

# TRADE PRACTICES AMENDMENT ACT 1978

## No. 206 of 1978

An Act relating to Trade Practices.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

1. (1) This Act may be cited as the *Trade Practices Amendment Act* 1978.<sup>1</sup> Short title,  
&c.
- (2) The *Trade Practices Act* 1974<sup>2</sup> is in this Act referred to as the Principal Act.
2. This Act shall come into operation on the day on which it receives the Royal Assent.<sup>1</sup> Commence-  
ment
3. Section 4 of the Principal Act is amended— Interpret-  
ation
  - (a) by omitting from the definition of “Deputy Registrar” in sub-section (1)”, and includes a person appointed to act as a Deputy Registrar of the Tribunal”; and
  - (b) by omitting from the definition of “Registrar” in sub-section (1) “and includes a person appointed to act as the Registrar of the Tribunal”.
4. Section 4D of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section: Exclusionary  
provisions

“(2) A person shall be deemed to be competitive with another person for the purposes of sub-section (1) if, and only if, the first-mentioned person or a body corporate that is related to that person is, or is likely to be, or, but for the provision of any contract, arrangement or understanding or of any proposed contract, arrangement or understanding, would be, or would be likely to be, in competition with the other person, or with a body corporate that is related to the other person, in relation to the supply or acquisition of all or any of the goods or services to which the relevant provision of the contract, arrangement or understanding or of the proposed contract, arrangement or understanding relates.”.
5. Section 6 of the Principal Act is amended— Additional  
operation of  
Act
  - (a) by inserting “53B,” after “46,” in paragraph (b) of sub-section (2); and
  - (b) by omitting from paragraph (c) of sub-section (2) “were, by express provision, confined to a contract made—” and substituting “and any reference in Division 2A of that Part to the supply of

goods, were, by express provision, confined to a contract made, or the supply of goods, as the case may be—”.

Termination  
of  
appointment  
of members  
of the  
Commission

6. Section 13 of the Principal Act is amended by inserting before “engages” in paragraph (c) of sub-section (2) “without the consent of the Minister”.

7. After section 44 of the Principal Act the following section is inserted in Part III:

Acting  
appointments

“44A. (1) The Minister may appoint a person who is an officer or employee for the purposes of the *Public Service Act* 1922 to act as the Registrar or as a Deputy Registrar during any period, or during all periods, when—

- (a) the Registrar or that Deputy Registrar, as the case may be, is absent from duty or from Australia or is, for any other reason, unable to perform the duties and functions of his office; or
- (b) there is a vacancy in the office of Registrar or in that office of Deputy Registrar, as the case may be.

“(2) A person acting as the Registrar or as a Deputy Registrar by reason of a vacancy in the office of Registrar or of that Deputy Registrar shall not continue so to act after the expiration of 12 months after the occurrence of the vacancy.

“(3) A person appointed to act as the Registrar or as a Deputy Registrar has, while acting as the Registrar or as that Deputy Registrar, as the case may be, all the duties and functions of the Registrar or of that Deputy Registrar, and references in this Act to the Registrar or to a Deputy Registrar shall—

- (a) if a person is acting as the Registrar—be read as a reference to the person so acting; or
- (b) if a person is acting as a Deputy Registrar—be read as including a reference to the person so acting.

“(4) The Minister may at any time terminate an appointment of a person to act as the Registrar or as a Deputy Registrar.

“(5) A person who holds an appointment to act as the Registrar or as a Deputy Registrar may resign his appointment by writing under his hand delivered to the Minister.

“(6) The validity of an act done by a person appointed to act as the Registrar or as a Deputy Registrar shall not be questioned in any proceeding on a ground arising from the fact that the occasion for the appointment, or for him to act under the appointment, had not arisen or that the appointment had ceased to have effect or the occasion for him to act under the appointment had passed.”.

**8.** (1) Section 45A of the Principal Act is amended by omitting paragraph (b) of sub-section (2) and substituting the following paragraph:

“(b) the joint supply by the parties to the joint venture of services in pursuance of the joint venture, or the supply by the parties to the joint venture in proportion to their respective interests in the joint venture of services in pursuance of, and made available as a result of, the joint venture; or”.

Contracts, arrangements or understandings in relation to prices

(2) The amendment made by sub-section (1) shall be deemed to have come into operation on 1 July 1977.

**9.** Section 47 of the Principal Act is amended by omitting from sub-sections (6) and (7) “not being a body corporate related to the corporation”.

Exclusive dealing

**10.** Section 53A of the Principal Act is amended by inserting after sub-section (2) the following sub-section:

“(2A) Nothing in this section shall be taken as implying that other provisions of this Division do not apply in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.”.

False representations and other misleading or offensive conduct in relation to land

**11.** After section 53A of the Principal Act the following section is inserted:

“53B. A corporation shall not publish or cause to be published an advertisement seeking a person or persons for employment, whether by the corporation or by another person, that contains a statement that is false or misleading in a material particular.”.

False representations in relation to employment

**12.** Section 62 of the Principal Act is amended—

- (a) by adding at the end of sub-section (2) “or to any other persons”; and
- (b) by inserting “or to any other persons” in sub-section (2D) after “persons using the goods”.

Product safety standards

**13.** Section 68 of the Principal Act is amended—

- (a) by omitting “or” at the end of paragraph (b) of sub-section (1);
- (b) by adding at the end of paragraph (c) of sub-section (1) “; or”;
- (c) by inserting after paragraph (c) of sub-section (1) the following paragraph:
  - “(d) the application of section 75A,”;
- (d) by inserting “or the application of section 75A” in sub-section (2) after “Division”; and
- (e) by adding at the end of sub-section (2) “or section”.

Application of provisions to contracts not to be excluded or modified

14. After Division 2 of Part V of the Principal Act the following Division is inserted:

*“Division 2A—Actions against Manufacturers and Importers of Goods*

Interpretation

“74A. (1) In this Division—

‘express warranty’, in relation to goods, means an undertaking, assertion or statement in relation to the quality, performance or characteristics of the goods given or made in connexion with the supply of the goods, or in connexion with the promotion by any means of the supply or use of goods, the natural tendency of which is to induce persons to acquire the goods;

‘manufactured’ includes grown, extracted, produced, processed and assembled.

“(2) In this Division—

(a) a reference to goods shall, unless the contrary intention appears, be read as a reference to goods of a kind ordinarily acquired for personal, domestic or household use or consumption;

(b) a reference to the quality of goods includes a reference to the state or condition of the goods;

(c) a reference to antecedent negotiations in relation to the acquisition of goods by a consumer shall be read as a reference to any negotiations or arrangements conducted or made with the consumer by another person in the course of a business carried on by the other person whereby the consumer was induced to acquire the goods or which otherwise promoted the acquisition of the goods by the consumer; and

(d) a reference to the person by whom any antecedent negotiations were conducted shall be read as a reference to the person by whom the negotiations or arrangements concerned were conducted or made.

“(3) If—

(a) a corporation holds itself out to the public as the manufacturer of goods;

(b) a corporation causes or permits the name of the corporation, a name by which the corporation carries on business or a brand or mark of the corporation to be applied to goods supplied by the corporation; or

(c) a corporation causes or permits another person, in connexion with the supply or possible supply of goods by that other person, or in connexion with the promotion by that other person by any means of the supply or use of goods, to hold out the corporation to the public as the manufacturer of the goods,

the corporation shall be deemed, for the purpose of this Division, to have manufactured the goods.

“(4) If—

- (a) goods are imported into Australia by a corporation that was not the manufacturer of the goods; and
- (b) at the time of the importation the manufacturer of the goods does not have a place of business in Australia,

the corporation shall be deemed, for the purposes of this Division, to have manufactured the goods.

“(5) For the purposes of paragraph (3) (b)—

- (a) a name, brand or mark shall be deemed to be applied to goods if it—
  - (i) is woven in, impressed on, worked into or annexed or affixed to the goods; or
  - (ii) is applied to a covering, label, reel or thing in or with which the goods are supplied; and
- (b) if the name of a corporation, a name in which a corporation carries on business or a brand or mark of a corporation is applied to goods, it shall be presumed, unless the contrary is established, that the corporation caused or permitted the name, brand or mark to be applied to the goods.

“(6) The reference in sub-section (5) to a covering includes a reference to a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper and the reference in that sub-section to a label includes a reference to a band or ticket.

“(7) If goods are imported into Australia on behalf of a corporation, the corporation shall be deemed, for the purposes of this Division, to have imported the goods into Australia.

“(8) For the purposes of this Division, goods shall be taken to be supplied to a consumer notwithstanding that, at the time of the supply, they are affixed to land or premises.

“74B. (1) Where—

- (a) a corporation, in trade or commerce, supplies goods manufactured by the corporation to another person who acquires the goods for re-supply;
- (b) a person (whether or not the person who acquired the goods from the corporation) supplies the goods (otherwise than by way of sale by auction) to a consumer;
- (c) the goods are acquired by the consumer for a particular purpose that was, expressly or by implication, made known to the corporation, either directly, or through the person from whom the consumer acquired the goods or a person by whom any antecedent negotiations in connexion with the acquisition of the goods were conducted;

Actions in  
respect of  
unsuitable  
goods