



HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON INDUSTRY, SCIENCE AND TECHNOLOGY

Reference: Fair trading

ADELAIDE

Wednesday, 13 November 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

BALDOCK, Mr Maxwell David, President, Small Retailers Association of South Australia Inc., and President, National Council of Independent Retail Organisations, 321 Port Road, Hindmarsh, South Australia 5007	477
BROWNSEA, Mr John David Leslie, Chief Executive Officer, Small Retailers Association of South Australia Inc., and Director, Fast and Fresh Pty Ltd, 321 Port Road, Hindmarsh, South Australia 5007	477
CAUDELL, Mr Colin, MP, former Chair, Select Committee on Petrol Multi-site Franchising, House of Assembly, Parliament House, North Terrace, Adelaide, South Australia 5000	518
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Fair trading

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Wednesday, 13 November 1996

Present

Mr Richard Evans (Chair)

Mrs Bailey

Mr Jenkins

Mr Forrest

Mr Allan Morris

The committee met at 10.48 a.m.

Mr Richard Evans took the chair.

CHAIR—I declare open this public hearing of the inquiry into fair trading. The terms of reference of this inquiry require us to examine claims by small business organisations that some firms are vulnerable to and not adequately protected against harsh and oppressive conduct in their dealings with larger firms. The committee has now received over 150 submissions. A significant proportion of these are from small business people who allegedly have suffered from what they consider to be unfair trading practices, particularly in the area of retail tenancy, service station franchises and other franchises.

Today we will be interested to hear about the particular experiences of people in their business dealings and about the adequacy of the state legislation here in South Australia to protect small businesses against unfair trading practices.

I welcome witnesses and observers here this morning, and I introduce the committee. I am Richard Evans, the member for Cowan in Western Australia; Mr John Forrest, the member for Mallee in Victoria; Mr Allan Morris, the member for Newcastle from New South Wales; and the Honourable Harry Jenkins, the member for Scullin in Victoria.

BALDOCK, Mr Maxwell David, President, Small Retailers Association of South Australia Inc., and President, National Council of Independent Retail Organisations, 321 Port Road, Hindmarsh, South Australia 5007

BROWNSEA, Mr John David Leslie, Chief Executive Officer, Small Retailers Association of South Australia Inc., and Director, Fast and Fresh Pty Ltd, 321 Port Road, Hindmarsh, South Australia 5007

CHAIR—I welcome representatives of the Small Retailers Association of South Australia. 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 that submission?

Mr Brownsea—No.

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

Mr Brownsea—Yes, I would. Essentially we are going to make two presentations: I am making a fairly broad one as the academic side of the small retailers; and Max will be making a presentation as a successful retailer and you will be hearing his views on his side of the operation.

Essentially, we are looking to a series of recommendations that obviously will be made by many others, I would expect, given the nature of the problems facing small business in Australia and our concerns about fair trading as a topic of considerable interest to us, and in fact pertaining to our absolute future. We are looking for a recommendation that the commercial certainty in trading be increased by the inclusion of harsh and oppressive conduct provisions in the Trade Practices Act, that is in corollary to harsh or oppressive, which we have a problem with because one supersedes the other.

We recommend that significant public resources be devoted to equip the Australian community to better relate collective taxes wasted through welfare expenditure on lost jobs to the perception that individual savings on carrots from large capital investor retail chains be also looked at. We recommend that the wisdom of identifying hot spots for early attention strengthens the need for clear, national fair trading laws and also strengthens the requirement that probably those trading laws should be reviewed at regular intervals rather than on an ad hoc basis or when the pressure becomes sufficient to motivate change.

We recommend that all levels of government be encouraged to pursue holistic, coordinated solutions to small business and fair trading issues. We recommend that the complex issue of defining the public benefit which, of course, is now a term that seems to be appearing in more and more places, in a manner that is

usable by small firms in both trade practices and the broader economic debate be addressed urgently. We are not too sure how a reasonable person, who is also the person who perhaps determines the public benefit, really arrives at these conclusions. We are saying we really want to know what everybody is talking about.

We recommend that the perception of unfairness arising from the ineffectiveness of the Trade Practices Act for small firms, whether true or false, needs to be actively addressed for economic reasons, if not for reasons of fair play. We recommend that many perceptions of unfair behaviour, which will inevitably arise in this inquiry, true or false, should be listed for closer research. We recommend that the commercial efficiency of retail markets be improved by raising the awareness of price through the public display of total occupancy cost schedules in all retail developments, and that there be some form of liability attached to the developers' claims as to the potential of the centres they are developing.

We recommend that the ACCC be asked to select a number of product lines which have undergone significant concentration of ownership of production or sales such as paint, light bulbs, matches, boot polish—and there are many others obviously which fulfil that category—retail tenancy space, motor vehicles and so on, and publish their individual and collective increases in price between 1973 and 1996, or probably 1975 when the act came into being.

We recommend that the vague and misleading issue of commercial uncertainty be formally addressed in the inquiry's report and dismissed. Here we would make the point that probably the greatest fear of all is the fear of the unknown, and what faces our industry is that there are so many unknowns there. How do people plan for those things they cannot in fact plan for because there are so many unknowns?

Those briefly are the recommendations that I am looking at, and Max will certainly look at some more. I use that as an introduction. Do you wish to add to that, Max?

Mr Baldock—If I can go on with this, yes. I have done copies of this submission for members so they can follow it through or work through it. Just to give you a little more of my background, I am the President of the Small Retailers Association and the President of the National Council of Independent Retailers which is, as the name indicates, a national body. So it has given me a much broader scope than normal state issues.

Over the last 12 months, I was responsible for the compilation and presentation of the small retailers submission to the state parliament to their parliamentary inquiry into the leases act. This is a copy of our submission and there are copies available from the Small Retailers Association if any members wish to view it.

One of the quotes from that document really sums up the whole issue of retailing in the state and in other states, too. If you could indulge me, I will just read very quickly from the front page where it states:

For too long, the small retailers of South Australia have had to accept the weaknesses of their situations and have complied with the demands of their landlords and their agents, remaining silent for fear of future recriminations. Excessive increases in rent, the threat of non-renewal of a lease and thus the total loss of their investments, have been enough to keep the retailers in their place. It has been only the guarantee of complete anonymity for some of the retailers that has enabled the Association to gain their stories—

Such was the fear that our members had of the recrimination that could be brought against them. It goes on to say:

The power wielded by landlords and their agents, some in particular, is frightening. And it exists, to a very large extent, because of the oligopoly that is in the major shopping complex sector of the industry. The oligopoly has operated to the disadvantage of retailers (and the public) involving massive asset transfers from retailers, increasing occupancy cost levels, and a code of behaviour that has seen the exploitation of the retail market. These existing complexes generally dominate their retail catchment area, having catastrophic impact on smaller centres, strips, main street, or stand alone retailers.

That was done after interfacing with 300 to 400 retailers and hearing their stories, anecdotal evidence and also statistical evidence. So, we certainly got a very clear picture of the size and extent of the problem in retailing in this state.

I am also a member of the southern kickstart project, which is involved in the employment of youth. More and more I have found, when I have been involved in the problems of retailing, that it is not necessarily just a problem of retailing or unfair trading but a problem of unemployment. The two seem to go hand in hand.

You have had a lot of submissions—as you said, 150 of them—and it would be silly of me to reiterate exactly what they have done. I have tried to focus my attention on three or four issues in particular and give some illustrative examples of some of those problems, because often words are one thing but actions are another.

I have tried to draw an analogy in this document with the problem we had with the natural environment. The heretics of the past espoused some changes to the natural environment, and for many years their advice was not heeded. It was only when governments took action and insisted that certain codes of behaviour occur that we saw a change in attitude, both by the public and by major corporations, to that environment. We have seen over the last few years some changes for the better in that area.

But along with all of this has gone the one key issue for business, and that is the environment impact statement. What I suggest to you is that, at the moment, the economic environment is showing absolutely similar strains of stress to that which the natural environment was showing. I have listed on page 2 a series of key stress signs showing that the economic environment is in major trouble. One in particular is the growth in revenue payments. I have quoted a figure there showing how in seven years the personal welfare benefit payments have doubled, which must be alarming to all of us, and the fact that, in 1994, 95.6 per cent of the total personal tax collections were going in that area.

What I am suggesting to you is this: let us take a leaf out of the way we approach the natural environment and have government intervention by effective legislation changes and make mandatory economic impact statements before developments go ahead in our country. I think this would alleviate some of the problems that we see, which we try to address after the ball, just as we did with natural environment problems.

In 2.2 I have very briefly gone through some statistics. I do not know how many statistics you have been given, but there are some very important and key issues here. I refer to the significance of small

business in the Australian economy. I have quoted straight from the ABS for most of these figures. I think there is a key statement that we all recognise around this table, and it is that small business is acknowledged as a vital and significant sector of the Australian economy. Small business performance is recognised worldwide to be the key to general national economic goals. I think this is very important. My paper will come back to those economic goals.

You can see the figures. You have probably heard them before. It is interesting how many of our businesses are non-employing and how many do actually employ one to four or five to 19 people. Total employment in small business in 1994-95 was approximately 2.7 million, or almost 50 per cent of total private employment, or 40 per cent of the total work force. So, we are talking here about a force of huge proportions. If we can do something to bring about positive change, the impact on the economy must be huge. I make the point there that, if this could be lifted by only 5 per cent in this area, we would have no unemployment. It is a very glib statistic, I know, but it shows the importance of small private enterprise to this country.

There are some disturbing trends. I think this is why our economy has faltered over the last few years. You can see between 1983-84 and 1994-95 that small business has increased by 3.3 per cent per annum and employment by 2.5 per cent per annum on average. But in the last three years between 1991-92 and 1994-95, the last statistical data available, small business has increased only by 1.5 per cent per annum, less than a 50 per cent increase. And their employment was down to 0.9 per cent, which is a little over 25 per cent of what it had been over that total period. So there are signs for us.

Small business growth patterns have slowed considerably but, even more so, the ability to employ has slowed. I would contend that an unfair trading climate has been a major contributor to this trend. I could cite, not only from small retailing but from some of the business groups that I am involved in, problems with quality assurance programs and the difficulties they are having obtaining export dollars which have, in turn, caused losses in employment to them.

It is interesting to note, too, that during this time private capital expenditure lifted steadily in Australia. In fact in 1995-96 it was 56 per cent higher than 1991-92. For all of this there has been no significant improvement in unemployment or public benefit. The question should be asked: where are the gains being made for much of this capital expenditure?

Then I list three or four areas of unfair trading situations and all of these have a direct effect on employment, certainly in small retailing. The first one, of course, is high occupancy costs of lease retail space. I have in the first section, under 2.3.1 on page 4, listed some statistics from August 1995. You will notice that at the back is a graph showing those statistics. When it is compared with the retail increases on the white page on the back, compared over a period of 1988 to the year 2000—obviously from 1995 onwards they are projected figures—you can see that the difference between rental increases and turnover increases is becoming alarmingly large. And as that gap widens so does the rate of unemployment increase.

I was going to show you on an overhead projector, which we have not got this morning, how those employment dollars can be lost. Perhaps at your leisure, on the page in front of that at chart 2, you can work through those figures and it will show you how, for a typical retail shop, over a period of seven years,

approximately one-third of employment dollars are lost—converted from employment dollars to investment dollars. I will very briefly show you the figures so you can understand what we are doing.

They are two sets of figures from 1989 and 1996, and they are absolutely accurate figures of a retail shop. It shows the gross profit which is running at 40 per cent over that period of time; it shows the weekly turnover these figures are on; it shows the rent in 1989 being 10 per cent of turnover—it had increased by 1996 to 15 per cent of turnover. The on-costs, the other costs of running the business, ran at five per cent in 1989 and six per cent in 1996 so there are no huge gains there. The profits were 10 per cent of turnover in 1989, which was \$1,000, and the profits for the owner had dropped for 1996 to \$880 per week.

But the incredible figure is the wages. In 1989 the shop, which is typical of many shops that I interviewed, had 15 per cent of turnover devoted to wages in 1989. So they are employment dollars, \$1,500. By the year 1996 they had dropped to \$1,210. If you consider the annual wage increases and the increase in superannuation on wages in that period of time, and also the inflationary value, you find that the real figure, if it was to be equated with the \$1,500 of 1989, for 1996 should have shown \$1,896. In actual fact it was \$1,210—in other words, a loss in employment dollars of one-third. And that is typical throughout retailing.

Where have those dollars gone? Where is the magic of it? They are still there. You can see that the business is still viable. But what is occurring is that employment dollars are being lost to investment dollars. As rents increase, the tenants have no other option but to eat into two areas. Firstly, they eat into their own profits, or their own capital—converting their own business, other businesses, cars, whatever else, to pay rental increases, as turnover demands do not increase along with rental demands. The next thing to go is wage costs. So, wages over the years have been gradually eroded, to the extent that we have a major problem in employment in retailing. Bear in mind also that retailing has traditionally been one of the greatest employers of our youth. Is it not a coincidence that at the moment we have high youth unemployment in this country? I thought I would take you through that exercise very quickly.

The other information here is on the high occupancy. I have given you some figures on the use of personal savings. Again, all these figures come from the ABS documents, *Characteristics of Small Business 1995* and *Small Business in Australia*. They are freely available to you in those forms, and you will find that they are accurate. They show that, in small business, the use of personal savings by the retailers is huge. They are the dollars that have been put away for superannuation, as many retailers see their businesses at the end of their career or their period being converted to superannuation dollars. If they are not there, the government is going to have to pick up those costs as well. That is what is happening to many of our people. They are losing the dollars, and the public benefit is being diminished, because the government is having to pick up those welfare dollars.

In 2.3.2, I have just quickly gone through and listed some of the ineffective and unfair legislation that faces retailers at the moment. I will briefly mention one or two, just for your information. The landlords and their agents are distorting the spirit of legislation to gain an unfair bargaining position, and here are some examples. The five-year minimum lease has become the five-year maximum lease for retailers in shopping centres. Landlords are obliged to fill in disclosure statements, in which they must disclose any changes they are making, by stating in most instances that something may or may not occur. Hence, by doing that, they have disclosed all—by disclosing nothing.

The next example is the use of a six months short-term lease and lease holdovers to avoid new leases or relocation costs. In one of our largest developments, which you may have heard of, the Marion shopping centre—which is going to be one of the largest in Australia—over 90 tenants were held on monthly holdover for up to six years while they thought about when the redevelopment would start. The reason why they were kept on holdover was so that the landlords could gain advantage over relocation costs and be able to put into place, when they wanted to, leases that were in their favour. That meant that, for that period of time, those people were unable to sell their businesses. So, the capital assets were tied up.

Representatives of lessees are now able to be accompanied in their negotiations with landlords. The word ‘accompanied’ is being used by landlords to say, ‘Right. Your agent can sit there but must not talk or be involved in any of our discussions.’ It is a ridiculous situation. They have used the word ‘accompanied’ according to the letter of the law rather than using ‘represented by’. Many of our acts have regulations that are either enacted unfairly or have escape clauses in them. I have listed three or four for your perusal later.

On our inquiries, the Attorney-General of this state told us that part of our problem was that we signed leases that we should not have signed and that, if we had been fairly represented around the lease negotiating table, many of our problems would not have occurred. One of our members from the shopping centre, which I name in the paper, did everything exactly to the letter of the law. He took with him a solicitor who acted on his behalf throughout his negotiations. After many months they got to the signing of a lease. It had cost him many thousands of dollars to get to this point, and they signed off on a lease with certain agreements.

When the agreements came back there were four key issues that had been changed from the original agreement. The solicitor is now trying to fight these. They were issues such as that there would be a bond that would have to be provided at around \$25,000; that rent would be taken directly out of his savings account, monthly. He had to sign away that agreement, and there were several other key ones. It suddenly just emerged within a negotiation, and this is with a solicitor. So even doing the right thing has not seemed to help our members escape unconscionable behaviour on the part of landlords.

The extended trading hours issue is another key issue that I know has been mentioned in many of the submissions. I would just like to contend that we had, in November 1994, in this state extended shopping hours which were introduced into the suburbs of Adelaide. By April 1995, it was finished in most centres, being rejected by both tenants and the public. Yet now we are pushing again for it. Shopping in the Adelaide CBD on Sundays, which has been in now for about 18 months, has been an absolute failure. Turnover has not increased; costs have risen; major retailers are opening later during the week in an endeavour to save costs; and employment has been lost. Major department stores are seeking shorter trading hours whereas only the major supermarket chains are seeking increased hours. That tells you something about who wants extra trading hours. Is it the people or is it large supermarket chains seeking extra market share?

I refer to rural areas. In my role as the President of the National Council of Independent Retailers we have had a lot of involvement with rural areas in New South Wales. I can assure you that, if you talk trading hours in the Hunter Valley area around Gosford et cetera, you will find what they feel about what has done to their businesses. Similarly, in South Australia, in Port Pirie, we have seen the demise of many of our members.

There are other losses that have been forgotten in this extended trading hours business. One is that the loss to the tourist industry will be enormous, and we forget that all those people working in retail industry are potential Sunday tourists anyway. They will be taken out of the tourist market. Similarly, with sports and entertainment industries, sporting clubs now are being hard hit by many issues including pokies. This will have a huge adverse impact.

This may seem a silly one, but we have introduced daylight saving to conserve energy in this state and other states. Do you realise that, if we open on Sundays, certainly in retailing, the extra power consumption will double that saved by the daylight saving process? It is only a small one, but it is interesting, is it not? Why have daylight saving? Certainly, in retailing, it will not have any impact. The loss of family time will cost social dollars along the track, obviously, and there will be a large loss in public benefit if extended shopping hours are introduced.

The retail industry and trading hours should be exempt from the Hilmer competition policy, as is allowed in Hilmer, because I think there is a clause that says that, if the public benefit is not seen to be served by the competition policy, then exemption shall be made. In this case I believe the public benefit will not be served by extended trading hours.

Predatory pricing is perhaps the last key issue which is having a huge effect on retailers. What we have got to realise here is that predatory pricing is not competitive pricing. There is a difference between the two. Predatory pricing is aimed to put out of business, either totally or in an area, another competitor. Competitive pricing is just natural market forces and the two are not the same thing.

There are some wonderful instances of this. Traders often have a higher wholesale price than the selling price to the public for the same products of large corporations. Many small retailers have been forced to purchase their goods directly from supermarkets now in an endeavour to remain competitive. I just give a silly little example. A slab of coke cans, 24 cans, can be purchased for \$12 to \$13 any day of the week from supermarkets. If, as retailers, we purchase them direct from Coca Cola, the wholesaler, we will pay \$18 to \$21 for the same product. Obviously you can imagine what we have done. Many of our retailers are going and buying them directly from supermarkets, only to find now that one company in particular has said to the supermarkets that they are not to sell to retailers.

CHAIR—Mr Baldock, I am conscious of time. We have 15 minutes, and I know my colleagues are keen to ask you some questions.

Mr Baldock—If I could just finish my summary, there are lots of other examples there. The point I was going to make further down here—and I am sorry about the time factor—is that supermarkets do not need to sell products to make a profit. In fact, they are quite capable of making a lot of profit without making any profit out of their stock.

They sell shelf space for their products and we have plenty of instances of that. Even now there is a company that checks to make sure that companies are getting the shelf space that they pay for because of the rorts going on in that business. They sell end of aisle space for a premium; they arrange lines of credit up to six months without payments. Wholesalers pay for store promotions of their goods. There is even a contract

for the floor space advertising in supermarkets.

In fact the deal, as I understand it, is that they have given the rights over to a company and at the end of every 12 months they audit their books and take a share—somebody quoted it was 60 per cent of their profits, straight off. Similarly, even with the right to supply shopping trolleys, they also get a share of the profits from being supplied with shopping trolleys. You can see that they have an unfair trading advantage anyway that other retailers cannot match. So predatory pricing is very effective when targeting competition.

Perhaps I can just conclude on this because I think it is important. I do mention vending machines, too, and they have a whole life to them. I would just like to read this conclusion to you because I think it is the crux of the whole issue here. It states:

Above, reflect some of the methods that large, dominant corporations use in the name of competitive efficiency. The result might well be huge corporate profits but most often at the expense of social responsibility.

We have seen that in the natural environment. And we can see the banking industry with huge profits, yet still shedding staff. Incidentally, banking went through deregulation, I believe. It will be interesting to check the public benefit that that has accrued for us. The conclusion goes on to say:

Economic efficiency must take into account the general welfare of a nation and its people. This involves the higher duties of governments and must take into account the quality of welfare services and welfare dollars. The difference between competitive efficiency—

which the major corporations aspire to—

and economic efficiency, is a measure of the public benefit. The closer the goals of each are to one another, the greater the public benefit. Small business employ more people per capita, spread the employment dollars more evenly and spend more of their earnings in this country than large corporations. Too often governments are dazzled by the size of corporate investments and profits. Governments must begin to measure the value of business to the public benefit. The difference between competitive and economic efficiency is much less in the small business sector.

CHAIR—Thank you, Mr Baldock. Is it the wish of the committee that the document be incorporated in the transcript of evidence? There being no objection, it is so ordered.

The document read as follows—

CHAIR—I just have a couple of questions before moving on to my colleagues. Would you give us an outline, Mr Brownsea, of the activities the Small Retailers Association of South Australia gets involved in?

Mr Brownsea—There are a very broad range of activities that an association would provide for business members. We were formed in 1949. We are basically interested in the food sector, I suppose, though our membership is very broad and covers newsagents, hairdressers and the like. So we cover the ambit of the small retailer. We provide them with a regular journal, we provide them with legal advice, leasing advice, accounting advice.

CHAIR—So if someone is going into a business new, they come to you for the total education?

Mr Brownsea—They most certainly can. Yes, we do provide a business review service for people.

Mr FORREST—Are they all in big shopping centres or are they spread—

Mr Brownsea—Most certainly not. The spread of our members is very broad, as our survey that we gave to the Prime Minister a few months back showed.

CHAIR—Mr Baldock, we have had evidence on various issues about goodwill. Some say that it exists; some say that it does not exist, certainly in a retail environment. What is your view?

Mr Baldock—Certainly, goodwill does exist. It is as tangible as the goodwill that shopping centre owners use to on-sell their businesses too. We have seen, in the instance of places like Arndale, that, as the ambience of a shopping centre such as that has diminished, so has the goodwill component and so has the price. Goodwill is something that is taken away from a business at the end of a lease period, and it is the time when landlords know that we are most vulnerable and when it can be converted very readily to a new retail set-up. So, yes, goodwill exists.

CHAIR—That is my point. Does goodwill exist beyond a lease period?

Mr Baldock—Does goodwill exist in a shopping centre? When a shop is on-sold to someone else or that person moves out of that business and somebody else comes in, they immediately take up some intangible force. It is a group of customers that come to them. That has been created by somebody before their entrance into that centre. What is that force? How can we determine it? Some might use the word 'goodwill'. I would. So, it certainly exists. But it means that it can be transferred from one person to another under an existing system, without any payment. So, the work of somebody can be transferred and value-added to another retail centre.

CHAIR—Could it be argued then that retailers who purchase a new business may, in fact, be paying too much goodwill, if they cannot return their investment within the lease period?

Mr Baldock—One would say that you pay the market value. When we look at the market value, that is exactly the same force that landlords would contend that we pay for rent. Where is the difference? You are paying a market value at that period of time, just like in a house. You might have two identical houses, both

in different suburbs. Everything is identical, but you will pay more for one than the other. What is the difference? We might not call it goodwill in that instance. It has got another name, but it is an intangible value for value-added.

CHAIR—The difference should be that you are able to return your investment within a lease period, because beyond the lease period you have no investment.

Mr Baldock—That is right. Then, if we have a series where rents reflected this and refits reflected this with the length of tenure, we would be able to do it.

Mr JENKINS—Mr Brownsea, your original submission goes to comments about the need for strengthening codes of practice. Of what value are the codes of practice at the moment?

Mr Brownsea—Really none. I suppose it is the franchise industry that does have a code. The codes of practice are as good as the strongest person involved with the code is, for good or for bad. I regret to say that, really, codes do fail in the strictest sense of the term. We realise that the government is looking at eliminating black-letter law and moving to codes. But, at the end of the day, I really cannot see it working unless the code itself is enforced by some very strong legislation.

Mr JENKINS—In your opening statement today, you well and truly emphasised what you believe to be a need for legislative change to tackle harsh and/or oppressive conduct.

Mr Brownsea—Yes.

Mr JENKINS—What type of legislative change would you like to see?

Mr Brownsea—I think change that clearly recognises who, in fact, is affronted by certain practices. I am aware of what the former minister for small business, Senator Schacht, was saying in his proposed changes to the act. But there he was also, unfortunately, talking about leaving things alone which were considered to be the norm. I have great problems with that notion, because it clearly could be unjust in itself. So, we really are saying that if it can be established that a practice, in fact, is not of general advantage to the community then something should be done about it. At the end of the day, the public benefit—and we are all the public. Whether we are retailers, purchasers of product or whatever, we are all the public. Therefore, the notion of public benefit must embrace all of us, and it does not do that at this stage. When you look at it, the Trade Practices Act is, at the end of the day—as, indeed, is Hilmer—a big-business document.

Mr JENKINS—You also said this morning that you believed that legislative change could bring greater certainty. Some of the opponents of legislative change say that it would lead to greater uncertainty.

Mr Brownsea—I take on board what you are saying, and I understand that. I am part of a committee here in South Australia which is called the centres review committee. We are looking at what the government should be doing with shopping centres into the future. Here, all of a sudden, everybody on our committee—whether they are a retailer or a landlord or a developer—is saying that, yes, they do actually want some certainty as to where the future will be. So, this is an interesting development, I think. We are in difficult

times. Retailing is not travelling well, as everybody must be aware. It is just not Coles Myer that is having problems; we all are, and this is a fact of life. Therefore, we need certainty. If there is going to be development and so on, we need to know that the rules are not going to change down the track, or we need to know that the rules are there for a fixed period of time. At the present moment, the rules do not necessarily serve us particularly well, because they were made for other purposes, probably at another time, and the conditions have now changed. The law in itself must move with the times.

Mr JENKINS—I personally would have great faith that you could bring certainty through legislative change, but today we have had the examples under the South Australian tenancy act which would cover relocation expenses and we have been given instances where centre managements, through the use of short-term leases, have avoided the spirit of the legislation. So, where do we go to from there?

Mr Brownsea—I did bring this up with the Attorney-General. I said, ‘Why do you not legislate to make it illegal to avoid the act?’ because a group of landlords did make it quite clear in parliament house, next-door to us here, in talking to one of the members of the Democrats. They said straight out, ‘You can do what you like. We will find a way around it.’ There is the warning. They have no respect for the law. If that is the sort of person we are dealing with, we want to be aware of it and make sure that the law has no respect for them, necessarily. This is the problem. They believe they have an absolute right to growth in an economy which is not necessarily growing.

Another thing to point out here is that, if the inflation rate is low, do company profits also not inevitably have to come down because of that very factor? That is something that the community is not recognising. The media beat up the fact that this company or that company are slightly worse than last year; but, in fact, they may not be when you look at the economic circumstances. So, these people are demanding a pattern of growth which may not be achievable. If you look at Westfield, for instance, and their growth rate, how on earth can they achieve what they are saying they are going to achieve, short of taking it away from the tenants? I point out here that the major investors in many of the shopping centres are super funds. So, really, superannuants are going to benefit by the destruction of small business. That is really what it is all about now. It is a wealth transfer system.

Mr Baldock—But it is only short term. They will not benefit long term from it, because ultimately this has got to come to a conclusion. This is an example of what I was saying before about competitive efficiency. You cannot deny that Westfield and these other groups are showing wonderful competitive efficiency, but at what cost? The cost is this economic efficiency. You mentioned that the profits are gained at a loss to the tenants; but that is not quite so. It is at a loss to the public as well. That is what we tend to forget. It is all those people that are not now in employment and the welfare dollars that have got to be paid to keep them in the society. So, it is a greater problem than just tenants finding that their losses are there. It is everyone’s losses that are being taken.

Mr ALLAN MORRIS—Let me go back to goodwill for a moment, and then I want to go to another topic after that. It seems to me that what has been occurring has been a fairly dramatic change in the nature of goodwill, where shopping centre owners now believe that the goodwill built up is actually theirs—

Mr Baldock—That is right.

Mr ALLAN MORRIS—And they control it by lease times, by access and by shifting around. The difficulty for a business to take its customers somewhere else, into another location, is now quite marked, partly because of zonings and all kinds of other issues. It seems to me that that is not being discussed at all by the industry—that changing nature of goodwill as part of a business. It does not seem to come up much at all in the things you hear.

Mr Brownsea—I think there is a concerted campaign, and we see it not only in parliament. Recently, in our parliament here, the matter of goodwill was raised. Certainly, the accounting industry has been raising the matter of goodwill. Part of the commentary is that, if they can wipe out goodwill, all of a sudden the leasing problems have been resolved because there is nothing left. That is a fallacy. To look at it another way, if you invest \$400,000 in a bank, you will earn interest and you will get your money back. If you invest \$400,000 in a business, you may get nothing back and you may earn nothing.

Mr ALLAN MORRIS—What I am saying is that it is not necessarily wiping out goodwill; it is actually being transferred from the individual tenant to the actual set-up, because the people who come into a business in a shopping centre may not have come there if that business was not there.

Mr Baldock—That is absolutely right.

Mr ALLAN MORRIS—And it becomes the ownership of the centre, not the business.

Mr Baldock—That is right.

Mr Brownsea—But those tenants have paid a marketing fee to the centre to promote it, and they have paid for what has been devalued, not the centre.

Mr ALLAN MORRIS—I am not disagreeing with you. I am agreeing with you. But that does not come across. What is coming across is almost a defensive measure. Anyhow, I suggest that that needs a lot more work.

Mr Baldock—Just on goodwill, there are two issues. Firstly, goodwill, or the loss of it, is not why tenancies fail. Even businesses that start with no goodwill costs find within their second lease arrangements that they often come unstuck, because it is at that second point in time where the costs escalate. That is the first thing. Another thing that is interesting is an application for assignment of lease that AMP gets for its members. When somebody sells the business, this is what they have to inform the AMP:

Reasons for wishing to assign: I am/we are receiving the sum of—

for the sale of it—

as a consideration, being so much for fixtures and fittings, so much for goodwill and stock at valuation estimated at . . . and will be paid to me as follows.

That is the sort of information now that AMP wants on the sale of every property. Here again there is an

acknowledgment that goodwill does exist and has a definite value to it. So, the goodwill problem really is not the issue with tenants going out of business in shopping centres. It is more to do with high rentals and abnormally high refit costs demanded of them.

Mr ALLAN MORRIS—But, historically, the price people paid for a business depended on whether or not they thought the business could be built up and, in doing that, it would not necessarily be a profit per month; it would be the eventual profit and capitalisation of goodwill. I think that has always been a tangible part of small business expectations. That is being wiped out as a valid part.

Mr Baldock—Certainly.

Mr ALLAN MORRIS—Mr Baldock, I am mystified by your comment on the front page of your remarks that you are ‘a member of a small business group working with a political party’. Can you expand on that, firstly. I am not local, so I do not know what you mean by that. Is there something going on? Is there a task force working on it?

Mr Baldock—It is a group of representative small business people that have been invited by a political party to be involved with them on the basis of developing an economic policy. What the party felt was that the information they have been given in the past may not necessarily have been accurate. They feel that by getting more to the grassroots people—

Mr ALLAN MORRIS—Is that publicly known?

Mr Baldock—This particular one would be known within the party circles, but it has not made a public appearance yet.

Mr ALLAN MORRIS—Looking at the local newspapers, I noticed this on the Marion centre. I saw some conflicting remarks there. I saw a letter from an old lady saying how wonderful it is going to be and I saw some letters from tenants saying what a concern it is. So, there is quite interesting marketing going on. The shopping hours debate here is quite a complex one, because you had it for a while, then it went back again and now it looks like re-emerging with an extension of shopping hours. I am puzzled as to this kind of political movement. It seems to be a pendulum. Going further, another submission that we will be dealing with after you reinforces that the new legislation has done nothing to protect sitting tenants.

Mr Baldock—That is right.

Mr ALLAN MORRIS—So, your state committee went into it. It came up with a recommendation. You got new legislation, which tenants are saying is not working. You have shopping hours shifting—extended, contracted and extending again. It is very difficult for an outsider to work out what is happening, because in South Australia you normally do have fairly close cooperation. Normally, there is not a big gap between the community and government, of either persuasion.

Mr Brownsea—The problem with South Australia is that the market is intensely competitive here. Figures are put out by the Bureau of Statistics on a quarterly basis relating to the cheapest products around

Australia. There are 50 of them in that list, ignoring liquor and petrol. Traditionally, South Australia has had by far the greatest proportion. This last quarter, we have an all-time high of 29 of the 50 cheapest in South Australia. If longer trading hours result in cheaper product, this flies in the face of that argument totally and absolutely.

The inquiry into trading hours that was done in South Australia, in the end, was a flawed document. I would say that the people on that committee were there to achieve a result, rather than a fair result. The government did a public survey, which also flew in the face of what they then deemed to be the result, and that, in fact, destroyed the results of the inquiry. But that inquiry is still very much on the agenda, I can assure you, even if it be unofficially. Certainly, the drive for the extension of trading yours has nothing to do with giving the public what they want, because they have already established that they do not want longer hours via what has already occurred. It is all about the likes of Woolworths forcing everybody to open up for longer hours, which the likes of Macs, at the end of the day, cannot do. Woolworths said, 'When the small retailer goes home to sleep, we will get their business.' Such is the extent of fair play in Australia.

Mr ALLAN MORRIS—I am from Newcastle, which is not far from the Hunter Valley and Gosford. So, I am quite mindful of those problems. But I am puzzled to hear it, because you had the experiment. Normally, you people are pretty effective in your lobbying and your influences, and the community over here is not divided over this issue. How come—

Mr Brownsea—We may not be as effective as donations to political parties. Certainly, that has been raised recently. One politician said that he thought he owed something to a shopping centre magnate because of a donation. I am intrigued as to why he would have thought he did; but it was said, and it was said to our lawyers, so we know that it was said.

Mr ALLAN MORRIS—It was not a federal politician?

Mr Brownsea—No, it was not. So, that is just part of the problem. But, strangely enough, in a country which is endeavouring to embrace best practices, I cannot get off the ground the argument that we should be looking at optimum trading hours. They will not discuss it, and I know why—because it will mean shorter hours.

Mr FORREST—I have just one small question about trying to get a handle on the difference between rent you might pay in a large shopping complex and what you might pay out on a suburban street. Evidence has been given to us that it is something like double.

Mr Baldock—Yes, at least.

Mr FORREST—One would have to expect that it would be higher. There are airconditioning costs, multistorey car parks and then the capital investment. What is your feeling on that?

Mr Baldock—As you said, we expect a differential in rentals. There is no question of that. But, when we look at national averages that are recommended by accounting groups and other groups and we find that we are paying three to four or five times higher rentals than those, we have a problem. What we have here is

an oligopoly. It has all the dynamics of an oligopoly at work. A couple of major players set the market rate, and the market is distorted by the very system of a tenant being held to ransom at the end of his lease period. So, it is not a fair market rental.

Then we have the market following that trend. The market, obviously, follows it more closely in major shopping centres; but there is a fallout to other centres as well, as they see the rentals that other people are paying. The figures will double. For people outside a centre compared to people inside a centre, it would be five to 10 times higher per square metre. That is the sort of figure we are looking at.

Mr FORREST—My question was: What, in your assessment, would be reasonable? It has to be higher, but—

Mr Baldock—What we would classify as a fair market rental is one that is not distorted by a weaker party bargaining with a stronger party. That is what has happened over the years. That is what has pushed the rental up.

Mr Brownsea—Actually, Mr Forrest, there are figures that exist, which are not necessarily ours, that show clearly what each individual type of business can afford to pay and remain viable. Those figures are being exceeded many times over in many of the shopping centres now, as the power of those centres increases. At the end of the day, you can say, 'Well, why bother to go in there?' and that is true; but, once a retailer, always a retailer, I suppose. These people do seek out new opportunities; but it appears, via the means of the short lease, that they are not intended, indeed, to survive. Our figures show really that the profitable life of a small business is around seven years. The big traders get 10 or 20 years to write off their capital expenditure. We get five. Pro rata, our investment is just the same as theirs, but our business terminates. That is the problem. We pay an exceptionally high rent for an exceptionally short opportunity to recover what we have spent. But we can establish what would be a fair rent.

Mr Baldock—There is another interesting thing there with the length of operation. There are statistics to show that the longer a business operates, so significantly does its ability to employ go up. It is fairly significant here: 69 per cent of businesses with five to 19 employees were five or more years old, 56 per cent of businesses with one to four employees were five or more years old, but only 45 per cent of non-employing businesses were five or more years old. So there is a direct correlation between the length of time a person is in business and their ability to employ people.

Mr FORREST—I am not sure I understand what the attraction is for retailers to go into these big centres. If I went in, I would want a water-tight contract. If I was opening a hairdressing salon or a delicatessen there would be no other delicatessen come in. But obviously there is no protection, even for that, is there?

Mr Baldock—No, not now. There was at one stage. You see, we have historically gone through a situation—

Mr FORREST—Way back.

Mr Baldock—Over the last three or four years the spirit of legislation has been changed and the spirit of the people we are working with has changed. Many of these people have been captive in a period when the word of a landlord could be trusted and would be supported by action. But in the quest for competitive efficiency and greater profits these circumstances have changed, so you have got a lot of people that are in there long term and cannot get out. The only way they will get out is by losing their capital investment. Why does somebody else new come in? If you come into my shopping centre and you take my place, immediately you will be offered a rental much less than they would offer me, for a start. It becomes a very viable proposition to the first timer. Not only will you not have to pay goodwill, all you will have to do is set up your shop. You will also be paying a fair rental. But by the time you are at the end of your first lease period you have become captive and then you start paying the piper. Your rents will jump 20, 30 or whatever percent and you are captive like all the rest of us.

Mr ALLAN MORRIS—Is there any key money?

Mr Baldock—Key money is outlawed, but there are other ways of extracting that money.

Mr ALLAN MORRIS—In South Australian legislation?

Mr Baldock—Yes.

Mr Brownsea—Except for a franchiser charging a fee to enter premises under a licence. I cannot explain why the Attorney-General gave that exemption, because he would not tell anybody.

CHAIR—Because it is a franchise fee. That is what it would be: it would a franchise fee rather than a key money fee.

Mr Brownsea—Technically. It is there as an exemption and it defies reason because it is key money.

Mr ALLAN MORRIS—Would it be possible for you to forward that information to us?

Mr Brownsea—I would certainly be pleased to do that.

Mr JENKINS—If people have got enough get up and go, can't they insist on clauses that would say that there should only be one of a certain type of business?

Mr Baldock—We would love to, but you have got two things: once you are captive you either accept the terms of the landlord or you do not. You have the option. You are quite free to accept either. No compromise.

Mr JENKINS—In the American situation there is a long tradition of anti-trust legislation and things like that. Why is it that here in Australia it is skewed most definitely in the other direction?

Mr Brownsea—Well you might ask. I asked that question of Brian Howe last November. He looked me in the face, turned around and walked away. That was the answer, and I do not understand it. The American situation is entirely different to Australia. We, at the end of the day, have three or four retailers

who absolutely control or dominate the market. In America nobody in true terms dominates the market. In America they also have much cheaper rentals than we do here, so they are miles in front of us before they even trade the hours that some people claim they do. You really should have a very close look at trading hours around the world, because there is a lot of misinformation being fed into this country by those who are going to gain from that misinformation. The world trades a lot of hours in a lot of places for a variety of reasons. We neither have the population nor the demand for what is being hoisted upon us. Really, the net result of that will be the further disruption of small retailers. When we came here and were looking at some of the things we might discuss, I said to Max, 'I really have to say to myself that I have thrown away the opportunity provided to me by my forebears.' I have left nothing for my kids, because we have allowed these things to happen. I can find no excuse for myself. We are here to find and provide a remedy, but that is what we have done. In real terms we have thrown it away.

Mr ALLAN MORRIS—Could I remind you about the key money information?

Mr Brownsea—Yes.

CHAIR—Thank you for appearing today. It has been quite an enlightening submission. Certainly the discussion about employment is quite significant. It had an impact upon my thought processes as you were talking about the whole thing, so I thank you for that.

Mr Brownsea—Thank you in turn for the opportunity.

[11.44 a.m.]

LAZARI, Mrs Sandra, 95 Augusta Street, Glenelg East, South Australia

CHAIR—Committee proceedings are recognised as proceedings of the parliament and warrant the same respect as proceedings of the House of Representatives itself demand. Witnesses are protected by parliamentary privilege with respect to 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. Whereabouts are you from?

Mrs Lazari—I am a little shopkeeper from Westfield Marion.

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

Mrs Lazari—No.

CHAIR—We noted that your submission was written to the Prime Minister. Hence, the reason you are here is that it has passed through the system. So we are very happy to see you here and talk to you about that.

Mrs Lazari—I thank you for the opportunity.

CHAIR—Would you like to make an opening statement before we ask any questions?

Mrs Lazari—I can only repeat what the two gentlemen before me said. We have been in business in shopping centres since 1977. We have won two retail excellence awards. We have been on a monthly lease now for six years. I was told five years ago by my cardiologist to give work away. We were unable to sell the business valued at \$300,000 because nobody would pay that kind of money for a monthly lease. We built the shop up from taking \$1,000 a week to taking between \$13,000 and \$16,000 a week over the years. All our staff have been with us all that time.

Now we have been offered a new five-year lease for 70-square metres at \$103,000 a year. Initially, I was mad and said to them, 'No.' So they gave me a letter telling me to get out in 30 days. I went downstairs and all the staff were in tears and I was in tears. So we had a think and another think and we thought, 'We'll go back and see what we can do.' So they offered us something that we can barely afford, but it is the only way that we can keep our staff in the job. We get nothing out of it. Our investment, our superannuation, is that shop. So we can walk away and do nothing, but the girls do not have a job.

We will have to spend at least another \$150,000 to relocate, to redo the shop. All we are going to get

is a concrete square—no ceiling, no fixtures or fittings. We are not allowed to use what we already have; they all have to be new. So where is the incentive for me to borrow another \$150,000 to set up a new business? I am expected to pay \$103,000 a year with a five per cent increase every year. If I am lucky enough to reach the target figure they have put on me, they want another five per cent off the top.

CHAIR—Could you say that again for me, please?

Mrs Lazari—They give you a target figure to reach. If you go above that figure—

CHAIR—In turnover, you mean?

Mrs Lazari—In turnover, sorry. They want another five per cent.

CHAIR—On the total figure or from that figure onwards?

Mrs Lazari—Yes, from that figure onwards.

CHAIR—I am interested in a couple of things. Firstly, how long have you had this month to month arrangement?

Mrs Lazari—Six years.

CHAIR—And you cannot sell the business because you are only on a month to month lease arrangement?

Mrs Lazari—No bank would finance anybody who has only a monthly lease.

CHAIR—So you are now forced into taking out an arrangement to give yourself a lease period so that, therefore, you can sell the business?

Mrs Lazari—If we are lucky enough to be able to sell, yes. But I do not see how we would be able to sell it, because everybody knows now that they only give five-year leases with no right of renewal. In the past our rent has increased by 44 per cent.

CHAIR—I would be interested to know about the sorts of practices of the owners of the property. Who are the owners?

Mrs Lazari—Westfields and the Commonwealth Superannuation Fund.

CHAIR—So are Westfield management on site?

Mrs Lazari—Yes.

CHAIR—What sort of practices do they use when negotiating with you? Is it through letters or is it

personal discussion? Are you able to bring your own representatives in?

Mrs Lazari—Only recently are we allowed to bring our own representative in. We employ the services of Peter Southwick, a land valuer, who negotiates for us, but he can only negotiate so far. And the best he has been able to do for us was \$103,000 for a 70 square metre shop, when Woolworths, in fact, are paying \$125,000 a year for a 3,000 square metre shop.

CHAIR—What sort of product line are you involved in?

Mrs Lazari—We have hairdressing and retail products, shampoos, conditioners.

CHAIR—Were you asked to sign a document waiving your rights in any way?

Mrs Lazari—I do not think so. The lease just ties you up so that you have no right of renewal.

Mr FORREST—On a month to month lease, they do not have any rights under the legislation.

CHAIR—I am just asking whether or not you were asked to sign a letter and asked to go and get a view of this letter from the management, waiving any rights that you might have under certain legislation within South Australia.

Mrs Lazari—Not that I can recall.

Mr FORREST—I just want to explore a little why people go into these big shopping complexes. What attracts them in there? Obviously, there is an attraction that there is a captive market but, as a hairdresser, your market is you and your staff who build up a clientele. People do not just walk past and say 'Oh, I need a haircut,' especially if you are a ladies hairdresser. What attracts people to go into these places?

Mrs Lazari—There is not any profit in hairdressing, the profit comes from the on-selling of a product. If we were to make a profit on hairdressing, we would have to charge \$50 a haircut. And who wants to pay \$50 for a haircut? There is no profit in hairdressing. There used to be, but not any longer.

Mr FORREST—Because it is high labour cost. So you make your money out of retailing the cosmetics?

Mrs Lazari—No. With the rents going up all the time, one has to put one's charges up, and you can only put them up so far. As we found out by retailing products, lots and lots of ladies now are doing their own hair at home. They are colouring their own hair. The only thing they will have is a haircut but they will colour and even perm their own hair now. And there are lots of backyard hairdressers.

We had an accountant at our West Lakes salon before we sold it. All the staff were doing hairdressing at home because they offered the client, who was coming to my salon, to do her hair at home for \$20 less. 'I will do your perm for \$20 not \$40; I will do your colour for \$20.' That is because she could pop down to the wholesalers herself and get the product, use half a tube, and not declare that income.

CHAIR—Is that a growing trend?

Mrs Lazari—Yes, very much so.

Mr FORREST—Would it be fair to ask you, as a hairdresser, if you were caught in that general demise of a broad industry, that you have not kept pace by being in this location?

Mrs Lazari—We had two letters from centre management in 1980 congratulating us on our 64 per cent growth. Then we got competition. We were by ourselves. We have now got seven competitors all doing the same thing, selling retail, within the complex. Price Attack, mostly coming from Queensland, buy in bulk. It is a franchise. The marketing manager—not even the centre manager—came into my shop on a Thursday night and, in front of everybody in the shop, demanded to know why my figures were stationary, why I was only taking the same amount of money now, whereas before I was having growth all the time. I said, ‘Where are your brains? You have given me seven competitors. Of course the slice of cake is smaller.’

Mr FORREST—Are the other competitors in the shopping complex—it is probably difficult for you to establish it—on the same rent as you or they have been enticed?

Mrs Lazari—I do not know. If there is a shop opposite me that stays empty for a little while and the only applicant is another hairdresser, they will put that hairdresser in opposite me at a reduced rent.

Mr FORREST—That has to be unconscionable.

Mr JENKINS—Originally, did you start the business or did you take over a business?

Mrs Lazari—We had a little hairdressing shop outside the centre, and they invited us to come in and put up a trading table with products on it during one of the holiday seasons. That is what we did. They saw how well we did from that and they said, ‘Would you like to open a shop inside the centre, just selling the products?’ So we did that, and that was really successful. Then our supplier said, ‘No, you must have hairdressing incorporated in the same shop. To enable you to sell the product you must have hairdressing as well. You cannot have two separate locations, you must have it combined.’

Mr JENKINS—Was this thing with the supplier just word of mouth? There was never a written agreement to that fact?

Mrs Lazari—Initially it was a verbal agreement and, as staff changed over the years, it became pointed out to us that we had to have hairdressing with the product.

Mr ALLAN MORRIS—That is quite common though, is it not? There are hair products that you can buy in chemists, but there are some that you can buy only in salons and nowhere else. That is part of the nature of the marketing, is it not?

Mrs Lazari—Yes.

Mr JENKINS—How long did your business operate outside the centre?

Mrs Lazari—Three years.

Mr JENKINS—Then you moved into the centre—

Mrs Lazari—It was part of the centre; we were just attached to the centre.

Mr JENKINS—Right. So they were the landlords?

Mrs Lazari—Yes.

Mr JENKINS—So you moved in and you could not just sell the supplies; you had to do the hairdressing as well. How many other businesses were in competition at that stage?

Mrs Lazari—Three.

Mr JENKINS—At the time that you moved inside, or at the time that you came to a lease agreement, did you ask management whether there would be an increase in the number of competitors?

Mrs Lazari—They said, of course, we cannot give you—what do they call it—exclusivity.

Mr JENKINS—Right. So at that point in time you did not try for exclusivity?

Mrs Lazari—It is in your contract, in your lease, that you do not get exclusivity.

Mr JENKINS—So you went into the centre and that was on a long-term lease of five years?

Mrs Lazari—That was three plus three.

Mr JENKINS—Did you get the plus three?

Mrs Lazari—Yes, and the rent went up 44 per cent. They wanted 70 per cent and, in the end, they settled for 44 per cent.

Mr JENKINS—Right. So at the end of the six years you went on to monthly—

Mrs Lazari—A monthly lease.

Mr JENKINS—How long have you been on the monthly lease?

Mrs Lazari—Six years.

Mr JENKINS—So another six years?

Mrs Lazari—Yes.

Mr JENKINS—You are still waiting for this redevelopment that is going on at the moment?

Mrs Lazari—Yes.

Mr JENKINS—So it is in the course of the final six years that, because of your health problems and other things, you have wanted to sell the business but you cannot do so because you have only got the monthly lease?

Mrs Lazari—The bank will not give anyone a loan when the business only has a monthly lease.

Mr JENKINS—How close are you to resolving a long-term lease for the new position?

Mrs Lazari—We have been offered a five-year lease with no right of renewal.

Mr JENKINS—That was the incident where you were under a lot of pressure to do it over a short time period. Is that correct?

Mrs Lazari—Yes. Initially, I said no and I was given 30 days notice to get out.

Mr JENKINS—But you are now back on a monthly lease.

Mrs Lazari—I backed down and said, ‘All right, we’ll give you what you want.’

Mr JENKINS—You are doing it at this stage on the basis of loyalty to those that you employ?

Mrs Lazari—Yes. Rather than invest the money in buying Westfield shares, I would be well off and have no work to do.

Mr JENKINS—Outside of the problems during lease negotiations, what other ways do the management of the centre affect the operation of your business?

Mrs Lazari—They watch you very carefully. If I am going round giving notices out of our next tenants’ meeting, I have got a security guard behind me.

Mr JENKINS—Do you hold a position in the tenants’ committee?

Mrs Lazari—I am just the Treasurer.

Mr JENKINS—Just the Treasurer would be sufficient. So since the tenants’ committee has been in place, has that improved relationships with the management or made it even harder?

Mrs Lazari—It has made them even angrier.

CHAIR—How do they express that anger?

Mrs Lazari—We had a photograph in the paper. When my husband and I went up to initially talk about a lease we were told by one of the leasing men, ‘This is not going to get you anywhere, we’ll win in the end. So you are just wasting your time and energy in organising such things. It does not reflect good on Westfield or your business.’

CHAIR—So the incident where the marketing manager came down unannounced and started haranguing you about your turnover figures: is that a normal type of behaviour?

Mrs Lazari—That was one-off. The next day I went to see the centre manager. I was very upset, and I said he was not justified in doing that in front of a shop full of clients and staff. I was not hassled ever again.

Mrs BAILEY—Who were the people you had the conversation with following the photograph of you and perhaps some of the others in the newspaper?

Mrs Lazari—Two of the leasing guys from the new leasing department.

Mrs BAILEY—You said their comment was, ‘We’ll win in the end.’

Mrs Lazari—Yes.

Mrs BAILEY—What did you understand by that comment?

Mrs Lazari—‘Either, ‘We will get rid of you’ or ‘It will not make any difference to what we are doing.’

Mrs BAILEY—How much have you spent in outfits or refits during the time that you have been in the shopping complex?

Mrs Lazari—About \$150,000, with new fixtures and fittings and neon signs.

Mrs BAILEY—You were offered a five-year lease. What was it that persuaded you to simply exist on this month to month lease? Was it simply the rent or was it the fact that you had no option to renew that lease?

Mrs Lazari—I had no choice about existing on a month to month lease. My business was there, all the jobs were there. The lease finished and we were put on a monthly lease.

Mrs BAILEY—Did I misunderstand? You were offered a five-year lease?

Mrs Lazari—No. We had a three plus three year lease. Once the end of the second three years finished there was no lease.

Mrs BAILEY—And you have not been able to negotiate?

Mrs Lazari—They said because of the rebuilding they will not give longer than monthly leases.

Mr ALLAN MORRIS—When do they expect to finish upgrading the centre?

Mrs Lazari—October 1998.

Mr ALLAN MORRIS—And your new leases will start then, is that the theory?

Mrs Lazari—We are meant to sign a five-year lease now.

Mr JENKINS—The majority of tenants at Marion are in the same position, are they?

Mrs Lazari—Ninety of us.

Mr ALLAN MORRIS—How many tenants are part of the tenants committee?

Mrs Lazari—It started off with 45, then it went down to 35 and it has come down to about 12. Everyone is really scared; they are really intimidated.

Mr ALLAN MORRIS—Out of how many in the whole centre?

Mrs Lazari—There are 102 shops, I think, in the centre, so it is a lot of people.

Mr ALLAN MORRIS—Have others reported to you on hearsay that there is any pressure on them? Have they been talked to like you were?

Mrs Lazari—No, they just say they are scared that they will not be given leases or, if they are offered leases, they will not be able to afford them.

Mr ALLAN MORRIS—In that Senate committee did you share experiences in terms of how much you are paying or any of your commercial information?

Mrs Lazari—Not really, no. It does not come into it. It is just the cost of the rent—we keep to ourselves.

Mr ALLAN MORRIS—Do you know what the rents are per square metre for each of the different tenants?

Mrs Lazari—We are all different.

Mr ALLAN MORRIS—Did you work out why?

Mrs Lazari—I really do not know why. A jeweller I know pays a lot more rent than we hairdressers do.

Mr FORREST—In your evidence you forwarded in your original letter, you have said it can be from \$1,500 per square metre to \$6,000, but the \$6,000 applied to a coffee shop. It might be in a better location for walk traffic or something.

Mrs Lazari—No, he has 10-square metres, apparently, at Tea Tree Plaza, which is another centre. It is a Westfield centre, but it is in a different location.

Mr FORREST—I ended up a bit confused because your letter was written for a different purpose than where we are at. Really, you have been in this position for 12 years now. Your first lease was three by three, so at the end of three years was there a spike in the new rent?

Mrs Lazari—Forty-four per cent.

Mr FORREST—I would be interested to see the pattern of that. Obviously, it is clear that people are sort of enticed in and then, once they are compromised, the price for the rent escalates.

Mrs Lazari—We are locked in, yes.

Mr FORREST—I would be interested to see how your figures have done that over the 12 years that you have been associated with this. I think that would show us some fairly revealing information.

Mrs Lazari—We have all our accountant's figures.

Mr FORREST—Do you have that available?

Mrs Lazari—Not with me, no. I can definitely get it to you.

Mrs BAILEY—When you are negotiating with the landlord—when you are taking up, for example, the option at the end of the three-year lease and the landlord is reviewing your rental—have you ever asked on what basis the rent is calculated?

Mrs Lazari—They say market value, but it is their market value. That is always the story, market value.

Mrs BAILEY—Do you ask them to substantiate their market value, their assessment of the market value?

Mrs Lazari—They say it is 'our' market value, Westfield's market value—that is, the price they put on the area. If you win a retailer's award, it seems to me that your rent goes up even more quickly and even higher because they know you are a good retailer and you will hang in there because you have a lot invested, a lot of goodwill, a lot of clients.

We did go down the road to a little shop in Jetty Road, Glenelg, and we are only paying \$36,000 for the same square meterage. Whether or not we stay with that one or stay in Westfield, I do not know. But the new shop, which is in a quieter location, cannot absorb all our staff, so it means at least eight have to go.

Mr ALLAN MORRIS—How does that rent compare to Westfield's?

Mrs Lazari—It is \$36,000 against \$103,000.

Mr JENKINS—Is that a strip shop or a shopping centre?

Mrs Lazari—Jetty Road, Glenelg, is a seaside resort. There is a lot of passing traffic, but mostly at the weekend.

CHAIR—Are you aware of any rent-free periods being offered to tenants?

Mrs Lazari—Yes.

CHAIR—Do you know whether that is a common practice?

Mrs Lazari—It depends how hard your land valuer negotiates for you.

CHAIR—Have you been aware of rent-free periods for the period of time that you have been there—12 years—or is it only a recent occurrence?

Mrs Lazari—We have been relocated at the moment because they have knocked down where we were. We were moved around the corner a few hundred yards away, and we are on half rent at the moment because of this move. But, during the renovations, we were all covered in dust. As fast as we would dust the shelves, they would be covered again. We were all coughing and spluttering. Trying to conduct a business when all the renovations were going on around us was very hard.

Mr JENKINS—Was there a temporary refit of this position that you are in at the moment?

Mrs Lazari—We just moved our fixtures from where we were into the new shop—the empty shop.

Mr JENKINS—There was really no expense?

Mrs Lazari—Only two days' takings. It took us two days to move, to pack everything up and unpack it all and place it on shelves.

Mr JENKINS—Was management reasonable in negotiating that type of shift?

Mrs Lazari—Yes.

Mr JENKINS—Did you say that you had another business at West Lakes?

Mrs Lazari—We did up until a year ago. It was Westfield also. Initially, it was National Mutual, and the rent was \$10,000 a month. The moment Westfield bought the centre it went up to \$13,000. The following year it went up to \$16,000. We were able to sell it eventually at half the price. There again, they had brought in three more competitors doing the same kind of thing that we were doing.

Mr JENKINS—Did you have a long-term lease at the time of sale?

Mrs Lazari—We had three years left of a five-year lease.

Mr JENKINS—Were the practices similar at Westfield as compared to Marion?

Mrs Lazari—Yes.

Mr ALLAN MORRIS—Most of us have heard these stories before, but they never cease to shock. You have started a new business in Glenelg now at just over a third of the rent, but with fewer people?

Mrs Lazari—Yes.

Mr ALLAN MORRIS—Are your customers following you?

Mrs Lazari—They are new customers. The customers at Marion are staying there, because we are still there. A lot of them would not. It is very difficult to park in this area. Westfield do offer free car parking.

CHAIR—Mrs Lazari, thank you for coming along today. I do not know specifically how we can address your particular problem. I think that you are working your way through that. I do not know whether this committee can in fact help you specifically. The broader issues are what we are concerned about, and there has been a lot of evidence presented to us in all states. As Mr Morris was saying, what you have told us is complementary to what everyone else has told us, but it never ceases to amaze us. So thanks for appearing today.

Mr ALLAN MORRIS—If you were to provide that information on your rent and perhaps your turnover, that could be kept in confidence if that were suitable to you. It would be helpful just to get an idea of the rent increases and turnover increases.

Mrs Lazari—Most definitely, yes.

Mr ALLAN MORRIS—It would be a bit of insight into how that was working over the time you have been there.

CHAIR—If you provide that to Gillian, that would be great.

[12.18 p.m.]

CAUDELL, Mr Colin, MP, former Chair, Select Committee on Petrol Multi-site Franchising, House of Assembly, Parliament House, North Terrace, Adelaide, South Australia 5000

CHAIR—Welcome. We are going to ask you some questions but would you first give us an overview of your inquiry—some of the things you looked at, some of the people you spoke to, some of the problems they were citing and an overview of your recommendations.

Mr Caudell—The committee was established in October 1995 as a result of representations from service station dealers and the MTA in South Australia in relation to the setting up of multi-site franchising by Shell and Mobil. The concerns at the time were that the petrol reseller market in South Australia would be in the control of approximately five people—they would have control of the reseller market in Adelaide.

The dealers were complaining and advising us that they believed the offers being made to them to relinquish their franchise agreements were unfair and unjust and that pressure was being placed on them in the marketplace to relinquish their agreements. They also believed there were no provisions within the South Australian legislation or federal legislation to provide them with any protection with regard to the retention of their leases, even though there is the Petroleum Retail Marketing Franchise Act and the Petroleum Retail Marketing Sites Act which were set up for their protection.

We wrote to every oil company. We received verbal submissions from BP and Caltex who advised us that, at this stage, they had no intention to proceed down the line of multi-site franchising. However, they did support in principle the situation that Shell and Mobil were proceeding with. Shell and Mobil appeared before the committee as well as the Shell dealer group, Shell National Action Group, the Mobil dealer group and a number of service station dealers who had concerns.

It was apparent that some dealers were receiving better treatment than others, that in the multi-site franchising being established some dealers were receiving favourable treatment over other dealers. For example, the Mobil multi-site franchisee, when it was being established, was offered \$110,000 in goodwill for each of his service stations and within the space of one minute he re-signed an agreement with Mobil and bought those service stations back from Mobil for \$40,000 each. At that stage he had three service stations which he sold to Mobil. He had a net gain of \$200,000, and that just happened to be the amount he needed to finance his operation to go into a multi-site franchise. Not all Mobil dealers were offered that particular deal. That particular Mobil service station dealer was previously the chairman of the Mobil Dealer Advisory Group that had expressed concerns previously on the approach being taken by Mobil. The Mobil dealer group believed and provided evidence that indicated that Mobil were using pressure in the form of price support, rental support, et cetera, to put the dealers in a position where they would have relinquish their franchise agreements.

In the case of Shell, evidence was provided before the committee that Shell multi-site franchising that was established was Shell's attempt to circumvent the sites act and set up vertical integration. That vertical integration was in the part that the Shell multi-site franchisee was being provided \$150,000 per annum guaranteed income for running the service stations. He would also receive at the end of the 10-year period, if

he performed up to expectation and lasted the 10-year period of the agreement, a \$1 million hand-out. That \$1 million payout at the end of the 10-year period was not available to any other service station dealer. All service station dealers that decided not to accept Shell's or Mobil's offer to buy them out would receive nothing at the expiration of their leases.

Previously, Shell and Mobil had provided to their dealers the indication that they would be renewing their leases when their leases expired. In their conference in Los Angeles, Mobil advised them that they would be renewing their leases, and that they felt that the dealer network they had was a good dealer network. That is now the subject of legal action before the Federal Court and that decision is, with regard to the direction to be taken, to be handed down, I understand, later this year.

The Shell dealer group have established a class action as well before the Federal Court in relation to promises that were made to them in Bali. In that case they were advised that their leases may be renewed at the expiration of their current leases for 50 per cent of the franchise fee. Within 12 months, Shell wrote back to them and said, 'We no longer intend to proceed with that particular course.' When their leases expire, they expire.

The committee did find that some of the actions of the oil industry were of concern and they felt that if those particular actions were to continue, there would be a need for the committee to recommend to the state government the establishment of a franchise tribunal to control the conduct of franchises, in particular, in the oil industry. The committee recommended a number of changes to the franchise agreement. They were not dissimilar to the ACCC in the fact that we believe that there needs to be a new franchise agreement in plain language. There also needs to be a clause included in that to cover early termination of the franchise by the franchisor so that there would be some provision within the system, and there could be an understanding of what a franchisor was entitled to if the franchisee decided that he wanted to terminate the franchise agreement.

Mr FORREST—Does that mean you are not recommending repealing the franchise act?

Mr Caudell—No. We are saying that there should be a franchise act. Like the ACCC, we do not believe necessarily that vertical integration was the way to proceed and that it did not lessen competition. We did agree with the ACCC in the fact that the horizontal integration, which is occurring in the oil industry, was unacceptable in the form of competition, that there needed to be more competition at the wholesale level, and that, in turn, would lead to greater competition at the retail level. So we did concur with the ACCC in the area of horizontal integration. We did not concur with regards to vertical integration. There is a need for a franchise agreement for the oil industry and for those dealers that do survive this process.

We also believe that in reframing the Oilcode, which I understand the MTA have since pulled out of, there is a need for an independent arbiter from the Oilcode, so that if there is a disagreement associated with the early termination of the franchise, then the facilitator of the Oilcode could provide a referral to an independent arbiter to ensure that the provisions of the franchise agreement are adhered to.

Mrs BAILEY—Did you make recommendations as to whom the independent arbiter should be?

Mr Caudell—No, we did not. We also believe that in the rewrite of the Petroleum Retail Marketing Franchise Act, there should be two separate agreements: firstly, a lease agreement and, secondly, a franchise agreement. The reason for that is that we are advised that the service station dealers do come under the provisions of the Retail Leases Act in South Australia. However, to affirm that would require legal action that would be costly and outside the provisions of an ordinary service station dealer to take that course of action.

Recent cases before the Federal Court would show that most service station dealers would be frightened off by the oil industry in relation to taking action to show that they were under the provisions of the Retail Leases Act. So, therefore, we feel that it should be legislated for, to ensure that dealers do come under the Retail Leases Act and that they have a separate agreement for their retail lease, and a separate agreement for their franchise.

Mr FORREST—Tell us a little more about the teeth this arbiter is going to have: little David with his sling shot and no stone, against Goliath.

Mr Caudell—The current situation with the Oilcode is that it was given to us to believe that the Oilcode itself has no teeth and no provisions at all, and that if there is no agreement between the parties then nothing occurred. We felt that if it is within the franchise agreement itself, with regard to the provisions of how it should be done, then if a dealer felt that he was not being treated as per the terms of the act he should be able to go before the Oilcode, which could refer it to an arbiter. That arbiter should be able to come back to the Oilcode and say, 'No, the provisions of the act have not been adhered to.' It is federal legislation, so it is not for us to say how it should proceed from there. We felt there should be someone to decide how the provisions should be addressed. It is up to yourselves.

Mr FORREST—It needs teeth.

CHAIR—Continue with the summary of your recommendations and then we will go to questions.

Mr Caudell—As well as that, the select committee believes that most of the competition is between the oil companies, rather than between the service station dealers. They also feel that there should be no further amalgamations of oil companies. They believe that four oil companies should be a minimum with regards to competition at the wholesale level. We also believe that there should be transparency in pricing, similar to the ACCC recommendation, and that transparency of pricing should take a number of forms, one of those being quarterly reporting of petrol prices in the local newspaper as well as in the Royal Automobile Association's journal. It would show up the pricing differences between metropolitan and country areas.

The committee also believed that there should be no legislative impediment to the establishment of new service station outlets in South Australia. South Australia currently has a Petroleum Products Retail Outlets Board, which decides where a service station may be established in Adelaide and it may refuse a licence for a person to establish a new service station. The committee felt that was an impediment to competition and the role of that authority should cease so that independent outlets could be established in South Australia. The committee was advised, by the ACCC report, that only 18 per cent of the service stations in Adelaide are independent, non-branded, versus 30 per cent in Melbourne. They see the Petroleum Products Retail Outlets Board as an impediment to establishing independent service stations.

We also believe, as I said, that an independent fuel terminal needs to be established so that importing of refined products into Adelaide can occur. If an independent fuel terminal were established, and also if provisions were made for independent service stations to be established in Adelaide, we feel that the competition at the wholesale level would have to ensure that they had a market to supply at the retail level.

We also recommended, as everyone has said about its provisions, that every endeavour should be made to scrap the Laidly agreement to ensure that those people who complied with the relevant standards would be able to purchase fuel from the refineries or the fuel terminals. We also recommended the establishment of terminal gate pricing under which people from all service stations could buy fuel from those fuel terminals at the same price.

The committee believes that the oil industry controls the pricing and, therefore, certain service stations are discriminated against. The establishment of terminal gate pricing would enable those service station dealers to all purchase at a similar price, so all people would be able to have the benefit of the competition at the wholesale level.

The select committee also recommended that evidence provided before it be referred to the ACCC and to the Commonwealth government for further examination. That evidence and statements have been provided to the ACCC and to the federal Treasurer for further investigation. We believed that certain information provided to the committee was outside the terms of reference of the committee and was also outside the powers for us to investigate. We handed that over to the ACCC as it was in the area of unconscionable conduct, et cetera.

CHAIR—Thank you very much, Mr Caudell. I have a couple of questions before passing to my colleagues. We are looking at harsh and unconscionable conduct. One of the arguments that has been put to us by the oil industry is the repealing of the petroleum franchise act and the Petroleum Retail Marketing Sites Act, whereas the franchisees say not to. Do you have a view on whether those acts should be repealed?

Mr Caudell—The committee in investigating the issue of the sites act found that since 1980 the oil industry had quite successfully circumvented the requirements of this act without intervention by previous federal governments and as such we felt that it was not really serving the purpose that it was intended for. The committee did recommend that if the oil industry placed any impediments in front of the state government with regards to the establishment of the recommendations of the committee then the committee believed that the issue of divorcement, either partial or full, should be placed on the table for debate.

Mr FORREST—So repeal the sites act but retain the franchise act.

Mr Caudell—Retain a franchise act but have it written in plain language with certain provisions to ensure that the dealers are protected.

CHAIR—It has been argued before us that the Trade Practices Act should be changed to say harsh and/or unconscionable conduct. It has also been argued to ask that if we did that and added any more to the description of that particular harsh and unconscionable conduct that it would create some uncertainty within the oil industry. Do you think the TPA needs changing, or not changing, as a result of your inquiry?

Mr Caudell—In the inquiry it was suggested to us the need for the updating of a number of acts, including the PRMF Act, to bring it into today's circumstances. The impression that was gained was that they did not feel as if they were protected by any particular act, that there were no protections in place for them on the harsh and unconscionable conduct. It was put before us there had been numerous inquiries and nothing had occurred and that there was a need for some form of provisions that would not incur a great deal of cost to the service station dealer. They felt that to seek remedy at law was nearly impossible because they could not afford to take on the oil industry.

CHAIR—Concerning this franchise tribunal that you spoke about very early in your submission, you said broadly that it would cover all franchises.

Mr Caudell—Yes.

CHAIR—This particular open inquiry is looking at that relationship between franchisor and franchisee, even outside of the oil industry. How would you perceive this franchise tribunal acting and what sort of responsibilities would it have?

Mr Caudell—The committee did not get into that area to look at that specifically because it was outside the terms of reference. What we felt was that when we looked at everything there was nothing within the legislation that we could use to assist us in determining whether dealers had been treated in a fair and equitable manner. There were no acts that covered the franchise operation, as was occurring in the oil industry, other than the Petroleum Retail Marketing Franchise Act. There was nothing dealing with the code of conduct of a franchise. We felt that with the growth in the number of franchises in the marketplace, both in the oil industry and elsewhere, that there was obviously going to be a need in the foreseeable future for some form of franchise act and franchise tribunal to oversee the operations of a franchise.

CHAIR—Okay, and how would you see this particular tribunal responding to that? Would it have legislative teeth and—

Mr Caudell—There is a need for something with teeth within the oil industry because at the moment there is nothing.

CHAIR—Okay.

Mr FORREST—They want more than teeth, they need a big stick. For Mr Morris's benefit, I have no trouble adjusting to unconscionable conduct when it comes to oil companies.

Mr ALLAN MORRIS—Funny about that.

Mr FORREST—You have answered my question about the teeth matter. That is for us to address one day. Did you have an opportunity to consider an attitude to the wholesale price of fuel, given that it is regulated intensely now, and whether that is part of the problem?

Mr Caudell—No, we believed there was a need to have competition at the wholesale level, that that

was the important part, that there needed to be greater competition at the wholesale level because if you have competition at the wholesale level, then in turn you will move on and those benefits will flow down to the retail level. Right at the moment, you do not have competition at the wholesale level in the oil industry. You have the majors that control everything from the wellhead to the steering wheel. The only competition that actually occurs is at the petrol pump. So the competition is at the tips of the fingers. So, in actual fact, you do not have competition. There is very little competition in the oil industry.

Mr FORREST—The maximum wholesale price is fixed by the ACCC now. Did you give consideration to the merits of removing that regulation and saying, ‘let it fix its own level’?

Mr Caudell—No, the committee did not look at the maximum wholesale price. It was mentioned a number of times to the committee within the hearings that the maximum wholesale price had paid little part other than as a base from which discounting occurred. Price support came off the maximum wholesale price. The maximum wholesale price did not really rate other than the fact that the price always moved back to that level rather than anywhere else.

Mrs BAILEY—Your recommendation about the independent arbiter: although you did not make a specific recommendation, were you moving in the direction of simply amending the Trade Practices Act or were you thinking more of what you mentioned previously about a franchise tribunal or ombudsman? You must have had some indication from your inquiry.

Mr Caudell—We were not looking at something within the Trade Practices Act. We were looking for something that could be established within the Oilcode such that if there were disputes over the termination of a franchise then the independent arbiter could have a look at the provisions as set out in the franchise act with regards to the termination of a franchise and ensure those provisions, as they relate to that particular service station, have been followed. A recommendation could come back to the Oilcode with regards to the implementation, to ensure that those provisions had been followed.

We did not want to establish another level of bureaucracy, but we wanted to ensure that there was some form of teeth within the Oilcode. We gained the impressions that there was no teeth within the Oilcode at the moment.

Mrs BAILEY—So what you are really suggesting is a person like the Banking Ombudsman, who is funded by the banks.

Mr Caudell—We did not go into actually who was going to do it, but we did not want to come down with something that established another level of bureaucracy.

Mrs BAILEY—If there is not a level of bureaucracy, it has to be funded somehow.

Mr Caudell—Yes.

Mr FORREST—A toothless tiger.

Mr ALLAN MORRIS—A slight divergence: we had some examples raised with us about people signing contracts, effectively under duress, not necessarily in service stations, but I understand that it happens in service stations, as well. ‘You either sign a lease on our terms or nick off.’ I would have thought that the state laws would normally protect anybody from a contract under duress. That would seem to be a normal part of the mechanisms, particularly in this environment. Has that been canvassed or discussed?

Mr Caudell—No, it was not discussed, other than from my own experience in the oil industry. I had experience in the oil industry from 1972 to 1985 as an executive for ESSO, and in 1985 to 1989 as a service station dealer with two service stations in Adelaide. It is a common occurrence to place a lease in front of a person and tell them to sign that lease. If they ask for a deletion of a clause which they find is unacceptable to them they may be told to sign it in its entirety or not have a lease. Also you would advise them that that provision relates to if a person were to cause problems and we need that clause in there to ensure that we can force that person out of the site, but it will not relate to yourself.

Mr ALLAN MORRIS—I am talking to you partly as a state member, but the example we had earlier today was the Marion shopping centre where state laws were changed in terms of fit-outs organised by the owner which would have meant that a number of people were required to sign a letter forgoing those rights or else they could not sign their lease.

Mr Caudell—I have a personal knowledge of Westfield Marion and the Retail Leases Act is before cabinet at the moment for changes in South Australia, so that there are certain issues that have been raised in the marketplace that are about to be changed.

Mr ALLAN MORRIS—So it would be similar to what I have heard of in petrol retailing where people were told, ‘Sign it or else.’ In other words, there was blackmail or duress. This unconscionable conduct is one thing but it seems to me that signing away your rights under duress is another thing. It is actually a slight divergence, but I thought state laws would normally protect it.

Mr Caudell—There are changes being put in place to protect those people in relation to that.

Mrs BAILEY—I just wanted to come back again to this question of the independent arbiter. If we use an example like that, the damage is done by the time someone has been forced to sign a lease and then on reflection may feel that they have a strong case to go to an independent arbiter. It would seem to me that the core issue is the role or the process of this independent arbiter, that if it could be tied up very tightly with some legislative backing before people get to that position, there may not in fact be the need for this extra level, whether it be extra level of bureaucracy or a self-funded scheme or whatever. Could I have your comments on that?

Mr Caudell—We are sort of moving out of what we actually had as our terms of reference and what we actually did discuss, so it is my own personal point of view. My own personal point of view is that there is a need for the establishment of something with teeth within the oil industry for the protection of those service station dealers that still remain and to ensure that dealers are protected through the provisions of the acts that are established and that their protections are enforced, because at the moment their only protection is before the courts, and that is a high cost and it is a high-cost remedy. There needs to be a low-cost remedy.

Mrs BAILEY—Thank you.

CHAIR—In relation to goodwill, it has been argued fairly solidly from around Australia on two parts, one that there is an established goodwill and one that there is not an established goodwill. The oil industry representatives suggest there is no goodwill, at the expiration of a lease that is it and there is no guarantee of lease continuation, whereas on the other hand we have a number of retailers and also dealers, if that is the right terminology, but a garage operator, saying that there should be some goodwill. What was the committee's position on this?

Mr Caudell—The service station dealers appreciated that their leases were for a nine-year or 10-year period, depending on which company they worked for, and that, if their leases were not being renewed, there was no goodwill at the expiration of that period. But what was established in evidence was that in the case of Shell establishing their MSFs, one person applied for a position as an MSF and was offered—as per the ad that appeared in most of the major newspapers throughout Australia—\$150,000 per year as the guaranteed level of support income for the running of those service stations.

At the expiration of the agreement, that person would receive \$1 million, which was \$100,000 per annum for the 10-year period, as a guaranteed pay-out at the end; whereas any other service station dealer who decided to stay on for the whole 10 years or the remainder of their lease would not be paid anything. All they would end up with was the value of their stock on hand: they would be paid for that. They were advised of that by the oil industry, and the oil industry advised us that that was the commercial reality. And we have to accept that commercial reality: if a person's lease finishes, at the end of that period there is no goodwill and there is very little you can do.

But the concern was—and we accepted that concern—that the oil industry had gone against all its previous practices and had told the service station dealers that in August 1995, in relation to Mobil, their leases would not be renewed and that at the expiration of their leases, if they did not accept the offer that was being made to them now, they would get nothing for them. So the industry basically made the leases or franchises valueless to anyone else in the open market. The open market provisions no longer applied: the oil industry basically was the only buyer and seller of franchises in the marketplace.

A particular example is of a service station dealer in the Adelaide Hills who purchased, in October 1994, a franchise that had two years to run. Prior to purchasing that franchise, he had discussed with Mobil the buying of that particular lease. When a person buys a lease knowing that he only has two years to go, he really takes it on face value that the lease is going to be renewed. But in the discussions with the oil industry he was advised, and every indication was given to him, that if he operated the site in the Adelaide Hills in the same form as he was operating his existing site in the southern suburbs of my electorate then his lease would be renewed. They knew that he paid \$95,000 for that lease in October of 1994. In August 1995 they told him that his lease would not be renewed and they offered him \$18,000 for the remaining period of his lease. But they knew in October 1994 that his lease would not be renewed: when they gave evidence before the committee, they told us that the decision making process had been 18 months prior to telling the dealers in August 1995.

CHAIR—Have there been any examples of the oil companies funding capital investment by a

franchisee?

Mr Caudell—In the case of Shell, the evidence by their multi-site franchisee was interesting, because he was unaware of how much he had borrowed, what interest rate he had paid for it, and who his legal representatives were. He borrowed \$13 million and, according to evidence before the committee, he did not even bother to solicit a quote for interest rates from any other banker. He went with the ANZ Bank because that was Shell's bank. Yet he gave evidence before the committee that he bought a shelf company in Melbourne because shelf companies are cheaper in Melbourne than they are in Adelaide. So for the sake of a \$2,000 shelf company he shopped around; but for the sake of interest rates on a \$13 million loan he did not even bother shopping around. He was unaware as to how much he had borrowed. He thought he had borrowed something in the vicinity of under \$10 million, but the committee advised that he had borrowed \$13 million, which was strange.

We asked him about guarantees et cetera and the fact that both Shell and the ANZ Bank had a charge over his assets. We asked whether he had given approval to both charges. We eventually received a letter which was advising the ANZ Bank from Shell that, if he were to fall over, Shell would pick up the debt. Basically, Shell had given the ANZ Bank a guarantee over the loan in that they would pick up the loan if he were to fall over. That happened in relation to the multi-site franchising. We are advised that there was a similar relationship for every multi-site franchise throughout Australia. We are also advised that the articles of association are established so that the MSFs cannot sell any assets without Shell's approval and they cannot have a board meeting without Shell's approval.

CHAIR—This would indicate, by implication, that—

Mr Caudell—Vertical integration right through, control of the assets and everything.

CHAIR—they are company owned, those sites—

Mr Caudell—A company owned and operated outlet.

CHAIR—Are there any further questions?

Mr ALLAN MORRIS—You just told us about the case where the company says in evidence that they had made a decision and therefore falsely advised him—consciously so. Wouldn't that have been actionable?

Mr Caudell—We forwarded that information to the ACCC.

Mr ALLAN MORRIS—Or the ASC?

Mr Caudell—We forwarded all our documentation to the ACCC. From there, it is up to the ACCC.

Mr ALLAN MORRIS—No, what I was thinking of there was, firstly, whether that was fraud or not. If they tell the person so that he trades on as normal, knowing they have already made a decision that that

process is going to change, I would have thought that was straightforward fraud. Do the state police not get involved?

Mr Caudell—No. The trouble in the oil industry is that everything is by word of mouth; nothing in written down in the oil industry. As a result you have no witnesses. You have a conversation between a service station dealer and a territory manager or a person who looks after a number of service stations for the oil company. Everything is a verbal situation. In evidence given before the committee, Mobil did not deny having advised the dealer that his lease would be renewed further down the line if he performed et cetera. However, the person who was before us said, 'I didn't take part in those negotiations.'

Mr FORREST—No conscience.

Mr ALLAN MORRIS—I understand what we mean in terms of unconscionable conduct between traders. But what we are getting here is outright fraud. They have made a decision as a company, on one hand, and then tell a prospective purchaser of one of their franchises that they have not. That is not simply unconscionable conduct; that is actually criminal conduct. I am surprised that your state police—

Mr Caudell—You have got to prove it.

Mr ALLAN MORRIS—The state police should at least talk to them. If you have taken evidence of that nature, and that is on oath, that is a fairly substantial basis for a starting point. It seems to me that the state police or the fraud squad should start talking to some of these people because these companies cannot operate in a code of secrecy. They are still eventually publicly accountable to public laws. I am just surprised that we use fraud squads and we do not seem to use them in some of these deals.

CHAIR—At least some of this information is being passed on.

Mr ALLAN MORRIS—But not to the state police. You might think about looking at it as being a straightforward fraud exercise because it seems to me that it is. Secondly, I think this appears to be a way of getting around the old system of price fixing that the federal companies used to deal in. The different companies—certainly around our way when there was discounting on—when they started and when they stopped was all so synchronised. Some of my constituents have told me that they would get a telephone call from the company telling them what was happening. Is this still happening in South Australia?

Mr Caudell—Yes. The indication given to the committee was that the old practices were still continuing. They would receive a telephone call to tell them when the price was going up and they would put the price up accordingly. They would be told that their rebate would be withdrawn.

Mr ALLAN MORRIS—This afternoon we have a witness, a Shell franchisee, who makes the point that he was sold a franchise, I think, four years ago as part of Shell FORCE as the greatest thing since sliced bread. Then Shell changed its mind and began squeezing and manipulating him out of the franchise. Are you aware of that particular aspect—not that submission, obviously—but of Shell having this change of policy and selling franchises? Do you know what kind of prices they were selling them for at the time?

Mr Caudell—I am not aware of exactly what price the dealers were paying for them. Generally, the MTA could answer. Everyone was offering different prices, but we did not receive any evidence before the committee of what they actually did pay for the franchises when they went in. They all pay in different ways. Some pay it up front and might pay \$30,000 for their franchise, but they will pay another premium associated with their rental as they go on, and they will pay their royalties as they go along. Whereas, a Caltex service station dealer might pay \$70,000 up front and then just pay a normal rent as he rolls along.

Mrs BAILEY—It is more an advertising fee.

Mr Caudell—The new Caltex/Ampol franchise agreement is a perfect example to see of something with regards to franchise agreements. You pay not only your franchise fee up front, you pay royalties for the selling of petrol, the workshop bay, and the sales room. You have an advertising royalty, and a computer royalty. Basically, anyone that signs one of these really needs to take some strong legal and financial advice.

Mr ALLAN MORRIS—The reason I raised it was going back to that fraud question. If a company sets up one day and starts selling franchises, and a week later decides that it is going to have multi-site franchise instead then, when does that change of policy become a breach of faith, or a breach of trust? More importantly, was the original sale fraudulent? Was it sold with the fraudulent intent that those people were to be hung out to dry when changes were made later? I just wanted to raise with you again that people have been saying things of that nature on public record. I am just surprised that we have not seen fraud squads asking people from Shell who talked to whom, and who knew what, and how. In one case you had Mobil and in another one you had Shell. It just seems to me that some of the fraud squad should be going round to these people and asking who negotiated, on what authority, what was put forward, and whether there were cases of fraud either within or between the companies. It may well be that Shell employees were not advised on what had been decided anyhow.

Mr Caudell—I appreciate your point and we will have some discussions with the police minister if he wishes to have a look at the evidence. I do appreciate what you are saying.

Mr ALLAN MORRIS—I think that it would be interesting this afternoon to ask this man whether he was misled. And if so, we could consider whether that constitutes fraud.

CHAIR—We will do that this afternoon. Mr Caudell, thank you for appearing before the committee. Your evidence has been quite well received, I think, by the members.

Luncheon adjournment

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

[3.52 p.m.]

McFETRIDGE, Mr Stewart, Director, Chatsway Pty Ltd, Shell Elizabeth Park, 110 Yorktown Road, Elizabeth Park, South Australia 5113

CHAIR—Welcome. Committee proceedings are recognised as proceedings of the parliament and warrant the same respect as proceedings in the House of Representatives. 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 consider your request. The committee has received your written submission and authorised its publication. Would you like to make any additions or alterations to it?

Mr McFetridge—I am quite happy to discuss that submission. I have a new submission which I would like to go through.

CHAIR—That could be an opening statement, so can we proceed with that before we go to questions. If you would like to hand us a copy of that we could pass that out.

Mr McFetridge—Certainly. I understand you have probably heard quite a bit from people about Shell and franchising today, so I will try to make it brief.

CHAIR—We are here to hear your evidence, so feel free to tell us whatever you want to.

Mr McFetridge—I understand that. Under the circumstances I will probably leave some of it and you can read that in your own time. But I will go through as much of it—

CHAIR—If you are suggesting that you want to go into an in camera hearing and do that now, we are happy to do that.

Mr McFetridge—With my original submission, I am quite happy to discuss that quite openly. With the new submission, probably a lot of it is ground that you have already been over, so I will cover most of it and if there is anything there that I think might be little more sensitive—

CHAIR—All right. You make your judgment as to what you want to be confidential as we proceed.

Mr McFetridge—I would like to thank the committee for asking me to give input to this inquiry. The issue of fair trading is an important one and I feel that the oil industry is probably one of the worst examples of secret deals and support packages being used by companies, in general, to control their retailers in the marketplace they operate in. Consequently, no-one in our industry is on a level playing field, as far as I see. Advantages are given to some and not to others, and this has been used to manipulate our industry quite a

bit.

I believe a franchisee, no matter what industry they are in, should be given a fair go and be able to succeed or fail on their own merits, not on what sort of deal they can get out of their franchisor. You have already talked to Mr Caudell today and he would have brought up a lot of things from our state inquiry here so I will not repeat that. In this state we have Shell operating a multi-site franchise of approximately 40 sites and we have single site franchisees as well, so there are the two different chains.

I have owned my franchise since October 1992 and I had been the lessee since 1985. The FORCE franchise, which stands for franchise opportunity rewarding commitment and excellence, was released in the middle of 1989. It was compared to Pizza Hut and McDonald's by Shell and we were told that it was really the only way to go to secure our futures and be successful.

My lease had not actually expired. I still had a couple of years to go on it, but I really was told that if I wanted to stay in that business, I would have to take the franchise there and then, otherwise, there would not be anything for me at the end of the two years. And, because initially back in 1985, I had paid a substantial amount for the business, to walk away without anything was not in my best interests, obviously. So, I chose to take on the franchise with a view of, perhaps, selling it somewhere down the track to recoup some of the goodwill that I had paid initially for my business.

Shell have changed their minds again from lessees to franchisees. Now it is franchises to multi-site franchises, and things like that. So, virtually they have scrapped the idea of the franchise as we knew it back in 1989 when I took it on. As I said, one franchisee here in Adelaide controls nearly 40 sites. In various communications and letters from Shell, we have been told that this franchisee is, of course, treated exactly the same as a single site franchisee.

You may have heard evidence from Mr Caudell today stating that this multi-site franchisee has actually got a guaranteed income and that he actually gets—if I remember rightly—a kind of superannuation payout of a \$1 million at the end of his 10-year tenure. I have put attachment A in there which is a letter from Shell and I have highlighted where it actually states:

The franchise agreement will ensure that the multiple site franchisee is exactly the same as our franchisee agreement with the single-site franchisees.

The second page of A is part of Mr Caudell's statement—I think it was part of *Hansard*—where actually in there he let parliament know that they had found out that this multi-site franchisee was actually guaranteed his income and had a guaranteed payout of \$1 million at the end of the 10-year term. I will just put those there just to show you where I have actually got that from. It is a little bit upsetting, of course. It would have been nice if we had something guaranteed at the end of it, but unfortunately, we do not.

A good example of this focus shift that they have made from single site franchisees to multi-site franchisees, is something that has recently come about where we have our state manager here who runs Go Gas which is Shell's LPG company. He has set up a deal with Yellow Cabs, which is a local cab company, whereby, the Yellow Cab drivers can use cabcharge slips as cash at the multi-site franchise sites. He is my

state manager. He is the multi-site franchisee's state manager, but we were not included in any of that negotiation. It was not offered to us. We only really found out when a cab driver came in and quizzed one of my console operators about it. He said, 'Do you take these as cash?' The operator said, 'No, we do not know anything about this.' This is the way we found out that Shell, through the state manager of Go Gas, had organised a deal for the multi-site franchisees from whom, basically, all the Yellow Cabs will be getting their gas and doing their own little deals with. So, that was not real good. We would have liked to have had the option to accept that. It might have been beneficial for us, too, but we never actually got that. That is really the type of thing that is happening.

Mr ALLAN MORRIS—It has not changed? Once you asked them, it did not change? They did not actually bring you into it?

Mr McFetridge—No, nothing at all. They have not got back to us at all on that.

Mrs BAILEY—No separate agreement on that?

Mr McFetridge—Not that I am aware of, no. We were not really privy to too many details of that. I am sure they would not like us to—

CHAIR—We are not moving to questions—

Mr McFetridge—That is fine, no problems. So, that is probably one of the best and most recent examples that I can give you on the focus shift. There are other things, like training and things like that. Training for us has virtually dwindled away to nothing for our console operators and other things. The industry is changing all of the time. We used to have regular training and that has virtually disappeared. Of course, it is very intense for the multi-site franchisees and their staff and things like that.

I am not an Autocare franchisee, but I have heard of where the Autocare franchisees were looking for some training but had found out that the multi-site franchisee Autocares had actually had an off-site training conference down south at some resort. That was not offered to any of the single site franchisees with Autocare franchises, as far as I know, either. So that is the type of shift that is actually happening within our industry at the moment.

We also have our Franchise Advisory Council which is made up of elected franchisees to represent us in negotiations with Shell. In the original FORCE brochure, that is the franchise introductory brochure back in 1989, the council was touted as our say in the development of the franchise. I have got that. It is page C of the attachments. In answer to the question, 'What are the benefits of FORCE?', it says:

4. A voice. You and Shell will elect franchisees to form Councils, which will have direct participation in the development of SHELL FORCE.

Basically, the Franchise Advisory Council is powerless. It is just a token and they have not really had many wins as far as I know.

I have just found out that at these National Advisory Council meetings, the minutes, which were heavily edited by Shell, the National Advisory Council franchisees actually wanted their own minute taker to come in to take the minutes so they could really have a look and see what went on. Shell said, 'They can sit there and take notes but they are not allowed to speak and we will not recognise any of the minutes that they take at these National Advisory Council meetings'. Basically, if they did not have any control over it then Shell did not want to have anything to do with it. That has just very recently happened.

As for BP's Franchise Advisory Council, I do not know if you heard this one but BP sacked them. They dismissed them when the Franchise Advisory Council started to disagree with some of the directions that the BP oil company was taking. So it is not just Shell that is doing these things, there is BP there as well. That is a glaring example of what they think of their Franchise Advisory Council. They say, 'You sit there and be quiet and just be our Franchise Advisory Council'. That is pretty much the way they are look at.

As far as our franchise itself goes, the royalties that we pay on our shop sales has doubled since 1990. In December 1990 it was four per cent on shop sales and now we pay eight per cent on shop sales. It has virtually doubled. The costs and wages have all escalated as well, which has caused a lot of franchisees who were running their businesses well to fall under the umbrella of Shell's profitability support, which for single site franchisees under normal conditions is purely discretionary.

I have got that here. It is in writing from Shell documents on a couple of attachments there. Attachment D talks of profitability payments being discretionary. There is a letter there at the top of Attachment E which says, 'Profit support will remain available at Shell's discretion'. Because these support packages are discretionary, once our business expenses go up to the point where they become borderline on giving a satisfactory return, Shell, at its discretion, may step in. But also at its discretion, Shell may pull out as well.

With price competitiveness support, which gives us the ability to compete with the guy down the road, that is also discretionary. At any time Shell could say, 'Sorry, Mr McFetridge, we are no longer going to give you price competitiveness support' and there is nothing I can do about it. Basically, I would be out of my site because no-one would come there. If you cannot compete, because of our industry and the highly competitive nature of it, as soon as you are off the pace then that is it, your business is finished. You are at their mercy pretty well. Once you start relying on these discretionary payments you are virtually at their mercy.

There are lots of good dealers that really have been put in that situation and have probably gone now. I myself run my business very tight, and I have not had to go into that situation. At one stage I was almost at the point of needing this discretionary profitability support from Shell, but when I actually started to discuss it with my area manager it came across to me that it was virtually means tested. The discussion came around to what type of car I should drive, what type of house I should live in and things like that. So I chose to say, 'No thanks, I'll survive on my own.' I was absolutely furious that Shell would try to dominate my private life as well as my business. When it starts to get to that type of thing, no.

Mr ALLAN MORRIS—Body and soul takes on a whole new meaning.

Mr McFetridge—It certainly does.

Mr ALLAN MORRIS—It is called franchising; body, soul, house and car.

Mr McFetridge—So as far as discretionary profitability support goes, it is really a means of control more than anything else. As I say, I was in a position where, as I run my business fairly tight, I could turn it down because I did not like the idea of that. But many dealers have not had that choice and really have gone under because the control that was put on them has just been more than they could handle.

As to an example of probably the direction Shell were heading with their franchise, back in 1994 we had the Fly Buy scheme launched to us. Basically, it was touted to us as the keys to success. Now this is 1994. In 1994 they had already started their pilot schemes for their multi-site franchising, so basically the writing was on the wall for single site franchisees that we were probably not going to be part of the network in the future. We were taken to this conference, we were given the keys to success, and Fly Buys was launched to us.

It was virtually compulsory; we had to attend this conference. It was offshore; they had got us all in one place. I was at a meeting discussing Fly Buys, and the national resale manager there at the time came out and said, 'You guys, don't sign up for this and you'll be swimming back to Australia, and when you get there we'll be there on your doorstep to buy your business back off you.' So basically it was the type of thing where there was not really any choice. It was something they had decided was going to happen and it happened.

So that is really an example of the type of thing that we had to put up with. They had already decided through the MSF pilot projects and things like that that we were not going to be part of the network, but they were still pushing this type of stuff on us as hard as they could. There are some more details in that handout I have given you on Fly Buys about costings and things, but I will let you get to that in your own time.

In conclusion, at the moment I am not able to sell my franchise, really. Shell at the moment are the only ones that will buy the franchise back. We have got to negotiate a buy-out price with them as best we can. We could put it on the market and we could find a buyer for it but because Shell has to approve that buyer it really gives them the power to knock that back pretty well. Because they are setting up their multi-site franchise systems around Australia the chances are that they are actually the only ones that we could sell the franchise to.

Mrs BAILEY—Do you have any evidence that they have used that power of veto?

Mr McFetridge—Not as yet, no. I do not think it has come to that, but that is really what it could come to. I have heard some people say they would like to try it but I do not think anyone has really got to the stage of going down that track to try it, to be honest with you. In March 1994 we actually received a letter stating that we may be able to renew our tenure for a further 10 years after the first five. That was before the conference and that was when we were all the flavour of the month. It all really happened in 1994. In May 1995 we received another letter stating that no further tenure was available at the end of our current contracts, basically. Those two letters are attached there and I have highlighted where it actually says they may at the time offer the franchisee another 10-year tenure after the first five. And then in May 1995:

Given the current attraction of multiple site systems, a prudent business planning assumption, particularly for single site metropolitan franchisees, would be that a further franchise period will not be available.

Basically, at the end of my tenure, no matter how good a franchisee I am—I could be great, earning lots of money for Shell, doing the right thing, saluting the flag, whatever—I am out. I am on the scrap heap at the end of my tenure. I paid, as I said before, a substantial amount for my business in the beginning, but on the last day of tenure it is worthless to me really. I can virtually hand my keys back and that is it, unlike an MSF who will be guaranteed \$1 million. About all I will get is a kick in the pants to send me on my way.

CHAIR—That is where I want to ask some questions.

Mr McFetridge—That is the finish.

CHAIR—Before my colleagues start, you mentioned a formula for them to buy the business back. Is that a set formula or is it a matter of negotiation between you and them?

Mr McFetridge—It is really a matter of negotiation. There is no set formula for what you would receive. An unwritten formula would be amount of tenure, profitability of the business, volume, shop sales, things like that—just if you were buying my business what we would discuss.

CHAIR—It is a matter of negotiation really?

Mr McFetridge—It is. It is a matter of negotiation.

CHAIR—You have just acknowledged that you do not have any goodwill at the end of the lease period.

Mr McFetridge—No, there is not.

CHAIR—When you in fact re-signed for, I think, a five-year period in 1989, was it?

Mr McFetridge—I actually took the franchise on in 1992. The franchise was released in 1989, but my original lease, which was a nine-year lease from 1985, was due to expire in 1994. So when I signed the franchise really I could have stayed there under a lease for two years, but because—

CHAIR—How long was the franchise period for?

Mr McFetridge—It was for 10 years.

CHAIR—So at the end of 10 years—

Mr McFetridge—It was five plus five.

CHAIR—Yes. So at the end of 10 years, as you quite rightly say, you have no business unless they

decide to extend?

Mr McFetridge—That is right.

CHAIR—Was that explained to you at the start?

Mr McFetridge—There was never a guarantee that at the end I could stay on, no. They would never have given that guarantee. Basically I accepted that that was a possibility, but it really was suggested that as long as you were a good guy and did everything right that would not happen. It was the same with the leases. With the leases that we used to have, I think it was very rare that a lessee could not sign on. When I bought the lease off the previous lessee, it was with a brand new contract—it was brand new for nine years—whereas now, if we were able to sell a franchise, I believe it would probably be just for the remaining time on that franchise and not a brand new franchise.

CHAIR—Which means that the person would have to return their investment within that particular time?

Mr McFetridge—In a short space of time, and that is why it would be hopeless for me to try to sell that lease with two years to go on it knowing that it is going to be a franchise.

CHAIR—In relation to multi-site franchises, how do they go about selecting the operators?

Mr McFetridge—I believe they—

CHAIR—If they offered you a situation; if not, why do you think that is the case?

Mr McFetridge—I believe they probably want someone outside the industry to do it. I believe they actually advertised it as a separate business.

Mr FORREST—They do not want somebody wise?

Mr McFetridge—That is the impression we got. I believe that some existing franchisees were asked to take tests and things to evaluate them, but I think that was more a token than anything else, to be honest with you. But that is just my opinion.

CHAIR—It has been suggested to us by the oil companies themselves that they are about 30 per cent overserviced in the marketplace Australia-wide. Do you get the impression, as an independent operator franchisee, that the oil companies are favouring multi-site franchises ahead of independents with a view to getting independents out of the system?

Mr McFetridge—My own personal feeling is probably yes. I believe that they are that committed to going down this track for various reasons. Yes.

Mrs BAILEY—What do you think the reasons are?

Mr ALLAN MORRIS—Cheaper.

Mr McFetridge—That is one of the reasons they came up with, but honestly I really think they are finding out that there is a lot more to running a service station than what they thought.

CHAIR—Have you got any examples there of them offering harsh and oppressive conduct against independent operators such as yourself, that would get to that end result?

Mr McFetridge—Not me personally, no. Other operators might have had that pressure put on them.

CHAIR—The only thing you are concerned about, from what I can gather from your evidence—

Mr McFetridge—My future.

CHAIR—There are two things. One is that you have not got an extension once the period finishes, but they are also introducing ideas to you without any discussion at all.

Mr McFetridge—That is right, and opportunities like that yellow cabs thing, that is just not with—

CHAIR—And the fly buys.

Mr McFetridge—We feel like we are on the scrap heap already, basically, to be honest with you.

Mrs BAILEY—Can I just follow up that last point about not being included in anything. On page C of your submission, of the fourth document here, point 9 says:

The Shell FORCE fee structure will allow you to know your fees in advance and how they are calculated. The fee structure also means a closer relationship with Shell through sharing the fluctuations of business activity.

Mr McFetridge—It sounds good, doesn't it?

Mrs BAILEY—So what was there that obviously has not turned out to be true?

Mr McFetridge—The fee structure, as I say, has doubled since December 1990.

Mrs BAILEY—Yes, but were you included in discussions?

Mr McFetridge—No, I have never been included in any discussions about whether I am going to get my rent doubled in that period of time. It is actually reviewed yearly based on—I am not sure what formula they use. Our rents used to be on a set formula. When I was a lessee we knew what our rent was going to go up by because there was a formula for it, it was actually in black and white in our contracts. But as far as the FORCE fees went, I believe they discussed it with the NAC, but you know what my feelings are on the NAC. As much as they tried, I really do not think they would have much input, probably, and so, lo and behold, out of the blue we got letters saying, 'As of January your FORCE franchise fees are this, this and

this. Thank you very much. Your NAC has been consulted and they have agreed.'

Mrs BAILEY—Regarding point 8 on that same page, about the advertising and promotional support, were you advised that you would be paying for this support?

Mr McFetridge—We had various service fees built into the FORCE fee structure which really I assumed covered promotional activities and things like that. I believe suppliers chipped in quite a bit as well. Suppliers actually were paying Shell certain amounts to be preferred suppliers. The term Shell used was, 'These are preferred suppliers,' and I believe preferred suppliers were helping Shell out, if they needed help, with advertising and things like that. But the service fees and things like that built into our fee structure I believe were going towards advertising.

Mrs BAILEY—Okay. I have actually made this comment before to other witnesses appearing before this hearing. Franchise agreements tend to be a take it or leave it agreement, but perhaps a vague take it or leave it agreement. One of the duties that this committee has is obviously to make recommendations to government. Can you make any suggestions as to franchise agreements? For example, do you see the necessity for some legislative underpinning, in other words, the legislation to spell out what should be and should not be in franchise agreements?

Mr McFetridge—You are talking probably along the lines of security of tenure for franchisees, or as in renewals of franchisees.

Mrs BAILEY—It can cover a number of options.

Mr McFetridge—That is right. In our contracts, the franchise can be cancelled on Shell's part if we do something tragically wrong. They supposedly will counsel you first, and then out you go. As far as renewal goes—

Mrs BAILEY—What I am really suggesting is a form of consumer protection for the franchisees with the franchise agreement.

Mr McFetridge—I would have liked to have had something like the first right of renewal at the end of my tenure to negotiate; to be offered the first right of renewal and then—

Mrs BAILEY—Providing you complied with a certain set of conditions.

Mr McFetridge—That is right—unless I was doing something tragically wrong. As I said at the end of my submission, it does not matter how good I am now, I am out, I am finished, I am on the scrap heap basically. During the franchise, as far as negotiating fees and things like that are concerned, that was supposed to have happened with the Franchise Advisory Council. They should have been able to go to Shell and say, 'Mr Shell, things are not real flash at the moment out in the marketplace. We are not getting the margins, so can we just keep our fees down just to get everyone by for now.' But, no, the fees went up, people went into profitability support, which is discretionary, and Shell got more control over them and came in and said, 'You can't drive a four-wheel drive, you have got to drive a Commodore,' and things like that.

That is the type of thing it got to.

Mrs BAILEY—One of the ways for the future could perhaps be for franchisees to go to a type of ombudsman. That may be one of the means. Or, as I was suggesting to you and asking for your opinion on, it could be having a franchise agreement containing consumer protection for the franchisee which is protected by legislation.

Mr McFetridge—Yes, I think there is definitely something needed there. What is happening in our industry at the moment is an example that shows something is needed in legislation. We have Oilcode which we can—

Mrs BAILEY—It does not work.

Mr McFetridge—No, it is useless, because it is not in legislation. It is a voluntary code. Honestly, if you put something—

Mrs BAILEY—I think you have answered my question.

Mr McFetridge—Yes; you know what happens with voluntary things.

Mr FORREST—You were a little bit sensitive about two aspects which I want to ask questions about, so I will check this with you again. It is about Fly Buys and also attachment D. Are you happy for me to pursue some questions on that?

Mr McFetridge—Yes, certainly. If I can answer them, I will.

Mr FORREST—The story you have given us we have heard so many times.

Mr McFetridge—That is right.

Mr FORREST—But this aspect of Fly Buys is another example of the goalposts being shifted. If we raised it with Shell they would say to us, ‘We only meant it as a joke. Euphemistically speaking, you have got to swim home.’ But they have introduced some sort of contract and they have reneged on it, and you are carrying what I understand is half of the cost—26 cents—yourself. It is an example of shifting goalposts.

Mr McFetridge—Exactly.

Mr FORREST—It is a breach of contract.

Mr McFetridge—And it happens all the time. The contract is that open-ended that they can shift at any time they like. They can do anything. I will give you an example. Security systems are an important issue in service stations and we had to have security systems fitted. But out of the blue, all these new sections of the contract came out where we had to have whiz-bang video cameras, recorders and upgraded security. It is a good idea—security is important. But I had a basic system, so it amounted to over \$12,000

worth that I had to have in by a certain time otherwise I would be in a contravention of my contract.

Mr FORREST—You paid for that, did you?

Mr McFetridge—I had to pay for that, that is right. So, somehow, I had to find \$12,000 before a certain date otherwise they would send me a letter telling me I was contravening the conditions of my franchise contract, or whatever. They said, ‘Just factor it into your business plan and we will pay it in profitability support.’ But I was not on profitability support, so I paid that \$12,000 out of my pocket. That is another example of something that came out of the blue and was not there originally. It is so open-ended they can change things all the time and there is really—

Mr FORREST—Why can’t your representative body get some sort of class action together to take some action against shifting the goalposts like that? Is it something you have considered?

Mr McFetridge—I never really had a close relationship with a franchise advisory council. My peers would probably say and think, ‘Right, they are doing the best they can’, but in hindsight now it has probably done a lousy job; it is probably what Shell have really put upon them. So really there is probably not enough of us left to do much about it now. But that is the type of thing. I think Shell really intimidated probably everyone that much that they really did not argue very much at all. We just accepted it. Shell would say, ‘Well, factor it into your business plans and we will pay for it.’

CHAIR—Is there anything in summation that you would like to—

Mr ALLAN MORRIS—Could I have a question first?

CHAIR—We have got to finish by half past.

Mr ALLAN MORRIS—Yes, just very quickly. That letter from Yellow Cabs says 35 outlets?

Mr McFetridge—Yes, how old would that be? It is dated there, August 1996. There was a list of the outlets, and they were all multi-site franchise outlets. I did not include that in it.

Mr ALLAN MORRIS—So they were not any of your independent operators?

Mr McFetridge—No, there were not any of ours. It said, ‘More sites to come somewhere’, which sort of said to us, ‘Guys, we are after you as well.’

Mr ALLAN MORRIS—But the impression in there is that it is all Shell sites, isn’t it?

Mr McFetridge—It is.

Mr ALLAN MORRIS—When you read that, it does not give the impression that you have got to check and make sure this site is—

Mr McFetridge—I probably should have included the other page with it which went to cab drivers, and it actually listed each site, the address, where you could participate in this promotion. I should have probably included that with it. It is a two-page document, that one there. We actually got this off a cab driver; that is how we got hold of it. So it actually did say those 35 outlets, and it was all to multi-site franchise outlets.

CHAIR—In summation, Mr McFetridge, is there anything that you have not covered that you would like us to take note of?

Mr McFetridge—Probably not at this stage.

Resolved (on motion by Mr Forrest):

That a submission be received as a confidential submission.

CHAIR—Thank you, Mr McFetridge. It is great of you to appear here today.

Mr McFetridge—Thank you. I hope I have been of some help.

CHAIR—We are getting a lot of evidence.

Mr McFetridge—I can imagine you would be.

Resolved (on motion by Mr Forrest):

That this committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.

CHAIR—Thank you. Thanks, *Hansard*, for your beautiful work today, and thank you ladies and gentlemen for attending today. That completes today's hearings.

Committee adjourned at 4.30 p.m.