

TPC/LCA spat continues

Tension between the Law Council of Australia and the Trade Practices Commission over the TPC's early release to the media of its discussion paper on the legal profession has intensified.

The President of the Law Council, Rob Meadows, wrote to TPC Chairman, Allan Fels, in November on the day the discussion paper featured on the front page of national papers.

Mr Meadows said the TPC's failure to provide the Law Council with a copy of the paper -- even on an embargoed basis -- placed the Law Council in an intolerable position because the Law Council was not in a position to respond to media enquiries about the paper's content.

Professor Fels responded in a letter saying: "I am sorry that you were upset about the way the Discussion Paper was released.

"I should clarify, at the outset, that the paper was prepared for public release.

"It was not a report to the Law Council and we see no reason to obtain your clearance prior to its release."

Release 'standard'

Professor Fels said that the paper was released in accordance with standard procedures and "took into account the need for the media to absorb what might have been an unfamiliar topic for them in a bid to ensure as accurate and balanced coverage of the paper as could be expected."

He said it was his intention to ensure that the Law Council and its constituent bodies had copies of the paper prior to its official release.

"I understand that this did, in fact, occur," he said.

Professor Fels said that one journalist either misunderstood or failed to observe the TPC's embargo.

Mr Meadows was less than happy

with the TPC's response to the Law Council.

He again wrote to Professor Fels and said the Law Council had never suggested the TPC needed its clearance to release the paper.

Mr Meadows said media coverage would have been far more balanced if the Law Council had an advance copy of the paper and was in a position to respond to media enquiries.

"As it was...we were in no position to provide any meaningful comment," he said.

"It appears to us that your only concern was the Commission's side of the story came out."

He also suggested that "standard procedures" ought to be reviewed so the TPC is seen to have some objectivity.

Report, not paper

"Whatever you might say, what was released was not a discussion paper - it was a draft report.

"It does contain conclusions. It does contain recommendations," he said.

"I have read the report and what I have seen highlights my belief that you have made a serious mistake in not consulting the profession before going to print.

"The report is riddled with inaccuracies, false assumptions and errors of logic.

"It is obvious that the syllogism is unknown to its authors. The report starts from a preconceived position and is lacking in objectivity," he said.

Mr Meadows told Professor Fels that he wondered whether there was any point in the legal profession responding to the paper because he doubted whether the TPC would change its mind or shift ground.

Mr Meadows enclosed a copy of his column in the December issue of *Law News*.

"You will see that I have referred to the decision of the High Court in *Church of Scientology v Woodward*.

"May I suggest that you might find the judgment of Murphy J, particularly, at page 68, instructive," he said.

That reference includes the following:

"Any powers granted to ASIO and exercisable by its Director-General or other officers must like other powers be used in good faith, for the purposes for which they are conferred and with due regard to those affected. That is the general rule...

"These implied conditions are not to be taken as excluded except by unmistakable language.

"If any of its officers acts in bad faith, uses his or her office or powers for extraneous purposes...or acts without due regard to those affected, then the officer is liable for misuse of office or power.

"Remedies may be in the traditional tort claims such as assault, trespass and defamation and the developing torts such as unjustified invasion of privacy, and outrage, or statutory remedies.

"Therefore, if a violation of the law by ASIO is proved, ASIO and its officers are amenable to legal process and to remedies available at least under the Constitution."

Note: Mr Meadows is the Society's guest for the Opening of the Legal Year and will address luncheons in Darwin and Alice Springs.

BALANCE

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