

FORUM#

THE DAWSON REVIEW

FOREWORD

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The Dawson Review, handed down on 16 April 2003, was met with great anticipation and a varied response. As the first review of the competition provisions of the *Trade Practices Act 1974* (Cth) ('*TPA*') since the Hilmer Review in 1993, the Dawson Committee's recommendations were eagerly awaited by a diverse group of interested parties. Indeed, over 200 submissions to the Committee were made.

The broad Terms of Reference required the Committee to review key provisions of the *TPA* 'in view of the significant structural and regulatory changes that are occurring in Australia that impact on the competitiveness of Australian businesses, economic development and affect consumer interests'. Clearly it was going to be difficult for the Committee to please everyone.

Just as the Dawson Committee addressed the challenge of balancing the concerns of small and large business, so too does this *Forum*. The object of *Forum* is to encourage thoughtful and intelligent debate on issues relevant to the law. The contributions published in this *Forum* do just this in traversing and appraising the full range of responses to the Committee's recommendations.

Some contributions focus on specific issues such as exclusionary provisions, the application of s 46, collective bargaining, predatory pricing, enforcement and penalties, and the ACCC's powers and use of the media. Other contributions address broader concerns in light of the Review's recommendations such as the use of competition law as economic regulation and the economic objectives of competition law. Much of our competition law is based on, and continues to be influenced by, United States antitrust law. However, are the regulatory requirements of a Small Open Economy like Australia the same as the United

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States? In the context of the Dawson Review, several authors question whether or not it is appropriate for Australia to follow United States law.

The government has accepted the Committee's recommendations, however, in June 2003, after intense business and industry pressure, the Senate agreed to conduct an inquiry into the adequacy of the *TPA* in protecting small business. The Senate Committee is to report by 4 December 2003. There is still much potential for the concerns of disappointed stakeholders to be heard.

Section 46 featured in the Review as it does in this *Forum*. The Committee rejected calls to alter the provision to include an effects test. Here we see a clear divide between the interests of large and small business and the positions are well-covered by several authors. Although the Committee was given the opportunity to reconsider its recommendations after the High Court's decision in *Boral*, it had nothing further to add. Calls for reform are made in this *Forum* and no doubt s 46 will feature in the Senate Inquiry.

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