

TRADE PRACTICES AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill contains miscellaneous amendments to the Trade Practices Act 1958.

Clause 2 changes the title of the Commissioner to that of Examiner and provides that the term "Commissioner" will be replaced with the term "Examiner in all relevant documents.

Clause 3 repeals Part II of the principal Act. That part requires all agreements relating to trade practices to be registered.

Clause 4 omits a provision requiring the Examiner to conduct a preliminary investigation on the request of the Commission. It also makes verbal amendments consequential on the change of title of the Commissioner.

Clause 5 replaces section 17 of the principal Act and requires the Examiner to furnish a report to the Commission if, after making a preliminary inquiry, he is of the opinion that the trade practice investigated is contrary to the public interest. The report will include a statement showing the nature of the trade practice, the reasons why it is considered contrary to the public interest, and the order which the Examiner considers would prevent its being carried on in a manner contrary to the public interest. Provision is made for service of a copy of the report on interested parties and those parties are required to furnish an answer.

Clause 6: This clause removes the existing provision requiring the Commission to be satisfied that a trade practice appears to be contrary to the public interest before it conducts an inquiry. The effect of this amendment is to remove from parties to a trade practice the initial onus of proving that the practice is not contrary to the public interest. The Commission will be required to hold an inquiry in every case where a report is made by the Examiner under section 17 of the principal Act.

Further provisions inserted by the clause—

- (a) Require the Commission to determine certain specified matters in all cases where it holds an inquiry:
- (b) Empower the Commission to receive in evidence any statement, document, or information which may assist it to deal effectively with the matter before it:
- (c) Authorise the Commission to promulgate rules of procedure.

Clause 7 adds provisions whereby membership of a trade association will be deemed to constitute an agreement to comply with specific recommendations made by the association to its members. These provisions were previously contained in Part II of the principal Act which is being repealed.

Clause 8 rewrites the provision of the Act permitting the amendment or revocation of orders and ensures that no amendment or revocation will be made without the Examiner and interested parties having an opportunity of being heard.

Clause 9 makes amendments to section 37 of the principal Act (which relates to delegation of powers by the Commissioner) consequential on the change of title of the Commissioner.

Clause 10 provides for service of notices and other documents on trade associations.

Hon. Mr Marshall

TRADE PRACTICES AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Trade Practices Act 1958

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Trade Practices Amendment Act 1961, and shall be read together with and deemed part of the Trade Practices Act 1958 (hereinafter referred to as the principal Act).

10 **2. Appointment of Examiner**—(1) Subsection (1) of section 10 of the principal Act is hereby amended by omitting the words “a Commissioner of Trade Practices and Prices”, and substituting the words “an Examiner of Trade Practices and Prices who shall be an officer of the Department”.

15 (2) Subsection (1) of section 2 of the principal Act is hereby amended by repealing the definition of the term “Commissioner”.

(3) Subsection (1) of section (2) of the principal Act is hereby further amended by inserting, after the definition of the term "Department", the following definition:

"'Examiner' means the Examiner of Trade Practices and
Prices appointed under this Act:"

(4) Subsection (1) of section 6 of the principal Act is hereby amended by omitting the word "Commissioner" wherever it occurs in that subsection, and substituting in every case the word "Examiner".

(5) All references to the Commissioner in any Act, regulation, order, or other enactment or in any agreement, deed, instrument, application, notice, or other document whatsoever shall, unless the context otherwise requires, be read as references to the Examiner.

(6) All matters and proceedings instituted by the Commissioner and pending or in progress at the commencement of this Act may be continued by the Examiner.

3. Registration of agreements—Part II of the principal Act is hereby repealed.

4. Investigation into trade practices—(1) Subsection (1) of section 16 of the principal Act is hereby amended by repealing paragraph (a).

(2) Section 16 of the principal Act is hereby amended by omitting the word "Commissioner" wherever it appears in that section, and substituting in every case the word "Examiner".

5. Report after investigation—The principal Act is hereby amended by repealing section 17, and substituting the following section:

"17. (1) If, as a result of any investigation under section 16 of this Act, the Examiner is of the opinion that a trade practice contrary to the public interest is being carried on, he shall furnish to the Commission, in a form approved by the Commission, a report showing—

"(a) The nature of the trade practice: 35

"(b) The reasons why he is of the opinion that it is contrary to the public interest:

"(c) A recommendation as to the order which he considers the Commission should make to ensure that the trade practice is not carried on in a manner contrary to the public interest. 40

“(2) The Commission shall provide any person who is a party to the trade practice in respect of which an inquiry is proposed to be held, or the representative of any such person, with a copy of the report furnished under subsection 5 (1) of this section; and any such person or representative shall furnish to the Commission, in a form approved by the Commission, an answer to the report within such time as may be limited in that behalf by the Commission.

10 “(3) A copy of the answer shall be furnished to the Examiner.”

6. Inquiry by Commission—(1) Subsection (1) of section 18 of the principal Act is hereby amended by omitting the words “if it is satisfied that the trade practice concerned appears to be contrary to the public interest, may”, and substituting the word “shall”.

(2) Section 18 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Subject to the provisions of this Act, at any inquiry under this section the Commission shall determine—

20 “(a) Whether or not the trade practice referred to in the report of the Examiner, or some other trade practice of substantially the same nature, does in fact exist; and if so

25 “(b) Whether or not any such trade practice is substantially within one or more of the categories referred to in subsection (2) of section 19 of this Act; and if so

“(c) Whether or not the effect of the trade practice is or would be contrary to the public interest.”

(3) Section 18 of the principal Act is hereby further 30 amended by adding the following subsections:

“(6) At any inquiry under this section the Commission may receive in evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matter before it, whether or not the 35 same would be otherwise admissible in a Court of law.

“(7) The Commission may from time to time make rules of procedure (not inconsistent with this Act or regulations under this Act) for the purpose of regulating the practice and procedure of the Commission, and the proceedings of 40 the parties.”

7. Orders by Commission—Section 19 of the principal Act is hereby amended by adding the following subsections:

“(7) Where any agreement is made by a trade association, the agreement shall be deemed to be made by the association and by all persons who are members of the association or represented thereon as if each such person were a party to the agreement. 5

“(8) Where specific recommendations, whether express or implied, are made by or on behalf of a trade association to its members or to any class of its members, as to the action to be taken or not to be taken by them in relation to any matter affecting the trading conditions of those members, the provisions of this Act shall apply as if membership of the association constituted an agreement under which the members agreed with the association and with each other to comply with the recommendations, notwithstanding anything to the contrary in the constitution or rules of the association. 10 15

“(9) This section shall apply to any agreement or arrangement referred to in subsection (2) of this section whether or not the agreement or arrangement is intended to be enforceable by legal proceedings.” 20

8. Amendment or revocation of orders—Section 21 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) Any order made by the Commission may at any time be amended or revoked by a subsequent order: 25

“Provided that, except with the consent of the Examiner and all parties directly affected by the order, no such amendment or revocation shall be made unless the Examiner and all such parties have been given a full opportunity of making such representations as they think fit with respect to the amendment or revocation.” 30

9. Delegation—(1) Section 37 of the principal Act is hereby amended by omitting the word “Commissioner” wherever it appears in that section, and substituting in every case the word “Examiner”. 35

(2) Any delegation under section 37 of the principal Act made by the Commissioner and in force at the commencement of this Act shall continue in force in all respects as if made by the Examiner. 40

10. Service of notices on trade associations—The principal Act is hereby amended by inserting, after section 37, the following section:

5 “37A. Where for any purpose under this Act a notice or document is required to be served on a trade association, the notice or document may be served on the secretary, manager, or other similar officer of the association; and for the purposes of this Act service on the association shall, unless otherwise provided by rules of procedure or directed by the Commission,
10 be deemed to be service on all persons who are members of the association or who are represented on the association by those members.”