



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

ECONOMICS REFERENCES COMMITTEE

**Reference: Effectiveness of the Trade Practices Act 1974 in protecting small  
business**

MONDAY, 24 NOVEMBER 2003

CANBERRA

BY AUTHORITY OF THE SENATE



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**SENATE**  
**ECONOMICS REFERENCES COMMITTEE**

**Monday, 24 November 2003**

**Members:** Senator Stephens (*Chair*), Senator Brandis (*Deputy Chair*), Senators Buckland, Chapman, Ridgeway and Webber

**Participating members:** Senators Abetz, Barnett, Boswell, George Campbell, Carr, Cherry, Conroy, Coonan, Eggleston, Faulkner, Ferguson, Ferris, Forshaw, Harradine, Harris, Kirk, Knowles, Lees, Lightfoot, Ludwig, Mackay, Mason, McGauran, Murphy, Murray, Payne, Sherry, Stott Despoja, Tchen, Tierney and Watson

**Senators in attendance:** Senators Buckland, Chapman, Conroy, Murray and Stephens

**Terms of reference for the inquiry:**

To inquire into and report on:

1. Whether the Trade Practices Act 1974 adequately protects small businesses from anti-competitive or unfair conduct, with particular reference to:
  - (a) whether section 46 of the Act deals effectively with abuses of market power by big businesses, and, if not, the implications of the inadequacy of section 46 for small businesses, consumers and the competitive process;
  - (b) whether Part IVA of the Act deals effectively with unconscionable or unfair conduct in business transactions;
  - (c) whether Part IVB of the Act operates effectively to promote better standards of business conduct, and, if not, what further use could be made of Part IVB of the Act in raising standards of business conduct through industry codes of conduct;
  - (d) whether there are any other measures that can be implemented to assist small businesses in more effectively dealing with anti-competitive or unfair conduct; and
  - (e) whether there are approaches adopted in Organisation for Economic Co-operation and Development (OECD) economies for dealing with the protection of small business as a part of competition law which could usefully be incorporated into Australian Law.
2. That the committee make recommendations for legislative amendments to rectify any weaknesses in the Trade Practices Act identified by the committee's inquiry.

**WITNESSES**

**COWLEY, Mrs Jean, Vice President, Master Grocers Association of Victoria ..... 2**  
**GLEDHILL, Mr Geoffrey, President, Master Grocers Association of Victoria ..... 2**  
**PARSONS, Isabel Ann, Consultant, Abbott Stillman and Wilson, Solicitors ..... 2**



**Committee met at 7.40 p.m.**

**CHAIR**—I call the committee to order. Today the committee will continue taking evidence on its inquiry into the effectiveness of the Trade Practices Act 1974 in protecting small business. The terms of reference for the inquiry direct the committee to examine whether the Trade Practices Act 1974 adequately protects small businesses from anticompetitive or unfair conduct, with particular reference to: whether section 46 deals adequately with abuses of market power; whether part IVA deals effectively with unconscionable or unfair conduct in business transactions; whether part IVB promotes better standards of business conduct; whether there are any other measures which could assist small businesses to deal with anticompetitive or unfair conduct; and whether approaches to small business and competition law in other OECD economies could usefully be incorporated into Australian law.

This is the sixth and final day of the hearings on this matter. Before we commence taking evidence, I wish to reinforce for the record that all witnesses appearing before the committee are protected by parliamentary privilege with respect to the evidence provided. The committee prefers all evidence to be given in public, but under the Senate's resolutions witnesses have the right to request to be heard in private session.

[7.41 p.m.]

**COWLEY, Mrs Jean, Vice President, Master Grocers Association of Victoria**

**GLEDHILL, Mr Geoffrey, President, Master Grocers Association of Victoria**

**PARSONS, Isabel Ann, Consultant, Abbott Stillman and Wilson, Solicitors**

**CHAIR**—Welcome. Do you have anything to add to the capacity in which you are appearing?

**Ms Parsons**—I am a lawyer with Abbott Stillman and Wilson, who are lawyers for the Master Grocers Association.

**CHAIR**—I now invite you to make an opening statement, Mr Gledhill, and at the conclusion of your remarks we will ask questions.

**Mr Gledhill**—I would like to begin by thanking the committee for inviting us here this evening. I think I would be right in suggesting that you have provided an extension to the time for seeing witnesses, and in part that is probably due to the lateness of our original submission. I thank you for that. It is a significant opportunity for us.

I would like to begin by outlining what the MGAV is and how it sees its role. We represent around 600 independent or family owned businesses in Victoria and, to some extent, in southern New South Wales. They are all in the retail grocery industry. Our members are all what we refer to as ‘bannered’ stores—they trade under a banner, be it Foodworks, IGA or AUR. We are fortunate in that we have 100 per cent of those bannered stores as our members, so we feel that we are very representative of that particular industry.

These businesses have broad range supermarkets, many of which are licensed, and they have fresh produce and many other departments. Each of the banners under which these stores are marketed are represented on the Master Grocers Association Board. There is at least one director from each of those banners. They are elected by their members to our board. The directors resign on a rotating basis and there are elections annually. As I said, we feel that we are representative of the people that we are speaking on behalf of.

As far as the people here are concerned, I have been in the industry for 20 years as a retailer of a variety of sizes of business. I have been on the MGAV board for eight years and I have been president for the last three years. I have made it my business to be involved in a number of industry activities because I think that is the way to drive these businesses forward cohesively and to act in a manner that gets some of the benefits of economies of scale.

Jean Cowley has run a number of businesses on behalf of others and, in the last few years, has had her own successful stores. She has recently refurbished one at Barwon Heads, on the Victorian coast, and has been on the MGAV for four years, as vice-president for the last two years. Jean has actually gone a couple of steps further; she has retail qualifications from a

university in America—I cannot remember the name—so I refer to her as a retail specialist. Isabel is a solicitor who acts on our behalf and who has been quite involved with this process.

Obviously you have all read and digested our submission. We did not put together a particularly large submission; we concentrated on a few areas that we felt had a genuine need for review or were areas that had a genuine detrimental impact on our members. We have briefly outlined in our submission—this has been the subject of much discussion—that there appear to be some areas in section 46 that require a confirmation of their meaning, which I suppose has changed with some of the decisions since the act was first passed. We believe there needs to be some tidying up, if you like, or confirmation of definitions in some areas. That is covered in our submission. We believe the issue of predatory pricing may also need some refinement. We are heartened by the fact that in some of its communications, and certainly in its submission, the ACCC has noted that there are areas in 46 that could require some attention.

Creeping acquisition is a matter that we are happy to address you on, as we may even have noted in our submission. At the outset, we do not think that creeping acquisition is necessarily a fantastic thing to be happening to our members; however, we have taken the advice of many of our members and subjected this issue to a lot of discussion. We feel more than anything that, as an industry, we have to look at ways we can ensure a creeping acquisition does not erode things like volumes. I am sure you will have some questions on that. It is an area we feel quite strongly about.

Another area that we would welcome some discussion on, and that I would certainly welcome Jean's input into—although I did not actually know how to term it—is the attitude of shopping centre landlords and our members' ability to secure retail space in some of those centres. We see that as a great challenge to us. Those are the areas that we wanted to confirm as our key areas of attention. We welcome the opportunity to be here and invite your questions.

**CHAIR**—Thank you very much. Mrs Cowley or Ms Parsons, do you want to make any further comments?

**Ms Parsons**—No, thank you.

**Mrs Cowley**—Not yet.

**CHAIR**—Thank you for your submission. You raise some very interesting questions for the committee. Some of your proposals and the points you have made are very much at odds with some of the other evidence we have received, so that is an interesting thing for us to digest and work our way through. To clarify something for me first of all, are you a subsidiary member of the National Association of Retail Grocers?

**Mr Gledhill**—No, we are not.

**CHAIR**—Are you connected?

**Mr Gledhill**—No, but we were.

**CHAIR**—You were?

**Mr Gledhill**—We were a member of NARGA, and our Victorian executive officer, Jennifer Flanagan, was a director of NARGA. I think it was about three months ago that we resigned from NARGA, and Jennifer resigned her position as a director. So we are not associated with NARGA now.

**CHAIR**—So your organisation as such was a member. Is that how NARGA works? Is it an association of associations, not of individual members?

**Mr Gledhill**—Basically, yes.

**CHAIR**—Thank you for that. I was a bit confused because some of the positions you have put to us here are different from NARGA's and I was just trying to understand that relationship and whether or not they were a national body over you. I will firstly go to your submission. We will start getting our minds back into this—we have been away for two weeks, so we need to focus our thoughts a bit. You describe what you call 'location specific predatory pricing'—selling products below cost in a particular area in order to influence the local market. Do you take the view that large grocery chains should be required to price goods at the same price across their entire networks?

**Mr Gledhill**—I think their pricing will probably reflect variations they may incur with freight and particular costs. Where we were going with that point was that we do not feel that it is a good situation whereby a chain is pricing goods in a particular area over a sustained period that clearly makes it impossible for perhaps one of our members to compete with. We cannot understand the logic, from their point of view, of why they would do that. If a national chain wants to sell all its goods below cost across its entire network then, as far as we are concerned, they can be our guest because they will not last very long doing that. It certainly raises questions in our mind of why they are doing it in a specific location, and if they are doing it for a sustained period we—

**CHAIR**—How do you define a 'sustained period' in general terms?

**Mr Gledhill**—Obviously, we accept that we are in the market and marketers do things to attract customers. Our competitors and we are going to do things from time to time that are meant to create a wow factor, if you like, in the eyes of consumers, and that is fine. If something is done for a launch or that sort of thing—if they have gone into an area and are trying to attract the attention of the local community—we can understand that. That is marketing; that is what they are about. They have an obligation to do that. But if they price a range of goods across a number of categories at an unsustainable level in terms of the cost of goods, then as far as the length goes, if it was across a broad range and done for a month or two months, we would wonder why they were doing that in a particular area, given that it was obviously a cost that their business was incurring in doing that. The chains that I am aware of have stated a number of times that they are not in the business of losing money, and that is, again, what we would expect. I suppose if it were for a month or two—but it is very hard to put an actual time on it.

**CHAIR**—Sure.

**Senator BUCKLAND**—But not being able to put a time on it does not give a very clear guide to us of what a sustained period is.

**Mr Gledhill**—I have indicated that if it were beyond a month, if it were two months, I would certainly be questioning that activity.

**Senator BUCKLAND**—If you look at market leaders, with the hot weather that we are getting now, quite often that black coloured soft drink—Coca-Cola or Pepsi-Cola to be more specific—will often be a market leader or a very low-priced product for what I would think was a sustained period, which goes on for a number of weeks. I have never considered that as an issue in the supermarkets because I can go to the local service station and probably buy it even cheaper still. I am wondering, if you get a leader like that—and let me say that IGA is one store that I have seen do this; no doubt selling at a loss to attract customers to other goods—how can you define that as being unfair? Obviously you buy your product in advance. You know that you are coming up for summer, so you would try to do the best deal you can. If you say three weeks or one month takes you into that unfairness stage, that is fine, but if you say it is open ended and it is—

**Mr Gledhill**—I will explain and I will make it a little bit clearer. If you are talking about a single product—and you correctly mentioned seasonal lines and those sorts of things—I do not believe that the MGAV would have any issue with the example that you gave. When I am talking about the type of pricing behaviour that we are discussing, I mentioned across a range of categories. That may cover half-a-dozen or a dozen of the key category lines that the average consumer will purchase in a week. It is a proportion of the average consumer basket with that pricing behaviour that I would question. If it were just a single product, certainly a seasonal line, I would not question that. We are in the market and it is something we accept. And you are right, we do it.

**CHAIR**—Just pursuing that issue of the idea of locational specific predatory pricing: what distinguishes that from other forms of predatory pricing, about which we have had a lot of discussion in our hearings?

**Mr Gledhill**—The MGAV's main concern is the aspect of location specific pricing—that is, where a particular region or outlet appears to be targeted. You obviously have heard much in the way of what is 'predatory pricing'. I happen to think that it is a very difficult thing to define. We have, as an association, had members come to us and make us aware of instances where this has occurred. In one instance that readily comes to mind, the matter was referred to the ACCC. I was going to ask at some stage whether, if I sought the permission of that particular business owner—and probably the ACCC, out of courtesy to them as the matter has gone to them—some information about that particular case would be of benefit to you in your deliberations. I could try to make it available to you.

**CHAIR**—I think that, in the first instance, it would be interesting to know how far the matter had gone with the ACCC. Could you advise us of whether it had been pursued or whether it was resolved through some mediation process? That might be helpful.

**Mr Gledhill**—Yes.

**Senator MURRAY**—Would it not be typical in your experience, Mrs Cowley or Mr Gledhill, that a promotional period seldom extends beyond five weeks? That is about the maximum length of a promotional period, isn't it?

**Mrs Cowley**—That is a fairly normal period, yes. Even for a launch, you would say that a promotional period would go for around four to five weeks.

**Senator MURRAY**—That is a normal cycle. Do you think that if what constituted a promotional period where pricing behaviour was costed lower than normal were included in the guidelines, then anything over that period would be an indicator that something abnormal was going on—not that something illegal was going on but something abnormal?

**Mr Gledhill**—Again, I refer back to what I said to Senator Buckland. If you were referring to just a single product line, I would consider that a difficult thing to do, given that particular arrangements are made to promote a particular product for certain reasons. The key from our point of view is that, if the pricing is across a breadth of categories, rather than indicating a marketing opportunity, to us it indicates an action that is attempting to stifle the competition to the point that it has no profitability and no ability to continue to trade. In terms of the time span, yes, five weeks is broad. Most promotions that cover a broad number of categories run in three- to five-week cycles. So, if we are talking about 50 products that might be across a dozen categories or something like that, that is the sort of cycle that we experience in our industry.

**Senator MURRAY**—Mr Corbett gave evidence to the committee that, where a smaller independent is cutting prices against one of their stores, their instruction is to match, not beat, those prices. Mrs Cowley, do you know from your experience whether that is true?

**Mrs Cowley**—I see no reason why that would not be true. Our problem is where a particular concentrated area—and this certainly happens in some areas in Victoria—undercuts cost price, or what would be considered cost price, for a sustained period over, as Geoff said, a range of goods that the consumer would buy week in and week out. Our problem is where the rest of Victoria is at one price, and this area is at another.

**Senator MURRAY**—In your experience, when a major chain has bought a small operator out—a so-called ‘creeping acquisition’—does it soften them up first through aggressive pricing behaviour to make them willing sellers?

**Mrs Cowley**—I cannot say that I know of any great experience of softening them up from a pricing point of view. A lot of pressure has been put on our members in the good locations, and a lot of it has got down to the preference of landlords to give retail space to the chains. Even some of our most talented and passionate retailers are overlooked by landlords in the good locations. Even when they are trying to expand their stores, they meet with great opposition from the landlord, who makes it quite clear that he would prefer a chain store at his site. Our members are really suffering. It is a great challenge to them to maintain and grow their businesses, because they are not the preferred tenants. I am not sure whether what you have said is true, but our members are certainly finding that to be the case.

**Senator MURRAY**—As I understand it, the approach you have taken on creeping acquisitions is essentially driven by your members wanting to have ease of exit. In other words, they want an avenue to get out; they want not to be closed up. It is basically as human as that, isn't it? They want to be able to sell their businesses for a good price.

**Mr Gledhill**—The response of our members, in some cases, has been along those lines: ‘It’s my asset. I’ve built it up, and who has a right to determine who I sell it to?’ It has been said like that. In fact, one of the key driving things behind our position on that is that, rather than what we are doing in allowing businesses, stores and people to exit the industry, we think that some of the solutions proposed for creeping acquisition would actually do more harm than good to our industry.

**Senator MURRAY**—Such as which?

**Mr Gledhill**—If you had a situation where the natural movement of the market was being orchestrated or regulated, we fear that that would have the potential to have a dramatic influence on the way in which suppliers, financiers and people such as that would look at our businesses and our industry. Certainly, I have seen other submissions that have indicated that economies of scale and volumes are important, and we acknowledge that they are. We do not like losing stores to the chains any more than many of the other people who have submitted evidence. We just believe that there is a different way of maintaining that critical mass—that volume. Once you start orchestrating—or attempting to orchestrate and regulate—the basic function of a market such as that, I think past experience would suggest to us all that we could enter a quagmire that we will spend a lot of time trying to wade out of and that we will not do so very well. I have discussed this with a number of people from the financial sector who have a significant impact on our industry. They have indicated strongly that, if that sort of regulation were to be imposed, it may well change the way they look at how they do business with our sector. That, above anything, is the driving force behind our position on creeping acquisition.

**Senator MURRAY**—There are a number of possibilities with respect to creeping acquisitions. One is simply that the ACCC is given a watching brief so that in a market which is regarded as overconcentrated—although not as a general rule—they would have the ability to prevent an acquisition if they felt it would result in a loss of competition. To give the easy example, you might have a country town with two stores, one a major chain and one an independent. The independent wants to sell. The ACCC would probably say they should sell to the other major chain but not to the same major chain. You would get that kind of effect. How do you react to the idea of giving the ACCC a general discretion of that sort?

**Mr Gledhill**—The ACCC’s involvement in reviewing anything to do with the Trade Practices Act gives us a degree of comfort. The issue becomes: where do we, as an association, have a right to even pass an opinion, I suppose, on matters that so directly affect people’s livelihoods, futures and planning? So, with a question such as that, I would love to provide a fuller answer, but I certainly would rather do that having put that, again, to a number of our members. The sort of scenario that you suggest is not something we have put to them at this point. We have had a good degree of discussion with them, but I am hesitant—if that is okay—to go into an area where I do not think I have that right.

**Senator MURRAY**—You must answer as you see fit, and the committee would never condemn self-interest, but we also have a primary task to look at public interest, which is what is in the interests of consumers. That would drive an attitude on that. Another option is simply to let the market operate as it chooses but to give the ACCC what is known as a divestiture power. In America that is antitrust legislation, which means that, once you reach a certain dominant market size which is regarded as anticompetitive, you can be broken up regionally, in total or

whatever. Have you or your committee discussed the issue of divestiture powers being granted to the ACCC?

**Mr Gledhill**—Our board has had that as a point of discussion. As we stand now, it is not something we have actively encouraged and it is not something that we would support.

**Senator MURRAY**—Let me give you a contrary example. The ACCC have powers over mergers. They did not like what was going to happen to Franklins, so they made certain orders to ensure that the market remained as competitive as possible. Those orders included parts of Franklins being sold to the independent sector. Does your organisation support that sort of behaviour?

**Mr Gledhill**—From our knowledge of the stores, that particular instance has worked quite well for a number of our members, hasn't it?

**Mrs Cowley**—Certainly.

**Senator MURRAY**—So why would you support that and be hesitant on a divestiture power which has the same effect?

**Mr Gledhill**—Possibly because I look at the Franklins situation as one where there was a deal of necessity because, as I understand it, the business was not in a financial position to continue. What we have tried to do in our submission and our consideration is be mindful of the role that the committee has got and how, as you mentioned before, Senator, you have got to look at the bigger picture. We have, to a degree, tried to do that as well. There is obviously self-interest concerned, but we have also had to look at other requests we make—reasonable ones that a government or a parliament could impose on other organisations—and be mindful of the consequences of doing that.

**Senator MURRAY**—Your submission seems to indicate that you support the ACCC's submission on section 46.

**Mr Gledhill**—Insofar as—and I stress that we are not here trying to be lawyers—

**Senator MURRAY**—You are retailers.

**Mrs Cowley**—We certainly are.

**Mr Gledhill**—We are not pretending to be anything else. The ACCC seem to have covered off a number of areas where we think certainly clarification and perhaps direction is required. We have not offered solutions to exactly how that is achieved, because, as I said, we are retailers—but we want to talk about how the law is impacting on us now and acknowledge the fact that we think there are other areas, as I said in our opening statement, that could require some tidying up.

**Senator CHAPMAN**—In relation to previous acquisitions, there is an apparent conflict here. If we do not change section 50, we allow larger chains to progressively buy their way into smaller opponents but, if we do change it, the likelihood is that it will reduce the value of the

businesses of the independent groceries that are left. Where do you balance out those two conflicting situations?

**Mr Gledhill**—We are well aware of the situation that you have illustrated there and which is in other submissions. We can empathise with the difficulties that people have had in terms of where they see the thing going. I suppose it comes down to how you look at business and how you look at business going forward. Are you going to move forward? Are you going to improve your business, be that as an individual business or collectively? Are you going to improve it by improving what you do or are you going to improve it by continually trying to nobble your opponent? There is a limit to the amount of nobbling you can do, I suppose. There is certainly a limit to the amount that a government can be involved in.

At the end of the day, the independents are going to grow through the offer they make in the marketplace. This has been the theme throughout our submission. We are not seeking a special level of protection or anything like that. We simply want the thing to work in a way that is fair, whereby people are made to work within the law as it is prescribed. I think that in a lot of cases the problems that exist in the area of trade practices are from people stepping outside, perhaps inadvertently, the boundaries of what we think is fair and reasonable. I would like to mention the instance of a major fuel company late last week. It was identified from within that company that a letter was going to go to the franchisees, I believe, and that that letter was going to ‘rough them up’ or ‘frighten them’.

**Senator MURRAY**—It is called a FUD letter!

**Mr Gledhill**—It was preparing the ground for some further business opportunities that were going to present themselves down the track. That is the sort of behaviour that really hurts our members. I know that it was not our members in this case, but that is the sort of behaviour that can be a problem for us. We said in our submission that we do not resile at all from the fact that the penalties involved for breaches of the act should act as a deterrent. We feel that that sort of behaviour is indicative of the sort of thing that is the real threat. With creeping acquisition, our board has said that one of the real dilemmas is orchestrating legislation or changes to legislation that are specifically aimed at individual organisations. Where does it start and where does it stop? What are the consequences? Who does it inadvertently hurt—who is the possible collateral damage? It may be us. That is why we have taken the stance we have on creeping acquisition.

**Senator CHAPMAN**—In essence, are you saying that as long as the predatory pricing issue is resolved satisfactorily that in a sense the creeping acquisition issue will take care of itself?

**Mr Gledhill**—There is no denying that with creeping acquisition—and it has been stated in other submissions—if market share and volume go away from the independents then that presents us with further challenges. However, in terms of the Trade Practices Act and how it affects our businesses, and bearing in mind that obviously the act is there for the benefit of the consumer as well, and we are mindful of that—it is not simply there for small business—areas such as those Jean has spoken about with landlord and tenancy issues and all that sort of thing all contribute significantly to a situation. If some of those things were addressed then perhaps, because of the dramatic consequences of creeping acquisition—

**Mrs Cowley**—Can I just say that there are retailers out there today who love what they are doing and really are bullied into selling stores. That is the sort of uneven playing field that is dangerous. If someone willingly chooses to sell his or her business and it is all above board, that is fine; but retailers need to be able to make a choice that is a true choice, not because they are scared that somebody is going to build next door to them in a small town. There needs to be a level playing field. Landlords at the moment—in some cases that is not true—are negotiating with the chains behind the tenant's back. That is quite difficult.

**CHAIR**—Just pursuing that point, do you have any sense of how many of your members might be likely to receive an offer from one of the major retailers—Coles or Woolworths—to take them over?

**Mrs Cowley**—I would not be able to give you any figures on that. A lot of the dealings are confidential, so I could not put a figure on it at this stage, no.

**CHAIR**—It has been quite an interesting challenge for the committee to try and get our heads around this issue of how creeping—or how deliberate—creeping acquisitions might be. Is it your belief that volumes and buying powers of the independents would decline when a group of independents sells out to a major chain? What happens to your buying power if a group actually sells out?

**Mr Gledhill**—It would depend. Certainly in our industry our buying power is determined by volume, to some extent. It is a big component of it but it is not the only component. When a manufacturer or a supplier puts together a promotional offer or calendar, part of the value of that offer is based on the commitment they get to a certain treatment of the stock—displays, stock weight in certain positions and that sort of thing—so, yes, volume is a big component of it, but it is not the only component. If a significant block of stores were lost, given that we have a single supplier, it is probably fair to say that it could have some impact on our buying prices.

**CHAIR**—I do not know if you are aware that the committee has received evidence from Metcash. Metcash actually commissioned NECG to do a report on creeping acquisitions in the Australian grocery industry and the report was lodged with the ACCC. It was based on the result of a survey of prices in the Victorian market. The survey was of all the chains and independents at one particular time. I do not know if you are aware of the detail. The study found:

The more local market players there are, and specifically the more independent supermarkets there are, the lower will be chain store prices. As a result, individual acquisitions which reduce the number of local rivals, and specifically remove an independent supermarket from a location, are likely to have an adverse effect on local prices, and most likely on non-price competition as well.

Is that how you see that the outcome would be?

**Mr Gledhill**—Not having seen the report, I would want to look at it and see the basis of their analysis. If I understand it correctly, they are suggesting that, if there are fewer players in the market, competition says that the offer or price charged to the consumer is affected—one goes up and one goes down. Is that what is being said?

**CHAIR**—That is basically the thrust of it.

**Mr Gledhill**—It may be a fair assumption, from the research they have done. I could not say that I have seen that myself to any great degree. However, a chain store in Melbourne that sits on its own—it has no competition around it—had a very adverse article printed about it in the local paper, and the article was generated by consumer discontent with the offer from that store. I do not believe that the article mentioned price as an issue, but certainly it was the offer. Notwithstanding that, if that sort of data was being used as a justification, if you like, for taking action that would dictate how a person operated in the marketplace, I suppose it would then come down to balancing up. As I said at the outset, creeping acquisitions are not a good thing. We are saying, ‘Let’s have a look at how it’s treated’, because you certainly would not want to treat something with a remedy that had a hideous side effect.

**CHAIR**—What about you, Mrs Cowley? Has that been your experience? You spoke about people whom you knew who either were being bullied into selling or felt very threatened by acquisition by a major chain. Can you elaborate on your experience with that kind of acquisition, the reduction in local competition and the impact that that has on prices?

**Mrs Cowley**—It is not something that I can give you figures on. I am talking about bullying, but it is not necessarily the chains that are doing the bullying; it is the landlords negotiating with the chains. Their preference is to have the retail space handed over to the chains. So that really was not what I was referring to.

**CHAIR**—I see. We have had a lot of discussion throughout the hearings about whether this is about supporting competition and whether it is competition for the consumer or competition in the marketplace, and they are issues that we are trying to think very clearly about in our reporting. I do not have any further questions for you, but I wonder if there are any concluding remarks that you want to make.

**Senator MURRAY**—Just before we turn to that, I have a further question on the bullying point. Having listened to you over time, Mrs Cowley, it seems to me that you are really saying that the bullying is coming from landlords, not from competitors, chains or suppliers. Is that what you are saying?

**Mrs Cowley**—I think it is a combination.

**Senator MURRAY**—Can you be explicit? It is a general statement. You have been quite clear on how landlords pressure an independent to sell, but how would a supplier, a bank, a chain, a competitor or anybody else pressure or bully someone to sell?

**Mrs Cowley**—Councils are fairly quick to rezone land. Even when the demographics clearly indicate that two large stores cannot survive in a town, land is rezoned or picked up. There is always that threat that they are going to build near you. As independent retailers, we do not have the resources to sustain a loss, whereas a chain store can be subsidised by the rest of the group. It just means that we are more vulnerable.

**Senator MURRAY**—Be explicit, Mrs Cowley: does a chain representative come along to the person they want to buy the store from and say, ‘You sell to me or we are going to build our own store here’?

**Mrs Cowley**—Absolutely.

**Senator MURRAY**—They actually use that kind of standover tactic?

**Mrs Cowley**—Yes.

**Senator MURRAY**—Both chains—Coles and Woolworths?

**Mrs Cowley**—I would think so; yes.

**Senator MURRAY**—You know this because members of your association have told you this?

**Mrs Cowley**—Yes.

**Senator MURRAY**—That is very clear bullying. Why are the councils complicit in this—because they see rezoning as a good way of generating extra development for the town?

**Mrs Cowley**—Generally, there is another offer to the council, whether it be improving parkland, car parks or whatever. They make it fairly attractive to councils to be there.

**Senator MURRAY**—Let me understand this: the chain will go to the council and say, ‘If you rezone that land, we will put so much money into the redevelopment or car parks and so on’? So they are offering the council incentives to rezone land, which will have as its effect making another store unviable?

**Mrs Cowley**—I cannot give you specifics on specific deals that are done with council. But, obviously, it is attractive for a council to have a major chain in their area. It seems to bring a lot more prestige—a lot more passing traffic, if you like. They certainly find it attractive to have a chain store in their area—or it appears that way to us anyway. I am not saying that I can give you details of deals that are done with councils. But in one town in Victoria all of a sudden, after one of our members had done a fantastic expansion plenty big enough to cope with the small country town, within 12 months it was splashed all over the paper that a chain was coming to town. It is pretty obvious that the independent retailer is not going to survive something like that, so within a few months—

**Senator MURRAY**—Why would town councillors, who are elected by the community, not realise that?

**Mrs Cowley**—I have no idea.

**Senator MURRAY**—What about suppliers? Do suppliers ever bully or pressure independents to sell out?

**Mrs Cowley**—No. I have had no experience at all of that.

**Senator MURRAY**—So, in summary, the bullies, as you describe them, are chains, councils and landlords—those three?

**Mrs Cowley**—Yes.

**Senator MURRAY**—Thank you.

**CHAIR**—Did you have any concluding remarks that you wanted to make?

**Mr Gledhill**—Some research is being done that I was only made aware of last Friday. One of the banner groups—a national banner—has commissioned this research. It is very extensive and into exactly what we are talking about, and it has come up with a lot of data. I was contacted by the CEO of this banner and he said that, if it was going to benefit the committee—it is just more information, obviously—he would be prepared to submit that to you, through us, later in the week.

**CHAIR**—I think the time has really beaten us. We extended the hearings so that we could hear you this evening, but the report has to be concluded by this week in order to be tabled early next week in parliament. If it could be provided tomorrow, that would be the only time we would have to even think about it. If that is possible, we would gladly receive it as an additional submission from you or from that organisation.

**Mr Gledhill**—If it can, fine.

**CHAIR**—Thank you very much for your time this evening and for your evidence. You have certainly raised some different issues that we need to think about and include in our report.

**Committee adjourned at 8.34 p.m.**