**TRADE PRACTICES AMENDMENT ACT 1976**

**No. 88 of 1976**

An Act relating to Trade Practices.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:—

**Short title and citation.**

**1.** (1) This Act may be cited as the Trade Practices Amendment Act 1976.

(2) The Trade Practices Act 1974-1975 is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the Trade Practices Act 1974-1976.

**Commencement.**

**2.** This Act shall come into operation on the day on which it receives the Royal Assent but the amendments made by paragraph 3(a) and by sections 8 and 17 shall be deemed to have had effect at all times on and from 1 October 1974.

**Interpretation.**

**3.** Section 4 of the Principal Act is amended—

(a) by omitting from sub-section (1) the definition of “Court” and substituting the following definition:—

“‘Court’ means the Australian Industrial Court;

(b) by omitting from sub-section (1) the definition of “person”; and

(c) by adding at the end of the section the following sub-section:—

“(5) The express references in this Act to corporations and bodies corporate shall not be taken to imply that references to persons do not also include references to persons who are not natural persons.”.

**Additional operation of Act.**

**4.** Section 6 of the Principal Act is amended—

(a) by omitting from paragraph (b) of sub-section (2) the words “section 46, Part V (other than section 55)” and substituting the words “sections 46, 60 and 61, sub-sections 64(3) and (4)”; and

(b) by omitting from paragraph (h) of sub-section (2) the word and figures “or 89(7)”.

**Representation at public hearings by Commission.**

**5.** Section 24 of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraphs: —

“(a) a natural person may appear in person;

“(aa) a person other than a body corporate may be represented by an employee of the person approved by the Commission;”.

**6.** (1) Section 33 of the Principal Act is repealed and the following section substituted: —

**Remuneration of members of Tribunal.**

“33. (1) The President shall, if he is not the Chief Judge of the Court or the President of the Australian Conciliation and Arbitration Commission, be paid—

(a) additional salary at a rate per annum equal to the difference between the rate per annum of the salary payable to the Chief Judge of the Court and the rate per annum of the salary payable to a Judge of the Court; and

(b) an additional annual allowance at a rate per annum equal to the difference between the rate per annum of the annual allowance payable to the Chief Judge of the Court and the rate per annum of the annual allowance payable to a Judge of the Court.

“(2) A member of the Tribunal other than a presidential member shall be paid such remuneration as is determined by the Remuneration Tribunal.

“(3) Subject to the Remuneration Tribunals Act 1973, a member of the Tribunal other than a presidential member shall be paid such allowances as are prescribed.

“(4) Where the President, not being the Chief Judge of the Court or the President of the Australian Conciliation and Arbitration Commission, dies or—

(a) being a Judge of a Federal Court, retires as such a Judge; or

(b) being a person who has the status of a Judge of the Court, retires from the office by virtue of which he has that status,

the Judges’ Pensions Act 1968 applies to and in relation to him as if he had been Chief Judge of the Court immediately before his death or retirement.’’.

(2) Sub-section 33(4) of the Principal Act as amended by this Act applies in the case of a President of the Tribunal who retired before the commencement of this Act as if that sub-section had been in force at the time of his retirement.

**Exceptions**.

**7.** Section 51 of the Principal Act is amended by omitting paragraph (g) of sub-section (2) and substituting the following paragraph:—

“(g) to any provision of a contract, or to any arrangement or understanding, being a provision or an arrangement or understanding that relates exclusively to the export of goods from Australia or to the supply of services outside Australia, if full and accurate particulars of the provision, or of the arrangement or understanding, were furnished to the Commission before the expiration of 7 days after the date on which the contract or arrangement was made or the understanding was entered into or the date of coming into operation of this paragraph, whichever is the later.”.

**Pecuniary penalties.**

**8.** Section 76 of the Principal Act is amended by omitting the words “Superior Court of Australia or the Australian Industrial Court” and substituting the word “Court”.

**Procedure for applications**.

**9.** Section 89 of the Principal Act is amended by omitting sub-section (7).

**Determination of applications for authorizations.**

**10.** Section 90 of the Principal Act is amended—

(a) by omitting from sub-section (2) the words “or any other person” and substituting the words “, by the Commonwealth, by a State or by any other person";

(b) by omitting from sub-section (5) the words “Subject to sub-sections (9) and (11)” and substituting the words “Subject to sub-section (9)”;

(c) by omitting from sub-section (6) the words “prescribed date” and substituting the words “date on which the application is received by the Commission”;

(d) by omitting from sub-section (9) the words “Subject to sub-section (10), where—” and substituting the word “Where—”; and

(e) by omitting sub-sections (10), (11), (12), (13) and (14).

**Applications for review.**

**11.** Section 101 of the Principal Act is amended by omitting from sub-section (1) the word and figures “or (11)”.

**Representation.**

**12.** Section 110 of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraphs:—

“(a) a natural person may appear in person;

“(aa) a person other than a body corporate may be represented by an employee of the person approved by the Tribunal;

**Interpretation**

**13.** Section 111 of the Principal Act is amended by omitting from the definition of “Australian flag shipping operator” in sub-section (1) the words “a law of Australia” and substituting the words “a law of the Commonwealth”.

**Institution of prosecutions.**

**14.** Section 140 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:—

“(1) For the purpose of proceedings before the Court for an offence against this Part, the references in paragraph 163(4)(b) to the Minister shall be read as references to the Minister administering this Part.

**15.** After section 163 of the Principal Act the following section is inserted:—

**Jurisdiction of Court to make declarations and orders.**

“163a. (1) Subject to this section, a person may institute a proceeding in the Court seeking, in relation to a matter arising under this Act, the making of—

(a) a declaration in relation to the operation or effect of any provision of this Act other than Division 2 of Part V or in relation to the validity of any act or thing done, proposed to be done or purporting to have been done under this Act; or

(b) an order by way of, or in the nature of, prohibition, certiorari or mandamus,

or both such a declaration and such an order, and the Court has jurisdic­tion to hear and determine the proceeding.

“(2) The Minister may institute a proceeding in the Court under this section and may intervene in any proceeding instituted in the Court under this section or in a proceeding instituted in any other court in which a party is seeking the making of a declaration of a kind mentioned in paragraph (1)(a) or an order of a kind mentioned in paragraph (1)(b).

“(3) The Commission is not entitled to institute a proceeding in the Court under this section but may, in its official name, intervene in a pro­ceeding instituted in the Court or in any other court, being a proceeding in which a party is seeking the making of a declaration of a kind men­tioned in paragraph (1) (a) in relation to a matter in respect of which that party gave, or could have given, a notice to the Commission under section 92, 93 or 94.

“(4) The jurisdiction of the Court to make—

(a) a declaration in relation to the validity of any act or thing done, proposed to be done or purporting to have been done under this Act by the Tribunal; or

(b) an order of a kind mentioned in paragraph (1)(b) directed to the Tribunal, shall be exercised by not less than 3 Judges.

“(5) In this section, ‘proceeding’ includes a cross-proceeding.”.

**Certificates as to furnishing of particulars of contracts, arrangements and understandings.**

**16.** Section 166 of the Principal Act is amended—

(a) by omitting from sub-section (1) the words “an agreement” and substituting the words “a provision of a contract, or particulars of an arrangement or understanding,”;

(b) by omitting from sub-section (1) the words “the agreement” and substituting the words “the contract or to the arrangement or understanding”; and

(c) by omitting from sub-section (3) the words “an agreement” and substituting the words “a provision of a contract, or of an arrangement or understanding,”.

**17.** Section 169 of the Principal Act is repealed and the following section substituted:—

Single Judge may exercise jurisdiction of Court.

“169. Except as provided by sub-section 137(4), section 143, sub-section 163(3) and sub-section 163a(4), the jurisdiction conferred on the Court by this Act may be exercised by a single Judge.”.

**Additional amendments.**

**18.** The Principal Act is amended as set out in the Schedule.

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SCHEDULE Section 18

ADDITIONAL AMENDMENTS

1. The following provisions of the Principal Act are amended by omitting the word “Attorney- General” (wherever occurring) and substituting the word “Minister”: —

Sections 11(2)(b), 12, 13(2)(b)(ii), 17(3), 28(1)(b), (2) and (3), 29(1) and (2), 77(1), 80(1)(a), 81(a) and (c), 89(4), 90(9)(b), 100(3), 149(3)(a), 163(4)(b), 166(3) and 171.

2. The following provisions of the Principal Act are amended by omitting the word “Australia” (wherever occurring) and substituting the words “the Commonwealth”:—

Section 6(2)(a)(iv) and (2)(b)(iv), 28(1)(e), 47(3), 76, 77(1), 137(6) and 170(2).