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# Legal notes

## Changes to the Trade Practices Act

The Trade Practices Amendment Bill (No. 1) 2000 has now been passed. The changes came into operation on 26 July. The amendments are designed to improve compliance with the TPA and provide easier access for small business and consumers to remedies under the TPA. The amendments are as follows.

### Intervention in proceedings

The courts will have a discretionary power to allow the Commission to intervene in private proceedings brought under the TPA, provided it is in the public interest.

### Declarations

To assist in the interpretation and enforcement of the TPA, the Commission will be able to seek declarations from a court about the operation of particular provisions of the Act.

### Representative actions

The Commission will also have the right to take class actions for contraventions of Part IV of the TPA (except for ss. 45D and 45E). This is in addition to the right to do so for contraventions of Parts IVA, IVB and V of the TPA. Consent of the victims of the contravention is always needed.

### Preference to compensation

A person who breaches the TPA may be required to pay a fine or penalty for the contravention, and also to pay a compensatory amount to a person who has suffered loss as a result of that contravention. If the guilty party is unable to pay the fine as well as compensation, the court will have a discretionary power to ensure that the victims are compensated in preference to the fine or penalty being recovered.

### Limitation period

The limitation period to start proceedings will be extended to six years, for all breaches of the Act.

### Increased monetary penalties

Penalties the courts may impose when there has been a contravention of Part V of the Act are increased to \$220 000 for individuals and \$1.1m dollars for corporations — from the current limits of \$40 000 for individuals and \$200 000 for a corporation.

### Extended range of sanctions

Courts can now order probation orders, community service orders, corrective advertising orders and adverse publicity orders for a breach of the TPA. This provides an alternative to monetary penalties when they may not be appropriate. This is particularly important if the defendant has escaped a fine due to inadequate resources. The orders will only be available on application by the Commission, and will be directed at the conduct in breach of the TPA.

### Unconscionable conduct

The TPA now allows the States to drawdown s. 51AC (unconscionable conduct). This will overcome a possible constitutional inconsistency that would invalidate state legislation. This provides greater access to remedies for small business under state retail tenancy legislation. For greater transparency, the transactional limit in ss. 51AC(9) and (10) which applies for unconscionable conduct remedies to be available, is increased to \$3m dollars.

### ACCC annual report

The ACCC will be required to provide greater details on the enforcement activities it has undertaken in each annual report