Given the amount of money the ACCC spends on making Russell Miller even wealthier than he already is, it was no surprise when he invited me to launch the 25th anniversary edition of his “Miller’s Annotated Trade Practices Act”.

My library staff ordered 165 copies of the book in Canberra alone, and close to 400 across the entire Commission.

This makes us by a country mile Russell’s biggest customer, so big he offered to put a special “ACCC” cover on the front of the book for us.

We politely declined, and instead, like everyone else, accepted the special silver cover.

I have to tell you Russell, that not everyone is totally happy with this new cover, as it only takes a little handling for it to start to show up scratches and fingerprints.

Given how much you charge for it it’s been suggested you could have at least followed the lead of the fridge manufacturers and given it one of those Iridium surfaces.

Although I can understand why you thought having a cover you could see your face in would be attractive to certain members of the legal profession.
I should point out here and now, that before accepting this invitation I had to weigh it up in exactly the same way we weigh up all requests before the Commission.

Namely – did the public benefits of me being here outweigh any anti-competitive behaviour that might arise from this launch?

Was the book a monopoly?

Some commentators have suggested that it is the practice of the ACCC to always ensure there are at least three major competitors in any market and as the Commission also buys large numbers of copies of both the CCH and Butterworths guides to the Trade Practices Act, we decided that today’s launch would not be anti-competitive.

The silver anniversary edition means Russell is now 25 years older than when he first started doing this book – which in turn means the first edition appeared in 1979 – just five years after the commencement of the Trade Practices Act.

The first edition was just one centimetre thick – this one is five centimetres, which means either the Act has become five times more complex in the past 25 years, or as seems more likely, Russell is charging his publisher by the page or just getting more verbose.

**Evolution of trade practices law**

To be serious for a minute, what I think this new edition really shows, like all of its predecessors, is that the Trade Practices Act never stands still and the job of the ACCC is never static.

The TPA is a piece of legislation that is constantly evolving to deal with the constantly evolving processes and practices of business – good and bad.

Australia has had anti-trust legislation almost since Federation, and trade practices law since 1965, but it was the Whitlam Government’s introduction of the original Trade Practices Act in 1974 that ushered in trade practices law as we know it today.
That legislation put a quick end to many cartels and prohibited other forms of misleading, deceptive and anti-competitive conduct.

The next big bang came in the 1990s when the ACCC acted to break up cartels in overnight freight express, building products, power transformers and even vitamins, with landmark multi-million dollar penalties.

1995 saw the extension of the Act to previously off-limits, or protected areas of the economy, including the professions, public utilities and agricultural marketing boards, as a result of the Hilmer Report, and a number of court rulings.

Other changes over the past decade saw merger law altered from a dominance test to the much lower threshold of substantial lessening of competition, the extension of competition law and its principles to intellectual property, the extension of the secondary boycott provisions and the protection of small business from unconscionable conduct.

It’s a process that is never ending - just look at some of the trade practices issues currently before the ACCC and the federal government:

- On cartels the Commission currently has 14 cases before the courts and more than 30 suspected cartels have been identified.

  Some of these involve very small scale local price-fixing arrangements, others are nationwide and a few are operating globally. I am reasonably confident that the Commission will soon be able to start court action, potentially in cooperation with international regulatory agencies, to try and bring these secretive cartels to a halt.

- The success of this crackdown is in part due to our new leniency policy which encourages corporations and their executives to reveal the most serious contraventions of Australian trade practices law such as price-fixing, bid-rigging and market sharing. In return they receive a clear and certain offer of leniency, provided they are first through the door.
• The Dawson Committee Report and the Federal Government’s response is now being processed. Importantly the federal government is currently considering the Dawson recommendation that **criminal sanctions** be introduced for hard core cartels. The ACCC strongly supports this recommendation because we believe the cost/benefit analysis for people considering participating in a cartel will take on a different perspective if executives find themselves facing several years behind bars and not just a financial penalty.

• We are looking forward to increased **international co-operation** against cartels through the development of a new cartels working group. Many global and international cartels that impact on Australia are likely to develop, and be detected by, antitrust agencies overseas. The ACCC sees inter agency cooperation agreements as vital in the detection and prosecution of cartels, whether they impact upon or emanate from Australia.

I am proud to say that these are just a few examples of where the ACCC has been a major participant in helping develop, and in some cases, drive reforms to trade practices law.

We have a very strong belief in adopting a collaborative approach with governments and parliaments to achieve the best possible outcome by working through the proper channels.

I believe any objective and rational analysis will show that this process has worked very effectively, and I cite as just one example the recent report of the Senate Economics Reference Committee into the application of the Act to small business.

This report contained seventeen (17) recommendations, many of which were supported unanimously by all members of the committee – making it highly likely that we will see some changes to sections of the Act dealing with misuse of market power, unconscionable conduct and collective negotiations in the near future.
Many of these changes were advocated by the Commission and the final report reflected, I believe, the very proper and rational submission we made to the Committee.

**Getting the message across**

In his Preface to the First Edition, Russell Miller wrote "If the Trade Practices Act is to work effectively towards achieving its stated aims it must be widely understood."

I couldn’t agree more with that statement, and it’s the reason why the Commission and all Commissioners, including myself, will never be shy about using the media and public forums to keep consumers informed of their rights, and businesses informed of their responsibilities, under the Act.

Publicising the work of the Commission through the media gives business and consumers the confidence that when they purchase goods and services there is a powerful ally there to protect them from dishonest and unconscionable conduct.

Such publicity also educates business about the requirements of the Act and helps discourage behaviour which may harm both consumers and their business.

The ACCC’s fundamental tenet is that it is eminently more sensible to have business comply with the Act, instead of having them act in a way that does damage to both consumers and the business, and then have to try to undo the damage later.

That is why we make education, information, advice and yes, even persuasion if necessary, the base of our compliance pyramid – and enforcement action the tip or sharp end.

In addition to using the media, the ACCC distributes around 800,000 copies of publications each year, many of them targeted directly at specific businesses.

Our Internet site provides an easy source of information on virtually every aspect of the ACCC’s activities, we work with professional and industry groups on codes of
conduct, and on a personal note, this is the 95\textsuperscript{th} speech I have given since taking up the position of Chairman 9 months ago.

But ultimately businesses will rely upon the professionals when they need specific advice about the Trade Practices Act, and the practitioners in turn need something they can turn to quickly for reliable advice on what their clients can and can’t do under the Act.

\textit{Conclusion}

In that preface to the first edition I quoted from earlier, Russell went on to say he hoped his book would contribute towards the understanding needed to make the Trade Practices Act work effectively.

I’m sure everyone here would agree Russell has made that contribution.

Everyone involved with the Trade Practices Act, be they business, lawyers or even the ACCC itself needs a reliable and credible source document to explain the Act and I’d like to congratulate Russell for producing this outstanding reference work which is an invaluable resource for both practitioners and regulators alike.

It adorns our table and is regularly opened to help resolve some debating point during Commission meetings. ACCC staff can often be seen wandering our corridors with their increasingly finger-printed copies, staring at their reflections.

Whenever we win a case in future you’ll have to assume our opponents didn’t read Russell’s advice.

If Russell loses, you’ll know the 26\textsuperscript{th} edition is overdue.

But in the meantime, I have much pleasure in declaring this entirely up to date 25\textsuperscript{th} anniversary version officially launched.

Thank you.