



Tasmania

PREMIER
MINISTER FOR STATE DEVELOPMENT

Sir Daryl Dawson, AC KBE CB
Chairman
Review Committee for the *Trade Practices Act Review*
C/- Department of Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir Daryl

REVIEW OF THE *TRADE PRACTICES ACT 1974*

Thank you for the opportunity to make a submission on the review of the *Trade Practices Act 1974* (the Act).

At this stage the Tasmanian Government does not wish to make substantial comments on the Terms of Reference.

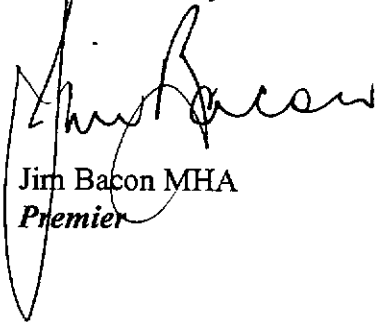
However, there are several general comments that the Committee could consider when developing recommendations:

- There is a range of views around whether the Act provides the appropriate balance of power between competing businesses – particularly small and large businesses. The Act currently enables small businesses to seek authorisation for strategies that counter the market power of larger businesses so long as these strategies are in the public interest. The Tasmanian Government considers that this process provides small businesses with appropriate recourse for addressing balance of power issues. However, the application of the Act could be improved by streamlining the processes associated with granting authorisations.
- International consistency of competition law is a key determinant of the extent to which the Act is able to promote competitive trading which benefits consumers in terms of product and/or service quality and price. If multi-national firms view Australia's competition laws as less rigorous than in other countries, this may lead to adverse outcomes for Australian consumers. The Committee is encouraged to give careful consideration to proposals that promote international consistency in the application of deterrence and penalties for illegal trade practices – including introducing criminal penalties such as jail sentences for officers of corporations that are involved in illegal corporate conduct such as breaches of collusive behaviour. This would provide a degree of consistency with the United States and other countries.

- There is a range of views as to whether the current 'purpose test' in s 46 - misuse of market power provision – creates difficulties for effectively enforcing abuses of market power by corporations with substantial market power. Under this test the ACCC is required to prove in each case that the firm behaving in an illegal manner had the 'purpose' of competing unfairly. The Committee is encouraged to consider options that overcome the difficulties of applying this test – i.e. collecting sufficient evidence that satisfies the 'purpose test'. Two options that warrant further consideration include: reversing the onus of proof and introducing an 'effects test', particularly for businesses with significant market power.

The Tasmanian Government believes that there is a number of complex issues raised in relation to this review. In addition, the successful introduction of any new proposals will ultimately depend on the design of those proposals. In this context, the Tasmanian Government would welcome the release of an issues paper at a later date in order to promote a fuller discussion on those matters.

Yours sincerely

A handwritten signature in black ink, appearing to read "Jim Bacon". The signature is written in a cursive style and is enclosed within a large, hand-drawn oval.

Jim Bacon MHA
Premier