

## Declarations

### Homer Simpson's Remedy – Is There Anything They Cannot Do?

*The Hon RS French*

#### Introduction

The familiar words “Well I declare” appear in a poem called “Kavanagh” written by Longfellow in 1839. The word “declare” so used is content free. Nothing is declared about nothing. A step ahead of this exclamatory usage is Pt IIIA of the *Trade Practices Act 1974* (Cth) which provides for declarations of nothing about something. Under s 44H the relevant Minister may “declare a service” for the purposes of the access regime for which that part of the Act provides. The Minister does not declare anything about the service. He or she simply declares it. In that case the declaration of nothing has significant statutory consequences. A service, once declared, is potentially amenable to access by third parties on payment to its provider of a tariff in an amount and under terms and conditions which may be negotiated or ultimately arbitrated by the Australian Competition and Consumer Commission (ACCC).

Further along the line of official declarations, although not without semantic difficulty, is the power conferred on the Takeovers Panel under s 657A(1) of the *Corporations Act 2001* (Cth) to declare “circumstances” in relation to the affairs of a company to be unacceptable. Such a declaration is a declaration of something about something although it is a little odd to be heaping moral obloquy on “circumstances” as distinct from conduct.

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