HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON INDUSTRY, SCIENCE AND TECHNOLOGY

Reference: Fair trading

BRISBANE

Tuesday, 22 October 1996

OFFICIAL HANSARD REPORT

CANBERRA

HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON INDUSTRY, SCIENCE AND TECHNOLOGY

Members:

Mr Richard Evans (Chair)

Mrs Bailey	Mrs Johnston
Mr Baldwin	Mr Allan Morris
Mr Beddall	Mr Nugent
Mr Martyn Evans	Mr O'Connor
Mr Forrest	Mr Reid
Ms Gambaro	Mr Zammit
Mr Jenkins	

The committee will inquire into business conduct issues arising out of commercial dealings between firms, including claims by small business organisations that some firms are vulnerable to and are not adequately protected against 'harsh or oppressive' conduct in their dealings with larger firms.

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.

WITNESSES

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON INDUSTRY, SCIENCE AND TECHNOLOGY

Fair trading

BRISBANE

Tuesday, 22 October 1996

Present

Mr Richard Evans (Chair)

Mr Beddall Ms Gambaro

Mr Jenkins

The committee met at 9.28 a.m.

Mr Richard Evans took the chair.

OVERELL, Mr Mark Alan, Business Liaison Officer, Queensland Retail Traders and Shopkeepers Association, Unit 3/321 Kelvin Grove Road, Kelvin Grove, Queensland 4059

CHAIR—I declare open this public hearing of the inquiry into fair trading. This inquiry has revealed that the small business sector has serious concerns about a wide range of aspects of their dealings with larger firms and organisations. Indeed, the committee continues to receive submissions, now totalling some 150, which suggests that there may be inadequacies in current provisions for dispute resolution in some circumstances. It is the task of this committee to assess the protection afforded by existing mechanisms to small businesses. To this end, the committee will hear evidence here in Brisbane today.

I welcome witnesses and observers here this morning, and I now call representatives of the Queensland Retail Traders and Shopkeepers Association to come to the table. The committee proceedings are recognised as proceedings of the parliament and warrant the same respect that proceedings in the House of Representatives itself demand. Witnesses are protected by parliamentary privilege in respect of the evidence they give before the committee. You will not be asked to take an oath or make an affirmation. You are reminded, however, that false evidence given to a parliamentary committee may be regarded as contempt of parliament.

The committee prefers that all evidence be given in public but should you at any stage wish to give evidence in private, you may ask to do so and the committee will give consideration to your request. The committee has received your written submission and authorised its publication. Would you like to make any additions or alterations to your submission?

Mr Overell—Not at this point in time.

CHAIR—Would you like to make an opening statement before we commence questioning?

Mr Overell—No, it will be right, thanks.

CHAIR—Just for the *Hansard* record, Mr Overell, would you mind giving us a summary of your submission.

Mr Overell—The association's submission was recorded and prepared in light of some small business representation that our membership covers. We cover members not only in Queensland but also in New South Wales and the Northern Territory, and many of the points raised in the submission are common areas of difficulty in fair trading issues.

CHAIR—Your submission raises a lot of factors which may impact adversely on small businesses. Do you regularly survey your members to assess the extent of unconscionable or oppressive conduct?

Mr Overell—Surveys regarding unconscionable conduct and harsh and oppressive matters are usually not surveyed. They are a matter of record within the office following complaints or inquiries requesting legal assistance or professional advice.

CHAIR—How many members do you have?

Mr Overell—There are 2,200 across the state.

CHAIR—And how many retailers would there be in the state?

Mr Overell—I would have to defer on that one.

CHAIR—Just an approximation?

Mr Overell—We would probably have about 15 per cent of the retailers.

CHAIR—Goodwill has been an issue in other states. I am just wondering whether you have a definition of goodwill and how you perceive that in relation to retail traders.

Mr Overell—Goodwill is an ethereal value ascribed to a business, generally when the business is to change hands. Goodwill in our view is also attached to the tenure that a business may have if it is located within a shopping centre or leased premises. Goodwill is the ability or the capacity for that business to continue trading and, of course, maintain a reasonable profit level. If there are alterations to the rules or the ground framework under which the business operates—that is, issues of leasing and outgoings in some circumstances—then the goodwill depreciates.

CHAIR—Is it your association's view that a lot of people moving into retail have an understanding of what their return on investment should be—that it should be associated with the length of the lease? Or do your members see that they have a certain amount of rights at the end of the lease and believe that they should have a continuation of their leasing arrangements?

Mr Overell—I think it is fair to say that a lot of people who enter the retail industry are ill-prepared and, in some respects, ill-advised as to what their outcome or prospects in the industry may be; take, for example, the retrenchments that occurred within the banking industry in the recent past. A lot of former bank employees who were working within the retail banking industry took the view or opinion that they could take their superannuation pay-outs or their redundancy packages—which, in a lot of instances, were worth several hundreds of thousands of dollars for senior positions and, certainly, tens of thousands of dollars for other people—and invest that in a business without perhaps getting proper advice. It is difficult in a lot of circumstances for these people to appreciate that there is assistance available to them before they sign a lease.

CHAIR—From where?

Mr Overell—Certainly from associations such as ourselves and from government departments, in the form of the Small Business Corporation or what was the Queensland Small Business Corporation. It even goes to the extent that most banking institutions publish guides on small business, but very often those people are the last to take their own advice.

CHAIR—I would imagine that someone spending a lot of money moving into a business would seek

some advice from an accountant and maybe a solicitor on their lease and also their chances of making money. By implication, are you suggesting that there is not enough information going to accountants and solicitors in small retail requirements?

Mr Overell—The area of solicitors is difficult, principally because there are a lot of relationships that may have been established over generations or at least a long period of time where a solicitor—perhaps a family solicitor—has been dealing with issues that are not related to commerce, industry or small business. The solicitor may be particularly well versed in family law but, when it comes to the realities of commercial leasing, it is now an issue that is fraught with danger.

CHAIR—Is that the same with accountants, too?

Mr Overell—I think the complexity of the tax law in some issues is very difficult for accountants to keep up with, let alone other issues relative to specific sectors of the retail industry. Unlike some industries, there are variances between one particular area of retail and the next.

Ms GAMBARO—The Retail Tenancy Act was introduced in Queensland in 1994. Is it working or are there other measures involved? I note that you covered it in your submission. What processes of mediation are available, and what happens when you get to the tribunal stage and no satisfactory outcome has been determined?

Mr Overell—It is our opinion that the act is still not working adequately to protect small business. Allied to that in a national sphere, of course, is the operation of the Trade Practices Act. We would like to see a strengthening, and perhaps even a replacement, of section 51AA to provide adequate protection for small business.

We have made a number of comments to the registrar for the Retail Shop Leases Act here in Queensland, following the 1994 amendments. Those covered a number of issues. We have had members, in very precarious positions, operating without leases for a number of years with no guaranteed security of tenure once the redevelopment of a centre was completed, yet they cannot afford to abandon their position within that centre because of a capital investment and perhaps an overdraft that is taken against their home property. The risk that small business owners have in their business is far greater than it would ever be for a managing director of a multinational corporate company.

Ms GAMBARO—You also pushed for uniform national legislation. What are some of the advantages there, particularly with shopping centres?

Mr Overell—It would certainly be a situation where, if there was a uniform national code, people who were operating retail businesses—perhaps a small chain across state borders—would not have the difficultly of trying to operate under two different pieces of legislation. That happens currently in the New South Wales/Queensland border situation of Tweed Heads/Coolangatta, where there is a Retail Tenancy Act in New South Wales and a Retail Shop Leases Act in Queensland which, although covering similar areas of operation, do have a number of differences. So a uniform national standard would be very, very advantageous. The other thing, of course, is that many of the major landlords are operating on a national

basis. Even their staff have difficulties sometimes in grasping that there are variances between Queensland and other states that they may operate in.

Ms GAMBARO—Another area I would like to talk to you about is something that arose in a previous submission. It mentioned the case of two identical shopping centres with one shopping centre having exorbitant outgoings in comparison to the other. Do many of your members come to you with particular problems relating to outgoings and expenses in shopping centres?

Mr Overell—I would average probably two to three complaints per week on leasing issues. Outgoings is generally always raised. The changes to legislation in the Retail Shop Leases Act in 1994 did not provide a mechanism for relief for anybody who had signed a lease prior to that date because they were still under the old legislation. In fact, the options, which may run for another six years, would take them through to the end of the century. There was a great deal of coercion, bordering on harsh and oppressive conduct, to see that leases were signed prior to the commencement of the new act. There was a mad scramble by property owners and managers to see that leases were signed prior to the commencement.

Ms GAMBARO—I have just two other quick questions. The first relates to local government planning. Not a week goes by where I do not have a number of constituents come to see me about tenancy and the number of shopping centres that are springing up at a close proximity. How can we address this, and what can we as governments do to ensure that not too many shopping centres are built in close proximity?

Mr Overell—The current method of appeal, through the Planning and Environment Court, is extremely expensive and costly for an independent objector—and this is a genuine objector—to appeal a decision. There is a circumstance that I am aware of in Brisbane where an objector has received notification that the council concerned has approved the application. The objector has 40 days to prepare his submission. The actual cost that the objector has to come up with or meet is so exorbitant that the appeal will be forfeited. He is not going to be able to appeal the decision; therefore, the development will proceed.

Ms GAMBARO—What about in areas of planning and economic impact studies?

Mr Overell—The difficulty that we as an association have with economic impact studies is that they are commissioned by the developer. That leads to the possibility that the ultimate summary of the economic impact assessment will be in favour of the development. If the court were able to commission its own economic impact assessment and have the developer meet those costs so that it was not a cost to government per se, we would probably have a more balanced economic impact assessment.

Ms GAMBARO—Thank you.

Mr JENKINS—What size developments would you think need an independent economic assessment done on them?

Mr Overell—It is very difficult to establish what criteria should be placed on it—whether it be in terms of square metreage in key tenancies, for example. It could even be that you have certain demographics within an area that need to be considered. Population bases in certain areas are not always accepted. If there

was a common standard for best practice principles for town planning and a development was seen to step outside those, then there should be cause for concern. Certainly, in the south-east corner of Queensland, we have seen a proliferation of retail floor space in major centres or regional centres which has then led to a surplus of retail floor space in strip and community centres. This applies across some very, very well-developed areas, even in the Brisbane metropolitan area where there is a large amount of retail space in neighbourhood centres.

Mr JENKINS—I suspect it is the Victorian experience as well. If you take the measure at the zoning stage, on whatever criteria, whether it be area set aside for retail—that is one matter—what about the mix within that retail which is the cause of a lot of the tensions?

Mr Overell—I cannot see how anyone could legislate for the mix within a centre. We as an association make recommendations to people that approach us with plans to move into a centre. We will ask questions such as who are your competitors within the centre? Are there plans to introduce any additional competitors? We will advise whether or not we feel that the move into that centre is in their own best interests.

Mr JENKINS—So it is really disclosure of what is going to happen, and then competition in the market will take care, as long as people are being honest and up-front.

Mr Overell—Yes. The difficulty is that disclosure is not necessarily the cure-all; it is not the great panacea to the problems. The issue is largely a complex one. The education process, obviously, as we have mentioned earlier, with people entering the retail area and being ill advised or perhaps ill informed, needs to occur from the outset. Certainly, there is the issue of the tightening of some legislation areas like trade practices, leasing issues and mix issues. Outgoings, of course, are a problem.

Certainly, as you are attempting to address here today, there are a lot of complex questions confronting small business. I refer to circumstances of multinationals in their dealings, of having great amounts of cash to hand to fight any objectors. And, of course, there is the war of attrition, where a small business simply does not have the money nor the time to adequately defend or protect itself. In Townsville, recently, a number of tenants were involved in dispute with their managing agent and their landlord, which is a major national insurance company.

The difficulty is that, when a lot of these issues are resolved, they are resolved out of a tribunal or out of a court and they are done on a non-disclosure basis. The difficulty we have with the issue of non-disclosure, is that it is our belief that there is something being hidden. If it was an amicable settlement, why does it need to be done on a non-disclosure basis?

We have members who are prepared or would otherwise be prepared to come before a committee such as this, but they are genuinely fearful that, if they do, they will lose their homes and any assets that they may have. They have probably sailed very close to being bankrupt already. They do not want to see, as it were, a principle being upheld turn them into bankrupts. That is a genuine fear.

Mr JENKINS—You mentioned a small business act. What would be the major elements that you

would like to see in a piece of legislation like that?

Mr Overell—If a small business act were to be drafted, it would need to, obviously, have very wide consultation. There would need to be effective remedies to solution and they would need to be cost effective, bearing in mind that small business does have difficulty in financing. While we do not expect government to subsidise the cost of these cases, litigation is not only becoming far more common but also far more costly. Whether we are following the American pattern of becoming a litigious nation or not, I do not know. These issues are difficult.

We mentioned national companies and I spoke earlier of circumstances where insurance companies that may hold very large retail portfolios are asking their tenants to sign away the rights of recovery by their insurer against any action that may be possibly claimed against the landlord. You have a situation which is extremely harsh and oppressive, and yet is becoming more and more prevalent and common in leases not only in Queensland but also across the entire country.

CHAIR—You mentioned that you would like to see 51AA tightened up. I would like to get an idea of what areas you would like to see tightened up and whether you have any recommendations.

Mr Overell—We are preparing and looking at the issues of 51AA with a view to making some further recommendations to the ACCC. It is our belief that, to date, the actions that have been presented to the commission for investigation largely have been rejected on the grounds that it is an issue not so much of harsh and oppressive conduct but of commercial dealings.It is very, very difficult to prove a case of harsh and oppressive conduct.

CHAIR—How? In what way?

Mr Overell—Very often, if we look at the issues of leasing, there are a lot of comments which are made, perhaps, off the record. You may have without prejudice papers or letters written. Although there have certainly been a number of precedents set within the Trade Practices Act, under other sections for without prejudice documentation, the landlords or managing agents are generally very, very cautious about putting things in writing, with the knowledge that, at some stage later, they may be used against them. A lot of the evidence is generally oral rather than written. While a number of people may have kept diary notes of circumstances—the Willows in Townsville is one example where that sort of thing has happened—how does one discuss the matter of onus of proof in an oral conversation?

CHAIR—Are you asking for a bit more weight for evidence being given to diary notes and things like that, are you?

Mr Overell—Yes, with regard to the weight of evidence in diary notes, whether or not statutory declarations can be accepted. We have asked, under the terms of the Retail Shop Leases Act, whether or not a class action could be brought. If there was a common complaint and a number of the relevant factors concerning a common complaint spread across a number of people, why could a class action not be brought under trade practices?

CHAIR—You mentioned small businesses, retailers, accessing funds to fight the large and corporate companies. Has the association a view as to how we can overcome this problem of lack of finance for fighting legal battles?

Mr Overell—The area of commerce is difficult. There is no real way that we can see issues of, if you like, people's advocates or public defenders stepping in, because the likely flood of small business operators to take up a case would, I think, be quite staggering.

CHAIR—It should not be a reason not do it, though.

Mr Overell—No. The difficulty is trying to determine how much it would cost.

CHAIR—Sure.

Mr Overell—The process, once you went to court, can drag on for a long time. The difficulty there is that, very often, the businesses do not come to the point of accepting that they need assistance or help, or that they have a serious problem, until it is so far down the track that time is also a very relevant issue.

CHAIR—Do you think there is a case for small business litigation insurance?

Mr Overell—I think there is certainly a case for it, but at what cost? Small businesses are now generally in a situation where—in Queensland, for example, many in the tobacco retail sector, with the recent increase in state tobacco tax, are in fact underinsured—they simply cannot afford to pick up the additional gap insurance that may be required to adequately cover their normal stock holding. Changes to government policy can affect small business in percentage terms to a far greater extent than it does the major corporates.

Ms GAMBARO—I have a few more questions. How effective has ACCC been, to date, with handling some of your members' complaints? And how slow is the process of investigation?

Mr Overell—I think the process is certainly thorough, but it is flawed in so far as it is extremely slow. It does take, in some instances, months to get even a response as to whether they are going to proceed or not. In some circumstances, I have had responses in a matter of, say, two weeks. But, generally, it has been a matter that, if we try to raise issues of 51AA, in most circumstances they will have rejected the circumstances in saying, 'The trader should have known better at the time or sought professional advice at the outset. Therefore, we are not going to pursue the investigation.'

I think the ACCC is not investigating the small business claims as much as they are the larger issues. Issues of corporate mergers and takeovers certainly seem to have a degree of precedence within the priorities. Whether the ACCC has the capacity to fully staff and educate its own investigators in the area of small business, we are not in a position to determine. We know that they have set up a small business section within ACCC. We have yet to see the fruit of that office.

Ms GAMBARO—With regard to section 46 of the Trade Practices Act, where the power of a major trader can block supply to a smaller trader, do you have many inquiries from your members or many cases of

that particular section being disputed?

Mr Overell—The issue of blockage of supply by a competitor is rarely raised in terms of a straight block of supply. However, the commercial reality is that major competitors do hold a staggeringly significant advantage over small traders. In fact, in Queensland it is a lot cheaper in the food retail sector for independent traders to actually buy their product through their competitor, be it Coles or Woolworths, than it is through a warehouse or direct through a manufacturer.

I would hazard that the majors, and that would include the four major supermarket chains of Coles, Woolworths, Franklins and Bi-Lo, have far more liberal trading terms than a small, independent trader could ever expect to obtain even on a cash basis. And, certainly, the majors are not operating on a cash basis. They would probably be operating somewhere between 90 and 120 days, in our estimation, whereas most independents are operating on a seven-day or 14-day basis.

Ms GAMBARO—With regard to fair trading—dare I mention it, the retail trading inquiry at the moment—has your association conducted studies into the consumption patterns of retailers over extended trading hours?

Mr Overell—Yes.

Ms GAMBARO—Can you report to the committee any studies undertaken there? Again, relating to the small business sector, have there been any studies that have shown the impact on the small business sector?

Mr Overell—That area is actually handled by our senior industrial officer who prepared a major submission for the Knox inquiry into trading hours here, which is a matter of public record. We have identified significant job losses within the small business sector since the introduction of extended trading hours in Queensland, which incorporated five weeknights and an extension on Saturday.

We have made submissions to the Knox inquiry for a review of the trading hours. We have also looked at ways of varying the trading hours order to allow what is still technically a small business, but a larger small business, to trade and provide service to the communities, where the current legislation would restrict them from doing so.

It is fair to say that small business certainly is the backbone of many communities across Queensland, particularly those in rural and remote regions. Yet, they are in a situation where they will develop a marketplace, perhaps cause the town to prosper and grow, competition will come in in the form of a major and then they are no longer able to compete because of issues such as trading terms.

CHAIR—In relation to education and training—you have emphasised that—have you any recommendations as to what we should be doing to improve that area?

Mr Overell—The industry associations serve certainly not all of the retail sector but a significant proportion of the industry is covered by industry associations. If the government were able to provide

assistance to the associations, whether it be in the form of educational or printed materials or subsidies, to ensure that approved education was conducted, then that would be greatly appreciated by the associations.

CHAIR—You would like to see ongoing training, but you would like to see emphasis on a 'pre moving into business' program?

Mr Overell—Yes, we certainly would. The difficulty is getting the message through in the first instance. Queensland, of course, perhaps more so than Victoria—my apologies, Mr Jenkins—has the logistical problem of distance. Unlike some areas, we impose the tyranny of distance upon members when we are servicing, in our association, members within Torres Strait, right the way through to the Queensland/New South Wales border. In fact, we have a member on the Queensland/South Australia border. The pure tyranny of distance in trying to get education to all of our members is difficult.

CHAIR—One final question from me, and that is about franchise retailers: is there any comment you would like to make about the association between the landowner—therefore the management of that land property, franchisor—and the franchisee?

Mr Overell—There is in place a code of conduct for the franchise industry. It is our opinion that the code of conduct is not working adequately to protect the interests of both the consumer and, of course, the franchisee as well. The franchisor, in some instances, has been perhaps less than diligent in areas of disclosure and may operate almost in the areas of unconscionability. There were a number of circumstances in the recent past where franchise groups have fallen into difficulties and been wound up. There are certainly a number of franchise operators who have appeared on current affairs programs with grievances. The issue of franchises, I think, is well recorded.

We would like to see a situation where all franchise groups came under the umbrella of a code of conduct. It is certainly not happening on a voluntary basis. Government may need to move towards a legislative process for the franchise industry and for the protection of very large amounts of capital.

CHAIR—With regard to the code, you do not think the code is suitable? Or is it the application of the code?

Mr Overell—The fact that it is a voluntary code is the main difficulty.

CHAIR—The actual code itself is okay or just the application of the code?

Mr Overell—I think there are elements within the code that could be strengthened to provide an adequate protection for the franchisor and the franchisee as well. The difficulty that occurs with the system is that you are spreading it beyond a one-on-one relationship; in fact, introducing a third party where perhaps you have a head lease belonging to the franchise rather than the franchisee.

CHAIR—Would you like to make a summing up statement?

Mr Overell—The intent of the association with the initial submission that we made to the inquiry was

that it be a preamble to further discussion. If the committee was at a later stage able to hold further submissions on specific issues arising out of the discussions here today and the initial papers, then we would certainly be more than prepared to participate again fully in that process.

CHAIR—We may be happy to contact you again and ask for some further expansion of what you have already said today. Thank you for appearing before the committee. I apologise for our late start but that is to do with procedure. Thank you for coming along. I refer you to *Hansard*. They might have further questions to ask of you before you leave that might be helpful to us.

[10.05 a.m.]

MURRAY, Mr Laurence James, Business Liaison Officer, Queensland Chamber of Commerce and Industry, Industry House, 375 Wickham Terrace, Brisbane, Queensland 4000

RANSON, Mr Peter David Leo, Small Business Officer, Queensland Chamber of Commerce and Industry, Industry House, 375 Wickham Terrace, Brisbane, Queensland 4000

CHAIR—Welcome. The committee proceedings are recognised as proceedings of the parliament and warrant the same respect that proceedings in the House of Representatives demand. Witnesses are protected by parliamentary privilege in respect of the evidence they give before the committee. You will not be asked to take an oath or make an affirmation. You are reminded, however, that false evidence given to a parliamentary committee may be regarded as a contempt of parliament. The committee prefers that all evidence be given in public, but should you at any stage wish to give evidence in private you may ask to do so and the committee will give consideration to your request.

The committee has received your written submission and authorised its publication. Would you like to make any additions or alterations to your submission?

Mr Ranson—We have no alterations.

CHAIR—Would you now like to make an opening statement before we commence questioning?

Mr Ranson—We have addressed domestic issues here, as we thought that was the main thrust, but we would also stress that we see unfair trading occurring on an international basis as well. I don't know whether this committee will be looking at that issue. Perhaps you can advise us.

CHAIR—Unfair trading on an international basis in what way?

Mr Ranson—In terms of the products which are coming into Australia. In many cases our manufacturers are faced with very severe cost penalties because of the legislative environment under which they have to produce their goods and in which they have to work. Goods which are produced in perhaps totally different environments without the environmental safeguards, as an example, are then placed before the community or purchased by government, which obviously disadvantages our manufacturers because they don't have the same constraints applied to their production costs.

CHAIR—This inquiry is really looking at unconscionable conduct. However, it may be that governments do perform unconscionable conduct in relation to legislation. We are happy to address some of those issues if you want to raise them.

Mr Ranson—We find some of the activities of government internal trading to be what we would perceive as unconscionable, inasmuch as they may direct departments to purchase through their own supply and companies.

CHAIR—We may get to that. If you want to make an opening statement, let us continue down that line before we go to questioning. That may be a line of questioning we could follow.

Mr Ranson—Thank you. Our concern is that we do not see a level playing field for many businesses and we do not see the conduct that is being put out by many authorities either honouring their codes of practice or honouring the intent of fair trading in general.At times government is disadvantaging Australian companies by the way in which it is purchasing. By purchasing goods where the same constraints are not applied to our companies in Australia, we find that they are very much disadvantaged at times. Australian companies trying to export overseas are disadvantaged in an unfair trading situation: the tariffs that are imposed on their goods are not reciprocated on the tariffs coming back into this country.

A classic example is in some of the Asian countries. We are bringing their cars in and we try to get our goods in and they are subject to very high tariffs, import duties or restrictions. Even as recently as last night *Four Corners* was demonstrating what was happening with the meat industry in Japan; meat was being relabelled as domestic product. That action taking place in Australia would end up with a gaol sentence. It is taking place in Japan. One per cent of our profits are retained in Australia; the other 99 per cent are exported overseas. We don't think that is particularly smart trading. We think that the federal government, in its relations with other countries, has some responsibility to address those issues.

In respect of our domestic situation, we appreciate that the marketplace is changing and the demand is changing. Consumers' expectations have changed and the industry has responded to meet the demanding expectations. In many cases, those expectations have favoured the proliferation of enormous stores at a disadvantage to the small retailer. Historically, once the community grows beyond a certain size it becomes advantageous for a major chain to put in a store. The market takes effect, the chain store goes in and all the thanks that the long-term small retailer receives is to be pushed out of the community. The community has had the support of small retailers for years and years. They grow to a sustainable size or critical mass and their reward is that a supermarket will push them out of business.

There is a very significant cost to the community of this which is not generally appreciated. The decision making must rest with the local councils which allow this development to take place. Overseas experience has generally demonstrated that there are deleterious effects occurring as a result. Those costs to the community are not well understood by communities when they allow that to take place. We are not saying it should not take place; we are merely saying that the costs to the community and to individuals are generally not appreciated or understood. Hence, many retailers are now in a lot of difficulty and we feel very sympathetic towards them.

The marketplace has been allowed through the development that has taken place. It is fair to say that there is an excess of retail floor space in many areas of south-east Queensland. We are witnessing building in advance of demand. We are witnessing people putting up buildings prior to the cash flows coming in that need to sustain the entities in there. They are doing so at a depressed economic time as far as building is concerned. They have made a market decision 'We will have our space. We will secure our position' and, at the cost to the small retailer, they may be buying market share and pushing them out. That is, if you like, marketing progress. Again, the community needs to understand—it generally does not understand—what it is allowing, through its councils, to take place.

Mr Murray—My presence here today is to try to put into a bit of perspective the whole situation in relation to regulations. I have a report here which I will give to you either now or later—whichever you would like.

CHAIR—We can receive that as an exhibit.

Mr Murray—It indicates to you that fair trading is just one aspect of the total business—regulation and legislation. The QCCI has done a lot of work in trying to work out compliance costs. We have done a major survey of their members and that is the result of the survey. That report has actually gone to the Prime Minister and other members of the cabinet and also to the Queensland ministers.

In general, what it is saying is that compliance costs are very, very high. There were 33 areas covered in that report. If you are operating in each area it would be something over $200,000 in compliance costs. There are differing levels with the size of business, and those are detailed in the report.

All I would like to say here today is that in relation to regulations, particularly into fair trading, we are really moving into an era of massive change; Peter has alluded to it to a degree. We are moving into electronic commerce in a very, very big way. This has also been pushed to a great degree by the federal government. Anything which the committee might be looking at I think ought to be looked at in the sense of what is going to happen in the future. In other words, just don't look at the past or the things which are put in front of you—try to crystal ball; try to work out in some sense what the future is going to bring. Our own Chamber of Commerce is now fully electronic. We do work all around the world from our office on international trading.

In relation to the regulations, we have appeared before the Small Business Deregulation Task Force, chaired by Mr Charlie Bell from McDonald's. We are also putting input into the Queensland government's red tape reduction task force. We are pushing forward on a broad front, trying to cope with this new era of electronic commerce. However, in relation to regulations, we have got a fairly basic position now. That basic position is that in relation to regulations we want harmonisation. We have moved from the small local market, the local town market, into a state market, into national markets and now into international markets. The business does not want a whole proliferation of rules and regulations covering small segments of the economy; it wants things which are all encompassing. We call it 'harmonisation'. I think you are probably well aware of that, Mr Chairman.

The idea being that if we have to become internationally competitive—and we are being pushed that way in a very, very short space of time—we have to have rules and regulations which are very clear, which are quite simple to understand—in plain English so that people can understand them easily without having to run to lawyers all the time. But in relation to regulations, the basic position is that you must look at a number of things. What is the objective of the regulation? Is the objective relevant? Will it achieve the objective? We have found through our surveys—not only ourselves but other studies—that there is a lot of non-compliance out there with regulations. Are there alternative means of achieving the same objective which involve less reliance on government? In other words, there should be greater reliance on the business sector to do self-regulation. If it is going to be government regulation, how is it going to be delivered? It has to be delivered in the most efficient manner.

That is all I would like to say about it. It is just a call for efficiency, for international competitiveness—looking forward, particularly in relation to electronic commerce. I have a copy of our Queensland poll survey which is a survey of business conditions in Queensland, if you wish to have a copy.

CHAIR—Yes.

Mr Murray—That is part of a national survey. It is on the same basis in every state of Australia through the Chamber of Commerce. Our barometer of business conditions, which goes from zero to 100, is running at around 50, with expectations of going to something like 60 or 63. They are not high levels. What we are looking at at present in Queensland is an economy which is not booming. It is going ahead. There is growth in the gross state product, but it is not a booming economy. One of our positions is that we must, somehow or other, make it easier for business to do business.

CHAIR—I am interested in your view about section 51AA of the act. Do you consider it needs reviewing, changing, updating or tightening?

Mr Murray—That is the unconscionable conduct section?

CHAIR—Yes.

Mr Murray—I think, in relation to that area—that is being done through the ACCI—we have no particular position here in Queensland about that section because it is being done on a national basis through all the chambers through our national system.

CHAIR—Do you have a view as to whether it is working? Does it need tightening up or better definition?

Mr Ranson—Unconscionable activity is still taking place; therefore, you could argue that the act is not working in the way in which it was intended. While the problem continues, the act is not 100 per cent successful.

CHAIR—We have had a lot of evidence in previous hearings about goodwill. What is your definition of goodwill, how do you perceive it and is it applicable in a retail tenancy environment?

Mr Ranson—Goodwill is very important. I can think of members right now who, after 16 or 18 years in the same situation, have suddenly been told, 'Your lease is terminated—finish.' They say, 'I don't want to terminate my lease.' The centre management says, 'We are terminating your lease at the end of the time because we need your space for X, Y or Z.' The person has built up goodwill in the environment in which they have been trading for that period and they will receive absolutely nothing at all for it. We do not think that is a very nice situation.

CHAIR—Is it then that you perceive goodwill to be beyond the lease period; that it is greater than the tenure?

Mr Ranson—Certainly, because you have built up a knowledge within the community that you are serving of your existence and an expectation of going to a location to obtain a service or goods. That does have a commercial value. In fact, if the lease was in existence, you can sell it. If the lease is suddenly terminated, then that is obviously a disadvantage to you.

CHAIR—How do we overcome that problem where the landlord wants to reclaim his floor space—which he has every right to do, I guess, at the end of a lease term—and solve this goodwill part of it?

Mr Ranson—Where relocation and reassignment can be agreed through mutual agreement, then that is the obvious first point of call that should take place. Having said that, I am aware of members who have been relocated to disastrous locations and have lost their total income because the passing trade that they used to have no longer exists or the landlord has introduced a number of similar type enterprises into the location. The segment of the market which they used to serve is diluted by so many other people in the same segment that they can no longer make a viable profit. The landlord gets the increased revenue, but the trader obviously suffers because there is only a certain pool of money to call from. It is virtually impossible for those people to take the landlord to court. We feel that this is where a code of practice should come into place.

CHAIR—For whom?

Mr Ranson—Between the landlord and the tenant. There needs to be another mechanism that can be brought into play—if you like, fair play and a fair appraisal of what is taking place which recognises that, yes, you have been here for this period, you have attracted a certain amount of goodwill attracted and, implicit within that, we acknowledge that if we terminate your enterprise there is a real cost to you. If you wish to terminate, that is up to you. There may be a cost to the landlord, but that is where—

CHAIR—You are suggesting that, if a landlord terminates a lease and there is a certain amount of goodwill which might be valued by a separate and independent valuer, the landlord then is liable for a certain percentage of that goodwill?

Mr Ranson—At present there is no legal liability at all. What we are suggesting is that there should at least be mediation between the landlord and the tenant to try to resolve the issue. Our experience of the courts is that it is very unsatisfactory.

Mr Murray—We are well aware of the initiatives which are being taken by the current federal government in relation to rollovers of funds on sale of business on retirement, which we applaud. One of the factors in the tax act is goodwill. One of the problems we have—not only with a concept like goodwill but also with other concepts like definitions of contractors and stuff like that—is that once again we need harmonisation. We need definitions which go right across the board through all the legislation. There are so many words which mean different things under different legislation. That is part of the build-up of our international competitiveness so that there is no doubt in the minds of the business people and the law fraternity as to what that word actually means.

CHAIR—What you are saying there is that in the small business portfolio, in the tax portfolio and in the industry portfolio the definitions are all the same?

Mr Murray—Yes. We understand that is a very difficult call. It is very difficult in the real world to get those definitions right. It is very hard. We think that attempts should be made to try to get that going.

Ms GAMBARO—You mentioned multinational companies in your submission. They have advantageous purchasing power. Are there any other advantages offshore that large companies like Franklins have—particularly in the area of finance? Do you have any evidence of advantages that they have that are not available to Australian firms?

Mr Murray—Do you mean actually operating in those countries or sourcing them?

Ms GAMBARO—In obtaining finance, for example. Do they have access to cheaper rates of finance, for example, than Australian firms in similar markets?

Mr Murray—There is no doubt about the bigger you are. You can go to the international markets to get your money. That is no problem. One of the problems that we do have at the moment is that in many of the lesser developed countries there are benefits being offered to business to relocate from Australia to overseas, including tax free holidays and buildings which are erected for nothing. A lot of it is involving the exchange of intellectual property. We have made submissions to the Industry Commission in relation to firms relocating offshore. We have had meetings with them and we have also had members actually meet with that committee.

But in relation to business, I think the crystal ball is that we are moving to this global village—everybody has been talking about it for a fair while; it is moving that way—trading on the Internet and things like that. We are moving so fast that it is very difficult for legislators to keep up with the changes which are occurring. We must maintain our international perspective. We are a trading nation and we have to become internationally competitive in the way we handle ourselves—by whatever means. We must remove the roadblocks to our future activities.

As you are probably well aware, the chambers around Australia have as a policy the implementation of a broadly based consumption tax. That is, for example, one issue. With that particular tax there will be advantages for international business which will put us on a par with other countries overseas which have that type of tax.

Mr Ranson—We had a meeting with the Indian delegation, and they indicated to us that they had attracted, for example, a company from Europe which enjoyed ten years of total tax free operations. All the income from their exports was tax free back in India. You were asking whether there was an advantage. I would perceive that as a considerable advantage for that sort of company.

Likewise, warehousing has become in the mining industry a common practice. You put your goods in their warehouse at your expense until such time as they are used, and then they are purchased as they take them off the shelf. If you are operating out of a country with a lower interest rate than Australia, there is a real advantage when interest rates are very high for the overseas companies, as they could put the goods into the warehouses and preclude the Australian product being on the shelf. The mining company simply took off the stock when they wanted it. They did not pay for it until they used it.

These are the types of developments. They have now extended further, because of warehousing costs in Australia, to warehousing offshore. This is just in time with electronic demand—that is, the stock is bar-coded then swiped and taken out of the store, generating an order in San Francisco, London, Frankfurt or wherever—because of the internal costs within Australia.

Ms GAMBARO—You have mentioned tax. In the area of tax we have, I believe, some five wholesale sales taxes. A number of your members are in the manufacturing industry. Would some of the problems that those taxes cause be alleviated if we reduced that to, say, two rates of wholesale sales tax?

Mr Ranson—Anything you can do to reduce the complexity would be appreciated. I make the comment at this time that the complexity of the tax act is now so far in excess of the mathematical ability of most people in Australia that one can question whether or not it is understandable. The fact that a government department is putting out documentation which is beyond the comprehension of most people and demands the use of specialised experts brings up the question of whether or not this is almost unconscionable behaviour on their part.

Mr Murray—We must make the point that the chamber is fairly active in assisting the tax office in various ways. We must also make the point that the Queensland Taxation Office has been very cooperative with business in trying to understand the issues and trying to progress new developments. We must make those points. The ATO has been excellent in Queensland in the way it has been handling itself.

The thing about it is that the tax act seems to be just getting bigger and bigger and bigger. The whole area of tax is under review with the recent conference on taxation. Recently—I think within the last 18 months—Peter and I placed material before the Senate Economics References Committee on a whole range of issues in relation to taxation. That was mentioned, I think under the previous administration, in a report of the Senate Economic References Committee.

A lot of work is being done on taxation, but basically the key thing about the broadly based consumption tax is that you can take the impact of that tax off exports. Under the wholesale sales tax under the WTO, we are precluded from doing that, so our goods are going out with wholesale sales tax in-built into the system whereas, with the broadly based consumption tax, under the WTO rules you can remove all those taxes from the final product price.

Ms GAMBARO—I have one more quick question on unregistered businesses and the impact on trading. I will give you an example of someone who manufactures children's furniture and is not registered. From evidence from your members, is that having a direct impact on retailing, when we are talking about flea markets and manufacturing cottage industries that operate from home?

Mr Ranson—There is some minor concern about them. There are also some interesting situations where the markets are attracting customers and therefore the standing retailer is actually making an advantage by the passing trade because they have come to the market to buy from the standing retailer. There is more concern in respect of the food industry—of instant food to eat on the spot—because the perception is that they do not have the same health regulations as the permanent food industry. In other words, the permanent sellers have health inspections and all the other costs and things that they have to have, but somebody can

come in with whatever it is they want to sell and just sell it from the street market unprotected and without any of the sanitation or other requirements. The permanents see that as being somewhat disadvantageous.

It is the imported products that we saw as the greatest issue in relation to furniture when the wholesale sales tax was going to be raised on knock-down furniture. We fought that very, very strongly. I am sorry to come back to tax, but that was the issue from the furniture people. They were concerned that, just at the time we developed the export market in Japan for knock-down kitchens, the previous government tried to bring in a tax on knock-down furniture—that is, furniture that was in kit form. That was directly opposed to what we were trying to do as far as exporting was concerned.

We would like to see it coming back to what Laurie has already said—the harmonisation not only of regulations but of the thrust and intent of government departments in the directives that they are putting out. So you actually harmonise and say, 'Yes, we want export. No, we are not going to tax you. When you actually get something up and export it, we will not turn around and put a new tax on it.' So we want that thrust harmonised right the way through.

Mr JENKINS—Would you like to comment on the success or otherwise of anti-dumping mechanisms?

Mr Ranson—That is another sore point in relation to the chamber. We will give you some comments, and Laurie will advance further on this. One of our members complained very strongly about the dumping of plastic tableware on the Australian market. He went over to the company, as I understand it, in Asia. He was threatened by firearms by the people when it was seen that he was looking at what was taking place. There were two companies trading out of the same office. One was the manufacturer, one was the exporter. This situation was put before the Industry Commission and the case was basically dismissed.

Mr Murray—It was put to the Anti-dumping Authority.

Mr Ranson—Yes. We have found that the Anti-dumping Authority is virtually non-effective.

Mr Murray—In that instance, there were 45 people employed at the Gold Coast. I could be corrected on this but I understand from his comments to me that he was the last manufacturer in Australia of this particular type of plasticware, which is mainly for picnics and stuff like that. Things like you get at McDonald's and that sort of thing.

The interesting thing about it was that his statement to us was that he had proof that the plastic on the imported product included PCBs. That information was placed before the Anti-dumping Authority, we are led to believe. We have not checked this, of course. Despite all that, he just had to close up. That was the end of the game. He personally was not threatened in the Asian country. His representative, who was an investigator, was actually threatened with violence and they could not go any further.

What happened was that the company just changed its name to another company. It had the same telephone number. It worked out of the same room and the same building in Asia. Those are the kinds of things which, in the practical world, a lot of our manufacturers are up against. Anything which can be done

to strengthen the effect of the Anti-dumping Authority, I think, would be appreciated by business generally.

Mr JENKINS—What other elements were missed out during the GATT proceedings that really need to be added to WTO?

Mr Ranson—The World Trade Organisation and the agreement for government purchasing are areas of grave concern because we do not have the level playing field in Australia. Our playing field slopes uphill and we are starting from the lower end. We have opened the door to allow anybody's product in, and we are doing nothing to protect ourselves. It is a very serious concern.

The Bevis report, which indicated that less than 10 per cent of Australian goods were being purchased by government, I think was an excellent report in the light it shed on that situation. We feel that, if we can get only 10 per cent penetration now, what chance is there when we throw the whole doors open. Somebody with a computer can sit wherever and put in tenders and we are obligated to buy using electronic commerce—as, again, we are moving down that track—at the lowest price, which appears to be the way in which the government's initiative has taken place as far as purchasing is concerned. There are very grave concerns over what may be the further implications of losing control of our own marketplace to overseas markets controlled by external legislation.

Mr JENKINS—Does the chamber have a view on the addition of social clauses to WTO?

Mr Ranson—I have indicated that, in relation to situations such as environmental issues, we have definite concern where products are coming in produced in factories where there is no environmental management. If I can concentrate on government purchasing, they are saying, 'We want to support regional development, we want to support industry, we want to do this, this and this. We want something which is environmentally sustainable,' and then we buy from a country overseas which perhaps has none of those conditions applying. We would like to think that consideration has to be taken of the way in which goods are produced. Clearly when they are produced by prison workers overseas and then they are put into this country that is unacceptable. Perhaps you want to extend the concept of prisons beyond just the formal prison to where workers are receiving very arduous employment situations, for example, carpet making in some countries where very young people are used. That is an obscenity. But this is the type of thing which we think do not believe is a fair trading situation against which we are trying to compete.

Mr JENKINS—Besides the normal controls, what other advantages/disadvantages are there in electronic marketing, both for people that engage in what we would describe as traditional trade against electronic marketers within Australia but likewise electronic marketers out of Australia to overseas as against their competitors?

Mr Ranson—If you are doing it on the Internet, for example, you do not need an office. You can be trading anywhere; you can have a very pretty picture up there or the product and you do not need any infrastructure. You may not even need to employ people if you are an intermediary trader. So there is no spin-off in terms of employment.

Mr Murray—It is an area which needs to be looked at by legislators, there is no doubt about that. It

is in its very early days at this stage, but the point about it is that there are no barriers electronically to people just clicking on, putting their credit card number in there basically and paying for the goods and having them brought into the country. The thing about it is that it is up to business people, of course, to ensure that they are competitive on that particular electronic commerce area, but at the same time the large volume of production which is generated in many of the major overseas countries means they do have an advantage. One of our major problems is that the last figures I saw I think we had something like an $11 billion deficit in trade with the USA. The USA, of course, has certain positions in a lot of markets which makes trading very difficult for Australia.

Mr Ranson—They are not signatories to the WTO, so a major country where we have a huge trade deficit has not even signed the agreement which we have signed.

Mr Murray—There are some agreements there which we have signed, along with other countries, and which some of these other—

Mr BEDDALL—What effect has there been?

Mr Murray—This was in relation to particular trading. I think it was in relation to meat.

Mr Ranson—And the leather hide situation.

Mr Murray—That is right, the leather problem there about two or three weeks ago. Their comment was that they did not sign so it does not apply to them. That is the kind of thing which does emerge from time to time in the international area.

Mr Ranson—We have given our edges away. All our advantages we have signed away, where some of the people that we are trying to compete with have kept their powder dry.

Mr JENKINS—Can we go back to the domestic situation. You talked of the way that when a community grows it gets to a stage where the corner store gets subsumed by a supermarket chain. I suppose in a way, as people get more used to the Internet and things like that, there will not be as much need for a supermarket. People will be sitting at home clicking on and getting the groceries delivered somehow. This is all dictated by the market, people's preferences. How far do we intervene to try to claw things back?

Mr Ranson—I think that is a question that the local community has to address with their council. Obviously, why the supermarkets are now putting in eight-cinema complexes and child care is to make the shopping an experience where want satisfaction occurs rather than need satisfaction, and they distinguish between the two. They are satisfying people's wants, not necessarily what they actually need. A whole ethos of marketing is taking place built around that concept.

Mr Murray—In relation to the shopping centres, I think there is a fair amount of literature around on the way things are moving, particularly in the USA, where shopping centres themselves in some instances have been pushed out by manufacturers actually just putting their product out directly to consumers. That will, of course, happen under the Internet system very rapidly. So strip shopping has suffered to the benefit of

hypermarkets, but there is no guarantee that hypermarkets are here to stay. It is an evolving business, retailing. It is always an evolving business trying to get the consumer to spend their money.

Mr Ranson—And the size of the hypermarkets is getting bigger and bigger in the States again. They are absolutely an enormous size.

CHAIR—People live in them.

Mr Ranson—Yes, tramps or disadvantaged people.

CHAIR—They actually live in them. I would like to get a view—I am conscious of time—from the chamber about the franchise code and the relationship between franchisors and franchisees. It is a rapidly growing area of commerce.

Mr Ranson—The franchising has been of very significant concern. Let me say right at the outset there are some excellent franchises available and excellent franchisors and franchisees. There are also some classic disasters, and disasters of such magnitude that one really grimaces at the fact they were allowed to continue as long as they did.

I draw the committee's attention to the situation that occurred between Cut Price Deli and Tomlinson. It is a case which is well documented. It has been through the courts and I believe I am entitled to make some comments in relation to that. It actually demonstrates very clearly the total disadvantages of taking a franchise using that as a model. I think it took four or five years to get the case to actually come to a final solution through the courts. As I understand it, no money has passed hands because, even though it went in favour of the franchisee, the franchisor declared themselves bankrupt. The moneys have disappeared. I believe the ASC is still investigating, the court is investigating. But where you look at an organisation that was selling businesses that had never ever made a profit, were incapable of generating a profit and were continuing to sell such businesses, one really has to question the ethics of that operation. They were signatories to the code. You looked at the documentation that they provided to their franchisees, where it said, 'If you approach a lawyer, we have the automatic right to take over and run your business for you at our costs.' That was written in black and white. Those were some of the terms and conditions that they put on their franchisees.

We are very much in favour of codes of practice—coming back to your question, how we feel about the codes of practice. The codes of practice are, where they are upheld, excellent. What we perceive as the problem—we have indicated this in our written submission to you—is that those codes of practice are not third party audited, if you like. What we are suggesting is that there was a role for an organisation like the Chamber of Commerce to undertake the third party audit of people who have been signatories to those, to verify that compliance is taking place. If you look, I believe, at Cut Price Deli, they were members of the code of practice, they were one of the directors of the organisation, so that when there was a complaint the complaint came to their directors, they knew that somebody had complained and could deal with them accordingly. I do not think that is the right way in which a code of practice should be administered.

We took part in establishing the benchmarks for dispute resolutions for the banking and the Telecom

and the insurance industry, where a great deal of effort was to make sure it was at arm's length and third party involvement. I think that is the type of involvement where a chamber, certainly overseas, and we should be doing the same thing in Australia, could act as that third party to be involved with monitoring, auditing and mediation where necessary, because we do not have any axe to grind, we are just trying to make certain that things go wrong in what is a fair situation.

So the codes of practice, yes, they can work. I will give you a classic example. One of our members rang up in dispute over a situation. We gave them advice, 'This is the law, this is what should take place, this is how we understand it would be a nice way to operate.' 'Thanks very much. I will do the right thing by the customer.' It will cost him money, but most businesses would do the right thing by most of the customers because they want them to come back. It is in their best interest. They will bend over backwards to keep the customer. It is more expensive to win a customer than it is to keep a customer. So your codes of practice should reflect that dedication towards maintaining that loyalty. I think that government involvement in those codes of practice may only be in terms of underpinning, where necessary, the legislation; that, if necessary, the people not only adhere but become members of the association and then they can be audited for compliance. If they are not members of the association, you cannot audit them.

Mr JENKINS—There seem to be two roles that you are suggesting for the chamber. One is that you oversight the codes and check that, in toto, they are being run properly.

Mr Ranson—Yes.

Mr JENKINS—The other aspect seems that you might offer yourself as the dispute resolver or arbiter.

Mr Ranson—Yes, at the present time we actually do that for some of our members. When they have a problem, they will come in and sit down, as we are now, across the table and we will try and get a solution, because of the enormous expense and time in the courts.

Mr JENKINS—But it could be that the industry, as part of its code of conduct, has its own mechanism—

Mr Ranson—As the insurance, banking, telecom industries have. They have their own ombudsman and their own set-up. But that is very big, and if you are a small retailer you could not afford to have that type of structure.

Mr JENKINS—But, in those cases, you would see a role for chambers to oversight the success of that.

Mr Ranson—I think that would be a viable proposal.

Ms GAMBARO—Just back on the code: the FCAC, the penalties for people to not register, non-compliance, I believe are not harsh enough, from some of the submissions we have been receiving. What are your views on that?

Mr Ranson—A number of the people have not joined. If you look at the franchising code at the present time, perhaps they do not see any value in becoming part of it, because of what has happened historically. That is why we refer you to this case. I think it is well worth looking at some of the transcripts of what took place. I think Justice Drummond was the presiding judge. When he actually said to Cut Price Deli's barrister that he would fine him personally if the next time he appeared before the court he was not ready to present the information, it gives you an idea of how the case was dragged on and dragged on and dragged on. All the codes of practice did not mean a thing. All they were used for was to delay the time, to try and bleed the small franchisee to death and at the end of the day hope you go bankrupt so you would not be able to continue the court action. This is why there is concern over how those codes are actually administered. There was no intent on that organisation's part to comply with those codes. If there had been, they would not have behaved in the way that they did.

Mr Murray—This franchising area is not just retail; it goes right down into industry. Industry is becoming a major user of franchise systems. Particularly in the USA, the thinking is that franchising in the rural area is a new serfdom. That, of course, has not yet happened in Australia, but I think that legislators need to be aware that there are seeds of destruction in that system unless it is handled properly. There has been a Pulitzer Prize given for some work in North Carolina on the pork industry, for example, as to the way it was manipulated so that in the end, from my memory, the actual operators of the farms were netting $7 an hour, plus 50c for each animal. That is, basically, very low wages.

CHAIR—I am conscious of time, so is there a final statement you would like to make? If we have any further questions, I would like to have the ability to be able to contact you again, if that is possible—

Mr Murray—Yes.

CHAIR—To get some clarification on some particular issues. But thank you for making your presentation today.

Mr Murray—Thank you, Mr Chairman.

CHAIR—Could I also refer you to *Hansard*, in case they have any further questions to ask you. Thank you.

[11.00 a.m.]

GRANT, Mr Graham Lauchlan, Lot 11 Grays Road, Halfway Creek, New South Wales 2460

CHAIR—Welcome. In what capacity do you appear here today?

Mr Grant—As a private citizen. I put in a submission to the inquiry about a caravan park development I did years ago and I lost the lot.

CHAIR—Committee proceedings are recognised as proceedings of the parliament and warrant the same respect that proceedings in the House of Representatives itself demand. Witnesses are protected by parliamentary privilege in respect of the evidence that give before the committee. You will not be asked to take an oath or make an affirmation. You are reminded, however, that false evidence given to a parliamentary committee may be regarded as contempt of parliament. The committee prefers that all evidence be given in public but should you at any stage wish to give evidence in private you may ask to do so and the committee will give consideration to your request. I also remind you Mr Grant that the fact that individuals are being mentioned may in fact require us to go into camera, so we may have to keep that option open if you are going to start talking about individuals and particularly that situation.

The committee has received your written submission and supplementary submission as confidential submissions to the inquiry. Would you like to make an opening statement before we commence any questioning?

Mr Grant—I have prepared an opening statement. Would you like copies?

CHAIR—Read it into *Hansard* and we will take some copies from you as well.

Mr Grant—Ladies and gentlemen of the committee, I have in my submission to you and in my supplementary letter given you a brief history of my life and the reasons why I believe my present position has been brought about by a dishonest action of Esanda Finance Corporation. I am prepared to supply as much material as you require to satisfy yourselves that my case is a genuine one of a large corporation using its size, knowledge and power to destroy individuals with no other motivation than greed. I hope you will accept that before Esanda came into my life I was a hard working, honest, truthful individual held in good regard by all who had any dealings with me.

For your interest, I have brought with me photographs of my caravan park, which was my creation from its conception to its final construction. You will see that it is a perfect location on the Pacific Highway with an adjoining beach. It was a fine project and it is to this day, to my pride and regret. At present I am living in poverty on unemployment benefits. I believe Esanda is surely responsible for bringing about this condition. My reasoning follows.

The original lender for my project was Financial Corporation of Australia Pty Limited. When my project was almost operational but unfinished, FCA advised me it was under receivership and it would be unable to fulfil its commitment to me. This I subsequently discovered was untrue. FCA was never in

receivership, and I have a document here to prove it. It is a printout from the ASC on FCA.

CHAIR—Are you submitting that document as evidence, Mr Grant?

Mr Grant—Yes.

CHAIR—There are also some copies of the opening statement there, as well?

Mr Grant—Yes. Included in this security held by FCA for my loan was my property of 12 flats that I had renovated on one acre of prime land. The FCA refused to make it possible for me to sell the flats to improve my cash position for the benefit of my creditors.

Around this time, FCA was taken over by Esanda. No advice was given to me, but Esanda replaced FCA as my lender. The FCA took it upon itself to pay accounts to statutory bodies on my behalf without my consent, at great cost to me. Esanda took control of my flats and their income.

This destroyed my reputation as I was unable to pay my bills. They had already taken control of the caravan park. Esanda contrived my bankruptcy so that I could no longer question its actions. Esanda sold my properties for ridiculous prices with no regard for me. Esanda added extortionate fees to my accounts without explanation.

I invite the committee, or representatives thereof, to examine in detail my claims. I believe that Esanda should be exposed for the actions it took to destroy my life. It is, in my opinion, guilty of conspiracy to defraud me, theft and blackmail. It has left me penniless, in ill health, and in ill repute. If conspiracies such as the one I have described are able to be perpetrated by a sinister thief such as Esanda, small business in Australia is doomed.

I know of two other submissions which have been lodged with this inquiry. They are both in relation to major projects such as mine in Narooma. They both bear strong indications that my case is not unique. In all cases, the proprietors have been, by devious and misleading conduct, decimated. I invite the committee to visit Narooma to see for itself the immensity of the crimes committed by Esanda and its related companies.

If my submission achieves nothing else, I hope it will help you initiate government action to prevent such things happening to other honest men in the future. Thank you for your attention. I will gladly answer any questions you may have.

CHAIR—Thank you, Mr Grant. A lot of the detail that you have just spoken about has been to the end of the project and I would like to get an idea from you as to what happened early in the project in terms of what sort of advice you might have obtained, what sort of terms were discussed, whether they changed, and what sort of mortgaging of security was involved.

Mr Grant—I actually started this project in 1973—I purchased the property then—and at that time I was President of the Chamber of Commerce. There was a fair amount of corruption in the Eurobodalla Shire that John Hatton was trying to get control of, so I started off with difficulties. John Hatton gave me guidance

and assistance all the way through. It took me 10 years of perseverance through government departments before I eventually got everything approved.

CHAIR—Town planning approval for a caravan park?

Mr Grant—Yes. Right through the State Planning Authority, lands department, coastal protection authority, police traffic branch, et cetera. I then went to FCA and put up the proposal to develop the caravan park. I wanted to borrow $570,000 to cover the project and I was instructed that, as I had 12 flats as well as the caravan park property, if I put the whole lot in as security, they would be able to offer me the best interest rates to continue and get the project through to fruition.

I started the caravan park and it was going extremely well. The first problem I had was the council doubling the amount of charges for a water main and a sewer rising main. I was, and still am, a licensed plumbing contractor and I had considerable experience putting in water mains and pipes, generally—I had been a plumbing contractor for many years—and John Hatton was assisting me to get the council to allow me to put the water mains in. However, the finance company took it upon itself to go and negotiate with the town planner and the council, and it just simply paid the money. So John Hatton continued trying to get—

CHAIR—Let me just ask you this question: under what basis would they have done that?

Mr Grant—Just to get the project moving a bit quicker. As it happened, the council was very short staffed at that time and it had the road gang put the sewer water main in and that was an absolute disaster. But John Hatton continued on my behalf and the finance company negotiated with council to get reimbursed $11,477, and that put an end to any further negotiation. But I would have been able to put those water and sewer mains in for less than $20,000, whereas it cost me over $60,000.

I was continuing, and everything was on course and going very well for finishing at Christmas time. I was called to Canberra and introduced to a person who they said was the receiver for the FCA and, as the FCA was under receivership, they could no longer advance me any further money. I just sat there stunned. I had subcontractors who were working away, fully intending to be paid, and I had every intention and ability—I thought—to pay them.

I returned to Narooma and looked at the project. We were within striking distance of getting the project finished, so I thought I just had to get the project finished. I explained to the subcontractors what had happened and I said, 'If we can get this place finished, and get it trading through the Christmas period, it will have been proven to be a success. They will re-finance and we will all be under way. But if we stop the progress at this minute, we are all heading for bankruptcy.' So with the cooperation of my mates—these were people that I had worked with in Narooma for 10 or 15 years—

CHAIR—So, where the trouble started then, as you understand it, was the receivership of one particular company being taken over by—

Mr Grant—The FCA told me that they had been taken over and gone into receivership. The documents that I just put over here from the Australian Securities Commission, prove that the FCA never

actually went into receivership. They had liquidity problems. But if I had realised that it was their choice not to advance any further money to me, I most certainly would have taken legal action to try and get rid of them and get them out of my business.

Mr BEDDALL—Can you establish that train of events for me? You dealt with the FCA which is a subsidiary of the ANZ Bank. How did you get introduced to the FCA? Was it the ANZ that said you should go to the FCA?

Mr Grant—No. My solicitor advised me to go to Canberra because there was a finance company called Finance Corporation of Australia that was specialising at that time in coastal developments in the tourist industry. At that time, the government's policy was that the future of Australian business was in tourism. If you were going to be in business, you either had to get big or get out, and any tourist development had to be comparable at least with anything worldwide so that we could attract worldwide customers.

I have aerial photographs of the caravan park if you would like to see exactly what the caravan park was like just before they chucked me out. It fronts the Pacific Highway and goes through to the beach.

CHAIR—Therefore, they misled you in relation to the receivership aspect of it, and you went to your subcontractors and asked them to work through the process to try to get this thing up and running.

Mr Grant—After the Christmas period, some of them got in touch with the finance company in Canberra and said, 'The caravan park is finished. When are we going to get paid?' They were told that they were my creditors and that they were nothing to do with the FCA and, seeing that I could not pay them, what they should do really to protect their own interests was to register a claim with the court against me, personally, or against my company, which they did.

As you can imagine, that absolutely destroyed my credibility and credit rating. As soon as I tried to get refinanced, every organisation I went to just looked at the problem and said, 'You have to be joking. With this amount of debts registered, what are there that are not registered?' The finance company had made sure that everybody I owed money to had certainly registered the claim.

CHAIR—I am trying to get in my mind that you had all this money approved by the FCA and that three months before Christmas, or thereabouts, they said that they could not advance you any more funds.

Mr Grant—Yes.

CHAIR—There was no attempt by the ANZ Bank to negotiate with you?

Mr Grant—No. The ANZ Bank, at that point, had no connection with the FCA which was a wholly owned subsidiary of the Bank of Adelaide.

CHAIR—The receivers did not tell you to try to seek finance elsewhere?

Mr Grant—There were no receivers. I was introduced to this person as a receiver, but that was a sham. Those documents prove that the FCA never went into receivership.

CHAIR—So they just stopped—

Mr Grant—Yes. They chose not to finish funding me.

CHAIR—Therefore, once the project was finished, I guess the creditors were chasing you.

Mr Grant—Yes.

CHAIR—You then went to bankruptcy?

Mr Grant—No. I said to them that I had made so much money with the caravan park through the Christmas period that I now had bookings for the May school holidays, so I would pay them 10 per cent, or something, of what I owed them. I paid 10 per cent to every creditor. Every time I had the surge of money from school holiday periods, I gave them each proportionally an amount owed. Every now and again a creditor would come to me and say, 'I have been advised to move against you.' I would then bring that person into the office and show him or her the books. I would say, 'This is what I am doing. Your only hope is for me to survive.'

CHAIR—Was there was any attempt at refinancing through another organisation?

Mr Grant—Yes. I tried to refinance with the AGC.

CHAIR—Can I ask you why these other attempts were not successful?

Mr Grant—Whenever it got right down to looking at my company structure, they found out that there were all these massive claims of the creditors. My company credit rating had gone down the drain. I registered my company in 1970 and it was not until 1984 that I had any difficulty. I had been a private contractor since 1963, so I was always very proud of my record as a business person.

CHAIR—Your view is that after being approved by FCA—they then gave you some story about receivership—they didn't advance you the funds that they had agreed to?

Mr Grant—No.

CHAIR—Did they ultimately move into liquidation or receivership?

Mr Grant—No.

CHAIR—You had no further action or claim against FCA for breach of contract?

Mr Grant—They just kept continuing until they were taken over by Esanda. Once Esanda took them over, the manager came down to see me. He said, 'I've been instructed that we have to clean up this case.' I

said, ‘Righto. What do you mean "clean up the case"—sell the caravan park?’ He said, ‘You either have to re-finance or sell.’ I had an agreement with MFA, Mortgage Finance Australia. When I was going to Sydney to actually sign up for that loan, I rang up FCA and I told them that they would be getting their money soon, because I was going the following day—the appointment was made to sign up for this loan. When I got there, the loan had been withdrawn. No explanation, just, ‘We’ve decided to withdraw the loan.’ That had happened previously with a loan application to AGC. As soon as the manager of FCA found out about it, there seemed to be a kiss of death on the project.

Mr BEDDALL—I just want to trace ownership of FCA, because FCA was an ANZ Bank company. When did it become a Bank of Adelaide company? As far as back as 1980 it was part of the ANZ Bank, not the Bank of Adelaide.

Mr Grant—I thought it was part of the Bank of Adelaide.

Mr BEDDALL—No.

Mr Grant—It was not always associated with the ANZ Bank.

Mr BEDDALL—Even your documentation talks about it as a subsidiary of the ANZ Bank in 1986. I know at some stage ANZ Bank had two finance companies: Esanda and FCA. FCA had some ownership—it was about 75 per cent owned by the ANZ Bank. The other ownership may have been the Bank of Adelaide, but I can’t see how it would have ever been in receivership and why the ANZ bank would have let that happen.

Mr Grant—No. I was just told by the manager that they had gone into receivership and introduced to a person purported to be the receiver. From them on, I thought, ‘There is nothing they can do about it.’ If I had been aware that that was a sham, they would have really had a fight on their hands. I was so convinced that the caravan park was going to be a success that I just continued working. I worked seven days a week—every waking minute. As a result of the stress that I had with the finance company attacking me all the time, I felt my heart thumping the whole four years. I have now got a prolapsed aortic valve—that is the valve in the centre of my heart.

CHAIR—The problem would have been solved, if I understand you correctly, if FCA had advanced you the funds that they originally agreed to. You would have paid your creditors and you would have then had one debt basically, which would have been back to FCA?

Mr Grant—Yes. That is right.

CHAIR—As I understand what you are proposing here, there has been no explanation as to why they refused to fund the rest of the project?

Mr Grant—No. They just said that they had gone into receivership—end of story, thank you very much. Go away.

CHAIR—They didn't actually go into receivership as I understand it?

Mr Grant—No. I was only told that about 1½ weeks ago. For all of these years I have believed that they went into receivership and I carried their burden.

CHAIR—This inquiry is about unconscionable conduct. What you are saying is—without generally talking about your case but talking about the mechanics of your case—that you had no-one, as I understand it, to refer to or to seek advice from. Is that right?

Mr Grant—I had accountants. I went to them for advice. Any advice they gave me they charged me absolute megabucks for. It was fairly shabby advice anyhow. When FCA or Esanda took possession of the caravan park and started to sell up proceedings, my accountants took over the management of the company and I had to account to them for all of the money and so forth. I had a solicitor. I was back and forth to him all the time, as you can imagine, with the actions from my creditors. He at no stage told me that FCA was not in receivership. I had legal and financial advice, but it was very poor.

CHAIR—So they sold you up?

Mr Grant—Yes. When they decided that the caravan park would have to be sold off, the manager of FCA or Esanda, as it was—I am not quite sure what it was at that time—came down and said to me, 'You've really done well.' I had put $86,000 through the bank in five weeks in the Christmas period and the caravan park was booked out for the following Christmas. As far as I was concerned, the caravan park had proven itself. But he said, 'For the sake of your health and all the rest of it, we should put the caravan park into one business.' There are quite a few things that are not covered by the mortgage: the garbage tip-truck, a couple of tractors, road working equipment for sealing the roads, washing machines and dryers, office equipment, a glass top deep freeze in the shop and shop shelves—a tremendous amount of stuff. He said, 'If you sign that over to the mortgage—we can advertise the caravan park as a walk-in, walk-out going concern—we will finance you and we will have an orderly marketing of the caravan park at the best possible price.' I thought, 'Oh, well, these people in suits, white shirts, ties and polished shoes don't tell lies.' I found out that that is not quite true. I thought that they would be honourable people and that would be true. I signed everything over to them. Within two weeks they came down with Jones Lang Wootton and took possession of the caravan park. I found myself as an employee managing the caravan park waiting for a mortgagee's auction. At that time all I wanted to do was either blow my brains out or get out of the bloody joint—excuse me.

Mr JENKINS—Did you seek legal advice at the stage when you consolidated at the suggestion of these people?

Mr Grant—I didn't think it was needed. At that point I thought that these people were honourable, honest trading people and they were going to try to get the best possible event out of the situation for all of us. I always believed that, for the finance company to succeed financially, they had to make sure that I succeeded financially. Through the whole period all they had done is written up the debt on the caravan park and the flats astronomically so they could actually consume all of my assets and give the creditors the flick.

One thing that I found absolutely abhorrent to me—I had always been a building contractor or in the

building trade; it is always people in the building trade who are worried about going broke or getting clipped here, there and everywhere—is the attitude of the finance company people saying, 'But they are creditors; they are in the building trade; they have to expect this sort of thing every now and then.' With that, they were just dismissed as cannon fodder. This was absolutely abhorrent to me. At one time I was advised to go to an accounting firm in Sydney. They specialise in companies in difficulties very early in the piece.

I went into them and he said, 'I suggest we enter a part 10 arrangement.' Being a plumbing contractor I didn't know what a part 10 arrangement was. The explanation he gave me was that a part 10 arrangement was that they use creative accounting to set up a set of books which proved to the creditors that the business was going to go into receivership, and the only hope they had of getting any money at all was to accept 10, 15 or 20 per cent of their account as final payment. As a plumbing contractor and builder all my life, I couldn't do it. All of these people were not the enemy; they were my mates. They were blokes I had worked with for 10, 15 years. I had worked with them and I had employed them on contracts that I have done. I couldn't treat them as cannon fodder, so I rejected that option immediately. If I had gone into that option and actually cleaned the company records, later on I probably could have paid them—as a debt of honour rather than a legal debt. I couldn't do that to those blokes because some of them at that point would have lost their houses.

Ms GAMBARO—I believe you said that you were introduced to FCA by your solicitor?

Mr Grant—Yes, my solicitor in Narooma.

Ms GAMBARO—Had he had any previous dealings with FCA?

Mr Grant—FCA had done a fair bit of loans through the Narooma area, and they have continued since. The only four major developments in Narooma that have gone on since mine were financed by FCA or Esanda and ANZ Banking Group. Four of these developments have foundered, exactly the same as mine, at great financial distress to the developers. There is no-one in Narooma any more who would be stupid enough to borrow money from a bank to go into a development. We have really done a job on development in Narooma, I tell you.

Ms GAMBARO—Just prior to your experience, had the FCA lent money to any other developments? You have mentioned projects since, but what about before you dealt with—

Mr Grant—I had never heard of them before I went up there. It was only through my solicitor that I knew they existed.

CHAIR—In hindsight, what course of action do you think would have prevented the experience that you went through?

Mr Grant—If I had realised that they hadn't gone into receivership, I would have gone into full fight mode. I thought their actions were beyond their control, so I thought they and I were in the one boat.

CHAIR—Their actions in not—

Mr Grant—In not financing the conclusion of the caravan park.

Mr BEDDALL—Obviously sometimes these difficulties happen. If you had sold your assets and a fair and reasonable price was gained you could have walked away and started again?

Mr Grant—I am told that my caravan park now is worth in excess of $3 million.

Mr BEDDALL—You were offered $300,000 for the flats and they were sold for $151,000?

Mr Grant—Yes, $151,000. At the time I was offered $300,000 I went to the finance corporation and said, 'I have had this offer'—it was actually the Department of Aboriginal Affairs that wanted to buy cheap housing in the centre of Narooma—'to sell the flats for $300,000. I can pay out my creditors and use the rest of the money to finish the caravan park, tar seal the roads and it will be an absolute A1 Rolls Royce caravan park.' I was told that as mortgagees any money that came from the sale of the flats had to go to reduce the loan and most certainly was not going to be used to pay out my creditors. My creditors were my problem.

Mr BEDDALL—When receivership is taken there has to be some provision for a fair and equitable price on goods. One of the constant complaints you get about mortgagee in possession is basically with what is called a fire sale—any price will do. There are always accusations that the price is a deal between the people selling and someone buying.

Mr Grant—The people that own my flats actually live in Mullumbimby and they bought them sight unseen.

CHAIR—Your case study is an interesting one.

Mr Grant—No; it is worse than interesting.

CHAIR—I don't know whether this committee will be able to resolve anything for you. I guess you are not expecting us to do that. But I think that, by bringing it to the attention of the committee, we are able to look at that relationship, as Mr Beddall was suggesting, concerning receivership sales and other financing arrangements for developers. I appreciate the time that you have taken to present this information to us. The last 20 years or so have been a difficult time for you. I appreciate that.

Mr Grant—If your hearing had been five years ago, there is no way I could have addressed you. I was carrying too much baggage and pain at that time. Now I can look back on it. When I was told that your committee was going to look into fair trading and so forth I got my 'nightmare box' out, as I call it, and here I am. It hasn't been easy.

CHAIR—We have had submissions from other people in that area about certain companies and individuals. As a committee we have asked for some explanations from particular companies about practice down that way. So it has at least opened up some procedural stuff for us.

Mr Grant—If I could suggest to the committee that seeing as Narooma is within reasonable distance

of Canberra it shouldn't be out of all possibilities for you to go down there and examine the cases. Have a look at my caravan park—and I use the term loosely—and see what a business it is now. The other businesses have foundered; they are now a success. They were never given the opportunity to run their course to pick up their full potential. It is an absolute tragedy. In Halfway Creek where I live now there has been a lot of very cheap land sold over the last five or six years and a lot of people have moved into the area. I have met them in the Fire Brigade and so forth. A tremendous number of them have had the same troubles through the banks as I have had. It is an absolute tragedy. People would really get small business going if they had confidence in the banking system, but it suicidal to deal with banks in small business and in the building industry.

CHAIR—Thank you very much for your submission today. Please refer to *Hansard*; there may be further questions they have of you. It is proposed that the following documents presented by Mr Grant be taken as evidence and included in the committee's records as exhibits: a company extract of the Finance Corporation of Australia and an extract of banks accused of plundering accounts, undated.

[11.40 a.m.]

PEAK, Mr Douglas William, Principal, H&F Educational Services, 11 Fitzgerald Court, Clear Mountain, Queensland 4500

CHAIR—Welcome. Committee proceedings are recognised as proceedings of the parliament and warrant the same respect that proceedings in the House of Representatives itself demand. Witnesses are protected by parliamentary privilege in respect of the evidence they give before the committee. You will not be asked to take an oath or make an affirmation. You are reminded, however, that false evidence given to a parliamentary committee may be regarded as contempt of parliament. The committee prefers that all evidence be given in public but should you at any stage wish to give evidence in private you may ask to do so and the committee will give that consideration.

The committee has received your written submission and authorised its publication. Would you like to make any additions or alterations to that submission?

Mr Peak—No. I would like to embellish it, if I may, with an opening statement.

CHAIR—Please do that and then we will ask questions.

Mr Peak—Thank you. The following detail is provided on the belief that no statutory exclusion from the provisions of the Trade Practices Act and national competition policy exists for book publishers. If it so does, then I owe this committee an apology for wasting its time. The current industry arrangement of selective discounting from a predetermined recommended retail price advantages major booksellers and disadvantages the smaller booksellers. This could possibly be viewed in the context of raw instinct, where size is used to eliminate the smaller competitor, thus maximising the market position of the major players.

In the absence of firm and available wholesale or trade pricing structures, potential is believed to exist for, first, anti-competitive arrangements through tiered discount levels; and, secondly, misuse of market power with potential illegal purpose through deterrents being used to prevent an individual bookseller from engaging in competitive conduct by the following means: terminating distributorships without commercial justification; refusing to supply or offering to supply at an unrealistically high price; allowing predatory pricing by affording preferential discounts; or by restricting access to goods at the right price and/or at the right time.

Primary boycotts whereby an agreement may be struck between major players to induce or influence a supplier to supply a competitor on disadvantageous terms are also possible. Third line forcing, through telling potential retail customers that they must acquire goods from a particular bookseller or by arbitrarily directing custom to a particular bookseller, is also prevalent in the industry.

Another concern is that resale price maintenance exists by forcing smaller booksellers to sell at or above a particular minimum price, leading to price discrimination in that identical products are being sold to different buyers at different prices, or alternatively the changing of trading terms to minimise discount amounts and supply of goods on less favourable terms to the smaller player prevents competition with the larger and more influential players.

CHAIR—Thank you. Can you give us a bit of a background as to the whole industry of educational books and the selling of them? Has the pricing policy you described in your submission always been the policy or can you identify a particular time when the policy in fact changed?

Mr Peak—For the length of time I have been in the industry, which is only about four years, the policy has always been the same. I believe there was a federal inquiry into the publishing trade some four or five years ago. To the best of my knowledge, nothing came of that inquiry, nothing substantial in regard to pricing.

CHAIR—What sort of recommendations would you suggest to the committee to overcome the problems that you are talking about?

Mr Peak—My submission is based on the fact that the industry does not release a trade or a wholesale price. It simply says that the recommended retail price of that book is X, and in most cases that price is actually printed on the book. If we all sold at that price, of course, we are contravening trade practice. They then determine your trading terms by discounting backwards from that recommended retail price. The amount of discount afforded individual booksellers depends on a number of factors, not the least of which may be cronyism in some areas.

I am not suggesting for one moment that all booksellers should receive the same wholesale price. Obviously for bulk purchases there has to be some differential, but the differences between discount rates afforded small booksellers and those afforded large booksellers are quite substantial, approaching in some cases 30 or 40 per cent. The upshot of that is, of course, that the smaller bookseller has absolutely no hope whatsoever of selling his works. He is unfavourably discounted out of the market.

Mr BEDDALL—Is your method of selling from a retail outlet or do you sell direct to schools or to individual people? How does the small bookseller operate in your circumstances?

Mr Peak—In my case, I sell direct to schools, as most booksellers in Queensland do, normally through representation at the schools and then an office run for larger orders and the out of the blue orders. We do not have a retail outlet per se.

CHAIR—So you get supplied from the publisher and then they supply you at X fee. Then they have got a recommended retail price which you sell for, so your margins are all associated within that, security, and what you are saying is that the publisher is able to negotiate different margins for different people.

Mr Peak—Yes, that is essentially correct, except they do not negotiate, they arbitrarily impose. If you do not accept that, of course, you do not get supplied. The problem is that, in the event of one or more publishers agreeing to discipline, for want of a better word, a smaller bookseller, obviously if you do not have access to one group of publishers then you fail to win any tenders that have multiple quotes for different publishers on them. So what I am saying is that as a bookseller you do not actually have a franchise to sell Penguin or whoever it may be, you are actually selling a raft, or a range, of books. The shortage of supply or the poor supply on one can affect the supply of the whole lot.

Mr JENKINS—What is your contractual arrangement with publishers?

Mr Peak—With the smaller publishers there is no written contractual arrangement. In the case of the large publishers, when they feel like it—there does not seem to be too much in the way of rhyme or reason—they will send you a four-page trading terms and conditions. These discounts do not appear on it, by the way; the trading terms purely refer to your 30-day, 60-day accounts. The discounts are at their discretion and reviewable at any time.

CHAIR—And supply is at their discretion too, I guess.

Mr Peak—Yes. My point is that there are a number like me in Queensland, and I guess hundreds like me throughout Australia, who are quite prepared to compete in an open market, but there has to be some sort of a level playing field, which does not exist at the moment.

Mr JENKINS—You talked about distributorships: what are they?

Mr Peak—A publisher may not distribute their own titles. They may decide, I guess for financial reasons—for instance, Longman Australia have their books distributed through Penguin. I guess it is economies of scale.

CHAIR—And this distributor deals through you?

Mr Peak—I deal with the publisher and the distributor supplies to me. That can become convoluted on occasions.

CHAIR—It seems that way.

Mr BEDDALL—Do you tend to cover a particular area? Obviously you could not visit every school in Queensland, so you are visiting schools throughout the year for orders at the end of the year for the start of the next year?

Mr Peak—No, we sell like all booksellers do. During the year you are selling individual titles to libraries, top-ups to masters. At the end of the year you have your bulk class set purchases for the onset of the new school year.

Ms GAMBARO—Mr Peak, could you outline who the major publishers in Australia in the educational area are for us, please?

Mr Peak—There are quite a few. Probably the top four would be Oxford University Press, Cambridge University Press, Macmillan and Thomas Nelson, and then there is a raft of others that come in on a lower tier. So those four would be the major players.

Ms GAMBARO—Could you also explain to me, because I am not familiar with it, how schools select a text that may be used for, say, their mathematics curriculum. Does the publisher directly negotiate

with the school? How does it all work?

Mr Peak—That is supposed to be what happens, that the publisher will send out free samples of a forthcoming text to a school, the masters review them and decide whether they want to purchase them and then they are supposed to choose their own bookseller and have those books supplied. What has happened over the years, as the publishers get a bit lazy, is that the schools come to the bookseller and ask them to supply the free samples—one-stop shopping, I guess you could call it. In other words, the bookseller has ended up doing a lot of work that the publisher should actually be doing to promote his products, but we accept that as being part and parcel of the business.

Ms GAMBARO—So, just going back to that, the best mathematical textbook does not necessarily end up in the school by the process you have described. It is just the marketing ability of the bookseller that influences what is—

Mr Peak—The bookseller does not actively market. In fact, the best way to ensure that you do not sell books is to go and try and tell a master of a subject what he should buy. You present a range of titles on that particular subject and allow him to select.

Ms GAMBARO—Thank you.

CHAIR—I am interested to hear your comment before about no formal agreements with the publisher. What happens to the industry if the publishers decide to start going direct?

Mr Peak—That happens; in fact, more so in primary school than in secondary school. For instance, Jacaranda Wiley here in Queensland do go direct to schools and in the past were only giving booksellers a marginal increase on discount rates that they offered the school. For instance, they would offer a school a 20 per cent discount and the bookseller may only be getting 21 per cent. So why be a bookseller for Jacaranda titles under those conditions? That has recently changed. I am not sure whether the committee is aware that about four or five months ago the two biggest booksellers in Queensland went to the wall as a result of a discounting war that broke out last year and the undercutting. The two major players went to the wall; fortunately, the smaller players stayed out of it. This is the type of by-product from the pricing structure within the industry that allows this to happen. The bigger the bookseller, the bigger the discount. Conceivably, if you took it to the nth degree, you could end up with a monopoly of one bookseller.

CHAIR—We had evidence in Melbourne on a very similar sort of thing you are talking about in relation to another product—not books but a building product. That seems to be the trend. We had evidence earlier this morning about electronic trading and things like that. Do you see the industry progressing and performing, or do you see the middleman, the distributor and the seller, in your industry as much as anyone else's, being forced out?

Mr Peak—I would see the future for booksellers under the current arrangements as being very bleak. The options that existed beforehand were that educational departments bought books centrally for state schools. That ceased in this state some years ago. That possibly may re-emerge. None of us—the smaller booksellers—has any problem with that. That is the chance we took starting a business, and if somebody

wants to centralise the buying function, so be it.

We are more concerned about the principles and the ethics in the way the current trading is done with publishers. For instance, at the end of the school year everybody needs to get their big school orders in as soon as they can to ensure supply from the publisher or the distributor. It is common knowledge throughout the industry, although very hard to prove, that the smaller bookseller, even though he might put his order in in November for his January supply, will not see his January supply till February. The bigger booksellers get preferential treatment. That is the only thing we are complaining about: the preferential treatment that is given to major players in the industry.

Mr BEDDALL—Who do you tend to deal with at the schools?

Mr Peak—Generally the bursars, or the registrars and the librarians, or individual masters—different schools have different methods. In some schools, the principals control the purse strings; in other schools it is delegated; in other schools it is individual budgets for individual departments—it varies.

Mr BEDDALL—And is it public and private schools?

Mr Peak—Yes.

Mr JENKINS—You acknowledge that there is no problem with having a discount for bulk orders. What you are really saying is that, because there is no transparency in how the discount is formulated, there is a problem which leads in most cases to there not being a level playing field because nobody really knows what is going on. What mechanism would you put in place to monitor this?

Mr Peak—I see no reason why it cannot be the same as, say, the hardware industry, where they have a catalogue that lists the trade, wholesale and recommended retail prices of that particular item. Unfortunately, in the book industry there is only a recommended retail price. Nobody knows what the trade and wholesale price is, and we fail to understand why publishers are reluctant to publish it.

Mr JENKINS—Right. So there would be a catalogue price. Depending on how many units you were buying, you would know the discount for that item. So it would be on an item by item basis with some allowance for the amount overall.

Mr Peak—Bulk discounting on marginal rates. I am not talking jumps of 20 and 30 per cent that exist at the moment but marginal incremental discounting for bulk buying—standard business practice.

CHAIR—Why do you think the publishers do not publish their wholesale price? Obviously it gives them a distinct trading advantage or negotiation advantage. But, on the other hand, wouldn't it be beneficial if they struck a price?

Mr Peak—Why they are reluctant to do so we are not quite sure. The industry has been reasonably well protected for years. They also have rights to the importation of books that I cannot acquire rights to. For instance, I have challenged previously why I cannot buy Oxford University Press direct from the source but I

must deal through the Australian publisher. Be that as it may, and I am not here to complain or comment on that, I think the industry has been overly protected for too long. It is a huge industry when you think that just in Queensland—I only deal with secondary schools, not primary—there are 408 or 410 secondary schools and an end of year order for a whole school may be $100,000 or $150,000 a school.

Mr BEDDALL—My understanding, from memory, from a few years ago is that the world publishing industry divided the world up and basically we are supplied from the United Kingdom and you cannot buy United States books direct. That was the case. Is that still the case, that American publishers do not provide books to Australia, they all come via the UK?

Mr Peak—I do not think that is correct; I am not sure. I buy all my American books through Baker and Taylor in Sydney and I have to pay up-front in US dollars, so I assume they come straight from the States.

Mr BEDDALL—It might have changed. It was the case at one stage.

Mr JENKINS—Is that overseas distribution a self-regulation thing? In whose hands is that?

Mr Peak—The Australian Booksellers Association told me that that has been the way since the inception of the industry in Australia.

Ms GAMBARO—The market forces in this industry are quite strange to observe—having taught at the place down the road here. You spoke of the distribution, for example, to first year commerce students when there is always a lack of available text books. Yet, universities order in advance and order the correct number of books, or supposedly order at the time. What market forces come into play there? The order would be put in, but they would never be available. What could cause those market forces to happen?

Mr Peak—Basically, three things can arise. Please do not take this as being critical of the schooling system. In a lot of cases, individual masters simply forget, or do not do their homework, and then there is a mad rush at the end of the year to supply them with the list of text books they want, by which time, of course, the publishing run may be coming to a close, or whatever, or they are the last cabs off the rank with the order.

The second reason is that prior to quality assurance being imposed upon booksellers, or industry in general in Queensland, it was very easy—certainly for less reputable booksellers—to accept orders knowing damn well that they had no hope of fulfilling that order simply on the basis of cash flow. You are probably aware of the charge forward system that exists over the end of the school year. It is quite dangerous to commit yourself to that and then find that you cannot pay your bills.

The third reason is that, as I said before, the publisher is not liable to tell somebody of the size and influence of, say, Brodies here in Queensland that I am being supplied ahead of them. That is quite prevalent and, to a degree, you can understand their loyalty to major suppliers. But sometimes it just goes overboard.

They are the three basic reasons. I would suggest that in the case of private schools not getting

supplied that it is probably more to do with the bookseller who has overcommitted himself. In the case of a state school, I am afraid I would have to say that it is generally lack of preparation.

Ms GAMBARO—I have one other question. You mentioned a couple of major booksellers had gone out of the market. Was that in Queensland?

Mr Peak—Yes.

Ms GAMBARO—There are a number of people dealing in direct marketing in this area. What has the impact of that been and how successful have they been in their business?

Mr Peak—In the secondary school market there has not been a major impact. Most of these direct marketing booksellers are in the business of buying remainders and you see them every day—it was $59; now it is $4.99; so, it must be a bargain. The mere fact that the book has been out of print for three years has nothing to do with it. They generally try to flog that type of ware and, from the point of view of the educational business, it does not present a threat, or it has not impacted on us. It may at the primary level, but I am not sure.

CHAIR—In summary, do you have some recommendations that would help this committee in its deliberations on fair trading?

Mr Peak—I represent a number of small booksellers who did not wish to appear for fear of intimidation or retribution from some of the major suppliers. My sole grievance is that the absence of a published and available trade or wholesale price is not in keeping with the principles of fair trading. A recommended retail price being imposed upon the public and the industry, generally, is not kosher. The pricing apparatus, or the pricing structure for books—in particular, educational books—should be transparent.

CHAIR—Mr Peak, thank you very much for appearing today and providing us with this submission. We appreciate it. Could you make yourself available to *Hansard*, if they have any questions to ask? They might have a few questions to ask about things.

Evidence was then taken in camera, but later resumed in public—

HAMILTON, Mr Charles Peter, Executive Officer, Queensland Chicken Growers Association, PO Box 3128, South Brisbane, Queensland 4101

SANSOM, Mr Gary William, President, Queensland Chicken Growers Association, PO Box 3128, South Brisbane, Queensland 4101

CHAIR—Committee proceedings are recognised as proceedings of the parliament and warrant the same respect that proceedings in the House of Representatives itself demand. Witnesses are protected by parliamentary privilege in respect of the evidence they give before the committee. You will not be asked to take an oath or make an affirmation. You are reminded, however, that false evidence given to a parliamentary committee may be regarded as contempt of parliament. The committee has received a written submission and authorised publication. Would you like to make any additions or alterations to your submission?

Mr Hamilton—No additions or alterations, but I would like to highlight some of the points in it.

CHAIR—You may proceed with an opening statement before we move to questions.

Mr Hamilton—Our purpose in appearing here is to briefly highlight a couple of the things in our submission. We have indicated that we are currently operating under state legislation which is subject to local review as we see it, with a motive of repeal in favour of either deregulation or possible authorisation under the Trade Practices Act.

We have concerns that the key element of our state legislation—which is to collectively negotiate the terms and conditions including a growing fee, as contained in the growers' contracts—and the collective negotiation and recourse to arbitration appears to be in conflict with the amended Trade Practices Act. What we are really seeking is some sort of legally acceptable basis for growers collectively to negotiate the terms and conditions, including the growing fee, attaching to the operational relationship with our processes and the basis for access to arbitration in the event that parties to the collective negotiation cannot agree. That is really the nub of what we are after.

Currently, the relationship between the growers and processors in Queensland is quite harmonious. At this stage, both the growers and the processors want to retain something like the existing arrangement, that is the collective negotiation principle, and some sort of right to arbitration.

Our concern is that that appears to no longer be a tenable proposition under the Trade Practices Act, which means that we then have to negotiate or try and argue the case with the state legislators to retain the state legislation, or we have got to go through quite a long and, as we see it, costly process of seeking authorisation for exemption under the Trade Practices Act.

We have a concern with authorisation in that the rules appear to have changed. No longer is it seen to be a real alternative to state legislation. Rather, our perception is that this is only a transitory arrangement while the industry moves from one status to another—from an administered industry to a deregulated industry, if we can use those sorts of terms.

So we do not really see authorisation as being a viable alternative in the longer term. What we are seeking is some sort of longer term surety that the arrangements will remain reasonably stable from an investment point of view. We have anecdotal comments from growers that they are reluctant to invest in the industry, particularly in the expansion of the industry. We are hearing comments from the growers again that financiers are reluctant to lend for any longer term basis because of the uncertainty as to the future of the industry and the future of contracts, which are critical to industry income.

We have made the comment that growers are at something of a disadvantage relative to the processes. We have 105 contract growers in Queensland. There are three processors, two of which are national corporations. They operate in all states. Because of their geographical location, the growers tend to be reasonably parochial. They have their own views and they do not communicate as well as a corporation can internally. They certainly do not have the financial capacity to launch extensive cases in courts and so on. My position, for example, is very much a part-time position. The size of industry in Queensland is such that preparing cases to go to authorisation to wherever is quite a costly process for Queensland growers.

We make the point that, whilst it is costly, it is also very time consuming. We have considerable doubts as to whether it adds anything to the value of chicken products. We do not believe consumers will win anything by going through the process of not allowing us to collectively negotiate. We do not believe that the collective negotiation process that we go through at the moment and negotiating the growing fee impacts on consumers at all—or at least not significantly.

CHAIR—Could we have an expansion on the actual structure of the whole industry? Could you briefly outline how it is structured in that regard? I did not want to interrupt you, Mr Hamilton, but I think it is an important point at this time.

Mr Hamilton—That is fine.

Mr Sansom—In terms of its relationship in Queensland, or Australia-wide?

CHAIR—You can start with Queensland and see how different it is for Australia.

Mr Sansom—Basically, you have three processors in Queensland; two major ones, which are national companies, Steggles, Inghams; and a smaller one, Golden Cockerel. There would be about 105 contracted growers. They are mostly around Brisbane but we have 10 up at Mareeba, with a Steggles processing plant in Mareeba. The smaller processor, Golden Cockerel, has some contracted growers but primarily uses its own company farms. With contract growers, it is a fee for service arrangement. The companies supply the feed and the chickens. They have the genetic stock, the feed, the technical services et cetera, and we provide the housing, the management and the secondary input material: litter, energy, gas, electricity et cetera.

The housing is very specialised. The average investment on a farm is probably somewhere in excess of $1 million. You virtually have no alternatives other than to grow chickens in them, if you wish to make any sort of a living out of them. It is an interesting relationship with the processors, which has worked reasonably well under the current situation of legislation, in terms of collective bargaining.

CHAIR—I get the feeling from Mr Hamilton that there is something happening at the moment which is causing a few problems.

Mr Sansom—No. Sorry. The problems are purely national competition policy and its likely impact on the existing state legislation, and the fact that ACCC can at the moment, under the current legislation, offer very little assistance in providing some 'protection' for growers against their lack of bargaining power against the processors. ACCC have in fact said to us that they believe the best thing we could do would be to retain our legislation because, under the current act, they can do little for us; and that any authorisation would be purely transitional and would be seeking to move to some sort of deregulated market place.

That, quite frankly, would be quite disastrous for growers, because they would be under enormous pressures. We have only got to look at the scenario in the United States, where they are currently trying to get legislation, because of the situation that exists with the processors and the growers in the states. Theft, fraud, coercion: you name it. I do not know who would really want to be a chicken grower in the United States; but, obviously, they con a number of people.
Does that explanation help?

CHAIR—Yes. That is very helpful. Mr Hamilton, do you want to continue with your opening statement now?

Mr Hamilton—Certainly. We have drawn attention in our submission to having no real concern about periodic reviews of legislation and legislative arrangements. We do make a distinction between a review and an application for authorisation. The suggestion is that a review is something where parties can look at whether circumstances have changed and perhaps suggest some finetuning of legislation; as opposed to an application for authorisation—which, it seems to us, is really having to justify our very existence and having to do that every three years or so, for no very good reason other than that that is the process you have to go through. We are not opposed to reviewing the legislative base or where we are coming from, but we are suggesting there is perhaps an alternative way of doing it. Authorisation does not seem to be a very tangible way of handling the problem.

We have raised some questions in terms of voluntary codes of practice which have been suggested. We agree with the principle, but we do say that this needs to be locked home into the legislation. It needs to have some sort of legislative backing, and any parties to an agreement must know it is legally binding. If that were not the case we may have a situation where growers might negotiate a position with a processor and the processor might say, 'That is all very fine but we are really not too concerned about it,' and just ignore it and not play the game at all.

We are saying it needs legal backing. You cannot just have an entirely voluntary code of practice; voluntary in a sense that, yes, parties can work their way through it without having to have Big Brother standing over them. However, having got to an agreement, that needs to be legally binding in some sense. It needs to be backed by legislation which enables that to happen.

We make the point that there are many parallels that we see between what we are seeking and the collective bargaining and negotiation of enterprise agreements in the industrial relations arena, the only real

difference being that in addition to growers' labour they are also negotiating about the use of their own capital or their capital invested in their farms. That is what they provide to grow out the processor's chickens. It is labour and capital which the growers provide. That is the only difference to what happens in the industrial relations arena. We really are saying, 'If it is good enough in the industrial relations area, why does it have to be different in the chicken growing business under the Trade Practices Act?'

The last point that we wanted to make was that our main attraction to the Schacht proposals was the notion that captive businesses might be protected from what is termed 'harsh and oppressive conduct' in dealing with larger firms. As Mr Sansom has suggested, there are some chicken growers, particularly those on the Atherton Tableland, who have no option but to supply to one processor. It is a little bit different down here but to the extent that there are contracts between growers and processors, they are locked into those. It is not that easy. There is no legal impediment to changing them but it is not that simple and straightforward. They tend to be locked in with processors.

The perception is that the national competition policy as applied and flowing into the Trade Practices Act is really looking at a naive model of competition where to operate effectively and for competition to apply you need many buyers and many sellers, and that is really not the business that the chicken farmers are in. Competition really is the chicken farmers, together with their particular processor, competing with other chicken growers with their particular processor. It is not the chicken growers versus the processors in that context, it is a different sort of relationship.

Mr BEDDALL—Does imported chicken meat pose a threat to you as well as the processors?

Mr Hamilton—Yes.

Mr Sansom—It is a major threat.

Mr Hamilton—Do not start us on that one.

Mr JENKINS—It would appear that the collective bargaining process that you go through does protect other growers from any sort of harsh or oppressive behaviour from the processors. Is it annually that the price is set?

Mr Sansom—Every six months.

Mr Hamilton—Yes, the fee is negotiated every six months.

Mr JENKINS—So the fee is set and what is expected of the growers is also part of the knowns. Is that correct?

Mr Hamilton—Yes.

Mr JENKINS—The chickens are supplied by the processor and the feed is supplied by the processor but in return the grower monitors the growth of the chickens. Is that correct?

Mr Hamilton—That is correct.

Mr JENKINS—And on the basis of that growth pattern there is a change in feed and things like that that comes from the processor.

Mr Hamilton—That is correct, yes.

Mr JENKINS—It is a fairly simple process in that—as simple as can be given you are looking after thousands of chickens—everything is known, there is a fee per head of chicken and there is an expectation of what the grower has to do on behalf of the processor.

Mr Hamilton—Yes.

Mr JENKINS—As I understand it, there is a couple of weeks of cleaning up and hopefully the next batch comes in. Are the growers running at their full potential for the number of chickens that they can look after? How much flexibility is there?

Mr Sansom—Are they running—

Mr JENKINS—At 100 per cent of capacity.

Mr Sansom—All the time?

Mr JENKINS—Yes.

Mr Sansom—They are running at the maximum capacity for their farms. There are a given number of birds placed per square metre.

Mr JENKINS—My real question then is: is there not a sense that the next time around there might be a lesser number of chickens supplied?

Mr Sansom—Yes. There could well be. We are certainly open. The very question about imports indicates that we are certainly exposed to whatever changes there are in the marketplace. As an Inghams grower at the moment I have been running probably 10 to 15 per cent below capacity because breeding stock has not been producing sufficient eggs to allow replacement. So, my farm has been under capacity by some 10 to 15 per cent. That, simply, is related to the number of birds placed on the farm. It has not significantly changed my input costs, simply my gross returns.

Mr BEDDALL—Do you think that it may have an impact on the availability? Is it a common thing that there is a lack of feedstock for them—not feedstock, as in feed, but chicken feedstock?

Mr Sansom—No. It is just one of those things that happens from time to time, and it has just happened with a number of the companies in the last nine to 12 months. We seem to be coming out of it now, and supply is getting back to normal again. Supply has not been drastically reduced, but certainly it has

been a bit tighter than it has been in the past.

Mr JENKINS—The question I was leading to then is: if you are running at 10 to 15 per cent below, I would take it that given the collective bargaining nature of the growers that would be shared across all growers?

Mr Sansom—Yes. There is an arrangement whereby farms are placed at particular densities so that everybody is approximately placed at the same level. Depending on the level of equipment on farms, some farms have got higher standards of equipment so they will be placed at higher densities, but essentially, when there is a downturn in the industry all growers essentially suffer.

Mr JENKINS—How many chickens, on average, would the 105 growers have?

Mr Hamilton—Fifty-seven million a year.

Mr Sansom—The average sized farm in Queensland would probably do about 85,000 a batch which would equate to about 500,000 annually from each farm.

Mr JENKINS—And there is no great difference in the economy of scale, is there?

Mr Sansom—No. There are economies with larger farms, but then there are also downsides to larger farms because of disease problems, et cetera, which can obviously decimate larger farms to a greater extent than the smaller ones.

Mr BEDDALL—What about new entries? Is there some sort of agreement with the processors that there be no additional entries or, until there is an agreement, that there is agreement amongst their suppliers that there is room for further growth?

Mr Sansom—There has been a gentleman's agreement, I guess, that expansion would go, not to any farm, but to existing farms that are efficient. If the expansion is such that those farms cannot take up the capacity then, yes, it is open to outsiders. There are no constraints on the processors taking on new growers whenever they so choose. The only thing that probably constrains them is the fee negotiation throughput which is a major consideration. If you take on a lot of extra farms, and everybody's throughput goes down, then obviously, there is going to be pressure to raise the fee under those circumstances to try and bring it back somewhere near the same gross returns on the farm.

Mr JENKINS—If the importation of the foreign cooked chicken meat were allowed, what would be the greatest effect? Would it lessen the throughput through the growers, or would it lower the fee? What is the likely consequence?

Mr Sansom—I think that there would be both. There would be a lowering of throughput, and there would be a pressure to reduce the fee. Let me just put the fee in perspective. The growing fee represents about eight per cent of the retail price of chicken. So, you could halve the growing fee and, quite frankly, you would do very little for the retail price of chicken. That is the actual contribution that the growing fee

makes to the total retail price.

As far as the importation is concerned, ultimately there will be a rationalisation in the industry, which means that farms will be closed down because growers simply cannot continue. Unfortunately, I believe that, as is often the case, it is the more technologically advanced farms that may well go to the wall because they are the ones with the biggest debt load and, therefore, they have the greatest difficulty servicing it.

Ms GAMBARO—You have been touching on breeding programs and productivity. Does the association conduct research into the breeding programs?

Mr Sansom—No. It is a vertically integrated industry and the processors are the ones that totally control the genetic programs. Anything that we know about them is by sheer chance and by keeping our ear to the ground. It is a very tight industry from that point of view. It is a very successful industry because of its vertical integration, but it does pose some problems for those of us in the growing sector.

Mr BEDDALL—At what stage do they arrive and depart?

Mr Sansom—They arrive a day old, so they have just come out of the hatchers. The first pick-up is—depending on weight, which is usually about 1.9 kilos—probably around 39 days. The final pick-up could be anywhere from 49 to 56 days when they are at around 2.65 to three kilos live weight.

Mr BEDDALL—So that makes it a No. 16 to a whatever.

Mr Sansom—Yes. The larger birds mainly go into the value-added, bone-out process, but you will get some of the banquet sizes out of the larger ones. The smaller ones are for Kentucky Fried, rotisserie and then No. 14s and No. 15s and those sorts of sizes.

CHAIR—As I understand your submission, what you are asking for is the ability to be able to collectively bargain and, because that is not offered to you at the moment, that is what you consider as harsh and unconscionable conduct by the processors because they are talking to individual farmers. Is that the basis of your submission?

Mr Sansom—The basis of our submission is that at the moment we have legislation in this state—as in all other states—which allows us to collectively bargain. That is under threat under national competition policy because of the review. Obviously, we are small industries and we tend to be throwaways under political imperatives, unfortunately. Trade Practices does not provide us with any satisfactory means of redressing that situation.

CHAIR—So what you see down the track then is that processors would be dealing individually with farmers and, therefore, some farmers would be able to negotiate their way through that process and others will not?

Mr Sansom—Some would, but I believe, knowing the processors, in most instances it would be a case of saying, 'There is a fee, take it or leave it.' I do not know that there would be an awful lot of

negotiating. Some better farms may be able to negotiate something a little better than that, but I think we tend to come to the lowest common denominator all the time.

Mr Hamilton—It does add costs too, whereas if you negotiate with two or three representatives of the growers, that applies then to all of the growers to a particular processor. It is a much simpler and more cost-effective process than having to go out and negotiate with 40 or 50 different growers, particularly if they all get a bit bloody-minded and do not want to play the game. There are costs involved in freeing the thing up. It is not necessarily cost effective to free it up. What we have at the moment is something which appears to be cost effective and does not harm consumers. The industry is happy with the arrangement. There is some room to manoeuvre, it is not just locked in—

CHAIR—On the other hand, with a grower who may not be as efficient as a grower down the road, the grower down the road is being penalised by the inefficiency of the other grower.

Mr Sansom—No, one of the things we should probably have explained when we were talking about the fee is that nobody is guaranteed a particular fee, it is a pool system. There is enormous competition between growers to get the best performance out of their birds. If grower A, say, picks up three cents more than the growing fee, that will be at the expense of grower B who will actually have to lose three cents to come back to the average. It is not a situation of saying that I can sit back and collect my growing fee for every bird I produce. That is not the case at all. I think that is something I did not make clear.

Mr JENKINS—Who decides that?

Mr Sansom—That is done on a pool system. It is a mathematical calculation. It is done on a rolling pool for the birds that come in for any particular week. For each grower it is calculated out as to what he will get above or below the growing fee depending on his feed conversion, which is probably the most critical factor, and the weight of the bird he has produced.

Mr JENKINS—If there was a dispute about that, who would resolve those disputes under the agreement?

Mr Sansom—Initially it goes to the delegates. The growers elect delegates to represent them with the company.

Mr JENKINS—So it is a self-regulating system?

Mr Sansom—Yes, in that respect. If we cannot reach agreement there it ultimately goes in this case to the Chicken Meat Industry Committee which is the state committee. That very rarely happens. Normally you try to negotiate a satisfactory arrangement.

Mr Hamilton—That is the second leg of what we were talking about—the access to arbitration in the event that the parties cannot resolve it themselves.

Mr JENKINS—Right. Thank you.

CHAIR—Thank you for your submission. I appreciate your time. If there is anything you would like to say in summary, I am very happy to hear that now.

Mr Sansom—No, I do not think so, thank you, Mr Chairman. I think we have covered it.

CHAIR—Thank you.

Mr Sansom—Thanks very much for your time.

[3.02 p.m.]

NATOLI, Mr Joseph Anthony, Chairman, Queensland Fruit and Vegetable Traders Association, PO Box 277, Moorooka, Queensland 4107

CHAIR—Welcome. Committee proceedings are recognised as proceedings of the parliament and warrant the same respect that proceedings in the House of Representatives itself demand. Witnesses are protected by parliamentary privilege in respect of the evidence they give before the committee. You will not be asked to take an oath or make an affirmation. You are reminded, however, that false evidence given to a parliamentary committee may be regarded as a contempt of parliament.

The committee prefers that all evidence be given in public but, should you at any stage wish to give evidence in private, you may ask to do so and the committee will give consideration to your request. The committee has received a written submission and authorised its publication. Would you like to make any additions or alterations to that submission?

Mr Natoli—I have just handed over additional information which is a response to Sir William Knox's recommendations on the extended trading hours in Queensland. Also, the very last page is an addition to that. It was taken out of *Marketplace News* and was a report on the AUF Conference at the Gold Coast. It was very interesting to hear Barry Ross, who is head of the Queensland Woolworths Fruit and Vegetable Division, making the comment that they quite frequently bring people into our stores to have a look.

CHAIR—We will deal with that as a separate issue at the end. Would you like to make an opening statement before we begin questioning?

Mr Natoli—I have identified three significant areas in which I believe small retailers, in particular, throughout Australia find difficulty in being able to compete on a fair and level playing field. The three areas have three different authorities, basically—federal government, state government and local government—that deal with those issues. There is a definite lack of understanding and communication between those three different areas.

The first one deals with the federal government: obviously, the Trade Practices Act and Commission come under their jurisdiction. Misuse of market powers is one thing that certainly has to be looked at. It is definitely becoming a problem in Australia, with the growing percentage of business that the large retailers have in this country. It is definitely being demonstrated that they have the ability to be able to misuse this power in a number of different ways. I have identified certain ways in their use of predatory pricing methods.

It is important that we take the context of what is happening to small retailers, understanding that there are those three different areas, so that the predatory pricing is certainly a major area that we want to look at. Proliferation of shopping centres around Australia is obviously a problem that we have with local governments, and it is also a state government issue. Australia has a tremendous amount of retail space available to the population, in comparison with other developed nations throughout the world. It is just a continuous push by the property developers, with the Property Council acting on their behalf, as well as the large retailers' quest for growth. They are continually looking for new retail outlets. You could also note that

included as part of the submission to Sir William Knox is an article that relates to the problems in Europe. It is an extract taken out of the *Financial Review*. It is important that the committee looks at that and takes it into consideration with the problems that we have in Australia.

The other problem, obviously, is extended trading hours. That has definitely affected part of the retail area; not the entire gamut, but more so the fresh food area, which my particular constituents or particular interest are involved with. We almost could see, through articles that have been written on behalf of Woolworths managers and Coles managers, that it is a definite predatory push to take market share away from small retailers throughout this country, especially in the fresh food area. So, again, that response to Sir William Knox, we identify the misinformation that has been put out to the public and to government members. We also identified that it is to do with growth. The push has come from big business—it has not come from consumers, as they like to make it out to be.

So collectively those three areas are the main areas. The proliferation of shopping centres certainly affects the tenancy agreements that those small retailers have. I think there are a lot of other associated problems that come about with that. But, if you take the three collectively and group them collectively, that is where the major problem lies in this country. The fact is that different governments are not quite aware of what is happening to retail as a whole. In business you do not need to lose 100 per cent of business to go out of business, you need to lose a reasonable amount of business to become unviable and sooner or later your rent increases and other overhead costs that continually go up just eat away at your viability. In the end the only option—and most times it is forced upon you by banks and landlords—is to get out. I think that is one of the greatest shames in this country in not being able to deal with the massive problems that are associated with small retailers.

CHAIR—You mentioned predatory pricing and you were suggesting that the ACCC should be addressing that in a bigger way than it currently is. What sort of recommendations would you have there?

Mr Natoli—I did include an article that the Juppe government recently had introduced predatory pricing legislation in France, and this is by a socialist government. It was done because they realised the tremendous harm that large retailers were inflicting on small retailers. I believe that the Republic of Ireland also has a similar type of legislation. But I believe that to try and legislate in Australia is very difficult. You could try and establish cost price, but there are a number of ways that they could go about getting around the actual cost price. So if you were to say the price of bread was $1 and they could not sell the bread under that $1, at the same time they may be paying 80 cents or it could be done through the reimbursement of credits or whatever.

So it is very difficult to control and very difficult to find out because of the closed door situation. The only way that I could see that it could work would be similar to the Prices Surveillance Authority. The problem with predatory pricing is that it is isolated, it happens in isolated areas and you will not see it happen right throughout the state or the country. Where it does happen it affects the small businesses within that parameter. They have the ability to reduce their prices in those areas and not anywhere else, so basically the consumers are winners in that particular predatory area, but the consumers elsewhere are paying much higher prices.

We showed examples of advertising by Coles. For example, when Robina opened they had a glossy brochure that was placed at Robina and there were 11 other stores throughout Queensland in which Coles put out the same type of glossy brochure. But we identified somewhere around 10 items that were priced differently—one price for Robina and another one for those 11 Target stores. And there was also the recommended retail price was much higher.

So you had three different price structures. One which was extremely cheap was in a very targeted area where they would go into that specific store and drive the price down. In the other 11 stores where they obviously had problems with competition they would continually sell products at a lower price. Then the rest of the state was paying a much higher price—in some places 50 per cent more than the consumers in those targeted areas. Because of their special nature with the massive market share they have, the only way I could see that being controlled would be to let them sell a particular product at a cheap price, but have them offer all consumers that price.

When a store like my store was targeted by the introduction of Big Fresh and they drove the price of eggs down to 33c a dozen, there was no way that the producers could produce the eggs at that price and there was no way they could buy the eggs at that price. Yet they sold eggs for an entire week at that price, absolutely distorting the public's perception of our ability to compete. In other words, they had placed us, in the public's eyes, as being non-competitive.

That makes it very difficult because we have only two options: we either match the price and lose a tremendous amount of money, or we do not match the price and lose patronage. That is where the problems lie with predatory prices. And, obviously, by them being forced to sell eggs at 33c a dozen everywhere, they would have incurred the same losses as I would have incurred.

CHAIR—If I can just clarify this, are you saying that the current act is okay but needs application, or are you suggesting some changes to the act?

Mr Natoli—I am suggesting that there needs to be some redefinition of what they classify as substantial misuse of market power.

Mr BEDDALL—This is the exact type of activity we identified some years ago—where a large national corporation can target an individual, crush the individual by sheer market dominance and then, of course, the eggs will go up to more than they were while they crush the next small target.

Mr Natoli—Yes.

Mr BEDDALL—The intent of the first changes to the Trade Practices Act, to 52AAA or 53AAA—whatever they were—was to enable Trade Practices Commission to take action. That has not happened and this committee may have to look at ways to do that. What I think should be able to happen is that you should be able to contact Trade Practices and say, 'This is what they are doing in this market,' and they should then be able to identify that as a market and if Coles or Franklins or Woolworths are involved in predatory practices they are in breach of the law. You are 100 per cent right—if they were forced to sell at 33c they would not do it. What they are trying to do is force people out.

There is another issue that the committee has to look at. The TPC also should be given the resources because you cannot afford to take the legal action that the Trade Practices Commission has. If it takes Coles Myers to court once and wins, the threat of that will make them change their practices. They were given very special consideration by the previous government. When Coles and Myers were separate entities and both were in financial difficulties, they gave an undertaking to the previous government that they would not abuse market power. Obviously that is not in the corporate memory any more.

Mr Natoli—I can remember Paul Keating threatened some supermarkets at an expo in Sydney and only two weeks later we had the instances of Big Fresh and Coles selling eggs at such a ridiculous price. I wrote to the Prime Minister, I wrote to Allan Fels and Alex Somlyay wrote as well. They wrote back and said that they did not really see that that was a major problem, that there was a little discounting, but they do not realise what the major repercussions are, that it just drives consumers away from my store.

Mr BEDDALL—Once you are gone, down the road they are at somebody else.

CHAIR—That was Fels' response, did you say?

Mr Natoli—Absolutely.

Mr BEDDALL—Fels is the big picture, national publicity person. Could I just make another point. There are two instances of that. There is one where that happens, then I notice one of the examples you have was Sunnybank Plaza. Sunnybank Hills is near where I live. At the shopping centre there there was a fruit and vegetable place but Big Fresh opened and it disappeared.

Mr Natoli—John owned that shop. The unfortunate part about that is that that shopping centre is owned by the state government superannuation fund and they chose not to renew his lease because they did not perceive that he could compete. Obviously, Australian stores have been overlooked for international stores. It really aggravates me when they have already perceived that he cannot compete yet he is an extremely good operator.

Mr BEDDALL—But that was a decision of the landlord, not the tenant.

Mr Natoli—I realise it was a decision of the landlord—

Mr BEDDALL—I am surprised at that. Franklins Big Fresh opened within a week or so.

Mr Natoli—Yes, his lease was up and they would not renew it. Until the time that Franklins opened he was trading but then he was not given the opportunity to take up the lease.

Ms GAMBARO—Mr Natoli, you mentioned predatory pricing. I sometimes notice in catalogues where a Coles Myer might advertise a product at $5.99 with a minimum quantity in brackets, and in very small writing. It might advertise that the minimum quantity is two kilos or whatever. Do you feel consumers are aware of that? In effect, if shoppers go to the store and purchase anything less than that they are paying a much higher price. Do you think that is deceptive advertising?

Mr Natoli—Most consumers are aware that there is a minimum quantity and the smart shoppers go back numerous times. My mother-in-law is a classic example of that. Especially when new shopping centres open, they will spend hours coming back, re-queuing and going back through there. The biggest problem that we have is the fact that we are trapped within the parameters of that predatory area, the nominated area. If you have a look at Coles' brochures, they vary from six to 15 stores, whichever they chose, but most of those stores are located in areas where Big Fresh is their major threat.

Unfortunately, ever since I have been in the shopping centre my store has been targeted. Prior to us going into the current shopping centre where we are, Coles had nine and a half years of no competition. I can guarantee you that their quality and their prices were exorbitant. The quality was atrocious compared to what it was when they first opened. In fact, they buy under a brand called SMS and the people in the markets could not believe that they were actually buying from SMS Maroochydore, which is unheard of, but they were buying specific quality because they were concerned that they would not be able to match our quality.

Over the last 18 months to two years they have gone back into their normal habits and have not been as aggressive as they were right at the beginning, but they certainly put in a concerted effort at the beginning to drive us out. In fact, their managers had said that we would be unlikely to last three to four months.

We probably lasted a lot longer across the road from where Big Fresh opened than most people would have given us. Wherever Big Fresh has gone, they have just annihilated competition. Wherever they have gone, they have just gone in and absolutely annihilated whatever competition is there.

We had been able to withstand the pressure up until a certain point, but we believe that we could have competed against Big Fresh if there had been certain restrictions to stop them from being so predatory.

Ms GAMBARO—You mentioned the example in your submission of the eggs, at 33c a dozen. They sent in representatives to check out what your grapes were selling at, then they dropped their prices. How long did this type of behaviour go on? Was it over a long period of time or was it at particular times leading into Christmas? Was it continuous?

Mr Natoli—With Big Fresh, it was just constant. We would have days where we would have their managers or a team of area managers who would come anything up to ten times a day to check out our prices so they could make adjustments or whatever. They had the audacity to walk through our stores and pick up products, just to throw them back on to the ground and make comments. One time, while the consumers were there, I got on a loudspeaker and said, 'This is how they treat their competitors, with contempt,' because that is basically what they were doing to us.

The manager for Big Fresh worked for us at our Natoli store. We trained him for six months and with that he took six of our best workers to work with Big Fresh and it was just a game for them. This was our livelihood. We had hundreds to thousands of dollars invested in this business. We had built up this business to turn over nearly $4 million dollars. We supported four families. We had 30-odd staff. I had put on a worker who was completely deaf from birth. No-one else would put that worker on and we put him on. He was 21 years of age and he was absolutely hopeless when he first started, but we thought that if we could not help people like that what was the purpose of being in business. He stayed with us for six months until our

doors were locked on us. And I could not even ring him and tell him not to come to work because we were locked out.

These are the atrocities that are happening out there. Not many people get to hear about it. Not many people really understand the tactics that are employed by big business. We have not got all day long to document everything that happens and take photographs or whatever. We are struggling to survive. We are struggling to keep our business afloat. We are working longer hours. We are stressed. The banks come down hard on us. They restrict our credit. You would not believe how difficult it has been.

If it were any other family maybe we would not have got this far, but it is not just happening to us, it is happening to a lot of other people. And not only in the fruit industry, but the butchers also have been decimated. The bakers are hurting. The delicatessen industry—there are so many people just going out.

Mr JENKINS—Your submission goes to the supermarket's behaviours at the wholesale fruit and vegetable market. It appears that not only is it not in the best interests of the independent retailers, but also not really in the best interests of the producers.

Mr Natoli—No.

Mr JENKINS—Is the wholesale market operated without any control over some of these aspects that you have raised?

Mr Natoli—The wholesale markets traditionally were like a stock market where entry restrictions were prevalent. Up until I think the 74 floods, the Brisbane Rocklea Markets were basically secured premises at close of trade on Friday and really were not available for any stock to be taken out until Monday morning.

What has happened since then is that, because they changed some of the by-laws, since then they have said that you can buy stock on Friday, store it in the markets and take it out, as long as you have written permission from the Brisbane Market Trust prior to 12 o'clock on Friday. You can take the products out of the markets, but you have to give them a rough idea of how many pallets you and at what time you would require to come in and pick up those pallets.

What has happened is that they have misused that change in the by-laws and a lot of the fresh product that comes in on Sundays is purchased and taken out of the markets before the independents get in there on a Monday. It is disconcerting when you see the Big Fresh, Coles and Woolworths trucks coming out of the markets when you have not even arrived and you see them heading towards their stores.

All we want is the ability to be able to compete on level terms. We are not asking for any special consideration in that respect but one of the problems that I see in the markets is the diminishing availability of quality. They have identified quality as a key issue and been able to lead in terms of being leaders of fresh food. You cannot grow 100 per cent top quality. There is a certain percentage of quality produce, mediocre produce and very poor quality produce. Their wanting to get that number one quality has created a problem for us because we can no longer compete on a level basis.

I bring up the idea of going to the Dutch system of Dutch auctions, where every individual buyer gets into chairs like this and if I am prepared to pay a higher price I can. I know for a fact that a lot of growers would be far better off under that system because when the products are scarce people are prepared to pay premium prices for them.

Mr JENKINS—What is the trust's attitude to the way this has changed since the supermarkets have gone into this?

Mr Natoli—They have been prepared to open the doors for big business, so they are quite aware that there is a market conducted there on a Sunday. They are quite lenient now compared with five or six years ago when the letter of the law was the letter of the law. Today it is very open and there is a different system now where sublessees are allowed into the market at an earlier time.

That means that you can sublease some of the sheds at the back of the markets. The wholesalers now are allowed to come into the markets and take product out of the markets. So Woolworths being outside of the markets basically can have the wholesalers take product out of the markets and deliver to them any time, 24 hours a day, seven days a week. That being the case, obviously the other two major retailers that are inside the markets thought that that was not fair so they are now being allowed to take their products out.

Mr JENKINS—So their advantages go beyond their ability to purchase in bulk. They are just given free kicks.

Mr Natoli—They are given special allowances. If you could imagine that there are 50 wholesalers in the markets and over the last few years some of those wholesalers have seen their future as being aligned with one of the major chains, so what is happening there is that they are bending over backwards to service these people because they want to make sure that they are considered as the number one supplier of their products. That being the case, obviously they are on the top of the list when it comes to the products and they get the first service. They get first delivery. They get basically whatever they want.

But when it comes to negotiating some of the price deals or setting up some of these specials at predetermined prices, they might set these prices three or four weeks before the actual market. The market works on supply and demand and it can vary from one week to the other, but with them they are guaranteed a set price. That price can either be guaranteed by the wholesaler or it can be an arrangement by the wholesaler and the grower in conjunction, if the grower is big enough to do so.

Mr BEDDALL—I remember about four years ago having discussions with people from the markets who then were very concerned that the big chains were going to bypass the markets altogether. So obviously this is a reaction to that to try and keep them in the market.

Mr Natoli—Absolutely. But a lot of the growers are now finding out as well that it is not all that rosy to give all their business. For the first couple of years it is great, it is similar to predatory pricing in one way, that they lure them in with a false sense of security. Then once they are in they lose their contacts that they have had with the markets and they have a tendency then to start to demand certain changes and start to demand certain things. To tell you how drastic an effect it can have on an industry, they have just decided

now that the styrofoam boxes will no longer be usable for them. In other words, they have said, 'This is it.' All the growers that have got stockpiles of these boxes, all the manufacturers of these boxes are now virtually in a position where they will incur losses because the supermarket has said, 'From this day on we do not want any more of these boxes.' That is how big an impact they can have on the industry. Without any consideration of what amount of money has been put in by the manufacturers, what amount of money in storing these cartons, and a lot of the growers buy them by the tens of thousands to save money.

Mr BEDDALL—What would your assessment be of the proportion of stores like yours that have had to close in the last three years? In my own electorate in the south side of Brisbane, a whole raft of them have closed. The point I want to make is that it appears to me that it is not in the interest of shopping centre owners because it then becomes a vacant store. It is a bit like letting McDonald's in; that is terrific except three takeaway food places close down. Have you any idea how much of your industry has gone by the wayside?

Mr Natoli—We have probably lost at least a quarter of our traders, but the worst part about it is that so many are now at that crossroads, where to take on another option or to take on a completely new lease is almost unpalatable, to the point where they are making the choice to walk out rather than to be thrown out or to lose everything. There are so many businesses that would be up for sale except there is no market for it. They have been able to virtually destroy the resale of fruit shops. The problem with that is that there is no youth coming through, there is no germination of younger people buying smaller shops and then going on, like I have, to bigger stores. It will happen by attrition eventually if it does not happen by them deliberately doing it. There will not be the actual environment there for it to regenerate.

CHAIR—Earlier you were talking about floor space compared to other countries, that the percentage of floor space in Australia is greater than in other countries. Is that well documented? What source are you talking about?

Mr Natoli—I have heard figures of three times the floor space than the average.

CHAIR—What I am asking is: can we in fact source from somewhere what the accurate figures are? Do you know where we can get it from, is what I am saying.

Mr Natoli—That is information that I have got via newspapers and so forth and articles that I have read, but I am sure there should be somewhere that I should be able to source that information.

CHAIR—We will try to source it as well.

Mr BEDDALL—South-east Queensland has 50 per cent more retail capacity than any other part of Australia.

Mr Natoli—And even in south Brisbane, where you are from, it is certainly far more concentrated than in the northern suburbs. Again, to return to predatory pricing, when Sunnybank opened up I went to have a look at Big Fresh there because we knew that we were going to have a Big Fresh open up next door at Maroochydore. Two days later I had my car serviced on the north side of Brisbane and I picked up one of

the Quest newspapers. The very same Woolworths ad was there except that everything was 10c each or 10c per kilo dearer in the northern suburbs than for the identical products. When these supermarkets buy, they do not buy two or three different lines of the one thing and sell them, they buy hits either from the one grower or—

CHAIR—So they are subsidised?

Mr Natoli—They are subsidised, absolutely.

CHAIR—And they tend to be subsidised through lower socioeconomic areas. Certainly, in my own experience in Western Australia, prices tend to be more expensive in those areas than they are in the more affluent areas.

Mr Natoli—That is for sure. Go to Toowong, Indooroopilly, or to any of those places. Go to places where there is not so much competition. Look at an area such as the Sunshine Coast where we have a number of small towns within 10 to 15 kilometres of each other and look at some of the price surveys that have been done on normal goods, dry goods, things like washing powders. I have documented some of those where surveys show there could be a discrepancy of $2 on a $5 packet of washing powder. We talk about Nambour being a lower socioeconomic area, it does not necessarily always work like that.

Ms GAMBARO—You mentioned retail trading hours in one of your appendices. You have been in the business a long time and I note that your family has been in this business for 70 years. Concerning the effect of retail trading hours, if somebody used to come in and spend $100 a week, is it now being spread over a greater number of days? Do you have any figures from any of your members?

Mr Natoli—We did a survey in the market with only 30 people. You have to remember that my association is quite a poor association. We only have 60 financial members and they pay $5 a month, that is how poor my association is. We have $3,000 to $4,000 in the bank at the moment. My position is voluntary. When we go and put these submissions or do surveys, we do it on a voluntary basis. We surveyed 30 of our retailers six months after extended trading hours commenced and we identified losses of 10 to 30 per cent in trade depending on where they were located. It was more so in the supermarkets, those people seem to have lost more in a shopping centre than if they were in a stand-alone store.

CHAIR—Thank you. Would you like to summarise your case in a final statement?

Mr Natoli—I have not had a look at what Sir William Knox has said about Hilmer and the competition policies that are about to be bestowed upon us. One thing that the federal government has got to take into consideration is the enormity of the problems that we are going to be faced with if total deregulation is going to be set upon us. I see in Victoria they are going to 24 hours, seven days a week shopping. I think the argument that it is consumer driven is absolutely false. It is being driven by big business. Unfortunately, I believe that the retailer needs to have special consideration when it comes to Hilmer.

I believe that open and deregulated policies in certain areas is great and it really does help

competition, but I believe we are beyond that with retailing. I think it is very important that we take that into the contest. I believe that state governments have already taken into consideration that deregulation of hours is in the consumers' interest. I really dispute that. I think the long-term benefit to the community to make sure that small retailers are out there is enormous.

We have just had a young guy of 22 in the shop, and the first time he shopped at an independent fruit shop was at our shop only the other day. He just loved it. He said it was incredible that he could come in there and he had never experienced that in his life. He said he will be a regular. I think if we allow competition as we have, where the big retailers have the ability to more or less push the small retailers out, we will not have that choice. I think the consumers will be a lot worse off in years to come.

It is imperative that we be able to maintain a good solid base of small independents. If John Howard and the federal government and state governments see small businesses as the driving force for employment in this country then they have to really look at some of the problems we have, fix them up and then we will not have to worry about competition because we will be able to compete. We have competed for 200 years and we will be able to continue to compete. The good operators will always be able to compete but, unfortunately, the way some of the laws are at the moment, the good operators are finding it more difficult to compete, and that is a worry.

CHAIR—Thank you for your time today. It has been appreciated. It is proposed that the document, 'A response to the inquiry into the effect of extended trading hours' from the Queensland Fruit and Vegetable Traders Association, presented by Mr Natoli, be taken as evidence and included in the committee's records as an exhibit.

[3.43 p.m.]

EDWARDS, Mr Peter Richard, 28 Panitz Street, Sorrento, Queensland 4217

CHAIR—Welcome. Committee proceedings are recognised as proceedings of the parliament and warrant the same respect that proceedings in the House of Representatives itself demand. Witnesses are protected by parliamentary privilege in respect of the evidence they give before the committee. You will not be asked to take an oath or, in fact, make an affirmation. You are reminded, however, that false evidence given to a parliamentary committee may be regarded as contempt of parliament.

The committee prefers that all evidence be given in public, but should you at any stage wish to give evidence in private you may ask to do so and the committee will give consideration to your request. I would also remind you that in relation to your confidential submission there were some names identified there. We would be concerned about discussing particular individuals in a public session and therefore may need to go into an in camera session if you want to do that. We are happy to consider that if that is the case. I am just making you aware that it may be difficult in a defamatory sense to be doing it in a public session. In what capacity are you appearing today?

Mr Edwards—I am appearing as a private citizen.

CHAIR—The committee has received your written submission as a confidential submission to this inquiry. Would you like to make an opening statement before we commence our questioning?

Mr Edwards—I was 12 years as a franchisee of McDonald's family restaurants. I had a restaurant in Clayton, Victoria. For probably 10 of those 12 years, it was a very acrimonious association, for a whole variety of reasons. Without making it a 'my story' submission, a lot of the problem is that McDonald's as the franchisor have tremendous power. The franchise agreement gives them a lot more power, I think, than the law realises and to fight them is just financially crippling. There are so many of them and they attack you in many different ways. While you are defending yourself in one area, they are attacking you in another. They go into harassing your staff. You are constantly either replacing or trying to keep your people happy.

McDonald's is a very stressful business at the best of times. We are open a lot of hours. The hours are gradually increasing, they virtually never close any more, and, if you have unhappy staff, especially people who are unhappy through no fault of their own—they are being harassed to cause me a problem, not to cause them a problem—it is a very bullying way of doing things.

They have the ability to build a store very close to you and impact you with sales. They not only destroy your business by opening other stores very close to you, they cause you a problem with your staff, they cause you a problem with legal. They consistently attack you, which causes you to have to defend yourself, so you are losing every which way. You are losing because you are being drained financially with legal fees, you are being drained of staff that you have to keep retraining and keep re-employing and you are being drained by having your business impacted.

McDonald's revenue is made up of a percentage of your sales, so they have no vested interest in

making you profitable. For instance, they opened a store in Frankston many years ago and that store, when it was last sold, was doing around $85,000 a week in sales. They have opened five other stores around that particular store and, without naming names, the particular fellow who bought that store for $1.3 million on the assumption it was doing $80,000-odd, is now in a situation where that store is doing in the thirties. Around about two years ago, they opened a store only a few hundred metres away from where he has this particular store. He actually purchased that store, they allowed him to purchase that store. But at the end of the day, the new store opening did $13,000, his existing store dropped $6,000, so there was a net gain of $7,000. So McDonald's gained a percentage of $7,000. The fellow who owned the two stores had his overheads not doubled but certainly towards being doubled for a net gain of $7,000. That is crippling. He consistently loses money on that deal.

The other thing that they do, and it is all legal, there is no illegality involved, but when, for instance, my store was sold and when other stores have been sold by operators and franchisees that have been in the business a long time, they can then force a new rental agreement. For instance, I had eight years of a 20-year licence to go. The person that bought that from me was forced into a new rent negotiation, and it is all fixed beforehand, of 2 per cent of turnover. In other words, for every person they force out of the older existing rental agreements, they get two per cent of turnover as additional rent. If you understand that the average McDonald's store does $2.4 million, that is a net gain to them of approximately $50,000 a year for no outlay—there is no additional outlay on their part. So they have a vested interest to force people with the older style agreement out of the business.

They force them out by impact, by threatening impact, by harassing your staff and by the manufacture of false, self-serving documentation. One of the ways they have of harassing you is to keep grading your store—as an 'A' store, a 'B' store or way down to an 'F' store—and they use this maliciously and spitefully. It is a very difficult situation. The franchisee really has no alternative but to keep fighting them or to pack his bags and go. Even when you sell your store they can manipulate the sale of the store to whichever particular person they want to buy it. They are not breaking any law; they are just immorally doing this, and they are doing it in many cases.

CHAIR—How long have you noticed this change of attitude over? You said you have been in 10 years—

Mr Edwards—Twelve years—10 years arguing with them virtually.

CHAIR—Was there a significant part of the McDonald's group where this suddenly happened? They had a major change of leadership, didn't they?

Mr Edwards—Yes—but it was also ownership. As I understand it, the top 10 management team were allowed to buy 10 or 20 per cent of McDonald's Australia. From that point on they have been actively working to lessen the asset value of the franchisees by opening so many more stores.

CHAIR—Franchise stores or corporate stores?

Mr Edwards—The percentage is still roughly the same. But, if you have a store next door to you or

across the road from you, it really does not matter too much whether it is a corporate store or another franchise store, it still impacts on your store dramatically. There is a particular fellow who owns a store down there who had had a store in Adelaide and transferred from Adelaide to Melbourne. He paid a lot of money for the store—$700,000-odd—and then, as part of the deal, he had to spend another half a million on the store. They have consistently opened more stores near him, and each store has impacted on him.

His answer to that has been to open longer hours. The last time I spoke to him, which I must admit was in 1994, he said he had actually told McDonald's, 'I can't open any more hours. I am now open 365 days of the year, 24 hours of the day, so any more impact is going to put me out of business.' They are doing it still. They have just gone on record as saying they intend to double the number of stores they have by the year 2000.

CHAIR—Getting back to my original question, was that the reason this happened?

Mr Edwards—That was the time when the acceleration of store openings really happened—from that point on.

CHAIR—So they had a change of ownership, primarily—

Mr Edwards—Virtually, yes.

CHAIR—Therefore, it became financially driven rather than wholistically driven?

Mr Edwards—Yes, totally.

CHAIR—The casual observer would conclude that McDonald's franchisees are in a highly profitable enterprise. To what extent does a franchisee share in the profits of the business?

Mr Edwards—The rental of the stores ranges, depending on the up-front payments. They have a very convoluted and difficult to understand rental agreement with the franchisees. But depending on the up-front money that you put in and the turnover of the store at the time you purchase it, the rental ranges from probably 10 per cent at the lowest to around 21 per cent. That is 21 cents in the dollar. So the impact that you have on other stores opening near you really cripples you. Unless you are getting $35,000 to $40,000 a week turnover every week of the year, they are losing money.

In fact, I was talking to a particular fellow who is mentioned in this report who is actually legally fighting McDonald's to prevent them opening two stores very close to him. He told me that McDonald's had now admitted that one in five stores—20 per cent—is losing money. Many franchisees own stores that are making money, but they also own stores that are consistently losing money. One particular fellow, who was the financial director of McDonald's, for many years was in that self-same situation. He had one that was making a lot of money and one that was losing a lot of money.

One particular franchisee—and I will not name him because of what you said—owns four stores and he told me that he had a turnover of nearly $9.5 million in the year 1994 and he lost $100,000 on that

turnover because the running costs are very high at the stores. They are very labour intensive, and every time you look around, McDonald's is inducing you or pushing you to upgrade. It always has to be the latest and greatest, which is very expensive. A friend of mine who works at the Commonwealth Bank told me about a year back that every franchisee that he personally knew had more debt than they had a year ago.

CHAIR—Can I ask you one final question before passing to my colleagues: is there a franchisee association?

Mr Edwards—There is, but it is totally toothless. I remember when a lot of these very bad things were happening to me I actually said to the president—and the person changes year by year as it is an elected honorary post—'If you let what is happening to me happen without saying a word when I go, it will happen to you.' They were not at all interested. The reason they are not interested is because McDonald's is very vindictive to anybody who does not comply with the company line. If you are in any way critical, they will literally do anything to make you sorry that you did that. So I do not think that you will find many of the existing franchisees will, unless it is a very secretive thing, come out and be critical of them.

Ms GAMBARO—Just leading on from that, a lot of franchise groups have franchise advisory councils, and you did not have any of those formal structures in McDonald's. You have a lot of information about other franchisees. Did you meet on a regular basis and discuss your problems?

Mr Edwards—Yes we did, we had franchise meetings. But very few of them were without company people there. In the early days it worked very well because in the early days nobody really knew of McDonald's. They were not the name that they are now. When I first went to McDonald's, the franchisees used to go around and address Rotary Clubs and all sorts of meetings to promote McDonald's.

At that time, McDonald's and the franchisees did work very closely and it was a very close-knit association. But over time, as McDonald's became stronger and stronger, their reliance on us became less and less. In the early days, as I say, there was always somebody from McDonald's at these meetings.

To my knowledge, there were three in 1993 and 1994 that were secretive or, if you like, held without the McDonald's people there. On each of those occasions, it was decided that one or more of these people would take their problems to McDonald's. And every time they did, the problems became watered down because at that point somebody had to say, 'I am bringing these problems to you'. At that time McDonald's were able to put a name to these negative vibes and they would simply make it very difficult for that particular person. So it became the thing that nobody would speak out.

If you are in debt for a lot of money, and the company has the ability to halve your asset value whilst you are still in debt for well over that, not many people are going to—in fact, nobody—is going to speak out. This particular fellow who is now doing it in Melbourne is the first person, other than myself, that I know of that has actively come out and criticised them.

Ms GAMBARO—I noticed that when you moved to Queensland you were interested in purchasing another franchise. Why, after all the bad experiences that you had had with McDonald's, were you still keen to purchase another franchise?

Mr Edwards—First of all, let me just say this: McDonald's itself, the system, is a great system. You know they study their business; they know more about their business than most people know about theirs. I enjoyed the business. Some of the people leave a lot to be desired. The biggest problem I had was with a guy in Melbourne and that continued for many years. I had doctors' advice to move the children to Queensland and I honestly and sincerely thought that if I moved to Queensland it would get me away from that particular person and the whole thing might well change. At that time, I did not have a problem with anybody else in McDonald's. I had a very good relationship with the Sydney head office people. After trying many times to establish myself again, I finally came to the conclusion that the fellow in Melbourne was not going to let that happen, and I stopped trying.

Mr JENKINS—In part, that answers the questions I was going to ask because I was really going to go back to the early days from 1981 when you fought hard to get a store. So that I can get my bearings: the Reservoir store was Plenty Road, Albert Street? Which was the Clayton store that you actually bought?

Mr Edwards—On Dandenong Road, near the old South Melbourne training ground. There is a big football oval—I do not know whether you know it. There is Clayton Road and you turn left into Dandenong Road and it is only a few hundred metres along on the left-hand side.

Mr JENKINS—So, in 1981 you had the 12-months unpaid which is part of the drill, so you had got through a lot of the hurdles that they put before you. But you made the decision which, as you say, turned out to be right given that the store no longer exists. You then had the problem with the individual but you got your hands on the Clayton store. You were able to get the Clayton store back into shape and it was economically a going concern.

Mr Edwards—Yes. It took about two and a half years before it was what they call 'a full rent store'. In other words, it was paying its way and could support paying full rent, but it was very run-down. It was the second store built in Melbourne, so it was old when I got it. It was built in 1973, so it was nine years old when I got it and it was badly in need of some tender loving care.

Mr JENKINS—What was the support of the McDonald's organisation throughout that initial period?

Mr Edwards—In that period it was good. It was very good. When I first took it over there was an $80,000 air conditioning unit on the roof that did not work. The Victorian state manager tried to say, 'It did work when you got it and it is your responsibility.' Here I was in a store that was losing money every week and they suddenly wanted me to spend $80,000 replacing the air conditioning. The previous manager of the store, who no longer worked there but worked at another store, told me that the air conditioning had been struck by lightning some months before I took over and that was what had caused the problem. I then went to the managing director of McDonald's in Sydney and explained to him the problem. He came down and ordered the air conditioning be replaced.

There were other problems with the store, too. I really received no help from the fellow in Victoria. He kept trying to say, 'You do it, you do it, you do it, it's your responsibility. You've bought what you've bought and you're responsible for it.' The managing director who, I am sure, everybody knows, came down and organised it. It was all done. Again, I think that caused friction with the fellow in Victoria. He was

saying no and Sydney head office was saying yes.

Mr JENKINS—Your real problem was with the franchisor's representative in the region that you were operating in. You had communication problems. Was it also that, at the time that you came to the agreement with McDonald's, there were things like whether the air conditioning worked or not that you did not actually resolve or you did not know that were going to be a problem?

Mr Edwards—When you buy the store you literally are not allowed in it until the morning of the purchase. That was the way the system worked. You see, a lot of people get a brand new store; that is a whole different set of circumstances. In my case I was buying an existing store so you are allowed on the premises around 6 a.m. and at 11 a.m. you open as the owner. You have got roughly five hours to do all the paperwork and you just trust that everything works. There is no way you can check it or know whether it works or not before purchase. What the Victorian manager was trying to say was, 'You've got what you've got. If it doesn't work, that's bad luck.'

That really is not what I am complaining about. As I say, the McDonald's real hierarchy, the Sydney head office, said immediately—they did not argue—they just said, 'Look, fix it.' They told him to fix it.

Mr JENKINS—So you beavered away and it was going well. What were the first signs that things were really getting rocky?

Mr Edwards—The first signs were when I tried to move to Queensland. I was encouraged to do so—well, I was not encouraged, that is not quite true. I was told that a lot of people in a poor volume store see it as an out to get a better volume store by changing states and they come up with all sorts of stories. The general manager of McDonald's at that time, who is a very well known person now, told me that when I moved to Queensland then McDonald's would take me seriously. He said, 'We've been involved with helping people to move. We do all the bits and pieces and then they don't move. They change their mind. So we've now adopted the attitude that until you move—until you change state—we are not even going to begin to take you seriously.'

I did all that. We moved up here and I told them. I kept them aware of what school we had got the girls booked into and I told them that I was talking to a fellow up here, who is no longer with them, of course, because his stores are sold. I came up here three or four times to see him.

We had an agreement on price, I had the finance, McDonald's said: 'We won't help, we don't hinder, we will just play a non-biased role.' At that time my previous job had been as franchise salesman for a company called Ultratune and at that time Ultratune ran an add for more franchisees and there was a mix-up with the advertising agency where my name was actually mentioned in the ad. This fellow in Melbourne went berserk and said I had two jobs and spread a lot of stories around that I was working for Ultratune. Even though we had a letter from the advertising agency, we had a letter from Ultratune, we had a letter from the managing director of Ultratune and I signed a stat dec to say that I had no connection with them, he still went ahead and said, 'I don't believe that, I don't believe you, you are a liar.' They used that story then on the fellow up here who was going to sell me the stores. When the final crunch came, he pulled out of the deal and he would not tell me why. He just said, 'I have been told not to talk to you, not to have anything to

do with you.'

Years later I met him in Brisbane, almost by accident, at the business that he bought up here. He told me that he had been told by McDonald's that I had another job, I was not serious, there is no way that I would go ahead and buy his stores, I was wasting his time and not to talk to me. I offered him $2.1 million for the two stores and they bought them, as I understand it, for around $500,000 less than that. Whether that was their intention, deliberately to buy them at a lower price, I do not know, but I can certainly tell you that that was the end result.

I did not get them, they did, and the guy that I was going to buy them off got about $0.5 million less than he would have by selling them to me. I then tried to buy Cavill Avenue in Coolangatta and they told me that it would not be sold until it moved; they were moving from one location in Cavill Avenue to another location. At the end of the day, they sold it roughly six weeks later, well before it changed location. I then tried to buy Mermaid Beach, because I knew they were for sale—sorry, I should have said that, I knew they were for sale—and I was negotiating with the guy that owned Mermaid Beach. I was then told that the company was going to buy it because it needed $700,000 spent on it. I then made a formal offer through accountants and solicitors to buy it and I included in the price that $700,000. I knew what they paid, and I said—I forget the exact details—but it included the $700,000 that they said had to be spent on it. They said it would not be sold and it was sold two or three weeks later to a franchisee from Tamworth, who still has it to this day.

CHAIR—Having gone all through that, for quite obvious reasons you decided to sell your Clayton franchise. In the process of that sale, were there things that went on that were outside of the franchise agreement?

Mr Edwards—I did not decide then, I still tried. The general manager of McDonald's suggested that I write to all the franchisees in Queensland to see if there were any stores for sale, even seeing if any of them wanted to transfer back to Victoria, which had happened in the past. The original owner of Cavill Avenue and Mermaid Beach did transfer back to Victoria and bought stores down there. It was many years later that I decided to sell. I decided to sell because I was exhausted. I had fought them legally, my store had burnt down in 1988, I had lost staff. I had a manager at the store who was under psychiatric help because of the constant abuse he was getting. In fact, we threatened McDonald's at one stage with legal action for defamation. Their reaction to that was: 'Send your papers to this solicitor, go ahead, we are not retracting one word.'

This particular fellow had worked for McDonald's for 11 years before he came to work for me and then when he came to work for me he had to put up with this constant bombardment—it never stopped. In 1988 the store burnt down. We rebuilt the store and in 1992 I was the victim of a very savage supposed armed hold-up. As I say, if it was an armed hold-up, it was a very non-professional job. Two men with guns did not get any money. If it was to give me a thorough beating, it was a very professional job. Whilst recovering from that, I still was being bullied and harassed.

One of the things they did—which I still find incredible—was that when we were trying to buy Clayton originally we were offered many stores. There were quite a few stores they offered us. There were

various letters of agreement, but they were never signed. They were just offers and we did not go ahead with them. They actually found an old letter that had been part of the original offer for Clayton, but it was never part of the legal agreement. The rental on that did not include the rent relief situation. In fact, there was no admission in that letter that the store was actually losing money, trading at a loss, and could not support full rent.

They went back to that original letter and said that if I had signed that letter I had short-paid them rent of $79,000. On 30 December—one day before New Year's Eve—I received an invoice from them for $79,000. This was whilst I was receiving psychiatric help and counselling after the bashing. I had just come out of hospital after having a spinal operation as a result of the bashing. The operation was in November and I received the letter in December.

It was an official invoice and it said, 'Please forward a cheque for $79,800, and may I take this opportunity of wishing you a Happy New Year.' That was from a mongrel that I would not spit on. He was a guy that I had had many verbal fights with. I got a bill not long after that from my solicitor for $15,000 as part of the ongoing money that I had to keep paying over the years to keep them off my back. He said he had now reached the stage where he could not hold MacDonald's off any more. He said I should sell to this particular fellow that they wanted me to sell to. The way they do that is that they also work the price out with him. They tell you in effect what price you will sell for and who you will sell it to.

I have got his letter here. He said that commercially he said you cannot keep going any more. My store manager had left me. He was under counselling as well. He could not fight them any more and so, at the end of the day, I left. I sold the store.

I remember meeting the now managing director of McDonald's in the Golden Wing airport lounge in Melbourne about five years before I finally sold and he said that the people in the company were amazed that I was still there. But what do you do? You have got all your life savings in it. The company says they do not want to buy it. It is not worth anything to them. Eventually they know that they will coerce you into selling the store for far less than it is worth and so they just keep up the aggro.

Mr JENKINS—Are the present agreements for 20 years?

Mr Edwards—Yes; as far as I am aware, they certainly are. I had better explain how this $50,000 per year works. They do not change the rental agreement. They have a rental agreement and a service fee, and it is written into the agreement that you sign—even though it runs for 20 years—that, when you sell, the new purchaser is subject to the service fee that is current at the time. Every time they put the service fee up—from three to four to five per cent—it lowered the asset value of your store, because it meant that the new person that was buying had to pay an extra one, two or maybe three per cent more than you were paying.

So, it was a double whammy, but it also gave them much more of an incentive to force you out. At a national marketing franchisee meeting we were at in Sydney, in December 1993, they actually said that, as part of this Top 10 Management buy-out, they had factored in that three franchisees per year would go, with older agreements. They actually admitted then that they were well ahead of the three per year. They had factored it in; that was part of their strategy: 'We will get rid of people so that we will get this extra $50,000

per year from these stores.' So they, by their own admission, had factored in an extra $150,000 per year as rental; and, by their own admission, they were well ahead of that plan. I cannot see that that is a very decent thing to be doing.

Most of the franchisees that I knew worked long hours and were loyal and worked very hard to promote McDonald's. McDonald's would not be, I do not think, anywhere near where they are now, if it had not been for the earlier guys running around doing what they did to promote the name: the school lunches, the hospitals, the unions. We did all the things that they asked us to do, for our own good: we saw it as a team thing. But now it is very much the case that they do not need the existing franchisees to anywhere near the extent that they once did; and, in many ways, the older people with the older agreements are just a nuisance to them. Whereas, if they can get them out and get the higher rent, then the newer people are not so complaining of the impact, because they do not know of any other thing. They do not remember when the stores were doing $80,000 per week, and they are less demanding of the returns that they expect.

Ms GAMBARO—Mr Edwards, with regard to the $50,000 fee that you are talking about, I find it extraordinary that they would change an ownership of a franchise for that amount of money, considering the amount of training and extra effort that they incur. Is that the only reason? When you mentioned the management buy-out, how long ago was that?

Mr Edwards—I think it was about six years ago.

Ms GAMBARO—How many managers were part of that profit sharing?

Mr Edwards—They call it the 'Top 10 Management Team': it was the top 10 people at the McDonald's head office. That would be the Managing Director, General Manager, Advertising and Finance Directors—the top admin people in McDonald's themselves. It was not the managers of the stores; it was nothing to do with them. You say that you find it hard to believe that they would do that for $50,000 per year; but, as I say, by their own admission they had factored in three per year, so that is $150,000.

I would agree with you, if it were true that they had to do all the training, but really they do not have to do that because, in the main—and I guess I should have made this clear—they are selling to existing licensees, other licensees. When my store was sold, it did not incur McDonald's one cent, because even the stamp duties, the legals—everything—is payable by the franchisee. They make that crystal clear when the new person comes in and the old person goes out—all the fees, the legal fees, are payable. Everything. They do not pay one cent for anything.

Ms GAMBARO—Are you saying that a lot of that is personally driven; if an existing franchisee says, 'I am interested in your store,' that that is the chief motivating force behind it?

Mr Edwards—No.

Ms GAMBARO—Or is it the financial aspects you have explained?

Mr Edwards—Certainly the financial aspect is a very valid point. They have a financial incentive. It

is $50,000 a year for eight years or 10 years, whatever the licence has left. In my case, it was eight years. So it was a minimum of eight times 50. With CPI increases, or whatever, that may well be a lot more money than that. But they were also able to renegotiate a purchase price for the store. So, in effect—I do not know the exact details—the person who bought my store also paid McDonald's around $300,000 as well as what he paid me.

CHAIR—In conclusion, Mr Edwards, you understand that this particular committee is looking at harsh and unconscionable actions, and we are looking at the franchise industry generally. From your experiences, and knowing the sorts of things that we are looking into, what sorts of recommendations would you have in the broader context, away from McDonald's, for franchising in particular? What sorts of things do you think we should be considering?

Mr Edwards—I think that what would be very helpful is if it was not always forced into a legal scenario, because, legally, there is no franchisee that can stand up to McDonald's. When you talked about the profitability of McDonald's, McDonald's as a company are making so much money that they just do not know what to do with it. I remember many advertising meetings we used to go to where they would say, 'Can we afford to be on one Sunday night movie?' Now it is, 'What aren't we on?' The advertising dollars they have is almost beyond belief, and it is expanding all the time.

It would be helpful if there were a mechanism where their franchise agreement could be watered down, even to the point where the franchisee has an agreed area where they cannot open one next door or across the road, where there is access to legally binding judgment but without the legal expense so that McDonald's and the franchisee are equal. It is not where McDonald's can simply keep throwing money at a situation and beat the franchisee down.

Another mechanism could be where McDonald's is not the sole arbitrator of the franchisee's future. What they can do—and do—is say, 'You cause us a problem, you will never get another store. You do the right thing, you may get another store.' They use this. To me, the ability to buy another store should be based on criteria that is not able to be judged solely by McDonald's. For instance, they say, 'Your store is a terribly run store,' and you say, 'Why is it that my sales are increasing?' One does not correlate with the other. They said on one occasion that I had an F-grade store, but my sales were ahead of market, so one does not correlate with the other.

So some sort of mechanism where they could not just say things, or just manufacture documents—for instance, come to your store, write that all these things are wrong with it and then walk away, then months down the track use that piece of paper, which is a total fabrication, against you in judging whether you can have another store or not. I just do not know how those things could be done, but there must be a way of weakening their power.

The biggest thing of all would be the franchisees guaranteed a set area. When I came into McDonald's they said, 'Your market is 80,000 people. We won't give you a street address, but we will guarantee you 80,000 people.' Now I think it is down to about 15,000 people. I am hard pressed to suggest things. That is the biggest single thing.

CHAIR—We will go to the extent where you have some experience with Ultratune. What sorts of specific issues of franchising are there in that area that we should be looking at?

Mr Edwards—With Ultratune it was very clear: there was a guaranteed area, there would be only one in an area.

CHAIR—So geographic base is the biggest issue as far as you are concerned?

Mr Edwards—Yes, because impact is the biggest sword that they have over you. If they open a store next door to you, they can devastate you. Some of these franchisees are in debt to $5 million, $6 million. If the threat of impact is held over their head, gosh, it is devastating. Absolutely devastating.

CHAIR—Mr Edwards, thank you for coming in today. We appreciate your time.

Resolved (on motion by Ms Gambaro):

That, pursuant to the power conferred by paragraph (o) of standing order 28B, this committee authorises publication of the evidence given before it at public hearing this day, including the publication on the electronic parliamentary database of the proof transcript.

Committee adjourned at 4.27 p.m.