

PREFACE

On 15 October 2001, the Prime Minister announced that there would be an independent review of the competition provisions of the *Trade Practices Act 1974* (the Act) and their administration.

Subsequently, on 9 May 2002, the Treasurer announced the appointment of a Committee of Inquiry to conduct the review and its terms of reference. The members appointed were the Honourable Sir Daryl Dawson AC KBE CB (Chairman), Mr Curt Rendall and Ms Jillian Segal. The terms of reference are set out in Appendix A.

On 10 November 2002, the Government announced that it had referred Recommendations 6 and 12 of the *Review of the impact of Part IV of the Trade Practices Act 1974 on the recruitment and retention of medical practitioners in rural and regional Australia* (the Wilkinson Review) to the Committee.

The date on which the Committee was to report was originally 30 November 2002. However, it required additional time to prepare its report in view of the interest shown, and the submissions made, by business groups, consumer organisations, individuals and professional bodies. On 12 November 2002, the Treasurer announced that the reporting date for the review would be 31 January 2003 rather than 30 November 2002.

Scope of the review

In announcing the terms of reference of the Committee, the Treasurer observed that, while there had been reviews of specific provisions and Parts of the Act in recent years, there had not been a comprehensive review of the competition provisions in Part IV of the Act since the Independent Committee of Inquiry into National Competition Policy in Australia reported in 1993. Accordingly, the terms of reference focus the review on Part IV (together with associated penalty provisions) and Part VII of the Act.

The terms of reference do not cover parts of the Act that have been the subject of recent consideration. These include Part IIIA (national access regime), Part X (international liner cargo shipping), Part XIB (telecommunications specific anti-competitive conduct rules), Part XIC (telecommunications access regime) and sections 51(2) and 51(3).

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Section 51 provides limited statutory exceptions from the scope of Part IV for such matters as conduct arising from agreements relating to conditions of employment and certain agreements relating to intellectual property. Sections 45D to 45EB, which deal with secondary boycotts, were also excluded from the review because they were the subject of proposed legislation before the Parliament.

Within these limits, the terms of reference were broadly cast and allowed interested parties to make submissions concerning most of Part IV and related provisions elsewhere in the Act. There was one issue – the unconscionable conduct provisions in Part IVA of the Act – which gave rise to some debate about the scope of the review. The Committee concluded that these provisions were outside the terms of reference but has included some information about the issues raised in some submissions in Chapter 3. Some submissions dealt with matters which the Committee considered clearly outside the terms of reference, for example, section 52 of the Act, and these have not been discussed in the Report.

Conduct of the review

The terms of reference required the Committee, in performing its functions, to advertise nationally, consult with key interest groups and affected parties, receive public submissions, and take into account overseas experience. As the States and Territories each apply the competition provisions of the Act as their own laws, the Committee was required to seek the views of the State and Territory Governments.

The Chairman wrote to each Premier and Chief Minister in May 2002 inviting them to make submissions to the review. Subsequently, submissions were received from five jurisdictions.

A member of the Committee made a presentation about the review to the Small Business Ministerial Council on 3 July 2002.

Calls for submissions were placed in the print media beginning on 24 May 2002. This included the national daily papers and a range of other publications chosen to ensure circulation in rural and regional areas.

Information about the review, including all relevant media releases and public submissions received by the Committee, was made easily accessible through a dedicated internet website.

Submissions

The Committee received 212 submissions by December 2002, of which 198 were posted on the Committee's website as public submissions. There were a number of organisations and individuals that made more than one submission. Fourteen submissions were received by the Committee on a confidential basis. A list of those who made public submissions to the Committee is set out in Appendix B.

In addition to formal submissions, the Committee received 320 written representations from consumers requesting that the powers of the Australian Competition and Consumer Commission (ACCC) not be reduced.

Consultations

The Committee conducted consultations with a range of interested parties between July and October 2002. These involved about 50 meetings with 47 parties in Sydney, Melbourne, Canberra, Brisbane and Perth.

Two of the Committee members undertook 26 additional meetings with persons concerned with administering competition laws overseas. The meetings were in Ottawa, Washington, Paris, London and Brussels during the fortnight beginning on 23 September 2002.

The Committee also attended the annual Trade Practices Workshop of the Law Council of Australia, which was held in South Australia in August. The Committee would like to record its appreciation to the Council's Trade Practices Committee for convening last year's workshop on issues of particular interest to its review. The discussions at the workshop were of particular benefit in the Committee's subsequent deliberations.

The Committee also acknowledges the assistance it received from the ACCC and its staff throughout the course of the review. The ACCC made a formal submission to the review and participated in consultations with the Committee. The ACCC was always willing to assist the Committee through the provision of additional information when requested.

Finally, the Committee wishes to express its gratitude for the work of the review's Secretariat, which was located within the Commonwealth Treasury. The Secretariat was led by John Jepsen and included Jason McNamara, Adrian Chippindale, Matthew Bishop, Chris Lyon, Jane Benson, Belinda Robilliard, Jeremy Coghlan and Kerrin Mercer.

