

20 February 2002

Section 2D Inquiry,  
Productivity Commission,  
P.O. Box 80,  
BELCONNEN ACT 2616

Dear Sir/Madam,

**Re: Submission to Productivity Commission re Section 2D**

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Thank you for the opportunity to provide comment in regard to the Commissioner's review of Section 2D of the Trade Practices Act 1974.

Traditionally, Local Government has provided basic services to its local communities. In more recent times the breadth of services and responsibilities have expanded rapidly in response to the environmental, social and economic needs of the community and the devolution of responsibilities from State Government.

Since the applicability of the Trade Practices Act to Local Government, Councils have had the benefit of exemptions under Section 2D that have allowed them to exercise a broad range of Governmental functions without the concern of possible action that might otherwise arise in relation to allegations of breaches of various sections of the Trade Practices Act (which would include an action by a party dissatisfied with a decision made by the Council in the best interests of the community).

Local Government authorities are cognisant of the intent of the National Competition Policy and the need to avoid anti-competitive behaviour. However, given the broad role of local authorities, which includes the granting of licences, for the benefit of their respective communities, legislation must provide the flexibility and scope in which to work. Whilst it could be argued that this activity is not caught by the Trade Practices Act because it is not activity "in trade or commerce", this argument may not be successful in all circumstances. With the above in mind, the exemptions for Local Government outlined in Section 2D should be retained as a minimum.

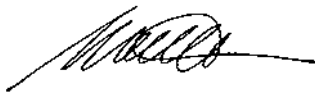
The specific identification of exemptions for Local Government (Section 2D) as distinct from Federal, State and Territories Governments (Section 2C) appears incongruous and it is considered appropriate that all spheres of Government in Australia be treated in the same manner and, accordingly, Section 2D could be abolished if Local Government was included specifically by title and intent within Section 2C. This position reflects the intent of the Productivity Commission's terms of reference (in particular, paragraph 3(c)).

Whilst investigating this issue it has become apparent that a level of interpretation exists as to the issues that are the subject of exemption under Section 2D in particular licences. With the absence of a substantial body of case law, it would be beneficial to better clarify the objectives of these exemptions within legislation (i.e. within 2D or a modified 2C).

Local Government is the third tier of Government within the Australian system of Government and, accordingly, should be treated as an equal partner and in the same manner as the Federal, State and Territories spheres. Baulkham Hills Shire Council has actively sought to implement the principles of competition alongside the Federal and State Government and, accordingly, believes that Local Government should be considered in the same way as the senior spheres of Government in all related legislation and policy.

Should you require further information in respect of this submission, please do not hesitate to contact Council's Assistant General Manager, Ray Fabris, on 9843 0105.

Yours faithfully,



Michael Watt,  
**ACTING GENERAL MANAGER.**