

8. This amendment to sub-s.73(3) provides that a linked credit provider who purchases the goods from the supplier and then supplies them under a contract of hire, lease or hire-purchase has the same defences available as does a linked credit provider who provides credit to a consumer for the acquisition of goods from the supplier.

Amendment (8) (Clause 36 : Liability for loss or damage from breach of certain contracts)

9. This amendment to sub-s.73(7) provides that the linked credit provider's liability in respect of a contract of hire, lease or hire-purchase is limited to the amount financed by the linked credit provider to the consumer under the hire, lease or hire-purchase contract (plus any award of interest or costs that may be allowed by the Court).

Amendment (9) (Clause 48 : Injunctions)

10. This amendment provides that where a declaration is made by the Trade Practices Tribunal under sub-s.50A(1) (see Clause 18) on the application of a person other than the Minister or the Trade Practices Commission, that person may apply for an injunction in respect of a contravention of sub-s.50A(6) in relation to that declaration. This modifies clause 48 which provided that only the Minister or the Commission could apply for an injunction in such cases.



