

APPENDIX A.2: MTAA representations to the Australian Government regarding the reform of the *Trade Practices Act 1974*.

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Dear

I am writing to you on behalf of the Fair Trading Coalition (FTC), a group of twenty-two small business organisations committed to reform of the *Trade Practices Act 1974* (Cth) to seek your support for the seventeen recommendations contained in the majority report of the Senate Economics References Committee Inquiry into the Effectiveness of the *Trade Practices Act 1974* in protecting small business. The Coalition represents some 300,000 small businesses.

You may be aware that the Committee, in a majority report, made a number of recommendations for the strengthening of section 46 (misuse of market power) and section 51AC (unconscionable conduct). The Committee also unanimously recommended the introduction of a collective bargaining arrangement as supported by the Federal Government following the Dawson Review.

Members of the FTC met recently to consider the recommendations contained in the report and I wish to advise you that they resolved unanimously to support the seventeen recommendations contained in that report. The FTC also urged the Government to announce immediately its response to the Committee's recommendations and to introduce, as soon as possible and during the current term, legislation into Federal Parliament to give effect to the Government's response to the Senate Committee report.

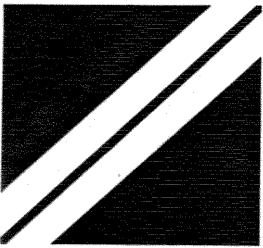
Small business supports competition and the competitive process but believes that changes to the *Trade Practices Act* are necessary to secure enhanced competition and a fairer trading environment. The FTC believes that endorsement by the Federal, state and territory governments of the Committee's recommendations would be a significant step towards achieving that necessary and desirable social and economic goal. The FTC has also called on state and territory governments to adopt the Committee's recommendations and, if necessary, to pass complimentary legislation. I would therefore urge you to consider supporting all seventeen of the recommendations contained in the majority report.

I look forward to hearing from you in due course.

Yours sincerely

MICHAEL DELANEY
Convenor of the Fair Trading Coalition
and
Executive Director, Motor Trades Association of Australia

30 March 2004



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No. of Pages: 3

To: THE Hon IAN MACFARLANE	From: M. DELANEY
Date: 18/3/5	Fax No: 02 6273 2738
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Motor Trades Association of Australia

The Hon Ian Macfarlane MP
Minister for Industry, Tourism and Resources
Parliament House
CANBERRA ACT 2600

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Dear Minister

Thank you for providing the opportunity yesterday to again attend a forum at which your intentions to repeal governing legislation and alter the structure of the petroleum market and the measures to be undertaken were discussed.

For the record, the MTAA and its national affiliate member, the Australian Service Station and Convenience Store Association (ASSCSA), advise they do not support your current proposals.

Service station operators regard your current proposals as plainly inimical to their interests and the public interest. Your current proposals would deprive them of a valuable property right contained in the Petroleum Acts, enacted by a predecessor Coalition Government after much agitation and advocacy.

We cannot accept your expressed view that everyone believes the Acts are "useless". We hold the opposite view as we have repeatedly communicated and advocated in dialogue with you and your advisers.

We have also offered to compromise and co-operate with whatever your Government wished to do in any manner that was positive and productive in our judgement, short of sacrificing the valuable property rights that our small businesses hold and have paid for; typically from the oil companies.

While acknowledging your expressed good intention to preserve 'on-foot' contracts, we believe that remains to be demonstrated.

Pending that, we believe your current proposals would rapidly extinguish those property rights with no compensation or capacity to recover our investments. This may well trigger dispossession of sites and bankruptcies with associated personal and social consequences for our members.

This would not be consistent with the Coalition's commitment to the protection of small business and to the rights of small business to exist and to be able to compete.

We absolutely disagree with your opinion that service station operators would be worse off if nothing were done by Government at this time. We believe that if your current proposals are not proceeded with, that would leave the prospect of our members being worse off as a possibility. By contrast, we have no doubt that if your current proposals are adopted that would impact upon our members in the way described above immediately. This is because all service station franchisors have already asserted the right to void our franchise agreements immediately upon repeal of the Petroleum Acts.

Our members therefore see the choice your current proposals offer as being between business oblivion or a difficult future. Neither is acceptable and our members will actively oppose this occurring.

MTAA and its national member, ASSCSA, will reject any claim they bear some responsibility for the delay or failure of your proposals for change in the retail petroleum trade because they are unable to support your current proposals. We believe that your current proposals do not improve on the status quo, but instead will lead to the inevitable demise of many thousands of small businesses in the retail motor trades that we represent.

The real issue here, as we see it, is that the two dominant supermarket chains have been able to join with two major oil refiners enabling them to capture over 50 per cent of the retail fuel market, without any evident consideration by the Government of the competition or structural adjustment consequences.

We believe this is inconsistent with the rhetoric of the Government about its support for small business. These market developments have made us utterly incapable of competing, notwithstanding that we otherwise are entirely competitive on all but price. They are designed to put us out of business. At the same time, the Government is ignoring the ultimate competitive impact on ordinary consumers in respect of a totally unavoidable consumption good - petroleum - which is central to the economy and society.

The very adverse consequences of your current proposals for our members will not be mitigated by the proposed amendments to the Trade Practices Act in respect of abuse of market power, unconscionable conduct and like matters.

The Government's amendments announced so far do not even meet the recommendations of the Minority Report of the Senate Economics References Committee on its report on Protection for Small Business as largely composed and proposed by Senator George Brandis. Much less even than those of the Majority Report which we prefer and support.

You declared at yesterday's Forum that a range of matters were not open for discussion or dialogue. You in fact said they were "off the table". In the face of that, we are disappointed that it was assumed we would be compliant with your current proposals.

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We remain prepared to explain to you in detail our concerns with your current proposals at any time convenient to you.

Yours sincerely



MICHAEL DELANEY
Executive Director

18 March 2005