



A New Tax System (Trade Practices Amendment) Act 2000

No. 69, 2000



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An Act to amend the *Trade Practices Act 1974* in connection with the implementation of A New Tax System, and for other purposes

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An Act to amend the *Trade Practices Act 1974* in connection with the implementation of A New Tax System, and for other purposes

[Assented to 22 June 2000]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *A New Tax System (Trade Practices Amendment) Act 2000*.

2 Commencement

- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.

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- (2) Item 1 of Schedule 2 is taken to have commenced when Part 3 of the *Competition Policy Reform Act 1995* commenced.
 - (3) Item 2 of Schedule 2 is taken to have commenced when the *Trade Practices Amendment (Industry Access Codes) Act 1997* commenced.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments related to the New Tax System

Trade Practices Act 1974

1 Paragraph 6(2)(b)

Omit “and 75AY”, substitute “, 75AY and 75AYA”.

2 After section 75AY

Insert:

75AYA Prohibition on misrepresenting the effect of the New Tax System changes

A corporation must not, in trade or commerce, for the purpose of price exploitation, in connection with:

- (a) the supply or possible supply of goods or services; or
- (b) the promotion by any means of the supply or use of goods or services;

engage in conduct, at any time during the period starting when this section commences and ending at the end of the New Tax System transition period, that:

- (c) falsely represents (whether expressly or impliedly) the effect, or likely effect, of all or any of the New Tax System changes; or
- (d) misleads or deceives, or is likely to mislead or deceive, a person about the effect, or likely effect, of all or any of the New Tax System changes.

3 Subsection 75B(1)

After “section 75AU”, insert “or 75AYA”.

4 Subparagraph 76(1)(a)(ii)

After “section 75AU”, insert “or 75AYA”.

5 After section 76

Insert:

76A Defence to proceedings under section 76 relating to a contravention of section 75AYA

(1) In this section:

contravention of section 75AYA includes conduct referred to in paragraph 76(1)(b), (c), (d), (e) or (f) that relates to a contravention of section 75AYA.

(2) In proceedings against a person (the *respondent*) under section 76 in relation to an alleged contravention of section 75AYA, it is a defence if the respondent establishes:

- (a) that the contravention in respect of which the proceedings were instituted was due to reasonable mistake; or
- (b) that the contravention in respect of which the proceedings were instituted was due to reasonable reliance on information supplied by another person; or
- (c) that:
 - (i) the contravention in respect of which the proceedings were instituted was due to the act or default of another person, to an accident or to some other cause beyond the respondent's control; and
 - (ii) the respondent took reasonable precautions and exercised due diligence to avoid the contravention.

(3) In paragraphs (2)(b) and (c), *another person* does not include a person who was:

- (a) a servant or agent of the respondent; or
- (b) if the respondent is a body corporate—a director, servant or agent of the respondent;

at the time when the alleged contravention occurred.

76B What happens if substantially the same conduct is a contravention of section 75AYA and an offence?

(1) In this section:

contravention of section 75AYA includes conduct referred to in paragraph 76(1)(b), (c), (d), (e) or (f) that relates to a contravention of section 75AYA.

pecuniary penalty order means an order under section 76 for the payment of a pecuniary penalty.

- (2) The Court must not make a pecuniary penalty order against a person in relation to a contravention of section 75AYA if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.
- (3) Proceedings for a pecuniary penalty order against a person in relation to a contravention of section 75AYA are stayed if:
 - (a) criminal proceedings are started or have already been started against the person for an offence; and
 - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.The proceedings for the pecuniary penalty order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings are dismissed.
- (4) Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of section 75AYA regardless of whether a pecuniary penalty order has been made against the person in respect of the contravention.
- (5) Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:
 - (a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of section 75AYA (whether or not the order was made); and
 - (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

6 Subparagraph 78(a)(ii)

After “section 75AU”, insert “or 75AYA”.

Note: The heading to section 78 is altered by adding at the end “**or 75AYA**”.

7 Subparagraph 80(1)(a)(ii)

After “ section 75AU”, insert “or 75AYA”.

8 Subsection 80(1A)

Omit “or section 75AU”, substitute “, 75AU or 75AYA”.

9 After section 75AY of Part 2 of the Schedule

Insert:

75AYA Prohibition on misrepresenting the effect of the New Tax System changes

A person must not, in trade or commerce, for the purpose of price exploitation, in connection with:

- (a) the supply or possible supply of goods or services; or
- (b) the promotion by any means of the supply or use of goods or services;

engage in conduct, at any time during the period starting when this section commences and ending at the end of the New Tax System transition period, that:

- (c) falsely represents (whether expressly or impliedly) the effect, or likely effect, of all or any of the New Tax System changes; or
- (d) misleads or deceives, or is likely to mislead or deceive, a person about the effect, or likely effect, of all or any of the New Tax System changes.

Schedule 2—Other amendments

Trade Practices Act 1974

1 After subsection 44ZZA(3)

Insert:

- (3A) The Commission must not accept the undertaking unless:
- (a) the provider, or proposed provider, is a corporation (or a partnership or joint venture consisting wholly of corporations); or
 - (b) the undertaking provides for access only to third parties that are corporations; or
 - (c) the undertaking provides for access that is (or would be) in the course of, or for the purposes of, constitutional trade or commerce.

2 Subsection 44ZZA(6A)

Repeal the subsection, substitute:

- (6A) If the undertaking provides for the Commission to perform functions or exercise powers in relation to the undertaking, the Commission may perform those functions and exercise those powers. If the Commission decides to do so, it must do so in accordance with the undertaking.

3 Subsection 44ZZJ(3)

Repeal the subsection.

*[Minister's second reading speech made in—
House of Representatives on 16 March 2000
Senate on 10 April 2000]*

(37/00)
