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1988

THE PARLIAMENT OF THE COMMONWEALTH  
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TRADE PRACTICES AMENDMENT BILL 1988  
EXPLANATORY MEMORANDUM

(Circulated by authority of the Acting Attorney-General  
Senator the Hon. Michael Tate)

**TRADE PRACTICES AMENDMENT BILL 1988**GENERAL OUTLINE

The purpose of this Bill is to amend the Trade Practices Act 1974 to ensure the consumer protection provisions in Part V of the Act remain effective and up to date.

2. The first amendment proposes the inclusion in section 53 of an express prohibition on false representations as to the value of goods or services. This is essentially a clarification of the existing prohibition on false representations that goods or services are of a particular standard, quality or grade.

3. The second amendment proposes the repeal of section 65U. That section would have the effect as from 1 July 1988 of exempting food and drink for human consumption from the product safety and product information provisions in Part V, Division 1A of the Act. The section was enacted in the belief that uniform State/Territory legislation would be enacted to fill the gap, but this has not occurred.

4. The final amendment proposes that a person authorised by the Secretary to the relevant Commonwealth Department may institute criminal prosecutions without being required to first obtain the consent in writing of the Minister. The amendment is administrative in nature, resulting from the transfer of some functions related to the enforcement of the Act from the Trade Practices Commission to the Federal Bureau of Consumer Affairs, a Division of the Attorney-General's Department.

FINANCIAL IMPACT STATEMENT

5. The proposals put forward in the Bill will have no impact on Government expenditure. No additional staff or resources are required for either the Commission or the Bureau. Additional compliance work resulting from the amendment to section 53 and the repeal of section 65U should be minimal and capable of being absorbed by existing resources.

6. The proposals should not impose any new costs on industry, as no additional regulatory burden is imposed by the Bill over that which has existed since 1986.

ABBREVIATIONS

7. The following abbreviations are used in this Explanatory Memorandum:

Act: Trade Practices Act 1974 as amended prior to any amendments effected by this Trade Practices Amendment Bill 1988.

Bill: Trade Practices Amendment Bill 1988.

Commission: Trade Practices Commission.

Federal Bureau: Federal Bureau of Consumer Affairs, Attorney-General's Department.

NOTES ON INDIVIDUAL CLAUSES

Clause 1: Short title

Clause 2: Commencement

8. Sub-clause 2(1) provides that, other than clause 4, the provisions of the Bill will come into operation on the day on which the Bill receives the Royal Assent.

9. Sub-clause 2(2) provides that Clause 4, which repeals section 65U of the Act, will come into operation on 1 July 1988, being the day on which section 65U would otherwise have exempted food and drink intended for human consumption from the operation of Part V, Division 1A of the Act.

Clause 3: False or misleading representations

10. Sections 53(a) and (aa) require clarification by expressly prohibiting false representations that goods or services are of a particular value. The existing provision prohibits, amongst other things, false representations that goods or services are of a particular standard, quality or grade. In Ducret v Chaudhary's Oriental Carpet Palace Pty Ltd (1987) ATPR 40-804, Ryan J said (at p. 48, 762)

"Notwithstanding the differences in width between "quality" and "standard" as used in s.53(a), I consider that a representation as to each of them is capable of being made by attributing to the goods a value expressed as an amount of money. Whether such an attribution constitutes a representation of that kind is a matter of fact to be determined on the evidence in each case."

His Honour went on to find that a representation that goods had a 'value' of almost ten times the approximate market price of similar goods was not, on the facts of that case, a representation that the goods were of a particular quality or standard.

11. The proposed amendment is intended to remove any doubt that section 53 prohibits false representations as to the value of goods or services.

Clause 4: Repeal of section 65U

12. Section 65U provides:

'At the expiration of 2 years after the day on which this Division comes into operation, this Division shall cease to have effect in respect of goods which are foods and drinks intended for human consumption.'

13. The Division in question is Part V, Division 1A of the Act, which provides for the banning of unsafe goods, the declaration of product safety and product information standards and the mandatory recall of hazardous goods. The Division came into operation on 1 July 1986, and therefore will cease to apply to food and drink for human consumption as from 1 July 1988.

14. The Section 65U was inserted by the Trade Practices Revision Act 1986 as a result of an amendment in the Senate. Senator Haines, when proposing the amendment, said (Hansard, Senate, 29 April 1986, p. 2004):

"The intention of this amendment ... is to give the industry time in which to pressure the States into introducing consumer protection legislation in the area of food and drink supply and sale which is uniform and which incorporates all the requirements contained in the Federal trade practices legislation before us."

15. That intention has not been realised, nor is it likely to be in the foreseeable future. Of all the requirements in Part V, Division 1A of the Act, only the mandatory recall of goods, has been proposed for adoption by the State/Territory authorities, and only two jurisdictions, Queensland and Western Australia, have in fact made the necessary regulations to require the recall of foods (but they have not done so in a uniform manner).

16. Repealing section 65U will therefore avoid the unnecessary fragmentation of the industry-generalised application of the Trade Practices Act and prevent the creation of a regulatory void, in which food and drink for human consumption is alone exempted from the product safety and product information provisions in the Act.

17. The presence in the Commonwealth Act of mandatory recall provisions is, in any case, desirable to ensure that hazardous goods banned in one jurisdiction are not dumped in another, and that such goods are withdrawn from sale simultaneously throughout Australia. The costs to the industry are also minimised when compared with the costs of complying with various differing State/Territory provisions. In fact, if this provision were not enacted, the costs to industry may increase. The amendment will not impose any further regulation upon the food and drink industry to that currently in existence.

Clause 5: Prosecutions

18. The requirement to obtain Ministerial consent before instituting a private prosecution under the Act is intended to ensure that private prosecutions are only instituted in accordance with the Government's prosecution policy. This requirement is unnecessary when prosecutions are instituted by the Commonwealth authority responsible for the enforcement of the Act, as such prosecutions will be under the control of the Director of Public Prosecutions who will ensure compliance with the Policy (see Prosecution Policy of the Commonwealth, January 1987, Chapter 2 - 'The Institution of Commonwealth Prosecutions'). By way of illustration, the existing section 163 provides that the Commission may institute prosecutions without obtaining the prior consent in writing of the Minister.

19. Following the establishment in March 1987 of the Federal Bureau, responsibility for the enforcement of Part V, Division 1A of the Act was transferred from the Commission to the Federal Bureau. The proposed amendment will allow officers of the Bureau who are authorised in writing by the Secretary to the Department to institute prosecutions in a manner similar to prosecutions instituted by officers of the Commission.

20. The Acts Interpretation Act 1901 defines the term 'Department' to mean the Department of State of the Commonwealth that is administered by the Minister administering that Act or enactment in which the expression is used (s.17(ia)).





