

Chris Reilly

North Sydney  
NSW 2059  
AUSTRALIA

02-08-03 13:11

Sir Daryl Dawson AC KBE CB,  
Trade Practices Act Review,  
C/- Department of the Treasury,  
Langdon Crescent  
PARKES ACT 2600

Dear Sir Daryl,

Like most Australians, I support Professor Fel's call for the jailing of significant economic criminals. My concern is the defacto exclusion of (typically state owned) authorities and "public servants".

There is little point in dealing with this in the abstract, so I will offer a specific example.

The NSW Waterways Authority claims to be the "owner" of Sydney Harbour, its regulator, law enforcer and a commercial trader of the Harbour's assets. Needless to say as a monopoly it satisfies the market dominance test.

For over two decades the Authority and its staff have perpetuated a remarkable set of Arrangements with Captain Cook Cruisers (CCC). This enterprise is the largest commercial user of the Harbour owned by a one-time director of the Authority.

In Neutral Bay for example CCC was granted a lease over public waterspace and foreshore, the size of small city block for \$18,000 per year. This was done without the environmental Impact Assessment required under the relevant NSW Environmental Assessment Act. Thus a large scale industrial facility was established on a site zoned local open space accessible only via a public park. This site is truly remarkable in that despite "regular reviews" specified by the lease, we are led to believe that a waterfront property a mile from the Harbour Bridge has not increased in value in 15 years! In reality this represents on the basis of equivalent commercial charges the misappropriation of about \$20 million in public funds in Y2K\$.s.

When the local council rejected a development application for a large scale cruise boat base after a rather interesting fire, CCC sought to have the Waterways Authority (the lessor) declared the determining authority. When this failed CCC erected a number of unlawful structures which did not comply with the building codes, fire regulations and of course had not been approved by Council. The landowner (the Waterways Authority refused to take any action.

The Waterways Authority has also engaged in the vicious harassment of those who object to these arrangements. One of these uniformed thugs reduced a 6-year-old child to tears with threats! We have endured events such as malicious prosecution, which ended in farce after the presentation of three sets of totally inconsistent evidence by a Waterways "Officer", since successfully prosecuted for negligent navigation on the basis of another incident.

Despite the fact that has been well and repeatedly documented to the relevant state minister, he has refused to take any action. It is not difficult to identify a motivation. A week before the last federal election the Waterways Authority spent hundreds of thousands of dollars mailing politically partisan material to 800,000+ NSW boat owners. It would be difficult to identify a NSW politician who has not enjoyed a free Harbour Cruise.

02-08-03 14:37

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02-08-03 14:39

In summary the NSW Waterways Authority has collected hundreds of millions of dollars from NSW boat owners and used the funds to build facilities to support the business operations of its cronies who enjoy peppercorn rents for public assets.

Just to complete this synopsis, the Minister recently appointed a Waterways Authority advisory board. One of its initial acts was to resolve to suppress the identities of its members! No mystery in that, since it includes the son of CCC's owner and CCC chief executive.

In summary it is a commercial monopoly, a vicious partisan regulator with the ideology of a waterfront trade union and contempt for any form of public accountability.

It is worth putting this in the context of say a public company.

- What would be the response if say a bank gave one of its former directors near free use of a bank asset worth tens of millions of dollars, when the crony's competitors were prepared to pay commercial rates producing millions of dollars in income?
- What would be the response if say the shareholders were levied hundreds of millions of dollars to build facilities for former director's enterprises on shareholder's land?
- What would be the response to the appointment of a board via a secret process, which resulted in a board that suppressed the identities of its members, with a significant vested interest and an outrageous conflict of interest?

**BOTTOM Line:** Those of us, who deal with the complexities of Australian business in what is fundamentally a small market, appreciate the complexities of some TPA issues.

However in NSW it is Government authorities that set the standard and that standard is worthy of a disorganised crime syndicate, complete with uniforms and crown immunity. Laws, which exempt "public servants" and their employers, simply destroy the credibility of any regulatory arrangement.

Yours Sincerely,

