DIGEST OF BILL

Purpose

To create a register of hazardous goods and prohibit the sale of and dealings with such registered goods.

Background

There have been, and will continue to be, hazards involved in some goods available in the market place. Consumer product safety concerns the detection of these hazards, the assessment whether such hazards are reasonable and the relaying of information to the consumer who may then make a choice as to whether to accept the risk or not. Over recent years there has been an explosion of new consumer goods on the market. Often these goods involve new materials or methods of construction which have not been sufficiently tested and it is only when numbers of consumers are injured or disadvantaged that the hazard can be assessed. In other instances, manufacturers have given too little consideration to the ways in which their products may be used or abused.

Apart from statutes concerned with the safety of particular products or with public health in general, most Australian jurisdictions have acquired consumer protection legislation. State and Territory legislation such as the Consumer Protection Act 1969 (NSW), Consumer Affairs Act 1971 (WA) and the Consumer Protection Ordinance 1978 (NT) relate to the safe design and construction of goods, regulate standards for the purpose of preventing or reducing the risk of death, personal injury or disease and provide
for the prohibition of the sale of dangerous goods. The other source of consumer protection legislation is the Commonwealth Trade Practices Act 1974.

In April 1986 the Trade Practices Revision Bill 1986 was passed and as a consequence the Trade Practices Act 1974 was amended in a number of ways (see Digest 86/27). Section 65 of the Trade Practices Act 1974 was amended to insert a new Division 1A into Part V of the Act. The new Division came into effect on 1 July 1986.

The main features of the new Division are that:

- the Minister is empowered to publish a warning notice in the Gazette stating that a good is under investigation;
- regulations may be made in respect of consumer product safety standards;
- the supply of goods which breach safety standards is prohibited;
- the export of goods which breach standards is prohibited;
- the Minister can require a supplier to recall goods; and
- the Minister is able to impose a permanent ban on goods.

The Division also provides the opportunity for a conference between the Trade Practices Commission and a supplier, where the Minister's intention is to ban that supplier's goods, though this provision can be by-passed by the Minister where there is imminent risk of death, serious injury or illness. The maximum level of fines that may be imposed for breaches of Part V is doubled to $100 000 for companies and $20 000 for people.

Main Provisions

Definitions of words and phrases used in the Bill are contained in clause 3.
Clause 8 of the Bill prohibits supplying, transporting or dealing with registered hazardous goods, other than as scrap, for repair, for return to the manufacturer or supplier or for destruction. The penalty for an offence against this clause will be a $10 000 fine in the case of people and a $50 000 fine in the case of companies. The export of registered hazardous goods is prohibited by clause 7.

The advertising of registered hazardous goods, other than as scrap or as damaged goods for resale to a repairer, is prohibited by clause 9 and the penalties imposed for offences against this clause are $5000 and $25 000 fines for people and companies respectively.

The Commonwealth air, shipping and rail transport authorities (established under the Australian National Airlines Act 1945, the Australian Shipping Commission Act 1956 and the Australian National Railways Commission Act 1983) are expressly prohibited from transporting registered hazardous goods (other than as scrap, for repair, for return to the manufacturer or supplier or for destruction) (clause 11). The maximum penalty for a breach of this provision will be a $50 000 fine. Officers of these authorities who knowingly are involved with the illegal transport of a registered hazardous good will be guilty of an offence and liable to a fine of $1000 (clause 12).

There will be a Registrar of Hazardous Goods and also Deputy Registrars (also clause 12, there are two clauses numbered 12 in the Bill). The Registrar's principle functions will be to maintain the Register of Hazardous Goods and to seek out, receive and record information concerning hazardous goods (clause 13).

Clause 19 establishes the Register of Hazardous Goods in which the particulars of hazardous goods will be entered. People will be able to inspect the Register (clause 21) and obtain from the Registrar, copies of extracts of the Register (clause 22) or certificates that a particular good does not appear in the Register (clause 23).

Where the Registrar is satisfied that a good is hazardous, the Registrar will record that good in the Register (clause 24). The Registrar will also have the power to amend obsolete or incorrect entries in the Register (clause 25). Wilfully making a false entry or amendment to the Register will result in a $500 fine (clause 26).
Where a person or company has been charged with the offence of either selling, advertising or transporting registered hazardous goods, the police will be entitled to seize the goods which are the subject of the charge (clause 30). The goods so seized will have to be secured in an 'approved place' (clause 31) and where possible, notice will have to be given to the owner of the goods (clause 32). If the stored goods pose a threat of death or injury to a person, the Commissioner of Police may order their destruction (clause 34).

Goods which are the subject of a conviction under this Bill may be forfeited to the Commonwealth (clause 35). Clause 36 provides for appeals to the Administrative Appeals Tribunal against decisions of the Registrar and clause 37 provides for the making of regulations not inconsistent with the Bill by the Governor-General.

For further information, if required, contact the Education and Welfare Group.

Reference


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