

The demise of consumer protection

Consumer protections in Australia under the *Trade Practices Act 1974* (‘the TPA’) were hard won. In fact, twenty years of negotiations were undertaken to produce a minimum standard for consumer safety. The protection of consumer rights in the TPA is provided for under a regime which creates disincentives to service providers and suppliers of products to act in ways that cause harm to consumers.

The TPA does not introduce a system of ‘strict liability’ for injuries resulting from the supply of goods and services, but rather, it imposes an obligation to exercise due care and skill.¹

However, last year a panel of ‘eminent’ people, in the space of only twelve weeks, considered, inquired into, evaluated and reviewed those protections and then recommended they be significantly amended to the detriment of consumers.² The protections for consumers, therefore, despite persistent lobbying by the consumer movement over a twenty-year period, all that time ago, will turn to dust.

So, with the stroke of a pen, we are headed back toward the dark ages where the weak perish at the hands of the powerful. ‘All care and no responsibility’, as the saying goes.

Last year, in the early hours of the morning, at the end of a very busy and controversial sitting week,³



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the federal parliament passed the *Trade Practices Amendment (Liability for Recreational Services) Act 2002*.

As a result, a term of a contract for a recreational service supplied by a corporation is not void under section 68 of the TPA only because it contravenes the implied warranty to provide due care and skill under section 74 of the TPA. The recreational service must involve a significant degree of physical exertion or physical risk for the recreational service provider to gain the advantage conferred on it by the section.

Therefore, any contract between a consumer and an incorporated recreational service provider, where the recreational service involves a significant degree of physical exertion or physical risk, can waive liability for death and personal injury.⁴

Waivers, the community has come to know since the TPA was introduced in 1974, are more often than not, not worth the paper they are written on. At least, that was the case until 19 December 2002 when the *Trade Practices Amendment (Liability for Recreational Services) Act* received Royal Assent.

Due to the perceived public liability crisis last year, the pressure on the government from the insurance lobby and groups unable to secure affordable insurance cover, action was taken in the hope of providing some relief. The eminent panel was established, directive terms of reference were created and recommendations were accordingly made. However, just because the panel was labelled ‘eminent’ does not mean that the recommendations are right and in the public interest.

The government has responded hastily and dismantled important consumer protections without ensuring that consumers are informed of the fundamental changes to the law, and further ensuring that consumers are suitably informed of risks at the time of entering into contracts with recreational service providers.

The reality of these reforms will haunt the government in years to come. The changes concerning the effectiveness of waivers will result in declining safety standards and consequently more injuries. Some of those injuries will be significant or on a grand scale, such as the collapse of a fairground ride. The media attention, and subsequent community backlash on the unavailability of compensation will not be regarded favourably. Pressure will mount on the government to restore consumer protections.

However, it is hoped that a disaster can be avoided and the government sees the error of its ways on this issue and repeals the *Trade Practices Amendment (Liability for Recreational Services) Act*. We also hope that the government will not proceed with implementing the other eminent panel recommendations to further amend the TPA to the detriment of consumers.

ENDNOTES:

- ¹ Section 68 *Trade Practices Act 1974*.
- ² *Review of the Law of Negligence*, 30 September 2002, Commonwealth of Australia.
- ³ Parliament was also debating controversial terrorism legislation.
- ⁴ Section 1 *Trade Practices Amendment (Liability for Recreational Services) Act 2002*.