

The Parliament of the Commonwealth
of Australia

SMALL BUSINESS IN AUSTRALIA

**CHALLENGES, PROBLEMS AND
OPPORTUNITIES**

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

January 1990

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SMALL BUSINESS
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TERMS OF REFERENCE OF THE COMMITTEE

On 24 September 1987 the Standing Committee on Industry, Science and Technology was appointed by resolution of the House of Representatives with power to inquire into and report on any matters referred to it by either the House or a Minister including any pre-legislation proposal, bill, motion, petition, vote or expenditure, other financial matter, report or paper.

TERMS OF REFERENCE OF THE INQUIRY

On 24 March 1988, the Minister for Science, Customs and Small Business requested the Committee to investigate:

1. the unique problems faced by small businesses as a result of the extensive yet fragmented regulations under which they are governed and ways in which the administration of regulations can be improved;
2. the impact of government policies in such areas as taxation, superannuation, training, marketing, access to information/advice and industrial relations;
3. the ultimate extent of impact of policies on small businesses compared with larger businesses.

MEMBERSHIP OF THE COMMITTEE

Chairman: Mr D.P. Beddall, MP

Deputy Chairman: Hon. R.J.D. Hunt, MP (to 24 February 1989)
Mr D.P.M. Hawker, MP (from 25 May 1989)

Members: Mr P.J. Baldwin, MP
Mr B.T. Cunningham, MP
Mr E.L. Grace, MP
Mr B. Lloyd, MP
Mr F.S. McArthur, MP
Mr J.B. Mildren, MP
Mr A.A. Morris, MP
Mr G.B. Nehl, MP (from 29 May 1989)
Dr A.C. Theophanous, MP
Dr M.R.L. Wooldridge, MP

Secretary: Mr P.F. McMahon

Acting Secretary: Dr D. Capp
Mr A. Kelly

Other staff who served the Committee in the course of the inquiry:

Ms M. Telesny
Mr J. Craig
Ms G. Richards
Mr R. Cavanagh
Ms J. Kiermaier
Ms S. Hunter
Ms V. Buck

The Committee is also indebted to the research staff of the Parliamentary Library who greatly assisted the inquiry.

ABBREVIATIONS

ABA	Australian Bankers Association
ABS	Australian Bureau of Statistics
ACM	Australian Chamber of Manufactures
ANU	Australian National University
ASBA	Australian Small Business Association
ASC	Australian Securities Commission
ATO	Australian Taxation Office
BIE	Bureau of Industry Economics
BOMA	Building Owners and Managers Association
BRRU	Business Regulation Review Unit
CDB	Commonwealth Development Bank
COSBOA	Council of Small Business Organisations of Australia
DITAC	Department of Industry Technology and Commerce
EPAC	Economic Planning Advisory Council
ESAS	Employee Share Acquisition Schemes
ESOP	Employee Share Ownership Plans
ESOT	Employee Share Ownership Trust
GDP	Gross Domestic Product
GIRD	Grants for Industrial Research and Development
IED	Income Equalisation Deposits scheme
LIFO	Last in first out system
MIMA	Motor Inn and Motel Association of Australia
MITI	Ministry for International Trade and Industry(Japan)
OECD	Organisation for Economic Cooperation and Development
PASS	Procurement Automated Source System
PAYE	Pay As You Earn
TSVA	Trading stock valuation adjustment
UNE	University of New England

PREFACE

This is the fourth report from the House of Representatives Standing Committee on Industry, Science and Technology.

This inquiry has been the largest the Committee has undertaken so far, both in terms of time and the breadth of subject matter covered. We believe it is the first inquiry into small business undertaken by a Federal Parliamentary Committee.

There are 600,000 small businesses in Australia - and an additional 150,000 in the farming sector. The precise contribution of the 750,000 small businesses to Australia is difficult to quantify but is substantial. They account for 96 per cent of all firms, half of private sector employment and a third of all employment in Australia. The existence of the small business sector contributes greatly to the flexibility of the economy and its ability to evolve to meet changing demands.

There is a high turn-over rate of small businesses, reflecting the large number of businesses which fail as well as the dynamic nature of the small business sector. It is an area in which there are many challenges and opportunities as well as problems.

Small businesses face particular problems because of their size. They often have more difficulty than big businesses in dealing with the complexities and demands of government regulations and requirements and usually have more difficulty in obtaining finance. They have particular needs which are too often overlooked.

This inquiry has sought to deal with the wide range of issues confronting the small business sector. As well as focussing on particular problem areas - such as taxation, finance and government regulation - we have addressed the question of how to make government more aware of, and more responsive to, the special needs of small business.

The Committee has undertaken an extensive process of information gathering and consultation with the small business community and those in government, educational and private sector agencies which influence the environment in which small business operates. We have put forward a large number of recommendations. These are by no means magical solutions for the problems facing small businesses but would, if implemented, remove many of the anomalies and inequalities which affect their operation.

To make the findings of the inquiry accessible to a wider audience the Committee has decided to extract from the main report the part which outlines the recommendations and main conclusions and have that published as a separate document. It is hoped that those involved in the small business sector, in particular, will read and comment upon the Committee's findings.

D.P. BEDDALL, MP
Chairman

January 1990

RECOMMENDATIONS
AND MAIN CONCLUSIONS

CHAPTER 1 SMALL BUSINESS - AN IDENTITY CRISIS?

A. The need for a definition

1. The Committee concludes that a small business can be defined as:

- . being independently owned and managed
- . being closely controlled by owner/managers who also contribute most, if not all, of the operating capital
- . having the principal decision making functions resting with the owner/managers

2. This definition can be qualified by a size component, but the Committee wishes to emphasise that this qualification serves as a functional addition to the definition, and should not overshadow it.

3. The Committee further concludes that a small business is one which employs up to:

- . 20 people in non-manufacturing industries, and
- . 100 people in manufacturing industries.

B. Research Needs

4. Establishing a definition for small business is merely the beginning. Extensive research is required in order to discover the importance of small business in the economy, the opportunities it provides and the difficulties it faces. Such research depends upon the collection of reliable and comprehensive data about small businesses.

B.1 A small business database

Recommendation 1

5. The Committee recommends that:

- . the Australian Bureau of Statistics continue to publish *Small Business in Australia* on an annual basis after 1992
- . the Department of Industry, Technology & Commerce in conjunction with the ABS examine the feasibility of establishing a small business data base similar to that proposed in Canada. (para 1.40)

Recommendation 2

6. The Committee recommends that:

- . the Australian Bureau of Statistics develop personal interviewing techniques to enhance its ability to gather accurate information. (para 1.46)

B.2 Research funding

Recommendation 3

7. The Committee recommends that:
- . the Australian Research Council nominate small business as an area of national priority in determining the distribution of research funding (para 1.55)

C. Small business policy formation

8. The Committee considers that, while the profile of small business has been raised within government, this process needs to be continued, with small business considerations represented in both economic and industry policy forums. The agencies dealing with small business issues within government need to be strengthened to better represent and defend small business interests within the federal bureaucracy.

Recommendation 4

9. The Committee recommends that:
- . the responsible Federal Minister report annually to Parliament on the state of small business and the Government's intentions and priorities with regard to small business. (para 1.81)
 - . all Commonwealth Departments nominate a point of contact on small business matters to facilitate liaison with the Small Business Unit and to improve consideration of the impact of all government policies on the small business sector. (para 1.92)

Recommendation 5

10. The Committee recommends that:

- a Commonwealth-State Ministerial Council be established to co-ordinate measures to assist the operations of small businesses throughout Australia and to examine the role of small business in the economy and the impact on small business of more general policy measures. (para 1.65)

C.1 Commonwealth Government assistance for small business

Recommendation 6

11. The Committee recommends that:

- the Department of Industry, Technology and Commerce increase the funding and staffing resources available to the Small Business Unit;
- the Small Business Unit establish a network of across portfolio liaison groups in Commonwealth industry, economic and welfare portfolios to generate a greater input of small business considerations into government policy formulation;
- the Small Business Unit establish a small business database centered on statistical collections already held by Commonwealth departments and agencies which include data about businesses (para 1.92)

D. The National Small Business Foundation

Recommendation 7

12. The Committee recommends that:

- . a National Foundation for Small Business be established with the aims of building a national small business database in consultation with the Small Business Unit in the Department of Industry, Technology and Commerce and promoting research into small business, awareness of small business and the interests of small business in Australia.
(para 1.99)

- . a one-off grant of \$500 000 be provided to the National Small Business Foundation Fund to assist with its initial development. (para 1.101)

E. Fragmentation of small business

13. Coupled with a National Small Business Foundation concentrating on research and education, a single peak body would be able to more effectively present the opinions of, and argue the case for, small business when dealing with government, at federal, State and local level. While the impetus for this body should come from the small business community, the Committee realises that the lack of resources available to small business organisations may hinder the formation of such a body.

Recommendation 8

14. The Committee recommends that:

- . the Small Business Unit of the Department of Industry, Technology and Commerce organise and host

a conference of small business associations with the aim of forming a national representative body of small business. (para 1.109)

CHAPTER 2 CONTRIBUTION OF SMALL BUSINESS TO THE ECONOMY AND ASPECTS OF SMALL BUSINESS GROWTH AND CLOSURE

15. The strong sense of independence of small business operators may become a growth hurdle. If the proprietor is unwilling to delegate responsibility, the business may grow but it will not be efficient.

B.3 The growth of a small business

16. Small businesses often cannot afford computerised systems or additional staff to assist with regulatory requirements. The result is that small businesses often cannot grow past the middle growth phase and in not growing face difficulties possibly leading to bankruptcy. Small businesses are not sufficiently considered when laws and regulations are drafted and not consulted about the practical effects of decisions on their operations.

Recommendation 9

17. The Committee recommends that:

- . the Department of Industry, Technology and Commerce, in developing industry profiles, examine the particular needs of small businesses in different stages of growth and tailor policies accordingly. (para 2.45)

C. Small business failures/closures

18. The high incidence of small business failures is often seen as a serious waste of resources. The high closure rate may, to an

extent, be the price to be paid for the dynamism and vitality which small business contributes to the economy.

19. The Committee concludes that the failure rate in small business is a matter of concern. The Committee is also concerned at the finance problems experienced by small business and the lack of business training undertaken before people commence small businesses.

Recommendation 10

20. The Committee recommends that:

- . the Department of Industry, Technology and Commerce provide a heightened awareness campaign to potential small business start-ups to drive home the value of business management training before commencement.
(para 2.60)

CHAPTER 3 REGULATION REVIEW

B. Cost of Regulation

21. Most regulation brings a benefit to some party. Regulations also bring costs to those whose access to markets is reduced or to those who are obliged to incur expenses they would otherwise not have to incur.

22. There is possibly a case for compensation to small business where it acts as the agent of government in the collection of revenue.

Recommendation 11

23. The Committee recommends that:

- . all government forms contain two boxes
 - one showing the estimated compliance time nominated by the government department or agency; and
 - one showing the actual time taken by the person required to fill in the form. (para 3.15)

C. Paperwork reduction program

Recommendation 12

24. The Committee recommends that:

- . after implementation of the above change concerning 'time boxes' on forms, all departments and government agencies submit to Cabinet each year a list of forms which can be reduced or eliminated. (para 3.17)

E. Uniform regulations

Recommendation 13

25. The Committee recommends that:

- . the Department of Industry, Technology and Commerce, in co-operation with the Business Regulation Review Unit, and the Ministerial Council work towards developing uniform regulations. (para 3.32)

Recommendation 14

26. The Committee recommends that:

- . the Department of Industry, Technology and Commerce in cooperation with the Ministerial Council take a leading role in encouraging State and local governments to simplify licensing procedures, to reduce duplication and investigate the possibility of principal licenses for businesses to incorporate multiple federal, State and local government requirements. (para 3.35)

G. Regulation tiering

Recommendation 15

27. The Committee recommends that:

- . the Department of Industry, Technology and Commerce in conjunction with the Ministerial Council determine areas for reduction in frequency and detail of reporting requirements for businesses below a certain size (regulatory tiering) in view of the disproportionately large cost impositions on small business. (para 3.44)

H. Federal review strategy

28. The role of government is to explain fully the necessity for specific regulations. A cost/benefit analysis should be carried out for every regulation. If there is not a net benefit then reasons should be given why the regulation should be continued or come into effect. For new regulations such an analysis should be reinforced by the insertion of a sunset or mortality clause.

29. There is a parallel need for language imposing regulations to be easy to understand.

30. A number of witnesses called for a small business impact statement on all new legislation and regulations.

Recommendation 16

31. The Committee recommends that:

- . all new legislation and regulations include a small business impact statement prepared by the proposing Department in consultation with the Small Business Unit in DITAC. (para 3.50)

I. The Business Regulation Review Unit (BRRU)

32. The Committee concluded that the BRRU is too poorly resourced, having a staff of only six, to effectively carry out its role. The Committee notes that the current process of regulation review is not a public one, and that the cost/benefit justification for new legislation and regulations remains confidential to Cabinet.

Recommendation 17

33. The Committee recommends that:

- . the Business Regulation Review Unit be provided with resources to effectively carry out its brief
- . the Business Regulation Review Unit be given a special brief to monitor regulatory impact statements for their effects on the small business sector. (para 3.56)

K. Administration

34. The National Industry Extension Service is an example of information about Commonwealth and State programs being delivered to small business in the same place in each State. If a stocktake were made of Commonwealth regulations and placed on a data base these centres would provide an appropriate point for information on all regulations (Commonwealth, State and local) for small business.

35. The Committee concluded that small businesses were being disadvantaged at the Commonwealth level with the current procedures for regulation review, given that small businesses have limited resources and little opportunity to document cases in regard to burdensome regulations.

Recommendation 18

36. The Committee recommends that:

- . the BRRU undertake a stocktake of all Commonwealth government regulations and develop a data base which could provide ready access to relevant information for small businesses;
- . DITAC with the Ministerial Council investigate methods of ready access for small business to the data base, such as through a "one stop shop";
- . DITAC with the Ministerial Council investigate ways of facilitating feedback on new and existing regulations between small business and the relevant authority;
- . DITAC with the Ministerial Council investigate ways to increase the awareness of small business of

impending regulations; and formulate a policy which avoids inconsistencies and overlap in the jurisdiction of the three tiers of government, using information from small business on the impact of current regulations.

a House of Representatives Regulations and Ordinances Committee complementary to the Senate Committee be established and, through a process of public inquiry, invite submissions, nominate priority areas for regulatory review and make recommendations on these to the Government with regard to:

- alternatives to regulations ;
- the operations of a cost/benefit analysis approach;
- unreasonable and inequitable costs imposed on a particular sector of the community (eg. small business);
- the use of sunset clauses and plain english;
- the implementation of particular regulations;
- the communication of information about regulations to the public; and
- the monitoring of plans to reduce the quantity of forms required to be completed by businesses. (para 3.72)

CHAPTER 4 TRADE PRACTICES AND TENANCY

A. *The Trade Practices Act 1974*

37. The Trade Practices Act, administered by the Trade Practices Commission, is a set of general principles covering behaviour for competition and trading. The primary focus of the Act is to preserve competition. The Act makes no distinction between small business and big business.

38. While the Committee understands the principle of the Act is not to favour small business and consumers over big business, but to guarantee competition, this competition could be reinforced by some changes in the Act, principally in the area of unconscionable conduct and implied conditions and warranties, to reduce the disparity in bargaining power.

A.1 Implied conditions and warranties

Recommendation 19

39. The Committee recommends that:

- . the supply and installation of computer hardware and software programs be included in the definition of goods and services in Section 4 of the Trade Practices Act so as to extend the application of the implied conditions and warranties provisions of the Act to cover these categories of goods and services.
- . the prescribed amount in Section 4B of the Act applying to non-domestic goods or services be raised from \$40 000 to \$200 000. (para 4.10)

A.2 Section 52A - unconscionable conduct

Recommendation 20

40. The Committee recommends that:

- provisions of the Trade Practices Act concerning unconscionable conduct (Section 52A) which currently apply to transactions involving consumers be extended to include small business transactions including retail/commercial tenancy agreements, where a small business is disadvantaged in the same way as a consumer, in its dealings with other parties.
(para 4.16)

A.3 Section 46 - misuse of market power

41. In its original form the Act limited the scope of Section 46 to corporations in a position to substantially control a market. Its scope was widened in 1986 to apply to a wider range of situations. The protection that may be available to small business under the amended Act is still not clear, due to the relatively short period of time since these amendments were effected.

A.5 Resources

42. Resources for the Trade Practices Commission have reportedly fallen over the last 9 years, with funding for salaries and administrative expenses declining by 6.6% in real terms over the period 1980-81 to 1987-88.

43. The effect of the decline in Commission resources will be compounded by the flow-on effects of the Government's deregulation strategies where the burden of administering competition law will fall to the Trade Practices Commission.

Recommendation 21

44. The Committee recommends that:

- . the Trade Practices Commission be provided with greater resources to service the increasing demands being placed on it by business deregulation, so as to ensure the services and support it is able to provide to small businesses are strengthened and not diminished. (para 4.44)

B. Retail and commercial tenancy

B.1 Shopping centre leases

45. The Committee considers that the disparity in bargaining power between small retailers and a shopping centre landlord can result in a landlord abusing his more powerful position by including unfair conditions into leases offered to smaller retailers. The Committee fully accepts the right of landlord and tenant to negotiate a lease, but considers that there should be an industry wide standard from which to begin negotiations, to protect the rights of both landlord and tenant.

B.2 Motel leases

46. Motel leases were also raised with the Committee as being of concern. As with shopping centre leases, advisory services for potential motel lessees have to be improved, and the complexity of leases reduced through standardisation.

Recommendation 22

47. The Committee recommends that:

- . the Commonwealth Attorney-General confer with State

and Territory Attorneys-General to formulate a standardised rental lease for commercial properties. (para 4.68)

B.3 Shop lease tribunals

48. The resolution of disputes between landlord and shop tenants, both inside and outside shopping centres, arising from leases was criticised as being weighted against the interests of tenants.

49. The Committee supports the establishment of an independent body to hear disputes between landlord and tenant. The disputes tribunal created in Queensland could serve as a model for similar tribunals in other States.

Recommendation 23

50. The Committee recommends that:

- . all State and Territory Governments introduce Shop Lease Tribunals to arbitrate in disputes between landlords and commercial tenants. (para 4.72)

B.4 Commercial tenancy and the Trade Practices Act

51. In discussing commercial tenancy, tenants associations called for the Commonwealth Government to extend the provisions of the Trade Practices Act to cover commercial leases.

52. The Committee considers that the extension of the 'abuse of market power' provisions of Section 46 of the Trade Practices Act to assist shopping centre tenants would not be appropriate, as it would alter the original intention of the Act. The 'unconscionable conduct' provisions of the Act (Section 52A), conversely, have the potential to provide greater protection for retailers.

Recommendation 24

53. The Committee recommends that:
- . Section 52A of the Trade Practices Act be extended to include retail and commercial tenants.
(para 4.79)

CHAPTER 5 TAXATION REFORM

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

55. 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 uncoordinated administrative systems which support it, and the associated compliance and reporting costs which are particularly onerous for small business.

B. Taxation administration

56. 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.

57. 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.

58. 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. The Committee 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.

59. 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 e.g. 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.

60. Many of the problems of the small business taxpayer 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.

Recommendation 25

61. 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. (para 5.39)

62. 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.

63. 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. 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.

Recommendation 26

64. 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 Rec 11). (para 5.45)

C. Wholesale Sales Tax

65. 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.

C.1 Administrative/compliance costs

66. 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.

Recommendation 27

67. 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 previously recommended (rec 8), and the Taxation Commissioner's Advisory Panel. (para 5.63)

68. 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 \$1 000 of sales tax liability) is an example of one form of regulatory relief which has benefited small business.

69. 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.

Recommendation 28

70. 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. (para 5.71)

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

Recommendation 29

72. 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 sales tax paperwork. (para 5.79)

C.2 Payment period

73. 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.

74. 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 Committee considers that an extension of the order of at least a further 30 days is warranted.

Recommendation 30

75. 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. (para 5.89)

C.3 Exemptions and conditional exemptions

76. There is a large range of goods which are exempt from sales tax as provided in the Sales Tax (Exemptions and Classifications)

Act 1935. 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.

Recommendation 31

77. The Committee recommends that:

- . the system of exemptions from wholesale sales tax be reviewed and simplified. (para 5.93)

78. There is also a substantial paperwork burden imposed on small retailers in dealing with conditional exemptions. 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.

Recommendation 32

79. 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. (para 5.102)

C.4 Rulings, appeals and advice

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

- . inconsistent rulings by the Deputy Commissioners eg.

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.

Recommendation 33

81. 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. (para 5.108)

82. 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

83. 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.

84. 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.

85. 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.

86. The Committee believes that existing exemptions from capital gains tax result in the lock-in of capital into either unproductive assets, eg 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. 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.

Recommendation 34

87. 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. (para 5.142)

88. 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

89. 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.

90. A trading stock valuation adjustment (TSVA) did operate in the period 1976/77 to 1978/79 financial years. 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 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 persistent 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 historical cost 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.

Recommendation 35

91. 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.
(para 5.161)

F. Income averaging

92. 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.

93. 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.

Recommendation 36

94. 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.
(para 5.174)

G. Company and provisional tax

95. Approximately 70 percent of small businesses are not incorporated. 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. It has been asserted that incorporated (big) businesses are greatly advantaged over unincorporated (small) businesses 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 business; and
- . the manner in which company tax is assessed and may be varied in comparison with the situation for provisional tax.

96. 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.

Recommendation 37

97. 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 income 1990/91 year). (para 5.185)

98. A major complaint made about provisional tax 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.

Recommendation 38

99. 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. (para 5.192)

Recommendation 39

100. 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%) which applies where tax is underpaid by other income tax payers. (para 5.201)

101. 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
- in spite of recent changes which will bring forward the timing of company tax payments, provisional tax payers involved in a business are still significantly disadvantaged in comparison with company tax payers.

Recommendation 40

102. The Committee recommends that:

- . the Government undertake a fundamental review of the provisional and company tax system as it applies 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; and
 - 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. (para 5.216)

H. Other taxing matters

H.1 Business establishment costs

103. 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.

104. 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.

105. 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. 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.

Recommendation 41

106. 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 (para 5.222).

H.2 Pay as you earn (PAYE) tax

107. 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. 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.

108. 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.

Recommendation 42

109. 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. (para 5.227)

H.3 Fringe benefits tax

110. 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.

Recommendation 43

111. 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 be required to make an annual payment. (para 5.233)

CHAPTER 6 FINANCE FOR SMALL BUSINESS

112. 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. 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.

C. Research

113. There is a lack of data on the Australian financial system pre and post deregulation. 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.

Recommendation 44

114. The Committee recommends that:

- . the Reserve Bank and/or the Australian Bureau of Statistics collect and publish statistics on bank lending to small business. (para 6.8)

D. Start-up venture and risk capital

115. Cash hand-outs are not the answer to survival problems faced by small business. Rather there is a greater need for equity financing in which the banking sector is reluctant to participate.

116. A major area of demand for venture capital comes from small firms which need relatively modest amounts of finance, around \$50 000. 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.

E. Working capital and cash flow

117. 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.

118. Incentives for profit retention, allowing small firms the capacity to use internally generated funds for expansion deserve attention.

F. Collateral

119. 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.

120. 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.

Recommendation 45

121. 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. (para 6.36)

Recommendation 46

122. 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. (para 6.50)

Recommendation 47

123. 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. (para 6.52)

H. Small business - knowledge of finance

124. 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.

125. 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.

Recommendation 48

126. 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. (para 6.55)

I. Banks and the small business sector

127. 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.

Recommendation 49

128. 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. (para 6.63)

CHAPTER 7 MANAGEMENT EDUCATION/TRAINING

129. 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.

130. 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 collecting, work scheduling and priority setting; 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.

131. The Committee believes that a business management course delivered to students and apprentices via the education system is the most effective way of providing basic management training to potential small business owner/managers.

Recommendation 50

132. 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. (para 7.18)

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

Recommendation 51

134. 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. (para 7.25)

C. National Small Business Information and Awareness Program

Recommendation 52

135. 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. (para 7.36)

D. Industry training levy

Recommendation 53

136. The Committee recommends that:

- . the approved training funds supported by the proposed industry training levy if adopted should include provision for training courses specifically catering for the training needs of the self employed and employees in small businesses. (para 7.42)

CHAPTER 8 OTHER MATTERS

A Franchising

137. Despite the popularity of franchising, concern has been expressed by small business organisations and trade associations that franchise agreements lead to franchisors taking unfair advantage of franchisees by including unnecessarily restrictive or onerous conditions in these agreements.

138. Some legal protection to franchisees is provided by the Practices Act 1974, mainly through the fair trading provisions of the Act. Throughout this inquiry, however, it became clear that the problems of franchising systems could best be dealt with by separate legislation.

139. 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. The Committee is not persuaded by the Ministerial Council's statement, in abandoning draft franchise legislation in 1987, that adequate remedies in law already exist to protect parties in franchise agreements.

Recommendation 54

140. 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. (para 8.38)

B. Close Corporation

141. 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.

142. 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.

Recommendation 55

143. 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.

(para 8.56)

144. 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.

145. 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 coordinated 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.

Recommendation 56

146. 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. (para 8:59)

C. Business names and trademarks

147. Legislation covering the registration of business names and trademarks 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

148. 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.

149. The Committee considers that the benefits of a national business names register should be extended to unincorporated businesses, which represent 75% of non-farm small businesses.

Recommendation 57

150. 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. (para 8.69)

C.2 Trade marks

151. Another problem faced by small businesses concerns the legal right of a business to use its registered business name. 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. Some small businesses mistakenly believe that registration of a business does confer some legal entitlement to the name.

152. 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 unsatisfactory nature of this situation is compounded by the Commonwealth being responsible for the register of Trade Marks while, under current legislation, the States are responsible for the registration of business names.

153. 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*.

Recommendation 58

154. The Committee recommends that:

- . the Australian Securities Commission in conjunction with Commonwealth and State small business agencies develop and implement an awareness campaign aimed at small business people to inform them of the difference between registering a business name and a trade mark. (para 8.80)

Recommendation 59

155. 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*. (para 8.82)

D. Bankruptcy Act (Part X)

156. 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. The Committee is concerned that the position of an unsecured creditor is largely unprotected in these arrangements.

157. 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.

Recommendation 60

158. 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. (para 8.93)

E. Government purchasing

159. Federal public sector purchasing is very big business. An estimated \$7b to \$8b or 4 percent of gross domestic product is spent each year by budget sector agencies alone. 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.

160. 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 directly addressed as they have been in many overseas countries. 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.

Recommendation 61

161. 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 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. (para 8.113)

F. Co-operatives

162. 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. 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.

Recommendation 62

163. 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 businesses and their relevance to Australian conditions. (para 8.127)

G. Superannuation

164. 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.

165. 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.

166. 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.

Recommendation 63

167. 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.
(para 8.146)

168. 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. The Government addressed these discriminatory features in the 1989 Budget.

169. 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.

170. 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.

Recommendation 64

171. 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. (para 8.155)

H. Industrial relations

172. 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.

173. The Committee accepts the evidence that there are problems in the current industrial relations system for the small business sector. 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.

174. 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.

Recommendation 65

175. The Committee recommends that:

- . the peak small business body which is recommended elsewhere in this report (rec 8) should examine the need for a more coherent organisational structure to represent small business in the Industrial Relations Commission. (para 8.171)

I. Employee share acquisition schemes

176. 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, conditional on the employer not claiming a tax deduction on the discount.

177. 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 tax exemption for the discount available to employees acquiring shares is too low.

Recommendation 66

178. 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. (para 8.184)

CHAPTER 1

SMALL BUSINESS - AN IDENTITY CRISIS?

A. THE NEED FOR A DEFINITION

A.1 A single definition for small business

B. RESEARCH NEEDS

B.1 A small business data base

B.2 Research funding

C. SMALL BUSINESS POLICY FORMATION

C.1 Commonwealth Government assistance for small business

C.2 Information and advice

D. NATIONAL SMALL BUSINESS FOUNDATION

E. FRAGMENTATION OF SMALL BUSINESS

CHAPTER 1

Small Business - An Identity Crisis?

There exists considerable confusion as to what individuals identify as small business¹

A. The need for a definition

1.1 In formulating a definition of small business, the Committee encountered a wide range of views as to what exactly defines a small business. The Committee can only agree with Professor Alan Williams' assessment that "despite the apparent simplicity of the task, small firms have proved particularly difficult to define, with any widespread level of agreement."² Attempts at a definition usually focus on some critical size range in terms of numbers of employees, or on some characteristics of ownership, management, means of financing or operation.

1.2 The Bureau of Industry Economics (BIE) submitted that a working definition of small business should be one which:

...can easily make use of official statistics or which forms the basis for collecting data. Moreover, to allow different studies to be compared, the definition must be widely accepted. ³

1.3 This viewpoint was echoed by the Small Business Development Corporation of Western Australia, who saw a definition as serving two purposes:

. first to "allow individual firms to be identified (as belonging to the category)... for policy and

1. Transcript of Evidence, p 1769

2. Williams, A.J. *The Characteristics and Performance of Small Business in Australia 1973-85*, unpublished report, p 11

3. Transcript of Evidence, p 643-4

regulatory purposes" and

- . second to "allow researchers to aggregate firms into size categories in a way which reflects real differences in the characteristics of the firms"⁴

1.4 The Committee concurs with these views and believes that the adoption of a definition of small business is a prerequisite for development of any policy or program aimed at this sector.

A.1 A single definition for small business

1.5 Defining a small business, however, is quite problematical. Opinion on an acceptable definition ranged from the Confederation of Australian Industry's and the Motor Traders Association of Australia's assertion that "there is no universally accepted definition,"⁵ to the Small Business Association of Victoria's use of "25 employees in the service area and 100 employees in the manufacturing area, or less."⁶

1.6 The central problem in finding an acceptable definition of small business lies in the diversity of small businesses. Professor Williams in his study into the characteristics and performance of small business expressed that problem in the following terms:

No matter what particular definitional method is used, the ultimate purpose of validly and reliably defining small enterprises is ... to be able to group together firms with similar characteristics, notwithstanding variations in numerical size, however measured. Firms differ in labour and capital resources employed, and attempting to employ a single numerical definition across several industries invariably creates specious comparisons.

4. Transcript of Evidence, p 1560
5. Transcript of Evidence, p 802
6. Transcript of Evidence, p 2040

A retailer employing 50 staff and operating out of a leased premises may have very similar characteristics and operating problems to a manufacturer with 10 staff and capital equipment worth \$ 2 million. A stock broker with 3 employees working out of a leased office may have the same gross income as the previously mentioned retailer and manufacturer.⁷

1.7 Definitions have sought to isolate the characteristics that are unique to a small business, and thus differentiate small business from its larger relations. The major characteristics of a small business are:

- . management is independent - managers are also owners;
- . capital is supplied by and ownership is held by one or few persons;
- . operations and markets are locally based, although markets may not be;
- . smallness is relative to the size of the largest firms in the industry.⁸

1.8 In 1971 the then Department of Trade and Industry's Committee on Small Business (the Wiltshire Committee) defined a small business as:

a business in which one or two persons are required to make all of the critical management decisions - finance, accounting, personnel, purchasing, processing or servicing, marketing, selling - without the aid of internal specialists, and with specific knowledge in only one or two functional areas.

7. Williams, A.J.: op cit, pp 11-12

8. Ibid, p 12

1.9 The Wiltshire Committee added to this definition:

Some view of size is generally looked for in association with the definition of small business; normally the conditions defined will be found to exist in the majority of enterprises having less than 100 employees.⁹

1.10 The Bolton Committee in the United Kingdom, also reporting in 1971, offered this definition:

Firstly, in economic terms, a small firm is one that has a relatively small share of its market. Secondly, an essential characteristic of a small firm is that it is managed by its owners or part-owners in a personalised way, and not through the medium of a formalised management structure. Thirdly, it is also independent in the sense that it does not form part of a larger enterprise and that the owner-managers should be free from outside control in making their principal decisions.¹⁰

1.11 The Bolton Committee indicated that only firms with 200 or fewer employees would meet their criteria.¹¹

1.12 Both these definitions suggest that the characteristics of a small business are contained in firms employing a certain number of people. This approach was adopted by the BIE which argued in *Finance for small business growth and development* (BIE, 1981) that "the characteristics normally associated with small business are found mainly in non-manufacturing firms employing fewer than 20 persons, and in manufacturing firms employing fewer than 100 persons." The BIE noted that this definition was now widely used.¹²

9. As quoted in *Report of the Committee on Small Business* June 1971, p16
10. Bolton Committee as quoted in submission from Mr G. Shailer, Transcript of Evidence, p 1774
11. Bolton Committee as reported in Williams, A.J.: op cit p 13
12. Transcript of Evidence, p 643

1.13 The Combined Central Regional Development Advisory Committee supported this view with its submission that the figure of fewer than 20 employees constituted a threshold between small and medium businesses:

From a structural ... or organisational point of view, business management changes when the number of employees exceeds approximately fifteen, with, for example, the creation of divisions or departments with middle managers within the organisation.¹³

1.14 Other evidence to the Committee questioned the adequacy of a single definition for small business. The Small Business Development Corporation of Western Australia believed that the generally accepted single definition covered too broad a range of firms to be "meaningful either in research activities or in policy development and program implementation."¹⁴ This view was echoed by Professor Geoffrey Meredith of the University of New England, who added that any attempt to apply a program to such a broad group is "doomed to failure."¹⁵

1.15 Consequently, it was proposed that a number of functional definitions could be adopted to more closely reflect the diversity of small business.

1.16 The Small Business Development Corporation of Western Australia suggested that a two category definition, composed of very small business and small business, would be more appropriate to the "real world of small business." In this definition:

1.17 A very small business is one which is -

- . independently owned and managed
- . maintains less than 5 individuals on its payroll

13. Transcript of Evidence, p 1485
14. Transcript of Evidence, p 1560
15. Transcript of Evidence, p 3341

1.18 A small business is one which is -

- . independently owned and managed
- . maintains between 5 and 19 individuals inclusive on its payroll¹⁶

1.19 Other submissions suggested that a further category could be added to this, that of non-employers (sole traders, tradesmen).¹⁷

1.20 Alternatively, a definition could be based on a more qualitative, rather than quantitative approach to small business. This approach would take into account the wide range of small enterprises. The definition would cover four categories:

- . the sector operating in the "cash economy" which has little impact on the nation as a whole other than providing employment opportunities and cash generation opportunities for many individuals
- . small enterprises typified by the single owner or sole proprietor who has little interest in "growth" such as the corner store or the single practitioner (for example painter or plumber) or others in the service or retail industry
- . small enterprises that employ a number of personnel and divide their operation into various departments, such as the operator at the local level selling cars (new and used) plus spare parts and providing services.
- . rapid growth entrepreneurial enterprises.¹⁸

1.21 The Committee notes this criticism of a single definition

16. Transcript of Evidence, p 1560-1

17. Transcript of Evidence, p 1777

18. Transcript of Evidence, p 3341

of small business. It considers that a major difficulty in formulating an adequate definition of small business lies in the diversity of the sector across the economy and the nature of the enterprise - be it a family business, self-employed tradesman, co-operative or entrepreneurial enterprise. In order to implement an effective policy of assistance to small business, the differing types and aspirations of small businesses need to be taken into account. However, the adoption of a number of differing functional definitions of small business would only confuse rather than clarify the issue. The use of a single definition establishes broad parameters within which more specific functional definitions can operate, according to the policy issue addressed. The BIE's definition establishes these parameters, but should be qualified to emphasise the managerial limitations of small business.

1.22 In evidence to the Committee, the Council of Small Business Organisations of Australia (COSBOA) stated that:

the crucial features of a small business are the nature of its decision making and the degree of financial exposure of its principals ... numbers (of employees) are not the important factor. It is the ability, capacity and mental approach of the proprietors which counts and these defy concise definition.¹⁹

1.23 This view was echoed by the Motor Traders Association of Australia, who submitted that "the first part of the definition adopted by the Wiltshire Committee is felt to be appropriate", but the addition of an employee size factor "leads to the number of employees becoming the basis for definition rather than merely a statement of qualification and clarification."²⁰

1.24 Recognition and understanding of the management structure of a small business is critical to the development of programs and policies to assist small business. Small businesses are not "just little big businesses, with small scale problems of the same kind as

19. Transcript of Evidence, p 1327

20. Transcript of Evidence, pp 766-7

those facing the larger organisations".²¹ Management style is fundamentally different, as shown in Professor Williams' study:

It is more impulsive than cautious. It is apt to be flexible, erratic and utterly dependent on its immediate resourcefulness. It knows few systems or procedures. Lines of authority and responsibility expand and contract, shift and waver around individual managers ... adaptability, flexibility and opportunism are the organisation's key to survival ... the organisation depends on the drive and resourcefulness of one man ... (The owner/manager) seldom delegates well. He seldom uses sophisticated systems and refined methods of control.²²

1.25 Any definition of small business should place due emphasis on the management style of small business.

1.26 Accordingly, the Committee concludes that a small business can be defined as:

- . being independently owned and managed
- . being closely controlled by owner/managers who also contribute most, if not all, of the operating capital
- . having the principal decision making functions resting with the owner/managers

1.27 This definition can be qualified by a size component, but the Committee wishes to emphasise that this qualification serves as a functional addition to the definition, and should not overshadow it.

1.28 The Committee further concludes that a small business is

21. Williams A.J., op cit, p 14

22. Ibid, p 15

one which employs up to:

- . 20 people in non-manufacturing industries, and
- . 100 people in manufacturing industries.

B. Research Needs

1.29 Establishing a definition for small business is merely the beginning. Extensive research is required in order to discover the importance of small business in the economy, the opportunities it provides and the difficulties it faces. Such research depends upon the collection of reliable and comprehensive data about small businesses.

B.1 A small business database

1.30 A substantial amount of comment was received during the course of the inquiry that Australia lacks an adequate database on small business.

1.31 Data concerning small business is currently gathered by a variety of bodies, at federal and State levels, as well as by private organisations. These data collections give researchers and policy makers an image of small business, but by no means a very clear picture.

1.32 Inadequacies in the collection and dissemination of data hamper the development of small business in two ways:

- . policy formation and consideration of issues affecting small business is based on a very small sample of small businesses, and
- . information to assist individual small businesses in establishment and growth is often too generalised to be considered of benefit by proprietors

1.33 The Committee views the lack of adequate data collection on small business with a great deal of concern, given that this forms the basis of any research program into this sector. It was pointed out to the Committee that the collection of basic data on small business can form the major part of any research project into these businesses, which consumes time and, more importantly, scarce funding.²³

1.34 The Canadian Government has encountered similar problems with a lack of data on small business. The Committee believes that the Canadian Government intended to address these problems by establishing a small business statistical data base. The proposed data base was to contain information which a company can use for planning, market research and inter-firm comparisons. The data base was to have information on the number, type and distribution of firms across Canada. It was to include total expenses to sales ratios, average values of inventory assets and liabilities, financial ratios and sources of funds.²⁴

1.35 One witness stated that there are two central problems in the collection of data from the small business sector:

One is that you will never get it from small business people ... (and) ... (t)he other is that there is no agency that systematically collects such data.²⁵

1.36 The publication by the Australian Bureau of Statistics (ABS) in 1988 of *Small Business in Australia 1983-84 to 1986-87* goes some way towards rectifying this situation. ABS data permits classification by industry size, location and organisational type but important areas of research into small business require data specific to firms. As well, the ABS has in the past concentrated on manufacturing enterprises which are not typical and make up only 5 or 6 per cent of the small business sector. Major

23. Transcript of Evidence, p 1813

24. Department of Industry, Science and Technology, Canada
Entrepreneurship and Small Business News Release 24.10.88

25. Transcript of Evidence, p 1813

groups such as services and wholesale/retail are not targets of regular data collection. The ABS has attempted to redress this problem with a retail census in 1985 - 1986 and a selected service census in 1986 - 1988 but the little analysis which can be performed is in jeopardy of being out of date.²⁶

1.37 The BIE commented that the statistics collected by the ABS, while useful for some purposes, do not by themselves allow analysis of some of the most frequently asked questions:

- . is there any pattern to small business failure
- . what factors determine success
- . are government support programs working
- . to what extent are small firms responsible for economic growth.²⁷

1.38 Not enough study has been done on small business management structures, knowledge skills or processes. Hence, in Australia, public policy to promote growth and development of the small business sector has been developed considerably faster than knowledge of small business. A major danger has been to assume that empirical results derived from the large enterprise sector apply to the small business sector. Small businesses have many significant differences from large enterprises other than simply those of scale.²⁸

1.39 The ABS indicated that the *Small Business in Australia* publication will continue to be produced up until at least 1992 on a bi-annual basis. The initial aim of the survey will be to provide a comprehensive register of small businesses, with the ultimate aim being to have a "full picture of (small) business in Australia."²⁹ The Committee believes that the publication has the

26. Transcript of Evidence, pp 1785-86

27. Transcript of Evidence, p 648

28. Transcript of Evidence, p 1789

29. Transcript of Evidence, p 2905

potential to form the basis of a national database on small business and commends the ABS for taking this initiative.

1.40 The Committee recommends that:

- . the Australian Bureau of Statistics continue to publish *Small Business in Australia* on an annual basis after 1992
- . the Department of Industry, Technology & Commerce in conjunction with the ABS examine the feasibility of establishing a small business data base similar to that proposed in Canada.

1.41 The second aspect of data collection brought to the attention of the Committee was the difficulty in obtaining data from small business people themselves. Evidence was given that the type of information being sought in an ABS survey was not readily accessible to small business people, and consequently their answers were, at best, guesstimates.³⁰

1.42 Additionally, small business owner/managers are often very conscious of their independence, and will resist anything they believe will interfere with that independence. A manifestation of this may be a suspicion or distrust of any individual or organisation seeking information on their activities.

1.43 This problem of data collection is further compounded by the need to gather information concerning the financial performance of small businesses. As this information is closely related to the income of business proprietors, the issue of invasion of privacy must be addressed by researchers.

1.44 The reliance on traditional methods of data collection - the use of survey forms - adds to the paperwork burden faced by small business proprietors, and there is no perceived benefit to them or their businesses from filling in yet another form. The

30. Transcript of Evidence, p 1785

Committee notes that the ABS has measures in place to minimise the impact of surveys on small business, by adopting procedures which try to minimise the number of forms that a business receives at any one time, and by limiting the number of questions applicable to smaller businesses.³¹

1.45 The reliance on survey forms as a principal means of collecting data from small businesses needs to be assessed in the light of the paperwork burden already faced by small business proprietors. The adoption of collection techniques more sympathetic to the time constraints faced by small business proprietors in attending to paperwork would facilitate the response of small business to surveys. The ABS is moving towards the use of sampling techniques to reduce the total number of businesses being surveyed, and the adoption of telephone surveys to eliminate the need for form filling.³² The ABS stated that it is developing a computer-assisted telephoning technique which would allow for the direct input of information into a data bank, eliminating the use of forms altogether.³³ The Committee considers that this is a major innovation in data collection, and welcomes the application of this technique to surveys of small business.

1.46 The Committee recommends that:

- . the Australian Bureau of Statistics develop personal interviewing techniques to enhance its ability to gather accurate information.

1.47 The Queensland Small Business Development Corporation indicated that a related problem in the area of data collection is that a significant amount of information about small businesses has been collected by various government agencies, both State and federal, but was inaccessible to researchers.³⁴ This was indirectly acknowledged by the ABS who indicated that their publication on small business in Australia had been compiled from existing

31. Transcript of Evidence, p 2907, 2909
32. Transcript of Evidence, p 2907, 2911
33. Transcript of Evidence, p 2911
34. Transcript of Evidence, p 860

records.35

1.48 The Committee considers that this large collection of raw data has the potential to be of immense use for research into small business, but remains sadly under-utilised.

B.2 Research funding

1.49 The problems of data collection highlight the lack of funding for research on small business, and the lack of a central research agency with a comprehensive research program on small business. Current research programs into small business are fragmented and uncoordinated, resulting in an unstructured overall research program. This situation is more a result of poor funding than lack of academic interest.

1.50 A major source of funding for research is provided through tertiary institutions. The Committee received evidence that the allocation of research funding does not favour programs concerning small business. Mr G. Shailer from Flinders University stated:

There has long been a general inequity in funding research in the economics and finance areas (as opposed to the physical sciences). Within economics and finance, there has been an enduring inequity in the allocation of research funds to the small business area.

1.51 The net effect of this scarcity of funding results in:

- . difficulty in attracting top quality researchers
- . limited scale of research activity
- . experimental research ignored or inaccessible
- . lack of advancement in specific research activities

and diminished levels of sophistication of such research.³⁶

1.52 Concern was expressed that this situation may be perpetuated with the Australian Research Council's exclusion of economics and finance as areas of national priority for research grants.³⁷ Evidence was given that the Research Council's funding decisions have not included small business research.³⁸

1.53 The Committee understands that the Australian Research Council is still in the process of developing the areas of priority, having already established five such areas.³⁹ Identifying these area is accomplished via a process of public consultation, currently by calling for submissions, and the Committee is led to believe that priority areas will be continually evaluated to ensure that the grants program responds to national needs.⁴⁰

1.54 Evidence indicated that few opportunities for funding research exist outside tertiary institutions, aside from some limited privately commissioned research.⁴¹

1.55 The Committee recommends that:

- . the Australian Research Council nominate small business as an area of national priority in determining the distribution of research funding

C. Small business policy formation

1.56 Small business policy at the federal level is formulated primarily through two bodies - the Small Business Council and the Department of Industry, Technology and Commerce.

36. Transcript of Evidence, p 1782

37. Ibid

38. Transcript of Evidence, p 1814

39. The Australian Research Council Awards 1989, Grants and Fellowships awarded in 1989; Department of Employment, Education and Training Research Policy & Grants Branch pp7-9

40. Ibid

41. Transcript of Evidence, p 1781

1.57 The Small Business Council was established in 1984 by the Minister for Industry, Technology and Commerce as one of eight high level industry advisory councils to the Government. It replaced a pre-existing Small Business Advisory Council.

The functions of the Council are to:

- provide a forum for regular consultation and communication on small business issues
- review conditions and prospects for small businesses with a view to identifying major development problems
- advise the Minister on policies which would minimise impediments to the establishment and development of small enterprises
- provide advice to the Minister on specific matters referred by him to the Council
- publish, subject to the approval of the Minister, the Council's findings and reports to stimulate public awareness and community debate on small business matters.⁴²

1.58 The principle means of gathering information to carry out its advisory role is to host round table discussions between the small business community and the Council.⁴³ This approach is considered to be of mutual benefit:

The participants provide 'grass roots' information which enhances the Council's ability to advise the Minister while the participants gain access to a Ministerial advisory body ... the participants often gain valuable information during the discussion which follows their presentation. Matters raised by

42. Transcript of Evidence, p 3115

43. Small Business Council Annual Report 1988-89, p 2

Round Table Discussion participants are taken up by the Council in the form of reports or advice to the Minister.⁴⁴

1.59 This information exchange is enhanced by the publication of reports and papers considered by Council.⁴⁵ Administrative support for the Council is provided by the Department of Industry, Technology and Commerce.

1.60 This consultative approach provides an opportunity for small business' concerns to be addressed at ministerial level. Additionally, the Council can assist the small business community to develop an understanding of the processes by which policy is formulated, and how government agencies implement policy programs.

1.61 The Department of Industry, Technology and Commerce, through the Small Business Unit and the National Industry Extension Service is the principle Commonwealth body responsible for the development and implementation of small business policy.⁴⁶

1.62 State-based Small Business Development Corporations are responsible for program delivery and the provision of direct services to small firms, such as counselling, referrals, education and training.⁴⁷

1.63 To facilitate co-ordination of program delivery between the States and the Commonwealth, the Commonwealth - State Small Business Working Party was formed in 1976. The Working Party monitors the joint Commonwealth - State small business assistance program, and provides a channel of communication to the policy development areas of government for the small business community.⁴⁸ Co-ordination of policy measures would be greatly assisted by regular meetings of State and Commonwealth Ministers responsible for small business matters. This would also serve to raise the profile of small business in the consideration of general economic or industry

44. Ibid

45. Ibid

46. Transcript of Evidence, p 1802

47. Transcript of Evidence, p 3118

48. Transcript of Evidence, p 3119

issues.

1.64 The Canadian Government has fostered greater co-operation at the federal and provincial level with regular meetings of the Ministers for Small Business. This is backed up by a committee of senior officials to formulate recommendations in a number of areas important to small business including financing, business management, services and technology transfer. Regional agencies have also been established to enable the federal Government to be more locally sensitive and help to develop economic approaches which are driven by local initiative.⁴⁹

1.65 The Committee recommends that:

- . a Commonwealth-State Ministerial Council be established to co-ordinate measures to assist the operations of small businesses throughout Australia and to examine the role of small business in the economy and the impact on small business of more general policy measures.

1.66 Additionally, small business interests are represented on a number of advisory bodies involved in the policy formulation process. These are the:

- . National Board for Employment, Education and Training
- . Economic Planning Advisory Council
- . Productivity Promotion Council of Australia
- . Technology Transfer Council
- . Australian Industry and Technology Council

49. Canadian Department of Industry, Science and Technology News Release *Entrepreneurship and Small Business*, 24 October 1988

- National Advisory Committee on Extension Services
- Management and Investment Companies Licensing Board

1.67 Essential to the policy development process is the research and analysis of issues affecting small business. This is provided by the Small Business Research Unit based in the Bureau of Industry Economics. The Unit annually publishes the Small Business Review, as well as providing specialist advice on particular issues.⁵⁰

1.68 The Commonwealth's approach to small business has two main elements:

- to provide the right business environment in which small businesses can be established and flourish
- to assist in developing internationally competitive firms. This includes initiatives to upgrade the competence of small and medium sized enterprises in areas such as business planning, new product and process design, adoption of new technology, quality management and human resource management.⁵¹

1.69 Those small businesses involved in export markets or regional or national markets are more specifically served by Commonwealth programs than are those which serve local markets.⁵² The majority of small businesses, however, are those which serve only local markets. These businesses, therefore, are affected mainly by initiatives adopted at Commonwealth level to foster a more favourable general business environment. The specific concerns of small business may not be fully taken into consideration compared with those of larger businesses, government agencies, and industry associations when developing overall industry and economic policy. The voice of small business in forums advising on general business and industry issues is not loud enough.

50. DITAC Annual Report, 1987-88, p 102

51. Transcript of Evidence, p 3109

52. Transcript of Evidence, p 3108

1.70 The principle problem affecting the formulation of policy for small business lies in the sheer diversity of small business, and the differing needs of small businesses in differing industries. These needs can be sometimes contradictory, and at odds with the overall economic aims of the Government. However, industry and economic policy obviously affects the business sector, and small business accounts for over 95% of that sector.⁵³ In view of the sheer size of the sector, the small business community should have a greater representation in the policy making process.

1.71 Small business representative agencies have been particularly critical of the representation of small business concerns in the policy formation process. The Council of Small Business Organisations of Australia (COSBOA) stated in its submission to the Committee that:

In the eyes of most policy makers, small business is a ghost. Its interests are, they believe, covered in concert with the larger operators in the vertically structured policy formulation processes which are traditional in Westminster governments ... Vertical or 'tree' decision making structures such as our ministerial portfolios address specifics more easily than they do generalised issues.⁵⁴

1.72 This view was reflected by other witnesses, who saw the policy making process paying only lip service to the real needs of small business:

There is seldom any shortage of platitudinous comment about the desirability of a healthy small business sector. Nor is there much shortage of calls of alarm about small business failure rates, the lack of assistance available to small business, and the burdens of the taxation system and bureaucratic demands on small business ...

53. Transcript of Evidence, p 3107

54. Transcript of Evidence, p 1323

Traditionally, small business 'policy' appears to have been largely (economically and politically) reactive. There appears to be little effort put into the process of policy formulation at either State or federal level. Certainly those policy formulation exercises that have become known have been somewhat unstructured.⁵⁵

1.73 Both these witnesses conceded that some improvement had been made with the rationalisation of Ministerial portfolios,⁵⁶ although it was still considered that the input to policy formulation did not reflect the importance of small business to the economy:

(W)e appear to have political commitment, several stimulatory mechanisms and increasing public awareness. From the outside of government, what appears to be missing is a centralised co-ordinating agency. Experience passed into or generated within the public sector which would benefit small business does not appear to accumulate. Departments appear unaware of the imposts of other departments or even of the collective effect of their own activities. In short, government has no small business memory.⁵⁷

1.74 The Committee considers that the consultative measures currently in place provide some access for small business into the policy making process. However, this input is limited to the industry policy areas, and does not extend into the domain of general economic policy formation.

1.75 The most important area of economic policy affecting small businesses is that of taxation. Throughout the inquiry witnesses decried the effect of taxation regulation on small businesses and the difficulties in obtaining advice to meet Taxation Office requirements. The Small Business Council met with senior members of

55. Transcript of Evidence, p 1790

56. Transcript of Evidence, pp 1802, 1323

57. Transcript of Evidence, p 1324

the Treasury Department and Australian Taxation Office to discuss possible reforms to the taxation system and its administration.⁵⁸ The Committee welcomes this move, but considers that the small business community should have an ongoing, formal input into the formation of taxation policy and reporting procedures.

1.76 The initiative adopted by the Taxation Commissioner to form an advisory panel is one means for small business to have a voice in this area. The Commissioner for Taxation has formed the Taxation Commissioner's Advisory Panel as a means of "better understanding the needs of business and the range of its particular circumstances".⁵⁹ The Committee understands that the membership of the Panel will consist of business, union, tax practitioners and taxpayer representatives.⁶⁰ Included in this membership is a representative from COSBOA.

1.77 In announcing this initiative, the Commissioner for Taxation, Mr Boucher, indicated that the group would "have a role in bringing forward issues of tax administration and in suggesting to me how they might be tackled."⁶¹ However, the qualification was added: "The group is likely to meet twice a year and discuss a wide range of taxation issues - although it will avoid tax policy, which ... is a matter for the Government."⁶²

1.78 It is the Committee's view that, while this initiative should be supported, the importance of small business to the economy warrants greater representation than a single member, representing the entire spectrum of small business, on the advisory panel.

1.79 The Committee considers that, while the profile of small business has been raised within government, this process needs to be continued, with small business considerations represented in both economic and industry policy forums. The agencies dealing with small business issues within government need to be strengthened to better represent and defend small business interests within the federal

58. Small Business Council Annual Report, 1988-89, p 4

59. Australian Financial Review, 20/2/89, p 10

60. Ibid

61. Ibid

62. Ibid

bureaucracy.

1.80 The Committee considers that the formation of a Commonwealth-State Ministerial Council, as previously recommended, would help raise the profile of small business issues within the Federal Government and the bureaucracy. This would be further assisted if the Government were to adopt the practice we believe is current in Canada of reporting annually to Parliament on the state of small business, the measures taken to assist small business and the Government's future proposals. This would also be of assistance to small business in the planning of their operations.

1.81 The Committee recommends that:

- . the responsible Federal Minister report annually to Parliament on the state of small business and the Government's intentions and priorities with regard to small business.

C.1 Commonwealth Government assistance for small business

1.82 In Australia, the focus of government policy on the small business sector at the federal level is a relatively recent phenomenon, beginning in 1976 with the establishment of a joint small business program with the States.⁶³

1.83 The program was, essentially, to provide management training booklets for small business. The States retained the basic responsibility of the delivery of the program through the setting up of small business agencies (where they did not already exist), and the Commonwealth agreed to assist with the provision of the training material.⁶⁴

1.84 Part of this program called for the establishment of a Small Business Bureau within (the now) Department of Industry, Technology and Commerce, a Small Business Advisory Council, chaired by the then Minister for Industry and Commerce and a

63. pers comm, Bureau of Industry Economics

64. pers comm, N. Bailey, DITAC

Commonwealth/State Small Business Working Party to act as advisory and co-ordination bodies for the implementation of the program.⁶⁵

1.85 Since the inception of this program the primary focus of government assistance to small business has been in the provision of management training assistance schemes, with other initiatives for small business being incorporated into broader policy development.

1.86 The trend of favouring small business within broader economic objectives has been followed by the Australian Government. Both Government and Opposition parties have adopted small business policies as part of their party platforms, and, at the federal level, small business has been accorded a place in a ministerial portfolio in both the Government and shadow ministries. However, the implementation of policies to assist small business has not achieved the results desired by the small business community.

1.87 COSBOA criticised the weighting given to small business under current administrative arrangements - the reduction in staffing levels of the small business bureau, and the "small business council established as an advisory body to a junior minister in one portfolio."⁶⁶ The Committee agrees that the importance of small business warrants improved representation.

1.88 COSBOA identified the major problem in attempting to deal with government departments as pinning down exactly which area of a given department could solve a problem affecting small business.⁶⁷ While departments have responsibility for policy and program issues, they are sometimes reluctant to acknowledge responsibility for considering the impact of that policy on a particular group such as small businesses.

1.89 As the majority of enterprises in the business sector are small businesses, greater cognizance should be taken of the views of this sector of the business community.

65. pers comm, N. Bailey DITAC

66. Transcript of Evidence, p 3227

67. Transcript of Evidence, p 3224

1.90 The recent formation within DITAC of a Small Business Unit to draw together the various sections of the Department in dealing with small business is a positive step. Given adequate resources, the Unit could not only co-ordinate policy and delivery of programs to the business sector, but could also work towards developing a 'small business consciousness' across industry and economic portfolios.

1.91 The Committee considers that the Unit's staffing levels should be at least equivalent to that of the now defunct Small Business Bureau at its peak, and it should be given a charter to establish liaison groups and more formal co-ordinating bodies as a means of establishing 'lines of communication' for small business concerns across portfolios. The Unit should also foster a greater understanding of small business by liaising with the Australian Bureau of Statistics, the Attorney-General's Office and the Australian Taxation Office to establish a Commonwealth small business database, utilising statistical records held by those departments which involve small business.

1.92 The Committee recommends that:

- the Department of Industry, Technology and Commerce increase the funding and staffing resources available to the Small Business Unit;
- the Small Business Unit establish a network of across portfolio liaison groups in Commonwealth industry, economic and welfare portfolios to generate a greater input of small business considerations into government policy formulation;
- the Small Business Unit establish a small business database centered on statistical collections already held by Commonwealth departments and agencies which include data about businesses; and
- all Commonwealth Departments nominate a point of contact on small business matters to facilitate

liaison with the Small Business Unit and to improve consideration of the impact of all government policies on the small business sector.

C.2 Information and advice

1.93 The two main kinds of policy measure usually proposed to assist small businesses are taxation relief and the provision of finance on favourable terms. However, the most widespread forms of assistance actually found in practice are forms of managerial assistance.⁶⁸ Since the beginning of assistance programs for the small business sector, the provision of information and advice for small businesses has been the central focus of these programs. The establishment of small business development agencies in each State has greatly enhanced the quality and quantity of advisory services available to small businesses. These services are constantly being upgraded.

1.94 The Committee is concerned that a great deal of the innovation in information and advisory services is being generated by the State agencies on an individual agency basis, rather than through an effort co-ordinated at the federal level. The Commonwealth focus appears to have progressively declined with the conscious decision by the Department of Industry, Technology and Commerce to disinvolve itself from small business management training and the Small Business Awards.

1.95 The Commonwealth should take a central role in the co-ordination and implementation of assistance programs for small business to prevent unnecessary duplication and wastage of resources, and facilitate a cross flow of information between the various small business assistance agencies.

68. Sheehan, W J *The Small Firms Sector - Some Issues of Public Policy*; Discussion Paper No.11 Department of Economics, University of Newcastle, May 1980, p 15

D. The National Small Business Foundation

1.96 The Small Business Council, in 1988, adopted a proposal for the establishment of a National Small Business Foundation to assist small business.

1.97 Among the proposed aims of the Foundation are:

- . to promote and develop the interests of small business in Australia
- . to carry out research, solely or in conjunction with other bodies, into reasons for successes or failures of small businesses, and to establish criteria for the success of a small business.
- . to operate in conjunction with accredited schools, technical and tertiary colleges and institutions and professional bodies, to apply its research to formulate practical programmes to reduce the small business failure rate
- . to develop educational programs relating to small business to increase the small business success rate
- . to develop means to monitor the results of its programmes
- . to advise governments, both State and federal, on matters and policies relating to small business
- . to develop programmes to foster awareness in the community of the importance of small business in the Australian economy.⁶⁹

1.98 The Committee endorses this proposal, as it believes that

69. Discussion paper No. 2 *Small Business Foundation*, paper prepared for the 18th meeting of the Small Business Council, 13 October 1988, p 26

such a foundation would be able to unite the disparate elements of small business into a single voice to express the views of small business. The Committee considers that the Foundation could take a central role in the development of a comprehensive research program, and in the co-ordination of the allocation of resources towards this program.

1.99 The Committee recommends that:

- . a National Foundation for Small Business be established with the aims of building a national small business database (in consultation with the Small Business Unit in the Department of Industry, Technology and Commerce) and promoting: research into small business; awareness of small business and the interests of small business in Australia.

1.100 The Committee understands that the Small Business Council intends the Foundation to be funded independently of the Federal Government although the Government will be approached to contribute to an initial Foundation Fund, in conjunction with industry, small business and interested persons.⁷⁰ The Committee notes that the Federal Government has provided funds to allow a development study to be conducted, with the aim of producing guidelines for the formation of the Foundation. The Government should further support the Foundation by contributing to the Foundation Fund. The sum should be sufficient to demonstrate the Government's commitment to the Foundation, and attract private sponsorship. The Committee endorses the Small Business Council's intention that the Foundation have no further funding input from the Government, and consequently believes that this sum should be a one-off grant.

1.101 The Committee recommends that:

- . a one-off grant of \$500 000 be provided to the National Small Business Foundation Fund to assist

70. Ibid

with its initial development.

E. Fragmentation of small business

1.102 The sheer diversity of the small business sector works against the possibility of a single agency representing all the views of small businesses.

1.103 Reasons for this diversity were outlined by COSBOA:

Small business is, and always will be, less organised in the lobbying sense than big business. Its grass roots are individualists, suspicious of bureaucrats, profit orientated and concerned more with surviving the present quarter than seeking to influence policy for the following year.

The sector expresses itself quite well to government, but usually on specific issues through a multitude of small associations. Because of its nature the sector has, and always will have, difficulty centralising sufficient resources to extract and present a clear picture to government.⁷¹

1.104 Polarisation of the small business community also results from a perceived lack of influence of the peak organisations. Many individuals therefore feel that more can be achieved by directing their energies into their industry specific organisations.⁷²

1.105 At the time of giving evidence to the Committee, COSBOA stated that it represented:

the opinions of about 85,000 small businesses through 110 State organisations to its 18 National Council Members. It speaks with confidence, therefore, on behalf of some 170,000 working

71. Transcript of Evidence, p 1330

72. Transcript of Evidence, p 3230

proprietors ... 73

1.106 COSBOA called for government to recognise the specific needs of small business. The other major small business peak body, the Australian Small Business Association (ASBA) expressed quite a different view:

While the Australian Small Business Association supports the initiative to hold an inquiry into the problems facing small business in Australia, we believe it would be an error for the difficulties facing business proprietors to be placed in some special category and isolated from the entire business sector - small, medium or large businesses alike ... ASBA believes that the inquiry ought to address its attention to the broad issues of the business environment and that the recommendations for change ought to be in terms of removing barriers to dynamic growth and expansion of the entire business sector.⁷⁴

1.107 This divergence of opinion about the need for policies developed specifically for small business by two associations claiming to represent the interests of small business at a national level is symptomatic of the fragmented nature of the small business community itself.

1.108 Coupled with a National Small Business Foundation concentrating on research and education, a single peak body would be able to more effectively present the opinions of, and argue the case for, small business when dealing with government, at federal, State and local level. While the impetus for this body should come from the small business community, the Committee realises that the lack of resources available to small business organisations may hinder the formation of such a body. The Committee, therefore, believes that the Government can play a role in the formation of such a body by organising and hosting a conference of small business

73. Transcript of Evidence, p 1317

74. Transcript of Evidence, p 141

associations with the aim of the conference being the formation of a national representative body of small business.

1.109 The Committee recommends that:

- the Small Business Unit of the Department of Industry, Technology and Commerce organise and host a conference of small business associations with the aim of forming a national representative body of small business.

CHAPTER 2

CONTRIBUTION OF SMALL BUSINESS TO THE ECONOMY
AND ASPECTS OF SMALL BUSINESS GROWTH AND CLOSURE

A. THE CONTRIBUTION OF SMALL BUSINESS

A.1 - Employment generation

A.2 - Innovation

A.3 - The culture of small business - independence and the
entrepreneurial spirit

A.4 - Other less tangible benefits

B. KEYS TO SMALL BUSINESS GROWTH

B.1 - Marketing

B.2 - Finance

B.3 - The growth of a small business

C. SMALL BUSINESS FAILURES/CLOSURES

CHAPTER 2

CONTRIBUTION OF SMALL BUSINESS TO THE ECONOMY
AND ASPECTS OF SMALL BUSINESS GROWTH AND CLOSURE

A. The contribution of small business

2.1 The adjective 'small' in the term 'small business' is, in a sense, an unfortunate one. It can carry connotations of 'insignificance', or 'being inconsequential'. Nothing could be further from the truth. The debate on the role of government assistance to small business hinges on the nature of the contribution which small business makes to the country's economic and social well being. The precise contribution of small business to Australia may be difficult to quantify but it is undoubtedly very substantial.

2.2 A Victorian study of growing firms in 1987 concluded that the full impact of small business on economic growth, the level of employment and the standard of living was not understood by government, the business advisory sector or the general public. The study considered this lack of understanding limited the provision of services and advice to assist small manufacturing enterprises. The climate of opinion concerning small business needed to change and the delivery of services and implementation of initiatives needed to be co-ordinated into an assistance program designed specifically for small business.⁷⁵

2.3 The Small Business Combined Association of NSW expressed concern about an absence of a genuine and tangible recognition of the importance of small business in the economy, particularly by the federal Government. As the Association stated, small and large businesses play a complementary role in the economic environment in Australia. One cannot survive without the other and it follows that the success of large commercial enterprises is dependent on the

75. Department of Industry, Technology and Resources Victoria, *Major Determinants of Small Business Growth*, Consultants Study, September 1987, Vol 1, p 3

formulation of policies aimed at ensuring the growth, viability and profitability of the small business sector.⁷⁶ Small businesses are indeed the 'seed corn' from which large businesses grow.⁷⁷

2.4 There are an estimated 750 000 small businesses in Australia - some 600 000 of which are 'non-farm' businesses. Small businesses account for 96 per cent of all firms, half of all private sector employment and a third of all employment in Australia.⁷⁸ Firm estimates of the contribution of small business to Gross Domestic Product (GDP) in Australia cannot be made, but it may be very approximately a bit less than 30 per cent.⁷⁹ More information exists concerning the role small businesses play in providing employment.

A.1 Employment generation

2.5 The following tables present a static picture of employment provided by small firms in Australia in 1986-87.

76. Small Business Combined Association of NSW Submission, p 2

77. Department of Industry, Technology and Resources Victoria,
Major Determinants of Small Business Growth, Consultants
Study, Vol 1, p 7

78. Transcript of Evidence, p 644

79. Transcript of Evidence, p 645

TABLE 2.1

Non-farm Employment in Small Firms by State, Australia 1986-87^a

	Employed Persons ^b		Small firms' share %	
	Small firms ^c '000	Total '000	of private sector employment	of total employment
New South Wales	788.4	1651.4	48	33
Victoria	608.6	1326.2	46	32
Queensland	361.3	690.1	52	30
Western Australia	222.4	448.2	50	34
South Australia	186.4	386.7	48	31
Tasmania	56.6	114.4	49	30
Australian Capital Territory	30.2	58.5	52	24
Northern Territory	16.8	40.9	41	24
Australia	2272.1	4716.5	48	33

Source: ABS, 'Small Business in Australia: 1983-84 to 1986-87', September 1988, Catalogue No. 1321.0.

Notes:

- a The average of estimates for the middle month for the four quarters of 1986-87.
- b Includes self-employed.
- c Firms employing fewer than 100 people in manufacturing, and fewer than 20 people in other industries.

TABLE 2.2

Employment in Small Non-farm Private Sector Enterprises,
Australia, 1986-87^a

	Persons employed		
	Small firms ^b '000	All '000	Small firm share of all private sector employment %
Mining	7.7	81.0	10
Manufacturing	437.3	1054.7	41
Construction	279.3	381.4	73
Wholesale trade	174.7	410.7	43
Retail trade	518.5	947.0	55
Transport and storage	118.5	211.3	56
Community services	173.9	481.6	36
Finance, property and business services	295.3	660.2	45
Recreation, personal and other services	264.1	479.6	55
Total	2272.1	4716.5	48

Source: ABS, 'Small Business in Australia: 1983-84 to 1986-87',
September 1988, Catalogue No. 1321.0.

Notes:

- a The average of estimates for the middle month for the four quarters of 1986-87.
- b Firms with fewer than 100 employees in manufacturing, and fewer than 20 in other industries.
- c Includes the Electricity, Gas and Water, and Communication industries.

2.6 It can be seen that small businesses provide a large share of employment in the construction, retail, transport and storage, and recreational, personal and other service industries - between 55 and 73 per cent. Total employment in the agricultural sector (agriculture and services to agriculture) as of November 1987 was estimated at over 380 000. This is not divided into "small firms"

and others.⁸⁰

2.7 There is insufficient information available to describe in detail how the picture may be changing over time.

2.8 Employment increased most in large firms, government departments and agencies between 1974 and 1983.⁸¹ However, unpublished ABS statistics indicate that 90 per cent of job creation between 1983 and 1987 occurred in service industries in firms employing between 20 and 100 people.⁸²

2.9 The small business sector abounds with different forms of employment. There are subcontractors, self-employed, family helpers, casual employees, part-time employees, outworkers or home-working employees and people holding simultaneous jobs in both the large and small sectors. The extent of small business employment creation may be understated in official figures owing to the complexity of the task of adequately covering all forms of employment, especially clandestine and atypical employment.

2.10 The small business sector tends to have lower qualification requirements, less unionisation and lower pay. This can provide greater labour market access to groups which are under-represented or excluded from other sources of employment. Growing female participation rates and an increasing preference for part-time employment will boost the supply of labour to small business. On the demand side, the growth of sub-contracting will provide more employment opportunities in small business. Evidence was given that sub-contracting, once confined to the building and construction sector, may be increasing rapidly in Australia and overseas as large firms reduce overheads and privatisation of public sector activities takes place.

2.11 Self-employment has been the fastest growing type of employment in Australia over the last decade. By adding the number

80. Australian Bureau of Statistics, *The Labour Force in Australia* November 1987 Catalogue No 6203.0

81. EPAC, *Some Features of Small Business and its Policy Environment*, February 1986, p 9

82. Transcript of Evidence, p 647

of self-employed and unpaid family helpers to estimates for the number of small business employees the total employment contribution of the small business sector becomes considerable.

2.12 It was also suggested in evidence that self-employment numbers may be understated as much small business is conducted "on a part-time and casual basis by individuals classified as employees for other enterprises or who are outside the labour force".⁸³

A.2 Innovation

Innovation is the introduction of a new or improved product, process or material based on new or existing technology.⁸⁴

2.13 Kennedy and Healy point out that the contribution of small firms to technological knowledge or innovation was believed until about the mid 1970s to be quite limited.

The limited resources and managerial expertise of small firms was thought to be insufficient to sustain an effective R & D programme, especially one employing highly qualified technicians, engineers or scientists and using expensive equipment. The costs of developing new products up to the point of commercialisation and successful marketing tend to be high particularly with no guarantee of 'breaking even' in the initial years following a product launch.⁸⁵

2.14 A revised assessment of the role of small firms is that they may be "particularly innovative in certain product sectors" where increasing economies of scale are not present or are not crucial to a competitive advantage. Small firms arguably respond more quickly to the market or to new technology as a result of their

83. Burgess J., *Small Business Sector and the Secondary Labour Market*, Newcastle University, Department of Economics 1988, p 3-7

84. Transcript of Evidence, p 651

85. Kennedy K. & Healy T., *Small Scale Manufacturing in Ireland* Economic and Social Research Institute, November 1985, p 34

vulnerability. The large turn-over rate of small firms may in fact be a mechanism for industrial change.⁸⁶ Studies in the 1960s pointed out the major role of individual inventors and small companies in making important inventions, although not so much in developing them.⁸⁷

2.15 The contribution of innovative small firms tends to be greatest in the early stage of the development of an industry "when technological development is rapid ... and the key to competitive success lies in non-price factors", such as flexibility in equipment use and individual labour skills. In industries which have matured, product success becomes more crucially dependent on price factors. "Products become increasingly standardised and mass production is more efficient (L)arger firms are the main contributors to innovation" which takes the form of technical improvements in the process of production.⁸⁸ The strong linkages between large and small firms which promote innovation have been pointed out in studies of the United Kingdom, the United States and Japan.⁸⁹

2.16 The translation of new ideas into commercially viable innovations requires resources which are usually available only to larger corporations. Research and development tends to require large, discrete investment. Given the scarce financial resources of most small firms there is usually a minimum threshold below which a research and development program to foster innovation is unlikely to yield useful results.

2.17 Government innovation policy in the United Kingdom is concentrated in areas where research is necessary before commercial products can be developed or where the benefits of research would be widespread. Grants are made for up to 50 per cent of the cost of an agreed project. The British Technology Group promotes the development and commercial use of new technology arising from research at UK public sector sources. The group licences new scientific and engineering products to industry and provides finance

86. Ibid

87. OECD study quoted in Kennedy, K. & Healy, T. op.cit., p 35

88. Ibid, pp 36 & 37

89. Ibid, p 37

for the development of new technology. In the United Kingdom the introduction of innovation grants for small firms with fewer than 25 people was foreshadowed in March 1989. There are, as well, a number of innovation centres with local authority support to help individual inventors and small firms with an innovative idea.⁹⁰ Australia could benefit from a study of such initiatives and their potential.

2.18 The Committee concluded that small firms make a significant contribution to the innovation process and government should ensure that policies which are in place such as Innovation Centres, GIRD grants and the National Industry Extension Service are continued and properly resourced.

A.3 The culture of small business - independence and the entrepreneurial spirit

2.19 Why stay in small business with all its attendant problems? One witness summed up the general opinion when he said:

First of all it is free. I am entitled to come and say to anyone I wish the sorts of things that I have said today. I have a degree of freedom which transcends working for a living for someone else. Second, my business is an honourable pursuit which gives me some sort of enjoyment and I really enjoy doing some of the things. I like the fight, I like doing what I am doing.⁹¹

2.20 The typical small business is directly managed by owners who take nearly all the important decisions and probably oversee their execution as well. A UK survey found 85 per cent of small businesses are controlled and managed by one or two people and usually one. Only in slightly larger firms is there a subordinate managerial structure and even delegation of specific functions such

90. UK Department of Employment, Small Firms & Tourism Report
March 1989 p 5

91. Transcript of Evidence, p 70

as marketing is rare.⁹²

2.21 Mr Connell from the Australian Chamber of Manufactures remarked to the Committee that small business people will continue in some cases to hold on to a declining business because of the independence that it gives them. He added that a lot of small business people are non-joiners. They do not join their business associations making it extremely difficult to communicate with them and to develop marketing and training programs or provide government business advice programs.⁹³

2.22 There may well be a link between the desire for independence, or perhaps leadership, and the entrepreneurial spirit. Entrepreneurs are highly motivated individuals who demonstrate initiative, drive and energy to achieve specific goals. They exist not only as owners of small business but also in large private enterprises, government and service sectors.

2.23 Small businesses are the vehicle for entrepreneurial activity in that people can develop a hobby or interest into a business opportunity. Employed trades people or executives of larger companies can establish a business of their own. Small business people may come from a wide diversity of backgrounds but all have a very strong motive for independence.⁹⁴

2.24 The strong sense of independence of small business operators may become a growth hurdle. As one witness put it: "The proprietor still wants to make all the decisions and do everything from pressing the button in the morning which turns the machine on".⁹⁵ Once the business reaches the size of perhaps 15 to 20 employees, more specialisation in roles is required. If the proprietor is unwilling to delegate responsibility, the business may grow but it will not be running efficiently.⁹⁶

92. Williams P. *What is the Problem of Small Business?*
Committee for Economic Development of Australia, February
1984, p 10

93. Transcript of Evidence, p 1958

94. Transcript of Evidence, p 1916

95. Transcript of Evidence, p 1954

96. Transcript of Evidence, p 1953

2.25 The National Industry Extension Service supports programs such as Enterprise Workshops and Centres for the Development of Entrepreneurs. These programs assist men and women in the preparation of business plans. Many small businesses have been established as a consequence of these programs and the Committee supports their continuation.

A.4 Other less tangible benefits of small business

Small businesses provide the foundation from which larger companies grow. They are often suppliers to larger companies and can fill niche markets which are too small for larger companies to bother filling. Small businesses can provide competition for larger ones leading to improvements in product, quality and price.⁹⁷

2.26 The existence of a healthy small business sector preserves some very desirable economic features. Flexibility is important in meeting the requirements of individual customers in many industries. A close working relationship between the manufacturer and the customer can be vital and this is something small businesses can be particularly good at providing. The emergence of local markets assists in the establishment and the survival of small firms. This can lead to a greater variety of products available for consumption.⁹⁸

2.27 In large firms there can be a lack of contact between the shop floor and management. In small businesses employers often work on the shop floor. There is no middle level of management through whom discussions must be filtered. There also tend to be less specialised production techniques so employees are more involved in the whole output process.⁹⁹ This can provide much greater job

97. Transcript of Evidence, p 1913

98. Sheehan, W. *The Small Sector - Some Issues of Public Policy*, University of Newcastle, Discussion Paper No. 11 1980 p 11

99. Sheehan, W. *The Small Sector - Some Issues of Public Policy* University of Newcastle, Discussion Paper No. 11 1980 p 11

satisfaction for all concerned.

B. Keys to small business growth

2.28 A survey of growing firms in Victoria in 1987 found that knowledge of the product market was essential for the growth of small firms. This required a detailed knowledge of customers' needs and a capability to provide personalised service. This allowed them to compete effectively against larger firms in specialised markets. Technology and production in these firms was found to be up to date but not necessarily at the 'leading edge'. "Cost efficiencies were achieved by clever modifications to equipment and scheduling". Processes had a high degree of flexibility to respond to changed customer needs.

2.29 The firms all possessed an entrepreneurial orientation. "The drive, determination and implementation skills of the owner-managers of growth firms were of major importance to growth performance." In almost all cases the owner-managers had an extensive background in the products and processes of their industry. In regard to management controls a major determinant of growth involved informal planning and 'finger on the pulse control'. More formal systems were apparent for firms in the mature phase of growth.

2.30 The study found that "external factors featured less prominently in explaining the performance of growth firms". The growth firms were "relatively insensitive to general economic trends because of their ability to anticipate and adapt their scale of operations".¹⁰⁰

2.31 The above study supported many of the opinions of the Australian Chamber of Manufactures concerning the strengths of small businesses. The concentrated ownership of small businesses means "owners may be satisfied with low initial returns and be prepared to

100. Department of Industry, Technology and Resources, Victoria, *Major Determinants of Small Business Growth Consultants Study*, Sept 1987, Vol 1, pp 1-2

plough back substantial funds to their businesses".¹⁰¹

B.1 Marketing

2.32 The Bolton report in the United Kingdom in 1971 classified small firms into three categories in regard to marketing. Those termed 'satellites' have one main customer and are commonly found in sub-contracting activities. 'Specialists' are those small firms performing functions which large firms find uneconomic. 'Marketeers' directly compete with large firms and make up the bulk of small firms.¹⁰²

2.33 Small businesses often fill a market niche where they are supplying a personalised product or a local geographical area. In a local market they may have an advantage over more remote, larger competitors faced with higher transport or communications costs. Small businesses can also have an advantage over larger competitors if the product they supply is highly specialised to the individual customer or where design, high quality, or after-sales service are important. On the other hand small firms can find themselves at a distinct disadvantage in supplying export markets.¹⁰³

B.2 Finance

2.34 The need for adequate finance to enable small business growth is quite apparent. The difficulties that small businesses face in raising finances have been widely noted. They are often seen as high risk enterprises, with little security to offer as collateral. Lending institutions, if willing to lend at all, will most likely demand high interest rates to compensate for the perceived risk. A stock market float in order to raise capital is rarely an option for small firms.

2.35 A small firm attempting to grow may not yet have reached the stage of having a steady flow of reliable orders and receipts, making regular loan repayments difficult to meet. At the same time

101. Transcript of Evidence, p 1913

102. Kennedy, K. & Healy, T. op cit, p 39

103. Ibid, p 40

it may be crucial to the firm's survival to increase its size. An increase in interest rates, due to a rise in the inflation rate often results in loan repayments reaching a crippling level.¹⁰⁴

2.36 The issue of finance for small business is dealt with in greater depth elsewhere in this report.

B.3 The growth of a small business

2.37 Small businesses go through a series of stages as they grow. Professor Alan Gibb of Durham University Business School has separated 10 growth phases, not all of which are listed here. Following the start-up phase, are micro-businesses which have ten or fewer employees. These make up possibly 80 per cent of all UK small businesses. The next stage consists of businesses with an owner manager and up to 50 employees. These businesses are dominated by the owner manager and characteristically do not have a full management team. Their product or market range is usually limited and they experience time and resource problems. Firms at this stage can be segmented into 'survivors, maintainers and growers'.¹⁰⁵

2.38 Businesses at the next stage of development have a management team and are "more likely to have borrowed money from banks (or) taken equity". They have had experience of a variety of products and markets. They employ up to 150 or 200 employees.¹⁰⁶

2.39 At the next stage of growth are "threshold businesses" which have the potential to be a target for takeover. These firms are in a position for the owner to realise his wealth and withdraw.

2.40 Gibb describes the next stage (stage 10) as 'intrapreneuring'. This is "associated with large company attempts at spin offs, new ventures within the company, decentralisation or disaggregation, and attempts to get managers to behave more

104. Ibid, pp 43-45

105. Gibb A. *Brief Review of UK Enterprise/Entrepreneurship Small Business Situation*, Durham University Business School, January 1988, p 2

106. Ibid p 3

entrepreneurially and take more risks".¹⁰⁷ It is an example of large companies building links with small companies.

2.41 As Gibb points out it is important for those developing government policy for small business to be aware of the different stages through which small businesses pass as they grow, since the needs of small businesses vary from stage to stage.¹⁰⁸ Only by examining the needs at different growth stages can government ensure that its policies are consistent with a healthy small business sector.

2.42 The Australian Chamber of Manufactures gave evidence that one of the biggest obstacles to growth in Australia is a shortage of skilled labour. "Small companies in particular suffer because they do not have the internal training infrastructure and they cannot solve their problems by internal promotion. They have to recruit from outside and have problems getting critical skilled people in some of the skilled trades areas and some professional areas as well".¹⁰⁹

2.43 Small businesses often cannot afford computerised systems or additional staff to assist with regulatory requirements. The result is that small businesses often cannot grow past the middle growth phase and in not growing face difficulties possibly leading to bankruptcy. Small businesses are not sufficiently considered when laws and regulations are drafted and not consulted about the practical effects of decisions on their operations. Small businesses may choose not to expand because of the disincentive of extra work needed to meet government regulations and the inadequate reward for the extra risks involved and additional labour costs. There may also be a perception of reduced control over one's destiny that tends to come with increased size.¹¹⁰

2.44 Unfortunately many small businesses do not recognise or adjust to changes in their stage of growth. As one witness put it

107. Ibid

108. Ibid, p 4

109. Transcript of Evidence, p 1962

110. Transcript of Evidence, p 51

such businesses continue to operate with their "filing cabinet in their front pocket" long after it has ceased to be appropriate. Invariably they suffer strains of growth and cash flow problems. By the time they seek advice they may be at the point of collapse.¹¹¹

2.45 The Committee recommends that:

- . the Department of Industry, Technology and Commerce, in developing industry profiles, examine the particular needs of small businesses in different stages of growth and tailor policies accordingly.

C. Small business failures/closures

Like business starts, business failures and dissolutions play a role in accommodating changing tastes and preferences, changing technologies and relocations of both populations and commercial centres.¹¹²

2.46 The high incidence of small business failures is often seen as a serious waste of resources and consequently government has evolved a number of programs in an attempt to reduce the number of failures. The high failure rate - or more correctly closure rate, since not all closures are failures - in part reflects the ease of entry of new businesses into most industries. The high closure rate may, to an extent, be the price to be paid for the dynamism and vitality which small business contributes to the economy.

2.47 The BIE stated that the only way to ensure significantly reduced failure rates would be both economically inefficient and politically unacceptable. This would involve "restricting entry by means of licensing on the basis of the demonstrated viability of the new entrant and the capacity for existing firms to withstand extra

111. Transcript of Evidence, p 1684

112. *The Annual Report on Small Business and Competition*
US Small Business Administration, 1985, p 87

competition".¹¹³ Policies aimed simply at reducing failure rates for existing firms would also be likely to encourage new entrants with less experience and a higher propensity to fail.

2.48 The BIE asked whether the concern about the failure rate in small business is justified. There is, after all, considerable stability in the estimated proportion of enterprises which are small. This indicates that for every failure a new small business is established in addition to growth commensurate with the economy. There are human and economic costs associated with small business failure but there are also benefits arising from the elimination of less successful firms which make room for new entrants with fresh ideas. In general the community benefits if entrepreneurs are willing to invest in risky projects and by definition some of these projects will always fail. People who fail in one business venture may learn from their mistakes in future ventures. Nevertheless, there is a case for government adopting policies to improve the internal efficiency of small business where it does not prop up inherently inefficient firms.¹¹⁴

2.49 The alternative view was also put that the higher failure rate in small businesses should be of major concern to policy makers. "The risk of failure affects the attitudes of debt providers through collection costs, interest and capital losses and should be of concern to anybody interested in the efficient allocation and use of national finances and human resources".¹¹⁵

2.50 The entrepreneurial role of small business is widely acclaimed and well appreciated by most observers. This entrepreneurial activity must necessarily lead to consistently high failure rates. It is the nature of small business enterprise to take risks and to be at the forefront of commercial development which is more prone to adversity.

Small businesses are often established to service narrowly identified niches in the market place.

113. Transcript of Evidence, p 661
114. Transcript of Evidence, p 664
115. Transcript of Evidence, p 1789

This is in contrast to larger enterprises who can achieve a degree of diversification. As a result of such an environment small businesses are prone to commercial downturns within their sphere of operations even when such downturns may go generally unnoticed by other business or industry sectors.¹¹⁶

2.51 ABS statistics do not provide any analysis of small business failures.¹¹⁷ Reliable and comprehensive information on small business failures does not exist and would be costly to obtain. The problem relates to the lack of notification to relevant authorities. This is further blurred by actions to 'bail out' before actual measurable failure (e.g. bankruptcy); and difficulties in distinguishing between voluntary and forced liquidations and different types of liquidation such as the death of the owner, disposal following success or failure or for personal reasons.

2.52 Williams in a longitudinal study on small business found most failures tend to occur within the first few years of a firm's operation. Williams' data indicate that a new small business has an approximate probability of surviving for six months of 82 per cent; a 68 per cent probability of surviving for six years; 52 per cent for two years; 39 per cent for three years; 32 per cent for four years; 27 per cent for five years and 8 per cent for ten years. These probabilities vary between industries (see Table 2.3) being lower in retailing and services and higher in manufacturing, wholesaling and primary industries.¹¹⁸

116. Transcript of Evidence, p 1791.

117. Transcript of Evidence, p 648

118. Williams A.J., op cit, p 10

TABLE 2.3

(Extracted from Williams, J. op. cit)

SURVIVORS AND FAILURES, BY INDUSTRY (ASIC) DIVISIONS, JANUARY 1973
TO DECEMBER 1987

ASIC Divisions	Failures	Survivors	Rank	Total Startups
Primary	311 (.720)	121 (.280)	3	432 (.031)
Manufacturing	1 465 (.599)	979 (.401)	1	2 444 (.177)
Wholesaling	952 (.716)	377 (.284)	2	1 329 (.097)
Retailing	3 875 (.784)	1 067 (.216)	5	4 942 (.359)
Services	3 591 (.775)	1 042 (.225)	4	4 633 (.336)
Totals	10 194 (.740)	3 586 (.260)		13 780 (1.000)

Figures in brackets represent the proportion of the numbers included in the study.

2.53 Williams also found geographic location (Table 2.4) had an effect on survival with small enterprises in the two territories having a higher probability of surviving and those in New South Wales and Victoria having the lowest probability.

TABLE 2.4

(Extracted from Williams, J. op. cit)

SURVIVORS AND FAILURES, BY STATE/TERRITORY, JANUARY 1973 TO
DECEMBER 1987

State/ Territory	Failures	Survivors	Total Startups
New South Wales	2 772 (.759)	880 (.241)	3 652 (.265)
Victoria	2 243 (.764)	692 (.236)	2 935 (.213)
Western Australia	2 029 (.732)	744 (.268)	2 773 (.201)
Queensland	1 451 (.711)	591 (.289)	2 042 (.148)
South Australia	1 363 (.720)	531 (.280)	1 894 (.137)
Tasmania	209 (.706)	87 (.294)	296 (.022)
Australian Capital Territory	80 (.684)	37 (.316)	117 (.009)
Northern Territory	47 (.662)	24 (.228)	71 (.005)
Totals	10 194 (.740)	3 586 (.260)	13 780 (1.000)

Figures in brackets represent the proportion of the numbers included in the study.

Firm size (Table 2.5) was a determinant in the firm's probability of surviving with smaller firms having a low probability of surviving.

TABLE 2.5

(Extracted from Williams, J. op. cit)

SURVIVORS AND FAILURES, BY START-UP SIZE (OWNER/MANAGERS AND FIRM
TOTAL EMPLOYEES (F.T.E. EMPLOYEES)), JANUARY 1973 TO DECEMBER
1987

Owner/manager & F.T.E. employees	Failures	Survivors	Total Startups
1 to 5	8 015 (.745)	2 744 (.255)	10 759 (.781)
6 to 10	1 632 (.733)	594 (.267)	2 226 (.161)
11 to 15	427 (.708)	176 (.292)	603 (.044)
Over 15	120 (.625)	72 (.375)	192 (.014)
Totals	10 194 (.740)	3 586 (.260)	13 780 (1.000)

Figures in brackets represent the proportion of numbers included in the study.

(Williams, J. *Small business as a Job Creator: A longitudinal study in Australia 1973-1987* pp 10-12)

2.54 In qualitative terms it is widely agreed that major causes of small business failure are: a lack of management skills on the part of the owner operator; insufficient finance; and often a failure to take advantage of assistance programs provided by government and private bodies.¹¹⁹

2.55 There is no doubt that business cycles, interest rates, government legislation and the taxation regime have some impact upon the survival rates of people in small business. The Small Business Corporation of South Australia argued however, that "direct causes of failure are essentially due to factors within the control of the small business person. Of particular concern

119. Transcript of Evidence, p 663

was the need to improve management comprehension and skill".¹²⁰Th Corporation submitted that 75 per cent of small business owners have never studied or been trained beyond year 12 at high school. Concepts of business management and control are largely unknown to them and their crucial importance remains unrecognised.

2.56 This leads to owner managers starting businesses without adequate planning in marketing, sales and capital requirements. The business venture starts dangerously undercapitalised and highly geared. Customers don't 'beat a path to their door' and establishment is slow putting further strains upon an initially inadequate capital structure. The owner manager is 'flying blind'. If he survives the first fiscal year he is often confronted with accounting records and statements required for taxation purposes. Data for ongoing planning and control purposes was frequently not seen as necessary. In insolvency cases it was noted that in over 80 per cent of the cases, management accounting records were not available or were inadequate.¹²¹

2.57 If the entity survives the first three years 'establishment' phase, they reach a second 'liquidity crisis' as the business enters a 'growth' phase. The business may be profitable, but cash generated cannot fund the 'growth' phase - the difference between book profit and cash flow often being unrecognised. Voluntary liquidations are more evident during and after year four. In part this is due to the pressure of the growth phase and owner fatigue which could have been mitigated to some extent if the owner had been trained in business planning and control. The growing business becomes unmanageable.¹²²

2.58 The Small Business Corporation of South Australia stated that even after intensive promotion less than 15 per cent of those starting a business come to the Small Business Corporation for advice and assistance and only 4 per cent seek in depth help and assistance.¹²³ The Corporation indicated that accountants and

120. Transcript of Evidence, p 1640

121. Ibid

122. Ibid

123. Transcript of Evidence, p 1675

other private sector advisors criticised the incursion of government into the area of advice to small business which they believed they were handling effectively. It was disputed that the private sector was, in fact, handling the area effectively.

2.59 The Committee concludes that the failure rate in small business is a matter of concern. The Committee is also concerned at the finance problems experienced by small business and the lack of business training undertaken before people commence small businesses.

2.60 The Committee recommends that:

- . the Department of Industry, Technology and Commerce provide a heightened awareness campaign to potential small business start-ups to drive home the value of business management training before commencement.

CHAPTER 3

REGULATION REVIEW

- A. DEFINITION
- B. COST OF REGULATION
- C. PAPERWORK REDUCTION PLAN
- D. CURRENT STATUS
- E. UNIFORM REGULATIONS
- F. PRINCIPAL LICENCES
- G. REGULATION TIERING
- H. FEDERAL REVIEW STRATEGY
- I. THE BUSINESS REGULATION REVIEW UNIT
- J. FACILITIES/FEEDBACK
- K. ADMINISTRATION
- L. MARKET DEREGULATION
- M. REGULATION REVIEW-OVERSEAS POLICIES

CHAPTER 3

REGULATION REVIEW

It is as though government has blindfolded us, tied our hands to our ankles behind our backs, spun us around a few times, and then pushed us into the road...¹²⁴

A. Definition

3.1 Government regulation can be categorised as serving either social or economic objectives. Social goals would include environmental and consumer protection, anti-discrimination, and occupational health and safety. Economic goals could involve combatting market failure and preventing or controlling monopolies. Regulations usually aim to improve economic efficiency or to promote greater equity.¹²⁵ Government regulation can also involve the imposition of taxes or charges.

3.2 As well as government regulation there is industry and professional self-regulation. Self-regulation can serve to safeguard the integrity, reputation and supply of a particular service, skill or trade without the need for government intervention. It may at the same time help safeguard the income of trade or industry members. Examples include law societies and medical associations. Even industries or professions which are largely self-regulated may require some government involvement, for example, to prevent unqualified people from practising.¹²⁶

3.3 It is important to note that historically the call for regulation has come from all sections of the community. Workers want safer working conditions. Businessmen want regulations to ensure

124. Transcript of Evidence, p 2440

125. Business Regulation Review Unit: Review of Business Regulations. Information Paper No. 2 Commonwealth of Australia, May 1986, pp 1 - 3

126. Clark, D. *Business Regulation*, Students Economic Briefs, Financial Review, Commonwealth Bank, 1988/89, p 91

openness and fairness for them in market operations. Consumers want protection from dangerous or sub-standard goods. The community generally wants to live in an unpolluted environment and cities with planned facilities.¹²⁷

3.4 Inevitably, there are conflicts to be resolved. It is the task of parliament and government to resolve these conflicts by taking into account the balance of private and public interests.¹²⁸ However, there is an increasing tendency for Acts of Parliament to express general principles and for the details to be left to subordinate legislation or regulations.

3.5 The primary argument in favour of deregulation is straight forward: by easing or eliminating regulation constraints, competition will increase. Greater competition in turn will lead to more efficient resource allocation and increase total social welfare.

3.6 Governments in a market economy have a role in providing an environment in which firms can realise any competitive advantage they possess. It is widely recognised that regulations have a significant impact on this environment. Small business owner/managers often regard government regulations as a problem affecting the efficiency of their business operations; however, detailed research concerning the impact of government regulation upon the operations of small business is lacking.¹²⁹ Progress toward deregulation is often retarded because of pressures from existing small businesses to retain many of the regulations which reduce competition. Examples include liberalisation of shopping hours and licensing of interstate transport operators.¹³⁰

3.7 Regulations which cause the most resentment among small business owners are often those imposed at State and local level concerning licensing, planning, health and safety rather than those which receive national media coverage. These regulations have the

127. Sumner C.J. (Hon.) Attorney-General of South Australia *SA Deregulation Initiatives* SA Government, 4 March 1989, p 2

128. *Ibid*, p 5

129. Transcript of Evidence, p 3261

130. Transcript of Evidence, p 639

most impact as they require forms to be completed, negotiations with fairly junior officials and payment of minor charges consuming a proprietor's time and money. Problems lie mainly in the compliance costs which represent a significant proportion of a small business's management resources.¹³¹

B. Cost of Regulation

3.8 *Most regulation brings a benefit to some party.* Regulations also bring costs to those whose access to markets is reduced or to those who are obliged to incur expenses they would otherwise not have to incur. Sometimes the costs outweigh the benefits - the higher prices to consumers and reduced flexibility in the economy are not matched by gains.

3.9 The need to adhere to regulations involves a heavy burden of paperwork on small business proprietors which reduces significantly time spent on productive, value-adding activities. The growing range and complexity of regulations mean that small businesses have to contend with an increasing amount of paperwork and have to rely on costly professional advice.¹³² It would be a useful discipline for each government form to be required to contain a box indicating the time expected to be taken in its completion. People who have to fill in such forms would be able to challenge that estimation. In this way a far clearer picture would emerge of the time burden being imposed by business regulation. The Committee understands such an exercise may have been, or is being, carried out in the United States.

3.10 The Business Regulation Review Unit (BRRU) has carried out an analysis of the gross costs of regulation. Somewhere between 40 000 and 80 000 public servants were estimated to be engaged in business regulation. To the salary and other costs to government were added an estimate of the direct cost to business. The aggregate cost of business regulation was estimated at \$23b to \$47b per annum

131. Transcript of Evidence, p 673

132. Transcript of Evidence, p 1913

or 9 to 19% of gross domestic product.¹³³

3.11 The relative cost of adhering to regulations is usually higher and the impact of regulations less able to be determined for small businesses than for medium and large businesses. Small businesses are less able to afford the assistance of expert staff.¹³⁴ A major problem in the last decade for small businesses has been the cost of compliance with a substantial quantity of new regulations and changes in the tax system. The speed of these changes leaves many small business proprietors confused.¹³⁵

3.12 There is possibly a case for compensation to small business where it acts as the agent of government in the collection of revenue - for example, in the case of PAYE, sales tax or child maintenance payments from parents. In survey work, small businessmen are reported as perceiving sales tax and child maintenance collection as more properly the responsibility of government bodies and not of the small firm.¹³⁶

3.13 Small businesses are particularly conscious of the effects of maladministration. They suffer substantial but unquantified costs as a result of over-regulation and oppressive administration. A principal complaint of small business at the federal level is with badly drafted legislation and regulations, and slow, inefficient and capricious administration.

3.14 The Committee concluded that regulations and particularly their compliance costs on small businesses should be reduced as far as possible.

133. Moran, A. *Government Regulation of Business* ACC/WESTPAC Economic Discussion Paper, No 1, 1987, p 6

134. Transcript of Evidence, p 3260

135. Transcript of Evidence, p 2359

136. Transcript of Evidence, Dr Dunlop, p 2359

3.15 The Committee recommends that:

- . all government forms contain two boxes
 - one showing the estimated compliance time nominated by the government department or agency; and
 - one showing the actual time taken by the person required to fill in the form.

C. Paperwork reduction plan

3.16 There has developed a proliferation of government forms which must be filled in by people operating or seeking to establish small businesses. There needs to be a concerted effort to reduce this burden. A requirement on government departments and agencies to review annually the necessity for the total paper work burden imposed on businesses should be introduced.

3.17 The Committee recommends that:

- . after implementation of the above change concerning 'time boxes' on forms all departments and government agencies submit to Cabinet each year a list of forms which can be reduced or eliminated.

D. Current status

3.18 Regulation review units have been in existence in Australia since 1983. The first to be established was the Tasmanian Deregulation Advisory Board. This was followed by the Victorian Regulation Review Unit in 1984, the Commonwealth Business Regulation Review Unit in 1985, the South Australian Advisor on Deregulation in 1986, the Queensland Regulation Review Unit in 1987 and the New South Wales Business Deregulation and Licence Reduction Unit in 1988.¹³⁷

 137. Towns, G. and Dimasi, J. *Regulation Review in Australia*, CIS Policy Report, Oct/Nov 1988, p 5

3.19 A 1987 report to the Small Business Council concluded that for any level of government to successfully follow a deregulation strategy the following ingredients were desirable:

- . political commitment to review and remove unnecessary regulations
- . private sector involvement for review and assessment of regulations
- . stock-take of existing regulations to enable targeting
- . focus on regulation review of areas where there is agreement for deregulation
- . economic analysis of costs and benefits of regulations
- . in-built expiry dates for new regulations
- . wind-back and removal of existing unnecessary and counter-productive regulations
- . greater use of prices as an efficient resource allocation instrument
- . greater willingness to free-ride on the experience of, and systems operated by, other governments
- . uniformity between the States and industries
- . a facilitating channel which provides feed-back on regulations between government and business
- . regulations written in plain English; and
- . a differential approach provided to small business

for regulation compliance.¹³⁸

3.20 There are common links in deregulation strategies adopted by the federal and State governments. There has been a strong political commitment to deregulation and consultation with the private sector. All have targeted areas of review with federal and State governments looking at common areas such as building, construction, town planning, transport, public health and food regulations. State governments have targeted as well business and occupational licensing and pollution control. Both levels of government have requirements for analysis of costs and benefits associated with regulations and their administration. Governments also provide feed-back mechanisms for advice from business and accept the move towards uniformity of regulation across State borders where it is desirable.¹³⁹

3.21 All States except Victoria and Western Australia have initiated the use of plain English in legislation. New South Wales, Victoria, Queensland and South Australia have made provision for sunset clauses in new legislation and a rolling program of automatic revocations for existing legislation. The Federal Government has agreed in principle to include sunset provisions in future legislation but has no plans for a program of automatic revocation of existing legislation. In Western Australia sunset provisions relate only to creation of some statutory authorities but the State is committed to an annual repeal process for obsolete regulations. Tasmania does not have sunset clauses nor a program of revocation. The Bureau of Industry Economics (BIE) has compiled the following table which provides a summary of deregulation strategies throughout Australia.¹⁴⁰

138. Small Business Council, *Overview of Government Deregulation Strategies*, Report by Committee, May 1987, p 36

139. Ibid p 7

140. Ibid p 12

Table 3.1 Summary of State and Commonwealth Deregulation Strategies

<sb>Consideration given to:<res>	NSW	VIC	QLD	SA	WA	TAS	C'wealth
Political commitment	x	x	x	x	x	x	x
- specific small business reviews	x	x	-	x	x	x	-
Private sector involvement							
- consultation	x	x	x	x	x	x	x
- direct involvement	x	-	x	x	x	x	x
Stocktake	x	x	x	x	x	x	-
Target areas	x	x	x	x	x	x	x
Agreement on priority targeted areas	-	x	-	x	-	x	x
Cost/benefit analysis	x	x	x	x	x	x	x
New regulations							
- inbuilt mortality	x	x	x	x	-	-	x
Existing regulations							
- immediate windback/removal	x	-	-	-	-	-	-
- program of revocations	x	x	x	x	x	-	-
All allocative instrument such as prices	-	-	x	-	-	-	x
Free ride	-	-	-	-	-	-	x
Uniformity	x	x	x	x	x	-	x
A facilitary channel	x	x	x	x	x	x	x
Plain English	x	-	x	x	x	-	x
Small business differentiated	x	x	-	-	x	x	-

Code: x = yes
- = no

N.T. - details not available

3.22 Governments appear to have accepted that small businesses are particularly disadvantaged because of their relatively small production base over which they can spread the cost of regulatory paper work, and the opportunity cost of managerial time applied to compliance activities. At the federal level, the BRRU does not have a specific brief to cover small business. The BRRU considers, however, that the "flow-on" effects of industry sector deregulation will ultimately benefit small businesses and remove the disadvantages they suffer.

3.23 Perhaps the most important development for small business in regulatory review has been the development of "one stop shops", where the public can receive all relevant application forms and details of compliance requirements for all regulations relevant to their line of business. This innovation is important for two reasons: firstly, by being a single point of contact for small business people, it greatly reduces the time needed to start a business; and secondly, information concerning new regulations that affect businesses can be disseminated through an agency that small business people are familiar with, rather than an anonymous bureaucracy.

E. Uniform regulations

3.24 The Australian Bankers' Association in evidence before the Committee stated that the biggest single problem for any business in Australia is the lack of uniformity in State legislation. For any who operate nationally, as a significant number of small businesses must, this is a problem.¹⁴¹

3.25 For example in the Albury/Wodonga area which involves the Commonwealth, Victorian and New South Wales Governments, problems can be particularly complex.¹⁴² The differing sets of rules, dual licence fees and such like present significant impediments for small business. In 1976, a survey found 600

141. Transcript of Evidence, p 1988

142. Transcript of Evidence, p 2568

border anomalies in the building sector alone.¹⁴³

3.26 Professional people are also affected by the lack of uniformity in State Acts and regulations. A member of a profession, for example the podiatry profession, can be registered to practice in one State but be unable to practice in another.¹⁴⁴

3.27 The problem is not just a lack of uniformity in State legislation. Local authorities, bordering each other, often have different requirements or different interpretations of the same rules.

3.28 The extensive and fragmented nature of regulations applicable to small businesses arises from the three tiers of government in Australia and the existence of overlapping jurisdiction. Regulation related to government revenue, at the federal level includes:

- . income taxation
- . fringe benefits taxation
- . superannuation
- . capital gains taxation
- . sales tax, and
- . customs

At the State level there are regulations concerning:

- . land taxation
- . stamp duty

143. Transcript of Evidence, p 2568

144. Transcript of Evidence, p 2062

- . work care contributions
- . particular contributory requirements, (e.g. long service leave)¹⁴⁵

while at the local government level there are for example:

- . building regulations
- . health regulations, and
- . waste disposal regulations.

3.29 In personnel related matters workers may be subject to dual awards. Federal and State governments each administer equal opportunity legislation and specify conditions of employment in respect of health and safety matters. Both federal and State governments have jurisdiction over administrative appeal, health, consumer affairs and trade practices matters.¹⁴⁶ Municipal governments have powers in relation to land use, building permits and health related matters. Interactions at the State and local level are constantly blurred in relation to planning, pollution and health.¹⁴⁷

3.30 The Commonwealth Government, through the BRRU, has co-ordinated efforts to obtain uniform State and Commonwealth legislation in a number of areas, particularly where non-uniformity imposes unnecessary costs to industry and affects interstate and export trade. A national uniform code of food law was agreed to by the Commonwealth, States and Territories during 1986. The Australian Uniform Building Regulations Co-ordination Council has completed a major review of the Australian Model Uniform Building Code.

3.31 The Small Business Development Council in Victoria advocated a joint Commonwealth-State Committee to examine proposed changes to legislation and regulations to help ensure compatibility at State and Commonwealth level and to pay specific attention to the

145. Transcript of Evidence, p 1996

146. Transcript of Evidence, p 1997

147. Transcript of Evidence, p 1998

effects on small business.¹⁴⁸

3.32 The Committee recommends that:

- . the Department of Industry, Technology and Commerce, in co-operation with the Business Regulation Review Unit and the Ministerial Council work towards developing uniform regulations.

F. Principal licences

3.33 The suggestion for industry-based licensing was put to the Committee. Under such a system a single licence would be issued and the relevant authority would cross out those applications to which the licence does not apply in each case.¹⁴⁹ There could be a licence to recognise, for example, that milk bars and other such shops serve several purposes. In that case the licence could authorise the sale of milk, tobacco and a number of other products. Similarly, operators in the motor industry currently require a number of different licences.¹⁵⁰ A single multi-purpose licence would have distinct advantages.

3.34 The Victorian Small Business Development Corporation recommended to the Committee that consideration be given at Commonwealth level to the establishment of principal licences. "This would reduce the number of licences currently required and assist in rationalising the entire regulation system."¹⁵¹ "In the example of the milk bar business, one or two of the fourteen or twenty licences required are in fact imposed at the Commonwealth level."¹⁵²

148. Transcript of Evidence, p 2585

149. Transcript of Evidence, p 2424

150. Ibid

151. Transcript of Evidence, p 2585

152. Transcript of Evidence, p 3197

3.35 The Committee recommends that:

- . the Department of Industry, Technology and Commerce in cooperation with the Ministerial Council take a leading role in encouraging State and local governments to simplify licensing procedures, to reduce duplication and investigate the possibility of principal licenses for businesses to incorporate multiple federal, State and local government requirements.

G. Regulation tiering

3.36 Small businesses by their nature are centred around one or two people who are required to cover all the aspects of business development and commercial life. They are usually not trained or educated in all these disciplines. The burden is increased by the fact that small businesses must interact with a large number of government and municipal bodies at their inception and during early growth.

3.37 Governments are not very good at distinguishing between different types of organisations when regulations are imposed. The corner grocery store and the big factory both can come within the ambit of the same regulations. Small business operators consider that much regulation and legislation is put in place without regard to the effect on firms with limited resources. This gives rise to the view that bureaucracy is more attuned to the larger firm. The Motor Trades Association highlighted two areas, taxation and industrial relations, where they considered the lack of concern for the small operator was particularly apparent. Many of the requirements on small business are so complex as to almost guarantee a high rate of breach even if only through oversight or genuine error.

3.38 The Motor Trades Association portrayed some aspects of taxation regulation as a form of government by decree. The Taxation Office, sometimes in a genuine effort to provide clarity, issue taxation rulings with the Commissioner's declared interpretation. These interpretations can be subject to challenge but at a cost. Two

challenges to the Commissioner's rulings in recent years cost in the vicinity of \$100 000, well beyond the reach of most small businesses.¹⁵³

3.39 Small business owners usually do not employ personnel officers and, owing to lack of experience, rarely possess industrial relations expertise. Little or no attention is given to small business employer-employee relations when legislation is being developed. For example, labour-related legislation often requires the proprietor of a business to consult trade union representatives. Such legislation ignores the fact that trade union membership may not exist within many small businesses.¹⁵⁴

3.40 It is recognised that fixed regulation costs place smaller firms at a competitive disadvantage and may force some small firms out of business. One response has been to suggest tiered regulations. Under regulation tiering small businesses would face lighter regulatory burdens than big businesses. Consequently, small businesses would have fewer record keeping requirements imposed; they would be inspected less frequently and pay lighter fines. In some cases, small businesses could be exempted entirely from certain requirements, record keeping or inspection programs.¹⁵⁵ There could be a case for regulation free time periods to help new industries get established.¹⁵⁶

3.41 The Australian Accounting Research Foundation held a Differential Reporting Seminar in Canberra in September 1989. It found that major difficulties could be experienced in determining not only which entities ought to be exempted from (in their case accountancy) standards but which standards they should be exempted from. To provide regulatory relief for small business through regulation tiering, one firstly has to define small business clearly. Certain kinds of information would periodically be required from firms in order to assist the authorities in deciding whether an exemption which had been granted was still applicable to a

153. Transcript of Evidence, p 770

154. Ibid, p 797

155. Brock, W. and Evans, D. *The Economics of Small Business*
Holmes and Meier, New York, 1986, p 180

156. Transcript of Evidence, p 112

particular business.

3.42 On the negative side it has been pointed out that, "regulation tiering may help preserve inefficient small businesses and may provide an incentive for some businesses not to grow in order to avail themselves of lighter regulatory requirements for small business."¹⁵⁷

3.43 The Committee accepts the existence of problems in the implementation of regulation tiering on any 'across the board' basis. These involve the impact not only on incentives for the growth of firms but in public service administration costs. The Committee in general does not support exemption of small business from regulation. It does accept, however, that there may be a case for regulatory relief, for example, in the form of reduced reporting requirements for small business.

3.44 The Committee recommends that:

- . the Department of Industry, Technology and Commerce in conjunction with the Ministerial Council determine areas for reduction in the frequency and detail of reporting requirements for businesses below a certain size (regulatory tiering) in view of the disproportionately large cost impositions on small business.

157. Brock, W. and Evans, D. op cit p 180

H. Federal review strategy

3.45 The most common proposal put to the Committee was for deregulation. The call is for the removal of regulations which impose a burden but not for those which provide protection for the advocate of deregulation. The shopkeeper wanted regulation to protect him against the shopowner. The small retailer wanted protection against the large retailer. Those who are established in an industry often request regulations which limit the right of entry to the industry of potential competitors.

3.46 The Committee believes there may be some misunderstanding in the small business community about regulation. Small businessmen by and large support regulation when they can see why those regulations are in effect. The role of government is to explain fully the necessity for specific regulations. A cost/benefit analysis should be carried out for every regulation. If there is not a net benefit then reasons should be given why the regulation should be continued or come into effect. For new regulations such an analysis should be reinforced by the insertion of a sunset or mortality clause.

3.47 There is a parallel need for language imposing regulations to be easy to understand. At the federal level, a principal complaint of small businesses was about badly drafted legislation and rules.¹⁵⁸ In other countries there is plenty of evidence of savings not only to the public but also to government administration resulting from easily understandable forms and rules.

3.48 A number of witnesses called for a small business impact statement on all new legislation and regulations. Areas such as equal opportunity, anti-discrimination, occupational health and safety, workers' compensation and affirmative action are regulated in a manner which presumes all businesses are large. A comprehensive review is required to ensure regulations take account of small businesses. A major problem at the Commonwealth level for small business is that the BRRU has no special brief to

158. Transcript of Evidence, p 1540

consider small business.

3.49 DITAC stated that a small business statement would overload the system to the ultimate detriment of small business. Federal Cabinet submissions already include an environmental impact statement and a social policy impact statement. A financial impact statement is required in explanatory memoranda for proposed Commonwealth legislation. This is intended to note any impact on industry and other sections of the community, although not specifically the small business sector. DITAC saw more merit in individual departments becoming more aware and having systems in place to monitor the impact of their programs on small business. It is not clear what mechanisms exist to increase that awareness in the federal bureaucracy. The Committee notes that in Europe all legislation proposed by the Commission of the European Community has to include a statement of its impact on small and medium business which then has to be cleared by the Directorate in charge of small business matters.

3.50 The Committee recommends that:

- . all new legislation and regulations include a small business impact statement prepared by the proposing Department in consultation with the Small Business Unit in DITAC.

I. The Business Regulation Review Unit (BRRU)

3.51 The BRRU was established to advise the Federal Government on proposed changes to regulations; to prepare public information papers on developments in regulations; and to examine particular facets of business and regulation arrangements covering them. Proposals for new regulations were to be scrutinised by the Structural Adjustment Committee of Cabinet which would require assurance that benefits outweighed costs. Legislation and regulations were to be expressed in simple english. Departments were to be required to publish any significant changes to regulations in

their annual reports.¹⁵⁹ Small business and budgetary matters including taxation which impacts heavily on small business, are excluded from the BRRU brief.

3.52 The BRRU is authorised to require from initiating departments a detailed regulation impact statement canvassing costs and benefits of proposals and demonstrating that the regulatory instrument proposed is the most efficient possible. In October 1985, it was announced that all new regulations would have a sunset provision. This policy is not implemented in all cases. The Structural Adjustment Committee of Cabinet makes the final decision.¹⁶⁰

3.53 In the opinion of the BRRU the most significant area of deregulation in Australia has involved banking. However, some progress has been made also in the following areas:

- . foreign investment has been liberalised by the abolition of the opportunities test, raising of thresholds, removal of manufacturing from the jurisdiction of the Foreign Investment Review Board (FIRB) and liberalisation of real estate
- . custom processes have been streamlined with simplification of processing and expedition of clearance
- . export controls on minerals have been liberalised with relaxation of controls on coal and petroleum products
- . model food law
- . building regulations in Australia have been streamlined with the introduction of a draft uniform building code to be circulated in plain english

159. Transcript of Evidence, p 3091

160. Transcript of Evidence, p 3200

- . primary industry regulations have been relaxed with the withdrawal of the mandatory export inspection of processed fruit and vegetables
- . television ownership has had the two station rule liberalised
- . Commonwealth regulation of private hospitals has been reviewed
- . the two airline policy will be terminated, and
- . inward bound airfreight regulations have been relaxed.¹⁶¹

3.54 The basic strategy of the BRRU is the removal of major restrictions on market entry and controls on prices rather than seeking to dismantle detailed regulations. However, the unit's Information Paper No.12 showed that 340 statutory rules were passed in 1987, only seven of which repealed existing statutory rules with 40 covering new ground. As well, 184 Acts of Commonwealth Parliament were passed. Both in terms of Acts and statutory rules the number of new regulations in 1987 was broadly similar to the last two years.

3.55 The Committee concluded that the BRRU is too poorly resourced, having a staff of only six, to effectively carry out its role. The Committee notes that the current process of regulation review is not a public one, and that the cost/benefit justification for new legislation and regulations remains confidential to Cabinet.

3.56 The Committee recommends that:

- . the Business Regulation Review Unit be provided with resources to effectively carry out its brief

- . the Business Regulation Review Unit be given a special brief to monitor regulatory impact statements for their effects on the small business sector.

J. Facilities/feedback

3.57 At the Commonwealth level the Government has instituted a request/response mechanism for anybody to approach Government through the BRRU with problems on any Commonwealth regulation. The case must be well documented.

3.58 The Commonwealth, in setting up the request and response mechanism, has taken the contrary view to some States, such as South Australia and Victoria, where all regulations have sunset clauses and a program of automatic revocation is in place for existing legislation and regulations. The Commonwealth has taken the view that automatic revocation is time consuming and unnecessary since there are fewer regulations in the federal sphere which are archaic compared with the States. There is also the belief that Commonwealth regulations tend to relate more to larger businesses than to small ones and are less interventionist than State regulations.¹⁶² Commonwealth departments are required to publicise major changes to regulations in their annual reports.

3.59 The Australian Chamber of Commerce argues that the review and response process is of limited usefulness to small businesses. In its submission, the Chamber said:

Small business had a great burden in dealing with regulations. To actually specify under the request/response procedure which regulations were causing trouble and then going further and actually putting up a case is too much.... To our mind it is somewhat akin to moving Mt Kosciusko with a teaspoon.¹⁶³

 162. Transcript of Evidence, p 3197
 163. Transcript of Evidence, p 263

3.60 The Chamber stated that the regulatory 'wipe out' procedures adopted by the State governments of South Australia, Queensland and Victoria are essential.

3.61 Proprietors of small businesses often are not fully aware of the likely impact of proposed regulations. The Law Institute of Victoria suggested that a body be set up in each State designed to communicate on such matters with small business.

3.62 The Commonwealth has not undertaken a stocktake of its existing regulations. A stocktake, undoubtedly, would be a difficult and resource intensive task. It was found in Victoria that it was difficult to ensure the completeness of their stocktake given that some departments maintained they had no regulations until pressed.¹⁶ The lack of centralised knowledge of regulations affecting small business has an impact on policy development and the efficient operation of small business. A register of federally imposed regulations, similar to the United States model, would be useful but a process of automatic revocation may be more practicable.

K. Administration

3.63 Throughout the course of the inquiry the Committee received many complaints from small business people about: the difficulty of *obtaining information concerning regulations*; the complexity of some regulations causing confusion with interpretation; the attitude of administrators who enforce the regulations; and the overlap of the three tiers of government.

3.64 Enquiries by small business to government bureaucracies are often transferred to the wrong section of a department or passed on continually between unsympathetic officers. Small businesses reportedly often find dealing with a government department to be a time consuming, aggravating and expensive activity.¹⁶⁵

3.65 The evidence of one witness, a llama farmer, encapsulates the experience of many in small business:

164. Transcript of Evidence, p 3201

165. Transcript of Evidence, p 2629

To establish the llama farm, to obtain the right to import and breed llamas, power was vested in three departments in two States. The right to receive stock in Australia from overseas took three permits. The right to operate the llama farm as a tourist operation involved 12-17 permits. The right to transport visitors on bales of hay across paddocks to see the llamas involved five permits and to signpost the property two or three permits.

3.66 The witness went on to explain to the Committee that the problem was compounded by:

...changes to personnel and procedures and whole departments being set up or abolished. Letters were sent signed by one officer and vetted by three others. This prevents personal contact and removes accountability. Letters are ignored or lost or take weeks to be answered.¹⁶⁶

3.67 This example demonstrates the case that all bodies and public servants involved in overseeing regulations must be trained and persuaded to become more accessible in assisting small business.¹⁶⁷

3.68 Small businessmen need to be aware of regulations affecting them. This can be achieved in a number of ways. The Small Business Development Corporation in Victoria, for example, has a "one stop shop". It provides information on all State Government requirements for the establishment and operation of businesses in Victoria. The Centre received 10 000 requests for information between September and February 1989 alone.¹⁶⁸ Other States such as New South Wales and Queensland have developed or are developing similar approaches. It would be helpful to business if there was some uniformity between

166. Transcript of Evidence, p 2436

167. Transcript of Evidence, p 2000

168. Transcript of Evidence, p 2584

the States in the development of such systems.¹⁶⁹

3.69 The National Industry Extension Service is an example of information about Commonwealth and State programs being delivered to small business in the same place in each State. If a stocktake were made of Commonwealth regulations and placed on a data base these centres would provide an appropriate point for information on all regulations (Commonwealth, State and local) for small business.

3.70 Proper interpretative summaries should be made of complex regulations. This would assist where national laws can be interpreted in different States by different administrators. Differences in interpretation about sales tax requirements by Deputy Commissioners of Taxation in different States can create considerable competitive advantages or disadvantages between firms. Publications explaining regulations would be useful not only for business but as training aids for public servants.

3.71 The Committee concluded that small businesses were being disadvantaged at the Commonwealth level with the current procedures for regulation review, given that small businesses have limited resources and little opportunity to document cases in regard to burdensome regulations.

3.72 The Committee recommends that:

- . the BRRU undertake a stocktake of all Commonwealth government regulations and develop a data base which could provide ready access to relevant information for small businesses;
- . DITAC with the Ministerial Council investigate methods of ready access for small business to the regulation data base, such as through a "one stop shop";
- . DITAC with the Ministerial Council investigate ways

169. Transcript of Evidence, p 2603

of facilitating feedback on new and existing regulations between small business and the relevant authority;

- . DITAC with the Ministerial Council investigate ways to increase the awareness of small business of impending regulations; and formulate a policy which avoids inconsistencies and overlap in the jurisdiction of the three tiers of government, using information from small business on the impact of current regulations.

- . a House of Representatives Regulations and Ordinances Committee complementary to the Senate Committee be established and, through a process of public inquiry, invite submissions, nominate priority areas for regulatory review and make recommendations on these to the Government with regard to:

- alternatives to regulations ;
- the operations of a cost/benefit analysis approach;
- unreasonable and inequitable costs imposed on a particular sector of the community (eg. small business);
- the use of sunset clauses and plain english;
- the implementation of particular regulations;
- the communication of information about regulations to the public; and
- the monitoring of plans to reduce the quantity of forms required to be completed by businesses.

L. Market deregulation

3.73 It is customary to describe potential benefits available from deregulation for small business as removal of the paper burden or 'red tape'. Market liberalisation may have important beneficial effects for innovation and the creation of new small businesses. There were examples of this occurring in the United States following the deregulation of trucking, airlines, banking and financial services and communications from the 1970s. 170

3.74 It is questionable whether much of the occupational licensing that occurs in Australia has more to do with limiting competition rather than consumer protection.

3.75 The policy of uniform national pricing followed by some major public sector enterprises is a form of cross subsidisation between users. There can be inequities created which disadvantage some small businesses and low income earners as a result of the pricing policies of the Telecom monopoly, for example. Deregulation could help remove these.

3.76 The Minister for Transport in May 1988 stated that all government business enterprises would be reviewed in terms of the regulatory arrangements in which the industries operated; their corporate and financial structure; and appropriate accountability mechanisms. Measures to improve the efficiency of such enterprises is part of the Government's micro-economic agenda.¹⁷¹

M. Regulation review - overseas policies

3.77 Many OECD countries have begun to reform business regulation in recent years. Belgium has established an authority to

170. Transcript of Evidence, p 3099

171. *Reshaping the Transport and Communications Government Business Enterprises*. Statement by the Minister for Transport and Communications, 25.5.88, p 4

simplify the forms introduced by new regulations and laws. It does not examine alternatives to regulation or possibilities for deregulation.

3.78 Canada has looked at the degree to which regulation imposed by a large bureaucracy on small business is reasonable and fair. Two initiatives have been taken to reduce paperwork burdens. One is the requirement for each department to submit a paper reduction plan to Cabinet each year for approval. The second is the creation of an advisory committee composed of 11 national and regional small business associations to monitor the process and advise where future efforts should be focused.

3.79 Germany does not have a specific part of the administration responsible for regulatory reform. The task is undertaken by a government commission on "de-bureaucratisation" and an independent commission on deregulation.

3.80 In Ireland a program has been initiated throughout the public service which aims at easing statutory and administrative requirements which have an impact on industry and business generally. The program includes a detailed review in each department of statutory requirements affecting industry and business and the preparation in each department of a report identifying where requirements can be simplified or abolished. It also introduces procedures to have an assessment made of the cost of compliance with all proposed new and changed regulatory requirements affecting industry.

3.81 In Norway, a co-ordinating committee has been established in the Ministry of Consumer Affairs to coordinate the processes of deregulation and regulatory reform.

3.82 Sweden has a special committee to co-ordinate and pursue work on deregulation and simplification of regulations affecting the business sector. An important task of the committee is to consider and provide information on rules and their consequences. The committee lays down principles concerning how to achieve fewer and simpler rules. It tries to influence all departments in this

direction.

3.83 In the United Kingdom there is a unit within the Department of Trade and Industry which has responsibility for promoting deregulation, simplifying administration and examining proposals for new regulations. The unit is not confined to examining the impact on small firms but it acknowledges that regulations often affect small firms disproportionately.

3.84 In the United States part of the Executive Office of the President has responsibility for reviewing regulations and for processing paperwork reduction. It has informal links with the Small Business Administration.¹⁷²

3.85 A number of countries are using or experimenting with various forms of "one stop shops". This is mainly at the intermediate level of government between central and local administrations. In Ireland a network of eight regional offices act as "one stop shops" for small firms. Their objective is to present all available government services including advisory and financial assistance in a unified and clear way and to be a clearing house for information for local firms.

3.86 An assessment in Ireland of the "one stop shop" initiative found that two-thirds of respondents were very satisfied with the assistance received and the degree of detail in the information supplied. Only twenty-five per cent, however, felt that all the help needed to start a business was provided.¹⁷³

3.87 There are two significant movements in the above OECD countries. Both are aimed at simplification. One involves mechanisms for regulatory review/reform. Some of the review mechanisms are particularly concerned with the impact of regulations

172. OECD Public Management and Private Enterprise, OECD Paris
1988, p 13 - 14

173. Ibid, p 15 - 16

on small businesses, but usually they are concerned with administrative simplification in general. The other movement consists of attempts to bring together in one office the range of administrations dealing with small business.

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CHAPTER 4

TRADE PRACTICES AND TENANCY

A. THE TRADE PRACTICES ACT

- A.1 - Implied conditions and warranties
- A.2 - Section 52A - unconscionable conduct
- A.3 - Section 46 - misuse of market power
- A.4 - Representative actions
- A.5 - Resources

B. RETAIL AND COMMERCIAL TENANCY

- B.1 - Shopping centre leases
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- B.3 - Shop lease tribunals
- B.4 - Commercial tenancy and the Trade Practices Act

CHAPTER 4

TRADE PRACTICES AND TENANCY

A. *The Trade Practices Act 1974*

4.1 The Trade Practices Act, administered by the Trade Practices Commission, is a set of general principles covering behaviour for competition and trading. The primary focus of the Act is to preserve competition; it doesn't necessarily follow that the Act will protect competitors.¹⁷⁴

4.2 The Act makes no distinction between small business and big business, but the Commission does recognise the importance of small business in the economy. The Commission's view is that the Act would tend to favour small business over big business, because small business is less likely to be in contravention of the competition provisions of the Act while still benefiting from the full protection of the Act. However, the Commission stated that competition laws should not be directed at protecting and 'preserving' small business as an end in itself.¹⁷⁵

4.3 The major problem faced by small business in competing in the market place against big business is the relative disparity in bargaining power. This can manifest itself in a number of ways, from the inability to obtain bulk discounting from suppliers to predatory pricing by large corporations to squeeze smaller competitors.

4.4 While the Committee understands the principle of the Act is not to favour small business and consumers over big business, but to guarantee competition, it agrees with the Commission that this competition could be reinforced by some changes in the Act, principally in the area of unconscionable conduct and implied conditions and warranties, to reduce the disparity in bargaining

174. Transcript of Evidence, p 2766

175. Ibid

power and "flatten some bumps in the playing field".

A.1 Implied conditions and warranties

4.5 Small business is protected under the implied conditions and warranties provisions (Section 4B, Division 2, 2A and 3) of the Trade Practices Act to the extent that it comes within the definition of "consumer" contained in section 4B of the Act when it buys:

- . goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption, or a commercial road vehicle; or
- . goods or services costing \$40,000 or less
- . except for goods which are bought to re-supply, or for using them up or transforming them in production, manufacture, repair or treatment of other goods or fixtures on land.¹⁷⁶

4.6 As the above quotation indicates the application of these provisions to small business is limited since the definition of consumer applies only to the end-user of goods, and does not extend to a person acquiring goods and services for resupply and resale. The Australian Automobile Dealers Association criticised this definition of the consumer. The Association argued that each buyer in the chain of distribution is a consumer, not just the end-user.¹⁷⁷ This view is one with which the Trade Practices Commission has some sympathy. In evidence to the Committee, the Commission stated that, as is the case with the exclusion of small business from the unconscionable conduct provisions of the Act, small business is excluded from the protection of implied conditions and warranties provisions because of a "feeling that a business person who buys goods that he or she resells should be able to pick if there is anything wrong with them".¹⁷⁸ However, the Commission agreed that th

176. Transcript of Evidence, p 2764

177. Transcript of Evidence, p 810

178. Transcript of Evidence, p 2786

argument "does not work all that well with modern technology".¹⁷⁹

4.7 The Commission's submission suggested that the widespread use of computer software by small business was exposing inadequacies in the Act.¹⁸⁰ The Commission reported increasing instances of small business firms with little computer experience relying on specialist firms to advise on hardware/software packages for that business, only to find that the package is unsuitable.¹⁸¹ Difficulties arose in these situations because of uncertainty about whether computer software are "goods" or "services" or neither.¹⁸²

4.8 The Act also places a \$40 000 limit on the value of non-domestic goods or services which attract the protection of the Act. In its 1984 Green paper on the "Trade Practices Act - Proposals for Change", the Government initially proposed raising this limit to \$200 000.¹⁸³ This limit was subsequently reduced to the \$40 000 included in the amended Act. The Commission acknowledged that this figure is low.¹⁸⁴ The figure of \$200 000 was originally suggested so as to include transactions covering some pieces of agricultural equipment,¹⁸⁵ but may have been considered an "undue intrusion into commercial transactions".¹⁸⁶

4.9 The Committee is of the view that small business should have protection under the implied conditions and warranties provisions, given the increasing sophistication of the technology available in consumer and non-domestic goods as found in computer software. The Act has the potential to greatly assist small business but this potential is limited by the restriction on the proscribed limit in section 4B. Effective protection could be rendered to small business by increasing the \$40 000 limit to \$200 000 as proposed in the 1984 Green Paper on non-domestic goods and revising the definitions of goods and services to include computer

179. Transcript of Evidence, p 2786

180. Transcript of Evidence, p 2764

181. Transcript of Evidence, p 2764

182. Transcript of Evidence, p 2764

183. *Trade Practices Act - Proposals for Change*, February 1984; p 4 (Green Paper)

184. Transcript of Evidence, p 2787

185. Transcript of Evidence, p 2787

186. House of Representatives Weekly Hansard; 20 March 1989, p 1740

software/hardware packages.

4.10 The Committee recommends that:

- . the supply and installation of computer hardware and software programs be included in the definition of goods and services in Section 4 of the Trade Practices Act so as to extend the application of the implied conditions and warranties provisions of the Act to cover these categories of goods and services.
- . the prescribed amount in Section 4B of the Act applying to non-domestic goods or services be raised from \$40 000 to \$200 000.

A.2 Section 52A - unconscionable conduct

4.11 Section 52A of the Trade Practices Act covers unconscionable conduct by business. The section was adopted as part of the 1986 package of reforms to the Act, and is designed to ensure that a corporation conducts its business with consumers in a reasonable manner, without undue influence or pressure, or resorting to unfair tactics.

4.12 Section 52A of the Act only applies to small business transactions in so far as the goods and services are "of a kind ordinarily acquired for personal, domestic or household use or consumption".¹⁸⁷ The supply of goods or possible supply of goods for "the purpose of re-supply or for the purpose of using them up or transforming them in trade or commerce" is specifically excluded.¹⁸⁸

4.13 The Trade Practices Commission noted that "business transactions were not covered because of fears held in some quarters that such a provision would produce uncertainty into such transactions".¹⁸⁹ The Commission is reconsidering whether protection

187. Trade Practices Act Section 52A (5)

188. Trade Practices Act Section 52A (6)

189. Transcript of Evidence, p 2778

to small business should be included in Section 52A.¹⁹⁰

4.14 Anomalies occur where a small business has limited bargaining power against a large supplier in a strictly commercial agreement such as occurs in commercial tenancy leases where a small business is disadvantaged in the same way as a consumer in that transaction. In this situation a small business currently has no protection under Section 52A.¹⁹¹ Consequently small business organisations argue that transactions by small business should be included in the scope of Section 52A where small business people are disadvantaged as consumers in those transactions. This is particularly the case where it is argued that a large corporation is engaging in unconscionable conduct, without necessarily transgressing 'the abuse of market power' provisions of Section 46.

4.15 The Trade Practices Commission is aware of this anomaly and has suggested to the Committee that the Section 52A provisions should be extended so as to apply to this type of business transaction where a small business is disadvantaged in the same way as a domestic tenant in dealing with a landlord.¹⁹² Professor Baxt, the Chairman of the Commission, elaborated on this point in evidence, saying that as the courts consider more cases on this subject, more judgements are being handed down suggesting that unconscionable conduct will be looked at closely by courts. Consequently, actions that could be considered unconscionable need to be examined in the context of the common law and equity, as well as trade practices law.¹⁹³ Given this evolution in the interpretation of the legislation, a further examination of Section 52A is needed to ascertain whether it should be extended to these types of small business transactions.¹⁹⁴

4.16 The Committee recommends that:

- . provisions of the Trade Practices Act concerning unconscionable conduct (Section 52A) which currently

 190. Transcript of Evidence, p 2785
 191. Transcript of Evidence, p 2763
 192. Transcript of Evidence, p 2795
 193. Transcript of Evidence, p 2803
 194. Transcript of Evidence, p 2803

apply to transactions involving consumers be extended to include small business transactions including retail/commercial tenancy agreements, where a small business is disadvantaged in the same way as a consumer, in its dealings with other parties.

A.3 Section 46 - misuse of market power

4.17 Section 46 of the Trade Practices Act proscribes the misuse of market power by powerful companies. The Trade Practices Commission stated that the section "is a general section devised to deal with the problems of small business in dealing with powerful suppliers or large rivals".¹⁹⁵

4.18 Section 46 prevents a corporation with a substantial degree of market power from taking advantage of this power to:

- . eliminate or substantially damage a competitor;
- . prevent entry into any market;
- . deter or prevent competitive conduct in a market.¹⁹⁶

4.19 The Trade Practices Commission stated that these provisions "while they apply to the BHP's, the ICI's, the CSR's, would seldom, if ever, apply to small business, except as the victim of the abuse of market power".¹⁹⁷

4.20 In its original form the Act limited the scope of Section 46 to corporations in a position to substantially control a market. Its scope was widened in 1986 to apply to a wider range of situations, moving the emphasis away from a corporation in an absolute or near monopoly situation, to include major firms in a market with an oligopolistic structure, and leading firms in a less

195. Transcript of Evidence, p 2762

196. Trade Practices Act S46(1)

197. Transcript of Evidence, p 2783

concentrated market.¹⁹⁸

4.21 The protection that may be available to small business under the amended Act is still not clear, due to the relatively short period of time since these amendments were effected. A number of cases under the revised Section 46 have produced differing interpretations of what constitutes 'abuse of market power'. The lower threshold test of a substantial degree of power in the market was recognised in *Mark Lyons Pty Ltd v Bursill Sportsgear Pty Ltd*, where a sole distributor of ski boots was held to have a substantial degree of power in the Australian ski boot market, even though the brand of ski boots in question only accounted for one third of ski boot sales.¹⁹⁹

4.22 It has been far more difficult to establish that a corporation has actually taken advantage of its market power to the detriment of competition and competitors. The Trade Practices Commission acknowledged that actions under Section 46 have had mixed results in the Federal Court.²⁰⁰ Two cases, judged in 1986 and 1987 (*Warman International & Ors v Envirotech Australia Pty Ltd & Ors* and *William & Anor v Papersave Pty Ltd*) gave a narrow interpretation to Section 46 and the definition of market power. The judgements gave authority to the "notion that there is no contravention of Section 46 if the conduct complained of can be categorised as taking advantage of a particular right, such as a legal or contractual right, or could have been performed regardless of market power",²⁰¹ even though the effect of these actions by a company may be to lessen, or even eliminate, competition.²⁰²

198. House of Representatives Standing Committee on Legal and Constitutional Affairs Report: *Mergers, Takeovers and Monopolies: Profiting from Competition?* May 1989, p 23

199. House of Representatives Standing Committee on Legal and Constitutional Affairs Report: *Mergers, Takeovers and Monopolies: Profiting from Competition?* May 1989, p 24

200. Transcript of Evidence, p 2762

201. House of Representatives Standing Committee on Legal and Constitutional Affairs Report: *Mergers, Takeovers and Monopolies: Profiting from Competition?* May 1989, p 25

202. House of Representatives Standing Committee on Legal and Constitutional Affairs Report: *Mergers, Takeovers and Monopolies: Profiting and Competition?* May 1989, p 24

4.23 The recently concluded High Court case *Queensland Wire Industries Pty Ltd v The Broken Hill Proprietary Co Ltd and Anor* provided a landmark decision for the interpretation of Section 46. In handing down its decision, the Court laid the foundations for future judgements by resolving a number of disputed definitions of what constitutes a market, market power and misuse of market power that were subject to differing interpretations by the Federal Court.²⁰³

4.24 The Court held that in defining the relevant market:

- . supply-side substitutability is an important determinant of market boundaries;
- . potential and actual competition is a factor to be taken into account; and
- . the fact that there is not commercial trade or traffic in a product does not preclude there being a market for that product.²⁰⁴

4.25 In establishing that BHP had a substantial degree of market power, the Court took into account:

- . market share;
- . barriers to entry; and
- . vertical integration of the corporation.²⁰⁵

4.26 The Court held that the interpretation of the misuse of

203. House of Representatives Standing Committee on Legal and Constitutional Affairs Report: *Mergers, Takeovers and Monopolies: Profiting from Competition?* May 1989, p 35

204. House of Representatives Standing Committee on Legal and Constitutional Affairs Report: *Mergers, Takeovers and Monopolies: Profiting from Competition?* May 1989, p 32

205. House of Representatives Standing Committee on Legal and Constitutional Affairs Report: *Mergers, Takeovers and Monopolies: Profiting from Competition?* May 1989, p 33

market power provisions should be based strictly on whether or not a company had taken advantage of its market power to lessen competition in the market place, rather than misusing its power in a reprehensible way. The Section was found to "stipulate that an infringement may be found only where the market power is taken advantage of for a purpose prescribed in paragraph (a), (b) or (c) of Section 46(1). It is these purpose provisions which define what uses of market power constitute misuses".²⁰⁶

4.27 The decision has been acknowledged as a milestone in the development of Section 46 of the Act. By clarifying the disputed provisions of the section the High Court has provided clear guidelines for the interpretation and application of Section 46 in future disputes between small businesses and potentially hostile larger companies.

4.28 The Committee notes that, given the relatively recent amendments to Section 46, the full impact of the strengthened section is yet to be felt. In discussing this case, the Trade Practices Commission took the view that the decision will place greater onus on firms which have a substantial degree of market power to be conscious of Section 46 in the conduct of their activities.²⁰⁷

4.29 The Committee concurs with this view and believes that the flow-on effect of the recent *Queensland Wire Industries v BHP and Anor* case will benefit small business where the precedent established by the High Court can be used in settling disputes. This benefit will increase in the long term as more cases are heard and the business community becomes more aware of its rights and obligations under the Section.

4.30 The knowledge in the business community that the Commission, or a private company, can take action under Section 46

206. House of Representatives Standing Committee on Legal and Constitutional Affairs Report: *Mergers, Takeovers and Monopolies: Profiting from Competition?* May 1989, p 34

207. House of Representatives Standing Committee on Legal and Constitutional Affairs Report: *Mergers, Takeovers and Monopolies: Profiting from Competition*, May 1989, p 34

with a likely outcome in favour of the instigator of the action often is enough to settle disputes. The Commission pointed out that a very high proportion of complaints are resolved one way or the other by simple negotiation.²⁰⁸

4.31 The Committee concludes that:

. Section 46 of the *Trade Practices Act 1974* be retained in its existing form.

A.4 Representative actions

4.32 The 1986 amendments to the Trade Practices Act allowed the Commission, for the first time, to take representative actions on behalf of persons or corporations harmed by breaches of the Act.

4.33 The major problems facing a small business person wishing to take action under the Act are the length of the case and cost of litigation. The Commission acknowledges that litigation costs are "just enormous"²⁰⁹ and deserving of scrutiny as an issue by itself.² This cost, combined with delaying tactics that can be adopted by larger companies, can effectively neutralise any benefit of a successful prosecution under the Act. The major cause of lengthy cases lies in the type of evidence that has to be collected and presented to court. As the Commission described it:

There always is and always will be a difficulty in relation to those provisions relating to competition where it is necessary to establish an effect on competition: it involves the provision of economic evidence and dealing with some fairly intricate economic concepts... we have... been looking for a long while... at how we can best get economic evidence presented to courts in a streamlined fashion that does not cost a lot of money.²¹¹

208. Transcript of Evidence, p 2811

209. Transcript of Evidence, p 2809

210. Transcript of Evidence, p 2809

211. Transcript of Evidence, p 2810

4.34 Prior to the amendment of Section 87, the Act allowed only for private action by businessmen or private persons to prosecute breaches of the Act.²¹² This was a major disincentive to using the Act, as the cost of litigation, and the length of court cases in a large number of instances effectively denied this course of action to small businessmen. Even in instances where a small business was very confident of a successful prosecution, the cost and time associated with court action could be sufficient to bankrupt the business.

4.35 Additionally, the Act did not allow any freezing of assets to pay out compensation where a favourable judgement was made. Consequently, a business defending an action could adopt the tactic of prolonging litigation to permit the relocation of its assets and ultimately paying out little or no moneys in compensation to the aggrieved parties.²¹³

4.36 This shortcoming was recognised in the 1984 Green Paper: *Trade Practices Act: Proposals for Change* and subsequently Sections 87 and 87A were included in the amendment package adopted in 1986.²¹⁴ Owing to the relatively recent adoption of these provisions, and the relatively few cases suitable for this type of action,²¹⁵ only a few cases have been taken to court, each representing 30 or 40 people.²¹⁶

4.37 The Committee believes that the 1986 amendments to the Act relating to representative actions have the potential to enhance significantly the protection that the Commission can offer to small business.

A.5 Resources

4.38 Resources for the Trade Practices Commission have

212. Transcript of Evidence, p 2785

213. Transcript of Evidence, p 2807

214. Evidence, p 2808; Senate Estimates Committee, Hansard
13 April 1989, p E91

215. Senate Estimates Committee, Hansard 13 April 1989, p E91

216. Senate Estimates Committee, Hansard 13 April 1989, p E92

reportedly fallen over the last 9 years, with funding for salaries and administrative expenses declining by 6.6% in real terms over the period 1980-81 to 1987-88.²¹⁷ In its 1987-88 Annual Report the Commission stated that this decline:

- . has severely hampered the Commission's efforts to achieve more cost-effective ways of promoting and securing the competition and fair trading which are essential to the success of Australia's drive for a more dynamic, flexible and efficient economy.²¹⁸

4.39 The effect of the decline in Commission resources will be compounded by the flow-on effects of the Government's deregulation strategies where the burden of administering competition law will fall to the Trade Practices Commission. The Commission will be gaining jurisdiction in new areas: the airlines, telecommunications, some of the rural sector, shipping and the waterfront, which combined with the present workload will stretch resources beyond their limits.²¹⁹

4.40 Resource constraints can only reduce the effectiveness of the Commission. In its report on *Mergers, Takeovers and Monopolies*, the House of Representatives Standing Committee on Legal and Constitutional Affairs noted that the Trade Practices Commission indicated that "resource constraints may eventually force it to allow less important matters to go by the wayside".²²⁰

4.41 Inadequate Commission resources affect small business directly, in the advisory and other services that can be provided to small business by the Commission and indirectly, in the Commission's ability to prosecute test cases, thereby establishing legal precedents for future actions. While the majority of cases dealt with by the Trade Practices Commission do not end up in court, the

217. Trade Practices Commission Annual Report 1987-88, August 1988, p 52

218. Trade Practices Commission, 1987-88 Annual Report, p 54

219. Transcript of Evidence, p 2796

220. House of Representatives Standing Committee on Legal and Constitutional Affairs Report: *Mergers, Takeovers and Monopolies: Profiting from Competition?* May 1989 p 89 - 90

very fact that they are raised with the Commission is often sufficient to secure their resolution out of court. Consequently, any lessening of the Commission's resources would reduce its ability to effect a resolution to such disputes and may ultimately result in small businesses perceiving the Commission as something of a toothless tiger.

4.42 The House of Representatives Standing Committee on Legal and Constitutional Affairs, when reviewing the resources of the Trade Practices Commission, stated that:

if resource constraints feature as a fundamental part of the Trade Practices Commission's decision-making process in relation to whether it should pursue breaches of the Act or other matters of concern with regard to the administration of competition policy, there is a strong possibility that the Trade Practices Commission may eventually represent little more than symbolic reassurance for the community. Unless the Trade Practices Commission is able to actively pursue breaches of ... the Act through the processes available to it, the deterrence value currently applicable to the powers of the Trade Practices Commission may well be diminished.²²¹

4.43 The House of Representatives Standing Committee on Industry, Science and Technology endorses this view and notes with concern that funding for the Commission was not increased in the 1989-90 Federal Budget.

4.44 *The Committee recommends that:*

- . The Trade Practices Commission be provided with greater resources to service the increasing demands being placed on it by business deregulation, so as to ensure the services and support it is able to

221. House of Representatives Standing Committee on Legal and Constitutional Affairs Report: *Mergers, Takeovers and Monopolies: Profiting from Competition?* May 1989 p 92

provide to small businesses are strengthened and not diminished.

B. Retail and commercial tenancy

4.45 The Committee received a substantial amount of evidence concerning the inequities faced by small businesses in commercial leasing arrangements. The source of the inequities lies in the disparity of bargaining power between small businesses and landlords, and two areas were brought to the Committee's attention as being of special concern: leases in shopping centres and leases in the motel industry.

B.1 Shopping centre leases

4.46 The Shopping Centre Tenants Association of Australia was sharply critical of the terms and conditions of retail leases offered to shopping centre tenants by landlords. The Association cited high rents and 'outgoings' (the shopping centre management costs shared by tenants) as the principal causes of complaints by tenants.²²²

4.47 The Association stated that the practice of attracting major retailers to shopping centres to act as anchor tenants by offering low rents meant that smaller retailers were paying disproportionately high rents and, in effect, subsidising the large retailer.²²³ Rents in centres can range from \$70 to \$650 per square metre, with the smaller retailer invariably paying the higher charge.²²⁴

4.48 Additionally, costs which the Association believed should be borne by shopping centre management are being passed on to tenants. These costs include sinking funds, depreciation, insurance

222. Transcript of Evidence, p 894

223. Supplementary submission, Shopping Centre Tenants Association p 1.

224. Attachment 2, Shopping Centre Tenants Association submission p 5.

premiums and fittings to individual stores, such as ceilings.²²⁵

4.49 High rent increases during the term of a lease also have a severe impact on small retailers. The Committee received evidence of rent increases by as much as 78 per cent annually for individual retailers,²²⁶ and overall increases in rents in retail complexes Australia wide. A survey of retail rents conducted in 1986 showed that rents had increased since 1980 by 110 per cent in Sydney, 130 per cent in Melbourne, 150 per cent in Adelaide and 200 per cent in Perth.²²⁷

4.50 The Association asserted that this situation has arisen with the development of shopping centre complexes. A shopping centre, by its very nature, is an autonomous "market" for retail space, owned by a landlord. Consequently, the landlord can set the terms and conditions for leases without the threat of competition, as there is no other "market" for that retail space.²²⁸

4.51 The Committee does not agree totally with this assertion, as shopping centres do not monopolise the available retail space. However, the Committee does consider that as these centres offer prime retail space relative to traditional 'strip' retail shopping environs, the competition for space in centres is consequently more intense. Additionally, the management structure of centres, which has effectively one landlord owning all the retail space does place shopping centre landlords in a more powerful position over their tenants than landlords of 'strip' retail space.

4.52 The Shopping Centre Tenants Association of Australia believes that landlords use this more powerful position to their own advantage,²²⁹ including conditions in leases favourable to themselves and not taking into account the effect that these conditions have on their tenants.

225. Attachment 4, Shopping Centre Tenants Association of Australia submission p 3.

226. Transcript of Evidence, p 305.

227. Transcript of Evidence, p 306.

228. Transcript of Evidence, p 894

229. Transcript of Evidence, p 900.

4.53 The net effect for the landlord is to increase the capital value of the centre at the tenants' expense. The Association stated:

Traditionally, there was a partnership between the shopping centre owner and the retailer, but with the ownership structure now, where the motivation is simply a property investment, then the partnership has gone out the window. We see new shopping centres such as the one in Sydney at Carlingford, sold by Lend Lease to a property group for \$27m. The group spent \$30m on it, upped the rents and it is on sale now for \$100m - that is 18 months later ... Every additional dollar of rent the group gets adds \$10 to the value of the shopping centre.²³⁰

4.54 The Building Owners and Managers Association (BOMA), which includes shopping centre owners in its membership, did not appear before this inquiry, but did appear before the New South Wales State Parliament Select Committee Upon Small Business in July 1986.

4.55 When questioned about the terms and conditions of leases offered to shopping centre tenants, BOMA stated that allegations that small retailers were being "sent to the wall" by high rents and other charges were "untrue" and "cannot be substantiated."²³¹

4.56 BOMA pointed out to the Select Committee that "obviously landlords cannot make money from shopping centres unless the tenants are doing well", and that management practices of shopping centres aim at getting the best results from the centre for all concerned.²³

4.57 In replying to questioning concerning the satisfaction of tenants with their leases, BOMA stated that "(it was) not suggesting that (tenants) are satisfied with every term and condition ... (but tenants) are sufficiently well satisfied with them to continue to want (to maintain their leases)." ²³³

230. Transcript of Evidence, p 902-3.

231. New South Wales Parliament Select Committee Upon Small Business Evidence p 33.

232. Ibid, p 36.

233. Ibid, p 37.

4.58 High rents and short leases were defended on the grounds of inflation and increased competition from other centres:

As inflation became a factor, it became desirable to review rent much more frequently, and one of the ways of doing that was to take shorter leases. More recently they have been adjusted more by reviews of rental during the lease term rather than by waiting for the end of term. The other problem that arises is that there is fierce competition between shopping centres, which means that if a centre is to remain viable it has to be refurbished and done up quite frequently. An opportune time to do that ... is when a lease terminates.²³⁴

4.59 The Committee considers that the disparity in bargaining power between small retailers and a shopping centre landlord can result in a landlord abusing his more powerful position by including unfair conditions into leases offered to smaller retailers. The Committee fully accepts the right of landlord and tenant to negotiate a lease, but considers that there should be an industry wide standard from which to begin negotiations, to protect the rights of both landlord and tenant.

B.2 Motel leases

4.60 Motel leases were also raised with the Committee as being of concern. Ignorance of the motel industry by bankers and lawyers when advising clients, and a lack of understanding by motel brokers of leasing principles were cited as the principle problems in leasing a motel.²³⁵

4.61 The situation faced by many motel lessees was described by a witness from the Budget Motel Chain in the following way:

There is a 'formula' for the guidelines when

234. Ibid, p 42.

235. Transcript of Evidence, p 1887.

purchasing a lease on a motel... A new lease for 15 years or more, calculate the 'turn-over' figure and multiply by 1.25 - 1.4 for the premium, which is a total of goodwill and chattels together. (An example: a motel with a turn-over of say \$100,000 would have a premium for the lease of between \$125,000 to \$140,000.) and then the rent is calculated at 22 - 25 per cent of turnover, making the rent on the turnover at say \$24/25,000 p.a.

This formula is considered within industry guidelines as 'fair' to all parties and it generally is fair ...²³⁶

4.62 However, in the experience of the witness, the banks are overly keen to lend money to inexperienced lessees.²³⁷ This leads to spiralling price rise on motel leases as the costs of running a motel increase, and lessees seek to sell their leases in order to escape crippling repayments.

4.63 The Motor Inn and Motel Association of Australia (MIMA) indicated that this situation was prevalent throughout the motel industry. People may unwisely invest their life savings or superannuation payments, borrowing so heavily as to place themselves in danger of losing everything.²³⁸

4.64 The turnover rate of lessees of motels is high. MIMA estimates that of the 1,800 member motels, there would be a change of motel owners and leaseholders every three years.²³⁹

4.65 As with shopping centre leases, advisory services for potential motel lessees have to be improved, and the complexity of leases reduced through standardisation.

4.66 Evidence was presented indicating that, in the drawing up

236. Transcript of Evidence, p 1885.

237. Transcript of Evidence, p 1886.

238. Transcript of Evidence, p 331.

239. Transcript of Evidence, p 325.

some motel leases, fundamental flaws are occurring that are not corrected by either landlord or tenant before the lease is signed. In one example, a lease had been drawn up without a clause covering rent adjustment, giving the landlord free reign over rent increases.²⁴⁰

4.67 The adoption of a standard commercial lease was proposed as a means of both preventing fundamental mistakes being made in the drawing up of a lease, and to establish a benchmark from which to begin negotiations on the terms of a lease.²⁴¹ As stated previously, the Committee considers that both landlords and tenants have a right to negotiate a lease acceptable to both parties. However, the adoption of a basic lease would set out the rights and obligations of both parties which could then be modified by the adoption of additional clauses agreed to by both parties.

4.68 The Committee recommends that:

- The Commonwealth Attorney-General confer with State and Territory Attorneys-General to formulate a standardised rental lease for commercial properties.

B.3 Shop lease tribunals

4.69 The resolution of disputes between landlord and shop tenants, both inside and outside shopping centres, arising from leases was criticised as being weighted against the interests of tenants. Tenants associations expressed concern that the provisions for the settlement of disputes between landlord and tenant do not ensure a fair hearing. For example, most commercial leases in New South Wales provide for a valuer to be appointed by the President of the Australian Institute of Valuers to arbitrate disputes. It was suggested that the commercial relationship between the valuer's company and institutional or private landlords may be a factor when

240. Transcript of Evidence, p 1887.

241. Transcript of Evidence, p 341.

hearing a dispute, to the detriment of a tenant.²⁴²

4.70 Tenants associations called for the establishment of an independent body to hear disputes.²⁴³ This course has been adopted in Queensland where a State funded Shop Leasing Tribunal has been established with power to arbitrate disputes between tenants and landlords. In giving evidence to the New South Wales Select Committee Upon Small Business, BOMA stated:

(H)aving considered these things at quite some length, not only in New South Wales but in other States, we rather reluctantly come to the conclusion that there is a case perhaps for setting up some organisations to deal with disputes in the industry ... 244

4.71 The Committee supports the establishment of an independent body to hear disputes between landlord and tenant. The disputes tribunal created in Queensland could serve as a model for similar tribunals in other States.

4.72 The Committee recommends that:

- . All State and territory governments introduce shop lease tribunals to arbitrate in disputes between landlords and commercial tenants.

B.4 Commercial tenancy and the Trade Practices Act

4.73 In discussing commercial tenancy, tenants associations called for the Commonwealth Government to extend the provisions of the Trade Practices Act to cover commercial leases.

4.74 The onerous clauses contained in leases were felt by retail

242. Transcript of Evidence, p 312.

243. Transcript of Evidence, p 312.

244. New South Wales Parliament Select Committee upon Small Business, evidence p 32.

tenants to be breaches of the unconscionable conduct and abuse of market power provisions of the Trade Practices Act. The Shopping Centre Tenants Association of Australia submitted to the Committee that Section 46 of the Act should be applicable to shopping centre tenants and landlords because the space within a shopping centre constitutes a market within itself. As landlords own that space, they consequently control that market and face virtually no competition in that market. The onerous conditions in leases therefore constitute an abuse of market power.²⁴⁵

4.75 This proposition has, however, never been tested in the Courts, and, because of the current definition of 'market' adopted in the Act, the outcome of any future action would be uncertain.

4.76 The Trade Practices Commission does not consider that Section 46 was an appropriate part of the Act to assist shopping centre tenants. The major problem faced by the Commission is whether or not a shopping centre constitutes a market.²⁴⁶

4.77 The Committee considers that the extension of the 'abuse of market power' provisions of Section 46 of the Trade Practices Act to assist shopping centre tenants would not be appropriate, as it would alter the original intention of the Act. The 'unconscionable conduct' provisions of the Act (Section 52A), conversely, have the potential to provide greater protection for retailers, as unconscionable conduct by landlords would be easier to prove than contravention of Section 46. Section 52A could be extended to small business to encompass the situations faced by shop tenants, and commercial tenants generally.²⁴⁷

4.78 In a commercial lease arrangement a small business is essentially in the position of a consumer of a product, and has limited scope to absorb costs and charges levied by landlords and still remain competitive. There are clearly demonstrated cases of

 245. Shopping Centre Tenants Association of Australia submission to House of Representatives Standing Committee on Legal and Constitutional Affairs inquiry into Mergers and Takeovers, p 2

246. Transcript of Evidence, p 2792.

247. Transcript of Evidence, p 2795.

unconscionable conduct carried out by landlords against tenants, and tenants should have the protection of Section 52A.

4.79 The Committee recommends that:

- . Section 52A of the Trade Practices Act be extended to include retail and commercial tenants.

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