

Seminyak Asri #19
Jalan Kunti
Seminyak
Bali
Republic of Indonesia

Secretary
Trade Practices Act Review
C/- Department of the Treasury
Langton Crescent
PARKES ACT 2600

Trade Practices Act Review

Terms of Reference Addressed:

This submission addresses terms of reference 2 & 3.

Summary

The ACCC should be constituted as the Interstate Commission under s 101 of the Constitution. Its commissioners should have the tenure of office provided by s103 of the constitution.

The section

“There shall be an Inter-State Commission, with such powers of adjudication and administration as the Parliament deems necessary for the execution and maintenance, within the Commonwealth, of the provisions of this Constitution relating to trade and commerce, and of all laws made thereunder”

History of the Interstate Commission.

The interstate commission was discussed in the Constitutional Conventions and included in the Constitution at Federation. The structure of the commission has had life breathed into the constitutional framework twice since federation. It currently has no commissioners appointed.

The constitutional debates reveal that the framers valued the creation of a body to adjudicate and administer trade and commerce that was beyond day

to day executive influence. The tenure described exceeded two terms of the house of representatives and the term of Senators.

Doubts as to validity of current arrangements

Kable v Director of Public Prosecutions puts forward the view that there is a duty incumbent upon the relevant legislature to maintain constitutional institutions (in that case State legislatures and State Supreme Courts). The same could be said of a commonwealth imperative to maintain the interstate commission.

A further argument could be made that insofar as any law made by the commonwealth or any provision of the constitution relating to trade and commerce required a power of administration or adjudication, that power must be exercised by the interstate commission, correctly constituted, and not by some other body.

The current arrangement subverts the clear constitutional intention that such powers should vest in the interstate commission. An analogous argument has meant that the judicial power of the commonwealth, when exercised by commonwealth bodies must be exercised by bodies constituted under Chapter 3 of the constitution, i.e. the judges must have the constitutional tenures guaranteed by the constitution, and commonwealth bodies that do not conform, cannot exercise judicial power.

The result of these propositions is that the current legal basis of the ACCC's powers is not without doubt. This should be rectified by constituting the ACCC as the interstate commission.

Greg Finlayson

Friday, 21 June 2002