

## CHAPTER 5 - TAXATION

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## CHAPTER 5

## TAXATION

## A. Introduction

5.1 The area of Commonwealth government regulation which emerged as of greatest concern to small business during the inquiry was clearly taxation.

5.2 Concerns were raised and recommendations made about almost every aspect of Commonwealth taxation including income, company and provisional tax, sales tax, capital gains tax, fringe benefits tax, superannuation and trading stock valuation. However the most pervasive, and the Committee believes the most important, complaint has been about the rapid growth in the size and complexity of taxation law, the complex and often apparently unco-ordinated administrative systems which support it, and the associated compliance and reporting costs which are particularly onerous for small business.

5.3 The discussion and recommendations which follow in this chapter reflect some fundamental small business perceptions given in evidence to the Committee during this inquiry. These include:

- . a basic perception that taxation law and its administration is unfair and inequitable in its treatment of small businesses in comparison with large business;
- . that taxation law and administration do not consider the operating environment of small (vis a vis large) business and in particular the working capital restrictions experienced by small businesses;
- . that the rapid increase in taxation compliance and reporting requirements over the past 5 years, has meant that accountants are now fully occupied with compliance

activities and no longer able to provide the management and business advice to small business clients which is so crucial to their success and survival.

- . it is claimed that the existing taxation provisions exacerbate the working capital and cash flow problems experienced by small businesses which are growing or want to grow. This is particularly the case for the existing trading stock valuation provisions and for the provisional tax system;
- . the problems of small business in obtaining finance and/or generating sufficient working capital themselves have been well documented. These are persistent problems which are understandably exacerbated in times of economic downturn. However, much of the evidence presented in this inquiry has dealt with the difficulties of businesses which are either unable to generate or obtain adequate working capital to take advantage of growth opportunities, or are on a strong growth path and, while making healthy book profits, run into difficulties with cash flow.
- . the existing taxation system is seen to be inequitable in its treatment of unincorporated small businesses in comparison with incorporated and usually larger businesses. Incorporated businesses are advantaged by the following:
  - a lower rate of company taxation in comparison with the top personal, marginal income tax rate;
  - by virtue of their legal form incorporated businesses benefit through the timing difference of their tax liability and payment and the method by which their liability is assessed;
  - superannuation deduction allowances which are still more generous than the \$3000 plus 75% of any

additional contributions which now applies to the self-employed;

- being able to defer capital gains tax in the event of corporate reorganisation whereas small businesses rolling over capital into a new business cannot;
- being able to more easily pass on the costs of fringe benefits tax than small businesses;
- being able to bring fully to account the awareness and administrative costs of compliance with taxation reporting requirements; and
- benefiting from considerable economies of scale in complying with taxation reporting and awareness requirements.

5.4 All of the above problems and perceptions depend in some way on the size and/or on the legal entity of small businesses. They are given added weight by the following observations:

- . about 70% of all small businesses employ less than 5 employees, about 90% employ less than 10 employees, i.e. most small businesses are very small business; and
- . about 70% of all small businesses (excluding primary producers) are not incorporated.

5.5 It is recognised that many of the recommendations made below would necessarily be adding yet another component of complexity to a tax system which most small businesses already believe is too complex. This is a recurring dichotomy in much of the small business sector's attitude to regulation generally. However, small businesses argue that there is 'good' regulation (justifiable in terms of a demonstrable market failure) and 'bad' regulation (which cannot be cost-benefit justified), and similarly there is justifiable complexity in taxation law and administration (e.g.

where it will result in small business being treated equitably) and unjustified complexity (e.g. the current state of the sales tax system).

5.6 Another difficulty with some of the proposals which advocate 'special treatment' for small businesses is that they require a satisfactory functional definition of 'small' to be determined, which will be legally and administratively workable, and will ensure the intended taxation benefits are delivered only to the disadvantaged group. This is not to say a satisfactory working definition cannot be determined.

#### B. Taxation administration

5.7 This predominant concern with the compliance costs of taxation and in particular, Commonwealth taxation, is consistent with the results of a previous survey undertaken by the ABS in 1979 of the perceived cost of government form-filling by small business.<sup>248</sup>

5.8 This survey indicated that approximately 70% of the total cost to small businesses of complying with government paperwork was associated with Commonwealth taxation form-filling. Although the absolute estimates placed on the costs of form filling at this time (\$600 for every small business of which \$420 was to comply with Commonwealth taxation reporting requirements) would be of doubtful validity a decade later, there is no reason to believe that the relative cost of Commonwealth taxation form-filling has substantially diminished.

5.9 Indeed the rapid growth in taxation legislation, which recently passed 1 million words<sup>249</sup> and concomitant growth in tax administration in recent years, is likely to have resulted in an increase in taxation compliance costs relative to other regulatory compliance costs.

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248. Australian Bureau of Statistics, *Cost to Small Businesses of Government Paperwork* Catalogue No. 5101.0, December 1981

249. Transcript of Evidence, p 2363

5.10 The growth in the body of taxation law and taxation reporting requirements over the past five years in particular has resulted in major increases in costs for all businesses in the form of both increased awareness costs and reporting (paperwork) costs.

5.11 Increased reporting costs are a result of the increase, particularly over the last five years, in the type and frequency of compulsory reporting required; for example for quarterly payments of provisional tax, monthly prescribed payments tax, and fortnightly payment of group tax. Reporting requirements concerning income tax for example have become more complex requiring additional record keeping and computation to deal with capital gains tax, imputation and superannuation.

5.12 The schedule of the regulatory paperwork which a small motor trader would typically be required to deal with is shown in Table 5.1. This schedule was submitted as evidence by the Motor Trade Association of Australia as an indication, among other things, of the paperwork generated by the Australian Taxation Office.<sup>250</sup> Of the 12 monthly and quarterly reporting and remittance requirements imposed on this type of small business, 9 were imposed by Commonwealth regulation and of these 6 related to Commonwealth taxation.

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250. Exhibit No. 11, Public Hearing 10 November 1989, Motor Trade Association of Australia

TABLE 5.1

## FORM FILLING TASKS RESULTING FROM GOVERNMENT REGULATION

## COMPLETED FORMS OR PAPERWORK TO:

Type of return	Instrumentality	Local State Fed.	Month Qtly. Year
Sales tax - spare parts	Aust. Taxn. Off. - Melb	F	M 21st
Sales tax - wholesale	Aust. Taxn. Off. - Melb	F	M 21st
Sales tax - exemptions	Aust. Taxn. Off. - Melb	F	M
Work care premium	Accident Comp. Commiss.	S	M
Stamp duty used cars	Vic. Stamp Duty Off. - Melb	S	M 21st
Stamp Duty Lease & Rental	Vic. Taxn. Off. - Melb	S	M 21st
Payroll Tax	Vic. Taxn. Off. - Melb	S	M 7th
Group Tax	Aust. Taxn. Off. - Albury	F	M 7th
Prescribed Payments Tax	Aust. Taxn. Off. - Melb	F	M 14th
Fringe Benefits Tax	Aust. Taxn. Off. - Albury	F	Q
New Cap. Exp. Survey	Aust. Bureau of Statistics	F	Q
Sur. of Emp. & Earnings	Aust. Bureau of Statistics	F	Q
Sur. of Emp. Earnings & Hours	Aust. Bureau of Statistics	F	Q
Fringe Benefits Tax	Aust. Taxn. Office - Albury	F	Y
Annual Returns	Dept. of Corp. Affairs	S	Y
Land Tax	Comm. of Land Tax	S	Y
Council Rates - Various	Local Councils	L	Y
Board of works rates	Board of Works	S	Y
Company Tax Returns	Aust. Taxn. Off.	F	Y
Reg. of Boilers & Pres. Ves.	Dept. of Labour - Melb	S	Y
Vehicle Testers Licence	R.T.A.	S	Y
Factory Registration	Dept. of Labour - Melb	S	Y
Credit Providers Licence	Credit Licencing Authority	S	Y
Shop Registration	Dept. of Labour - Melb	S	Y
Petrol Retailers Licence	Dept. of Labour - Melb	S	Y
Second Hand Dealer. Lic.	Magistrates Court	S	Y
Motor Car Traders Lic.	Motor Cars Traders Com.	S	Y
Poisons Licence	Department of Health	S	Y
Work care reconciliation	Accident Comp. Commiss.	S	Y
Registration of Names	Dept. Corp. Affairs - Melb	F	3 yearly

ALSO: SEC, Gas &amp; Fuel, Telecom, RTA and VSR

Source: Motor Trade Association of Australia

5.13 Increased awareness costs have resulted from the burgeoning body of taxation law, and concomitant growth in the complexity of taxation administrative systems. Self assessment has, by placing the onus on tax payers to inform themselves fully of taxation requirements before lodging a return, substantially increased the awareness costs and penalties resulting from not being fully informed. Increases in penalties for non-compliance and greater emphasis by the Australian Taxation Office through, for example, field audits programs on enforcing compliance have also increased the probability of non-compliance being detected, whether non-compliance occurs through intent or ignorance.

5.14 The nett result of these types of changes, many if not most of which have been soundly based, has been a major increase in the costs to taxpayers of fully informing themselves of taxation law and reporting requirements. They also have resulted in major increased in the costs penalties should taxpayers not fully inform themselves.

5.15 There appear to be two types of responses by the small business person to this deluge of taxation regulation which were put to the Committee in evidence with some poignancy by a small business person:<sup>251</sup>

There are two things that happen. The first thing is that one makes an intellectual approach like this and says, "Okay, I cannot beat the system; I do not understand it; I will pay what I have to pay and I will just go along with it; if it means I have to recover a little bit more out of my market, I will try to do so; if I cannot, I will wear it for a while". The second view is, of course, a very common view - and I know this is held by a lot of my colleagues in small business - that is, to cheat the system. You cannot survive by being absolutely straight - that is the view I think that is common. I take the view that I will pay whatever levies

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251. Transcript of Evidence, p 60



they impose. No doubt I am going to be rolled by the taxation department some day. Its people will come in, or they will send in an auditor, and they will say that I have done something wrong. It will be because of ignorance rather than any malicious intent on my part, but I think it is cheaper for me to do it that way. Your colleagues in Canberra have built an edifice of law and regulation which is indecipherable; I cannot understand it.

5.16 As with most other forms of government regulation, the increase in taxation reporting and awareness costs has had a more than a proportionate impact on smaller businesses. This has occurred for two reasons:

- . economies of scale; and
- . the inability of many owner operated businesses to bring the costs of taxation compliance to account as a tax deduction against income.

5.17 Economies of scale which apply to larger businesses in establishing a specific purpose accounting/reporting function to comply with taxation requirements, don't apply to small businesses. For example it may be just as costly to set up procedures for complying with sales tax reporting requirements for one transaction as for thousands. The cost of maintaining awareness of changes in tax requirements and of obtaining and, if necessary, of appealing taxation rulings is also likely to be the same regardless of the size of the business.

5.18 Larger businesses may simply employ additional staff to perform additional accounting and reporting tasks necessary to comply with tax law. The cost of these additional employees is a fully allowable deduction against taxable income. Smaller firms which cannot justify doing this, may either:

- . require the owner/manager or his/her spouse to perform these additional tasks and absorb the

associated additional costs (in the form of his or her own 'unpaid' time). These compliance costs are not able to be brought to account as an additional tax deductible cost against income;

- . request their accountant to perform these compliance accounting tasks. This often occurs at the expense of those other management/planning advisory services for which many small businesses crucially depend on their accountant. Since unrecognised management deficiencies are a major cause of small business failure, the increasing preoccupation of accountants with compliance reporting tasks is therefore compounding the management problems of small business.

5.19 These compliance costs are particularly onerous for those very small businesses (typically businesses with less than 5 employees) which cannot afford to employ clerical/accounting staff; where the proprietors/partners may work 60 to 100 hours a week often for remuneration less than the award wage; and which are generally characterised by a dearth of both capital and management resources. It is these 'micro businesses' which appear most in need of special consideration in the formulation of tax law and its administration, although most of the above arguments apply in some measure to those small businesses at the larger end of the size spectrum (ie. 5 - 20 employees) as well.

5.20 The perception of small business people, whose success and contribution to the economy depends in major part on their ability to minimise administrative overheads and to devote most of their time and energy to 'productive' entrepreneurial activities, is that they are having to spend more and more of their time performing unproductive and unpaid form filling tasks to comply with increasing taxation and other regulatory requirements.

5.21 There are other areas of regulation at the Commonwealth,

State and Local government levels where the administration of regulations is perceived by small business as paying little heed to the environment in which small businesses operate.

5.22 However, taxation administration is clearly of greatest concern in the area of Commonwealth government regulation. Small business argue that taxation administration and in particular taxation reporting requirements do not consider the costs that they impose on small business.

5.23 This may be in some measure a consequence of the ubiquitous impact of Commonwealth taxation on (small) businesses, but also appears to be in large measure a result of the rapid growth in the size and complexity of Commonwealth taxation law and in taxation reporting requirements over recent years.

5.24 There are several types of action which the small business community is requesting be taken in response to these complaints about taxation administration:

- . an immediate review of taxation compliance reporting requirements with a view to reducing and simplifying these for small businesses;
- . improvement in the advisory services provided by the ATO to small businesses including:
  - . a single point of contact (one-stop shop) in the ATO for inquiries without the need for referral to numerous specialist areas within the Office;
  - . a toll free telephone hotline specifically for small business inquiries; and
  - . outposted tax office advisers in State government and privately operated small business advisory organisations to train staff and provide advice; and

- greater consultation with small business organisations and greater consideration of the small business environment in the development of taxation (reform) proposals.

5.25 The Committee is aware of the unprecedented scale of taxation reform which has occurred in Australia over the past 5 years. The Income Tax Assessment Act has increased from 1023 pages in 1981 to 1665 pages in 1986. Since mid-1985 the Australian Taxation Office has been responsible for instructing on over 100 taxation bills that have been introduced into the Parliament. In its evidence to the Committee<sup>252</sup> the ATO has pointed to many of the difficulties both the ATO itself and professional tax advisers and the community at large have experienced in coping with this rate of change. For example the ATO's principle concerns have been in the areas of training staff to implement and administer the new and amended tax laws, and in informing the public of these legislative developments and of their rights and obligations under them. This new body of tax law and amendment has yet to be fully digested by professional tax advisers let alone by the small business community at large.

5.26 The Committee believes that the burgeoning bulk and complexity of taxation law which has occurred over the last 5 years places an unreasonable burden on small business. It believes that the government in seeking to address this burden must examine individually each component of the taxation system e.g. PAYE tax, prescribed payments, sales tax, provisional tax, capital gains tax.

5.27 The Committee agrees that in many instances it will not be possible to reduce the amount of information and associated compliance costs which the ATO requires of small business tax payers. However, there would certainly appear to be opportunities for reducing the awareness costs for all taxpayers by reducing the complexity of tax laws themselves.

5.28 In its submission to the Committee<sup>253</sup> the ATO acknowledge

252. Transcript of Evidence, p 2983

253. Transcript of Evidence, p 2984

these concerns about the complexity of tax laws and the increase in reporting requirements. It advised that a Law Improvement Section was established in the ATO in early 1988 with a charter to develop options for law improvement and to respond to constructive criticism of tax legislation. It also stated that there are limits on the scope for simplifying tax laws which are necessarily complex in some instances to provide adequate protection against tax avoidance and the like, but stated its confidence that through a process of public consultation significant reductions in the complexity of taxation law be achieved.

5.29 Significant reductions in the burden of taxation reporting requirements, particularly on small business, may be achieved by reducing the frequency of transmission of information to the ATO and by changing the medium of transmission of that information, for example by computer transfer. In addition there is the strong justification in some instances for reimbursement of the costs of small business for acting as a tax collection agent for the ATO.

5.30 The Committee has identified several areas of taxation including sales tax, PAYE tax and prescribed payments and fringe benefits tax where both reporting and remittance frequencies could be reduced for small businesses where the amounts of tax remitted involved are relatively small and the associated compliance costs are relatively high.

5.31 The Committee has noted that small business has been identified by the ATO as a priority area for information and advisory services during 1989-90. The ATO advised of several initiatives which have been taken to improve the appropriateness and quality of information and advice provided to tax payers generally by the ATO.<sup>254</sup> These included mobile information vans visiting rural and isolated communities providing taxation advice; 008 hotlines to provide information to the public on major recent taxation initiatives; discussions with TAFE colleges with the view to the introduction of a tax component in there courses; and computer modernisation of the inquiry area in branch tax offices to promote

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254. Transcript of Evidence, p 2987

consistency in the provision of advice. These types of initiatives although not all specifically directed at small business will undoubtedly yield benefits in the quality and timeliness of advice provided to small business tax payers.

5.32 One area of common complaint during this inquiry about advisory services provided by the ATO has been that a small business person and/or his tax adviser will frequently need to talk to a number of different people in different specialist areas of taxation within the ATO to deal with a particular taxation inquiry or concern. Recognising that many of these smaller businesses and the smaller tax and accountancy firms which support them, do not have the resources or the time to liaise with numerous different officers within the ATO on a particular taxation inquiry, there would seem to be merit in providing a single point of contact perhaps in the form of a toll free telephone hotline, specifically for small business tax payers to seek information. This single point of inquiry would provide an internal referral service within the ATO to the appropriate area of expertise and not impose this additional liaison and communication requirement on the small business taxpayer her or himself.

5.33 In its submission to the Committee<sup>255</sup> the ATO informed the Committee it was taking or considering several measures to reduce compliance costs to tax payers including:

- . simplification of taxation forms;
- . providing more information leaflets and booklets with emphasis on useful work examples;
- . providing preprinted personal details on various tax forms and mailing these with appropriate information booklets direct to tax payers and agents;
- . requirement for payment of fringe benefits tax by instalments only where fringe benefits tax liability is

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255. Transcript of Evidence, p 2989

a \$1000 or more; and

- . development of a small employers group tax package.

5.34 The Committee believes that the Australian Taxation Office should consider entering into joint ventures with both business and professional organisations with a view to providing taxation training to the officers of these organisations and possibly by outposting ATO officers in the advisory areas of these organisations to provide advice to small business clients. Similar joint venture arrangements should be considered with the relevant State Government organisations which provide advisory services to small businesses.

5.35 Small business people have been consistently demanding in the course of this inquiry greater levels of both consultation with, and consideration of, small business by the ATO and Treasury in the development of taxation proposals. The Committee notes the establishment of a Taxation Commissioner's Advisory Panel which includes for the first time representation of the small business community through the Council of Small Business Organisations of Australia (COSBOA). Although the Committee understands that the advisory panel has only met on two occasions to date, the Commissioner is to be congratulated on this initiative.

5.36 The ATO has pointed out however, that there are constraints on the type and level of consultation it is able to undertake with tax payers because of timing constraints, the possibility of financial or commercial advantage resulting from such consultation, and because any draft legislations or proposals put forward by the ATO is ultimately subject to the approval of the Treasurer.

5.37 The Committee acknowledges these constraints which apply to consultation with any group of tax payers. However, it believes that until such time as a 'small business consciousness' is built into the ATO and Treasury which could ensure adequate consideration is given to the small business environment in the development of tax proposals, consultation with the small business community in particular must be given a special priority.

5.38 Both the establishment and representation of the small business on the Commissioner's advisory panel and the priority being given to the small business tax payer by the Commissioner during the 1989-90 year are signs of increasing recognition of the particular needs of the small business people, and the burden imposed on them by the taxation system. However, the Committee would be concerned if these initially promising developments were to prove no more than a reflection of small business being 'the flavour of the year'. Obviously many of the problems of the small business tax payer which derive from the complexity and size of taxation law and the administrative systems which support it, can only be addressed through a continuing commitment by the ATO, Treasury and the Government to consult with the small business community. A continuing consciousness amongst the architects of taxation reform and the providers of taxation services of the distinctive features of the small business environment is essential if these problems are to be remedied.

5.39 The Committee recommends that:

- . the Treasury and the Australian Taxation Office undertake an immediate review of taxation compliance and reporting requirements with a view to reducing and simplifying these for small businesses;
- . the Australian Taxation Office improve the advisory services which it provides to small business by:
  - establishing a single point of contact in the Australian Taxation Office specifically for inquiries by small business people without the need for further contact with numerous specialist areas within the Office;
  - establishing a toll free telephone hotline specifically for small business inquiries; and
  - outposting Australian Taxation Office advisers in State Government and other small business advisory



organisations to train staff and provide advice to small business clients; and

- . the Australian Taxation Office and Treasury undertake greater consultation with small business organisations and give greater consideration to the small business environment in the development of taxation reform proposals.

5.40 The Committee realises that much of the complexity of the taxation law is a necessary consequence of the complexity of commerce itself. The need to guard against opportunities for tax avoidance to some extent has been a consequence of the era of a literal court interpretation of taxation law. However, it believes there is considerable opportunity for removing redundancies in taxation law, simplifying it and giving greater emphasis to plain and comprehensible English in the formulation and writing of taxation law.

5.41 The Committee has some sympathy with the view that one of the keys to reducing regulation is to attack the paperwork that is associated with that regulation. This approach applies as much to taxation regulation as to any other form of regulation. Every aspect of Commonwealth taxation has a piece of paper and in many cases several tax forms, associated with it.

5.42 During this inquiry witnesses often argued that they did not necessarily object to regulation itself but rather to the compliance cost and in particular, the paperwork associated with that regulation. This certainly applied to comments made about Commonwealth taxation, where small business people resented the time associated with taxation form filling activities.

5.43 The Committee is attracted to a measure which it understands has been implemented in the United States under the 1980 Paper Work Reduction Act. This requires the Inland Revenue Service and indeed all federal agencies which produce forms, to include on those forms a 'time-box'. This time-box contains an agreed estimate

of the number of hours required to fill out the relevant form. This estimate of 'the form filling time' presumably should include the time associated with maintaining the awareness and understanding of the relevant regulation which is necessary to permit the form to be completed correctly as well as the time required to fill out the form itself.<sup>256</sup>

5.44 The very existence or provision of this information on every government form and in particular, on every taxation form, would place a discipline on regulating authorities including the Australian Taxation Office to minimise and recognise the time associated with completing paperwork by tax payers. Obviously the time included in the time-box would have to be agreed between, in this case the Australian Taxation Office and the client group of tax payers or a representative organisation of that client group of tax payers. This time-box could also provide the basis by which those businesses and other individuals who effectively act as tax collection agents for the ATO (eg group tax payers in the case of PAYE tax) could claim some compensation from the Australian Taxation Office in the form of a tax credit or allowable tax deduction for the time they spend completing paper work on behalf of the ATO.

5.45 *The Committee recommends that:*

the Government require the Australian Taxation Office (and ultimately all government departments and agencies) to incorporate a 'time-box' on all its taxation forms giving an agreed estimate of the time required to complete these forms. (see also recommendation 11)

### C. Wholesale sales tax

5.46 Wholesale sales tax has been one of the areas of Commonwealth taxation subject to extensive criticism in evidence to the inquiry. It has been described as one of the most complex, contradictory, administratively difficult and costly of all taxes, particularly for the small business community. The costs to small

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256. Federal Register, Part II, Office of Management and Budget, 10 May 1988, Vol. 53, No. 90, p 16618

business of compliance with sales tax reporting requirements is also indicative of many of the concerns raised about tax administration generally.

5.47 The problems raised during this inquiry about sales tax have been grouped into the following areas:

- . Administrative/Compliance Costs
- . Payment Period
- . Exemptions and Conditional Exemptions
- . Rulings, Appeals and Advice

#### C.1 Administrative/compliance costs

5.48 Compliance with sales tax legislation imposes substantial costs on businesses. Small business is particularly disadvantaged by the compliance costs associated with sales tax legislation.

5.49 The sheer volume of sales tax legislation - more than twenty five Acts plus accompanying regulations - is in itself daunting. Much of this legislation and the goods it refers to seem somewhat antiquated, a reminder that the sales tax system of the 1980's is largely based on legislation which originated in the 1930's. There are, for example, fourteen Sales Tax Assessment Acts and eleven Rating Acts. It would seem that this multiple legislation is in part a consequence of a concern that if sales tax law were incorporated in a single Act, a successful challenge under Section 55 of the Constitution might render the whole body invalid. It has been asserted that this concern was not justified.<sup>257</sup> The Government might as part of its tax law improvement program consider reviewing all sales tax legislation with a view to incorporating it into a single Act.

5.50 Persons registered with the Commissioner of Taxation are required to satisfy certain conditions with respect to the keeping of business records and documents relating to sales transactions. In addition, they are required to make monthly returns of sales, assess

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257. Commercial Clearing House, *Australian Sales Tax Guide* p 440

the sales tax liability, and remit the tax to the ATO.

5.51 Generally, in the case of small firms in wholesaling and manufacturing, the proprietor or manager is personally required to have a working knowledge and understanding of a number of matters arising from the imposition of sales tax. These include the administrative procedures to follow and familiarity with the schedule of rates and the system of exemptions. The proprietor must also keep up to date with official rulings by the Commissioners on various matters and ensure that the accounting and clerical work associated with reports and remittance to the ATO are completed.

5.52 The cost of compliance with sales tax regulations are substantial for all businesses registered for sales tax purposes. Much of this administrative and compliance cost burden derives from the inherent complexity of sales tax legislation and the multiple rates which apply to different classifications of particular goods. However it has been asserted in evidence to the Committee that compliance and awareness costs often are also a result of ambiguities in many sections of legislation which among other things have supported 'a minor industry concerned with interpreting the Act'.<sup>258</sup>

5.53 These costs fall more heavily on small businesses, as is the case with other aspects of taxation compliance, because of economies of scale and the inability of many very small businesses to bring these compliance costs to account.

5.54 Small business people argue that the sheer volume of clerical work involved in compliance with, and maintaining awareness of, Commissioners' rulings is an unreasonable burden, and is, in terms of their business, unproductive. The time spent on sales tax reporting requirements may have a particularly serious impact on the performance of a small business by diverting the owner/manager away from those entrepreneurial and other 'productive' activities on which the business's success is crucially dependent.

5.55 There are substantial economies of scale associated with the sales tax reporting and awareness costs.

5.56 The time and costs associated with sales tax reporting and remittances do not vary greatly with the number of taxable transactions nor the amount of sales tax remitted. Regardless of whether the number of transactions are in the hundreds and the sums involved are thousands of dollars, as might be the case for a small business, or ten of thousands of transactions and millions of dollars, as might be the case for a large business, the same forms must be completed and with the same frequency.

5.57 Similarly, the costs of maintaining awareness with sales tax law and Commissioners' rulings are more or less the same regardless of business size. The costs of lodging an appeal against a Commissioner's ruling on for example, the sales tax classification of a good, are fixed regardless of whether the disputed sum involved is one thousand or one hundred thousand dollars.

5.58 With a few exceptions the wholesale tax system provides no regulatory relief for small businesses for which these more or less fixed reporting and awareness costs impose a disproportionately large burden.

5.59 In addition, very small businesses (micro businesses) are also disadvantaged with respect to large businesses in that they are often unable to bring sales tax reporting and awareness costs to account as allowable deductions against income. In these micro businesses (typically businesses employing less than 5 employees) it is the owner managers who finds themselves spending more and more of their unpaid time, complying with the reporting requirements and maintaining awareness of new sales tax law. Only by doing so and not employing clerical or accounting staff can they contain costs and maintain their businesses viability. Of course in an unincorporated small business the time the owner manager spends on tax compliance is not an allowable cost against income.

5.60 Larger businesses which can justify employing clerical and accounting staff can, unlike the self-employed small business

person, claim the cost of this 'unproductive' labour as an allowable deduction against income. These costs can also be more easily passed on to consumers by larger businesses and spread over larger volumes of goods without affecting the firm's competitive position.

5.61 Small business people also perceive themselves as unpaid tax collection agents for the ATO, and as such consider they should be compensated in some form. In the case for example, of those small retailers, where much of sales the tax paperwork performed may relate to conditionally exempt purchasers, this is perceived as an unpaid service to those purchasers and the Tax Office.

5.62 The Committee concludes that:

- . the costs of complying with, and maintaining awareness of, wholesale sales tax law impose an unreasonable burden on small businesses; and
- . these costs are disproportionately high for 'micro businesses' in particular, because of economies of scale and the inability of many of these 'micro businesses' to bring these costs to account.

5.63 The Committee recommends that:

- . the Government initiate a public and comprehensive review of the wholesale sales tax system including sales tax law and its administration;
- . this review include a specific brief to propose means of simplifying law and administrative systems so as to reduce the disproportionately high awareness and compliance burden for small businesses; and
- . this review be conducted in consultation with the small business community through its representative organisations, including the peak body recommended in Chapter 1 and the Taxation Commissioner's Advisory Panel.

5.64 The Government has already taken some initiatives in response to these types of criticisms which have been made by the business community over many years. In September 1985 the Government announced a rationalisation of the number of sales tax rates categories from four to three and the tax's coverage was extended in several areas principally with the objective of reducing anomalies.

5.65 The Australian Taxation Office (ATO) has also recently been assessing information on the small business 'market segment' of its sales tax activities with a view to identifying administrative changes which will both improve ATO efficiency and relieve the sales tax related workload on small business taxpayers.

5.66 The recent change announced in the 1989 budget to the sales tax exemption threshold for small manufacturers from \$12 000 to \$50 000 annual sales (or from \$250 to \$1000 of sales tax liability) is an example of one form of regulatory relief which has benefited small business. Under the new arrangements an additional 12 000 small manufactures (16 per cent of all wholesale sales tax payers) will no longer need to register and pay sales tax. This will involve a very moderate cost to revenue of \$8 million in 1989/90 and \$12 million in 1990/91 and presumably result in a considerable reduction in administrative costs to the ATO.

5.67 There are clearly further opportunities to simplify sales tax law and the administrative systems which support it, so as to reduce further compliance costs for the small business taxpayer. For example data provided by the ATO<sup>259</sup> indicates that the small business segment (approximately 36 000 small businesses which represent 51.2 per cent of total sales tax payers) contributes only 2.9 per cent (\$222m) of total sales tax revenue. The remaining 48.8 per cent of bigger business sales tax payers contribute 97.1 per cent (\$7430m) of revenue. It would seem that further regulatory relief for very small businesses other than that currently available to very small manufacturers, would provide significant, additional administrative cost savings to small business and the ATO.

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259. Transcript of Evidence, pp 2991-5

5.68 Almost half of the small business tax payers (16 812 small businesses) collect less than \$2 500 of sales tax annually. More than one quarter (10 208 small businesses) collect less than \$1000 of sales tax annually.<sup>260</sup> This means that over 10 000 small businesses are collecting and remitting less than a total of \$10m in sales tax annually.

5.69 It would seem that both the compliance cost to these small businesses and the administrative cost to the Australian Tax Office of dealing with over 10 000 sales tax forms and remittances every month (an average of less than \$100/month/business of remitted sales tax) would recommend some relief for these very small sales tax remitters. The data provided by the ATO do not identify how many if any of these very small remitters are small manufacturers who will be totally exempted from sales tax as a result of the changes announced in the 1989 budget. However it would appear that a substantial number of these 10 000 small businesses are not covered by this exemption and that some regulatory relief is justified. For example, the frequency of remittances could be reduced from a monthly to a quarterly basis. The cost to revenue of the deferred remittance would be modest and the administrative cost savings to the ATO should be substantial.

5.70 More important would be the paperwork and compliance cost savings to the small business remitters which would have both real cost benefits and 'morale' benefits for small businesses. The Committee notes that an electronic lodgement system for sales tax could reduce if not eliminate much of this paperwork in the longer term. In the short term the issue by the ATO of personalised remittance forms to remittees would reduce time spent on completing paperwork.

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260. Transcript of Evidence, p 2994



5.71 The Committee recommends that:

the Australian Taxation Office reduce the remittance frequency of sales tax for qualifying small businesses (ie small sales tax remitters) from monthly to quarterly with a view to reducing compliance costs for these businesses.

5.72 The other aspect of sales tax administration which was the subject of considerable comment and complaint in evidence during this inquiry was the unpaid service which many businesses provide in collecting sales tax on behalf of the ATO. Businesses also act as collection agents for the ATO in collecting PAYE tax and fringe benefits tax.

5.73 It would seem reasonable that since businesses do in these instances perform a service for the ATO they should be entitled to some payment or compensation for doing so. These costs are of course more significant for small businesses and particularly micro businesses where the collection and remittance of sales tax may be performed by the 'unpaid' owner operator or partners in the business.

5.74 Larger businesses which have employees to perform these tasks are obviously more able to absorb these costs and the costs are allowable as deductions against income. In addition these larger businesses would, for example, in the case of sales tax, generally use the services of professional advisers to minimise the costs of sales tax collection and remittance through restructuring transactions and other arrangements.

5.75 There is therefore a strong case for providing some form of compensation to micro businesses in particular, for the costs of collecting and remitting sales tax. The Small Business Council in its discussion paper 'Taxation and Small Business in Australia'<sup>261</sup> has suggested two possible options for providing such compensation.

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261. Small Business Council, 1989, 'Taxation and Small Business in Australia', p 21

5.76 One option suggested was to provide a tapered credit by which businesses received a tax credit related to the value of the tax collected. For example, businesses collecting up to \$2000 per annum in sales tax could be given a 2 percent tax credit on the sales tax remitted. This would provide modest compensation to about 40 per cent (about 14 700) of small business sales tax payers for their sales tax collection and remittance costs, and at a modest cost to government revenue. This suggestion is only illustrative of the type of compensation regime which could be implemented. The precise level and other details of such a scheme would have to be determined after taxation statistics were analysed and the exact cost to revenue determined.

5.77 Another option suggested was to provide a credit which was related in some way to the actual collection, reporting and remittance costs for a business, but structured in some way to give a greater benefit to small businesses. A tax deduction or credit based on the agreed time required to complete sales tax paperwork, as represented in a 'time-box' on every tax form (refer Chapter 5.1) and an agreed hourly rate of remuneration, is one option for implementing such a system. This proposal would be more equitable than a tax credit arrangement because it would relate directly to the time and cost to businesses of collecting and remitting sales tax. It is therefore the Committee's preferred option. Obviously its administrative feasibility would need to be considered by the ATO but there is no obvious reason why a tax credit could not be provided on this basis. Where firms employed staff to perform these collection and remittance tasks there would be some double counting because, in addition to the tax credit, these businesses could claim the cost of labour as a tax deduction. However by restricting the eligibility for a tax credit to micro businesses where these tasks would not usually be performed by paid employees, this double counting could be minimised.

5.78 A system of compensation for small businesses and in particular very small businesses, which recognises the service they provide to the ATO in collecting and remitting sales tax, is strongly recommended on the grounds of both equity. It would be seen as a significant step by the Government and ATO in improving

its standing with the small business community.

5.79 The Committee recommends that:

- . compensation in some form be provided to qualifying small businesses (ie small sales tax remitters) for the cost of sales tax collection and remittance to the Australian Taxation Office, possibly by providing a tax credit based on an agreed reasonable 'compliance time' spent dealing with sales tax paperwork.

C.2 Payment period

5.80 A major inequity in the sales tax system results from the requirement that sales tax be remitted by the twenty-first day of the month following the month in which the taxable transaction takes place. In consequence where the payment of accounts occurs after an extended period of credit, a business may be required to remit sales tax payments to the ATO before payment for the goods is received from the customer.

5.81 Under the existing arrangements the maximum period for remittance of sales tax to the ATO is about 50 days (assuming the sale occurs at the beginning of the month) and the average period would be considerably less (roughly 35 days assuming sales occur on average, in the middle of the month). The average time taken for non-cash paying customers to settle accounts is certainly greater than this. Although no comprehensive data on average payment periods has been provided to the Committee, it was consistently asserted in evidence that settlement periods are of the order of 60-90 days. For example, a building material wholesaler stated that the settlement period for his business averaged 64 days and that this resulted in cash flow difficulties.<sup>262</sup>

5.82 This means that businesses not receiving cash payments may be required to remit sales tax to the ATO for the sales of goods for

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262. Transcript of Evidence, pp 1624, 2194

which payment has not been received. This is especially problematical for small businesses with their well-documented problems of obtaining sufficient working capital and maintaining adequate cash flows. For example in a survey conducted by the Victorian Employers' Federation, all respondents indicated that the payment of sales tax had caused cash flow problems on some occasions.<sup>263</sup> There has also been some suggestion that small businesses are sometimes forced to give extended credit in order to make sales or that in periods of tight credit, they do not have sufficient market power to resist demands by large business customers to extend periods of credit. This may mean that account settlement may extend to well beyond 60-90 days. In some circumstances a small business may actually be required to obtain loan finance to pay sales tax on transactions for which it has not received payment.

5.83 The adverse effect of the current sales tax payment arrangements on cash flow are likely to be minimised by large businesses which are often able to structure their operations so as to defer sale transactions and consequently sales tax remittances.

5.84 There are therefore strong arguments for a general extension of the payment date for sales tax beyond the twenty-first day of the month in recognition that average payment periods for accounts now extend well beyond this time. The average payment period of 60-90 days asserted in evidence to the inquiry would need to be verified before a final recommendation on the magnitude of the extension is decided but the Committee considers that an extension of the order of at least a further 30 days is warranted. For the reasons stated above this extension might justifiably be restricted to small businesses.

5.85 Several possible arrangements have been considered by the Committee by which extended remittance periods for small business sales tax payers might be implemented. One option is:

A split timing arrangement whereby small businesses

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263. Transcript of Evidence, p 12

would not be required to remit sales tax for at least a further 30 days after the current payment date. Larger businesses (ie the 48 per cent which currently contribute 97 per cent of sales tax revenue)<sup>264</sup> would continue to remit on the 21st day of the month following the sale.

5.86 This arrangement would result in a 'one-off' loss to revenue in the year of introduction but the total amount of wholesales tax collected would not alter, just its timing. If a simple further 1 month (30 days) extension of the remittance date was given to the approximately 36 000 small businesses (i.e. small sales tax payers), the 'one-off' cost to revenue would be perhaps \$30 million but the recurrent cost in terms of public debt interest would be only \$5 million. These figures are only indicative but the indication is that the recurrent cost to revenue would not be great.

5.87 The inequity of this proposal and of current remittance arrangements is that they take no account of the differing payment periods in different industries and businesses, and would, for example, provide those businesses fortunate enough to receive immediate cash payment with interest-free loans from the ATO. A second option therefore would be:

An arrangement whereby all businesses are required to remit sales tax on the 21st of the following month but only for those sales for which they have received payment.

5.88 This arrangement would be the most equitable in that it would not advantage those businesses which receive cash payment or whose accounts are settled promptly, in comparison with those whose accounts are settled in 60-90 days. This arrangement may present administrative difficulties for the ATO and admit the possibility of abuse through, for example, deliberate deferral of payment.

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264. Transcript of Evidence, p 2993

5.89 The Committee recommends that:

- . the payment period for sales tax be extended beyond the current period (21st day of the month following the month of transaction) to reflect the extended settlement periods now common in transactions to which wholesale sales tax applies; and
- . the following two arrangements for extending sales tax remittance periods be considered:
  - a one month extension of the current payment date be given to all small business sales tax payers (combined with a quarterly remittance frequency - see Recommendation 28); or
  - sales tax in future only be remitted on the 21st day of the following month for transactions where payment has been received in the previous month.

### C.3 Exemptions and conditional exemptions

5.90 There is a large range of goods which are exempt from sales tax as provided in the Sales Tax (Exemptions and Classifications) Act 1935. In addition, taxable goods may be conditionally exempt depending on the classification of the user (eg government, educational institution) or the use to which the purchaser puts the goods (eg agriculture, aids to manufacture).

5.91 There are over 150 items specifically exempt from sales tax, subject to some restrictions. These include agricultural mining, fishing equipment, primary produce, most food stuffs, drugs, medicines and surgical goods, fuel and power, books and paper, scientific and educational goods, works of art and building materials. Many of these exemptions relate to 'basic needs' and their exemption has been supported by successive governments on the grounds that expenditure on these items represents a large proportion of the income of low and middle income earners, and that taxing these items would be regressive.

5.92 The number and complexity of exemptions add to the ATO's own administrative costs and the compliance costs for taxpayers who have to determine whether a particular item is exempt. It can be argued that many of the exempt items do not fall into a 'basic needs' category and that in any event there are opportunities for simplifying the system of exemptions and reducing the associated compliance costs.

5.93 The Committee recommends that:

- . the system of exemptions from wholesale sales tax be reviewed and simplified

5.94 The system of conditional exemptions imposes major awareness and compliance costs on small retail businesses.

5.95 Goods sold by a retailer may be conditionally exempt depending on who purchases these goods or how they are used. For example crockery is normally taxable at 10 per cent but is tax exempt when bought by a public hospital. Goods ordinarily taxable are exempt when used as aids to manufacture. It is the retailers' responsibility to satisfy her/himself that the goods are conditionally exempt and to claim a rebate of sales tax back from the wholesaler or manufacturer. If they sell goods to a person or for a purpose, which proves to be ineligible for the exemption, they are legally liable and may have to pay the tax themselves. Given the complexity of the system and the fact that the retailer does not benefit from the granting of the exemption, this would seem an onerous, though under the existing system, perhaps a necessary condition.

5.96 There is also a substantial paperwork burden imposed on small retailers in dealing with conditional exemptions.<sup>265</sup> In some cases, when ordering goods from the wholesaler, the retailer may claim conditional exemption (using the standard Certificate 'B' form) in anticipation that in all cases customers will be eligible

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265. Transcript of Evidence, pp 1590 - 1600

for conditional exemption and will cover themselves by completing and signing Certificate 'A'.

5.97 In other cases the ATO will not allow conditionally exempt goods to be supplied on Certificate 'B', insisting that the tax be paid. The retailer then has to keep accurate records of all sales and claim a rebate of tax from the wholesaler at the end of each month on Certificate 'D'. The end result is potential confusion and unnecessary and unprofitable labour for the retailer spent on completing the paperwork necessary to claim a rebate on the sales tax.

5.98 Clearly the retailer, who derives no benefit him/herself from dealing with all this paperwork, and has no sales tax liability him/herself, is performing an unpaid service to the ATO and to the conditionally exempt purchaser.

5.99 Two suggestions have been made in evidence to the inquiry to remove this confusion and administrative complexity, the inequities in the existing system and to reduce the paperwork cost for the small retailer:

- i) abolish the conditional exemption system altogether;
- ii) shift the responsibility for claiming a rebate on sales tax for conditionally exempt purchases from the retailer to the purchaser.

5.100 Clearly, by abolishing the system of conditional exemptions altogether, as advocated by some,<sup>266</sup> both the paperwork cost for sma retailers and the risk of substantial penalties should they not comply with the requirements of the existing system are removed.

5.101 An alternative would be to require all conditionally exempt purchasers to pay the sales tax on purchase and then to claim a rebate from the ATO, as currently occurs with the diesel fuel rebate for primary producers. This would also eliminate the compliance



costs and risks for the small retailer and place the compliance cost and responsibility on the beneficiary of the conditional exemption.

5.102 The Committee recommends that:

- . the system of conditional exemptions from wholesale sales tax be altered so that the purchaser claiming exemption from the tax be responsible for claiming a rebate.

#### C.4 Rulings, appeals and advice

5.103 Three basic types of concerns were raised with the Committee about sales tax rulings, appeals and advice:

- . inconsistent rulings by the Deputy Commissioners, for example in different States, causing uncertainty and in some cases substantial cost penalties to businesses;
- . the ruling and appeal process is slow, again creating uncertainty and imposing costs on businesses; and
- . the quality and timeliness of oral advice, on which many small businesses must depend, from the ATO is very poor.

5.104 Instances have been reported where Deputy Commissioners in different States had made different classification rulings for the same good thus imposing substantial commercial penalties for a business selling this good.<sup>267</sup> This situation is clearly unacceptable and could only presumably, be a result of poor communication between the different State Offices. Properly designed and maintained information systems based on modern information technology which provide current information on all sales tax rulings should preclude this occurring.

5.105 There were also complaints that the appeal process was too

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267. Transcript of Evidence, p 2103

slow and that the costs of the uncertainty that prevails pending the outcome of an appeal can be very damaging, particularly for small businesses. In the sales tax area the costs of delay in say, the resolution of a disputed classification of a good, can be substantial and cause small businesses financial difficulties.

5.106 The Committee notes that there has been a steady decline in the backlog of appeals in Appellate Tribunals over the past few years. As of 30 June 1989 the number of appeals on hand had dropped to about 32 000 from 71 000 at 30 June 1987.<sup>268</sup> At the current rate processing appeals, the 1989 figure still implies substantial delays in resolving many appeals. Although this constitutes a substantial improvement on the situation several years ago, small businesses have argued that this magnitude of delay is still unacceptable and can prove fatal for a small business with minimal cash reserves.

5.107 The Committee therefore believes that a fast track appeals mechanism should be considered to deal specifically with sales tax disputes.

5.108 The Committee recommends that:

- . a time limit of 60 days be placed on the provision by the Australian Taxation Office of rulings requested about the classification of goods;
- . a 60 day limit also be placed on the time available to the Australian Taxation Office to determine on objections about the classification of goods; and
- . the Australian Taxation Office establish a 'fast track' appeal mechanism for wholesale sales tax disputes.

5.109 The ATO itself recognises that in the past its performance in providing consistent, accurate and timely advice on sales tax matters to tax payers has not been good. Small business people are the principal users of the ATO's advisory services because larger

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268. Commissioner of Taxation, 1988-89 Annual Report

businesses normally have access to in-house advice or seek expert advice from private accountancy firms on such matters. The ATO has admitted that there has been 'a significant error rate' in dealing with sales tax inquiries and has attributed this to the inadequate knowledge of sales tax of the staff fielding these inquiries.<sup>269</sup>

5.110 In consequence, the ATO has adopted three strategies to improve the advisory service on sales tax matters. The first is a pre-emptive strategy of identifying the information needs of specific community and industry-based groups and producing literature and other material to provide information to these selected groups of taxpayers. The second strategy is to upgrade the technical training of staff and thereby provide better quality advice to sales tax payers. The third strategy is to develop expert systems to be run on personal computers which can provide the basic decision rules for sales tax classification and value issues. This will assist advisory staff in different offices to provide correct and consistent advice in a timely fashion.

5.111 The Committee recognises that the improvement of sales tax advisory services to small business have been given a high priority by the ATO and would expect a noticeable and measurable improvement in these services to result over the next 12 months.

#### D. Capital gains tax

5.112 Capital gains tax and its effect on small businesses was an area of major concern identified by the Committee during the course of this inquiry. There were few submissions made to the Committee addressing taxation issues which did not recommend some change to the current capital gains tax provisions. These ranged from proposals for a total taxation exemption for capital gains resulting from the sale of a small business<sup>270</sup> to more limited taxation exemptions applying to, for example, goodwill only<sup>271</sup> or to the

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269. Transcript of Evidence, p 3013

270. Transcript of Evidence, p 137

271. Transcript of Evidence, p 1009

rollover of capital<sup>272</sup> A variety of suggestions were also made which provided exemptions based on some type of time qualification. For example, total exemption from capital gains tax provided that an investment was sustained for more than five years.<sup>273</sup>

5.113 The current situation which applies to small businesses is that any small business established or purchased since September 1985 is subject to full capital gains tax with the exception of an exemption for 20% of the capital gain on goodwill for businesses valued at less than \$1 million. A large number of small businesses and business and professional organisations have made submissions to the Committee arguing that this existing limited concession is neither adequate nor, in some instances, appropriate.

5.114 There would appear to be two basic arguments for an extension of the existing capital gains tax relief provisions for small businesses.

5.115 The first is that small businesses in general are high risk ventures and in many cases the income rewards to small business operators during the life of the business are relatively poor. They therefore argue that the goodwill built up in a small business is the owner/operator's major form of reward for many years of hard work and that this should not be taxed in the same way as a normal capital gain. They argue that this situation is particularly unfair for a small business where there is no initial capital or goodwill to be indexed for inflation. In addition the proceeds from the sale of the small business on the retirement of the owner operator has traditionally been seen as an important means of providing retirement security for these people. They therefore argue that some form of taxation relief on the sale of a small business should be provided to encourage small business people to provide for their retirement in this manner.

5.116 The second argument basically revolves around the consequences of a realisation-based tax such as the existing capital

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272. Transcript of Evidence, p 2366

273. Council of Small Business Organisations of Australia, Supplement: Submission, p 4

gains tax. A tax of this type inevitably results in a lock-in or reduction of capital mobility and, to some extent human mobility, within the business sector. This lock-in effect under the current capital gains tax regime is not specific to small businesses. However, small business people argue that an important determinant of the success and contribution of the small business sector to the economy is high mobility of both capital and human resources (in the form of the skills and experience of the small business owner/operator). It is the high mobility of capital of the small business sector combined with the entrepreneurial and innovative spirit of many small business people which has permitted small business to become the most vital and adaptive section of other successful national economies. Although no quantitative evidence was provided to the Committee on the magnitude of any lock-in effect of this type resulting from the introduction of capital gains tax in 1985, no-one, including Treasury officials who gave evidence to the Committee, disputed that a reduction in capital (and human) mobility in the small business sector has resulted from the introduction of capital gains tax.

5.117 The 70% of small businesses which are not incorporated have also emphasised that larger, incorporated businesses are able to reorient or expand their business activity within a corporate structure and defer or circumvent capital gains tax in many instances. Treasury officials have in evidence to the Committee in May 1989<sup>274</sup> pointed out that the then current capital gains tax provisions which applied to incorporated businesses provide limited rollover provisions for certain types of company reorganisations where there is no essential change in the ownership of the underlying asset. Changes announced in the 1989 Budget to these provisions are intended to close some loopholes which apparently allowed companies to avoid capital gains tax by transferring assets to a subsidiary and then selling the subsidiary so as to pass the capital gains tax liability onto the buyer.

5.118 The Committee accepts there is validity in both these arguments for greater relief from capital gains tax for small

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274. Transcript of Evidence, p 2951

businesses. However, it believes the second argument, concerned with capital mobility, to be more compelling than the first concerned with retirement security.

5.119 The appreciation in the goodwill of a small business has in the past been an important source of retirement security for small business owners and operators and has provided some compensation for relatively poor income rewards and working conditions for small business people. Since the introduction of capital gains tax in 1985 and recent reforms to superannuation law the strength of this argument have been diminished.

5.120 Since the introduction of capital gains tax in 1985 small business people commencing or purchasing a small business have been aware (or should have been aware) that the proceeds from sale of their small business on retirement would be subject to capital gains tax. They should therefore be making alternative arrangements to supplement their income on retirement through superannuation arrangements which, as a result of the recent reforms noted and recommendations made elsewhere in this Report (refer Chapter 4.2) be significantly more generous than they used to be. The argument that the increase in the value of the goodwill in a small business is compensation for the income forgone and long hours worked by the owners operators of small business does not in the Committee's opinion provide a justification for a tax exemption or benefit. A basic principal underlying the introduction of the capital gains tax regime is that income wherever it is derived (including capital gains) should be subject to the same general levels of taxation.

5.121 The Committee finds the second argument put by the small business community to justify a liberalisation of relief from capital gains tax for small businesses far more compelling. One of the major strengths of the small business sector in other economies and in Australia's is its ability to respond rapidly to changes in technology, costs and market opportunities by the redeployment of both capital and human skills. It is this characteristic which is fundamental to the roll of small business in contributing to the genesis of new areas of economic activity and structural adjustment.

5.122 The lock-in of capital to existing small businesses resulting from the introduction in 1985 of a realisation-based capital gains tax must result in a significant dampening of those very characteristics of small business (innovation, adaptability, mobility) which should be particularly highly valued in Australia's current economic situation.

5.123 The Committee believes that this provides a powerful argument for a deferral of capital gains tax where capital is being rolled over from one business to another. A form of rollover relief would provide the most effective means, of all those suggested to the Committee during this inquiry, of promoting capital and human mobility within the small business sector and maximising the contribution that small businesses can make to the resolution of our current economic problems.

5.124 The Committee notes that in the recent Small Business Council discussion paper, *Taxation and Small Business in Australia*, the Council recommended the introduction of capital gains tax rollover provisions for small businesses. The Committee fully supports the general thrust of the Council's recommendation.

5.125 The precise form of this rollover relief should be determined by two principal categories of considerations:

- . the objective of promoting capital and human mobility in the small business sector and the growth of small businesses into larger businesses; and
- . considerations of equity, capital market distortions, and possible taxation avoidance.

5.126 The Committee flagged a general suggestion responding to these two types of considerations with the Treasury Taxation Division which responded in a written submission and at a public hearing.<sup>275</sup> The comments provided in that submission and in oral evidence to the Committee tended to argue against the provision of

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275. Transcript of Evidence, pp 2928, 3026

rollover relief from capital gains tax for small business or business generally. However, it is noteworthy that Treasury officials were not able (or willing) to provide any justification for the existing limited relief from capital gains tax (i.e. the exemption for 20% of the increase in goodwill of a small business valued under \$1 million). The Committee does not believe that the existing relief is adequate or appropriate.

5.127 Treasury's arguments, or rather comments, about the provision of rollover relief from capital gains tax fell into three categories. First, the efficacy of a rollover provision in reducing the existing lock-in effects of capital gains tax was questioned. It was argued that in certain circumstances it would probably act to exacerbate the lock-in of capital. It was also argued that the extension of rollover relief to small businesses would seriously weaken the equity principal incorporated in the capital gains tax whereby it should apply to the disposal of all assets under all circumstances. Treasury also noted that the provision of rollover relief would have 'undesirable revenue consequences'.

5.128 It is noteworthy that all three arguments put by Treasury officials against rollover relief from capital gains tax also apply to the existing provisions for an exemption on 20% of goodwill for business valued under \$1 million.

5.129 Concerns expressed in the Treasury submission about 'lock-in' effects related inter alia to the capital gains tax exempt status of small businesses acquired or established prior to the 19 September 1985. Treasury appeared to be concerned that the provision of a deferral of capital gains tax liability on rollover from one business to another would allow assets acquired prior to this date to avoid capital gains tax entirely. This might actually increase rather than decrease the lock-in inefficiencies (distortion of capital or investment decisions) resulting from capital gains tax.

5.130 The Committee argues that a simple provision could be made that any pre-1985 business availing itself of the capital gains tax deferral on rollover, could do so only on the basis that it lost its



capital gains tax exempt status and ultimately, when the business was sold outright without rolling over, capital gains tax would be paid. This could, contrary to the view put by Treasury, actually liberate some of the pre-1985 locked-in capital by persuading small business people to surrender their pre-1985 capital gains tax exempt status in exchange for a rollover deferral of liability. The Committee believes that the lock-in of capital to pre-1985 businesses is a major problem whereby much capital and small business experience which could be redeployed to greater benefit to the individual small business person and the national economy is now 'quarantined' in (pre-1985) established businesses.

5.131 The argument that a rollover provision for any category of small business (for example, businesses with a nett value less than \$1 million) will result in a distortion of investment decisions and a lock-in of capital to that particular category of business is accepted. However, it can be argued that some degree of lock-in or preferential treatment of capital invested in a particular business sector, (eg small business) may be justified if it results in net economic benefits. For example, the greater mobility of capital within the small business sector and a resultant increase in the contribution that small businesses make to restructuring and new economic activity may outway the costs associated with any lock-in of capital to the small business sector as a whole.

5.132 The Committee's objective in providing rollover relief to the small business sector is to ensure that there is a high level of capital and human mobility within that sector without inhibiting in any way the growth of small businesses to larger businesses. By specifying, for example, a dollar limit on the valuation of a business which would qualify for this rollover relief, a significant restraint could result on the growth of small businesses into larger businesses, since larger businesses would not qualify for rollover relief.

5.133 To avoid this outcome the Committee is suggesting an arrangement whereby a qualification criteria for access to rollover relief would be based on the initial size of a business and not on the size of a business at the time the rollover occurred. For

example, eligibility for rollover could be restricted to the owners of a business with a net value of \$1 million or other appropriate threshold value at the time of initial establishment or acquisition of the new business. Any subsequent rollover of capital into progressively larger businesses would still benefit from a deferral of capital gains tax regardless of the size of the business being sold or acquired.

5.134 Treasury's argument that rollover relief would seriously weaken the equity principal of the capital gains tax ignores the fact that the equity principal currently does not hold for assets purchased before September 1985, for the family home or indeed for 20% of the increase in goodwill of a business valued at less than \$1 million. There is already a major inequity and distortion in investment decisions resulting from these exemptions, particularly because of the lock-in of capital to pre-1985 small businesses and other assets.

5.135 Under existing arrangements there is a major disincentive for the owner of a small business acquired or commenced prior to 1985 to sell that business and reinvest capital in another business. It is likely that a significant proportion of all small businesses fall into this category. The consequences of this lock-in effect should be a major consideration in the government's review of existing capital gains tax provisions as they apply to small businesses. Similarly critics of the existing capital gains tax regime have argued that because of the exemption applying to the family home there has been a massive over investment in housing at the expense of more productive activities including investment in small businesses.

5.136 The Committee believes that these existing exemptions from capital gains tax result in the lock-in of capital into either unproductive assets, such as the family home, or place major frictions on the mobility of capital in a sector of business where capital mobility is a major determinant of business success. In contrast the proposals being put by the Committee that a deferral (not exemption) of capital gains tax be provided where there is rollover of capital from an initially small business into another

productive business may result in some lock-in effects, but a lock-in effect with a productive outcome. The Committee is advocating a rollover provision with the objective of getting the small business and national economy rolling by promoting capital and human mobility.

5.137 The cost to public revenue of an extension of capital gains tax deferral in the event of rollover from one business to another must of course be a consideration which determines the final form of this rollover relief. However, by placing a simple dollar limit on the size of capital gains deferral which is provided in the event of rollover and/or indeed by placing some time limit on the application of rollover relief, e.g., 10 or 20 years the revenue costs could be contained.

5.138 The precise form in which rollover relief and capital gains tax is provided to small businesses would also need to consider the possibility of avoidance of capital gains tax. In consequence the Committee is suggesting in the following recommendation that a 12 month limit be provided for the rollover to occur and in addition, that capital realised from the sale of a business should be held in an approved holding account if capital gains tax is to be deferred until the time of rollover.

5.139 The other major concern the Committee has had in formulating its recommendation has been to quarantine in some way the application of this capital gains tax deferral to 'productive small business' which can contribute to the restructuring of our economy and new economic activity. At the very least there are certain categories of business activities which the Committee does not believe should qualify for rollover relief. This approach has been adopted in the United Kingdom where certain taxation benefits are restricted to so called 'trading businesses' which are broadly defined as businesses carried on, on a commercial basis with an intention to realise profits and which do not include:

- . businesses dealing in shares, commodities, securities, land or futures;

- . banking, insurance, money lending, higher purchase, financial, accounting or legal services; and
- . businesses dealing in goods except in the course of carrying on ordinary trade or wholesale or retail distribution business.

5.140 A final point which deserves emphasis is that a deferral not an exemption from capital gains tax is being proposed. The provisions formulated for provision of rollover relief from capital gains tax should ensure that an indefinite exemption (effective avoidance) on the rollover of capital from one business to another is not provided. In other words on the ultimate sale of a business when the capital is not reinvested in another productive business, e.g. on retirement, full capital gains tax should be paid. This would obviously require careful consideration to be given to the status of capital gains on the death of the owner of a business where the business is inherited by spouse or children and also to the treatment of partnerships and trusts.

5.141 The following recommendation is contingent on the continuation of the existing capital gains tax regime. It obviously would not stand if for example a speculative gains tax were introduced.

5.142 The Committee recommends that:

- . given the existing capital gains tax regime, capital gains tax be deferred on the capital gain realised on the sale of a trading business which is rolled over into another trading business.

5.143 The Committee suggests that conditions of the following type might be applied to the provision of this benefit:

- . capital gains tax deferral apply only to that part of the realised gain which is subsequently rolled over into another trading business;

- . eligibility for the capital gains tax deferral be restricted to the owners of a business with a net value of less than \$1 million or other appropriate value (the figure to be indexed for inflation) at the time of its establishment or purchase;
- . eligibility for the capital gains tax deferral be restricted to 'trading' businesses which are defined as businesses conducted on a commercial basis with an intention to realise profit and which do not include:
  - business dealing in shares, commodities, securities, land or futures;
  - banking, insurance, money lending, higher purchase, financial, accounting or legal services; or
  - businesses dealing in goods except in the course of carrying on an ordinary trade or a wholesale or retail distribution.
- . the rollover must occur within one year of the sale of the previous business; and
- . full capital gains tax be paid in the tax year when the existing business is sold unless the realised capital gain is deposited in an approved holding account until such time as reinvestment occurs.

#### E. Stock-in-trade

5.144 The effect of inflation on the operations and viability of small businesses has been a recurrent theme during the course of this inquiry. Current arrangements for trading stock valuation under the current taxation system is illustrative of how high levels of inflation and the existing tax system interact to the detriment of the cash flow and the long term survival of small businesses. Any increase in the value of stock held by a business over a financial year is treated as income. In consequence the inflationary component

of the increase is treated as income and is subject to income tax.

5.145 The result of this is that many small businesses which maintain substantial stock holdings (e.g. manufacturing and trading businesses) and which must reinvest a substantial proportion of any cash income in trading stock, may show substantial 'book profits' but after the payment of taxation on the inflationary component of their trading stock may have little or no liquidity. These liquidity problems are exacerbated for businesses which are growing and must substantially increase real trading stock levels from one year to the next.

5.146 Evidence was provided to the Committee on numerous occasions<sup>276</sup> about the detrimental effect on liquidity of the taxation treatment of stock valuations. Perhaps the most compelling of this evidence was provided by Mr David McKee<sup>277</sup> who provided an example to the Committee of how investment in a productive manufacturing business would result in a negative cash flow while an equivalent investment in alternative and, arguable less productive, investments (e.g. property investments) would result in a substantial positive cash flow which would continue over the life of the investment.<sup>278</sup>

5.147 Mr McKee quoted the example of a small manufacturing business established with initial capital of \$500 000, \$280 000 of which was used to purchase stock. In the first taxable year the business showed a 'book profit' of \$100 000 which increased in the second taxable years to \$106 000. However, because of the need to finance increases in stock levels and the taxation treatment of the inflationary component of the stock's value, the business experienced a short fall in cash funding in the second taxable year of \$10 600.

5.148 When this initial outlay of \$500 000 in a manufacturing business is compared with an equivalent investment in, for example property, in the first taxable year a 'book profit' of \$20 000

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276. Transcript of Evidence, pp 1263, 1388

277. Transcript of Evidence, p 511

278. Mr David McKee Submission

resulted and in the second taxable year a 'book profit' of \$32 000. However, in spite of these lower levels of 'book profits' the property investments resulted in positive cash flows. Cash was available for distribution of \$10 200 in the first taxable year and \$16 320 in the second taxable year.

5.149 Mr McKee understandably then asked the question:

'Why would a rational investor seek to invest in a manufacturing business with its negative cash flow from operations when there are many types of investment propositions available offering positive cash flow from operations.'

'If the government is concerned about national growth it needs to determine which industries needs its support. Does the country need a booming property sector or an expanding manufacturing sector? If the manufacturing sector is worth supporting then the government needs to recognise that taxation is the greatest strain on businesses' liquidity. It can help small manufacturers by adopting more flexible taxation rules. It could, for example, follow the American example and offer the LIFO system as an alternative inventory valuation and it could allow depreciation calculations to be based on replacement costs rather than an original cost.<sup>279</sup>

5.150 The Council of Small Business Organisations of Australia also advocated in its submission to the Committee<sup>280</sup> that some type trading stock adjustment is essential to assist small business liquidity to offset the impact of inflation on trading stocks. COSBOA quoted figures indicating that an investment of \$100 in trading stock in June 1979 would have required an investment, and for taxation purposes would be assessed at, \$215 for the same quantity of trading stock in June 1988. COSBOA also recommended that

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279. Mr David McKee Submission, p 4

280. Council of Small Business Organisations of Australia, 5 January 1989, Supplementary Submission

a suitable basis for inflation adjustment to trading stock would be provided by the 'last in first out' system (LIFO) currently employed in the United States. LIFO is a system whereby it is assumed that the last goods purchased are the first goods sold and the cost of sales for the goods is costed on that basis. The LIFO system for the costing of goods sold by a trader is not recognised under present taxation law as a basis for the valuation of trading stock. COSBOA argued that the LIFO system would provide a fair and equitable basis for providing an adjustment to offset the impact on trading stock.

5.151 This proposal was referred to Treasury Taxation Policy Division for comment by the Committee and in its response<sup>281</sup> Treasury made the following points.

5.152 In periods of rising prices LIFO tends to produce a higher cost of goods sold figures than other methods currently approved by the Australian Taxation Office (eg 'first in first out' FIFO, or average costing). Treasury accepted that LIFO 'would enable business (to some extent) to counter the effects of inflation on reported incomes by an accounting technique rather than a specific inflation adjustment'.<sup>282</sup>

5.153 However, Treasury also noted that unlike other currently approved methods, LIFO undervalues (often significantly) the cost of trading stock on the company accounts because inventory values can date back for a substantial period. Consequently Australian accounting bodies do not recommend the use of LIFO. LIFO also fails to bring to tax the real holding gains on inventories which may apply in particular cases. It is not equivalent to an adjustment for the general level of inflation.

5.154 This last point is accepted by the Committee and on balance the Committee is persuaded that if an adjustment is to be provided for inflationary effects on trading stocks valuations it should be provided through a specific purpose, inflation adjustment.

5.155 A trading stock valuation adjustment (TSVA) did operate in

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281. Transcript of Evidence, p 2957

282. Transcript of Evidence, p 2957



the period 1976/77 to 1978/79 financial years. This provision allowed a deduction equal to a 'prescribed percentage' to the value of 'eligible trading stock' on hand, generally at the commencement of the year of income. The 'prescribed percentage' was equal to one half of the percentage increase in the goods component of the consumer price index. 'Eligible trading stock' was all trading stock excluding land, shares, financial securities and intellectual and commercial property.

5.156 This arrangement provided a partial compensation to all businesses to offset the impact of inflation on trading stocks. However, the adjustment provisions were rescinded in July 1979. The principal reason stated for the withdrawal of the adjustment was that tax payers obtaining the adjustment did not utilise the adjustment for the intended purpose. It was asserted that in the main, the adjustment provided an additional means of increasing the distribution of profits to shareholders/owners.<sup>283</sup> There was also a substantial cost to revenue. In its first full year of operation the TSVA cost \$360 million, equal to approximately 13% of the corporate tax base at that time.

5.157 In its submission Treasury pointed out that should a scheme be reintroduced of the type operating in 1976-79 it would have cost, for example, in the 1983-84 financial year approximately \$650 million. However, the Committee notes that there has been a substantial and continuing reduction over the past 15 years or so in the non-farm stocks-to-sales ratio in the Australian economy reflecting improved stock control. This continuing trend would imply a further reduction in the cost to revenue on reintroduction of a TSVA.<sup>284</sup>

5.158 In the 1985 draft 'White Paper on Reform of the Australian Taxation System' it was concluded that reform must be provided on a comprehensive basis with inflation adjustment applying to all items affected by inflation, including durable assets, stocks and monetary items and that it should apply to all sectors of the economy including the business sector. Treasury therefore argued that a

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283. COSBOA Supplementary Submission, p 5, 5 January 1989

284. 1989/90 Budget Paper No. 4, p 2.24

reintroduction of a TSVA which would provide inflation adjustment in respect of only one of the areas of business costs would therefore distort productive decision-making towards holding stocks as against investment in plant or securities.

5.159 Since the time of the 1985 White Paper no comprehensive inflation adjustment has been introduced in the Australian taxation system.

5.160 The Committee has noted Treasury's comments about the revenue implications and the distorting effects of the reintroduction of a TSVA. However, the Committee believes that, in the light of persevering high levels of inflation, and the existing major distortions to investment decisions (resulting from the combined effects of high levels of inflation and the existing based taxation system) away from productive investment in trading and manufacturing businesses to alternative forms of investment, the introduction of at least a partial adjustment for inflation on trading stock valuations is strongly recommended.

5.161 The Committee recommends that:

- . the government introduce a trading stock valuation adjustment scheme or an alternative arrangement for reducing tax on the inflationary component of income associated with investment in trading stock.

#### F. Income averaging

5.162 There are two tax related arrangements currently in place which are specifically directed at the taxation related problems experienced by categories of business and professionals who experience substantial fluctuations in taxable income between different income years. The first of these is available for primary producers and the other for specific categories of occupation including artists, composers, inventors, performers, production associates, sport persons and writers. These arrangements allow these categories of tax payers to average their income over a number

of years to counteract the impact of progressive tax scales on taxpayers with variable incomes and consequent inequities in the tax burdens placed on them in different income years. These arrangements have an equity objective of ensuring that these categories of tax payers do not pay greater tax over a year or a number of years than those on equivalent but steady incomes.

5.163 A separate but tax related scheme also applies for primary producers called the Income Equalisation Deposits Scheme (IED). This scheme allows primary producers to reduce fluctuations in their income from year to year by putting money aside in 'good' income years for use in subsequent 'bad' income years. These good and bad years are related to cyclical movements in the prices of commodities, exchange rate fluctuations and weather variations.

5.164 In May 1989 the government announced changes to the IED scheme which had been operating in various forms since 1977. Under the new scheme deposits are tax deductible in the year of deposit and withdrawals are assessable for income tax purposes in the year of withdrawal. Interest is paid only on the investment component of the deposit made in the fund ie the value of the deposit when reduced by the tax which would have applied in the deposit year. Interest is paid at the short term Commonwealth Bond rate. An upper limit of \$250,000 is set for the amount of tax deductible deposits that can be accumulated in the IED. Other arrangements have been put in place to ensure that unwarranted benefits and manipulation to gain tax advantages do not occur.

5.165 This scheme allows primary producers to redistribute income effectively between different income years with a tax averaging benefit. It also provides some incentive for primary producers to put aside funds in good years when profitability is good for use in bad years when negative cash flows are experienced.

5.166 There is wide variety of other types of small businesses which experience unpredictable and uncontrollable variations in taxable income across successive income years. For example, small retail, trading and service businesses in rural centres are highly dependent on primary producers for their income. The fluctuating

incomes of primary producers related to movements in commodity prices and weather variations, are therefore directly reflected in fluctuating incomes for these rural businesses.

5.167 Similarly there are many businesses in the tourist industry which experience wide income fluctuations from year to year due to unpredictable factors including the weather. For example, a business operating in the Australian snow fields may experience wide variation in income from year to year depending on the length and quality of the skiing season.

5.168 Large and unpredictable fluctuations in income are experienced by professional categories other than those enjoying access to the income averaging arrangements currently in place. For example, the Institute of Architects<sup>285</sup> claims that architectural practices experience substantial and uncontrollable variations in income levels over different income years and that income averaging arrangements provided to other special employment categories should be extended to the architectural profession.

5.169 In a submission made to the Committee by a small but highly successful technology based company involved in the manufacture and export of scientific equipment<sup>286</sup> it was asserted that fluctuations in the Australian dollar resulted in substantial income fluctuations across income years for this particular company which could not be predicted and presented considerable cash flow difficulties. It was argued that an income averaging facility of the type currently enjoyed by primary producers would do much to alleviate the adverse consequences of these income fluctuations.

5.170 Once again the Committee raised with the Treasury the possibility of extending the income averaging facilities currently available to rural producers and selected categories of professionals to other small businesses experiencing substantial income fluctuations. Comments provided by Treasury on this suggestion raised the possibility of an undue advantage being given to small businesses which do not experience fluctuations of real

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285. Transcript of Evidence, pp 2660, 2672

286. Transcript of Evidence, p 2335

incomes, unless this facility were effectively quarantined. Additionally it made the point that there appears to be nothing inherent in small business which invariably or commonly produces significant income fluctuations. Finally and inevitably Treasury raised the issue of the cost of revenue resulting from any deferred taxation payments.

5.171 The Committee believes that there is strong case for the extension of the current income averaging facility enjoyed by primary producers and others, to other small businesses which also experience large income fluctuations and which in consequence pay higher levels of taxation than they might otherwise. There are clearly disadvantages in doing this on the current basis of selecting specific business or professional categories such as primary producers, artists, sports people and the like who are likely to experience large income fluctuations from year to year. This arrangement provides a benefit to a category of business regardless of whether the individual business concerned actually experiences large income fluctuations.

5.172 The Committee suggests that one option whereby this benefit could be selectively extended to those small businesses where it is justified, would be by allowing any business to apply for access to this income averaging facility on the basis of demonstrating for example that over the past two or perhaps three years that a substantial fluctuation in income levels has actually occurred. This would mean that those businesses gaining access to this taxation provision would do so on the basis of need and not their particular good fortune in belonging to one of a set of specified business or professional categories.

5.173 The Committee also believes that the current Income Equalisation Deposit scheme as it now operates after changes announced in May 1989, has considerable merit not only for primary producers but for any small business which experiences income fluctuations and would benefit from an incentive to put aside funds in 'good' years for use in 'bad' years.

5.174 The Committee recommends that:

- . the government introduce an income averaging facility and an income equalisation deposit scheme of the type currently enjoyed by primary producers, to assist other small businesses which experience large income fluctuations across income years.

## G. Company and provisional tax

### G.1 Legal forms of business and the taxation system

5.175 The significant differences in the taxation treatment of small businesses based on their different legal forms has been an area of consistent complaint during this inquiry. The existing taxation system is seen to be inequitable in its treatment of unincorporated small businesses in comparison with incorporated and usually larger businesses. It has been asserted that incorporated (big) businesses are greatly advantaged by the following:

- . a lower rate of company taxation in comparison with the top personal marginal income tax rate;
- . the timing difference of tax payment for a company versus an unincorporated businesses; and
- . the manner in which company tax is assessed and may be varied in comparison with the situation for provisional tax.

5.176 Similar discriminatory treatment of incorporated versus unincorporated businesses were also asserted to occur in the area of capital gains tax, superannuation deduction allowability, economies of scale relating to taxation compliance and awareness costs, and the ability of larger businesses to pass on the cost of fringe benefits tax.<sup>287</sup>

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287. Transcript of Evidence, p 835

5.177 Only about 23% of small businesses are incorporated. If primary producers are excluded (only 6% of primary producers are incorporated) then 30% of the balance of small businesses are incorporated. The distribution of incorporation in small businesses varies widely between different sectors of the economy (refer Table 5.2). For example, almost half of all manufacturing and mining small businesses are incorporated probably reflecting the fact that most of the businesses in these two sectors would tend to be at the larger end of the size range of small business. About a quarter of small businesses are incorporated in the construction, community services and transport and storage sectors.

5.178 In summary approximately three quarters of all small businesses are not incorporated. These businesses argue that they are discriminated against by the manner in which the taxation system treats unincorporated businesses i.e. sole proprietorships, partnerships and trusts. In unincorporated businesses the net income from the business is distributed to the sole proprietor, the partners or beneficiaries of the trust and is included in their personal income for taxation purposes. Most of these proprietors, partners and trust beneficiaries would be paying provisional tax.

5.179 A simple comparison of company tax rates with top marginal personal income tax rates does not reflect the average tax liability of incorporated and unincorporated businesses, because personal income taxes are progressive while company tax is applied at a flat rate. Subject to the assumptions made and noted in Table 5.3 (notes 1, 2, 3 and 4), it is evident that for an individual (i.e. a sole proprietor) the average rate of tax does not exceed that for a company until income levels exceed approximately \$95 000. For a two person partnership the average tax does not exceed that for a company until total partnership income exceeds approximately \$180 000. Similarly with a family trust using the assumptions at note 3, average rates of tax do not exceed that applying to a company until income levels also exceed approximately \$180 000.

5.180 Of course many if not all of the discriminatory effects of the taxation system between companies and unincorporated small businesses would be obviated with the advent of the close

corporation legal form referred to in Chapter 8 of this report. The close corporation proposal may allow many currently unincorporated small businesses to take this form of incorporation which would admit them to the company tax system. This of course presumes that the relevant corporation legislation survives a constitutional challenge in the High Court and, more importantly, that there is a high rate of uptake by unincorporated business of this new legal form.



**TABLE 5.2**  
**PRIVATE SECTOR SMALL ENTERPRISES**  
**INCORPORATED V UNINCORPORATED**

ASIC Sector	Total Number Small Enterprises	Number Incorporated	% Incorporated
Agriculture	234,401	13,573	6%
Wholesale/Retail	204,052	46,592	23%
Business Services	90,914	52,534	58%
Construction	79,756	18,011	23%
Other Services	59,146	10,798	18%
Total Manufacturing	41,925	20,225	48%
Community Services	38,753	8,445	22%
Transport and Storage	33,571	7,043	21%
Mining	2,306	1,098	48%
Communication	205	17	8%
Electricity, Gas and Water	54	26	48%
<b>TOTAL</b>	<b>785,083</b>	<b>178,362</b>	<b>23%</b>
Excluding Agriculture	550,682	164,789	30%

**Source:** Private Communication C Papadopoulos, Bureau of Industry Economics (imputed from 1986 ABS Integrated Register of Companies).

5.181 In contrast a company whether private or public, is taxed as a separate entity from its owners or shareholders. It would be expected that a large proportion of incorporated small businesses are private rather than public companies.<sup>288</sup>

5.182 Much of the commentary on the discriminatory taxation treatment of unincorporated businesses has focussed on the differences between the current rate of company tax which is 39%, and the maximum personal marginal rate of income tax, which was 48 cents in the dollar in the 1989-90 financial year (49.25% when the medicare levy is included). This will reduce to 47 cents in the dollar in 1990/1991 (48.25 cents with the medicare levy). A comparison of marginal and average tax rates for small businesses with different legal forms (companies, sole proprietors, partnership and family trusts) is represented in Table 5.3.

5.183 Since it could be expected that a relatively small proportion of participants in unincorporated small businesses be they sole proprietors, partners or trust beneficiaries, derive taxable incomes from the business exceeding \$90 000 a year, it might be concluded that average rates of tax applying to the majority of these small businesses participants are less than would apply were they incorporated and paying a flat rate of company tax. For example data extracted from statistics published by the Australian Taxation Office on provisional tax payers with income principally derived from sources other than property or primary production, suggest that only about 9% of these provisional tax payers, which would include most small business provisional tax payers, have incomes greater than \$50 000. Only 2% have incomes greater than \$100 000.<sup>289</sup>

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288. Transcript of Evidence, p 857

289. Australian Taxation Office, *Taxation Statistics 1987-88*, AGPS 1989 Table 1.3d

**TABLE 5.3**  
**COMPARISON OF MARGINAL AND AVERAGE TAX RATES**  
**FOR SMALL BUSINESSES**  
**WITH DIFFERENT LEGAL FORMS**

TAX RATES: 1989/90 INCOME YEAR				
	Indiv- idual	Company (Note 4)	Partner- ship (Note 2)	Family Trust (Note 3)
Tax on TAXABLE INCOME: <u>\$20,000</u> (Note 1)	3317	7800	2058	1883
Marginal Rate:	29%	39%	21%	21%
Average Rate:	16.6	39.0	10.3	9.4
Tax on TAXABLE INCOME: <u>\$30,000</u>	7157	11700	4158	3983
Marginal Rate:	39%	39%	21%	21%
Average Rate:	23.9	39.0	13.9	13.3
Tax on TAXABLE INCOME: <u>\$50,000</u>	16157	19500	10414	10089
Marginal Rate:	47%	39%	39%	39%
Average Rate:	32.3	39.0	20.8	20.2
Tax on TAXABLE INCOME: <u>\$75,000</u>	28157	29250	20564	20173
Marginal Rate:	48%	39%	47%	47%
Average Rate:				
Tax on TAXABLE INCOME: <u>\$100,000</u>	40157	39000	32314	31923
Marginal Rate:	48%	39%	47%	47%
Average Rate:	40.2	39.0	32.3	31.9
Tax on TAXABLE INCOME: <u>\$125,000</u>	52157	48750	44314	43915
Marginal Rate:	48%	39%	48%	48%
Average Rate:	41.7	39.0	35.5	35.1

Tax on TAXABLE INCOME: <u>\$180,000</u>	78557	70200	70714	70315
Marginal Rate:	48%	39%	48%	48%
Average Rate:	43.6	39.0	39.3	39.1

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- Note 1:** 'Taxable Income' is net profit for income tax purposes from the hypothetical business. It does not include any other income derived by the taxpayers, does not allow for imputation credits or any entitlement to rebates and does not include any capital gains.
- Note 2:** The partnership model comprises two equal partners, that is, they share profits equally.
- Note 3:** The family trust model distributes \$416 to each of two children (who are minors with no other income) and distributes the balance to two adults equally.

Example: Net Income: \$180,000

Distributed as follows:

Adult	\$ 89,584
Adult	\$ 89,584
Child	416
Child	416
	<hr/>
	\$180,000
	=====

\$416 is the maximum unearned income which can be received by a minor tax-free.

- Note 4:** The company could be expected to remunerate its directors in order to provide them with money to live on. The most tax-effective payment method would be by franked dividend. Payment by way of salary or directors fees would be subject to individual tax rates.

Assuming there are two directors and remuneration is paid in the form of a dividend consisting of 100% of after tax income, there would be no further income tax liability on the dividend until the average rate for each individual exceeded 39%. The average rate of tax for an individual reaches 39% at a taxable income level of \$87,145.

5.184 The Committee believes it is desirable to bring company tax rates and top marginal personal income tax rates into closer alignment. However, the evidence does not indicate that the majority of unincorporated small businesses are greatly disadvantaged by the higher top rate of personal income tax in comparison with the lower flat rate of company tax.

5.185 The Committee recommends that:

the government progressively reduce the existing difference between the company rate of tax (39%) and the top marginal personal income tax rate (47% or 48.25% including the medicare levy in the 1990/1991 income year).

## G.2 Provisional tax

5.186 The majority of participants in unincorporated small businesses be they partners, beneficiaries of trusts or sole proprietors pay provisional tax. Provisional tax is paid where more than \$1000 income per annum is derived from non-wage and salary sources be it from dividends, interest, rent from properties or business income. The provisional tax system was established to insure parity with the pay as you earn tax (PAYE) system applying to salary and wage income earners. It aims to limit the tax deferral advantages derived by non-salary income including that from business profits, by virtue of that income not being taxed at the time of receipt.

5.187 The establishment of this parity between wage and salary tax payers and other tax payers through the provisional tax system is a legitimate equity objective. Although provisional tax payers do still enjoy some tax deferral advantages over PAYE tax payers, since the introduction of the quarterly provisional tax payments system for provisional tax payers with tax liability over \$5000 in December 1987, these advantages have been significantly reduced. The threshold for quarterly provisional tax payments was subsequently raised to \$8000 in 1989/90. Of course the introduction of the quarterly payment system has had other advantages for the Government because of the public interest savings permitted by the resulting

smoother pattern of revenue collection.

5.188 There were two principal types of complaints which were made during the course of this inquiry about the operation of the provisional tax system, both prior to and subsequent to the introduction of the quarterly payment system.

5.189 The first was that during the establishment phase of a small business when all evidence indicates a small business is at its most vulnerable, the provisional tax system requires the payment of a 'double slug' of provisional tax in the first year tax is payable. This understandably may have severe consequences for the viability of an incipient small business because of its effect on the business's cash flow.

5.190 In some sense this 'double slug' on the establishment of an unincorporated small business is comparable to the 'transitional effects' of the introduction of the new company tax collection regime announced in the 1989 Budget. This would have resulted in all but the very smallest companies having to make a quarterly payment of company tax under the old regime in May 1990, followed by an 85% payment under the new regime in July 1990. This 'double slug' would have had a serious effect on company cashflows. It therefore resulted in major protests by the business community. In consequence the Government has announced alternative provisions to defer for five months the initial payment under the new company tax regime so as to ease pressures on the cash flow of small and medium size companies.

5.191 There is a good case for providing comparable concessions to newly established small businesses which pay provisional tax. For example a concession could be given whereby a new trading business would be allowed to defer paying provisional tax for the first two or three years of operation. A tax liability limit of say \$40 000 per annum could be placed on access to this deferral option. In subsequent years the normal quarterly or annual arrangements for the payment of provisional tax would apply.

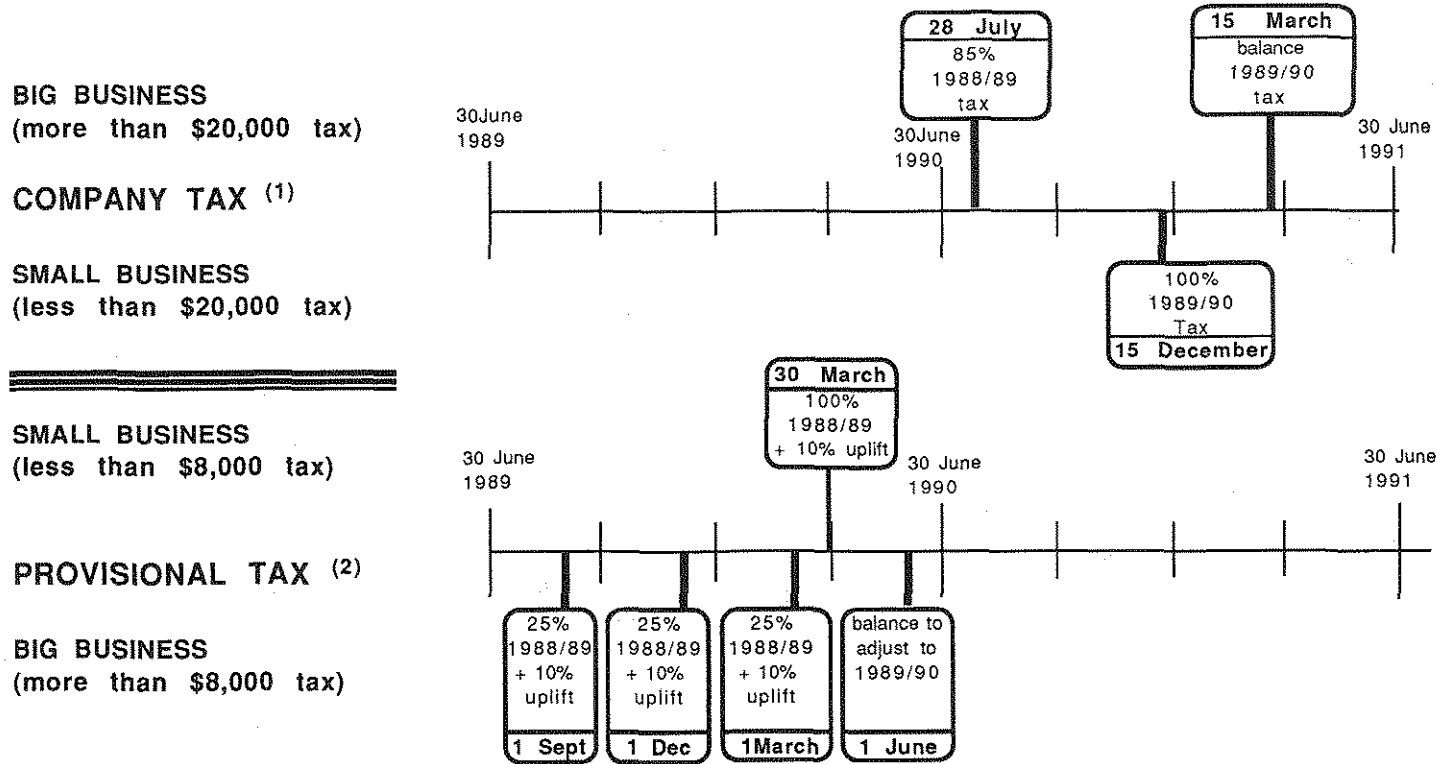
5.192 The Committee recommends that:

a deferral or alternative concession on the payment of provisional tax be given to new small trading businesses paying provisional tax for the first time, so as to reduce the adverse effect of provisional tax on the cash flow of these newly established small businesses.

5.193 The other major concerns raised by small business people about the operation of the provisional tax system related to the method by which provisional tax liability is calculated, to the timing of payments, and the penalties which apply should 'self-assessing' provisional tax payers significantly underestimate their income. A summary of the operation of the provisional tax system (and the company tax system) is shown in Diagram 1. This shows how the provisional (and company tax systems) now operate as a result of the changes announced in the 1989 Budget.

5.194 Specifically provisional tax payers with a liability less than \$8000 will make one annual tax payment on 30 March every year. Their provisional tax is based on taxable income received in the previous year with a 10% uplift factor applied. Provisional tax payers with a tax liability greater than \$8000 will make quarterly tax payments of 25% tax based on the previous years taxable income with the same 10% uplift factor applied. Primary producers and other categories of taxpayers who have access to income averaging facilities are exempt from quarterly payments. In both instances provisional tax payers have the option of applying to vary (self assess) their taxable income for the current income year. They would normally only choose to do so if they expected their income in the current income year to be lower than in the previous income year. However, should they be in error by more than 10% in estimating their income a 20% per annum tax penalty applies on the amount by which the provisional tax has been underpaid.

## DIAGRAM 1 TIMING OF COMPANY AND PROVISIONAL TAX PAYMENTS



- Footnote (1) • Company tax is paid in the year following the income year eg. company tax for the 1989/90 income year is paid in the 1990/91 income year  
 • The first company tax payment (for big business) is based on 85% of tax liability in respect of the previous income year  
 eg. company tax paid on 28 July 1990 is based on 85% of tax liability in respect of 1988/89
- (2) • Provisional tax is paid during the income year eg. single instalment provisional tax payers pay provisional tax no earlier than 30 March 1990 for the income year 1989/90  
 • Provisional tax is based on 100% of taxable income in the previous income year, increased by an uplift factor, currently 10% eg. provisional tax paid on 30 March 1990 is based on 100% of taxable income in 1988/89, increased by an uplift factor of 10%



5.195 Evidence given to the Committee<sup>290</sup> referred to the severe consequences of the current system of calculating provisional tax for small business people whose incomes fluctuate substantially and unpredictably from year to year. For example a small business which experiences a low income year immediately following a good income year is penalised by the existing provisional tax system in that their tax liability for the 'bad' year is based on their taxable income in the previous 'good' year. They have the option of self-assessing and applying to vary their provisional tax liability downwards to reduce their provisional tax liability. However, if they underestimate their income by more than 10%, the 20% per annum penalty applies. Many small business people and their accountants have argued that these conditions for self-assessing are prohibitive and in very few instances would they be able to estimate their taxable income with sufficient confidence (bearing in mind they must do so during, not after, the relevant income year) to risk self-assessing.

5.196 These stringent requirements for provisional tax payers contrast with the relatively generous arrangements for 'adjustments to initial payments' for company tax payers announced by the Acting Treasurer in his statement of 22 November 1989. These arrangements resulted from a concern that in some cases companies may not have sufficient time following the end of the income year in which to accurately estimate the initial 85% company tax payment due on 28 July in the following income year. These arrangements will allow companies which inadvertently overpay to claim a refund at any time prior to the payment of the balance of 15%. For those which inadvertently underestimate their taxable income by more than 10% they will be able to 'top up' their payment at anytime and thereby limit further application of the 20% per annum penalty.

5.197 These arrangements seem very generous when one considers that after all, these companies are only being asked to estimate their taxable income 28 days after the end of the income year, while provisional tax payers who wish to apply to vary their taxable income, must make this estimate during the income year. In the case

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290. Transcript of Evidence, p 64

of quarterly provisional tax payers this estimate must be made as little as two months into the current income year. And for annual provisional tax payers this estimate must be determined no later than 30 March, three months before the end of the income year.

5.198 The provisional tax system penalises, in the form of an initial overpayment of tax, those small businesses which, for whatever reason, experience a drop in income from one income year to the next. The system concomitantly rewards, in the form of an initial underpayment of tax, those small businesses which experience an increase in profitability from one income year to another and which, are presumably less in need of a tax break. In consequence the provisional tax system acts to compound the working capital and cash flow problems of a small business, particularly where they experience a year of poor profitability after a year of good profitability.

5.199 In summary, evidence to the Committee about the existing provisional tax system has pointed to the following basic issues affecting small business:

- . the effect of the timing of provisional tax payments on the ability of unincorporated small businesses, particularly newly established small businesses, to maintain adequate working capital and cash flow;
- . the severe consequences of the current system of calculating and varying provisional tax for small businesses whose incomes fluctuate substantially and unpredictably from year to year; and
- . the inequity of the 10% automatic annual uplift factor, of the 20% penalty per annum for erroneous variations (those in error by more than 10%) to income and, of the provisional tax system generally in comparison with the company tax system.

5.200 The Committee notes that where an income tax assessment has been amended to increase the amount of tax payable, the tax payer is

liable to pay interest on the amount of the increase under Section 179AA of the Income Tax Assessment Act 1936. There appears to be no reason why provisional tax payers should be penalised more heavily (i.e. at 20% per annum) for underpayment of provisional tax than other tax payers who underpay income tax. Interest is currently paid at the rate of 14.026% per annum by other tax payers.

5.201 The Committee recommends that:

- . the current 20% per annum penalty for underestimated taxable income applied to provisional tax payers be aligned with the penalty interest (currently 14.026%) applying where tax is underpaid by other income tax payers.

5.202 The Committee does not recommend that the lower rate apply to companies unless an uplift factor identical to the uplift factor applied to provisional tax is applied when calculating company tax payments.

5.203 Some adverse comment has been made about the operations of the quarterly tax payment system subsequent to its introduction on 1 December 1987. It was basically that the quarterly payment system is cumbersome and does not mesh well with the assessment system for ordinary income.

5.204 In recognition of the legitimate basis of some of these complaints about the quarterly payment system a review was announced by the Commissioner of Taxation in December 1988 to report in mid-1989. As a result of that review changes were announced in the 1989 Budget whereby the government decided to raise the threshold for general exemption from the quarterly payments system from \$5000 to \$8000. This was to take effect for provisional tax payable in 1989-90 and as a result some 130 000 of the existing 320 000 quarterly instalment tax payers will pay provisional tax annually instead of quarterly. It would seem that apart from giving relief for a substantial number of provisional tax payers from the quarterly payment system altogether, no fundamental changes are to be made to the operation of the quarterly system itself which would

address the concerns expressed about its complexity and cumbersome nature. This is disappointing to say the least given that there still remains approximately 190 000 provisional tax payers who pay tax quarterly and must continue to cope with the complexity of the existing system.

### G.3 Company tax

5.205 Thirty per cent of small businesses are incorporated and pay company tax. Prior to the changes announced in the 1989 Budget, company tax was paid by four quarterly payments in the year following the income year. This contrasted with provisional tax payments and PAYE tax payments which fall due during and not after the income year (refer Diagram 1). This difference in the timing of company and provisional tax payment constituted a major advantage for companies (generally large businesses) over unincorporated small businesses through the effect of these taxation payments on cash flow. The deferral of company tax payment to the year following the year of income constituted a benefit equivalent to an interest free loan from the Commonwealth on the deferred tax. Under the previous collection system companies also benefited from being able to spread payments over the following year in four quarterly payments and from basing the first three payments on the income of two years prior to the year of tax payment.

5.206 The advantageous position of companies in the timing of tax payments, to use words included in a Treasury submission to the Committee of 19 May 1989, 'appears to be an historical legacy which has persisted despite comment by Committees investigating tax matters suggesting it be brought more into line with the timing of tax payments of other tax payers'.<sup>291</sup>

5.207 Subsequently significant changes to the company tax collection system were announced in the 1989 Budget to come into effect in 1990-91 financial year. The new company tax payment system is represented in Diagram 1 for companies balancing on 30 June. The new system involves changes only in the timing of company tax

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291. Transcript of Evidence, p 2955

payments and not in the amount payable. The amended system provides for a single instalment of 85% of the notional tax due or 85% of the self-assessed tax due, on the 28 July in the year following the year of income. A further payment of the balance is to be made on the 15 March in the year following the year of income. It should be noted that the 'notional tax' is based on income in the year prior to the year of income and unlike provisional tax, no uplift factor is applied.

5.208 Bringing forward payments within the financial year following the year of income will reduce the tax deferral benefit to company tax payers compared to small business provisional tax payers. This will increase the equity of the taxation system and obviously result in a significant reduction in costs to the Commonwealth by reducing public debt interest.

5.209 However, even under the new company tax collection regime companies will still enjoy a deferral benefit over provisional tax payers because tax will continue to be paid in the year following, and not during as is the case for provisional tax payers, the year of income. In addition the notional tax amount will continue to be determined by applying the tax rate applicable to the income year to the preceding years taxable income. This will mean that the initial 85% payment will be based, for those who choose not to self-assess (very likely those companies whose income has risen), on income two years prior to the year of payment of tax. No uplift factor is applied to this previous income in calculating the 85% payment due. Companies whose income is growing will have a substantial advantage over unincorporated small businesses paying provisional tax in that the initial 85% payment will be based on income levels two years prior and without any indexation.

5.210 Companies also have the option to self-assess their actual income with penalties comparable to provisional tax payers should they underestimate their income by more than 10%. It is unlikely that any company except one anticipating a reduction in taxable income would take up this option. These companies have the advantage over provisional tax payers of being able to estimate their taxable income after the end of the income year and then apply to vary it

downwards. This could generally be done with a great deal more confidence than is possible for provisional tax payers who must estimate expected income and apply to vary during the course of the income year.

5.211 In summary, the Committee recognises the changes announced to the company tax collection system will reduce the inequities in the tax system between companies and unincorporated businesses. However, companies still retain a substantial advantage in comparison with unincorporated businesses which pay provisional tax through the timing of payment and the method by which tax instalments are calculated.

5.212 The changes to company tax payments as announced initially in the 1989 Budget would have created considerable cash flow difficulties because of the transition from the previous quarterly payment system to the new system. In consequence interim arrangements were announced whereby companies with tax liabilities with less than \$400 000 may opt out of the new payments system for the first year. Instead they will be allowed an additional 5 months to pay the full amount. In subsequent years only companies which pay less than \$20 000 tax will be extended this concession whereby 100% of the tax will fall due on the 15 December in the year following the year of income. In addition all companies have been given a longer period of time to make their 85% payments. Instead of being required to pay on 15 July in the year following the year of income, they will now be allowed until 28 July to make this payment.

5.213 These interim arrangements and the alternative arrangement for businesses with less than \$20 000 tax liability seems sensible and should ease the cash flow problems which otherwise would have been experienced by companies in complying with the new tax collection arrangements.

5.214 The Committee believes that the existing tax system is fundamentally inequitable in its treatment of individual tax payers and unincorporated small businesses in comparison with company tax payers. In spite of the changes announced in the 1989 Budget to bring forward the timing of company tax payments, provisional tax is still paid during rather than after the income year, and is still

based on the application of an uplift factor to the previous years' income. This is not the case for company tax payment. In addition the conditions applying to those provisional tax payers who wish to vary their taxable income (self-assess) are far more onerous than is now the case for company tax payers. This is because company tax payers are able to apply to vary their taxable income after the income year, while provisional tax payers must do so during the income year.

5.215 The Committee concludes that:

- . the existing provisional tax system is fundamentally inequitable in its treatment of unincorporated small businesses in comparison with company tax payers because:
  - provisional tax payments fall due during, and not after, as is the case for company tax, the income year;
  - provisional tax is based on the application of an uplift factor to the previous year's earnings rather than on actual earnings as is the case for company tax;
  - it is usually not possible for provisional tax payers involved in a business to estimate during the year of income with sufficient confidence what their actual income will be, and therefore apply to have the level of provisional tax varied;
  - the penalties (20% per annum) which apply should an application to vary provisional tax be significantly in error (more than 10%) are in any event prohibitive;
  - in contrast, company tax payers have until the year after the year of income to estimate their taxable income and apply to vary it. Although the same

penalties apply should the estimate be in error, companies are in a far better position to make confident estimates of taxable income and avoid these penalties;

- the provisional tax system penalises (in the form of an initial overpayment of tax) those unincorporated small businesses which, for whatever reason, experience a drop in income from one financial year to the next;
- in consequence the provisional tax system acts to compound the working capital and cash flow problems of small businesses, particularly where they experience a year of poor profitability after a year of good profitability; and
- inspite of recent changes which will bring foward the timing of company tax payments, provisional tax payers involved in a business are still significantly disadvantaged in comparison with company tax payers.

5.216 The Committee recommends that:

- . the government undertake a fundamental review of the provisional and company tax system as they apply to small businesses with a view to:
  - establishing a fully equitable tax collection system for both unincorporated and incorporated businesses with respect to both the timing of tax payments and the method by which tax liability is calculated and can be varied;
  - reducing the uncertainties and/or penalties for provisional tax payers associated with estimating and varying their taxable income during the year of income;



- in consequence, reducing the adverse affects of the provisional tax system on the working capital and cash flow of small businesses which experience fluctuating and unpredictable incomes from year to year.

## H. Other taxing matters

### H.1 Business establishment costs

5.217 Evidence concerning small business failure and closures indicates that the first one to two years after the establishment of a small business is the period when it is most vulnerable and most likely to fail or close.<sup>292</sup> About 50% of small businesses close or fail within the first two years of their commencement. Two of the principal reasons given for this high failure rate for small businesses are the lack of management skills of the owner and the lack of working capital.<sup>293</sup>

5.218 In consequence every effort and encouragement should be given to people contemplating establishing a small business to undertake in advance appropriate small business and management training, develop a small business plan, and to seek appropriate professional advice on both the likely viability of their business and the most appropriate legal form and other arrangements for its establishment.<sup>294</sup>

5.219 The Committee understands that establishment costs relating to a small business which are incurred prior to its establishment, are viewed as capital rather than recurrent costs and are not allowable as deductions against income subsequently derived from that small business. It would seem that the tax system currently does not encourage people to undertake appropriate training, seeking appropriate advice and taking the other necessary steps to maximise

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292. Williams A.J. *Small business as a Job Creator: a Longitudinal Study in Australia, 1973-1987* p 10

293. Transcript of Evidence, p 663

294. Transcript of Evidence, p 2397

the prospects of the success of a small business which they may subsequently establish.

5.220 The Committee argues that these costs should be allowable as deductions against income which is subsequently derived from a business to which these training and other establishment costs are directly related. Under the arrangements announced in the 1989 Budget these costs would be able to be carried forward indefinitely. This would encourage rather than discourage potential new (small) business entrants to undertake appropriate training and obtain appropriate advice before, and not after when it often proves too late, establishing a (small) business. This deduction could not be made against current salary income for example, but would only be able to be made against income derived if a (small) business were subsequently established.

5.221 The Committee notes that costs including training costs incurred in relation to an alternative career or type of employment are also viewed as capital costs and are not allowable as deductions against income. It would seem the taxation system is discouraging rather than encouraging people to explore alternative careers, acquire new skills or pursue self employment as an alternative to paid employment by not allowing these training and education costs as deductions against income. If the acquisition of new skills and greater mobility in the workforce are perceived as priorities in the government's education and industry policy, there is a strong argument that training and education costs should be allowable as deductions against income provided that income is subsequently derived from a job or business to which the training or education is directly related.

5.222 The Committee recommends that:

- . all small business establishment costs including the costs associated with undertaking appropriate small business and other training courses; obtaining appropriate professional advice; the costs of developing a business plan; and the costs of registering a business name; and of establishing a

company or close corporation should be allowable as deductions against income subsequently derived from a small business; and

- . this entitlement be restricted to 'trading' businesses as defined in para 5.139 (Recommendation 34).

## H.2 Pay as you earn (PAYE) tax

5.223 Changes were announced in the 1989 Budget whereby group employers with annual PAYE remittances greater than \$5m will be required in 1989/90 to remit PAYE tax instalments deductions from wages and salaries to the ATO on a fortnightly basis. This will affect about 500 large companies. Previously all group tax payers remitted PAYE tax on a monthly basis. Under the previous arrangements these group employers enjoyed a deferral benefit from the ATO resulting from the delay in deduction of PAYE tax from employees' wages and salaries and the subsequent monthly remittance to the ATO. The changes announced in the Budget will result in a reduction in the remittance deferral benefit to these large group employers resulting in an estimated public debt interest saving of \$20m in 1989-90 and \$70m in 1990-91 and later years. The changes will also result in bringing forward revenue into 1989-90 income year by approximately \$550m.

5.224 Although group employers with annual PAYE tax remittances of less than \$5m will continue to enjoy a payment deferral benefit, there is a strong argument that small businesses should be entitled to some payment or compensation for the service that they provide to the ATO in collecting and remitting PAYE tax. At the moment only businesses employing less than 10 employees are exempt from registration as group employers and the monthly payment remittance system. This 'payment for services rendered' to smaller businesses could be provided in the form of tax credit or deduction or alternatively, a less frequent remittance system.

5.225 The Treasurer indicated in the Budget statement that the changes announced in the Budget were a first step towards PAYE remittance arrangements aimed at moving large group employers to a

bi-monthly system and small employers, comprising the majority of remitters, to a less frequent payment system than at present.

5.226 The Committee would support the introduction of a less frequent payment system for smaller group employers and the possible discontinuation of the existing tax stamp system. It is suggested that a quarterly remittance system for all businesses, both group and non-group employers, with annual PAYE tax remittances of less than approximately \$100 000 would be appropriate.

5.227 The Committee recommends that:

group employers with annual PAYE tax remittances of less than \$100 000 be allowed to remit PAYE tax on a quarterly rather than a monthly basis.

5.228 This would exempt more than 92% of existing group employers (453 000 businesses), and presumably all non-group employers, from the monthly remittance system. About 17% (about \$7b) of total PAYE annual remittance (about \$41b) would be remitted quarterly rather than monthly under this arrangement.

### H.3 Fringe benefits tax

5.229 Somewhat surprisingly most of the views put to the Committee about the effects of fringe benefits tax on small businesses related more to the paperwork and recording requirements associated with the tax than the imposition of the tax itself. There were some exceptions. For example the Construction and Housing Association in its submission to the Committee quoted the results of a survey of its membership which it conducted in May/June 1988 where fringe benefits tax was identified as the most important problem affecting small business. However, local government regulation, the lack of skilled labour, the high cost of labour, workers compensation costs, and paperwork generally associated with government regulation all rated very highly as problems preoccupying small business.

5.230 The Construction and Housing Association argued<sup>295</sup> that fringe benefits tax falls disproportionately on small businesses which are in an embryonic stage and that specialised labour may be difficult to attract without the inducement of attractive salary packages which include fringe benefits for staff. It was also argued that small businesses are not able to pass on the costs of fringe benefits tax as are larger businesses.<sup>296</sup>

5.231 Complaints about the paperwork and reporting costs associated with fringe benefits tax were pervasive in evidence to the Committee. It would seem that in this area, as is the case for PAYE tax and sales tax, there is a strong argument for providing regulatory relief for small businesses which contribute a relatively small proportion of fringe benefits tax revenue and for which the compliance burden imposed by this tax is onerous.

5.232 The ATO in its evidence to the Committee<sup>297</sup> indicated that the ATO was (in May 1989) reviewing inter alia, the current \$1000 tax liability threshold for exemption from the requirement for quarterly fringe benefits tax payments. Under these existing arrangements it is estimated that 35% (approximately 35 000) of all fringe benefits tax payers who contribute only 1.8% of total fringe benefits tax revenue are exempt from the quarterly payment system<sup>298</sup> The Committee notes that if this threshold for exemption were raised to \$3000, 70% (approximately 70 000 small businesses) of fringe benefits tax payers who contribute only 8.4% of total fringe benefits tax revenue (\$83m out of \$956m) would be exempt from the quarterly payment system and only required to make annual reports and remittances. This would result in a modest cost to revenue through the effect of the less frequent payments on public debt interest.

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295. Transcript of Evidence, p 717

296. Transcript of Evidence, p 835

297. Transcript of Evidence, p 2989

298. Australian Taxation Office, *Taxation Statistics 1987/88*,  
AGPS 1989

5.233 The Committee recommends that:

- . all fringe benefits tax payers with an annual fringe benefit tax liability of less than \$3000 be exempt from the quarterly payment system and only required to make an annual payment.

CHAPTER 6

FINANCE FOR SMALL BUSINESS

- A. PRE DEREGULATION
- B. DEREGULATION
- C. RESEARCH
- D. START-UP VENTURE AND RISK CAPITAL
- E. WORKING CAPITAL AND CASH FLOW
- F. COLLATERAL
- G. MEASURES TO ADDRESS THE FINANCE GAP
- H. SMALL BUSINESS - KNOWLEDGE OF FINANCE
- I. BANKS AND THE SMALL BUSINESS SECTOR

## CHAPTER 6

## FINANCE FOR SMALL BUSINESS

6.1 During the course of the inquiry, concern was expressed at hearings and through submissions about the inadequate access to finance for small firms. A significant obstacle to successful growth and development of small business has been access to finance under appropriate terms and conditions.<sup>299</sup> Firms therefore take a short term view of investment which restricts their long-term planning and growth. Additionally since many firms are under-capitalised, good ideas remain undeveloped.<sup>300</sup>

**A. Pre-deregulation**

6.2 The Australian Financial System Committee Inquiry in 1981 (Campbell Inquiry) and the Australian Financial System Report of Review Group of 1984 (Martin Inquiry) had the expectation that deregulation within the financial system would create a more favourable environment for borrowing by small business. There was also an expectation that a shortage in the supply of longer term loans to business would persist.

6.3 In the regulated environment, banks lacked the scope to provide loans to high-risk small business ventures which lacked collateral. The costs to banks of loan administration and assessment of future prospects of small firms is substantial, and this further discouraged bank loans to such firms. This distorted financial markets and provided opportunities for profitable arbitrage activities by finance companies. Equity finance necessary for the early growth stages for small business was rare. Regulations limited the possibility of equity involvement by the Commonwealth Development Bank and other banks. There were further difficulties in

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299. Small Business Council *Small Business Capital Needs, Problems and Solutions* Discussion Paper 2, 1988, p 26

300. Small Business Council *Small Business Access to Bank Finance* Discussion Paper No. 3, DITAC 1989, p 62



trading shares in private companies. This combined with the reluctance of small firms to surrender equity led to a too heavy reliance on loan funds to finance long term expansion which increased risks associated with rapid growth.<sup>301</sup>

## B. Deregulation

6.4 The Government's financial deregulation initiatives involved the floating of the Australian dollar; the entry of some sixteen new and foreign banks; the removal of interest rate controls together with measures to free up capital markets and to facilitate the flow of investment funds.<sup>302</sup>

6.5 Management and Investment Companies were established in 1984, following the 1983 Espie Report. Management and Investment Companies were designed to promote the establishment and development of a private sector venture capital industry in Australia. They were intended to encourage management and financial support for start-up and early growth of Australian based enterprises which had the potential to grow rapidly, be export oriented and to use innovative technology.<sup>303</sup>

6.6 The second boards on Australian Stock Exchanges were established from 1984. These increased opportunities for risk capital to be raised by young small companies which could not meet the cost or obligations of listings on main boards. Secondary share markets also have the advantage of providing an exit mechanism whereby entrepreneur and venture capital providers can realise their investments.<sup>304</sup> However, according to the Reserve Bank, the major growth area in banking activity since deregulation has been in the money, bond and foreign exchange markets. It concludes that larger companies have clearly benefited from deregulation. For small business, the full impact of deregulation is yet to be felt.<sup>305</sup> The

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301. Ibid, p 62

302. Ibid, p 65

303. Transcript of Evidence, p 3148

304. Transcript of Evidence, p 3126

305. Small Business Council, *Small Business Access to Bank Finance*, Discussion Paper No. 3, DITAC 1989, pp 75 & 76.

Australian Bankers Association, on the other hand, believes that with no quantitative restriction on funds, access to bank finance by small business has been improved, provided firms are able to meet the higher interest rates.<sup>306</sup>

### C. Research

6.7 There is a lack of data on the Australian financial system pre and post deregulation. There are no statistics on bank lending to small business as the Reserve Bank and the Australian Bureau of Statistics do not separate out small business loans, making it difficult to analyse the impact on small business of changes made to the Australian financial system.

6.8 The Committee recommends that:

- . the Reserve Bank and/or the Australian Bureau of Statistics collect and publish statistics on bank lending to small business.

### D. Start-up venture and risk capital

6.9 Capital is required by a small business

- . as seed money to develop a new idea or product
- . as start up finance to commence a new business
- . as follow up finance in the early stages of a new business, and
- . to expand or redevelop an existing business.<sup>307</sup>

6.10 Cash hand-outs are not the answer to survival problems faced

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306. Ibid, p 73

307. Small Business Council, *Small Business Capital Needs, Problems and Solutions*, Discussion Paper No 2, 1988, p 26

by small business. Rather there is a greater need for equity financing in which, however, the banking sector is reluctant to participate. The entry of more banks with deregulation does not appear to have provided a more innovative attitude to the financing of small businesses.

6.11 The venture capital industry has gained impetus in Australia since the establishment of the Management and Investment Companies Program. The 1987 stock market crash affected the venture capital market by reinforcing the Australian attitude which favours short term return on investment and has tightened the availability of money in the venture capital market.<sup>308</sup>

6.12 The ideal situation in a venture capital market is for a purely temporary involvement by the venture capitalist in any one firm. Venture capital essentially assists people who have an ability to develop a company to a certain size but who are having difficulty in developing it further. However, in many instances companies not only require financial assistance but help with management as well.<sup>309</sup>

6.13 Management and Investment Companies now examine the management capabilities of firms in which they may invest far more closely than when the MIC Program commenced.<sup>310</sup>

6.14 Small firms approaching a venture capitalist are often looking for management assistance particularly if in a second phase of growth. In these cases venture capitalists ideally have a level of equity holding sufficient to allow them a significant influence in crisis situations. The well documented problem here is the reluctance of small businessmen to lose control of their firms by surrendering equity.

6.15 There are limits to the number of venture capital investments with which an investment manager can be involved and remain able to closely monitor their progress. This creates an incentive to choose

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308. Transcript of Evidence, Evidence p 1611

309. Transcript of Evidence p 1619

310. Transcript of Evidence, p 3148

a smaller number of larger investments rather than a large number of small investments. One venture capital investor indicated a lack of interest in projects under \$100 000 and stated that the ideal minimum threshold would be \$1m.<sup>311</sup> This creates particular difficulties for small operators in obtaining venture capital.

6.16 A major area of demand for venture capital comes from small firms which need relatively modest amounts of finance, around \$50 000.<sup>312</sup> With the preference of venture capital organisations for investments over \$100 000, or even larger, and the emphasis in the lending policies of banks on collateral and established trading records, small businesses have to rely more heavily on organisations like Small Business Development Corporations.<sup>313</sup>

6.17 Management Investment Companies can have difficulty in raising capital themselves and it is unlikely that the current round of issued capital approved by the Management Investment Companies Licensing Board will be taken up.<sup>314</sup> It is generally accepted that a base of \$15m is needed to undertake second round funding. The smaller Australian venture capital companies would require joint venture partners to be effective in this area.<sup>315</sup> The lack of availability of money had been further exacerbated for small business by banks pulling back loans from companies during a growth phase.<sup>316</sup>

6.18 Firms do require start-up finance and further injections of capital in growth phases. Some segments of small business such as capital intensive industries require large amounts of money. This presents substantial barriers to new entrants particularly in the area of high technology which is also considered high risk, with large initial costs in research and development which must be recovered through sales. Unless barriers are lowered big business can dominate these industries. Service industries, however, can be commenced with much lower amounts of start-up capital.

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311. Transcript of Evidence, p 1612  
312. Transcript of Evidence, p 1616  
313. Transcript of Evidence, p 1613  
314. Transcript of Evidence, p 3192  
315. Transcript of Evidence, p 1620  
316. Transcript of Evidence, p 1608

6.19 Currently, it is easier for viable inventions to obtain overseas money instead of Australian money which of course means that some promising ideas do not get developed in Australia.<sup>317</sup>

6.20 The more traditional or "low tech" manufacturers have particular problems in obtaining start-up capital. Management investment companies are orientated more towards high technology ventures. Domestic banks are often found to be unsympathetic and foreign banks are not particularly interested in the venture capital markets.<sup>318</sup>

6.21 In Japan there are three government affiliated financial institutions "to supply firms with loans for investment and long-term working capital which is often necessary for modernisation and nationalisation". This supplements finance which is available from the private sector. There is finance available for "establishing business cooperatives as well as to meet policy objectives in structural improvements, pollution control and energy conservation". These loans are made on favourable terms for small business. Government credit guarantees supplement the credit worthiness of small businesses and facilitate capital flow from private financial institutions. Various schemes are employed to lessen the tax burden for small businesses and to help them raise reserves and strengthen management.<sup>319</sup>

#### E. Working capital and cash flow

6.22 As a result of deregulation banks can provide funds at market interest rates and are also able to provide more flexible packages of finance; however, the pricing of finance to cover risk has rationed access to funds in much the same way as ceiling interest rates did in the past. Large businesses are better able to borrow money overseas when local interest rates are high than small

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317. Transcript of Evidence, p 1457

318. Transcript of Evidence, p 490-1

319. Torrihara (Mr), Small and Medium Enterprise Agency, *The Entrepreneurship of Japanese Small Business and its contribution to economic development* Speech to the International Congress on Small Business, June 1989, p 36

businesses are.

6.23 In 1987, the BIE surveyed innovative small businesses in the emerging industries and found that 70 per cent of those surveyed obtained external finance for new product and process development activities, marketing strategies and overall growth and expansion. The most common source of finance came from existing shareholders and partners. Seventy per cent of respondents believed that growth of their firm had been impeded by a lack of finance.<sup>320</sup> Trading bank were perceived to be interested only once the small business had been established for five years or longer. The size of the firm was a factor in its ability to attract finance. This survey was undertaken after deregulation but before the stock market crash when capital was more freely available.

6.24 Williams' longitudinal study in Australia (1973-85) found that over a twelve year period where owner managers were contacted on a regular basis and asked to list five major problems experienced in the past year, cashflow difficulties headed the list as the major problem for 17 per cent of respondents.<sup>321</sup>

6.25 Cash flow problems cause major difficulties for expanding businesses. Even successful manufacturing companies with export orders have experienced problems in obtaining working capital. Capital from a management investment company allowed a heavy expansion in the case of Labtam Ltd with turnover rising from \$2.5m in 1983 to \$23m in 1988. The Chairman of Labtam, however, stated in evidence "...we were in so much trouble with banking facilities and cash flow that I even have nightmares four or five years later. I have not found that banks have really improved at all in that time."<sup>322</sup>

6.26 Another successful company, Fred Small and Son Pty Ltd, which fills significant export orders stated that cash flow was their biggest problem. This company complained of particular difficulties arising from the fact that payment for export orders was on

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320. Transcript of Evidence, p 655

321. Transcript of Evidence, p 3261

322. Transcript of Evidence, p 123

completion of the job, whereas progressive payments could be obtained for jobs within Australia. Austrade provided some relief in these instances which was not obtainable elsewhere in the financial system.<sup>323</sup> This cash flow problem caused by payment on delivery contracts was applicable to a significant sector within small business. Labtam estimated that 70 per cent of small firms, in the scientific instrument and computer field, are doing business largely outside Australia.<sup>324</sup>

6.27 Many small businesses, being high risk enterprises, ideally should rely to a greater extent on equity financing than they do. Most people establishing a small business do not have large amounts of equity to invest. The cost of seeking outside capital by way of a small float or an equity issue, however, involves substantial costs for brokers and in the preparation of a prospectus.<sup>325</sup>

6.28 Small firms rely heavily on internally generated funds for their growth and development. It has been estimated that for the small business sector in total, possibly up to 75 per cent of required funds may be internally generated. This may reflect the reluctance of small firms to accept new equity, stemming from fears associated with dilution of control.<sup>326</sup>

6.29 Incentives for profit retention, allowing small firms the capacity to use internally generated funds for expansion deserve more attention. The abolition of tax on retained earnings, placing small firms on an equal footing with large firms, has assisted in this regard. However, the 1985 capital gains tax acts as a disincentive for profit retention.

6.30 High interest rates constrain new capital and plant investment programs in manufacturing and other industries. Over recent years real short term interest rates in Australia have been significantly above those in countries with which we compete in international markets. Larger income streams therefore have to be

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323. Transcript of Evidence, p 121

324. Transcript of Evidence, p 126

325. Transcript of Evidence, p 49

326. Small Business Council *Small Business Capital Needs, Problems and Solutions* Discussion Paper No. 2, May 1988, p 26

generated in Australia for producers to stay level with their overseas competitors.

#### F. Collateral

6.31 Many witnesses argued that banks in Australia placed too much emphasis on the need for collateral security for loans. Banks did not appear to take full account of business plans which indicated the viability of businesses and their capacity to meet debt repayments out of cash flow.

6.32 The personal assets of small business people often have had to be used as security. Company directors often have to resort to personal loans at high interest rates to raise money for their businesses. Access to bank finance may improve once a business is established but banks still tend to require a substantial amount of collateral despite the proven management and performance of the small business. The market place continues to ignore the needs of small business to borrow sums up to \$100 000 where a short fall in security exists and despite demonstrated good cash flow projections.<sup>327</sup>

6.33 The Australian Bankers Association (ABA) argued that banks are increasingly considering cash flow prospects and business plans when evaluating loan requests. The ABA argued that the normal amount of interest charged by banks does not compensate for the risk of loaned funds being lost entirely in untried small business ventures and that consequently they have to be security conscious.<sup>328</sup>

6.34 In this inquiry the Committee has confirmed certain of the findings of its inquiry into Investment in Australian Manufacturing. In that inquiry, references were made in evidence to the difficulties, for new or small businesses, of obtaining finance. The Committee found that steps taken in recent years to deregulate the financial market may not have succeeded in creating a financial system capable of meeting the needs of an economy requiring major restructuring.

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327. Transcript of Evidence, p 1203

328. Transcript of Evidence, p 1979



6.35 In the inquiry into Investment in Australian Manufacturing the Committee recommended that the Government hold an inquiry into the adequacy of the Australian financial system and its institutions in serving the needs of industry development and restructuring. The Committee considered this should include an assessment of the impact of financial deregulation and subsequent new entry into the banking and financial sectors. The Committee notes the Government response to that recommendation but still considers such an investigation is warranted.

6.36 The Committee recommends

that a review be undertaken by the Industries Commission of the availability of finance to small business with specific reference to:

- the lending practices of the banking sector in a deregulated financial environment;
- measures which might be undertaken to improve the access of small business to start-up and working capital on reasonable terms;
- the effects of deregulation on the availability of the relatively modest amounts of \$50 000 - \$100 000 of venture capital which appear to be most in demand and most difficult to obtain by small business.

#### G. Measures to address the finance gap

6.37 The Commonwealth Government and State Governments have attempted in addition to deregulation measures, to improve the availability of finance to small business.

6.38 The role of the Commonwealth Development Bank (CDB) was expanded in 1985 to allow the provision of loans and equity finance to small business. In 1986-87 the Commonwealth Development Bank (CDB) provided \$339.3 million in loans to small

business compared with \$118.0 million in 1984-85.<sup>329</sup>

6.39 The CDB seeks to facilitate the success of their client businesses. The bank advises applicants concerning weaknesses and potential dangers in their businesses, although such advice may not be as specific as that provided from professional sources. As a bank of last resort the CDB receives applications from businesses which tend to be undercapitalised and with relatively high borrowings. The risk to the CDB is great in many cases. The CDB provides finance on reasonable terms and conditions to small business at the general level of interest rate charged by major trading banks. The CDB is required to raise its funds in the market and make a reasonable profit.<sup>330</sup>

6.40 The Australian Industry Development Corporation has also been able to include small business financing in its brief although its concentration is still on medium to larger firms.

6.41 The Management Investment Company Program has been extended to June 1991. It is anticipated by the Government that this will allow time for the venture capital market to recover from the 1987 stock market crash.

6.42 Taxation changes to extend dividend imputation to life offices announced in May 1988 are intended to stimulate further the development of the venture capital market. Double taxation of dividends has been removed. This has been achieved by a system of full imputation whereby income distributed to resident individual shareholders, which has been taxed at the company level, is free from further tax.<sup>331</sup>

6.43 Division 7 of the Taxation Laws Amendment (Company Distributions) Act 1987 which imposed an additional tax on retained income of private companies in excess of a specified retention allowance was abolished. This hopefully removes some of the disincentive to firms wishing to retain profits to invest in

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329. Transcript of Evidence, p 3124

330. Transcript of Evidence, pp 2224-8

331. Transcript of Evidence, p 3126

their operations which hampered capital formation by small business.<sup>332</sup>

6.44 Incorporated small businesses benefit from the reduction in company tax from 49 to 39 cents in the dollar and the recent reductions in personal income tax rates benefit unincorporated businesses. In addition, the tax deductible superannuation contribution for a self-employed person was increased from \$1500 to \$3000 in May 1988 and now 75 per cent of the contribution in excess of \$3000 will be an allowable deduction. This is of direct benefit to small business proprietors.<sup>333</sup>

6.45 The Commonwealth Government provides taxation concessions of 150% to incorporated businesses which undertake research and development as well as GIRD grants for smaller firms.

6.46 Export Market Development Grants are also available from Austrade.

6.47 There is an initiative in France from which Australia may be able to learn in promoting exports by small manufacturing firms. A small manufacturers' export foundation, Fondexpa, was set up in October 1983. It brings together various complementary institutions and firms including banks, large companies and small manufacturers to promote small manufacturing firms in both domestic and foreign markets. Fondexpa provides help with administrative procedures by putting manufacturers in touch with public institutions and professional bodies specialising in the export market and carrying out market research.

6.48 The foundation organises collective stands at exhibitions in France and abroad where firms are able to benefit from services adapted to their needs. It also provides product tests, arranges canvassing missions abroad, and issues invitations to foreign buyers in France. It places firms in touch with commercial partners and arranges publications on a collective basis. Training is provided by extension workers and courses are

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332. Transcript of Evidence, p 3126

333. Transcript of Evidence, p 3216

arranged on specific aspects of management. Fondexpa also organises a "Grand Prix for Exports" where winning firms stand to benefit from tailored types of aid and services.<sup>334</sup>

6.49 The British Overseas Trade Board also has a Small Firms Committee to improve the awareness of export support services among small firms,<sup>335</sup> and the Japanese Government provides information, trains personnel and offers financial support for overseas enterprises. It is estimated that 54 per cent of small and medium enterprises in Japan invest overseas.<sup>336</sup>

6.50 The Committee recommends that:

- . the Department of Industry, Technology and Commerce and Austrade examine the Fondexpa initiative in France, which provides a comprehensive service to small business linking the domestic and overseas markets, and the British Overseas Trade Board's Small Firms Committee's activities.

6.51 The State Governments also assist small business through such agencies as:

- . Victorian Economic Development Corporation
- . New South Wales Investment Corporation
- . Queensland Industry Development Corporation
- . Western Australia Small Business Development Corporation

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334. Fondexpa Publicity Department Press Release, 1986, pp 1 & 2.

335. UK Department of Employment, Small Firms and Tourism Report  
5 March 1989 p 1

336. Torrihara (Mr) op cit p 14

6.52 The Committee recommends that:

- . the Industries Commission review of the availability of finance to small business (previously recommended) also examine:
  - the effects of the removal of division 7 provisions in the Taxation Laws Amendment (Company Distributions) Act 1987, on capital formation by small businesses; and
  - the effects of the recent extension of dividend imputation to life and superannuation funds, on the availability of venture capital to small business.

#### H. Small business - knowledge of finance

6.53 Small business people frequently lack knowledge of the appropriate sources of development finance and working capital and may be unaware of the advantages of different methods of raising capital. They are often also unskilled in presenting a financial case to potential investors and lenders.<sup>337</sup>

6.54 These problems can be, and often are, overcome through the use of appropriate forms of professional advice. However, support services that do exist, such as those provided, by accountants and government bodies, are used by only a small proportion of small business owners.<sup>338</sup> The BIE conducted a case study of the use of accountants' services which found that very few small businesses make use of such services other than those relating to tax and indeed are largely unaware that such services exist.<sup>339</sup>

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337. Transcript of Evidence, p 665

338. Transcript of Evidence, p 667

339. BIE 1987, Small Business Review 1986, AGPS Canberra

6.55 The Committee recommends that:

- . the Department of Industry, Technology and Commerce review information on finance including the different forms of finance and sources of finance which is currently available to small business and give consideration to ways of filling this information gap.

#### I. Banks and the small business sector

6.56 There have been some indications that the entry of more banks into the financial system is providing a broader range of banking services. Competition between banks to service the larger corporations increased, and a realisation developed that banks had to look elsewhere for a market share. There has been the advent of new banks looking at particular niche areas of banking such as professional service areas of clients.<sup>340</sup> The Australian Bankers Association (ABA) stated that deregulation has given banks the ability to provide more flexible packages of finance.<sup>341</sup>

6.57 Lease financing is a mature financial product of over 35 years with now some 30 per cent of the economy's equipment capital being leased. The use of this form of financing has increased substantially in the small business sector. In terms of general market functioning leases are written for most capital equipment (provided they are used for commercial purposes) and for periods ranging between two and five years; interest rates are usually fixed for the period of the lease. Provided the commercial use test is met, lessees may claim the full amount of the base rentals as a tax deduction.<sup>342</sup>

6.58 There are many other financing needs of small business, of course, for which lease financing is not appropriate. The finance companies associated with the major banks have found leasing and hire purchase of plant and equipment a strong growth area and a source of good profits.

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340. Transcript of Evidence, p 1472

341. Transcript of Evidence, p 1472.

342. Transcript of Evidence, p 3516

6.59 In Australia, there is a need for bank managers to develop a greater empathy with small business and become more involved at a practical level. The Committee supports moves which the ABA says are underway for banks to set up special small business sections within their own structures.<sup>343</sup>

6.60 The ability of loans officers in the banking system to assist a small business person with a cash flow problem; advise people whether a proposition is commercially viable; or to encourage them to undertake some management training, is inadequate and this is unlikely to change while the banks' lending criteria gives major emphasis to the extent to which the loan is secured against assets.<sup>344</sup> Evidence was received that the major banks in the United Kingdom, such as Barclays, Natwest, Lloyds and Midlands are far more advanced than Australian banks in providing assistance programs for small business.<sup>345</sup>

6.61 The ABA argued that it is unreasonable to expect banks to provide advisory and counselling services to small business beyond encouraging them to seek independent advice. Mr Cullen, from the ABA said "The question is do we want to return to paternalism in the banking system?"<sup>346</sup> The Committee believes that if 'paternalism' means the banks adopting a supportive and advisory role towards small business whereby the viability of small business prospects are seriously assessed and loan applicants are encouraged to seek advice and training to improve their prospects of establishing a successful business, then the answer is yes! The apparent preoccupation of banking institutions with securing their loans to small business against assets, fails to recognise that by taking steps to increase the likelihood of the success of a small business the banks could build up continuing clientel and business for themselves.

6.62 Lending policies which ensure ready access to finance to

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343. Transcript of Evidence, p 1472.

344. Transcript of Evidence, p 943

345. Transcript of Evidence, p 297

346. Transcript of Evidence, p 1983

applicants mainly on the basis of adequate collateral and with insufficient regard to the business skills and plans of that applicant may in fact be increasing the incidence of small business failure. A responsible approach to small business financing would require that a small business loan applicant to demonstrate a sound business plan and skills, regardless of collateral before finance is provided.

6.63 The Committee recommends that:

- . the Department of Industry, Technology and Commerce undertake a major campaign under the National Small Business Information Awareness Program to increase awareness among bank officers of the problems and potential of small business loans and to encourage banks to shift the focus of their lending policies away from an undue emphasis on collateral to an assessment of business prospects, plans and the skills of applicants.



CHAPTER 7

MANAGEMENT EDUCATION AND TRAINING

- A. SMALL BUSINESS EDUCATION
- B. SMALL BUSINESS MANAGEMENT TRAINING
- C. NATIONAL SMALL BUSINESS INFORMATION AND AWARENESS PROGRAM
- D. INDUSTRY TRAINING LEVY
- E. LICENCES FOR SMALL BUSINESSES

## CHAPTER 7

## MANAGEMENT EDUCATION/TRAINING

The idea is to work smarter, not harder.<sup>347</sup>

A. Small business education

7.1 A major factor inhibiting the success of a small business is the lack of managerial skills of the owner/manager. The lack of managerial ability in many cases is the result of, or is compounded by a lack of business education or experience.

7.2 The lack of basic business education by small business owner/managers was shown in a study conducted by Professor Alan Williams covering 13 780 small businesses over a 12 year period to 1985.<sup>348</sup> The study found that approximately 45% of small business people had never studied any technical, trade or professional subjects or courses related to the type of business they were engaged in or entering. Only 20% had relevant studies of this kind extending beyond one year. Half of all owner/managers had never undertaken any business or management education prior to starting a business.<sup>349</sup>

7.3 This lack of preparation for starting a small business extended to seeking advice concerning the venture. Nearly 60% of those starting up new businesses consulted with no more than three 'knowledgeable people' during preparation for launching the business, including their banker. Other 'knowledgeable people' included accountants (in 22% of cases) and lawyers (in 14% of cases).<sup>350</sup>

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347. Evidence, p 858

348. Williams, A.J. op cit, p vi

349. Ibid p 78

350. Ibid p 138

7.4 The result of this lack of business education is often that a small business, regardless of the market acceptability of the product or service offered by the business, tends to evolve in the market place without direction until the owner/proprietor, in a majority of cases, leaves the business or goes bankrupt. Approximately 40% of new small firms fail within three years and approximately 66% fail within five years due to poor management practices.<sup>351</sup> Other evidence to the Committee put the failure rate due to inadequate management as high as 90% of all small businesses over a five year period.<sup>352</sup>

7.5 Small businesses require specific management skills which need to be acquired to lay the foundation for a viable business. These fall into two areas: first, operational skills such as financial planning, cash flow management, debt collection, work scheduling and priority setting;<sup>353</sup> and second, strategic skills where the owner/manager can no longer control all aspects of the business and needs to develop long term planning objectives, and delegation and communication skills.<sup>354</sup>

7.6 Training programs have been developed by a variety of agencies to meet the needs of small business. These agencies, both privately and publicly funded, provide programs designed to teach general business skills as well as provide advice to business people on specific problems or at critical periods in the growth of their business. The Committee welcomes a recent initiative of the Federal Government to investigate the training needs of small business people, awareness of existing training facilities and the adequacy of those facilities.

7.7 The types of advisory services provided are typified by those available from the State and Territories' small business agencies. These agencies have as policy objectives to promote the development of small business, to assist new and existing businesses, and to improve the level of competence of small business

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351. Transcript of Evidence, p 3120  
352. Transcript of Evidence, p 2632  
353. Transcript of Evidence, p 940  
354. Transcript of Evidence, p 840

people. These objectives are achieved through business counselling, subsidised consultancies, provision of training courses, publications and, in some cases, financial assistance.<sup>355</sup>

7.8 The services provided by these agencies, as well as small business associations, trade and professional associations, chambers of commerce et cetera are designed to provide skills to individual owner/managers and make them better business people. Each service is designed to deliver management advice in the most accessible way and to fit into work/leisure patterns of small business proprietors. However, the penetration of these services into the small business community remains limited. Despite the numerous services available, people intending to start up a small business show a reluctance to use them. The Small Business Corporation of South Australia indicated to the Committee that its efforts in encouraging small business 'intendees' to attend a business start-up course were not as successful as it had hoped:

As a result of our fairly intensive promotion we attract somewhat less than 15% of people starting in business in this State and only 4% of the total, in fact, come in for in-depth help and assistance.<sup>356</sup>

7.9 Similarly, the Small Business Development Corporation in Queensland found that 86% of people considering starting a small business had not undertaken any training in running a small business.<sup>357</sup>

7.10 The reluctance to utilise available advisory and training services was attributed to a number of factors: not knowing the courses were available, course work being too theoretical or inappropriate for the specific needs of small business owner/managers; and the lack of time available to small business proprietors to attend courses.<sup>358</sup> Criticism was also made of the

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355. Small Business Council; *A guide to the Small Business Council, Government Small Business Agencies and Private Sector Associations*, 22 October 1987, pp 20 - 46

356. Transcript of Evidence, p 1675

357. Transcript of Evidence, p 14

358. Transcript of Evidence, p 1640

nature of training programs themselves. The Motor Traders Association of Australia stated:

The training and advisory industry that has grown up around the small business community seems to have adopted a definition of a small business proprietor as a person who is necessarily in need of training and guidance and who is so incapable of reasoned decision making as to require others to do this for him or her.

This is not always the case and it is interesting (and alarming) to note the training industry's chagrin bordering on outrage resulting from an apparent lack of concern among small business proprietors for all the 'worthwhile' almost evangelistic training opportunities on offer.

In other words, there is a risk of the small business community being seen as a target group for selling by the training system instead of a group to whom trainers should respond specifically and accurately.<sup>359</sup>

7.11 The Committee is concerned that the small business advisory services are not reaching their client group, and the services they are offering are not perceived as being of much benefit to owner/managers. However, there is a fundamental need for the basic business education being offered by advisory groups to reach people intending to start small businesses.

7.12 As stated above, the lack of management skills is a major factor in the failure rate of small business. These skills are not being acquired by a majority of people intending to start a small business. While these skills alone will not guarantee the success of a small business, they lay a basic foundation for the successful operation of a business venture.

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359. Transcript of Evidence, p 774

## B. Small business management training

7.13 Small business advisory groups and trade associations stated to the Committee that management education should be incorporated into secondary school curricula, apprenticeship training and tertiary education in order to reach the maximum number of people that may, at some stage of their careers, be owner/managers of a small business.<sup>360</sup> The incorporation of a small business management course into the education system would serve two purposes: firstly to provide an understanding of the basics of managing a business, and secondly to introduce to the student the concept of small business as a viable career path.<sup>361</sup> This is particularly important for apprenticeship training and professional education at tertiary level. Evidence to the Committee indicated that a large number of these students eventually find themselves managing their own businesses, with very little preparation given to management education.<sup>362</sup>

7.14 The Committee heard some criticism of the benefits of management education courses. Evidence was given that these types of courses would not be considered relevant to their immediate needs by students or apprentices, and probably would be ignored.<sup>363</sup> Additionally, the Committee heard that there was some employer resistance to incorporating business education courses into apprenticeships. Employers felt that this would not serve any immediate benefit and would encourage apprentices to set up their own businesses before they had the necessary work experience.<sup>364</sup> However, it was acknowledged that the complexities of the work environment, in terms of safety regulation, taxation, superannuation, et cetera, did justify some business management component in an apprenticeship course.<sup>365</sup>

7.15 The Committee notes this criticism, but believes that a business management course delivered to students and apprentices via

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 360. Transcript of Evidence, p 774  
 361. Transcript of Evidence, p 1934  
 362. Transcript of Evidence, p 1070, 1083  
 363. Transcript of Evidence, p 2299  
 364. Transcript of Evidence, p 1682  
 365. Transcript of Evidence, p 2301

the education system is the most effective way of providing basic management training to potential small business owner/managers.

7.16 Initiatives have already been taken by the Queensland, South Australian, New South Wales and Victorian Departments of Education to establish small business management courses for secondary schools.<sup>366</sup> In all four States the units are part of the Year 11 and 12 elective subjects.<sup>367</sup> The Committee notes in particular the course design in South Australia where the students set up and run a business for a year.<sup>368</sup> This type of course would provide invaluable experience as it would replicate the problems faced by any business in the critical first year of operation, and consequently give a student a realistic view of the management and entrepreneurial skills needed to run a successful business.

7.17 The Committee supports these initiatives and is encouraged that the education department in Western Australia is intending to introduce a small business management course into secondary schools.<sup>369</sup> Management courses should also be included in apprenticeship training programs, as not all apprentices will have year 11 and 12 qualifications.

7.18 The Committee recommends that:

. the Commonwealth Department of Employment, Education and Training liaise with State education authorities to establish small business management education as part of the curricula for all secondary education and apprenticeship training.

7.19 Related to the issue of the provision of management training courses is the lack of penetration of these courses into the client group.

7.20 The Australian Chamber of Manufactures stated that: "even if costs can be met, time and availability is often a major problem. Small businesses generally lack the reserve resources to maintain

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366. Transcript of Evidence, p 2267

367. Transcript of Evidence, p 865, 1681, 2267

368. Transcript of Evidence, p 1682

369. Transcript of Evidence, p 2267

the operation of a business while management or staff undertake training".<sup>370</sup>

7.21 Evidence given to the New South Wales Parliamentary inquiry into Small Business supported this view, indicating that "owners of small businesses are extremely critical of current education programs and training programs - questioning their availability, quality and relevance".<sup>371</sup>

7.22 Training programs are often not seen as sufficiently relevant by owners (or potential owners) of small businesses to solve their day to day problems. Where a training course is attended by small business owners from a variety of trades, the presenter has little chance of relating the course to the specific needs of each owner.<sup>372</sup> This makes the problem of relevance more difficult to solve.

7.23 The Financial Management Research Centre based at the University of New England has adopted an interesting approach to management training programs for small business. The Centre stages industry specific workshops which provide practical guidance to owner/managers by using their own company's financial figures against the Centre's industry performance benchmark to identify the company's strengths and weaknesses. This approach to management and education programs for small business should be adopted on a wider scale to cater better to the individual needs of owner/managers.

7.24 Industry and trade associations could facilitate the implementation of management training programs by providing industry specific information to program developers in each State's Small Business Development Corporation and publicising the availability of the courses to businesses within each industry. These training development procedures should also be adopted for professional practitioners, such as medical practitioners, veterinarians, lawyers and dentists who face the same types of management problems as other

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370. Transcript of Evidence, p 1937

371. Evidence to the NSW Parliament Select Committee upon Small Business, p 61

372. Ibid



small businesses.

7.25 The Committee recommends that:

State small business development agencies liaise with the various industry, trade and professional associations to develop industry specific business management education and training programs.

7.26 As revealed by the 1985 survey by the Department of Industry, Technology and Commerce most small businesses consult with few advisors before starting a business venture. However, the study also noted that in a majority of cases the persons consulted were either a bank manager, lawyer or accountant. It was also pointed out to the Committee that bank managers and accountants, and to a lesser extent lawyers, have an ongoing contact with small businesses that put them in an ideal position to act as either an advisory or referral service for small businesses to improve their management skills and profitability.<sup>373</sup> The Committee agrees that these service providers are a crucial link between the small business community and counselling and advisory services for that community.

#### C. National Small Business Information and Awareness Program

7.27 In May 1988 the Commonwealth Government launched the National Small Business Information and Awareness Program.<sup>374</sup> The aim of the program is to make small business people more "aware of the need to improve their management skills and to bring to their attention the wide range of readily available management education and training aids prepared by government as well as other public and private sector services".<sup>375</sup>

7.28 This aim is to be achieved by liaising with the main private sector agencies involved with small businesses; that is principally banks, accountants and solicitors.<sup>376</sup> Implementation of

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373. Transcript of Evidence, p 1640

374. Transcript of Evidence, p 3121

375. Ibid

376. Ibid

the program is being carried out in conjunction with State/Territory small business development corporations and the Australian Bankers Association, the Institute of Chartered Accountants of Australia, The Australian Society of Accountants, the Law Council of Australia and Business in the Community Limited.<sup>377</sup>

7.29 The first phase of the program is to make the private sector agencies aware of what small business assistance is available, and to raise awareness of the needs of small business within these agencies.<sup>378</sup> The Australian Bankers' Association stated that "many of the problems faced by small business lie in the area of ease of entry into the field. What the current system appears to lack is an agency where potential entrants can seek professional advice on the elements necessary for success prior to making a final commitment".<sup>379</sup> This is the type of problem that the initial phase of the NIAP scheme is addressing; where bank managers and loans officers can act as a facilitator between an intending small business owner/manager and the advisory services available to him/her.

7.30 Evidence from the Small Business Development Corporations of South Australia and Queensland showed that their programs of education for individual bank managers in the types of assistance that could be provided to small businesses had markedly improved the advisory and referral services available to small business.<sup>380</sup>

7.31 The initiative adopted by the Commonwealth Development Bank in providing full financial advisory services to small businesses in conjunction with consideration of loan applications is one which should be more widely followed.

7.32 The second major multiplier agency for small business are accountants. However, evidence was presented that accountants have to spend so much time dealing with the complexity of taxation

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377. Ibid

378. National Small Business Information and Awareness Program: Progress report to the Ministers by the Commonwealth/State Small Business Working Party; 26 August 1988, p 5

379. Transcript of Evidence, p 1973

380. Transcript of Evidence, p 1679

requirements that they are unable to devote sufficient time to giving management advice to their small business clients.<sup>381</sup> To put it another way, small business people have to pay such large fees to accountants just to deal with complex taxation matters that they are prohibited from obtaining the business advice they clearly need.<sup>382</sup>

7.33 Accountants are in a position to provide advice to small business proprietors as they see the overall financial performance of a business. The cost of obtaining professional accounting advice can be high, but this can be reduced to some extent if accountants are prepared to act as a referral service to other lower cost advisory services. However, only if the burgeoning taxation and other compliance and reporting requirements are reduced, can accountants be expected to resume their traditional role as management and financial advisors to small businesses.

7.34 Lawyers are the third major multiplier agency for small business. The Committee heard criticism of the quality of advice offered by lawyers to small businesses, particularly in the area of commercial leasing. The Law Institute of Victoria indicated that the legal profession has adopted strategies to better attune themselves to the needs of small businesses, but it was admitted to be a "long haul".<sup>383</sup> The evidence provided by the Law Institute of Victoria on range of issues indicated that the legal profession, at least as represented by this organisation, has a strong interest in, and commitment to, the small business community.

7.35 Evidence from the three professions indicated to the Committee that there is an awareness among these principle multiplier agencies that small businesses have differing requirements to larger businesses. While attitudinal change in some of these agencies can be a slow process, the Committee is encouraged that this change is taking place.

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381. Transcript of Evidence, p 74

382. Transcript of Evidence, p 1083

383. Transcript of Evidence, p 2024

7.36 The Committee recommends that:

- . the National Small Business Information and Awareness Program be given increased funding to continue and expand its program of integrating small business advisory services with the principal private sector agencies that are most regularly in contact with small businesses.

#### D. Industry training levy

7.37 The Federal Government plans to introduce an industry training levy on businesses starting on 1 July 1990. The levy is part of the government's program of improving training standards across Australian industry. The revenue collected from the training levy will be paid into a government approved fund which will be used to increase funding to existing training infrastructure. Existing training infrastructure which will be assisted by the levy, currently does not cater well for the training and education needs of small business, or management education for small business.

7.38 In the discussion paper *Industry Training in Australia: The Need for Change*, the Minister for Employment, Education and Training stated that any industry training scheme "will require consideration of its effect on small business".<sup>384</sup> However, in developing a comprehensive training scheme, the Government recognises the need to balance the impact of such a scheme on small business against the objective of securing as wide a coverage as possible of industry.<sup>385</sup>

7.39 The discussion paper recognised that there are specific problems associated with any form of training program for small business, in terms of removing employees from the workplace, providing facilities for apprentice training, and the absence of the owner/managers themselves from the workplace to attend a training

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384. Minister for Employment, Education & Training: *Industry Training in Australia: The Need for Change*, December 1988 p 54

385. Ibid p 55

courses.<sup>386</sup> Group training schemes have been developed which reduce the impact upon individual employers of apprenticeship training. The training period of apprentices is spread between several employers. The schemes enable employers to obtain apprentices as well as increasing the number of training positions available.<sup>387</sup>

7.40 The paper stated that despite the impact of training schemes and the imposition of a levy on those businesses not currently providing enough training:

exemption from a general scheme could affect the capacity of small firms to take a role in new competitive opportunities arising through the structural adjustment process. It could also greatly limit the training available to small business employees and their capacity to gain access to new career structures that may be developed through the award restructuring process.<sup>388</sup>

The paper did acknowledge that there was a limit on the capacity of some small businesses to be involved in the scheme, by stating that it "is clear that any arrangement should exclude very small businesses".<sup>389</sup> In accordance with this statement, businesses with a yearly payroll of less than \$200 000 have been excluded from paying the levy. This threshold was decided on the basis that a payroll of \$200 000 would constitute a company employing approximately 8 to 10 people.<sup>390</sup>

7.41 The Committee believes that increasing the skill levels of the workforce may also increase the willingness of the workforce to look to small business as an alternative career choice. With already over 25% of the non-farm workforce employed by small business,<sup>391</sup> this sector of the economy warrants trainin

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386. Ibid p 129

387. Ibid

388. op cit, p 130

389. op cit, p 55

390. pers comm Minister's Office;

391. Minister for Employment, Education and Training *Industry Training in Australia* op cit pp 126 - 7

and education programs tailored specifically to its needs.

7.42 The Committee recommends that:

- . the approved training funds supported by the proposed industry training levy should include provision for training courses specifically catering for the training needs of the self employed and employees in small businesses.

#### E. Licences for small businesses

7.43 A number of witnesses suggested that a form of licensing should be introduced to ensure that those who wish to establish small businesses have a requisite level of management skills. The proposed system would require that a person intending to start a small business would first need to complete certain units in business management, such as business management, financing, and bookkeeping.<sup>392</sup>

7.44 It was suggested that, before being able to register a business name, a person should be required to produce a certificate from an approved course.<sup>393</sup>

7.45 The major benefit of a licensing system is that it would ensure that managers of new businesses acquired business skills necessary to survive the first critical two year period, thereby reducing the number of small business failures and increasing the efficiency of the small business sector.<sup>394</sup> Compulsory licensing would cause a large number of administrative problems in terms of designating approved courses and providing access to those courses in regional areas. A licensing fee structure would also have to be imposed to cover administration costs, adding to the financial burden faced by new business people. Minimum standards for approved courses would have to be coordinated between States to ensure a uniform licensing system, and the licence would have to be

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392. Transcript of Evidence, p 2044

393. Transcript of Evidence, p 2202

394. Transcript of Evidence, p 2198

recognised Australia wide.

7.46 While the Committee recognises that management deficiencies are a major factor in small business bankruptcies, it does not believe that a formal licensing system for small business is an acceptable means of dealing with the problem. The Committee also believes that a compulsory form of licensing would not be acceptable to the small business community.

7.47 The need for small business people to acquire management skills, which a licensing system would address, could be better dealt with by adopting other measures recommended in this report, that is the inclusion of business management courses in secondary, TAFE and tertiary education institutions, and the extension of the NIAP program to ensure that business advisory services and multiplier agencies offer better quality advice to small business. Business management education and training is the key to increasing the growth and profitability of the small business sector. However, current methods of providing education and advisory services need to be more closely tailored to the needs of the small business client group.

7.48 Management education and training programs cannot guarantee the success of every small business venture, nor should they aim to do that. However, training and education can enable a small business person to more realistically assess the viability and progress of his or her business, increase its profitability and make it more flexible to market demands.

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CHAPTER 8  
OTHER MATTERS

A. FRANCHISING

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## CHAPTER 8

## OTHER MATTERS

## A. Franchising

8.1 Franchising presents an alternative means of expanding business and an alternative means of starting up a new business by entrepreneurs. Under the system, the franchisor, as owner of a marketing system, business service or product (identified by a brand name or trademark) enters a contract or agreement with the franchisee and grants, under certain conditions, the right to use a business brand name or trademark and the right to produce or distribute the franchisor's product or service.<sup>395</sup>

8.2 Substantial benefits exist for both franchisees and franchisors under the system. Franchisees get commercial and management assistance when starting-up an outlet, and continuous assistance throughout the life of an agreement. Franchisors are able to expand their business with limited capital, and have highly motivated owner-managers operating their outlets rather than company employees.<sup>396</sup>

8.3 Franchising can be divided into one of, or a combination of:

- . product franchising, where a distributor supplies the product of a manufacturer, often with exclusive right to sell within a specific market (common with motor vehicles and petrol);
- . business format franchising, where a unique system of doing business is licensed in a controlled

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395. Bureau of Industry Economics Submission to the Trade Practices Consultative Commission, p 1

396. Bureau of Industry Economics Submission to Trade Practices Consultative Commission, p 2

manner usually with a trade name, trademark, specified decor, (for example, restaurants, real estate and motels);

manufacturing franchising, where an essential ingredient or technical information is supplied (common in the soft drink industry).<sup>397</sup>

8.4 Franchising has existed as a business system for many years. The first phase in the development of this system began in the United States with the creation and expansion of the automobile and oil industry franchising networks. These networks were established world wide, proving the success of the system. Franchising rapidly expanded in the 1950's and 60's with the development of the concept of business format franchising, typified by the growth in fast food retailing.<sup>398</sup>

8.5 The impact of franchising on the economy is difficult to quantify, as the collection of statistics has been sketchy.<sup>399</sup> This lack of data also frustrates an assessment of the impact of franchising on small business. Estimates by the Australian Franchise Opportunities Handbook put the number of systems at over 600, although other sources such as the Directory of Australian Franchise Opportunities claim that the figure is between 200 and 300.<sup>400</sup> Similarly, the estimates of the number of franchise outlets varies according to the sources used, but as many as 20,000 outlets may currently be in operation.<sup>401</sup>

#### A.1 Regulation of franchise agreements

8.6 Despite the popularity of franchising, concern has been expressed by small business organisations and trade associations that franchise agreements lead to franchisors taking unfair

397. Bureau of Industry Economics Submission to the Trade Practices Consulting Committee, pp 2 - 3

398. Transcript of Evidence, p 3451

399. Australian Industry Trends, Issue No. 6, April 1989, p 20

400. Australian Industry Trends, Issue No. 6, April 1989, p 21

401. McCosker, C. *Increasing small business employment through franchising* Paper presented to the National Small Business Conference, 13 & 14.2.89, p 6

advantage of franchisees by including unnecessarily restrictive or onerous conditions in these agreements.

8.7 Conditions in the agreements not only cover virtually all aspects of the franchisee's business, from the operational aspects, such as location of outlets, appearance of outlets and provision of goods and services, but also establish the dominance of the franchisor by giving him or her the right to vary the terms of the agreement without consultation.<sup>402</sup>

8.8 Franchisees recognise that franchisors must exercise some control over the operation of franchise outlets but question the degree of control of and onerous restrictions normally contained in the agreements.<sup>403</sup> Evidence to the Committee from the Motor Traders Association of Australia indicated that franchisors in that industry have admitted that they would not sign their own franchise agreements, yet expect their franchisees to do so.<sup>404</sup>

8.9 Three areas where franchise agreements acted against the interests of franchisees were outlined to the Committee:

- . absence of any requirement for prior disclosure of information clearly outlining the rights and responsibilities of the two parties
- . unilateral alteration of the agreement by franchisors without prior notification and
- . lack of clear cut statements on the basis for renewal or the grounds for termination of agreements.<sup>405</sup>

8.10 Some legal protection to franchisees is provided by the *Trade Practices Act 1974*, mainly through the fair trading provisions of the Act - Section 47 and Sections 51 to 59. These

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402. Transcript of Evidence, p 3455; Bureau of Industry Economics Submission to the Trade Practices Consultative Committee, p 2

403. Transcript of Evidence, p 2857

404. Transcript of Evidence, p 2857

405. Transcript of Evidence, pp 2858-9

provisions cover exclusive dealing, the provision of false or misleading information and misleading or unfair conduct.

8.11 The *Trade Practices Act* can only provide limited protection as, like all small businesses, franchisees are only covered if they fall within the definition of consumers contained in Section 4C, and it does not fully address the areas outlined above. The Act cannot force the disclosure of information from franchisors, nor can the Act prevent unilateral alteration of an agreement. Renewal or termination of agreements specifically related to franchising does not fall within the ambit of the *Trade Practices Act*, and would be covered only by common law provisions such as breach of contract.<sup>406</sup>

8.12 Two reviews of the *Trade Practices Act* in the 1970's (the Swanson Committee in 1976 and the Trade Practices Consultative Committee in 1979) concluded that the *Trade Practices Act* should be amended to overcome the problems faced by franchisees. Throughout this inquiry, however, it became clear that the problems of franchising systems could best be dealt with by separate legislation.<sup>407</sup> Specific franchise legislation would provide legislative protection against unfair practices, and ensure fair dealing between franchisees and franchisors, by regulating for prior disclosure, terms of alterations of agreements and other areas of contention not already covered by legislation. This would be achieved without distorting existing laws to fit purposes for which they were not intended.

## A.2 First exposure draft Franchise Agreements Bill

8.13 The need for government regulation was recognised by the Ministerial Council for Companies and Securities when it released an exposure draft of a Franchise Agreements Bill for public comment early in 1986. The draft bill sought to provide potential franchisees with an adequate opportunity to assess, before entering

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406. Bureau of Industrial Economics Submission to the Trade Practices Consultative Committee, pp 20-1

407. Transcript of Evidence, p 781

into a franchise agreement, the extent to which their conduct of the franchised business would be subject to the control of the franchisor and constrained by their (the franchisee's) legal obligations under the agreement. The proposals did not, however, purport to determine what matters could and could not be included in franchise agreements.<sup>408</sup>

8.14 The overall purpose of the draft bill was to ensure that franchisors dealt fairly with franchisees throughout the length of the agreement. This was to be achieved by requiring the prior disclosure of relevant financial and management information, and the terms under which franchisee and franchisor carried on their dealings with each other. The main provisions of the draft bill were:

- . that franchisees be supplied with a copy of the agreement and a prior disclosure document 7 days before the agreement is executed. This prior disclosure document would contain relevant business information about the franchisor;
- . a cooling off period of 7 days after entering the agreement;
- . no unilateral variation of the agreement;
- . an equitable supply of goods amongst all franchisee outlets;
- . that a party seeking termination of the agreement must give the other party 30 days notice.<sup>409</sup>

8.15 Reaction to the draft bill fell into three categories; those who supported the draft, those who rejected it and those who did not necessarily object to franchise legislation, but objected to

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408. Consultative Paper and Draft Franchise Agreements Bill (Green Paper), 1986, p 4

409. Consultative Paper and Draft Franchise Agreements Bill, pp 5 - 7

the extent of regulation contained in the draft bill.<sup>410</sup> Most of the submissions received fell into the latter two categories,<sup>411</sup> and in accordance with this majority opinion, the Ministerial Council decided to release a second draft for comment, which was done in November 1986.

8.16 In its submission to the Committee, the Attorney-General's Department stated that the first draft was revised as it was "too onerous on franchisors and was an unwarranted interference on the parties' freedom to contract".<sup>412</sup> The Department stated that a major difficulty in the first draft lay in defining the franchise agreement, which was "defined too widely in some respects and too narrowly in others".<sup>413</sup> This problem of definition, and the purpose of the intended legislation, was re-examined in the second exposure draft.

### A.3 Second exposure draft Franchise Agreement Bill

8.17 The second draft bill narrowed the purpose of the proposed legislation strictly to imposing an obligation on franchisors to disclose relevant financial information to franchisees prior to entering a franchise agreement.<sup>414</sup>

8.18 However, provisions dealing with prior disclosure of financial and managerial information were reduced on the grounds that this would place franchisors at a competitive disadvantage. It also reduced the number of requirements on franchisors for fair dealing with franchisees.<sup>415</sup>

8.19 Provisions concerning the protection of the interests of franchisees, such as the cooling off period, equitable supply of goods and services, termination of franchise agreements and related

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410. Second Exposure Draft on Franchise Legislation, November 1986, p 4

411. Second Exposure Draft on Franchise Legislation, November 1986, p 4

412. Transcript of Evidence, p 2838

413. Transcript of Evidence, p 2862

414. Second Exposure Draft of the Franchise Legislation, November 1986, p 3

415. Second Exposure Draft on Franchise Legislation, November 1986, p 5

agreements; were deleted from the draft.<sup>416</sup>

8.20 The draft recognised the need for the franchisor to exercise a large degree of control over the franchisee, by stating that this was "a necessary part of ensuring that uniformly high standards are maintained as between the various franchise outlets".<sup>417</sup>

8.21 In dealing with the franchisor - franchisee relationship, the exposure draft sought mainly to provide some basic legislative protection. The focus of the draft was not to "ensure that franchise agreements are fair nor (did) it seek to ensure that potential franchisees are aware of all the pitfalls. It aim(ed) to ensure that a small number of the more important pitfalls are highlighted" to minimise difficulties in the relationship between the two parties.<sup>418</sup>

8.22 The aim of the second exposure draft was to allow for a flexible franchise agreement, while providing for an exchange of information between franchisor and franchisee before an agreement was signed. In the view of the Ministerial Council for Companies and Securities, this would enable franchisors to continue to be the dominant partner in a franchise arrangement and would let them adjust their systems to cope with changing market conditions. At the same time it would allow franchisees to recognise, before entering into franchise agreements, that by so doing there was a price to be paid in terms of limited independence for the benefits of being permitted entry to a business which has been established through someone else's endeavours.<sup>419</sup>

8.23 Reaction to the second draft was just as critical as to the first draft. The shift in focus of the draft legislation was seen by franchisee groups as having the effect of protecting the interests of franchisors rather than franchisees, thereby defeating the

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416. Second exposure draft on Franchise Legislation, pp 12 - 13

417. Second Exposure Draft of the Franchise Agreements Bill  
November 1986, p 3

418. Second Exposure Draft of the Franchise Agreements Bill  
November 1986, p 3

419. Second exposure draft of the Franchise Agreements Bill,  
November 1986, p 3



purpose of the legislation. Franchisee groups saw the narrowing of the focus of the draft bill to exclude the fairness provisions and the draft's recognition of the dominant position of the franchisor as a reaction by the Ministerial Council to "pressure from franchisors, potential franchisors and presumably larger business interests".<sup>420</sup>

8.24 In view of the criticism of the draft legislation, the Ministerial Council decided in May 1987 not to proceed with the legislation. In making this decision, the Council considered that adequate remedies in law already existed to protect parties to franchise agreements, notably Section 52 of the *Trade Practices Act*, corresponding State fair trading legislation, and in common law, such as breach of contract or misrepresentation.<sup>421</sup>

8.25 In evidence to the Committee, the Attorney-General's Department indicated that the Ministerial Council took the view that, if the "objective of franchise legislation was to impose an obligation to disclose and provide remedies when sufficient disclosure did not take place, remedies were already available".<sup>422</sup> The remedies were available under Commonwealth trade practices legislation under section 52, and State members of the Council were undertaking reforms of their fair trading legislation to bring it up to levels of the Commonwealth *Trade Practices Act*.<sup>423</sup>

8.26 The Attorney-General's Department also indicated to the Committee that the major stumbling block encountered in circulating the two drafts was finding an adequate definition of franchising that would be suitable to both franchisees and franchisors, and capable of being framed in legislation. The Department concluded that "There has not yet been a satisfactory definition of what is a franchising agreement".<sup>424</sup>

8.27 The Committee does not see that this is the case. Franchising legislation has existed in nearly all States of the

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420. Transcript of Evidence, p 1359

421. Transcript of Evidence, p 2838

422. Transcript of Evidence, p 2862

423. Transcript of Evidence, p 2863

424. Transcript of Evidence, p 2862

United States for a number of years and, while possibly not being directly applicable to Australian franchising systems, would provide the basis for a viable legal definition of the arrangement. Additionally, the Commonwealth has produced the *Petroleum Retail Marketing Franchise Act*, which details the terms of the agreement between the franchisee and franchisor in that industry. The Committee recognises the difficulty in arriving at a definition that would suit all types of franchising agreements, however the common elements to these agreements can be identified and used for framing legislation.

#### A.4 The Trade Practices Act

8.28 The Trade Practices Act affects franchising by controlling:

- . trading relationships between franchisors and franchisees through restrictions on exclusive dealing and prevention of third line forcing (where a supplier forces a buyer of their goods or services to also buy the goods or services of another person);<sup>425</sup>
- . control by franchisors over franchisee's pricing by preventing resale price maintenance;
- . protection of buyers of franchises by preventing the offering of false and misleading information to endure people to buy businesses.<sup>426</sup>

8.29 While the *Trade Practices Act* does impact on franchising operations, its primary role was not designed with a protective function in mind. The Act seeks to promote efficiency in Australian industry by "replacing anti-competitive, collusive private regulation of the market with open competition as the market regulator". The Act, then, does not intend to "protect individual competitors or classes of competitors as such, but promote free and

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425. Transcript of Evidence, p 2770

426. Transcript of Evidence, p 3456

fair competition".<sup>427</sup>

8.30 The *Trade Practices Act* also draws no distinction between large and small competitors, which can inhibit any protection the Act affords.<sup>428</sup> The Trade Practices Consultative Commission in monitoring the Act, has to take an overview of the market place as a whole when addressing the needs of a franchisee. The submission from the Attorney-General's Department acknowledges that "certain conduct which may adversely affect or even cause the failure of a small business may nonetheless not contravene the Act because the conduct in question does not have the requisite effect on competition in the market".<sup>429</sup> Prosecuting under the Act, therefore, relies on a franchisee proving that they have been unfairly treated in a micro level market-place under an Act that deals with a macro level economic environment.

8.31 An additional consideration is that, while action can be taken under the Act where a breach has occurred, often a franchisee has invested money in his or her business and may not have the additional funds available to pursue the franchisor through the courts.

8.32 The call for regulation of franchising was based on the need for preventative measures to forestall an ill-informed decision to enter a business enterprise. The Ministerial Council, conversely, has relied on measures that require a breach of law to protect the interests of franchisees, even though the law may not necessarily be cognisant of the specific economic and contractual obligations unique to franchise agreements.

8.33 The Committee believes that there is a continued and growing need for specific purpose franchise legislation which would stipulate certain basic conditions for franchise agreements to ensure fair dealing between franchisees and franchisors.

8.34 The Committee is not persuaded by the Ministerial Council's

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427. Transcript of Evidence, p 2820

428. Transcript of Evidence, p 2819

429. Transcript of Evidence, p 2820

statement, in abandoning draft franchise legislation in 1987, that adequate remedies in law already exist to protect parties in franchise agreements. Clearly the Swanson Committee in 1976 and the Trade Practices Consultative Committee in 1979 did not believe this to be the case. Nor did the State and Commonwealth Attorneys-General when they went through a process of extensive inquiry, legislative drafting and consultation over several years with a view to formulating satisfactory legislation to provide these remedies at law in the form of specific purpose franchise legislation.

8.35 The Committee has been presented with no evidence arguing that the need for such remedies or legislation has diminished over the last decade and indeed, it suspects that if anything, the need may have increased with the continuing growth in franchising as a form of business.

8.36 The Committee suspects that, after the genuine and concerted attempts made to draft satisfactory franchise legislation resulted in an outcome which pleased neither franchisee nor franchisor, the attempt was abandoned for reasons having little to do with "the adequacy of existing remedies at law".

8.37 To give credit to the Commonwealth Attorney-General and the Ministerial Council, they recognised the need for franchise legislation and made a serious effort to draft such legislation. But they should recognise that in spite of the frustrations experienced in endeavouring to strike a reasonable balance between the franchisees and franchisors in the form of legislation, the need for such legislation remains.

8.38 The Committee recommends that:

- . The Commonwealth Attorney-General and Ministerial Council re-examine the case for specific franchise agreement legislation which would contain:

- prior disclosure documentation;
- a cooling-off period;
- conditions for alteration to the agreement; and

- conditions for termination/renewal or transfer of franchises.

## B. Close Corporation

8.39 The Close Corporations Bill was introduced into the House of Representatives on 25 May 1988, as part of a package of legislation designed to amend the *Companies Act*, called the Corporations Bill. This Bill faced a stormy passage through the House, and, when transmitted to the Senate, was referred to a Joint Select Committee for consideration and amendment. Despite the controversy surrounding the Corporations Bill, the close corporations part of the legislation was considered by both government and opposition parties to be a beneficial change for small business, and only minor amendments were suggested for the Close Corporations Bill. The Joint Select Committee reported to the House of Representatives in April 1989 and the amended legislation was passed by the Senate on 11 May 1989.

8.40 The Bill was assented to on 14 July 1989, but 'at the time of writing' has yet to be proclaimed. This is dependant on the establishment of the Australian Securities Commission (ASC), which will administer the *Corporations Act*.

8.41 The *Corporations Act* is currently facing a High Court challenge made by four State governments contesting the power of the Commonwealth Government to replace State-based regulation of corporate law with a package of federal laws. The main areas of the challenge are the Commonwealth's power to legislate for the formation of companies, the internal management of companies and share dealing. The *Close Corporations Act* deals with the internal management of companies and is, consequently, also under challenge.

8.42 The *Close Corporations Act* is designed to reflect the simpler management structure of small business enterprises. The features of the close corporate form are designed to enhance flexibility and reduce operating costs in comparison with a fully incorporated company, by reducing the financial and other reporting

requirements and replacing the usual concept of management with simpler association rules.<sup>430</sup>

8.43 Central to the legislation is the elimination of the formal director/shareholder distinction and its replacement by simpler partnership rules.<sup>431</sup> The close corporation is formed by the lodging of a founding statement with the ASC which would be updated with each change to the material particulars. Additionally, a certificate of compliance must be lodged annually which would show that the close corporation accounts have been kept and accurately reflect the financial position of the corporation.<sup>432</sup>

8.44 The essential features of a close corporation are that it contains 10 or fewer members, with trust holdings counted separately; the shares in a close corporation must be fully paid up, to the same value and having the same rights; and shares cannot be allotted at a premium or discount. With minor exceptions, only natural persons may be members of a close corporation, and a purported acquisition by a body corporate of a share or a unit of a share in a close corporation is void. A close corporation cannot act as a trustee or as a holding company nor can a close corporation offer its shares to the public.<sup>433</sup>

8.45 To balance the reduced reporting requirements with the need to protect creditor's interests, the Act provides for an increase in the circumstances, compared to fully incorporated companies, in which members will face personal liability upon the event of the close corporation's insolvency.<sup>434</sup> These circumstances are:

- . where the number of members exceeds the maximum of 10 and the close corporation is subsequently wound up;
- . if the close corporation breaches the prohibition on

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430. House of Representatives Daily Hansard, 25.5.88, p 2996

431. House of Representatives Daily Hansard, 25.5.88, p 2996

432. House of Representatives Daily Hansard, 25.5.88, p 2996

433. Joint Select Committee on Corporations Legislation Report, April 1989 p 182

434. Transcript of Evidence, pp 2836 - 7

becoming a holding company and is subsequently wound up; and

- . where proper accounting records have not been kept.<sup>435</sup>

8.46 While the initiative to amalgamate the dual roles of director and shareholder into the single role of member has been welcomed, other aspects of the Act have been criticised as being inappropriate or too inflexible for the small business environment. The major area of concern revolved around the extent of personal liability provisions. This aspect of the Act was examined by the Joint Select Committee on Corporations Legislation. A number of submissions received by the Joint Select Committee underscored this point. Clarke and Kann, solicitors, argued that:

The most significant detriment to the attractiveness of the simplicity of the close corporation is the extended circumstances in which, often inadvertently and without serious fault, members of such entities may incur personal liability for debts of the company. We believe that that risk will be sufficiently alarming to deter the section of the community to which they are directed from using close corporation.<sup>436</sup>

8.47 The reduced reporting requirements and provision for the lodgement of a certificate of compliance rather than an audited statement of accounts also reduced the level of scrutiny to which members of a close corporation were subjected. Consequently, the compensatory mechanism for creditors lies in the extent of personal liability, to place the "onus on members to take reasonable steps to monitor the corporation's financial position".<sup>437</sup>

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435. Joint Select Committee on Corporations Legislation Report, April 1989 p 184

436. Joint Select Committee on Corporations Legislation Report, April 1989 p 187

437. Companies and Securities Law Review Committee, Report to Ministerial Council on Forms of Legal Organisation for Small Business Enterprises, September 1985, p 48

8.48 The Attorney-General's Department felt that these provisions would not reasonably detract from the corporate form. The liability provisions were "not greatly different" from the current situation under company law whereby directors can be liable for the debts of a company incurred knowingly when they have no reason to believe that the company will be able to pay the debts.<sup>438</sup>

8.49 Further areas of concern raised with the Joint Select Committee on Corporations Legislation covered the provisions: restricting a close corporation from acting as trustee; prohibiting them from being holding companies; and limiting membership of close corporations to "natural persons".<sup>439</sup>

8.50 These restrictions and the extent of personal liability in the legislation was thought by a number of business groups and associated organisations as limiting the usefulness of the legislation. The attitude was summed up by the NSW Business and Consumer Affairs Agency (BACA) submission to the Joint Select Committee on Corporation Legislation which said:

Basically it is rather an inflexible vehicle as far as share structure, membership, size and relationship with other companies are concerned. Another major disincentive ... is the extended circumstances in which ... members may incur personal liability for their debts. Often that liability may be incurred through inadvertence and without serious fault on the part of the Members.

8.51 In view of this, it was felt that the legislation would:  
  
only be useful to small businesses owned and managed by a very limited number of people who only need a single structure with no subsidiaries and trusts and do not need to raise capital other than borrowings from

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438. Transcript of Evidence, p 2875

439. Joint Select Committee on Corporations Legislation Report, April 1989 p 156.



financial institutions.<sup>440</sup>

8.52 While this view sees the close corporation legislation as having limited applicability it must be remembered that the legislation was framed primarily with the needs of owner-operated businesses, not incorporated businesses, in mind. As these businesses grow, there will obviously be a growth in the management structure which would require a corresponding change to the legal framework of the business. The close corporation therefore, acts as a corporate framework that will more realistically reflect the legal needs and responsibilities of small businesses.

8.53 Evidence given to the Committee by the Australian Automotive Industry Association indicated that, although a fee structure was yet to be finalised, the savings to a business, over the years, could go into five or six figures.<sup>441</sup> If savings of this magnitude are to be realised, this is expected to outweigh the other drawbacks of the close corporation.

8.54 The Joint Select Committee on Corporations Legislation, in reviewing the close corporation legislation, noted the disadvantages discussed above. However, in the conclusion to the report on corporations legislation, the Joint Select Committee argued that the benefits of the simplified corporate structure coupled with the less onerous requirements as to documentation and overall machinery for a close corporation would outweigh the disadvantages. In concluding, the Joint Select Committee stated: "Nevertheless, it believes the Bill represents an innovation in company law, the benefits of which may only become apparent after the legislation has been in operation for some time".<sup>442</sup>

8.55 The Committee concurs with this view, and also notes that the Attorney-General has taken a significant step in tailoring

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440. New South Wales Business and Consumer Affairs Agency Submission to the Joint Select Committee on Corporations Legislation  
pp 23 - 4

Legislation, pp 23 - 24

441. Transcript of Evidence, p 2873

442. Joint Select Committee on Corporations Legislation Report,  
p 188

legislation specifically for small business. The Committee expects that, having taken this step, the Attorney-General will monitor the implementation and response to the legislation, to ensure that the intended benefits to small business are realised.

8.56 The Committee recommends that:

. the Attorney-General's Department and the Department of Industry, Technology and Commerce review the operation of the *Close Corporations Act* annually to assess the extent to which the objectives of the legislation are being achieved viz.:

- provide a low cost and flexible legal framework for those unincorporated small businesses which previously found incorporation unattractive; and
- reduce the taxation, superannuation and other disadvantages currently experienced by small businesses which are not incorporated.

8.57 The success of the Close Corporation legislation in reducing if not eliminating, the discriminatory treatment of unincorporated small businesses, for example with respect to the timing and rates of tax, and superannuation and other entitlements, will to a large extent depend on the rate at which these small businesses become aware of and act to adopt this new legal structure.

8.58 One would therefore not wish the Government's expectations in providing a new legal form for small businesses to be disappointed simply because of lack of awareness in the small business community about the close corporation and its potential advantages. Given the well documented difficulties that governments generally experience in reaching the most poorly informed, but often most needy, of small businesses about government programs and initiatives directed at small business, it would be advisable to take steps to ensure that this initiative is widely publicised and

promoted in the small business community. Clearly the National Small Business Information Awareness Program co-ordinated by the Department of Industry, Technology and Commerce and the network of accountants, solicitors, banks and other financial institutions which are directly in contact with small businesses are obvious channels for this information.

8.59 The Committee recommends that:

- . the Attorney-General's Department and the Department of Industry, Technology and Commerce take steps to ensure that the close corporation legal form is widely publicised and promoted in the small business community.

#### C. Business names and trade marks

8.60 Legislation covering the registration of business names and trade marks was criticised in evidence to the Committee as being cumbersome and causing unnecessary duplication of paperwork and increasing costs for small business.

##### C.1 Business names

8.61 The problems faced by small business in registering business names under current legislation are twofold:

- . firstly, that names have to be registered on a State by State basis; and
- . secondly that registration of a name confers no legal right to use that name.<sup>443</sup>

8.62 Evidence indicated that interstate trading for a business is unnecessarily complicated by the requirement to re-register a business name in each State. While adding to the costs for a business, there is also the possibility that the business name has

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443. Transcript of Evidence, p 1756

been registered already, forcing the business to trade under two (or more) different names.<sup>444</sup>

8.63 Under current companies legislation, Corporate Affairs Commissions in each State maintain separate Registers of Business Names. The requirement to register separately in each State in which a business wants to trade is particularly onerous on small businesses, especially where a business is based close to a State border, as occurs for example in Albury/Wodonga.

8.64 This situation could be further complicated following the proclamation of the corporations legislation. Under this legislation, the Australian Securities Commission will administer a register of companies on a national basis, yet the Committee understands that the State Corporate Affairs Commissions may continue to administer their own business name registers.<sup>445</sup>

8.65 The Attorney-General's Department indicated that it was the intention of the legislation to overcome this problem of multiple registrations:

The essential element of the Commonwealth legislation is that all these bodies will be able to operate nationally. For example, you will not have the current problems of, say, bodies in Albury who engage in cross border business having to register in the other State and incurring further costs; that will not be a feature.<sup>446</sup>

8.66 However, there have been some reports that State Corporate Affairs Commissions may continue to administer business name registers after concluding negotiations with the Federal Government over the administrative jurisdiction of the Australian Securities Commission.<sup>447</sup>

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444. Ibid

445. Section 120, *Corporations Act*, pers comm, Attorney-General's Office.

446. Transcript of Evidence, p 2875

447. Chanticleer, *Australian Financial Review*, 21.9.89

8.67 The Committee recognises that the Federal Government is still negotiating with State Governments over the referral of powers to the Australian Securities Commission to administer the corporations legislation. The Committee would encourage the Commonwealth Attorney-General to negotiate the surrender of the administration of State business name registers to the Australian Securities Commission. Otherwise, the absurd situation may arise of a nationally registered company having to register its business name on a State by State basis.

8.68 The Committee also considers that the benefits of a national business names register should be extended to unincorporated businesses, which represent 75% of non-farm small businesses.<sup>448</sup>

8.69 The Committee recommends that:

- . the Commonwealth Attorney-General negotiate with State Attorneys-General to transfer the administration of Registers of Business Names to the Australian Securities Commission; and
- . the Australian Securities Commission establish a national Register of Business Names

## C.2 Trade marks

8.70 Another problem faced by small businesses concerns the legal right of a business to use its registered business name.

8.71 Registration of a business name does not provide proprietary rights over that name. The purpose of registration is to provide publicly available information on the ownership of a registered business.<sup>449</sup> However, due to the legal requirement to register a business name, some small businesses mistakenly believe that registration of a business does confer some legal entitlement

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 448. pers comm, C Papadopoulos, Bureau of Industry Economics,  
 (Extracted from 1986 ABS Integrated Register of Companies)

449. Latimer P *Australian Business Law* CCH 1989 edition, p 770

to the name.

8.72 Consequently, the situation may (and has) arisen where a business, in good faith, can register a business name with a Corporate Affairs Commission, yet be in violation of the *Trade Marks Act*.

8.73 Evidence was given to the Committee of a computer company, trading in Victoria, which registered its name with the Victorian Corporate Affairs Commission. However, part of the name was used by an older firm, trading in Sydney. The Victorian company was threatened with legal action if it continued to use the name, as the Sydney company had taken out a trade mark application on the words used in the name. Patent attorneys consulted by the Victorian company advised that the Sydney company had a good case, and it could become very costly to pursue it. Consequently, the Victorian company was faced with the choice of a potentially costly legal battle to use its registered name, or to change its name.<sup>450</sup>

8.74 Evidence was also received of instances where successful businesses had their names or logos registered by someone else as trademarks without the businesses' knowledge, and had then been placed in the position of either buying their own name back or changing their name.<sup>451</sup> The Committee was informed of the situation where a successful ice cream factory in Darwin had its logo registered as a trade mark by a person unrelated to the company, and was faced with the choice of legal action to buy its logo back, or use another logo in no way associated with their original design - in effect, having to compete against their own, established name.<sup>452</sup>

8.75 Legal entitlement to, and protection of a business name can be secured by registering the name with the Commonwealth Trade Marks Office under part A or B of the *Trade Marks Act*. The Commonwealth being responsible for the register of trade marks while, under current legislation, the States are responsible for the

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450. Appendix 1, Submission from the Small Business Association of Victoria

451. Transcript of Evidence, p 1761 - 2

452. Transcript of Evidence, p 1762

registration of business names. The Commonwealth trade marks register and the state business names registers are operated independently of each other, in that there is no requirement for a search of one register as part of the procedure for registration on the other.

8.76 There should be a requirement, on registering a business name, that the register of trade marks be searched to ensure there is no accidental violation of the *Trade Marks Act*.

8.77 If each State's Corporate Affairs Commission should transfer administration of business names registers to the Australian Securities Commission, and if the ASC should establish a national register of business names, the ASC would be able to cross reference the register of business names with the trade marks register. This would reduce, if not eliminate, the chance of a person, or company, accidentally adopting a business name already registered and protected under the *Trade Marks Act*.

8.78 However, the cross referencing of a national register of all business names against the national register of trademarks would not preclude someone deliberately taking out trademark protection over a business name already registered with either each State's Corporate Affairs Commission or the ASC with a view to securing legal entitlement to the name and potentially the goodwill associated with the name.

8.79 The only means by which a business can legally protect its business or brand name is by registering its name as a trade mark. Although the dual registration of a name as both a business name and as a trade mark undoubtedly penalises small businesses because of the dual associated cost, it would appear the best means by which they can protect themselves against exploitation of their name and goodwill by others.

8.80 The Committee recommends that:

- . the Australian securities commission in conjunction with commonwealth and state small business agencies

develop and implement an awareness campaign at small business people to inform them of the difference between registering a business name and a trade mark.

8.81 The legal requirement to register a business name carries with it a false impression that a legal right to use the name is granted with registration. This impression needs to be dispelled and small business people need to be made aware of the difference between registering a name and protecting a name.

8.82 The Committee recommends that:

- . the Australian Securities Commission cross reference the register of business names with the register of trade marks to prevent accidental violation of the *Trade Marks Act* when registering a business name; and
- . the Australian Securities Commission implement an awareness campaign for small business people on their legal rights to use a business name with a view to encouraging small businesses to protect that name under the *Trade Marks Act*.

#### D. Bankruptcy Act (Part X)

8.83 The operation of Part X of the *Bankruptcy Act* came under criticism by small business people as being too lenient on debtors, and not providing enough protection for unsecured creditors.

8.84 The Victorian Employers' Federation pointed out that while resorting to bankruptcy:

may solve the problem for the debtor, it transfers the problem to the creditor. The assumption seems to be that the creditor, by definition, is sufficiently financially



well-off to sustain the loss without damage. This is simply not the case. Bad debts must be paid for, either in the form of higher prices for other consumers, or through lower profits. These in turn reduce the capacity of a business to operate.<sup>453</sup>

8.85 The Committee considers that this situation is particularly onerous for small businesses, which usually do not have the resources, or time, to pursue a bad debt through the courts to seek a settlement.

8.86 Evidence to the Committee indicated that the operation of Part X of the *Bankruptcy Act* compounded the situation for small businesses. Witnesses stated that substantial debts, could, in effect, be written off, leaving a small business person unable to claim any compensation for the debt:

They do not go through the bankruptcy process; they are not declared bankrupt, they just sign Part X or they are put through a Part X of the Bankruptcy Act that clears them from all debt that occurred beforehand ...<sup>454</sup>

8.87 The Committee wrote to the Attorney-General to ascertain the rights of creditors under Part X of the Act. In replying on his behalf, Senator Bolkus, the Minister for Consumer Affairs and Minister Assisting the Treasurer for Prices, outlined the three options available to a debtor under that part of the Act:

- . A Deed of Assignment - Whereby the debtor assigns to a trustee all property (other than that which the debtor acquires on or after the date of the deed) which would have been divisible among the creditors had the debtor become bankrupt. The deed binds all creditors. So long as the deed remains in force, an unsecured creditor is not able to take action to recover a debt. However, if the deed does not release the debtor from the debt, the creditor may

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453. Transcript of Evidence, p 16

454. Transcript of Evidence, p 1245

pursue the claim after the final dividend has been paid. The deed does not affect the rights of a secured creditor to enforce a security. A secured creditor may also prove under the deed for either the whole or part of the debt although the amount for which he can thereafter enforce his security will be decreased by the amount for which he has proved. The deed releases a debtor from liability for all debts other than those which would not be released by the debtor's discharge from bankruptcy. The deed does not release from liability a person who is a partner or co-trustee with the debtor or who is jointly liable with him for the debt.

. A Deed of Arrangement - Where the debtor arranges his affairs with a view to the payment of the debts either in whole or in part. It only applies to such of the debtor's property as is specified in the deed. The deed binds all creditors and so long as it remains in force, an unsecured creditor cannot take any legal action against the debtor to recover a debt without the leave of the Court. The deed of arrangement differs from the deed of assignment in that whereas a deed of assignment releases a debtor from all debts for which a release would have been obtained under bankruptcy, a deed of arrangement only releases a debtor from debts for which it provides. The position of a secured creditor is the same as under a deed of assignment. A deed of arrangement may be terminated at any time either by the creditors, the Court, or by the occurrence of an event for which the deed provides that it is to terminate.

. A Composition - Where the creditors of a debtor agree to accept the payment of their debts by instalments or agree to accept a lesser amount in full payment. A composition binds all creditors and so long as it is in force, an unsecured creditor is

not able to take any legal steps against the debtor to recover a debt. However, if the debtor is not released from the debt, the creditor may pursue the debt after the final payment under the composition has been made. The position of unsecured creditors is the same as under a deed of assignment. A composition operates to release the debtor from all debts other than those that would not be released by the debtor's discharge from bankruptcy. A composition does not release from liability a person who is a partner or co-trustee with the debtor or who is jointly liable for the debt. A composition may be set aside by the Court, on the application of a creditor made within 21 days of its date, or may subsequently be terminated by either the creditors or the Court.<sup>455</sup>

8.88 The Committee is concerned that the position of an unsecured creditor is largely unprotected in these arrangements. There are avenues for unsecured creditors to take court action against a debtor filing under Part X but, after secured creditors have received their compensation, there would be little left to distribute.

8.89 Additionally, the Minister states in his letter that, under Part X, debtors are not required to contribute from their income to the payment of their creditors. This provision exists because Part X arrangements are designed around the ability of a debtor and creditors to come to a voluntary agreement to deal with the debtor's insolvency.<sup>456</sup> Small Businesses, in attempting to recover trading debts under a Part X action, are doubly disadvantaged in that unsecured creditors are excluded from the original distribution of a debtor's assets, and, by not formally being declared bankrupt, a debtor cannot be compelled to repay remaining outstanding debts. The capacity of small businesses to absorb debts is limited. As noted previously in the report, access to finance for small business is

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455. Letter to the Committee from Senator Bolkus, Minister for Consumer Affairs, dated 10 April 1989, pp 2 - 3

456. Letter from Senator Bolkus, p 3

restricted. Consequently, covering an unpaid a debt must impose an additional burden on private sources or involve modifying existing financial arrangements with banks, for example by extending overdrafts. The Committee heard evidence of one small business that was forced to carry two bad debts totalling \$72,000. Although legal recourse was available, the business was unable to afford to risk any more money on legal action, and was only able to service the debt by remortgaging the family home.<sup>457</sup>

8.90 The Attorney-General's Department acknowledged that Part X provisions could be abused, with one witness stating: "If I may emphasise that this is a personal view ... a lot of the time one gets the impression ... that the Part X option is something of a cheat's charter: it is an easy way out in that people can go into business and then set themselves up again and again, continuing on with this sort of commercially reprehensible behaviour."<sup>458</sup>

8.91 The Attorney-General's Department stated that bankruptcies which are not company bankruptcies are divided into business and non-business bankruptcies.<sup>459</sup> Non-business bankruptcies are defined those applying to persons who are consumer-type debtors, whose bankruptcy is a consequence of their inability to live within their regular income. Business bankruptcies apply to those persons who had engaged as a trader, in some form of trading as a profit.<sup>460</sup> These definitions could be utilised in the operation of Part X, restricting the application of the Part to non-business debtors. This would place some penalties on the debtor and provide for the repayment of debt to all creditors, rather than secured creditors.

8.92 The Attorney-General's Department was sympathetic to the circumstances of small businesses unable to recover debts due to a Part X action, and stated that:

Perhaps if the situation were changed slightly and what we call consumer bankrupts were able to go into Part X -

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 457. Transcript of Evidence, p 1252  
 458. Transcript of Evidence, pp 2848 - 9  
 459. Transcript of Evidence, p 2845  
 460. Transcript of Evidence, p 2846

these are the people whose bankruptcy is brought about by misfortune, ill health, unemployment and that sort of thing - that would be a more appropriate remedy for them. Perhaps ... those people who conduct business in ... a commercially reprehensible way ought to put into bankruptcy.<sup>461</sup>

8.93 The Committee recommends that:

- . the *Bankruptcy Act* be amended to restrict the application of Part X of the Act to consumer bankrupts, and exclude business bankrupts from the operation of the Part.

#### E. Government purchasing

8.94 Federal public sector purchasing is very big business. An estimated \$7b to \$8b or 4 per cent of gross domestic product is spent each year by budget sector agencies alone. This estimate excludes very substantial expenditure by government business enterprises.<sup>462</sup>

8.95 It is difficult to estimate the share of government contracts which go to small firms in Australia and it is not possible to assess the extent of lost opportunities. The BIE in its 1985 Small Business Review found that 45 percent of small firms had never tendered for government contracts compared to 15 percent of large firms. There are a variety of reasons why small firms which have the potential do not or cannot take advantage of this lucrative and large indigenous market. These include:

- . ignorance of contracts to be let;
- . unfamiliarity with government procedures;

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461. Transcript of Evidence, p 2849

462. Hansard, 3.10.89, p 1212, Mr West, "*Major Reforms to Government Purchasing*"

- . lack of resources to cope with the tendering procedures;
- . lack of capacity to cope with volume contracts, and unwillingness to expand capacity with the certainty of winning a contract;
- . inadequacy of local manufacturing networks to compete on a joint or group basis;
- . cash flow borrowing constraints;
- . tailored specifications;
- . real or perceived obstructiveness of bureaucratic processes;
- . a tendency by government bodies to make period contracts thus effectively barring the smaller specialised firms which may be able to offer a product more efficiently and cheaply;
- . slow payment of debts by government bodies.<sup>463</sup>

8.96 The recently announced government purchasing reforms followed from the service-wide review conducted in 1987 of government purchasing by the Government's financial management improvement program. The review found:

- . a culture of caution and risk avoidance;
- . slow and laborious processes;
- . a preoccupation with technical rather than functional specifications; and
- . a commitment to single stage tendering processes

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463. Department of Industry, Technology and Commerce, Small Business Unit, Paper on Government Purchasing, 1985, p 1

whether or not they were effective in the market.<sup>464</sup>

8.97 In response to these findings, it is proposed that as a result of the Government's purchasing reforms, departments will write functional specifications for their needs and Australian firms will be encouraged to say how they think they can supply goods to meet that need. It is hoped that research will be encouraged and innovative solutions will be put forward by potential suppliers.<sup>465</sup>

8.98 The preference margin scheme will be abolished but antidiscriminatory elements such as ensuring issued specifications are not biased will be retained and strengthened. Unsuccessful tenderers will be debriefed. A "Purchase Australian" Office will be established and there will be a public sector education campaign about buying local products. A full time Industrial Supplies Office co-ordinator will be funded. Consideration is also being given to requiring government departments to pay customs duty and to ways of co-ordinating Commonwealth and State purchasing to assist industry. Preference measures will require that government specifications not exclude suitable or reasonably adaptable Australian products, and that alternative Australian solutions are considered. They will also require that the ordering patterns of departments be scaled down where possible to the minimum economic order requirements of Australian industry.<sup>466</sup>

8.99 Other countries have gone much further in their requirements to direct government business to small firms.

8.100 The United States and Canada place conditions on tenderers for major contracts as a means of directing business to small firms, and ensuring that small firms secure a fair proportion of total sales of government property. In the United States there are two complementary programs now operating to enhance the ability of small firms to participate in the tendering process for contracts offered by large public and private sector organisations.

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464. Hansard, 3.10.89, p 1213

465. Ibid, p 1214

466. Ibid, p 1215

8.101 These two programs are known as the:

- . Small and Small Disadvantaged Subcontracting Program
- . Procurement Automated Source System (PASS)

8.102 The Small and Small Disadvantaged Subcontracting Program resulted from various amendments to the *Small Business Act of 1958* whereby large public and private sector organisations are required to increase the participation of small and/or disadvantaged businesses in their procurement processes. This requirement encourages buyers to develop new small business suppliers to meet their contracting requirements. The Act also sets goals for the percentage of work to be allocated to small businesses. At present the goal is set at 5 per cent of purchases.

8.103 In addition large organisations, such as Lockheed, which handle substantial government contracts are required to establish Small Business Offices within their organisations. These Offices provide a counselling service to small and/or disadvantaged businesses to enable them to become acquainted with an organisation's purchasing needs and requirements. From information available it seems that this program has been effective in encouraging small firms to seek actively to deal with large organisations. The program has encouraged the development of small firms, and assisted particularly those firms which have been prepared to invest in advanced production methods.

8.104 The Procurement Automated Source System (PASS) is a computerised database which holds information on many thousands of small enterprises who wish to do business with large public and private sector organisations. PASS is administered by the Federal Small Business Administration which is currently assisting large organisations in establishing on line computer links with PASS.

8.105 Through the computer these organisations will be able to gain access to many small firms in each product or service area and obtain detailed information on the products and services offered by



them.467

8.106 Both these programs address the very real problems of small firms being able to tender for contracts by large organisations.

8.107 Canada introduced a number of initiatives recently under an "access Small Business" program aimed at assisting small firms to gain improved access to government contracts. A key element of the package is that prime contractors are required to submit a Small Business Subcontracting Plan for contracts over C\$10m.468

8.108 In Japan, the Minister for MITI, in consultation with all other Ministers, sets an annual target for the level of small and medium size business participation in government purchases. In 1988 their share of the total procurement budget (government and public corporations) was almost 40 per cent.469

8.109 Press reports in mid 1989 indicated new initiatives by the Small Business Directorate in the Economic Community. The directorate intended to encourage public purchasing authorities to make it easier for small businesses to bid for contracts. Existing measures already help by obliging purchasing bodies to open contracts to free competition. Now public authorities will be encouraged to divide contracts into small lots where possible. A separate networking scheme co-ordinated by the Small Business Directorate with 6000 to 7000 company profiles issues confidential information to some 400 professional consultants to advise small business clients on potential contracting opportunities, joint ventures or take over candidates.470

8.110 The participation of Australian small business in government purchasing could receive an enormous boost if the problems of small business with tendering requirements were more

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467. Office of Advocacy, op cit pp 44 - 49

468. Canadian Ministry of State, Small Business and Tourism News Release Program for access to Federal Procurement, pp 1 - 2

469. Small and Medium Enterprise Agency, MITI, & Japan Small Business Corporation, *Outline of the Small and Medium Enterprise Policies of the Japanese Government*, March 1989, p 57.

470. Financial Times, 9.7.89, p 7

directly addressed as they have been in many overseas countries.

8.111 The establishment of the Purchase Australian Office and the bolstering of the Industrial Supplies Office will assist in this regard. However, a significant number of small businesses in Australia have never been involved in the government purchasing process and measures need to be undertaken to address this problem.

8.112 Australian Government purchasing guidelines should assist small business to gain access to Government contracts by dividing large contracts into small lots as is proposed in the European Community. The guidelines should be amended to provide an advantage to large contractors who submit a small business participatory plan in their tender proposals.

8.113 The Committee recommends that:

- . the Department of Industry, Technology and Commerce in conjunction with the Purchase Australian Office, Industrial Supplies Office and small business organisations investigate appropriate mechanisms for small businesses to participate more fully in Australian Government purchasing opportunities. These mechanisms could include a register of interested firms and means of evaluating firms as approved goods and service providers. Criteria for approval could include meeting quality assurance standards
- . consideration be given encouraging the establishment of small business cooperatives to increase opportunities for small business to subcontract to large suppliers of goods and services or to contract directly with government
- . Australian Government purchasing guidelines contain a statement to the effect that, for larger contracts (say greater than \$5m) where a tenderer does not manufacture the complete product (or provide the

complete service) itself, inclusion of a 'small business participator plan' and the ability to employ sub-contractors will be regarded in evaluation of a tender. Advertisements calling for tenders should include this statement

- . Australian Government purchasing officers be required to consider smaller specialised firms in issuing large contracts and where possible break large contracts into small lots; and
- . the Department of Industry, Technology and Commerce investigate an extended role for the National Information and Awareness Program in the promotion of small business participation in government tendering.

#### F. Co-operatives

8.114 Co-operatives offer a realistic and valuable vehicle by which individual small businesses can overcome problems associated with their lack of management, marketing, bargaining power, and other resources. Co-operatives can best be described as an association of businesses who have come together to achieve some common commercial objectives more successfully than they could as individuals.<sup>471</sup>

8.115 A co-operative is a business voluntarily owned and controlled by the people using its services. It shares the investment and operational risks, benefits gained and losses incurred, equally among its members in proportion to their use of the co-operative's service, rather than earning profits for the shareholders as investors.

8.116 Co-operatives first established themselves in the United Kingdom in the areas of whole food and radical publishing and book

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 471. *Agricultural Co-operatives in Australia*, Report of the Working Party for the Standing Committee on Agriculture, Canberra, 1988, p 4.

selling in the 1970s. More recently an increasing number of co-operatives have been formed to create employment, or to save jobs on the threatened closure of a firm. In the UK the number of co-operatives created has greatly increased over the last ten years, but the rate of growth is no longer increasing and has levelled off since 1984 at just over 300 per year.<sup>472</sup>

8.117 Co-operatives of small businesses are very much encouraged by the Japanese Government to overcome inefficiency due to the small scale of their operations and their trading disadvantage compared to the larger enterprises. There are "finance and tax incentives to promote the establishment of such cooperatives". The Small Business Association also provides guidance on the establishment and modernisation of cooperatives. A commercial and industrial cooperative organised for each industry conducts research and provides guidance and training in order to improve and develop the industry as a whole. There are joint business cooperatives to improve productivity by consolidating the business activities of member enterprises. There are also shopping district promotion cooperatives.<sup>473</sup>

8.118 One of the key initiatives of the Japanese Small and Medium Enterprise Agency is assisting small businesses to form into groups for the purpose of pursuing economies of scale. The groups also help supplement managerial resources by providing businesses with opportunities for personnel training and supplying them with technical and managerial information. Small businessmen of different industries and with different specialities share their technologies, marketing ability and management know-how to develop better and new business operations. This "fusion of technical and managerial resources" is attracting public attention as one of the keys to the new development of small business.<sup>474</sup> Through mutual exchanges a group of enterprises from different industries can be formed to collectively work on the development of a new technology, a new product or service.

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 472. Thomas, A & Cornforth, C, *The Survival and Growth of Worker Co-operatives; A Comparison with Small Business*. Co-operative Research Unit, Open University, 1987, p 3.

473. Torrihara (Mr) op cit, p 42

474. Ibid. p 11

8.119 Co-operatives provide a means for small businesses to compete successfully against large business' market power. The benefits are not merely theoretical, as is evident by their very considerable success in Europe, North America, and Japan. In the Netherlands, for example, all potato processing, 93% of butter and cheese production and 83% of fruit and vegetable production are through producer controlled co-operatives.

8.120 In Australia, co-operatives exist in virtually every sector of industry, although they are most readily identified in the public mind with finance, primary producers and vegetable growers.

8.121 Co-operatives can range from small groups brought together for a specific purpose, such as several farmers combining to buy a piece of equipment, to large institutions with much broader objectives, such as the St George Building Society and the Dairy Farmers Co-operative.

8.122 Each State and Territory has its own legislation covering co-operatives, and this differing legislation was identified in evidence to the Committee as the biggest problem facing this sector.

8.123 The Co-operative Federation of South Australia stated to the Committee:

There are different co-operatives Act(s) in every State. There are some States with a Minister specifically for co-operatives, while other States do not have that. A Minister who has a number of duties has a number of concerns. So we feel that there is not quite the specific interest.

The State Acts are just not the same. The whole nature of co-operation is not understood; it is fragmented in itself. In every State you will find legislation for credit unions, but they are a form of co-operative enterprise. You will find legislation for building societies, another form of co-operative enterprise. Then

you will find the Co-operatives Act which covers a wide variety of people.<sup>475</sup>

8.124 According to press reports the New South Wales Government has recently sought to increase the flexibility of co-operatives in that State by reviewing the New South Wales Co-operatives Act.

8.125 The review seeks to improve the competitiveness of co-operatives by allowing them to raise capital and engage in merger and takeover activities. Additionally, co-operatives would be given full corporate powers to pursue their objectives, in contrast to the view that co-operatives should be given limited powers to reflect their limited objectives.<sup>476</sup>

8.126 The Committee considers that this type of review of co-operative legislation should be adopted by other States as a means of both standardising the regulatory environment faced by co-operatives, and maintaining the attractiveness to businesses of the co-operative style of trading.

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475. Transcript of Evidence, p 1742.

476. *Australian Financial Review*, 15/6/89, p 30.

8.127 The Committee recommends that:

- . the Standing Committee of Attorneys-General review State and Territory legislation applying to co-operatives with a view to providing uniform legislation for co-operatives throughout Australia
- . the Department of Industry, Technology and Commerce prepare an analysis of the "cooperative movement" in Japan and other government policy initiatives for small business and their relevance to Australian conditions.

#### G. Superannuation

8.128 Two recurrent concerns about superannuation have emerged during the Committee's inquiry. The first concerns the increase in the size and complexity of superannuation law and the associated increased reporting and awareness costs of operating smaller superannuation funds established by small businesses. The second concerns the different treatment under the taxation system of contributions which are made to superannuation funds by the self-employed, employers and employees.

##### G.1 Compliance costs

8.129 The Committee received evidence from small businesses, from the accountancy and legal professions, and from the superannuation industry about the major increase in compliance and reporting requirements for the superannuation industry which have occurred over the past five or six years.

8.130 Few of these objected to the basic direction of the recent changes in superannuation, namely: encouraging the provision of superannuation, particularly by employers in the private sector, thereby extending access to superannuation benefits to a greater proportion of the workforce; promoting a system of portability and preservation; eliminating reporting of previous entitlements; and increasing protection of fund members.

8.131 All voiced objections to the burgeoning body and complexity of superannuation law and the concomitant increase in reporting and compliance costs for operators of superannuation funds. These were of greatest concern to the operators of small business related funds which have been established for the benefit of both proprietors and employees. This imposition of these new compliance requirements may be sustainable for the larger players in the superannuation industry, but for the smaller funds established by small business people, these additional awareness and compliance costs are a major burden and threaten the viability of their funds. As one professional servicing small business clients explained:

..... we have now with the legislation in the last 12 months over 700 pages of explanatory memoranda, legislation, press releases, information circulars, (more) press releases and information circulars elaborating on the previous press releases and circulars. .... I am a professional working in the area. I have difficulty in digesting, sorting and understanding the current state of play. I pity the poor businessman, both small and large, if he has to do the same.<sup>477</sup>

8.132 Increased reporting requirements have taken the form of annual audits and reports to the Insurance and Superannuation Commission (ISC) and the amendment of trust deeds required to comply with new regulations. These new reporting requirements have resulted in substantial increases in the operating costs of superannuation funds such that many of the smaller funds are likely to become uneconomic. For example, even a two person fund will now incur at least \$800/annum in audit and accounting fees. Essential amendments to trust deeds will add at least another \$400 in legal costs. The latter costs are the same independent of whether the fund has 2 or 10 000 members.

8.133 In addition the substantial increases in awareness costs

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477. Transcript of Evidence, p 449



for the small fund managers who are unlikely to be able to keep up with the proliferating superannuation legislation and regulations are likely to persuade the managers of many of these smaller private funds (operated under sections 23F or 23FB) to transfer their funds to master funds with the life offices and others. The substantial potential penalties for inadvertent non-compliance with superannuation regulations, may be the major consideration in a decision by the trustees of a small fund to remove this risk and join one of the master funds, managed by insurance companies, banks and others.<sup>478</sup>

8.134 There has been quite a deal of speculation about the number of these small funds, mostly established under trust deeds, which operated prior to the recent changes. Estimates vary from 150 000 to 300 000. As of 30 June 1989 the Insurance and Superannuation Commission reported that 123 500 funds had filed the annual returns necessary to qualify for the 15 per cent tax on fund earnings and employer contributions.<sup>479</sup>

8.135 Most of these funds are very small but have traditionally provided the major vehicle for the self-employed and small business people to provide for their retirement security, along with the proceeds from the sale of their business if sold on retirement. With the introduction of capital gains tax, the after-tax value of their businesses where they were purchased after 20 September 1985 will in future be reduced, placing even greater emphasis on the security provided by superannuation.

8.136 It is estimated that perhaps 50 000 of these funds may have assets of \$50 000 or less. These funds now appear too small to be economic and/or the owners, trustees and accountants who operate them are finding the level of knowledge they now must have of highly complex superannuation legislation a deterrant to continuing in this role.

8.137 In short, the small funds used by small business people are

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478. Transcript of Evidence, p 2671

479. Annual Report 1988/89, Insurance and Superannuation Commission, p 38

being priced out of the market by increased regulatory compliance and awareness costs. The alternative to sustaining these high compliance and awareness costs is to enter into a master fund arrangement. These master funds 'fold' a large number of small funds into one large fund which files only one tax return and annual report to the Insurance and Superannuation Commission each year, thereby reducing administrative and operating costs significantly. With fees in these master funds running at about 5 per cent of contributions and 1 to 1 1/2 per cent of assets, a small fund with \$50 000 assets and \$5000 annual contributions might incur \$750 - \$1000 in annual fees.

8.138 The main concern raised in evidence to the Committee about small businesses being compelled to move into master funds, was that this would in many cases reduce the options available to retired small business people, particularly investment options. It was asserted that small business people would have, under managed fund arrangements, a far more restricted range of investment and benefit options than a retiree in a large business superannuation fund.<sup>480</sup>

8.139 This would certainly seem to be the case with the master fund arrangements offered by the insurance companies, which have been operating in this market for some time. These funds normally require the use of the insurance companies' in-house investment management and they may offer member funds little more than the options available to ordinary members of their superannuation funds.

8.140 There are alternative master funds emerging which do offer more flexibility and, for example, some choice of investment management. The growth in this market sector should ameliorate some of the disadvantages of small business funds joining master funds.

8.141 Regardless of these options, there is good reason and undoubtedly considerable scope for reducing the complexity of the superannuation regulations and reporting requirements which have grown so rapidly over recent years. One suspects that this rapid expansion in requirements has occurred without any major

consideration being given to the impact of the associated compliance and awareness costs placed on managers of small superannuation funds. The Committee concludes that the recent changes in superannuation law and administration provide a compelling example of how a process of reform, implemented without full consideration being given to the small players in the field can result in a whole section of the community being denied equitable access to the benefits of the reforms.

8.142 In this example the small superannuation funds and their client small businesses have not received full consideration and the expansion of rules and reporting requirements has for them negated the benefits of the reform process.

8.143 Undoubtedly the inexorable pace at which these superannuation reforms have been implemented provides some explanation (but no justification) for the complexity of the new superannuation laws and their administration. However the Committee believes that, had there been a consciousness among the architects of these reforms, bureaucrats and politicians alike, that the compliance and awareness costs resulting from this complexity would fall disproportionately on small business related funds, greater efforts would have been made at the outset to avoid those results.

8.144 A small but telling illustration of this was provided by the original version of the Annual Return for Superannuation Funds, which must be completed by all superannuation funds. This form was tabled at a Committee hearing at which it was pointed out that, for those funds which simply comprised a life insurance policy (i.e., perhaps 200 000 of the 300 000 superannuation funds in Australia), 16 of the 31 questions included in the form were unanswerable. It was suggested by the Life Underwriters Association of Australia,<sup>481</sup> that, 'with a little bit of consultation and a little bit of forethought', these 16 questions could have been incorporated into a single question. In summary, the annual return form was designed in such a way that 16 of the questions were irrelevant and/or unanswerable for perhaps two thirds of all the respondent funds.

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481. Transcript of Evidence, p 1406

8.145 Subsequent to this public hearing (in December 1988) a revised form was issued by the Insurance and Superannuation Commission which incorporated the suggested changes. This certainly indicates the Government's preparedness to respond to the concerns of small funds and small business people in such matters and they should be congratulated for this. However, the moral of the story remains that a process of consultation with both the practitioners (life insurance intermediaries) and their clients (small business people) in advance of the promulgation of these regulations and forms could have pre-empted these difficulties.

8.146 The Committee recommends that: the Business Regulation Review Unit, in conjunction with the Insurance and Superannuation Commission, undertake a review of superannuation regulations with the specific objective of simplifying them and reducing the associated compliance and reporting costs, particularly for small superannuation funds of the type operated by small businesses.

## G.2 Taxation treatment of contributions

8.147 The discriminatory treatment under the taxation system of contributions by the self-employed to superannuation funds in comparison with employer funded schemes, was a recurring feature of evidence provided to the Committee during its inquiry.

8.148 Prior to the May 1988 Economic Statement a limit of \$1500 was set for fully tax deductible contributions to superannuation by the self-employed. This situation was highly discriminatory since an incorporated small business could, subject to certain benefit limits, claim very generous contributions to superannuation for its employees as a tax deduction. This situation provided a strong incentive for some self-employed professionals, for example, to incorporate and, as employees of a company, gain access to the substantially greater taxation benefits available for employer funded superannuation contributions.

8.149 This situation was obviously inequitable. As one witness stated to the Committee:

If you want to encourage people to save for their business (retirement), why do you only want employed people and not self-employed people to be encouraged to save for their retirement?<sup>482</sup>

482. Transcript of Evidence, p 2395

8.150 In recognition of this situation the Government did, to give it due credit, raise the level of tax deductible contributions to \$3000 in May 1988. This still fell far short of an equitable situation. The system remained heavily biased in favour of employer funded schemes. Employer contributions were taxed at 15 per cent, while employee contributions and those of the self-employed over \$3000 per annum, were taxed at the full personal income tax rate.

8.151 The Government addressed these discriminatory features in the 1989 Budget. The changes announced substantially improve the tax treatment of contributions by the self-employed to superannuation funds by allowing tax deductability of 75 per cent of allowable contributions in excess of the fully deductible \$3000.

8.152 In addition, entitlements have been extended for employees with limited access to employer sponsored superannuation schemes. For employees, where employers contribute less than 4 per cent of salary towards a superannuation fund, contributions of up to \$3000 per year are also now to be fully tax deductible. This deductibility will be progressively reduced as employer contributions approach 6.5 per cent of salary at which level the benefit cuts out.

8.153 These changes, which reduce the discriminatory treatment of both employees without access, or with limited access to employer funded schemes and, of the self-employed, are sensible and represent a further major step in the right direction. However, the bias in favour of employer funded schemes will continue where the self-employed and employees choose to contribute more than \$3000 to a superannuation fund.

8.154 The Committee can see no good reason why this discriminatory treatment should persist. It believes that if tax is to be imposed on superannuation contributions, then it should be imposed at the same rate regardless of the source: employee, employer or self-employed.

8.155 The Committee recommends that:

. as a part of a process of continuing reform of the

superannuation system, the Government move to eliminate the remaining discriminatory taxation treatment above \$3000 of contributions, of the self-employed (and employees) in comparison with employer funded superannuation schemes.

#### H. Industrial relations

8.156 Industrial relations is a very difficult area for small business. It is by and large regulated either by industrial awards of the Australian Industrial Relations Commission which have many thousands of respondents or by Common Rule State Awards.

8.157 In both cases because of the nature of small business there can be difficulty in small business putting a viewpoint to the Industrial Relations Tribunal. While many small businesses are members of employer organisations they simply do not have the time or resources to fully participate in the policy debate of those employer organisations. Small business hold the strong view that government industrial relations policy is developed after consultation between business representatives, union representatives and industrial relations tribunals and the results are simply forced on small business.<sup>483</sup>

8.158 Mr Boyle from the Australian Small Business Association (ASBA) described to the Committee the close relations he had with his employees which he said was typical of the small business sector:

I never pay employee wage rises as a consequence of a decision handed down by the Arbitration Commission but pay employees as a consequence of what they produce. I have 60 people working and I know the Christian name of every employee in the company. If I thought hard enough I would know the names of their wives and the number of kids they have. They come to Christmas parties at my place. I go to their place for weddings and things like that. That is how

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483. Transcript of Evidence, p 2001

small business operates. One has really got to come to grips with that relationship and we should be promoting it and fostering it rather than trying to fracture it by imposing decisions of other tribunals that never listen to this or understand this.<sup>484</sup>

8.159 Over recent years there have been changes in direction in the industrial relations area which would be very beneficial for manufacturing and large export businesses, such as the eradication of restrictive work practices (or at least their minimisation). Many small businesses with a one to one employer/employee relationship have eliminated such practices some time ago.

8.160 This then means that the submissions being put to the Commissioner do not take account of a very large section of the workforce.<sup>485</sup>

8.161 Small businesses have difficulty in obtaining information about current award conditions applicable to small business. Federal and State Governments do provide some information services in this regard. However, the information available from them is often outdated due to delays in processing awards and orders. Small businesses relying on this information can be unwittingly involved in breaches of the law.

8.162 Many awards contain limitations on the ability of small businesses to employ people as casuals or part timers. This increases labour costs incurred by small businesses and inhibits their flexibility to structure themselves in a way which best serves the needs of their customers.<sup>486</sup>

8.163 A high proportion of small businesses have what are called 'voluntary employment agreements' which embrace a variety of employment terms outside award conditions.<sup>487</sup> The Committee consider however, that voluntary agreements could result in too drastic a

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484. Transcript of Evidence, p 179

485. Transcript of Evidence, p 322

486. Transcript of Evidence, p 2001

487. Transcript of Evidence, p 169



reduction in real wages if they were not based on fairly objective criteria such as the determination of an award. The Committee also is concerned with the possible break down of the centralised wage fixing system which balances weak and strong unions. Powerful unions would place higher demands on employers.

8.164 Some enormous changes have taken place in the second tier wage negotiations which, while not of direct benefit to the small business sector, have produced an indirect benefit. The work force employed by major suppliers to small businesses have become much more efficient. As award restructuring progresses and the craft system is eliminated, an even greater degree of flexibility will come about. However, there was no shortage of criticism of current awards.

8.165 Mr Barron from the Tasmanian Chamber of Commerce gave evidence to the Committee regarding a study on penalty rates in the tourism industry which allegedly demonstrated a classic example of restriction on increased employment and an impediment to the economy of the State in terms of business not being able to open. The study found that penalty rates were a major cost imposition on the operation of small businesses in the State. There were very few voluntary type agreements in those industries. There was evidence that it was inhibiting the ability of tourists to spend as much as they would anticipate spending. Mr Bannan also told the Committee that studies had shown there was sufficient demand for people to work an 8 hour shift for five days a week on any of 7 days.<sup>488</sup>

8.166 The Committee considers that there was a general acceptance that penalty rates, if removed, would be abolished at a higher base rate. Awards in such industries were predicated on the fact that because penalty rates existed the base award was low. It was also believed that employees are attracted by the penalty rate.

8.167 Mr Webber, the Managing Director of Mayne Nikless said that award restructuring policies ignored industrial relations reform issues facing two-thirds of the workforce. There was too much

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488. Transcript of Evidence, p 2745

emphasis on promoting award restructuring in the manufacturing industry and in particular in the metals industry though there was much to be gained from it. The services sector employs two-thirds of the work force but faces very different structural problems from the manufacturing sector. Issues such as rostered days off versus shorter working hours, the general issue of the spread of hours and meal breaks are significant problems for some businesses.

8.168 Submissions often raised the issue of trade union membership in relation to these matters. 66 per cent of employees in the private sector are not members of trade unions. This was of particular concern when legislation relating to industrial matters placed obligations on employers to consult unions or their representatives.<sup>489</sup>

8.169 The Committee accepts the evidence that there are problems in the current industrial relations system for the small business sector. The Committee agrees with the submission from the Law Institute of Victoria that the appointment of a Small Business Advocate would not completely overcome the problem. There are already in place several organisations that represent business both big and small. It is obviously difficult for very small businesses to get their message across, owing to a lack of specific organisational representation at that level. The right to appear at National Wage case hearings is widely granted but not at State industrial hearings.<sup>490</sup>

8.170 As long as there is a central wage fixing system in Australia, it is imperative that the small business sector have a strong and more coherent representation before the Industrial Relations Commission.

8.171 The Committee recommends that: the peak small business body which is recommended elsewhere in this report should examine the need for a more coherent organisational structure to

489. Transcript of Evidence, p 796

490. Transcript of Evidence, p 2006

represent small business and explore the possibility of a small business advocate in the Industrial Relations Commission.

#### I. Employee share acquisition schemes

8.172 Employee Share Acquisition Schemes (ESAS) are designed to increase employee participation in the development and operation of a company. This is achieved by providing a voice to the board of directors via a large block shareholding, and motivating employees themselves with a direct financial gain linked to the performance of 'their' company.

8.173 Studies carried out in the United States indicate that the performance of companies with a significant block of employee owned shares (10 - 40 per cent or more interest in the company) improved over companies without such schemes. A comparative study carried out by the National Centre for Employee Ownership showed that, during the five years after companies had introduced Employee Share Ownership Plans (ESOP), annual growth outstripped control companies by 5.05 per cent, while sales growth was 5.4 per cent faster. Moreover, 73 per cent of the ESOP companies improved their performance after they had set up their plans.<sup>491</sup>

8.174 Companies are encouraged to form ESOPs by generous tax incentives, which allow for deductions from taxable income on funds made available to, or provided by, ESOPs. The US tax code, for example:

- allows for repayments of interest and capital funds borrowed to purchase shares under an ESOP to be tax deductible;
- allows lenders to exclude from taxable income 50% of the interest earned from loans to finance an ESOP;
- allows dividends paid on stock that is held under an ESOP to be deductible from corporate taxable

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 491. Rosen C And Quarry M, *How well is employee ownership working?*, Harvard Business Review, September - October 1987, p 127

income.<sup>492</sup>

8.175 The combination of tax incentives and potential for improved performance of companies with ESOPs has seen a rapid growth in the number of employee-owned or partially owned companies in the United States, with the number reaching 8 100 in 1987.<sup>493</sup> Figures for the number of employee-owned or partially owned companies in Australia are not available, but a report by the Financial Review put the number of employee-owned companies (as a result of employee buy outs) at 50, and added that this number is increasing.<sup>494</sup>

8.176 There are two main types of employee ownership:

• Savings Plans

These are usual in the case where the employee must buy the shares out of his/her savings (the employee shareholding itself then becomes a form of saving). However, in these plans the employees are exposed to sharing in the losses as well the profits of the share holding.

• Self Financing Plans

Under this form of employee ownership an Employee Share Ownership Trust (ESOT) is established. The Trust then obtains a loan, either from the company or outside sources.

The Trust uses the money to acquire a significant equity stake in the company through the acquisition of company shares (either from other shareholders, or through a new issue of shares). Dividends on the shares together with any capital gains realised and

492. Kirkpatrick D, *How The Workers Run Avis Better*, in *Fortune*, 5 Dec 1988, Attachment to Submission by Association for Employee Ownership in Australia

493. Rosen C. and Quarry M. *Harvard Business Review*, September - October 1987, p 126

494. *Australian Financial Review*, Wednesday, 11 January 1989

any 'profit sharing' payments made by the company to the Trust can be used to pay off the loan.

In these plans, the employee only shares in the profits, as there has been no financial outlay by the employee to buy shares.<sup>495</sup>

8.177 The self financing plan is the more popular form of employee share ownership, as it offers:

- (1) A stake to the employees in the company in which they work through using the profits of that company to assist the employees to buy into it, and
- (2) A savings scheme to employees through employees being able to sell their shares at market rates (and thus realise capital growth benefits) after a set number of years, or upon retirement or resignation. The sale is made through an ESOT which controls a set or growing percentage of shares. The ESOT will not allow the sale of employee shares to non-employees if that would result in a dilution of employee share ownership.<sup>496</sup>

8.178 In order to encourage Employee Share Acquisition Schemes in Australia, the Federal Government, in its May 1988 Economic Statement, announced that an employee would be exempt from tax on share discounts received under an approved ESAS up to a maximum of \$200 per year, based on a maximum discount of 10 per cent of market price at the date of issue. The tax exemption to the employee would be conditional on the employer not claiming a tax deduction on the discount.<sup>497</sup>

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495. *Labor Council of NSW and Association for Employee Ownership in Australia - Draft Compact Relating to Employee Share Ownership* pp 1-2; attachment to submission from the Association for Employee Ownership in Australia

496. Transcript of Evidence, p 3677

497. Economic Statement May 1988 p 112

8.179 These announced changes were incorporated in the amendments to Section 26AAC of the *Income Tax Assessment Act 1936* enacted under the *Taxation Laws Amendment Act (No.5) 1988*. Under the provisions of this section, employees are eligible for a discount on shares or rights to acquire shares in an approved employee share acquisition scheme.

8.180 An approved scheme must fulfil the following conditions:

- the shares or right to acquire shares are issued after 30 June 1988,
- the shares or right to acquire shares are non-discriminatory - i.e. all full-time and permanent part-time employees including directors may take part,
- any financial assistance provided in respect of the acquisition of shares or rights under the ESAS is available on a non-discriminatory basis,
- the shares or rights to acquire shares must be held for a minimum of three years unless the employee ceases employment,
- all the shares are ordinary shares, and
- no deduction is allowed to the employer in respect of the scheme.<sup>498</sup>

8.181 The Committee welcomes the change in the legislation which provides some incentive to employees to take up share options in 'their' company, but considers that the limit of \$200 on the tax exemption for the discount available to employees acquiring shares is too low.

8.182 The Committee considers that a greater incentive for

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498. S 11, *Taxation Laws Amendment Act No.5 1988*

employee participation would result from increasing the amount of non-declarable income from discounts and increasing the maximum discount rate, to allow a greater tax benefit for employees investing in their own company.

8.183 The Committee recognises that these measures would have an effect on taxation revenue, but considers that the potential for improved productivity and growth by companies with ESAS would result in gains for the Commonwealth via increased corporate taxation.

8.184 The Committee recommends that:

- the tax exemption for discounts on market value for shares issued to or purchased by employees be raised from \$200 to \$1000 to promote employee financial participation.
- the maximum rate of discount be raised to 100 per cent

D P Beddall, MP  
Chairman

January 1990

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

In the second section, the author details the various methods used to collect and analyze the data. This includes both manual and automated processes. The goal is to ensure that the information gathered is both reliable and comprehensive.

The third part of the document focuses on the results of the analysis. It shows that there are significant trends in the data, particularly in the areas of customer behavior and market performance. These findings are crucial for making informed business decisions.

Finally, the document concludes with a series of recommendations based on the analysis. These suggestions are designed to help the organization improve its operations and increase its profitability. The author believes that these steps are essential for long-term success.

This document is a confidential report and its contents should not be shared with unauthorized personnel. It is intended for the use of the management team only.



## APPENDIX I

## CONDUCT OF THE INQUIRY

On 24 March 1988 the Minister for Science, Customs and Small Business requested the Committee to inquire into the problems facing small business.

The Committee advertised the inquiry nationally in major metropolitan newspapers. In addition, Commonwealth, State and Territory Government departments and authorities, and small business organisations with an interest in the subject matter were approached and invited to make submissions. Appendix II lists those individuals or organisations who made submissions. One hundred and eighty-two submissions were received.

Twenty-two public hearings were held in every capital city and in Newcastle and Townsville. Two hundred and thirty witnesses gave evidence. These are listed in Appendix III. In all approximately three and a half thousand pages of evidence were received. A transcript of the evidence taken at public hearings is available for inspection at the Committee Office of the House of Representatives and the National Library of Australia.



## APPENDIX II

## LIST OF SUBMISSIONS

Submission No.	Date	Persons or Organisations
1	18 April 1988	Australian Entrepreneurs Association Pty Ltd
2	27 April 1988	Transport Operators Productivity Service  Transport Operators Productivity Service (supplementary submission)
3	2 May 1988	Curtis & Moore, Public Accountants
4	3 May 1988	Professor M.E. Nairn, Murdoch University, WA
5	4 May 1988	City of Preston
6	4 May 1988	Small Business Peoples' State Council (NSW)
7	5 May 1988	O.B. Bell & Co.
8	8 May 1988	S. Holmes & D. Nicholls Australian National University
9	9 May 1988	CaterEquip
10	10 May 1988	Mr B.R.S. Comport
11	10 May 1988	South Australian Government (Government Adviser on Deregulation)
	6 February 1989	South Australian Government (supplementary submission)
12	12 May 1988	Small Business Combined Associations of NSW
13	16 May 1988	Llama Farms
14	17 May 1988	The Motor Inn and Motel Association
15	17 May 1988	Queensland Retail Traders and Shopkeepers Association
16	18 May 1988	Quarterdeck Marine

17	20 May 1988	Mr Vernon Prior
18	21 April 1988	S.A. Small Business Corporation
	6 February 1989	S.A. Small Business Corporation (supplementary submission)
19A	3 May 1988	Australian Small Business Association (Northern Territory Division)
19B	6 July 1988	Australian Small Business Association (National)
19C	21 June 1988	Australian Small Business Association, (Canberra Division)
20	18 May 1988	Gale Consultancy & Professional Services
21	23 May 1988	S. Prasser & N. Munro-Smith Royal Melbourne Institute of Technology
22	25 May 1988	ETP Semra Pty Ltd
23	14 April 1988	Mr Norm Keegan
24	24 May 1988	Otec Pty Ltd
25	20 May 1988	Coles Refrigeration & Air Conditioning
26	23 May 1988	Tangentyere Council Inc
27	24 May 1988	Royal Australian Institute of Architects
28	25 May 1988	Professor G. Meredith University of New England
29	31 May 1988	Yallourn College of TAFE, D. McInnes
30	31 May 1988	Adelaide College of TAFE, J. Scales
31	1 June 1988	Australian Professional Colour Laboratory Association
32	3 June 1988	Qld Small Business Development Corporation
33	3 June 1988	Concord Business Association
34	8 June 1988	Mr Paul Jeffress

35	10 June 1988	Mrs Joan Talbot Haldane-Stevenson
36	10 June 1988	Flinders University of S.A., G. Schailer
37	10 June 1988	Mr Martin O'Meara
38	3 June 1988	Restaurant and Catering Association of New South Wales
39	15 June 1988	Australian Physiotherapy Association
40	14 June 1988	Budget Motel Chain
41	27 June 1988	Taxation Institute of Australia
	3 April 1989	Taxation Institute of Australia (revised submission)
42	16 June 1988	Association of Consulting Engineers Australia (Federal Office)
43	17 June 1988	Peejay's Furniture Repairs
44	22 June 1988	Furniture Retailers Council of Australia
45	22 June 1988	Landscape Contractors Association of Victoria Ltd
46	21 June 1988	The Confectionery and Mixed Business Association of Australia and New Zealand
47	20 June 1988	Ian Whyte and Co.
48A	29 June 1988	Motor Trades Association of Australia (National)
48B	14 July 1988	Australian Automobile Dealers Association (Tasmania)
49	28 June 1988	Victorian Employers' Federation
50	27 June 1988	Australian Hotels Association
51	21 June 1988	Harbourside Haven Village
52	5 July 1988	Australian Boating Industry Association Ltd
53	7 July 1988	Master Builders' - Construction and Housing Association Australia, Inc

54	30 June 1988	Perrymade
55	30 June 1988	Harlech Property Group Pty Ltd
56	21 June 1988	Mr Lawrence Doube
57	29 June 1988	Australian Retailers' Association
58	28 June 1988	George Fincham and Sons Pty Ltd
59	28 June 1988	Torrens Trading Pty Ltd
60	22 June 1988	Council of Small Business Organisations of Australia
61	4 July 1988	CEA Technologies Pty Ltd
62	1 July 1988	Elson Group Enterprises Pty Ltd
63	30 June 1988	Hilton Centre Target Chemists
64	30 June 1988	Australian Society of Accountants
65	5 July 1988	Mr Frank Donato
66	7 July 1988	John & Esta Handfield Pty Ltd
67	13 July 1988	Mr Les Thornborough, Central Coast Bricks
68	4 July 1988	J. Kelmar, WA University of Technology
69	12 July 1988	Agrovision
70	20 July 1988	Bertram Bullet Co.
71	21 July 1988	Information Australia Group
72	22 July 1988	I.F Consulting Group Pty Ltd
73	25 July 1988	Arthur Anderson & Co
74	26 July 1988	Confederation of Australian Industry
75	29 July 1988	National Institute of Accountants
	21 March 1989	National Institute of Accountants (supplementary submission)
76	29 July 1988	Terence Sheppard & Associates

77	1 August 1988	Horsham Taxi Service
78	1 August 1988	Albury Wodonga Development Corporation
79	1 August 1988	Verdier Lene Pty Ltd
80	2 August 1988	Trade Practices Commission
81	3 August 1988	Australian Chamber of Manufactures
82	3 August 1988	Commonwealth Development Bank
83	4 August 1988	Australian Federation of Business and Professional Women
84	5 August 1988	Southseas Marine
85	10 August 1988	Real Estate Institute of Australia
86	10 August 1988	Australian Finance Conference
87	10 August 1988	Australian Institute of Management (Daniel Johnson Image Makers)
88	11 August 1988	John Gilmour (Proudly)
89	15 August 1988	Australian Equipment Lessors Association
90	15 August 1988	Intelligent Network People
91	16 August 1988	David H. Price
92	17 August 1988	Parry's Paints (John Parry)
93	30 August 1988	Mr A R Pitt, Maryborough Qld
94	19 August 1988	NSW Local Government Association
	21 March 1989	NSW Local Government Association (supplementary submission)
95	19 August 1988	Australian Veterinary Association
96	22 August 1988	Department of Industry, Technology and Commerce
97	22 August 1988	Business in the Community Ltd
98	23 August 1988	Australian Chamber of Commerce

99	23 August 1988	Peter Fitzgerald Pty Ltd
100	18 August 1988	Broken Hill Chamber of Commerce
101	23 August 1988	Newcastle Chamber of Commerce and Commerce
102	12 August 1988	Institution of Engineers Australia
103	24 August 1988	B R Groves & Associates
104	24 August 1988	Tadan Enterprises
105	30 August 1988	Small Business Development Corporation WA
106	26 August 1988	WA Shopping Centre Retailers Association
107	24 August 1988	Tong Sing Pty Ltd
108	30 August 1988	Life Underwriters Association of Australia
109	5 September 1988	Australian Council of Libraries and Information Services
110	5 August 1988	P J Cauchi
	17 November 1988	P Cauchi (supplementary submission)
111	30 August 1988	Sharon Taylor
112	24 August 1988	Australian Society of Real Estate Agents and Valuers Ltd
113	25 August 1988	Law Institute of Victoria
114	18 July 1988	Barry Nancarrow
115	30 August 1988	National Curtain Industry Association
116	8 September 1988	Michael J Craft
117	26 August 1988	Tandex Chemicals Pty Ltd
118	8 September 1988	Australian Bankers' Association
119	6 September 1988	R J Stringer
120	29 August 1988	The Pharmacy Guild of Australia
121	19 September 1988	G A Vercoe
122	20 September 1988	Bureau of Industry Economics



123	2 September 1988	Australian Podiatry Council
124	8 September 1988	Qld Small Business Development Corporation
125	no date	C Symonds, Cairns Chemex
126	5 October 1988	Hunter Development Board
127	6 October 1988	Mr D McKee, University of Newcastle
128	5 October 1988	Small Business People (Hunter Region)
129	27 October 1988	Shopping Centre Tennants Association
130	1 November 1988	Australian Association of Occupational Therapists
131	16 November 1988	Small Business Management Service
132	17 November 1988	Townsville Tile Centre
133	17 November 1988	Representative Business Services
134	17 November 1988	Wulgaru Pharmacy
135	17 November 1988	Townsville Chamber of Commerce Services
136	17 November 1988	Brisbane College of Advanced Education
137	16 November 1988	Burns and Company
138	16 November 1988	Q Search (C. Maddox)
139	16 November 1988	Australian Institute of Management (Qld)
140	16 December 1988	Auscan Consultants
141	16 November 1988	Redcliffe Central Chamber of Commerce
142	17 November 1988	P.J. Steine
143	17 November 1988	Susie Dickson
144	13 January 1989	Drake, Murphy and Shoemaker
145	17 November 1988	Australian Small Business Association (Townsville)

146	17 November 1988	Towers, Hart and Davies
147	16 November 1988	Qld Confederation of Industry
148	16 November 1988	Qld Department of Employment
149	16 November 1988	J. Cagnacci, Business Planning
150	16 November 1988	Master Painters Decorators and Signwriters of Qld
151	16 November 1988	Institute of Chartered Accountants - Qld
152	16 November 1988	Australian Society of Accountants - Qld
153	22 November 1988	Institute of Chartered Accountants - National
154	1 December 1988	Samson Fisheries
155	12 December 1988	Combined Central Regional Development Advisory Committees
156	12 December 1988	WA Chamber of Commerce and Industry
157	13 December 1988	Small Business Investment Company
158	20 January 1989	Apparel Agents Association - Qld
159	20 January 1989	Independent Grocers Co-op Ltd
160	25 January 1989	T Croll
161	1 February 1989	SA Mixed Business Association
162	2 February 1989	Small Business Association State Chamber of Commerce and Industry (Vic)
163	9 February 1989	H Harris, Strategies for Growth and Change
164	6 February 1989	Association of Newsagents Co-op (SA)
165	15 February 1989	Clean Machine Co
166	21 March 1989	NSW Chamber of Commerce & Industry
167	3 April 1989	LOPAC Pty Ltd, Mr Des Owen

168	20 March 1989	Small Business Development Corporation
169	3 April 1989	Attorney-General's Department
170	15 August 1988	Premier of Tasmania
171	7 April 1989	David Christian
172	6 April 1989	Anthony de Lara
173	4 April 1989	Mrs Jean Stogg
174	26 April 1989	Mrs L. Huckle
175	19 April 1989	Commonwealth Treasury
176	19 April 1989	Australian Taxation Office
177	26 April 1988	Business Regulation Review Unit Department of Industry, Technology and Commerce
178	10 May 1989	Australian Bureau of Statistics
179	2 May 1989	Temple Flower Supplies
180	30 May 1989	Peat Marwick Hungerford
181	24 July 1989	Mr T. Regan
182	10 October 1989	Association for Employee Ownership in Australia

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APPENDIX III

LIST OF HEARINGS AND WITNESSES

Melbourne, 12 September 1988

Victorian Employers' Federation  
Mr D N Edwards, Deputy Executive Director  
Mr M M Meere, Manager

Private Citizen  
Mr J J Gilmour, Shoe Shop Operator  
Mr M A O'Meara, Chartered Accountant

Agrovision  
Mr G E Wilson, Managing Editor

Intelligent Network People Pty Ltd  
Mr P J Gerrard, Managing Director

Royal Melbourne Institute of Technology  
Mr N P Munro-Smith, Lecturer  
Mr S Prasser, Senior Lecturer

Labtam Limited  
Mr D Dryden, Chairman

Fred Small and Son Pty Ltd  
Mr B A Evans, Export Marketing Manager

Australian Small Business Association  
Mr P J Boyle, Federal President  
Mr P J Stirling, State Secretary

City of Preston  
Mr E E Rothschild, Industry Liaison Officer

Sydney, 4 October 1988

SBP State Council Inc.  
Mr P M Greenwood, President

Concord Business Association  
Mr I D Hall, Chairman

Private Citizen  
Mr S Annis  
Mr D H Price

Business in the Community Limited  
Mr T N Cappie-Wood, Director  
Mr B Holley, Chief Executive

Curtis and Moore  
Mr M Curtis, Partner and Public Accountant

Harlech Property Group Pty Ltd  
Mr D H Jones, Managing Director

Motor Inn and Motel Association of Australia  
Mr H Rose, Chairman

Australian Professional Colour Laboratory Assoc  
Mr B A Maginnity, National Chairman

Restaurant and Catering Association  
Ms J Johnston, President

Australian Society of Real Estate Agents and Valuers Ltd  
Mr C L Allen, President

Newcastle, 5 October 1988

NSW Branch, Australian Hotels Association  
Mr P F Flood, Executive Member  
Mr G R Knapp, Chief Executive

Newcastle Chamber of Commerce and Industry  
Mr S D Derwin, Chairman  
Mr J I McDermid

Coles Refrigeration and Air Conditioning Pty Ltd  
Mr J F Carney, Managing Director,

Hunter Region Enterprise Agency Ltd  
Mr D J Chiron, General Manager

Down Under Glass Chillers Pty Ltd  
Mr D Keeping, Managing Director

Newcastle City Council  
Mr I MacGregor, Economic Development Manager

Private Citizen  
Mr M J Craft  
Mr L R Johnson  
Mr D McKee

Jewel's Town Newsagency  
Mr J Campbell, Newsagent

Toronto Newsagency  
Mr L Campbell, Newsagent

Mount Hutton Newsagency  
Mr D Monico, Proprietor

Nelson Bay RSL and Citizens Retirement Village Ltd  
Mr W J King, Chairman

Small Business People (Hunter Region) Inc  
Mr A J Deegan, Honorary Secretary  
Mr T H Lawler, Honorary Treasurer

Hunter Development Board  
Mr M L Davies, Training Development Executive

Canberra, 20 October 1988

Department of Industry, Technology and Commerce  
Mr G Hollander, Assistant Director  
Ms C Papadopoulos, Director

Canberra, 3 November 1988

Master Builders'-Construction and Housing Association  
of Australia Inc  
Mr G J Forster, Director

Canberra, 10 November 1988

Australian Automobile Dealers Association  
Mr A G Brown, Executive Director

Motor Traders Association of Australia  
Mr R J Davison, Member  
Mr M Delaney, Executive Director

Motor Traders Association of NSW  
Mr F Holstock, Executive Director

Brisbane, 16 November 1988

Queensland Small Business Development Corporation  
Mrs C V Anger, General Manager  
Ms S Bott, Research Officer  
Mr D J Kelleher, Corporate Services Manager and Deputy General  
Manager  
Mr G B Siebenhausen, Chairman

Shopping Centre Tenants Association of Australia  
Mr J W Bradford, National Director

Insolvency Practitioners Association of Australia  
Mr R J F Burns, Queensland Divisional Chairman

Q Search  
Mr C W E Maddox, Manager

Australian Institute of Management (Qld)  
Mr J Herbert, General Manager

Small Business Management Services  
Mr B K Fitzgibbon, Manager

Redcliffe Central Chamber of Commerce  
Mr M R Juster, Member

Private Citizen  
Mr A R Pitt

Drake Murphy and Schoenmaker, Chartered Accountants  
Mr D W Drake, Founding Partner

Pembroke Financial Planners Ltd  
Mr T F W Marshall, Financial Planner

State Department of Employment, Vocational Education and  
Training  
Mr K Moore, Executive Officer  
Mr P Wildman, Manager, Employment Branch

Queensland Confederation of Industry  
Mr F A W Haalebos, Executive Officer

Master Painters, Decorators and Signwriters Association of  
Queensland  
Mr I W Sharp, Secretary Manager

Joe Cagnacci Business Protection Planning  
Mr G J Cagnacci, Principal

Institute of Chartered Accountants  
Mr R A Grice, State Chairman  
Mr B D Thomas, Chairman

Douglas Heck and Burrell  
Mr L J Litzow, Managing Partner

Touche Ross & Co, Chartered Accountants  
Mr D J Van Homrigh, Partner

Australian Free Enterprise Foundation  
Mr P J Burgess-Orton, National Organiser

Apparel Agents Association  
Mr G M Nicoll, President

Townsville, 17 November 1988

Private Citizen  
Mr P J Cauchi, Cane Farmer  
Mr J Parry  
Mrs S Dickson  
Mr J R Barnard  
Mr T A Hughes, Pharmacist  
Mr P J Steine

Queensland Commercial Fisherman's Organisation  
Mr R J Stringer, Delegate

Townsville Chamber of Commerce  
Mr K R Crane, Treasurer  
Mr R M Lappin, President



Mr P B Roberts, Member of the Executive

Townsville Tile Centre  
Mr I B Allcroft, Manager  
Mrs M P Allcroft, Partner

Obolo Pty Ltd  
Ms F L Barker, Director

Australian Small Business Association, Townsville  
Mr A J Baldwin, Vice-President  
Mr P Towers, Branch President

Towers, Hart and Davies, Public Accountants  
Mr K Davies, Partner

Canberra, 24 November 1988

Council of Small Business Organisations of Australia  
Mr R A Bastian, Chief Executive  
Mr A G Brown, Councillor  
Mr E D Brown, Deputy Chairman  
Mr P F Judkins, Chairman

Canberra, 1 December 1988

Life Underwriters Association of Australia Ltd  
Mr J R Davies, Executive Director  
Mr D S Mitchell, National President

Perth, 12 December 1988

WA Shopping Centre Retailers Association Inc.  
Mr C Elieff, President

Murdoch University  
Professor M E Nairn, Deputy Vice-Chancellor

WA Chamber of Commerce and Industry  
Mr C Barnett, Executive Director

Department of Regional Development and the North West  
Mr J M Hainsworth, Regional officer

Combined Central Regional Development Advisory Committee  
Mr J Hewber, Member  
Mr W R Seimons, Member  
Mr D J Singe, Chairman

Curtin University of Technology  
Mr J H Kelmar, Lecturer

Horticultural Industry Australia Limited  
Mr T Radzikowski, General Manager

Perth, 13 December 1988

Confederation of Western Australian Industry

Mr D J Gray, Chairman

Mr L G Rowe, Director

Small Business Development Corporation

Mr R Lane, Managing Director

Mr W Lapsley, Deputy Chairman

Southseas Marine and Camping

Mrs J D Watts, Partner

Small Business Investment Company

Mr S C Beere, General Manager

Mr R P Evans, Managing Director

Spinelect Wholesalers

Mr S Rahimtulla, Managing Director

Adelaide, 6 February 1989

Small Business Corporation of South Australia

Mr R W Flavel, General Manager

South Australian Government

Mr S B Wood, Government Adviser on Deregulation

Tadan Enterprises

Mr D E S Keast, Director

Terence Sheppard and Associates Pty Ltd

Mr T A Sheppard, Managing Director

Torrens Trading Pty Ltd

Mr K J Whicker, Managing Director

Associated Newsagents Co-operative (SA) Ltd

Mr G Hand, Group General Manager,

Strategies for Growth and Change Pty Ltd

Mr H R Harris, Director

Co-operative Federation of South Australia Inc

Mr B Powell, Vice-President

Private Citizen

Mr L Doube

Mr G E P Shailer

Adelaide College of Technical and Further Education

Mr J N Scales, Senior Lecturer

Dynek

Mrs P Crook, Marketing Director

SA Mixed Business Association  
Mr T A Sheehan, Executive Director

Australian Small Business Association  
Mrs J A Fuller, Member

Melbourne, 7 February 1989

Budget Motel Chain  
Mr P Bennett, Managing Director

Australian Chamber of Manufactures  
Mr M A Connell, Director  
Mr K C Crompton, Director  
Australian Bankers Association  
>Mr A C Cullen, Executive Director,

Law Institute of Victoria  
Mr S J Elliott, Member  
Mr P S Gandolfo, Treasurer and Chairman  
Mr P A Hamilton, Member  
Mr T Murphy, Chairman  
Mr A Robertson, Member

Small Business Association of Victoria  
Ms T Borghese, Executive Director

Furniture Retailers Council of Australia  
Mr M F Batch, Honorary Treasurer  
Mr F Densten, Executive Manager

Australian Podiatry Council  
Mr H Roche, Executive Secretary

Landscape Industries Association of Australia Ltd  
Mr M Thomas, National President

Australian Society of Accountants  
Mr R Hood, Chairman

Australian Institute of Management - Victoria  
Mr D E Adams, Past Deputy Chairman  
Mr K Dance, Immediate Past Chairman  
Mrs B Rossman, Council Member

Pockett Pacific Pty Ltd  
Mr S Latchford, Partner/Manager

Private Citizen  
Mr V Prior

Canberra, 9 March 1989

CEA Technologies Pty Ltd  
Mr D J Gaul, Director

Private Citizen  
Mrs J T Haldane-Stevenson

Mont Equipment Pty Ltd  
Mr F Mack, Managing Director

Sydney, 21 March 1989

Australian Finance Conference  
Mr R Hardaker, Deputy Executive Director

Commonwealth Development Bank of Australia  
Mr B J Wright, General Manager

Institute of Chartered Accountants in Australia  
Mrs T J Foster, Committee Member  
Mr P E Middleton, National President

National Institute of Accountants  
Mrs L K McPhee, NSW State President  
Mr G J Stewart

Australian Association of Cooperatives  
Mr J L McCall, Manager

ETP Semra Pty Ltd  
Mr V N E Robinson, Director

University of Newcastle  
Mr W Dunlop, Director

Robert Jones Associates  
Mr R Jones, Principal

University of Technology  
Mr S R Tibbles, Executive Director

Taxation Institute of Australia  
Mr G Cooper, Research Director  
Mr D C Orrock, Chartered Accountant

Private Citizen  
Mr P Jeffress

Local Government Association of NSW and Shires Association of  
NSW  
Mr D J McSullea, Deputy Secretary

State Chamber of Commerce and Industry  
Mr H Maccallum, Member  
Mr D J G Taylor, Executive Director

Canberra, 3 April 1989

Llama Farms  
Mr B N Carter, Proprietor

J and H Agencies Pty Ltd  
Mrs L E Jamieson, Director and Co-Manager

Lopac Pty Ltd  
Mr D T Owens, Managing Director

Confederation of Australian Industry  
Mr G J Chalker, Deputy Director  
Mr D S George, Chief Executive Officer

Albury-Wodonga Development Corporation  
Mr G L Oke, Economist

Small Business Development Corporation  
Ms S Holmes, General Manager

Department of Industry, Technology and Commerce  
Mr G I Towns, Acting Director

Australian Chamber of Commerce  
Mr R B Davis, Chief Economist

Royal Australian Institute of Architects  
Mr A K Cooper, ACT Councillor  
Mr I Thompson, National Councillor

Australian Boating Industry Association  
Mr D Gilmour, Executive Director

Institution of Engineers  
Dr B W Jenney, Mechanical College Board Member

Australian Federation of Business and Professional  
Women Inc  
Miss R A Duncan, Vice-President  
Ms M R Timpson, National President

Hobart, 7 April 1989

Deregulation Advisory Board  
Mr D J Stenning, Secretary

Fine Woodturning  
Mr D W Christian

Tasmanian Chamber of Commerce  
Mr V J Barron, Director

Canberra, 13 April 1989

Trade Practices Commission  
Mr H Spier, First Assistant Commissioner

Canberra, 11 May 1989

Trade Practices Commission  
Professor B Baxt  
Mr H Spier

Attorney-General's Department  
Mr W T Cassells, Assistant Director  
Mr D C Edwards, First Assistant Secretary  
Mr M Keehn, Senior Assistant Secretary  
Mr S Skehill, Dep Secretary  
Mr R T Temperley, Director  
Mr P J Wenn, Inspector-General in Bankruptcy  
Mr G M Wheeler, Principal Legal Officer  
Mr J T D Wood, Director  
Mr M A Zanker, Principal Legal Officer

Canberra, 12 May 1989

Australian Automobile Dealers Association  
Mr A G Brown, Executive Director

Attorney-General's Department  
Mr K A Allen, Acting Special Adviser  
Mr G W J Carter, Director  
Mr D Edwards, First Assistant Secretary  
Mr M A Keehn, Senior Assistant Secretary  
Mr J R Munro, Senior Investigator  
Mr B G O'Callaghan, Acting Senior Assistant Secretary  
Mr J T D Wood, Director

Small Business Council  
Mr H Atlas, Chairperson

Department of Industry, Technology and Commerce  
Ms M Crooks, Acting Director

Australian Bureau of Statistics  
Mr W A Pattinson, Acting Assistant Statistician

Canberra, 22 May 1989

Department of the Treasury  
Mr J P Anderson, Assistant Secretary  
Mr J J Landau, First Assistant Secretary  
Ms J R McKenry, Assistant Commissioner  
Mr B M Nolan, Second Commissioner  
Dr A J Preston, First Assistant Secretary  
Mr P E Simpson, First Assistant Commissioner  
Mr G Smith, Assistant Secretary

Department of Employment, Education and Training  
Mr M J Cusack, Assistant Secretary  
Mr D W Uren, Senior Executive Officer

Austrade  
Mr R T Anderson, Manager

Department of Industry, Technology and Commerce

Mr J D Bell, First Assistant Secretary  
Ms M Crooks, Acting Director  
Mr W N Hurst, Principal Adviser  
Dr A J Moran, Director  
Ms C Papadopoulos, Director  
Mr L Russell, Assistant Secretary  
Mr N R Stevens, Deputy Secretary  
Mr R T Summerville, Director

Council of Small Business Organisations of Australia

Mr R Bastian, Chief Executive  
Mr A G Brown, Past Chairman  
Mr E D Brown, Deputy Chairman

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## APPENDIX IV

## LIST OF EXHIBITS

Exhibit No.	Persons or Organisation	Title/Document	Date of Hearing
1.	Mr Peter Gerrard Managing Director Intelligent Network People Pty Ltd	White Paper on Small and Medium Enterprises in Japan - produced by the Ministry of International Trade and Industry 1986	12.09.88
2.	"	Extract from: "Innovate and Grow - programme of the SME Development Plan Workshop", Singapore	12.09.88
3.	"	Overview of Developmental Needs and Assistance Programmes	12.09.88
4.	"	"Programmes to Help Local Companies Grow", Economic Development Board of Singapore	12.09.88
5.	Mr Ian McGregor Newcastle City Council	An Economic Development Strategy for Newcastle	05.10.88
6.	Mr Don Keeping Down Under Glass Chillers Pty Ltd	"Do you want to sell more of this?"	05.10.88
7.	Mr Dennis Chiron Hunter Region Enterprise Agency Ltd	Regional Employment Initiative backed by State Government, industry, organisations and individuals	05.10.88
8.	Mr Dennis Chiron	"Yes there is a future"	05.10.88
9.	Mr Dennis Chiron	The HREA Small Business Handbook	05.10.88
10.	Motor Trades Association of Australia	Information Kit for the launch of the MTAA	10.11.88
11.	Motor Trades	Table of forms required	10.11.88

	Association of Australia	to be completed by new vehicle dealers of Victoria	
12.	Small Business Development Corporation Qld	Annual Report of the Small Business Development Corporation for the year ended 30 June 1987	16.11.88
13.	"	Yearly Operational Statistics of the Small Business Development Corporation for 1986/87 and 1987/88	16.11.88
14.	Queensland Confederation of Industry	1987 Annual Report of Queensland Confederation of Industry	16.11.88
15.	"	Trade Program October 1988	16.11.88
16.	"	Policy on Stronger Manufacturing in Queensland	16.11.88
17.	Mr Van Homrigh, Touche Ross & Co	Reporting Requirements for Annual Reports	16.11.88
18.	"	Professional Development Program Guide 1988	16.11.88
19.	"	Client Bulletin (6 November 1988)	16.11.88
20. 21. & 22.	"	Touche Ross Accounting and Auditing News Nos. 2, 3 & 6 for 1988	16.11.88
23. & 24.	"	Touche Ross Accounting Letter Nos. 2 & 3 (April and July 1986)	16.11.88
25.	"	Sales Tax Characteristics and Planning Techniques (3rd edit)	16.11.88
26. to 35	Mr Van Homrigh, Touche Ross & Co	Touche Ross Tax Letters of June 1986, July 1986, October 1986, December 1986, November 1987, February 1988, August 1988.	16.11.88
36.	Life Underwriters Association of	Insurance and Superannuation	01.12.88

	Australia	Commission 1986/87 Annual Report for Superannuation Funds	
37.	Combined Central Regional Development Advisory Committees	Small Town Self Help Program	12.12.88
38.	Small Business Development Corporation WA	Report of Government Regulations Review Committee dated February 1983	13.12.88
39.	Mr Brian Powell Co-operative Federation of SA	List of currently registered co-operatives in SA	06.02.89
40.	Ms Judy Fuller	Discussion Paper No. 1 on Small Business Education Institute	06.02.89
41.	Australian Chamber of Manufactures	Topic Paper 2	07.02.89
42.	"	The Determinants of Investment within Small Manufacturing Companies in Australia (November 1988)	07.02.89
43.	Confederation of Australian Industry	Sales Tax - Time for Reform	03.04.89
44.	Albury-Wodonga Corporation	Albury - Wodonga: Australia's National Growth Centre	03.04.89
45.	Royal Australian Institute of Architects	Professional Liability in the Building Industry	03.04.89



## APPENDIX V

## BIBLIOGRAPHY

## Books, Reports and Monographs

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Joint Select Committee on Corporations Legislation *Report April 1989.*

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Sumner C.J. (the Hon) *S.A. Deregulation Initiatives*; S.A. Attorney-General's Department, March 1989.

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Williams A.J. *The Characteristics and Performance of Small Business in Australia 1973-1985*; Unpublished Report.

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