



Penrith City Council



Our Ref: PEB:sk
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25 June 2002

Mr Herb Plunkett
Assistant Commissioner
Productivity Commission
PO Box 80
Belconnen

Dear Mr Plunkett

REVIEW OF SECTION 2D OF THE TRADE PRACTICES ACT - LOCAL GOVERNMENT EXEMPTIONS

In response to your request for submissions on the draft report, Council is pleased to make the following comments that we hope will assist you in making the best possible recommendations to the Federal Government.

Council supports the Local Government and Shires Associations in their view that section 2D must be retained in some form. Furthermore Council believes that the provisions of the Trade Practices Act should be limited to declared business activities, pursuant to Department of Local Government Guidelines.

National Competition Policy (NCP) envisaged the separation of regulatory activities from trading activities. The Trade Practices Act was clearly intended to only apply to the latter. It is our view that if an activity is classified as a "business activity" for the purposes of National Competition Policy (i.e. required to comply with NCP pricing policies), then it should be subject to trade practices legislation.

Such an approach:

- Is consistent with NCP principles;
- Avoids the possibility of varying definitions (between State and Federal Acts) and hence also avoids confusion and administrative effort in maintaining records on different basis and policies to serve potentially conflicting objectives;
- Has little or no risk of creating losses to the national economy. The trading operations of General Purpose Councils are small compared to the national economy. They impact on local communities, not on the total Australian economy;
- Has no risk of inappropriately classifying a regulatory activity as being subject to the Trade Practices Act. Should such an activity go wrong, its remedy should be pursuant to administrative review mechanisms, not by Trade Practices legislation;

- Has little risk of being misinterpreted. The cost of running a case even when Council wins should be avoided. Certainty of process has been noted by the Commission as a significant concern and appears to have been a strong consideration in the original drafting of the Section.

We appreciate your efforts to work towards an improved legislative base and look forward to an improved Trade Practices Act.

Yours faithfully

A handwritten signature in black ink, appearing to read "Alan Travers". The signature is fluid and cursive, with a large initial "A" and a stylized "T".

Alan Travers
General Manager