

1996

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Trade Practices Amendment (Better
Business Conduct) Bill 1996**

No , 1996

(Hon. K.C. Beazley)

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

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A Bill for an Act to amend the law relating to trade practices to promote better business conduct, and for related purposes

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Trade Practices Amendment (Better*
6 *Business Conduct) Act 1996*.

7 **2 Commencement**

8 This Act commences on 1 July 1996.

9 **3 Schedule(s)**

0 Each Act that is specified in a Schedule to this Act is amended or
1 repealed as set out in the applicable items in the Schedule.

1
2 **Schedule 1—Amendments of the Trade**
3 **Practices Act 1974**

4 **1 Subsections 6(3) and (4)**

5 Omit “Part IVA”, substitute “Parts IVA and IVB”.

6 **2 After Part 1VA**

7 Insert:

8 **PART IVB—HARSH OR OPPRESSIVE CONDUCT**

9 **51AC Harsh or oppressive conduct**

10 (1) This section applies to a corporation if:

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

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

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

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

30 (4) Without in any way limiting the matters to which the Court may
31 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
- (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 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.

1 **51AD Mere institution of legal proceedings not harsh or oppressive**
2 **conduct**

3 (1) A corporation is not to be taken, for the purposes of paragraph
4 51AC(3)(a), to engage in harsh or oppressive conduct in relation to
5 another person by reason only that the corporation institutes legal
6 proceedings against the other person or refers a dispute or claim
7 involving the other person to arbitration.

8 (2) A corporation is not to be taken, for the purposes of paragraph
9 51AC(3)(b), to engage in conduct that the corporation ought
10 reasonably to know to be harsh or oppressive in relation to another
11 person by reason only that the corporation institutes legal
12 proceedings against the other person or refers a dispute or claim
13 involving the other person to arbitration.

14 **3 Subsection 75B(1)**

15 After "IVA" insert ", IVB".

16 **4 Paragraph 80(1)(a)**

17 After "IVA" insert ", IVB".

18 **5 Subsection 82(1)**

19 After "IV" insert ", IVB".

20 **6 Section 83**

21 After "IVA" insert ", IVB".

22 **7 Subsections 84(1) and (3)**

23 After "IVA" insert ", IVB".

24 **8 Subsection 86(2)**

25 After "IVA" insert "or IVB".

26 **9 Paragraphs 86A(1)(b), (4)(b) and (5)(b)**

27 After "IVA" insert "or IVB".

28 **10 Paragraph 86B(1)(b)**

29 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".



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