

EXECUTIVE OFFICE



**Australian
Competition &
Consumer
Commission**

Our Ref: 1032406
Contact Officer: Richard Fleming
Contact Phone: 02 6243 1278

GPO Box 3131
Canberra ACT 2601
23 Marcus Clarke Street
Canberra ACT 2601
tel: (02) 6243 1111
fax: (02) 6243 1199
www.accc.gov.au

3 | January 2011

Mr Roger Bates
P.O. Box 188
Pattaya Post Office
Pattaya City Chonburi 20260
OS 20260 Thailand

Dear Mr Bates

Concerns about record keeping at the State Library of South Australia and other libraries

Thank you for your letters dated 10 November 2010, 26 November 2010, 28 November 2010, 4 December 2010, 5 December 2010, 7 December 2010 and 14 December 2010. You have requested further consideration of the matters raised in your letters.

Your previous correspondence

In your initial complaint dated 10 November 2010 you provided information which raised allegations of keeping of false records of newspapers by various state and federal libraries and allegations of corruption by South Australian politicians, public sector and law enforcement agencies.

The ACCC's response dated 12 November 2010 provided general information regarding the role of the ACCC in administering the *Trade Practices Act 1974* (TPA), referred to consumer protection provisions of the TPA including the 'trade or commerce' element of section 52 and advised that the issues raised in your letter are unlikely to give rise to concerns under the TPA.

In your letter dated 26 November 2010 you raised various issues including allegations of misleading and corrupt conduct by Australian authorities, and anti-competitive and misleading conduct by newspaper publishers. You also provided a detailed background in relation to the abovementioned claims.

In a letter dated 28 November 2010 you confirmed a conversation with an ACCC staff member regarding your initial complaint, and requested confirmation that the correspondence dated 12 November was a genuine response from the ACCC.

In a letter dated 3 December 2010 the ACCC confirmed that your complaint was recorded by the ACCC Infocentre under the reference number 1032406. The letter re-iterated the ACCC's view that the alleged conduct is unlikely to fall within the scope of 'trade or commerce' under the TPA.

In a letter dated 4 December 2010 you requested that correspondence from the ACCC be provided on letterhead signed by an ACCC Commissioner. You sought clarification as to the definition of 'trade or commerce' and application of the TPA to newspaper publishers including News Corp.

In a letter dated 5 December 2010 to the ACCC, the Treasurer, The Hon. Wayne Swan MP, Shadow Treasurer, the Hon. Joe Hockey MP and Senator Nick Xenophon, you raised a number of issues including the following:

- an outline of your understanding of the terms 'misleading or deceptive' and 'trade or commerce';
- an outline of your understanding of the role of the ACCC in administering the TPA;
- a request for information from the ACCC to assist you in understanding the ACCC's response to your complaint;
- a request for advice as to whether an Office of Fair Trading (the OFT) may be able to assist you;
- a request for assistance from the ACCC in communicating with the OFT;
- a request for consideration by an ACCC Commissioner regarding whether the scope of the TPA should be broadened;
- a request for the ACCC to communicate with the federal government concerning reintroduction of news media ownership laws.

In a letter dated 7 December 2010 to the ACCC, the Treasurer, the Hon. Wayne Swan MP and the Hon. Joe Hockey MP you requested that the ACCC respond to your previous correspondence. You stated that the issues raised appear to be within the jurisdiction of the ACCC. You alleged corruption by state and federal public sector and law enforcement agencies.

In a letter dated 13 December 2010 the ACCC referred to your previous correspondence. The ACCC confirmed that your complaint has been internally referred for further consideration and that you would receive a response within 28 days.

In a letter dated 14 December 2010 you raised a number of additional issues and requested prioritisation of consideration of the issues raised in your complaint.

Role of the ACCC

You have sought clarification regarding the role of the ACCC in investigating alleged contraventions of the TPA.

The ACCC is an independent statutory authority responsible for the enforcement and administration of the TPA. The ACCC also has roles under other Commonwealth legislation, although they are not relevant to this matter. I note that in particular that, as part of Australian Consumer Law amendments, the *Trade Practices Act 1974* was renamed the *Competition and Consumer Act 2010* on 1 January 2011. The *Competition and Consumer Act* is not relevant to this matter as the alleged conduct occurred before 1 January 2011.

Application of the TPA to State Library services

The TPA is focussed on regulating commercial behaviour between business and between businesses and consumers. In this regard, there are two important issues that arise when considering whether the TPA applies to the concerns you raise about the storage and public access of archived material in a public library.

Firstly, I note that the Commonwealth, States, Territories and other emanations of the Crown have immunity from the application of the TPA except insofar as those entities carry on a business. From the information you have provided, there remains an open question as to whether the TPA applies to the functions performed by the library which give rise to your concerns.

Notwithstanding this uncertainty and on the assumption that the TPA may apply to the activities of the library you describe, the concerns that you have raised would most likely fall under the provision in the TPA that prohibits corporations, in trade or commerce, from engaging in conduct that is misleading or deceptive, or is likely to mislead or deceive. The TPA defines 'trade or commerce' to mean 'trade or commerce within Australia or between Australia and places outside Australia.' A second issue then arises as to whether the activity of the public library, in providing storage and public access to archived material, is in trade or commerce.

Based on the information you have provided, my view is that the storage and public access of archived documents by public libraries is unlikely to be characterised as conduct that is in 'trade or commerce' under the TPA as it does not have the usual hallmarks of commercial activity. For this reason, the TPA is unlikely to the concerns you have raised.

This information is provided for general guidance and the ACCC does not provide legal advice and I accept that you may have a different assessment to that I have outlined above. If you remain concerned about whether the TPA applies to the issues you raise, you should seek independent legal advice.

Alleged corruption

You have also raised allegations of corruption by state and federal public sector and law enforcement agencies. As these concerns fall outside the TPA I am unable to make specific comment on them but would encourage you to report any such concerns to the relevant authorities for consideration.

Concerns regarding alleged South Australian public sector corruption are more appropriately raised with the South Australian Police Anti-Corruption Branch. The contact details for the Anti Corruption Branch are listed below.

South Australian Police Anti-Corruption Branch
Tel: (08) 8207 2200

Concerns regarding alleged federal police corruption are more appropriately raised with Australian Commission for Law Enforcement Integrity (ACLEI). The contact details for the ACLEI are listed below.

Australian Commission for Law Enforcement Integrity
GPO Box 305
CANBERRA ACT 2601

Tel: (02) 6229 9300
Fax: (02) 6230 7341
Corruption Hotline: (02) 6229 9393
e-mail: contact@aclei.gov.au

Conclusion

For the reasons outlined above, the ACCC does not propose to take any action to respond to your concerns at this time. However, the TPA confers a right of private action on those who believe they have suffered loss or damage as a result of alleged conduct in breach of the TPA.

Thank you for your letters. I hope this information is of assistance.

Yours sincerely,



Brian Cassidy
Chief Executive Officer