

Trade Practices Bill— Some Implications

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The regulation of fees by accountants, solicitors, real estate agents and other agents, or any agreement relating to premium rates chargeable by tariff companies, appear to be only some of the "services" covered by the Trade Practices Bill of 1965. This is due to the fact that Clause 5 of the Bill defines business "as including a profession" and "services" as including, "without limiting the generality of the expression, the rights or benefits that are to be provided under an agreement for—

- (a) the performance of work (otherwise than under a contract of service), whether with or without the supply of goods;".

For the sake of simplicity I propose, in this short article, to quote mainly from relevant sections of Mr. Snedden's speech on the Bill on May 19, 1965, rather than from the Bill itself.

"The purpose of the Bill," according to Mr. Snedden, "is to preserve competition in Australian trade and commerce to the extent required by the public interest." However, later in his speech, Mr. Snedden states that "the Government is conscious that the lessening of competition may, in some aspects of the economy, be unavoidable; indeed, it may be not only consistent with, but a proper ingredient of, a truly free enterprise system". He goes on to say: "The Bill gives effect to the Government's view that these inquiries should be conducted by a body which is presided over by a person with legal qualifications and experience, but will also have as members two persons who are qualified for appointment by virtue of their knowledge of, or experience in, industry, commerce or

public administration. Thus composed, a body conducting an inquiry should be able to do so in an orderly and expeditious manner; it will be in a position to cope with such questions of law as may, from time to time, arise and it will be able to evaluate the economic and business considerations with a practical appreciation of what is involved."

I will refer later to the immensely wide definition of "public interest" (Clause 50). Suffice it to say here that the "two persons" would have to be quite exceptional if they are "to evaluate the economic and business considerations with a practical appreciation of what is involved" in the absence of any direction as to the principles to be applied in making such an evaluation other than the principles laid down in Clause 50.

But back to Mr. Snedden's speech: "The Bill will cover . . . restrictions as to—

- (a) the terms or conditions, including prices, on which goods or **services** (my emphasis) may be supplied or acquired;".

This seems clear enough, one would think.

Whilst one hesitates to suggest that it would be a relevant consideration for those supplying "services", it might perhaps be of interest to mention that "there are two practices which will be prohibited directly by the Act. That is, they will be prohibited without first being subjected to an examination to determine whether they are compatible with the public interest. These two practices are collusive tendering and collusive bidding.

(Later in the speech) "Clause 41 provides that examinable agreements must be registered if the

relevant restrictions relate to the supply or acquisition of goods or of certain classes of services rendered in connection with either goods or land". Although Clause 41 does not appear to cover agreements relating to the regulation of fees, Clause 47 provides that the Commissioner can institute proceedings in the Tribunal with respect to this type of agreement at any time.

Turning to the Trade Practices Tribunal which, as mentioned, is to consist of one lawyer and two laymen and which "will be the only body to examine agreements and practices made examinable by the legislation, and will determine whether they are contrary to the public interest", we note that all members of the Tribunal "will be appointed to hold office for terms of not more than seven years".

It should also be noted that the Bill provides for the appointment of a Commissioner of Trade Practices also "for a period not exceeding seven years". "The Commissioner will be the only person who will be able to bring agreements and practices before the Tribunal for examination after he has formed the opinion that they are contrary to the public interest."

And here we can ponder as to the quality of laymen in particular, who are likely to be available for appointment for a term of not more than seven years. Whilst one must earnestly hope that first class people will offer themselves for appointment as Commissioner and to the Tribunal, one could be pardoned for fearing that academics, retired people, or disgruntled businessmen are more likely to offer themselves for appointment for this limited period than their more active, successful business brethren.

And now to the key Clause in the Bill, and here I again quote Mr. Snedden:

"The public interest criterion which the Tribunal will be required to apply when examining an agreement or practice is to be found in Clause 50. Because of the importance of this provision, I will read sub-clauses (1) and (2) to the House. They provide—

(1) In considering whether any restriction, or any practice other than a practice of monopolization, is contrary to the public interest, the Tribunal shall take as the basis of its consideration the principle that the preservation and encouragement of competition are desirable in the public interest, but shall weigh against the detriment constituted by any proved restriction of, or tendency to restrict, competition any effect of the restriction or practice as regards any of the matters referred to in the next succeeding sub-section if that effect tends to establish that, on balance, the restriction is not contrary to the public interest.

(2) The matters that are to be taken into account in accordance

with the last preceding sub-section are—

- (a) the needs and interests of consumers, employees, producers, distributors, importers, exporters, proprietors and investors;
- (b) the needs and interests of small businesses;
- (c) the promotion of new enterprises;
- (d) the need to achieve the full and efficient use and distribution of labour, capital, materials, industrial capacity, industrial know-how and other resources;
- (e) the need to achieve the production, provision, treatment and distribution by efficient and economical means, of goods and services of such quality, quantity and price as will best meet the requirements of domestic and overseas markets; and
- (f) the ability of Australian producers and exporters to compete in overseas markets."

And there you have it. The Commissioner and the Tribunal of one lawyer and two laymen are expect-

ed to interpret "public interest" by reference to Clause 50. It seems to this writer that "The Australian Financial Review" report (October 20) of part of what Mr. J. Hutton and Dr. J. P. Nieuwenbuysen had to say in their article "The Tribunal and Australian Economic Policy" in a recent symposium could bear repeating here. I quote: . . . "the Bill gives too wide a discretion to the Tribunal in interpreting the public interest." . . . "They conclude that it is inappropriate to require a judicial body such as the Tribunal to make decisions about economic policy in the absence of coherent guidance from the legislature as to what this policy should be."

As stated at the outset, I have attempted to keep this article simple by quoting appropriate extracts from Mr. Snedden's speech, and except where Mr. Snedden quotes from the Bill, I have only once quoted from the Bill itself. In doing this, however, I trust that I have not given a misleading impression in any way. The Bill is now available and should be read in its entirety if a proper understanding of its overall implications is desired. Without entering into any discussion as to the need for a Trade Practices Bill, my object has been merely to stimulate interest in the "services" sections of the Bill and to indicate their far reaching ramifications.

GROWTH STOCKS *(From Page 9)*

Toppa Holdings Ltd.	Declined in 1961; subsequently grew but just failed to reach target.
W. R. Carpenter Holdings Ltd.	Declined in 1962; subsequently grew and substantially exceeded target.
(ii) Interrupted in more than 1 year.	
Allied Mills Limited	Declined in 1961; subsequently grew and exceeded target by a greater margin than any other stock.
Blue Metal Industries Ltd.	Declined in 1961; subsequently grew but did not reach target.
Brickworks Limited	Declined in 1961 and '62; "
Davis Syme & Co. Ltd.	Declined in 1961, '62 and '63; "
Dodds Consolidated Industries Ltd.	Declined in 1961, '62 and '63; "
H. G. Palmer (Consolidated) Ltd.	Declined in 1964; just failed to reach target.
National Consolidated Ltd.	Declined in 1961 and '62; subsequently grew and achieved target.

After Nine Years:

Of 20 stocks, 1 continued uninterrupted growth. 7 stocks achieved overall growth rate in excess of 12% p.a. compounded.

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