

Senate Economics Legislation Committee

Trade Practices Amendment (Liability for Recreational Services) Bill 2002

Submission No. 13

Submittor: Australian Sports Commission
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Attachments? No Attachments



A U S T R A L I A N S P O R T S C O M M I S S I O N

Dr Kathleen Dermody
The Secretary
Senate Economics Committee
Suite SG.64
Parliament House
Canberra ACT 2600



INQUIRY INTO PROPOSED AMENDMENTS TO THE TRADE PRACTICES ACT

Dear Dr Dermody,

I am writing to provide a brief submission to the abovementioned Inquiry.

The Australian Sports Commission (ASC) is the Commonwealth Government body responsible for the delivery of funding and development of Australian sport through the implementation of the Government's sports policy. The role of the ASC is to provide national leadership in all facets of sport development through national sporting organisations (national governing bodies for sport and their affiliated associations, clubs and individuals) from the elite level to the government and private sectors, schools and the wider sports community.

The ASC is acutely aware that the problem of insurance, in particular public liability insurance, have been affecting the sport and recreation industry since late 2001 and show little sign of abating in the short term. Sporting organisations at all levels are facing sharp rises in premium costs and, in some cases, difficulties in obtaining any insurance at all at an affordable price.

Whilst recognising the steps which governments have made towards identifying and implementing strategies to stabilise and ease the current insurance crisis, the ASC views the need for consistency of definitions as critical in this next phase. The definition of "recreational services" is of particular concern and we believe that the definition adopted in the *Trade Practices Amendment (Liability for Recreational Services) Bill 2002* should explicitly include sporting activities. Our position is expanded on in the attachment.

We would be pleased to assist the Inquiry further if needed. To that end, Amber Fox on 62141390 can be contacted to discuss the ASC's position.

Yours sincerely

MARK A PETERS
Chief Executive Officer



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15/11/02

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**AUSTRALIAN SPORTS COMMISSION SUBMISSION TO THE SENATE
ECONOMICS LEGISLATION COMMITTEE INQUIRY INTO AMENDMENTS TO
THE TRADE PRACTICES ACT**

Definition of Recreational Services

Trade Practices Amendment (Liability for Recreational Services) Bill 2002 ("Bill")

The ASC notes that the intent of this Bill would be to prevent section 68 of the *Trade Practices Act 1974 (TPA)* rendering void any provisions in contracts for recreational services that purport to exclude, restrict or modify those implied warranties. The Bill would allow consumers to waive those warranties in the case of contracts for the supply of recreational services as defined.

A key element of this Bill for sport is the definition of "recreational services". In the Bill,

"recreational services" means services that consist of participation in:

- a) a sporting activity or a similar leisure time pursuit; or*
- b) any other activity that:*
 - i. involves a significant degree of physical exertion or physical risk; and*
 - ii. is undertaken for the purposes of recreation, enjoyment or leisure.*

Review of the Law of Negligence

The ASC notes that in the Review of the Law of Negligence, the expert panel, whilst supporting the intent of the Bill, considered that the definition of "recreational services" in the Bill was too broad in the context of recommendations 11 and 12 of their Report.

"For the purposes of Recommendation 11:

- (a) Recreational service means a service of:*
 - (i) providing facilities for participation in a recreational activity; or*
 - (ii) training a person to participate in a recreational activity; or*
 - (iii) supervising, adjudicating, guiding or otherwise assisting a person's participation in a recreational activity.*
- (b) Recreational activity means an activity undertaken for the purposes of recreation, enjoyment or leisure which involves a significant degree of physical risk."*

The Panel further highlighted the need for conformity of the relevant definitions in both the Proposed Act and the Bill.

Comment

The ASC supports the definition of recreational services in the *Trade Practices Amendment (Liability for Recreational Services) Bill 2002* as it explicitly mentions sport.

The Commission acknowledges that the amendments in the Bill are designed to permit self-assumption of risk by individuals who choose to participate in an activity and will allow them to waive their rights under the Trade Practices Act to sue the business providing the activity. The

recommendations from the Review of the Law of Negligence are directed at excluding liability for the materialisation of obvious risks.

The ASC is concerned that, in an effort to achieve consistency in definitions, the definition of recreational services in the *Trade Practices Amendment (Liability for Recreational Services) Bill 2002* may be revised to that proposed in the Review of the Law of Negligence which does not explicitly include sport.

Although we consider the Review of the Law of Negligence definition includes sport it could be interpreted more narrowly and in such a way as to exclude sporting activities from its scope.

Our concern stems from the way in which the word “recreation” is used in the broader community and within the sport and recreation industry, as illustrated by the examples below.

1. It is common for the terms “sport” and “recreation” to be used to define separate components of the industry, whereby “sport” refers to competitive organised physical activity and “recreation” refers to non-competitive physical activity.
2. The industry itself tends to define itself as “sport and recreation”. This definition is further complicated at the federal level, where the ASC clearly defines what is “sport” for its funding purposes. Sporting organisations, at all levels, tend to define themselves quite explicitly as “sport”, and as separate to “recreation”.

For these reasons, the ASC would recommend that the definition adopted in the *Trade Practices Amendment (Liability for Recreational Services) Bill 2002* be retained, or if any changes are made, that the definition explicitly include sporting activities.