Brief Digest of Bill

Purpose: To amend the Trade Practices Act 1974–76, largely in implementation of some of the recommendations of the Trade Practices Act Review Committee (chaired by Mr T. Swanson) which was established in April 1976 and reported on August 1976.

Most, although not all, of the amendments to the restrictive trade practices provisions tend to reduce the burden of compliance with the Act on businesses, but the provisions for consumer protection are to be tightened and employees’ boycotts are to be prohibited.

Provisions

The main provisions are summarised in the Explanatory Memorandum circulated by the Minister and in the Second Reading Speech. They are even more briefly noted below.

The Commission

Clause 7 of this Bill provides that the present Trade Practices Commission is to be replaced by a new Commission with the same name. The new Commission unlike the present one is to be a body corporate.

Clause 20 of this Bill seeks to replace sections 45, 46 and 47 of the Principal Act, the restrictive trade practice provisions, with new sections.

Anti-Competitive Arrangements

New section 45 is to prohibit contracts, arrangements or understandings which have the purpose or effect of substantially lessening competition in a market, or of effecting a collective boycott. The present S. 45 prohibiting contracts etc. in “restraint of trade” is repealed. Collective boycotts are to be prohibited regardless of their effect on competition.

Price-Fixing

New section 45A will deem price-fixing agreements to have the purpose or effect of substantially lessening competition and so to be illegal. Exceptions are made for price agreements relating to a joint venture product, the price to be paid by a collective buying group and the advertised retail sale price of their goods.
Covenants

New sections 45B and 45C prevent covenants running with the land from being used for anti-competitive effects or price-fixing.

Employee Boycotts

Section 45D is to be added to prohibit boycotts by employees which hinder the supply of goods or services by their employer to a corporation if they are likely to have a substantial adverse effect on the corporation’s business.

Monopolisation

Section 46 (1) is to be amended to make it clear that a market-dominant corporation is engaging in the prohibited monopolisation only if it takes advantage of its power with the purpose of reducing or preventing competition.

Exclusive dealing

Among the changes to S. 47 are to provide immunity for exclusive dealing conduct notified to the Trade Practices Commission until the Commission makes a positive determination that the conduct is both anti-competitive and without net public benefit.

Price Discrimination

Clause 21 of this Bill repeals S. 49 which has prohibited price discrimination.

Mergers

Clause 22 exempts from the restrictions on mergers (S. 50) acquisitions of companies with less than a $3 million turnover unless part of a systematic pattern of acquisition in that industry. Clause 44 also provides a defence in the case of beneficial acquisition of a failing company.

Exceptions

Clause 23 provides for a new section 51(2)(a) which exempts from the Act (other than the new employee boycott provisions and those on resale price maintenance) conduct relating to terms and conditions of work (e.g. union strikes over wages).

Consumer Protection

The definition of ‘consumer’ is to be widened (mainly for small businessmen) to include buyers of goods costing less than $15,000.

Various misleading practices are specifically prohibited including those in relation to land (C. 25–30).

Sale of unsafe products can be banned (C. 31, S. 62).

Goods for export are excluded from consumer product and safety standards (C. 31, S. 32).

The penalty of imprisonment is to be abolished (C. 40) and a wider range of corrective orders made available (C. 41, 45).
Enforcement
Clauses 40–46 provide for some changes in enforcement, remedies and admissibility of evidence.

Clearances
The provisions for clearance are repealed, except for mergers (C. 54).

Authorisations
Authorisations are still possible for some actions and Clause 50 seeks to alter the test in S. 90, so authorisation is to be granted where public benefits are thought to outweigh the detriment to the public caused by any lessening of competition. At present authorisation is granted where the conduct results in a specific and substantial benefit to the public that would not otherwise be available.

Procedure
Public hearings into authorisation applications are to be abolished (C. 16).
Interested parties are given the right to discussion with the Tribunal before the determination of authorisation applications or exclusive dealing notifications (C. 51).

Further Legislation
The Minister announced his intention to introduce further legislation on some matters currently under discussion, in particular greater involvement by State government agencies in the administration of the consumer protection part of the Act, and the application of the Act to government enterprises.

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