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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Trade Practices Amendment Bill (No. 2) 1977

EXPLANATORY MEMORANDUM

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

TRADE PRACTICES AMENDMENT BILL (NO. 2) 1977

EXPLANATORY MEMORANDUM

The purpose of the Bill is to amend the Trade Practices Act 1974 to -

- . permit parties to contract for a minimum limitation on liability for a breach of a condition or warranty implied by sections 70, 71, 72 and 74 of the Act, in relation to goods or services not ordinarily acquired for personal, domestic or household use or consumption;
- . remedy a number of technical problems in the definition of "consumer" contained in section 4B of the Act; and
- . provide for alternative procedures to enable consumer product standards to be brought into law more simply.

Definition of "Consumer"

2. The definition of "consumer" in section 4B depends, for the most part, upon the price of the goods or services (4B(1)(a)(i)); that price is currently \$15,000 (4B(2)(a)).
3. Proposed section 4B(2)(b) specifies the relevant price where goods or services have been purchased outright. Proposed section 4B(2)(e) separates, for the purposes of calculating the relevant price, the outright purchase price and any credit charges. Credit charges will be treated as a separate acquisition of a service at its own price.
4. Proposed section 4B(2)(c) is substantially similar to present sections 4B(2)(b) and (c), which deal with the acquisition of a mix of goods and services, or goods and other goods or services and other services.
5. Proposed section 4B(2)(d) specifies the relevant price where goods are not purchased outright or purchased subject to credit. In particular, this provision relates to situations of hiring or leasing. In such situations the relevant price is to be the price at which the goods or services could reasonably have been purchased

or, if they could not have been so purchased, the value of the goods or services.

Power of Minister to Declare Product Safety or Information Standards

6. Clause 4 provides a new section - 63AA - which enables the Minister for Business and Consumer Affairs, by Gazette notice, to declare consumer product safety or information standards by reference to a standard or part of a standard prepared or approved by the Standards Association of Australia, or by any other prescribed body. The Gazette notice may adopt such a standard with any addition or variation specified in the notice.

7. Upon a declaration under new section 63AA, the provisions of sections 62 or 63, as appropriate, operate to give the standards the force of law.

Limitation of liability for breach of certain conditions or warranties.

8. Clause 5 inserts a new section 68A. That section permits in a contract for the supply of goods or services (other than for goods or services ordinarily acquired for personal, domestic or household use or consumption), being a contract treated as a consumer transaction by the Act, the inclusion of a term limiting liability for a breach of certain other terms implied into the contract by the Act.

9. This limitation may be expressed to operate with respect to implied terms relating to supply by description (section 70), undertakings as to quality or fitness (section 71), supply by sample (section 72) or the supply of certain services (section 74). The limitation may not be applied to the implied conditions and warranties of quiet possession, freedom from encumbrance and the right to sell the goods, set out in section 69 of the Act.

10. Any term providing a limitation of liability may not do so in respect of the replacement or repair of goods (or the cost thereof) or the supplying of the services again (or the cost thereof) - see new sections 68A(1)(a) and (b).

3.

A term of limitation of liability may be avoided if it is
found to be unfair or unreasonable to rely on the term - see new
section 68A(2). New section 68A(3) specifies a number of factors to
which a Court may have regard in assessing fairness or reasonableness.
Application

2. Clause 6 provides that the amendments to section 4B, and
the application of new section 68A permitting terms of limitation,
are only relevant to contracts made after the commencement of this
Amendment Act.