

TRADE PRACTICES AMENDMENT ACT (No. 2) 1978

No. 207 of 1978

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:

1. (1) This Act may be cited as the *Trade Practices Amendment Act* (No. 2) 1978.¹ Short title,
&c.

(2) The *Trade Practices Act* 1974² is in this Act referred to as the Principal Act.

2. This Act shall come into operation on the day on which it receives the Royal Assent.¹ Commence-
ment

3. Section 6 of the Principal Act is amended—

- (a) by inserting “sub-section 45D (1A) or in” before “section 55” in paragraph (a) of sub-section (2); and
 - (b) by inserting “(other than sub-section (1A))” after “45D” in paragraph (b) of sub-section (2).
- Additional
operation of
Act

4. Section 45D of the Principal Act is amended—

(a) by inserting after sub-section (1) the following sub-sections:

“(1A) Subject to this section, a person shall not, in concert with another person, engage in conduct for the purpose, and having or likely to have the effect, of preventing or substantially hindering a third person (not being an employer of the first-mentioned person) from engaging in trade or commerce—

- (a) between Australia and places outside Australia;
 - (b) among the States; or
 - (c) within a Territory, between a State and a Territory or between two Territories.
- Boycotts

“(1B) In a proceeding under this Act in relation to a contravention of sub-section (1A), it is a defence if the defendant proves—

- (a) that the conduct concerned is the subject of an authorization in force under section 88;

- (b) that a notice in respect of the conduct has been duly given to the Commission under sub-section 93 (1) and the Commission has not given a notice in respect of the conduct under sub-section 93 (3); or
- (c) that the dominant purpose for which the defendant engaged in the conduct concerned was to preserve or further a business carried on by him.

“(1C) The application of sub-section (1A) in relation to a person in respect of his engaging in conduct in concert with another person is not affected by reason that the other person proves any of the matters mentioned in sub-section (1B) in respect of that conduct.”; and

- (b) by omitting from sub-sections (2), (3), (4) and (6) “sub-section (1)” and substituting “sub-section (1) or (1A)”.

Pecuniary penalties

5. Section 76 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(3) If conduct constitutes a contravention of two or more provisions of Part IV, a proceeding may be instituted under this Act against a person in relation to the contravention of any one or more of the provisions but a person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.”.

Power of Commission to grant authorizations

6. Section 88 of the Principal Act is amended by omitting sub-section (7) and substituting the following sub-section:

“(7) Subject to this Part, the Commission may, upon application by a person, grant an authorization to the person, and to any other person acting in concert with the first-mentioned person, to engage in conduct to which section 45D would or might apply and, while such an authorization remains in force, that section does not apply in relation to the engaging in that conduct by the applicant and by any person acting in concert with the applicant.”.

NOTES

1. Act No. 207, 1978; assented to 6 December 1978.
2. Act No. 51, 1974, as amended. For previous amendments *see* Acts Nos. 63 and 56, 1975; Nos. 88 and 157, 1976; Nos. 81 and 151, 1977; and No. 206, 1978.