

TRADE PRACTICES AMENDMENT ACT 1977

No. 81 of 1977

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:—

Short title,
&c.

1. (1) This Act may be cited as the *Trade Practices Amendment Act 1977*.¹

(2) The *Trade Practices Act 1974*² is in this Act referred to as the Principal Act.

Commence-
ment.

2. This Act shall come into operation on 1 July 1977.

Repeal of
expired
commence-
ment
provisions.

3. Section 2 of the Principal Act is repealed.

4. Before section 3 of the Principal Act the following section is inserted:—

Application
of Act to
Common-
wealth and
Common-
wealth
authorities.

“2A. (1) Subject to this section, this Act (other than Part X) binds the Crown in right of the Commonwealth in so far as the Crown in right of the Commonwealth carries on a business, either directly or by an authority of the Commonwealth.

“(2) Subject to the succeeding provisions of this section, this Act applies as if—

- (a) the Commonwealth, in so far as it carries on a business otherwise than by an authority of the Commonwealth; and
- (b) each authority of the Commonwealth (whether or not acting as an agent of the Crown in right of the Commonwealth) in so far as it carries on a business,

were a corporation.

“(3) Nothing in this Act renders the Crown in right of the Commonwealth liable to be prosecuted for an offence.

“(4) Part IV does not apply in relation to the business carried on by the Commonwealth in developing, and disposing of interests in, land in the Australian Capital Territory.”.

5. Section 4 of the Principal Act is amended—

Interpretation.

- (a) by inserting in sub-section (1), before the definition of “authorization”, the following definitions:—

“ ‘acquire’ includes—

- (a) in relation to goods—acquire by way of purchase, exchange or taking on lease, on hire or on hire-purchase; and

- (b) in relation to services—accept;

‘arrive at’, in relation to an understanding, includes reach or enter into;

‘authority of the Commonwealth’ means—

- (a) a body corporate established for a purpose of the Commonwealth by or under a law of the Commonwealth or a law of a Territory; or

- (b) an incorporated company in which the Commonwealth, or a body corporate referred to in paragraph (a), has a controlling interest;”;

- (b) by inserting in sub-section (1), after the definition of “authorization”, the following definition:—

“ ‘business’ includes a business not carried on for profit;”;

- (c) by omitting from sub-section (1) the definitions of “commencing date”, “Commission” and “Companies Ordinance” and substituting the following definitions:—

“ ‘commencing date’ means 1 October 1974;

‘Commission’ means the Trade Practices Commission established by section 6A, and includes a member of the Commission or a Division of the Commission performing functions of the Commission;”;

- (d) by omitting from sub-section (1) the definition of “conduct”;

- (e) by inserting in sub-section (1), after the definition of “Court”, the following definitions:—

“ ‘covenant’ means a covenant (including a promise not under seal) annexed to or running with an estate or interest in land (whether at law or in equity and whether or not for the benefit of other land), and ‘proposed covenant’ has a corresponding meaning;

‘debenture’ includes debenture stock, bonds, notes and any other document evidencing or acknowledging indebtedness of a body corporate, whether constituting a charge on property of the body corporate or not;”;

- (f) by omitting from sub-section (1) the definitions of “engage in conduct” and “financial corporation” and substituting the following definition:—

- “‘financial corporation’ means a financial corporation within the meaning of paragraph 51 (xx) of the Constitution and includes a body corporate that carries on as its sole or principal business the business of banking (other than State banking not extending beyond the limits of the State concerned) or insurance (other than State insurance not extending beyond the limits of the State concerned);”;
- (g) by omitting from sub-section (1) the definitions of “full-time member of the Commission” and “give effect to” and substituting the following definition:—
- “‘give effect to’, in relation to a provision of a contract, arrangement or understanding, includes do an act or thing in pursuance of or in accordance with or enforce or purport to enforce;”;
- (h) by omitting from sub-section (1) the definitions of “market”, “meeting” and “member of the Commission” and substituting the following definition:—
- “‘member of the Commission’ includes the Chairman and a person appointed to act as a member of the Commission but does not include an associate member of the Commission;”;
- (j) by omitting from sub-section (1) the definition of “practice of exclusive dealing” and substituting the following definition:—
- “‘practice of exclusive dealing’ means the practice of exclusive dealing referred to in sub-section 47 (2), (3), (4), (5), (6), (7), (8) or (9);”;
- (k) by inserting in sub-section (1), after the definition of “price”, the following definition:—
- “‘provision’, in relation to an understanding, means any matter forming part of the understanding;”;
- (l) by inserting in sub-section (1), after the definition of “Registrar”, the following definition:—
- “‘require’, in relation to the giving of a covenant, means require or demand the giving of a covenant, whether by way of making a contract containing the covenant or otherwise, and whether or not a covenant is given in pursuance of the requirement or demand;”;
- (m) by omitting from sub-section (1) the definitions of “services” and “share” and substituting the following definitions:—
- “‘services’ includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities that are, or are to be, provided, granted or conferred in trade or commerce, and without limiting the generality of the foregoing, includes the

rights, benefits, privileges or facilities that are, or are to be, provided, granted or conferred under—

- (a) a contract for or in relation to—
 - (i) the performance of work (including work of a professional nature), whether with or without the supply of goods;
 - (ii) the provision of, or of the use or enjoyment of facilities for, amusement, entertainment, recreation or instruction; or
 - (iii) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;
- (b) a contract of insurance;
- (c) a contract between a banker and a customer of the banker entered into in the course of the carrying on by the banker of the business of banking; or
- (d) any contract for or in relation to the lending of moneys,

but does not include rights or benefits being the supply of goods or the performance of work under a contract of service;

‘share’ includes stock;”;

- (n) by adding at the end of sub-section (1) the following definition:—

“ ‘unsolicited services’ means services supplied to a person without any request made by him or on his behalf.”; and

- (o) by omitting sub-sections (2), (3) and (4) and substituting the following sub-sections:—

“(2) In this Act—

- (a) a reference to engaging in conduct shall be read as a reference to doing or refusing to do any act, including the making of, or the giving effect to a provision of, a contract or arrangement, the arriving at, or the giving effect to a provision of, an understanding or the requiring of the giving of, or the giving of, a covenant;
- (b) a reference to conduct, when that expression is used as a noun otherwise than as mentioned in paragraph (a), shall be read as a reference to the doing of or the refusing to do any act, including the making of, or the giving effect to a provision of, a contract or arrangement, the arriving at, or the giving effect to a provision of, an understanding or the requiring of the giving of, or the giving of, a covenant;

- (c) a reference to refusing to do an act includes a reference to—
 - (i) refraining (otherwise than inadvertently) from doing that act; or
 - (ii) making it known that that act will not be done; and
- (d) a reference to a person offering to do an act, or to do an act on a particular condition, includes a reference to the person making it known that the person will accept applications, offers or proposals for the person to do that act or to do that act on that condition, as the case may be.

“(3) Where a provision of this Act is expressed to render a provision of a contract, or to render a covenant, unenforceable if the provision of the contract or the covenant has or is likely to have a particular effect, that provision of this Act applies in relation to the provision of the contract or the covenant at any time when the provision of the contract or the covenant has or is likely to have that effect notwithstanding that—

- (a) at an earlier time the provision of the contract or the covenant did not have that effect or was not regarded as likely to have that effect; or
- (b) the provision of the contract or the covenant will not or may not have that effect at a later time.

“(4) In this Act—

- (a) a reference to the acquisition of shares in the capital of a body corporate shall be construed as a reference to an acquisition, whether alone or jointly with another person, of any legal or equitable interest in such shares; and
- (b) a reference to the acquisition of assets of a body corporate shall be construed as a reference to an acquisition, whether alone or jointly with another person, of any legal or equitable interest in such assets but does not include a reference to an acquisition by way of charge only or an acquisition in the ordinary course of business.”.

6. After section 4 of the Principal Act the following sections are inserted:—

Subsidiary,
holding and
related
bodies
corporate.

“4A. (1) For the purposes of this Act, a body corporate shall, subject to sub-section (3), be deemed to be a subsidiary of another body corporate if—

- (a) that other body corporate—
 - (i) controls the composition of the board of directors of the first-mentioned body corporate;
 - (ii) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the first-mentioned body corporate; or