

Trade Practices Compliance

by Robert Cunningham

Penalties for infringements of the *Trade Practices Act 1974* (TPA) can be as high as \$10 million per occurrence for a corporation and \$500,000 per occurrence for individuals. The extent of this liability together with the adverse publicity that accompanies infringement proceedings raises the damage profile of trade practices infringements significantly.

For most businesses, the important prohibitions in the TPA relate to anti-competitive behaviour and consumer protection.

Anti-competitive behaviour includes cartel conduct, boycotts, third-line forcing, resale price maintenance, exclusive dealing and mergers.

'Cartel conduct' includes:

- price-fixing; or
- restricting outputs in the production and supply chain; or
- allocating customers, suppliers or territories; or
- bid-rigging

by parties that are, or would otherwise be, in competition with each other.

The consumer protection provisions relate to unfair contracts, misleading and deceptive conduct and warranties about the supply of services and goods. Other matters are covered under the consumer protection provisions as well.

The Australian Consumer Law is expected to come into effect early in 2010. It will deal with unfair terms in standard form contracts entered into with consumers. Businesses should review any contracts for the provision of goods or services which use a standard form.

One way of minimising the risk of infringements under the TPA is to develop a

compliance program. The ACCC says that a compliance program in a business improves the performance of the business generally, reduces the risk of violations of the TPA and helps prevent the reputation of the business being sullied by publicity relating to breaches of the TPA. An attempt by a business to comply with the TPA may mitigate penalties imposed for any offence committed.

The ACCC recommends that businesses obtain advice to help them identify areas of risk and to establish a compliance program.

If you would like advice about a program to assist your business, Flower and Hart would be pleased to discuss it with you. At no cost to you, we would discuss the need for a compliance program in your business and a process by which the program could be developed. We would also discuss costs with you so that there are no surprises on that score.

If you would like us to help, please telephone Robert Cunningham or Katrina Chambers to arrange a preliminary discussion.



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