The Trade Practices Act (Cth) 1974 and its Impact on Maritime Law in Australia

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as required!
Declaration

This thesis contains no material which has been accepted for the award of any other degree or diploma in any other University and, to the best of my knowledge or belief, contains no material previously published or written by another person, except when due reference is made in the text.

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Katherine Beatrice Lewins
Preface

The majority of the work for this thesis was completed as a series of stand alone articles published (or in one case, accepted for publication) in journals with a double blind peer review system. There is also one case note that has been published unrefereed. The fact that much of the thesis has already been published has certain ramifications for the thesis, relating to both content and style. Of necessity each published article introduces the topic, and the workings of the *Trade Practices Act 1974* (Cth) (TPA), afresh. Similarly, each article explores, to varying degrees, the possibility of reform in that particular area. Although each is tailored to the particular subtopic in question, a degree of overlap and repetition is unavoidable.

I have decided to set out the published articles in the format in which they have been published. This lends authenticity to the work, and makes it clear where the published work begins and ends. However, it does mean that each section which is a published work will be presented in the house style of the particular journal in which it has appeared, complete with its own footnoting.

Aside from the introduction, each article forms the main bulk of one chapter. All chapters will conclude with an outline of any significant developments which may have arisen since the publication of the article, so as to bring the article ‘up to date’. The abbreviations adopted in each article are continued throughout the balance of that chapter.

The interest in the topic of TPA and maritime law, along with the growing body of cases, makes it clear that the impact of the TPA on maritime law is a real and significant issue to the maritime industry and maritime law community in Australia. Outside the author’s work, there has been little analysis published in Australia or elsewhere.
Abstract

The trade of shipping is necessarily international in nature. Courts and international bodies often express the need to ensure international consistency in matters of maritime law. However, it has been an extremely difficult goal to achieve. Many countries have refused to be party to international conventions that seek to ensure comity. Some have enacted laws that reflect part but not all of those conventions, or seek to improve the protection offered by the conventions. The domestic law of each country also adds its own flavour to shipping law as recognised and applied by the courts in that jurisdiction.

In 1974 Australia enacted the *Trade Practices Act 1974* (Cth) (TPA), heralding a new era in corporate and commercial law. However, its impact on maritime law on Australia has only been felt over the last 10 – 15 years. It is potentially relevant to many areas of maritime law, including carriage of goods by sea, cruise ships, and towage. This thesis explores the encroachment of the TPA on a number of different areas of shipping law, using the few case examples on offer and extrapolating the impact that the TPA may have. It also considers the extent to which the TPA is stymied by simple contractual agreements to litigate or arbitrate in a non Australian forum, despite the TPA’s status as a mandatory statute within Australia.

Raised at various points in the thesis is the possibility of law reform, which is a complex compendium of issues overlaid with a moral dimension – does shipping, as an industry, deserve to be exempted from the operation of the Act which sets a high standard of corporate behaviour? If so, how could that reform be shaped? In the meantime, what steps can the shipping industry take to work within the legal framework of the TPA?
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