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# Legal notes

## Legislation update

### Trade Practices Legislation Amendment Bill 2003

This Bill was introduced on 27 March 2003. It will amend the *Trade Practices Act 1974* (TPA) by introducing a new Part VIIA to replace the *Prices Surveillance Act 1983* (PSA). The Bill also makes some technical changes to Part IIIA of the TPA.

In 2001 the Productivity Commission reviewed the PSA. It recommended that the PSA be repealed and that limited price monitoring functions be included in the TPA. In the explanatory memorandum for the Bill, it is stated that the proposal recognizes that the impetus for prices surveillance has changed significantly since the enactment of the PSA in the early 1980s. Once seen as a tool to reduce inflation, prices surveillance is now regarded as part of Australia's overall competition policy.

The new Part VIIA broadly preserves existing powers of prices surveillance. It provides for selective surveillance of the prices of certain goods and services at the discretion of the minister. Declared companies must notify the ACCC before increasing the price of notified goods or services and must wait a statutory period before implementing the increase. A new feature of the proposed prices surveillance mechanism is that the minister will be able to appoint an inquiry body other than the ACCC if the minister considers there is a possible conflict of interest.

Part IIIA of the TPA establishes a set of rules enabling third parties to obtain access to the services provided by certain major infrastructure facilities. It provides for the ACCC and the Australian Competition Tribunal to perform functions under an access regime established by a state or territory, provided certain conditions are met. Following the decision of the High Court of Australia in *The Queen v Hughes [2000] HCA 22*, further attention has been given to ensuring mechanisms conferring powers on Commonwealth authorities are constitutional. The Bill makes some technical changes to Part IIIA as part of this process.

### Trade Practices Amendment (Personal Injury and Death) Bill 2003

This Bill was introduced on 27 March 2003. It was drafted following the release of the *Review of the Law of Negligence Report* in October 2002 (the Ipp Report). It amends the TPA to prevent individuals from bringing actions for damages for personal injuries or death resulting from contravention of Division 1 of Part V of the TPA.

The Bill also removes the power of the ACCC to bring representative actions for damages for personal injuries and death resulting from contraventions of the Division.

Other orders and remedies will continue to be available for conduct in contravention of Division 1 of Part V. Potential remedies include injunctive relief (s. 80), non-punitive orders (s. 86C) and other orders (ss. 87 and 87A).

## Bills not yet progressed

### Trade Practices Amendment (Small Business Protection) Bill 2002

This Bill was introduced on 26 September 2002, to propose amendments to s. 87 of the TPA which would have enabled the ACCC to bring representative actions on behalf of people who suffered loss or damage as a result of conduct in breach of the secondary boycott provisions (ss. 45D and 45E of the TPA).

The Bill proposed to remove the phrase 'other than section 45D or 45E' from paragraphs 87(1A)(b) and 87(1B)(a) of the TPA.

Section 87 of the TPA permits the ACCC to bring a representative action seeking compensation and other remedies on behalf of people who have suffered or are likely to suffer loss or damage as a result of another person's contravention of specified provisions of the TPA.

The Bill had failed to pass the Senate by the end of the parliamentary sitting.

### **Trade Practices Amendment (Public Liability Insurance) Bill (No. 2) 2002**

This Bill was introduced last year as a Private Member's Bill by Senator Stephen Conroy. It had the stated purpose of giving the ACCC powers (similar to those that the ACCC was given under the GST price exploitation provisions in Part VB of the TPA), to prevent price exploitation arising from the current insurance reforms.

The Bill would have empowered the ACCC to take action against insurance companies who exploited savings from the reforms and charged premiums for public liability insurance which did not reflect the effects of the reforms.

This Bill has not progressed.

### **Trade Practices Amendments (Credit Card Reform) Bill 2002**

This Bill was also introduced last year as a Private Member's Bill by Senator Stephen Conroy. It had the stated purpose of giving the ACCC powers (similar to the powers that the ACCC was given under the GST price exploitation provisions in Part VB of the TPA), to deal with any price exploitation arising from changes in the regulation of credit card fees as a result of reforms announced by the Reserve Bank of Australia on 27 August 2002.

This Bill has not progressed.