

# Book Reviews

RESTRICTIVE TRADE PRACTICES: COMMENTARY  
AND MATERIALS by Anne Hurley, Sydney, Law Book  
Company, 1991, xxv + 615pp ISBN 0455210071(HC)

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The *Trade Practices Act 1974* is in my view the most important piece of economic legislation that Australia has produced in its relatively short history as a nation. It replaces a series of Acts of the Commonwealth Parliament which attempted to control anti-competitive business activities, and those resulting in the acquisition of monopoly power. Despite a number of challenges on constitutional grounds, most of which have failed, it has been a relatively successful piece of legislation. Based on a mixture of United States, United Kingdom and European "precedents", the legislation not only contains provisions to control anticompetitive behaviour but is also generally regarded as the model Australian legislation for consumer protection. So far no State or Territory has chosen to replicate the restrictive trade practices provisions of the Australian Act, but all States and the Northern Territory have now replicated the consumer protection provisions of the Act.

Although Australia had had legislation which had attempted to regulate anti-competitive behaviour prior to 1974, it was the passage of the 1974 Act which was the catalyst for the teaching of competition law, or restrictive trade practices, in Australian tertiary institutions. Prior to the appearance of Anne Hurley's impressive collection of commentary and materials, there has only been one other major Source Book (or Case Book) which deals with this particular area of the law — the work by Ransom and Pengilly: *Restrictive Trade Practices: Judgments, Materials and Policy*.

In this work, Anne Hurley has adopted what I would regard as a traditional approach in the selection of materials for the teaching of this important subject area. She has relied heavily on a *legal* analysis of material relating to this area. Regrettably there has been too little use of economics literature and other, extracts. I think the proper way to teach the subject is to teach it as an interdisciplinary subject. This is the way I have taught it over a number of years to an impressive number of students at Monash University (in joint teaching with economists such as Maureen Brunt, Gary Pursell, Bob Officer and Phillip Williams). I found it necessary to include much more material which deals with the economic analysis of the relevant legislation and related matters than is included in this collection. The approach adopted by Hurley is in fact a *straight* legal approach but there is a sprinkling of interesting material (mainly from lawyers rather than economists) in the book dealing with the economic issues.

Another small quibble I have with the collection (and I trust that these remarks will be seen as constructive criticisms) is the choice of material. Whilst there has been some American material reproduced in the book (cases from the United States Supreme Courts and other courts), there has been relatively little material produced from the European Commission, from the United Kingdom or from Canada. Whilst the UK Legislation has less and less significance for the Australian student and practitioner, the other jurisdictions are increasing in importance. I would also have liked to have seen more material from US scholars (as well as court decisions) in dealing with the various issues that are analysed but I understand there are prohibitive royalty fees payable for the use of such material.

Hurley adopts a classical approach to the analysis of the subject area. She deals with each of the sections of Part IVA of the Act in a separate chapter. The subject of *authorisation* (a most important aspect of the operation of the Act) is treated separately in relation to each of the relevant sections. In my view it is more appropriate to deal with authorisation in general terms rather than treating it as relevant to each of the separate sections. Often transactions in respect of which there have been applications

to the Trade Practices Commission for authorisation involve a number of sections of the Act rather than one section. The issues the Commission has to consider in determining whether authorisation should be granted will often not be constrained, when evaluating public benefit, by considerations raised by one specific section.

The extracts chosen are generous. A considerable amount of material is reproduced from publications of the Trade Practices Commission. These materials are useful, especially for those wishing to understand how the Commission views its obligations in relation to the areas of the law. Again, one would like to have seen material produced from other jurisdictions to contrast the approach taken there with that taken in Australia.

More and more, trade practices law will be influenced by overseas developments. The Australian Government has shown a willingness to allow interchange of information between the Australian Securities Commission and equivalent bodies overseas and one sees the same development occurring in relation to the trade practices area. Future editions of the work may take this into account.

My final quibble with the book is that it could have been more policy orientated. Again this reflects my approach to the teaching of the subject which differs from that adopted by law schools.

The selection of case materials in this volume will prove useful to practitioners as well as to students who wish to obtain an overview of the interpretation of the provisions of the Act.

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