# RONALD MOORE BANNERMAN

## AO 1921-2013

Australia’s inaugural Commissioner of Trade Practices, Ronald Moore (Ron) Bannerman was without doubt a founder of competition and consumer law in this country. Surprisingly appointed in 1966, Ron was faced with implementing contentious new laws containing an unprecedented blend of legal and economic principles which, at the time, might have been expected to fail.

Well suited to this daunting mission, Ron focused on the possibilities rather than the limitations of the Trade Practices Act 1965. Overcoming innumerable hurdles and maximising every available opportunity, his vision, persistence and determination brought the Act to life. As maligned as the Act was, Ron’s work made it ground-breaking. Concentrating on laying firm foundations for tougher laws, and satisfied to begin with incremental advances, his approach was pivotal to the legislation’s survival. The resultant revolution in public and political attitudes influenced the development of a stronger Act in 1971, and made possible the passage of the far reaching Trade Practices Act in 1974.

Appointed Chairman of the newly-formed Trade Practices Commission, Ron turned his talents to more robust regulation. He continued to consolidate, educate and persuade, remaining politically neutral and carefully pursuing a regulatory path which would advance the law. A strong promoter of competition law with a cooperative approach, Ron reached out to all stakeholders, earning their profound respect not just for the breadth and depth of his knowledge but for his resilience, diplomacy, humanity, sincerity and constant courtesy.

## Early years

Born at Strawberry Hills, in inner Sydney, on 21 November 1921, Ron was third of the four children of George Rose Bannerman and Dulcie (née Moore), both locally-born. Ron had two older brothers, George and Kenneth, and a sister, Maureen, who was 10 years his junior. Their father worked in the Postmaster-General’s Department, running various post offices before transferring to postal investigations. Ron started school at Brighton le Sands, later attending Kogarah Primary School, where he was dux. Travelling to school, he devised a scheme which revealed lifelong traits of frugal management and care for others. Negotiating a deal with a shop owner near the railway, Ron walked to school for some months, diverting his train fare to periodic payments towards a tricycle for his little sister.

Assisted by a bursary providing textbooks, Ron went on to the academically selective Canterbury Boys’ High School in 1933. There during the aftermath of the Great Depression, he was a serious and hard-working student. Boys travelled from distant suburbs to the school. With transportation often difficult, social life on the weekends was localised, based on simple activities such as tennis, hiking and bike riding. Outside the classroom, Ron acquired the notable skill of riding a bicycle through the underground drainage systems in Kogarah and Hurstville—demanding abilities to keep his body below the crossbar of his bike, emerge backwards from the drains on occasion and avoid the authorities who frowned on such dangerous practices.

Completing his Leaving Certificate in 1937, Ron won an ‘exhibition’ to university. Awarded to top ranking students, this grant covered fees, but not books or other expenses. Aged just 16, Ron was ineligible to begin studying law as he intended, and was expected to use his exhibition for an Arts degree. He persuaded the Registrar at the University of Sydney, who advocated starting a combined Arts/Law degree, to transfer the exhibition to the law course when Ron reached the threshold age of 17. Wanting to support himself financially and eager to get practical experience, Ron sought work in the Commonwealth public service.

Sydney’s then Deputy Crown Solicitor, who knew Ron’s father, provided the opening needed. On 11 April 1938 Ron started work as a clerk in the Attorney-General’s Department. The small office, situated on the sixth floor of the iconic Commonwealth Bank Building in Martin Place, included some soldiers returned from the First World War. Effects of restraints imposed on employment conditions during the Depression were still evident. Nonetheless, the work was interesting and the practical training superb. ‘Young Ron’ was treated kindly by fatherly supervisors. As a junior he managed to keep up both his fitness and his savings by conserving his travelling allowance and running all the way to deliver urgent papers to Court.

When Ron began his four-year law course in 1939, the University of Sydney Law School was located in Phillip Street. This enabled part-time attendance by students and lecturers (generally legal practitioners) working in the city. While Ron appreciated the intellectual stimulation from his fellow students, and of colleagues in the office, he found studying part-time difficult. To achieve greater participation in university life, other than just sitting examinations in the Great Hall, he played in the university Rugby Union team. With Australian involvement in the Second World War intensifying, in August 1940 he joined the Sydney University Regiment.

On hearing of the Japanese bombing of Pearl Harbour in December 1941, Ron immediately volunteered for permanent service. Deployed as a gunner in an Australian Light Anti-Aircraft Battery in February 1942, he became expert in the use of the Bofors gun. Suffering an accident during training, Ron had the little finger of his left hand permanently bent. He was promoted to Sergeant at the end of 1943. Willing to serve overseas, he was disappointed that his ‘reserved occupation’ kept him assigned to the home front and that, despite his active service and his injury, he was not granted status as a ‘returned soldier’ after the war.

Before joining the army, Ron had met the love of his life. Joyce Dupen, who worked as a metallurgical clerk, lived in the nearby suburb of South Hurstville. Ron, aged 21, and Joyce were married at Rockdale Methodist Church on 19 June 1943. War-time rationing added stress to the wedding preparations, but the marriage was to last 68 years. The newlyweds lived in sparsely furnished ‘rooms’ in Drummoyne, before purchasing first a run-down old house in Earlwood and later a brand new home on a bare block in a post-war housing development at Lane Cove. The couple’s three children were all born in Sydney—Marilyn in September 1945, Bruce in December 1948 and Sally in June 1952.

## Attorney-General’s Department

Required for employment in an essential occupation, Ron was discharged early from the army, on 2 April 1945. Having completed his law degree, he graduated in June that year and resumed his career in the Deputy Crown Solicitor’s Office. With public service promotions subject to an appeals system which frequently delayed staffing action for months, Ron advanced to Legal Officer Grade 2 in the Common Law Section in October 1947, then to Grade 3 by mid 1949. He volunteered to work for some months in central office in Canberra during 1949 and, around the same time, to help support the case in a major arbitration plaint filed by the Commonwealth lawyers’ professional association. Losing a provisional promotion in Canberra on appeal, Ron returned to Sydney, where he was promoted to Senior Legal Officer in July 1950. He was admitted as a solicitor in New South Wales on 8 February 1952.

Both the volume and range of government legal work increased markedly after the war. Consequently reorganised, the Crown Solicitor’s Office became a separate division of the Department in 1948. Ron found this a vibrant and remarkable workplace, offering ample responsibility supported by skilled leadership and cooperative teamwork. The first of his several overseas work trips was in 1956, when he travelled to London in connection with the hearing of a constitutional case in the Privy Council.1 Promoted to Principal Legal Officer in July 1957, Ron and his fellow section heads cultivated a fertile training ground for many outstanding lawyers. Consolidating his own excellent reputation, Ron on occasion astounded his colleagues with his capacity to rapidly come to grips with the intricate legal detail of subjects outside his experience—such as the laws pertaining to betting.

Late in 1962, Ron took up a promotion to Assistant Secretary in the Executive Division in Canberra, then situated in A Block of the Administrative Building. When his family followed early in 1963, they rented a somewhat neglected small house in Deakin. Afterwards purchased and extended, it became their home for the next 50 years.

In Australia’s rapidly expanding business sector at that time, monopolies and restrictive trading practices proliferated, unchecked by effective regulation. Zealously committed to introducing legislation to redress this situation, Attorney-General Garfield Barwick and his policy advisers were engaged in an extended reform campaign when Ron arrived in Canberra. Given the status quo, their eventual success was remarkable. One major legal obstacle dated back to a 1909 High Court ruling that parts of Australia’s first competition enforcement law were unconstitutional because they sought to regulate corporate behaviour—a power reserved to the States.2

Political hurdles abounded. Many in government and in business objected to the proposed legislation. Vigorous and vocal opposition greeted every phase of the Bill’s prolonged passage. Eventually shepherded through its final stages by the next Attorney-General, Billy Snedden, the Trade Practices Act which was assented to on 18 December 1965 was far weaker and narrower in focus than initially envisaged. Its implementation would certainly demand the courage, initiative and energy predicted by Barwick in the course
of debate.

## Commissioner of Trade Practices

In these inauspicious circumstances, the Government went in search of a Commissioner of Trade Practices. Contenders included current and former senior departmental officers who had helped develop the legislation. The Attorney-General was being pressured to put forward a candidate from the business sector, or an expert from overseas. Various difficulties were inherent with all these aspirants. Those involved with the fraught passage of the Act were seen as being tainted by their association with the ‘Barwick circus’. Any business sector appointee prepared to accept a probable substantial reduction in income and the risk of public failure in what was viewed as a dubious undertaking at best, had also to be credible across the spectrum of professions and industries and without any perceived conflict of interest.

Not so much on the sidelines as on a parallel track to colleagues working on trade practices policy, Ron was prospering in Canberra. Recently promoted to First Assistant Secretary, he provided direct support to the Attorney-General in various law reform and administrative responsibilities. Keen to influence the choice of Commissioner, Snedden persuaded Ron to agree to being nominated. Assured that there was negligible risk of being appointed, Ron afterwards asserted that his was the last name remaining on the list, simply because he was ‘not disqualified’.3 The Attorney General, who had the utmost regard for Ron’s legal ability and personal qualities, saw it differently. Listing the characteristics of his ideal Commissioner, Snedden found that, criterion by criterion, Ron was the benchmark for judging all the candidates—and ultimately the logical choice for the role.

Aged 44, Ron was appointed Commissioner of Trade Practices for a seven-year term commencing on 18 August 1966. Announcing the decision, the Attorney-General expressed confidence that Ron would scrupulously observe the requirements of the office. Opposition Deputy Leader, Gough Whitlam, offered congratulations, noting that in his long acquaintance with the new Commissioner, from their time at Law School together, he had formed a high opinion of Ron’s qualities and qualifications. Ron’s family was there to hear the announcement, beginning years of unstinting support which he always acknowledged and for which he was constantly grateful.

Admitting to being ‘scared stiff’4 by the appointment, Ron was acutely aware of his lack of trade practices experience, his non existent credibility with business or consumers and the magnitude of his assignment. However, any suggestion that he was uncommitted to the legislation was quickly dispelled. Regarding it as his duty to accept the intimidating position thrust upon him, he resolved to do his utmost to not let the legislation fail, and to have it lead to something better. A pioneer in the field, he had to qualify himself, later recalling the early years as building both qualifications and character.

## Trade Practices Act 1965

Before the Trade Practices Act commenced on 1 September 1967 the organisation and systems to administer the new laws were created. An office was set up in the City Mutual Building in Hobart Place, Canberra. Years before the advent of computers, a confidential Register of Trade Agreements was established. All agreements restricting competition had to be registered for examination by the Commissioner. The resultant massive workload for the small staff provided overwhelming evidence of the magnitude and prevalence of anticompetitive restriction impacting on the supply of goods and services in Australia.

Carefully managing working relationships at all levels, Ron was adept at choosing and nurturing high calibre staff. An inspirational leader who set high standards for himself and others, he fostered an exciting work environment in which people were conscious of history being made. Generally adopting a cooperative stance, Ron held frequent discussions with industry, commerce and professional groups—explaining, educating, persuading and garnering information. He developed trade practices networks with businesses and universities and encouraged media interest in the Commissioner’s work.

Obliged to report annually to Parliament, Ron turned this then-uncommon imposition to good effect. He recorded qualitative assessments of the work done under the Act and, exposing the volume and nature of agreements, provided proof of the need for the legislation. The reports informed public and parliamentary debate and became authoritative source material for the media, and industry and professional bodies. Meticulously prepared, all Ron’s writing shrewdly targeted his audience. Thinking long and hard about his subjects beforehand, he honed his words with precision.

Despite his own obvious skills and reputation, he decided early on not to be his own lawyer. Legal services were provided by an Assistant Crown Solicitor in charge of a sub-office of the Crown Solicitor’s Office with a professional staff of seven. Ron also wisely chose to retain top-class counsel from the private bar in Sydney and Melbourne. Exceptionally well-prepared for legal encounters, Ron and his advisers went through every document thoroughly, analysing principles and confronting foundational challenges in the law.

Highly ethical and politically astute, Ron stringently maintained his integrity and statutory independence. Aware of his duties to Parliament and the public, and of political realities facing governments, he was carefully impartial, aiming at building bi-partisan acceptance and support for the legislation. Courageous in confronting issues, he eschewed playing politics. Avoiding direct involvement with making policy and drafting legislation, he instead influenced developments through comments on Bills and by making small criticisms or pressing for accelerated progress
where warranted.

Having established a credible administration and the real need for the law, favourable judicial enforcement was also required for the legislation to succeed. Not specific about what constituted ‘public interest’, the Act was bereft of experts, precedent or case law and, to be effective, needed to have its constitutional basis confirmed. While many restrictive practices were satisfactorily dealt with through consultation at the administrative level, litigation on essential matters would clarify the powers—and the principles underlying the decisions—of the Trade Practices Tribunal. With sole authority to initiate proceedings there, Ron’s selection of which cases to pursue was critical.

Despite major legal challenges, apparent set-backs, delays and resultant protracted disruptions to his work, Ron persisted. Action in the Tribunal and the Courts—in cases pertaining to Tasmanian breweries, frozen vegetables, concrete pipes, the books trade and fibreboard containers—progressively established the constitutional basis of the legislation, developed the notion of public interest and discredited price agreements. In the wake of the concrete pipes judgment,5 which identified some defects in the Act, Attorney-General Tom Hughes oversaw the passage of the more powerful Restrictive Trade Practices Act 1971, which came into operation in February 1972. Contemporaneous events outside the court became the catalyst for amendments outlawing resale price maintenance. All combined to gradually develop community acceptance of stronger laws against collusion and abuse of market power. From early 1971 both sides of the Parliament indicated intentions to strengthen trade practices legislation. By December 1972, when the government changed, Labor Attorney-General Lionel Murphy had a markedly more favourable environment in which to introduce radically different trade practices legislation. Nonetheless, perseverance and compromise were needed to get the Bill through a Senate still hostile following the double dissolution and joint sitting in mid-1974.

Dealing with both competition and consumer protection, the Trade Practices Act which commenced on 1 October 1974 was far wider in scope and contained much stronger penalties, relying more heavily on judicial enforcement. Ron was appointed Chairman of the newly created Trade Practices Commission. Habitually modest, he claimed that there were not many people available with the right background, while he was at hand and ‘hadn’t fluffed’ the implementation of the earlier Acts. He acknowledged that he had made some progress, was known to and respected by stakeholders, and had the trust and approval of both sides of Parliament.

## Honesty, responsibility and competition

While the changes probably went much further than Ron had envisioned, he remained pragmatic, embracing his expanded responsibilities with undiminished passion. Still enjoying frequent opportunities to consult, negotiate and re-educate, he promoted the new Act as a comprehensive but integrated piece of legislation directed at community benefit, summarising its purpose as ‘honesty, responsibility and competition’.

The 1974 legislation presented its own set of challenges for the new Chairman—not least an influx of clearance and authorisation applications to be dealt with. More comprehensive sanctions were especially unwelcome in a slumping economy, and the focus on enforcement put relationships with industry on a more adversarial footing. Consumer groups too were taking a more critical interest in the work of the Commission.

No longer the sole decision-maker, Ron was head of a Commission with five other members, in whose selection he had little part. Innovatively for the public sector, he arranged Commission work in committee style, designed to produce high quality submissions and decisions. His superb people skills were called upon to deal with varying abilities and egos on the Commission.

Survival was always an issue. Frequent shifts in ministerial responsibility brought uncertainty about the Commission’s ongoing role in consumer protection. The Swanson review created further ambiguity—while it did not fulfil early predictions of emasculating the Act, it recommended amendments in 1977 to remove restraint of trade and clearance mechanisms. In this climate resourcing was a particular challenge for Ron. A careful manager, he was occasionally criticised for his caution, but his aim was always to protect the Commission from any charge of extravagance and from political fallout. Scrupulously honest, and conscientious about restraining his own budget in times of financial stringency, he was frustrated by a lack of mutual fair-play and the constant expectation that the Commission would do its job with inadequate resources. The 1981 Review of Commonwealth Functions impacted on the credibility as well as the resources of the Commission, whose effectiveness depended in part on community belief that it had intrinsic government support. Doing his utmost to keep the Commission motivated through the disruptions and uncertainty, Ron used his annual reports to analyse and explain the effect of legislative amendments, and the implications of resource decisions.

Legal effort in the Commission and the Tribunal was directed to cases likely to set significant precedents. The Commission conducted public hearings relating to petrol stations, Media Council control of advertising, tied insurance directed by building societies, and the tied hotels system. Despite a steep learning curve for all parties concerning enforcement, vital principles were established and the Commission had some important wins. These included the first successful price-fixing case (against glucose manufacturers) and defeating challenges to the use of statutory demand powers.6 One case proved especially difficult for Ron. In the prolonged and bitterly fought Tradestock/TNT freight forwarders matter, Ron accepted questionable advice to issue statutory demands during the case. Challenged by the defence, Ron and the Commission were found to be in contempt of court. Despite a comparatively light penalty, Ron was horrified and devastated, taking the decision very personally. He also felt keenly the Commission’s ultimate defeat in the case—its first case against a collective boycott and the longest-running and most expensive litigation conducted during his term.7

Maintaining his trademark calm and courteous style throughout, Ron prevailed because of his personal qualities as well as his management skills. Renowned as highly principled, fair and clear thinking, he was humble and occasionally a little unworldly. Unfailingly polite, he was respectful even in disagreements and constructive rather than critical when confronted with bad news or mistakes. He made staff feel welcome and valued in Commission meetings, and at workshops listened intently, only rarely intervening to make a salient point. Understanding political tensions and the perceptions of stakeholders, his was generally the voice of reason.

## Retirement

Aged 63, Ron retired at the end of December 1984. Sharing 18 years of accumulated wisdom in his final annual report, he commented on the development of trade practices law and administration during his term and on what remained to be achieved. Satisfied that he had set the foundations, he hoped that these would survive in years to come – and recommended that his successors should not have such long terms in office. His comprehensive ‘points of experience’, printed as an appendix on blue paper, were dubbed
‘Blue Hills’.8

Appointed an Officer of the Order of Australia (AO) in January 1985, Ron was still in demand for years after he retired. He continued his public service as President of the Legal Aid Commission (ACT) for five years from February 1985; as Administrator of the Code of Conduct for Australian companies with interests in the Republic of South Africa in the late 1980s; and in 1988 conducting a review of the efficiency of the Commonwealth Reporting Service. He presented and published papers on trade practices law and administration, lectured part-time at the Australian National University and willingly cooperated with academics and historians writing about his era. An enthusiastic attendee at Senate Occasional Lectures, even when he needed a wheelchair, he never lost his interest in the law.

Always an active member of the community, Ron retained his interest in and ability to relate to people at all levels to the very end. A keen bowler, he was one-time President and a life-member of the Canberra Bowling Club. He also had a major role in drafting the Club’s constitution and helped to rebuild the clubhouse. Other leisure activities included outings with friends from his trade practices days, going to the Brumbies’ Rugby Union games with family members, and bike riding again late in life. Ron and Joyce travelled extensively overseas, and enjoyed annual holidays in Cairns.

Devoted to his family, Ron was conscientiously caring and supportive of all its members throughout his life. Especially proud of all his children and grandchildren, he encouraged them regarding education and helped in practical ways where he could. Acting as scribe for one grand-daughter during university law lectures in the late 1990s, he managed to restrain himself when the lecturer made a fundamental mistake, but insisted that the student research the point and argue the case.

Missing Joyce after her death on 11 November 2011, Ron became increasingly frail. He was hospitalised for long periods early in 2013, and died on Saturday 27 July, four months short of his 92nd birthday. He was survived by his sister, his three children, eight grandchildren and four great grandchildren.

Speakers at Ron’s memorial service on 9 August 2013 remembered him as a wonderfully wise man of enormous integrity, and an outstanding lawyer. Tributes bore testament to his immense contribution to the Australian community through his work establishing credibility for the regulation of competition and fair trading, making this an integral part of business culture.

An annual memorial oration in Ron Bannerman’s honour was established jointly by the Australian Competition and Consumer Commission and the Law Council of Australia
in 2015.

## Notes

* The case concerned alleged inconsistency between State and Commonwealth laws regarding licensing of premises used for the slaughtering of cattle for export.
* Huddart, Parker & Co. Pty Ltd v Moorehead [1909] HCA 36; (1909) 8 CLR 330, concerning the Australian Industries Preservation Act 1906.
* David Merrett, Stephen Corones and David Round, ‘The Introduction of Competition Policy in Australia: The Role of Ron Bannerman’, (2007) 47(2) Australian Economic History Review, p.186.
* Ron Bannerman, interviewed by Carmel Meiklejohn, Canberra, 20 October 2012.
* Strickland v Rocla Concrete Pipes Ltd [1971] HCA 40; (1971) 124 CLR 468.
* Melbourne Home of Ford v TPC (1979) ATPR 40–107. W.A. Pines v Bannerman (1980) ATPR 40–144 (and on appeal) (1980) ATPR 40–163.
* TPC v TNT Management Pty Ltd (1985) 6 FCR 1; 58 ALR 423; ATPR 40–512.
* Long-running radio serial, Australian Broadcasting Corporation, February 1949–September 1976.

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