

## The role of the Minister

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In its report at page 292 the PC in considering the role currently played by the relevant Minister in the access process is described as being involved in making 'significant public policy judgements' in relation to access regulation. The Draft Report correctly, in my view, states that there should be some ministerial involvement. But, it does not need to be in relation to actual decisions. The PC quotes from the Hilmer Report at page 291 of the Draft Report and I agree with the philosophy behind that quotation. But, the PC then, in my view, incorrectly concludes that whilst there must be careful judgement exercised before we disturb property rights, that this is the strongest case for the 'retention of designated ministers as primary decision makers in the Regime'. The PC adds that it concurs with the view that the relevant important trade-offs between property rights and economic efficiencies should be made by elected representatives rather than by regulators. I disagree strongly with the conclusion the PC description of the apparent role that the Minister is seen to be playing in this context, seems to me to be no different than the responsibilities that are required to be exercised by the ACCC and the ACT when they consider applications for authorisation and similar decisions (or determinations). It is true that in the context of authorisation decisions of respective mergers, the role is now one that is vested in the ACT. But there is no suggestion that in any of these matters the Minister should have a final casting vote, as it were, in dealing with these matters. The ACCC, or the ACT on review, when considering applications for authorisation and for exemptions by way of notification in relation to exclusive dealing etc often consider similar questions involving property rights, economic deficiency and related matters. There is no suggestion that the Minister should have a final say in relation to that process.

As noted in my original submission on this topic, the right of the Minister to direct the ACCC (or indeed the ACT) in dealing with these matters was removed as a result of amendments to the legislation. The Minister, however, can play a very significant role (as can the departments of government) of making submissions to the ACCC and to the ACT

I see no reason at all why the Minister should have this additional responsibility. I am advised by the NCC that there are situations where relevant Ministers (not necessarily Federal but State or Territory ministers) delay making their decisions on access issues.

If a government, whether Federal, State or Territory, believes that a particular access application is of such significance and such importance, from a national policy standpoint, then perhaps legislation should be considered to deal with these matters rather than

providing a general power to the Minister to play a "role" which I am sure is regarded as an uncomfortable one, is obviously restricted in terms of his/her ability to settle on all the issues; such a task calls on the Minister and a relevant department to solicit expert advice which will not necessarily be available at short notice and in the restricted time frame.

I believe this is a very important question of politics as well as economic regulation. It is too easy, in my respectful view, for parties seeking access applications or indeed seeking government decision in other areas where the government rather than regulators are more directly involved, to be influenced by submissions made to him/her - /it by appropriate parties.

It is critical, in my view, that the Minister's role should be relegated" in the political context of this area of economic regulation which calls for expertise from specialist bodies which are established by the Government to deal with them.

I think the PC for the opportunity to make these further submissions.