



Bathurst City Council

**CIVIC CENTRE**

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Ms Helen Owens  
Commissioner  
Section 2D Inquiry  
Productivity Commission  
PO Box 80 ~  
BELCONNEN NSW 2616

6 March 2002

Dear Ms Owens

**Section 2D Inquiry of the Trade Practices Act 1974**

Council notes that you are currently undertaking an inquiry into the operation of Section 2D exemptions for Local Government of the Trade Practices Act. In regards to the review of the Section Council would note the following:

1. Given that there are exemptions contained within the Legislation for both the Federal and State Government of Australia, it would appear inappropriate to single out Local Government as a tier of Government on its own for potential removal from the Legislation. The fact that the sections that exempt the other tiers of Government will remain, in itself, supports the concept that such protection is appropriate for all Government in Australia and accordingly it should remain with Local Government.
2. It is noted that the protections provided to both the Federal and State Governments are much more broad sweeping than those provided to Local Government. Bathurst City Council would contend rather than reducing the amount of coverage for Local Government, the Inquiry should be seeking to establish equivalent coverage for all tiers of Government in Australia. On this basis, rather than removing 2D the Section should be strengthened to reflect the exemptions contained for the other tiers in other parts of the Act.

*Bathurst -Experience the Thrill*

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Reference: DS:AA: 07.00017,03.00009  
Enquiries: Mr D Sherley 02 6333 6206

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3. Whilst the Productivity Commission has indicated that a level of protection already exists because court cases have shown no problems with respect to statutory functions, Council is concerned that if the legislation should specifically exclude Local Government then one would logically expect that appeals to the High Court, based on previous experience, would indicate these protections would be removed. The basis for this comment is that if the Act has been altered to specifically exclude Local Government then one would presume the Courts would then say there was no intention to cover any Local Government functions and accordingly no exemptions would exist. This is of direct concern to Council, as the likelihood of litigation would increase as new law was attempting to be established.
4. It is noted also, that the removal of Local Government from reference in the Trade Practices Act in this Section flies in face of the battle that Local Government has been undertaking for constitutional recognition. The proposals appear to be again a way of diminishing the standing of Local Government as a partner in the three tiers of Government in Australia.

Thanking you for the opportunity to provide comments on the review being undertaken by yourselves.

Yours faithfully



D J Sherley

**DIRECTOR OF CORPORATE SERVICES**

cc: Local Government & Shires Association