

ABN : 48 014 914 743

Our Ref: AG:SS  
File No.: 0038

22 February 2002

Ms Margaret DiMichael  
Section 2D Inquiry  
PO Box 80  
BELCONNEN ACT 2616

Dear Ms Di Michael

### **REVIEW OF SECTION 2D OF THE TRADE PRACTICES ACT**

The Local Government Association of Tasmania (LGAT) is the peak body for Local Government in the State. The Association is also a member of the Australian Local Government Association (ALGA), which is based in Canberra.

We are aware that ALGA will be making a submission to the Inquiry. We can confirm that ALGA has consulted with LGAT and the content of that submission has the support of our Association.

To complement the ALGA submission, LGAT consulted with all Councils in Tasmania on the Inquiry. In that process we received a number of written representations as well as verbal responses. Contributions have also been received from our Executive Committee which oversees Local Government policy matters.

In summary, there is unanimous support for retention of the exemption. Exempting the licensing decisions of Local government from Part IV of the Trade Practices Act (TPA) ensures that those licensed to supply goods and services do so to agreed minimum community standards and conditions. These standards and conditions protect the community from the provision of sub-standard goods and services, particularly in the areas of public health and safety.

The need for exemptions is to enable the licensing authorities (i.e. Councils) to impose conditions and prescribe standards. Particular examples of Local Government licence coverage includes:

- Hawkers
- Food premises
- Hoardings

- Places of assembly
- Public health risk activities
- Potable water cartage vehicles
- Kennels
- Licences under by-laws

The basic act of licensing, in our opinion, is necessary. While some will undoubtedly argue that either the licensing regime or the conditions attached are barriers to the entry of others to a market, for the reasons already outlined there are valid and important reasons to have particular licences.

If a problem exists in relation to barriers on entry to certain markets, it is likely not the licence provisions but rather the conditions that attach to licences.

We are not in a position to investigate or comment upon the appropriateness of licence conditions that go beyond what we describe as the “reasonable” act of licensing. If a problem exists, it could be associated with the requirements public authorities place upon their approvals.

On the matter of local supplier preference, provisions exist in the Tasmanian Local Government Act to ensure that tenders above \$50,000 are subject to competitive tender. A preference regime does not exist in the state although within evaluation methodologies of councils it is likely that value for money components of the tender are considered. This may relate to issues such as geographic proximity in relation to after sales service and maintenance or other matters where proximity outweighs consideration of price. These processes are transparent and are not weighted against suppliers outside municipal boundaries.

With regard to the status of Local Government, the Association does not support Local Government being referred to as an “authority” of the State. Local Government is a separate level of government and should be treated in the same way as the Commonwealth and State Governments. Exemptions applying to the activities of those governments should equally apply to Local government.

Consistency of treatment should be of paramount consideration. Rather than seeking to remove the 2D exemption, it should be extended to include the immunity from prosecution and pecuniary penalties enjoyed by the Commonwealth and State Governments. In the event that 2D was to be removed, the Association considers that coverage under Sections 2A, 2B and 2C Local Government should be extended to include Local Government

Yours sincerely

Stewart Wardlaw  
**EXECUTIVE DIRECTOR**

(Email : [stewart.wardlaw@lgat.tas.gov.au](mailto:stewart.wardlaw@lgat.tas.gov.au))