

**ARTHUR ROBINSON & HEDDERWICKS
LIBRARY**

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

Presented and read a first time

(Industry, Science And Technology)

**TRADE PRACTICES AMENDMENT (BETTER BUSINESS
CONDUCT) BILL 1995**

CONTENTS

Section

1. Short title
2. Commencement
3. Amendments

SCHEDULE

AMENDMENTS OF THE TRADE PRACTICES ACT 1974

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

Presented and read a first time

(Industry, Science and Technology)

A BILL

FOR

**An Act to amend the law relating to trade practices to
promote better business conduct, and for related purposes**

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Trade Practices Amendment (Better Business Conduct) Act 1995*.

2 **Trade Practices Amendment (Better Business Conduct)**
 No. , 1995

Commencement

2. This Act commences on 1 July 1996.

Amendments

3. The *Trade Practices Act 1974* is amended as set out in the Schedule.

SCHEDULE

Section 3

AMENDMENTS OF THE TRADE PRACTICES ACT 1974

1 Subsections 6(3) and (4):

Omit "Part IVA", substitute "Parts IVA and IVB".

2. After Part IVA:

Insert:

"PART IVB—HARSH OR OPPRESSIVE CONDUCT

Harsh or oppressive conduct

"51AC.(1) This section applies to a corporation if:

- (a) the corporation and another person (**the other person**) are or were in a commercial relationship that involves or involved the supply of goods or services by the corporation to the other person on a regular or continuous basis; and
- (b) the commercial relationship is or was of major significance to the commercial activities of the other person; and
- (c) the nature of the commercial relationship and the circumstances of the other person are such that the other person's freedom of action is or was substantially reduced.

"(2) For the purposes of subsection (1), a commercial relationship does not include negotiations relating to the formation of a relationship between the corporation and the other person.

"(3) A corporation to whom this section applies must not, in trade or commerce:

- (a) knowingly engage in conduct that is harsh or oppressive in relation to the other person; or
- (b) engage in conduct that the corporation ought reasonably to have known to be harsh or oppressive in relation to the other person.

"(4) Without in any way limiting the matters to which the Court may have regard for the purpose of determining whether conduct of a corporation is harsh or oppressive in relation to another person, the Court may have regard to:

- (a) the relative strengths of the bargaining positions of the corporation and the other person; and
- (b) the impact of the conduct on the other person; and
- (c) any standard generally regarded in the area of trade or commerce in which the corporation is involved as representing a standard of acceptable behaviour in trade or commerce; and

SCHEDULE—continued

- (d) the extent to which the conduct of the corporation is consistent with any code of practice adopted by, or applying to, participants in the area of trade or commerce in which the corporation is involved; and
- (e) the extent to which the conduct of the corporation is consistent with its conduct towards persons who have entered into commercial relationships with the corporation that are the same as, or substantially similar to, the commercial relationship between the corporation and the other person; and
- (f) whether the other person has taken reasonable steps to protect the person's interests; and
- (g) in relation to a contract—the extent to which the corporation was prepared to negotiate with the other person in relation to the terms and conditions of the contract.

“(5) In a proceeding for a contravention of subsection (3), the Court must not make a finding that conduct of the corporation contravenes subsection (3) unless the Court is satisfied that, in the context of the commercial relationship considered as a whole, a reasonable person would conclude that the conduct went beyond what was reasonably necessary for the protection of the present or future legitimate interests of the corporation.

“(6) This section does not apply to conduct engaged in after the commencement of this section if the conduct engaged in is conduct that gives effect to, or involves the enforcement of, a provision of a contract that was entered into before the commencement of this section.

Mere institution of legal proceedings not harsh or oppressive conduct

“51AD.(1) A corporation is not to be taken, for the purposes of paragraph 51AC(3)(a), to engage in harsh or oppressive conduct in relation to another person by reason only that the corporation institutes legal proceedings against the other person or refers a dispute or claim involving the other person to arbitration.

“(2) A corporation is not to be taken, for the purposes of paragraph 51AC(3)(b), to engage in conduct that the corporation ought reasonably to know to be harsh or oppressive in relation to another person by reason only that the corporation institutes legal proceedings against the other person or refers a dispute or claim involving the other person to arbitration.”.

3. Subsection 75B(1):

After “IVA” insert “, IVB”.

4 Paragraph 80(1)(a):

After “IVA” insert “, IVB”.

SCHEDULE—continued

- 5 Subsection 82(1):**
After “IV” insert “, IVB”.
- 6. Section 83:**
After “IVA” insert “, IVB”.
- 7. Subsections 84(1) and (3):**
After “IVA” insert “, IVB”.
- 8. Subsection 86(2):**
After “IVA” insert “or IVB”.
- 9. Paragraphs 86A(1)(b), (4)(b) and (5)(b):**
After “IVA” insert “or IVB”.
- 10. Paragraph 86B(1)(b):**
After “IVA” insert “or IVB”.
- 11 Subsections 87(1), (1A), (1B) and (1C):**
After “IVA” insert “, IVB”.
- 12. Subsection 87(1CA):**
After “IVA” insert “or IVB”.
- 13. Subsection 87(1D):**
After “IVA” insert “or IVB”.
- 14. Paragraphs 87A(1)(b) and (c):**
After “IVA” insert “, IVB”.