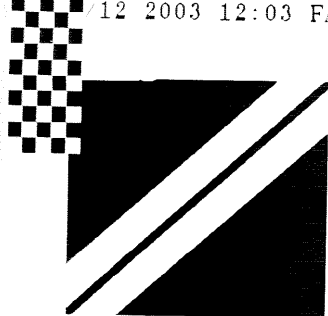
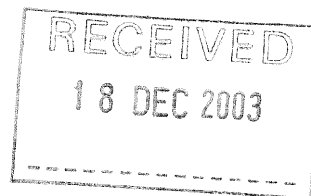


02 62732738



Motor Trades Association of Australia

Senator Ursula Stephens
Chair
Economics References Committee
The Senate
Parliament House
CANBERRA ACT 2600



Dear Senator Stephens

I write in response to a letter from your Committee Secretary, Dr Sarah Bachelard, advising that your Committee, as part of its inquiry into the effectiveness of the *Trade Practices Act 1974* in protecting small business, is inviting supplementary submissions following the High Court decision in *Rural Press*.

The High Court decision in *Rural Press* has not changed the views that the Fair Trading Coalition (FTC) has already expressed, in its submission, to your Committee; it has though significantly amplified them. The fundamental view held by the FTC is that section 46 is not working as the Parliament intended (as expressed in the Second Reading Speech) in 1986. In our view section 46 needs, at a minimum, to be clarified to restore the Parliament's intent.

In fact, the Fair Trading Coalition believes that the views expressed about section 46 and its interpretation, by Mr Justice Kirby in his dissenting judgement reflect the concerns of the FTC about the manner in which the High Court is interpreting section 46. The Fair Trading Coalition sees this not as an issue which the High Court itself can resolve. Rather our view is that the current wording of section 46 does not provide the necessary clarity for the Court to support the intent of the 1986 amendments.

While the views expressed by Mr Justice Kirby are supported by the Fair Trading Coalition, the reality is that his views are at odds with the majority of the High Court and that divergence has been made clear on at least two occasions. It would seem, to us, therefore unlikely that the views expressed by the majority on those two occasions as to the operation of section 46 will be overturned. In that case, the FTC believes that the Parliament must act to clarify section 46 so that it serves the purpose that the Parliament intended in 1986; that is small businesses have redress against the misuse of their market power by those firms who take advantage of their substantial degree of power for a proscribed purpose.

Yours sincerely

MICHAEL DELANEY

Convenor of the Fair Trading Coalition
and Executive Director of the Motor Trades Association of Australia

18 December 2003

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