

The Parliament of the Commonwealth of Australia

Finding a balance

Towards fair trading in Australia

*Report by the House of Representatives Standing Committee on
Industry, Science and Technology*

May 1997

Terms of reference

1. The Committee is asked to investigate and report on:
 - the major business conduct issues arising out of commercial dealings between firms including, but not limited to, franchising and retail tenancy;
 - the economic and social implications of the major business conduct issues particularly whether certain commercial practices might lead to sub-optimal economic outcomes.
2. The Committee is asked to examine whether the impact of the business conduct issues it identifies is sufficient to justify Government action taking into account, but not limited to:
 - existing State and Commonwealth legislative protections;
 - existing common law protections;
 - overseas developments in the regulation of business conduct.
3. The Committee is asked to examine options and make recommendations on strategies to address business conduct issues arising out of dealings between firms in commercial relationships, taking into account, but not limited to:
 - the potential application of voluntary codes of conduct, industry self-regulation and dispute resolution mechanisms, including alternatives to legislation and court-based remedies, and mechanisms to support these measures;
 - legislative remedies.
4. In developing options, the Committee will seek to ensure certainty in the market place, contract dealings and other commercial transactions, minimise the regulatory burden on business, and keep litigation and costs to a minimum.

*Received from the Hon. Geoff Prosser MP
Minister for Small Business and Consumer
Affairs
(26 June 1996)*

Membership of the Committee

38th Parliament

Chair:

The Hon Bruce Reid MP (to 12 September 1996 and from 6 February 1997)

Deputy Chair:

The Hon David Beddall MP

Other Members:

Mrs Fran Bailey MP

Mr Bob Baldwin MP

Mr Russel Broadbent MP (to 9 October 1996)

The Hon Martyn Evans MP

Mr Richard Evans MP (Chair from 12 September 1996 to 6 February 1997)

Mr John Forrest MP

Ms Teresa Gambaro MP

Mr Harry Jenkins MP

Mrs Ricky Johnston MP (from 9 October 1996)

Mr Allan Morris MP

Mr Peter Nugent MP

Mr Gavan O'Connor MP

Mr Paul Zammit MP

Secretariat:

Mr Paul McMahon Secretary

Mr Lee Boldeman Adviser (courtesy Department of Industry, Science & Tourism)

Ms Gillian Gould Inquiry Secretary (to 30 November 1996)

Ms Susan Johnston Inquiry Secretary (from 1 December 1996)

Ms Frances Wilson Administrative Officer

Foreword

It is widely recognised that small business plays a vital role in the Australian economy. The recent statement by the Prime Minister, the Hon John Howard MP, *More Time for Business*, described small business as the engine room of the Australian economy, a vital source of enterprise, innovation and jobs. There are nearly 900 000 small businesses in Australia, employing almost 50 per cent of the workforce.

Because it plays such a vital role, small business is a top priority for the Government. In particular the Government has committed itself to listen to the concerns of small business, to address those concerns and to subject its policies to a process of continuous improvement.

Unfair conduct by big business towards small business is one such major concern. Indeed, it has been a matter of grave concern for many years. Not only has such conduct the potential to impact heavily on the economic health of the small business sector, and on the allocation of resources generally, it can also involve heavy social costs. Consequently, the Minister for Small Business, the Hon. Geoff Prosser MP, asked the House of Representatives Standing Committee on Industry, Science and Technology to investigate and report on business conduct on 26 June 1996.

After a detailed investigation the Committee has concluded that concerns about unfair business conduct towards small business are justified, and should be addressed urgently. In an endeavour to find a balance towards fair trading in Australia, the Committee has recommended a number of specific measures, including legislation, to induce behavioural change on the part of big business towards smaller business, and to provide unfairly treated small businesses with adequate means of redress. These proposals will provide small business with a fair deal.

I wish to thank the many business groups, property managers, small business operators and interested individuals who recognised there are problems and who provided written submissions and oral evidence at public hearings. For some small business witnesses, providing such evidence revived many painful memories. They are to be commended for their public spirit.

Finally, I would like to thank the Department of Industry, Science and Tourism for releasing Mr Lee Boldeman, a senior officer of the Department with particular interest and expertise in the regulation of unfair business conduct, to advise the Committee throughout this inquiry.

The Hon Bruce Reid MP
Chair
May 1997

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Abbreviations

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| AADA | Australian Automobile Dealers Association |
| ABA | Australian Bankers' Association |
| ABS | Australian Bureau of Statistics |
| ACCC | Australian Competition and Consumer Commission |
| ACCI | Australian Chamber of Commerce and Industry |
| ACT | Australian Capital Territory |
| AIP | Australian Institute of Petroleum |
| AMP | AMP Shopping Centres Pty Ltd |
| ANZ | Australia and New Zealand Banking Group Limited |
| APADA | Australian Petroleum Agents & Distributors Association |
| BCA | Business Council of Australia |
| COSBOA | Council of Small Business Organisations of Australia |
| CPI | Consumer Price Index |
| EIEA | Entertainment Industry Employers Association |
| FAANZ | Franchise Association of Australia & New Zealand |
| FCAI | Federal Chamber of Automotive Industries |
| GLA | gross lettable area |
| IST Committee | Standing Committee on Industry, Science and Technology |
| Lend Lease | Lend Lease Property Management (Australia) Pty Limited |
| MTAA | Motor Trades Association of Australia |
| NSW | New South Wales |
| SA | South Australia |
| SMEs | Small and Medium size Enterprises |
| UCC | Uniform Commercial Code |
| UK | United Kingdom |
| US | United States of America |
| VECCI | Victorian Employers' Chamber of Commerce and Industry |
| WA | Western Australia/West Australian |
| Westfield | Westfield Shopping Centre Management Co. Ltd |