



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT SELECT COMMITTEE ON THE RETAILING
SECTOR

Reference: Industry concentration in the retailing sector

THURSDAY, 8 APRIL 1999

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JOINT SELECT COMMITTEE ON THE RETAILING SECTOR

Thursday, 8 April 1999

Members: Mr Baird (*Chair*), Mr Jenkins (*Deputy Chair*), Senators Boswell, Ferris, Forshaw, Murray and Schacht and Mrs Elson, Mr Fitzgibbon and Mr Nairn

Senators and members in attendance: Senators Boswell and Ferris and Mr Baird, Mrs Elson, Mr Jenkins and Mr Nairn

Terms of reference for the inquiry:

To inquire into:

- (a) the degree of industry concentration within the retailing sector in Australia, with particular reference to the impact of that industry concentration on the ability of small independent retailers to compete fairly in the retail sector;
- (b) overseas developments with respect to this issue, highlighting approaches adopted in OECD economies; and
- (c) possible revenue-neutral courses of action by the Federal Government (ie courses of action that do not involve taxation reform).

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BRITTAIN, Ms Jennifer Margaret, Member, Small Retailers Association, and Proprietor, Lockleys Topz Shopz Convenience Store

BROWNSEA, Mr John David Leslie, Executive Director, Small Retailers Association

POWNEY, Mr Keith Roy, Committee Member, Small Retailers Association, and Proprietor, Glenunga Welcome Mart

SYMONS, Mr Jon Robert, Member, Small Retailers Association, and Proprietor, Collinswood Foodtown

CHAIR—I call the committee to order and declare open this public hearing of the Joint Select Committee on the Retailing Sector. Today's hearing at the Methodist Hall, Adelaide, is part of the committee's inquiry into industry concentration in the retail sector. I welcome Mr John Brownsea, Ms Jenny Brittain, Mr Jon Symons and Mr Keith Powney. The committee prefers all evidence to be given in public but you may at any time request that your evidence, part of your evidence or answers to specific questions be given in private and the committee will consider any such request. I point out, however, that evidence taken in camera may subsequently be made public by order of the Senate.

The committee has before it submission No. 215 dated 31 March 1999. Are there any alterations or additions that you wish to make in relation to that submission at this point?

Mr Brownsea—Only one, Mr Baird, on page 3, second paragraph, fourth line. It says 'by those who don't want to facts the facts'. It should be 'face the facts'. Sorry about that error.

CHAIR—No problems. Any other changes?

Mr Brownsea—No, that is it.

CHAIR—May I congratulate you on how clearly you put your submission together. It was easy to read and it was succinct with the attachments to it, so I appreciate that. I think in fact, of all of the submissions, you have brought together and crystallised the arguments on behalf of small retailers as well as anybody and I would like to thank you for that. I now invite you to make an opening statement, after which we will undertake questions.

Mr Brownsea—Thank you, Chairman. Before moving to some general comments I would like to point out that the retailers I have with me are successful retailers in their own right. They are not people who have an axe to grind in terms of feeling damaged in the industry. They are successful retailers and therefore their attitudes are positive to what we have to say. Our submission really follows on from the NARGA submission and I have a copy of it here, so I clearly have read it and I make the point that we entirely support and endorse what they have said. I am also the representative of NARGA in South Australia.

Further to that, in our submission we have alleged that essentially the process we have in Australia now in the retail industry is a predatory process. It is one where even the best may not survive by the very processes that go on where they are in fact being targeted for market growth by one of three major retailers. That is a major concern to us because in some cases people will be taken out of business whether they want to be or not, simply because they recognise that they may have no choice, even though they might be trading well.

In discussing the establishment of a cap on the market we note the comments made by other retailers suggesting that really their percentage share is not as has been alluded to. I have put on your table the A.C. Nielsen report stating what the market share is, and we rely on A.C. Nielsen, a credible commentator on the industry. So those are the figures as far as we are concerned. However, others have alleged different figures, but I think we are looking at them as selectively taking figures that enable them to change the argument. If they are objecting to the 80 per cent and saying they are only 43 to 45 per cent, where is the problem? There is none at all on the basis of that.

We believe there has to be a cap on the market immediately, simply because there may not be enough time to adequately research the issue. I am pleased to hear that the committee in fact is going to take a bit longer than has been allowed initially under your terms of reference because that was really one of my concerns; that in all fairness to you as a committee you may not have enough time to do the job as well as you would want to. So I applaud your decision to take longer.

CHAIR—On that it is probably likely that we will extend when the actual submission is going to be made to parliament.

Mr Brownsea—I am pleased to hear that. It is a relief. Certainly in the document I have presented in front of you I have tried to outline the main problems. Just picking up on what has been said in the media, the suggestion that the 80 per cent is not the answer in the long term of course could be seen to be correct. We should be looking at other remedies within this. Perhaps it is not my job here, or indeed anybody's, to suggest what they might be, because I think we need to have a much closer look at what is occurring not only in this country but also overseas where there is increasing evidence that overseas governments and retailers—

Senator BOSWELL—If you can give any recommendations we would be pleased to—

Mr Brownsea—They most certainly will come but I would also like to take the time to make sure that what we are suggesting is worth while and has a satisfactory resolution for everybody. In the end we are talking about ensuring that Australia is a country which provides hope and promise for people who want to take the risk of being in business. The risks should be shared and should as far as possible be equal. It never will be entirely equal and we all realise that.

CHAIR—Just following on from Senator Boswell's comments, I think it is appropriate that where possible you bring forward your recommendations now so that it can help influence our deliberations.

Mr Brownsea—I suppose at the end of the day my recommendation was that there were other issues to look at along the way. The pricing policy of wholesalers is one.

CHAIR—I do not want to disrupt your flow but—

Mr Brownsea—That is all right and I will move to that but certainly in many cases—and I think in some of the press comments in the last couple of days—they have been talking about prices and we notice that Coles are saying, ‘Well, price is no longer an issue.’ I think they might be saying that they are no longer competitive; they are not competing; price is not an issue; they are not competing; they are talking about trying to make a profit out of cutting costs and so on. So I am very interested in those comments and I have put on your table recent comments along those lines out of *Retail World*, 29 March to 9 April 1999 issue, where Ron Corbett says, ‘Price is no longer a food retailing issue so therefore has competition ceased?’ We allege it has in many cases and you will see from that map I have provided you with, of the break-up of Coles and Woolworths in Sydney, that quite clearly something dramatic has happened to the way in which they appear to be competing in the marketplace. It would imply that in fact there is much less competition now than there was in the 1981 example I have provided.

We also have problems with the national competition policy. I have certainly read it and I have it with me here today. The policy within it clearly says that you would not do anything to help the likes of small business in what is ostensibly a competitive market, but we argue the market is not necessarily competitive because it is totally controlled by two major retailers. If you look at Franklins’ figures, for instance, they are trading with some difficulty in the marketplace and are not the threat that the other two are. We have grave reservations about the implementation or the interpretation of the national competition policy.

We also look at those who contributed towards the applying of that policy. There do not seem to be any retail organisations as we would know them who have taken part, nor for that matter were there many retailers who took part in providing Professor Hilmer and his team with the information on which they then put together a policy. So we would argue that the retail industry is now being afflicted with a policy to which it made no contribution; therefore I think it needs to be revisited. The notion that you should not do anything to help anybody that is struggling until they are really out of business is a flawed one. There is no hope for any of us if that is the case, but we are also saying there are many very good retailers in Australia—and once again I am surrounded by three of them—who are finding life difficult despite the fact that they are good and successful operators.

That is the problem we are trying to address: how do we make sure that these people, who are significant employers, at the end of the day keep their businesses alive, keep their investment alive—which is also significant in real terms to them—and also make sure that their loyal employees maintain their jobs? There are not necessarily any other jobs throughout the rest of the industry for them.

That is probably a summation of our interests. We are concerned that virtually, no matter how good some of these people might be, it will not be good enough, given the anticompetitive nature of the market, not only at the retail end but also within the wholesale part of it. Certainly we are aware of the fact that the number of people who service our part

of the industry, reps and so on, is declining. In order for those companies to address their costs they are taking staff off the road, but where is the money going that they are saving? It is going straight into the big business end of it. They generally demand that they do things like come in and stock the shelves. If Jenny or Jon or Keith were to say to one of their suppliers, 'You will stock my shelves,' they would be laughed at, but if one of the major retailers was to say, 'You will stock my shelves,' they will say, 'When can we start?' because they want to keep your business. So that, I think, indicates the difference in the power that exists in the industry.

I am just going to close, because I realise you want to ask questions, by pointing out the number of small supermarkets that have disappeared off the face of the earth in Australia over a period of seven years. I have provided you with those figures and 844 between 1991 and 1997 is a very significant number. We have simply to point out that 106 major supermarkets opened in that time, so there was still a very significant net decline of 738 which I would argue means there is less competition out of that process and there surely is also less choice. What happened to those people's investments? They have disappeared, the job opportunities have disappeared and of course the bigger the operation, whether it be a supermarket or anything else, the fewer people pro rata turnover they employ, so it is a process that is also seeing effectively, at the end of the day, fewer people employed.

I have also alluded within my papers to the difference in running costs of big and small supermarkets, which is very significant, and that is a major concern to us because we really do not come out having parity in the first place. You really cannot be competitive if you are not competitive when you start out. Let us look at sport. Sport imposes handicaps or whatever to make sure that competition is ideal and perfect. We do not see that in the retail industry at all, particularly in Australia. I also draw your attention to the Life: Be In It document which appeared in *Business Review Weekly* on 18 September 1998 where, in looking at issues in relation to GST, they discovered a whole lot of other issues relating to the supermarket industry which surprised them. I think that article, given that people had no interest in what they did discover, is very interesting because it does expose the industry for what is going on.

That is all I really want to say in reference to the paper that I have put in front of you. I believe that the cap must be put in place as a temporary measure while indeed another committee perhaps takes over and looks at the more specific issues that are emerging overseas. In accessing the Internet to see what we could find, we realise that we have only tickled the surface and there is a lot of evidence—both ways, I will add, and that will always be the case—which points to the fact that in many countries overseas retailers are looking at the problems which confront them in times that are changing very rapidly and where, technically, certain controls are not in place. I think there is the comment that for competition to be perfect you also need some fairly straight rules. If there are no rules it will always be winner takes all and that is not necessarily a desirable way to ensure the integrity of an industry, retention of employment and indeed the spreading of wealth and opportunity which is important in a country like Australia.

I will finally draw your attention to some of the outcomes of the fair trading review, the Reid review, which clearly identified that small business was trading under difficulty in Australia. They certainly had plenty of opportunity to come to that conclusion, given the

broad area of their research. They finished up by saying, 'As a consequence the capacity of small business to grow, to employ, to export and to invest in Australia's future has been reduced,' and we entirely endorse that. It has been reduced as far as retail is concerned and we are a slightly different industry. In many industries the small people do not necessarily compete headlong with the big people but Jenny, for instance, could be competing with the deli up the road or, just as easily, Woolworths up the road, so her area of competition is immense and her ability in some cases to compete is severely compromised because she is not in a position in the first place, for instance.

I will end my argument there. You have clearly read my report and I lay it on the table before you with attached appendices.

CHAIR—I wonder if each of you—Ms Brittain, Mr Symons and Mr Powney—could tell us briefly what type of retail store you have and give us a brief statement on how you feel you have been impacted by the concentration of the retail sector.

Ms Brittain—I am one of 38 stores. We are a convenience store or what used to be called the deli. We find in our group that we change regularly to try and meet market demands and to—so-called—keep up with the big boys. One of our stores at Para Hills is finding it very difficult. His trade has dropped 25 per cent since Foodland opened seven days a week from seven in the morning till 11 at night. It is a massive decrease in his turnover. The only thing that is keeping him going is his X-lotto outlet.

Recently I had the benefit of going to a Rothmans top traders seminar. I know there is an issue with cigarette companies as far as health is concerned. But cigarettes provide a big turnover in our stores; they are a major attraction. We discount our cigarettes to attract people to our stores and that is generally across the board in Topz Shopz. One of the comments that was made by the seminar speaker was that for every 50 small businesses that close they lose one rep off the road. When you look at it across the board that way, if they are losing one rep in one cigarette company—there are three major cigarette companies—you put that across the board with every company that supplies small business and it is a massive decrease in employment. He quoted the 1997-98 figures that show 21,000 small businesses went bankrupt between 1997 and 1998, and in 1998-99 5,000 extra went bankrupt.

Senator BOSWELL—Is that retailers?

Ms Brittain—This is generally small business across the board, but a high percentage of those were retailers.

CHAIR—You commented, in terms of your own chain, that with deregulation the drop in business was how much?

Ms Brittain—The store that I speak about in Para Hills has a 25 per cent drop in its turnover.

CHAIR—With deregulation of shopping hours, was it?

Ms Brittain—He had a supermarket open next door to him from seven in the morning till 10 at night.

CHAIR—I see.

Ms Brittain—Prior to that he sold groceries. He had a whole range of convenience products.

CHAIR—Right. Mr Symons.

Mr Symons—I am a member of the Foodtown group. We have 73 stores. I am in the top end of it. The bottom end is gradually disappearing. We have a situation where we set a level where they can join the group and if they do not reach that level they drop out of the group, and we can see it in a dramatic rate at this stage. They can fall by the wayside. We have lost five stores in the last two months.

Senator FERRIS—Is that in South Australia?

Mr Symons—That is just in South Australia. The problem I can see is the huge discrepancy with the difference between the national retailers and us as independents. We lose out in our award rates for a start. Our award rates here are set at state level whereas Coles and Woolworths set at federal level. They have got set hourly rates. We have to pay time and a half and double time for our staffing. That is just one part of it. Of course rental is a huge problem for us.

CHAIR—Senator Ferris said that was interesting and I find that interesting too. Do you believe that you are paying different rates to—

Mr Symons—I know we are.

CHAIR—Okay, why?

Senator FERRIS—Can you give us an example of that and what it means in terms of different—

Mr Symons—The junior rate in this state for a 15- to 16-year-old is \$7.84. If they work after 6.30 at night they get time and a half. If they work Sundays they get double time. Coles, Woolworths and Franklins have already got an award rate set in place under a federal award where they get paid a set amount per hour. They do not get double time or time and a half.

CHAIR—Okay, that is very interesting. Thank you.

Mr Symons—At this stage I have a store at Murray Bridge. I say 'I' because I am on the committee with Foodtown as well. We have a store at Murray Bridge and have outlaid \$100,000 to upgrade the store. Two weeks later the council let the Woolworths store in that town trade seven days a week, I think from seven until 10. He has gone from \$50,000 a week to \$32,000 and that was within one week. He was not informed of the change; it just

happened. Also what worries me is we are talking multinational companies here. I cannot bring any facts or figures in but what worries me is: are the profits of the multinationals going offshore? With the independents, we are keeping it within Australia. Has anybody looked at that situation?

Mr NAIRN—Woolworths and Coles are both Australian owned. Woolworths has 280,000—

Mr Symons—Coles is K Mart, which is an American company.

Mr NAIRN—Woolworths has 280,000 Australian shareholders.

Mr Symons—I understand that, but how many shareholders are offshore?

Mr NAIRN—They are all Australian.

Mr Symons—Are they?

Mr NAIRN—Yes.

Mr Symons—I am sorry, I did not know the facts, but I am asking questions.

CHAIR—No, it is appropriate you do ask.

Mr Symons—Yes. But that is a problem I worry about.

CHAIR—Yes.

Mr Symons—We have also looked at our products on the shelf; we have come to the stage now where we go and we check our competition. Coles and Woolworths have got products on the shelf at prices which we cannot even buy at through our warehouse. There is a huge problem. We would be better off going and purchasing the goods from these stores than buying them from our warehouse. I know the warehouse has a problem because they have got overheads, too, and they work on a very strict profit and they are very close to the point—but there is a huge discrepancy there.

Senator FERRIS—Are you part of the Davids buying group? **Mr Symons**—Yes, I am, and I am bringing out the point. I was with Woolworths for 6½ years before I started out in the independents. Davids had 56 per cent when I started out with Woolworths. Now they have got 28 per cent of the marketplace. Within 15 to 16 years they have lost half of their market share in this state.

CHAIR—And why do you think it is—because they have got such a difference in terms of the prices that they are able to offer retailers?

Mr Symons—Initially there is a sales tax problem there. Because we pay sales tax as independents, the sales tax comes straight from the warehouse, but Woolworths and Coles do not pay at store level like we do.

Mr NAIRN—That will get fixed if the tax package goes through.

Mr Symons—Yes, if—and if it goes on food, which we are still not sure of.

CHAIR—We will not enter into a political debate here, thanks.

Mr Symons—The other problem, which is probably by the way, is that Woolworths is going heavily into petrol now. Are we going to lose petrol stations as well as supermarkets and other small businesses? They are stating that they will stay at the cheapest price of petrol in their area. Are we going to lose another small business? It is just another thing where they are eating into our market.

CHAIR—Okay. Mr Powney.

Mr Powney—Actually my brother and I have three convenience stores. We call them convenience stores because they mainly service local communities. None of them are huge stores. What we like to think we offer is a service for the elderly. We do a lot of home deliveries which we do not charge prices for. We have a very large proportion of elderly shoppers during the day who just cannot face going to large supermarkets and that sort of thing. We believe we have fair prices. We are not cheap, but our customers know that and they are quite happy with that, and they are very loyal to us.

One of the things they demand, though, because we are in probably more affluent areas, is new lines, and constantly new products; we constantly have to put in new offers for them. One of the problems we have is that we cannot get to new lines. If you see something advertised on television there is a good chance that we will not be able to get it for three or four weeks after its release. I cannot bring any proof, but from speaking to representatives from the companies they say Coles have said, 'If you want us to stock that line then it won't be available to the independents until after say two or three weeks after the initial release.'

Coles and Woolworths will say they get it at the same price that we do, and maybe they do, but they get all the added rebates. They get allowances. They get shelf money. They get paid to put lines on the shelves. We do not have access to any of that. So somewhere manufacturers have to make a profit. That cost of putting lines into major stores has to be spread over that product, so we are paying a higher price for it. It is a bit like the advertising dollars that are built into the cost price of products.

Another problem we have is that we want to grow all the time; we want to expand. Because we are a partnership and because of all the uncertainty in the retail sector at the moment, banks do not want to know us unless we own our homes or we have got solid collateral. The banks are not prepared to support us to grow. One of our stores has a Coles seven-day store nearby which does not trade as Coles—it just trades with no name—and which is open extremely long hours, as are we. They recently did a \$300,000 refurbishment. They will not recoup that money for probably 10 years. If I went to the bank and said, 'Give me \$300,000 and I'll pay that back over 10 years,' they would laugh at me. We do not have that level playing field. We do not have access to that sort of money, which just gets very frustrating, because we want to compete; we want to grow.

Part of the thing that worries me is—and this is my personal view—that, once Coles or Woolworths have got the major supermarket business, where do they turn to next? The next obvious one is convenience stores, and they have already said they are going to be opening more and more convenience stores. Stores like ours employ university students. Between the three stores I have got eight university students. They come to us as they start university and they work for us through their university course for three years. These people have tried to get jobs with the major chains. They are too old or they do not have the experience. Where do these people go if we are not around? One particular guy was looking for eight months for work to support himself through university.

It is little things like that. They all add up. And it worries me: in the future, where will these people go? All we want is a fair go. All we want is a level playing field where we all buy at the same price, we can all have access to new lines, and just generally be allowed a fair go at trading.

CHAIR—All right, thank you. Thank you for the contribution from all of you. It was very helpful. I would like to invite Kay Elson to begin the questioning.

Mrs ELSON—Thank you very much. In your submission, Mr Brownsea, I noticed that you were very concerned about predatory pricing. Do you have any evidence of that going on at the moment?

Mr Brownsea—Yes. It also raises the question of when is loss leader pricing perhaps predatory. There is a broad depth of opinion on this, particularly in America where obviously their antitrust laws do address predatory pricing. I have got quite a few court cases on this recently off the Internet. They did not all go one way or the other by any stretch of the imagination, but at least they have a system there which allows them to look at a problem and in fact decide if it was predatory or otherwise. My concern about predatory pricing is that recently in one Adelaide suburb a major supermarket was selling cans of Coke for 50c. My member was buying cans of Coke for 97c. How predatory was that pricing? Quite clearly, he just could not drop his price to 50c and quite clearly that was less than the price of Coke, but probably that supermarket, via its kickbacks, if there were any—and we cannot prove this, of course, because we cannot get the information. I think you should subpoena information from some of these companies to really get to the bottom of what is happening. In fact, later on today you will have a supermarket owner from that same area who will probably be telling you about his same problems with that same major retailer. The problem is that they can in fact lose money indefinitely in certain sites to wipe out the competition, and along the way of course local people make the comparison: ‘How can a Coke be 50c here and \$1.50 somewhere else?’ It is logical, and they naturally think that it is the bigger price that is the rip-off, whereas in fact the smaller price is a mechanism to destroy the other businesses in the area.

So there is a difference, I think, between fair competition, which is where something should be capable of being matched without a trader going broke, and a predatory price which is meant to destroy people if they do try and compete. So there is a fine line that separates what is fair and reasonable and what is clearly a process that is designed to destroy for an absolute advantage, with the full knowledge that in fact people cannot compete on that basis. Nobody in their right minds would sell Coke or whatever else it might be for less than

it can be bought. I am not really picking on Coke; this is the exact example. I think recently a supermarket from that same area went to the major supermarket I am talking about and was buying coffee there at \$3 a can cheaper than they could actually buy it from their warehouse.

So there are huge questions behind the market. Is this the fault of the major retailers, or is it what is in the system? Are these the norms that we have come to accept simply because they are that? I have a problem with the notion that because something is considered to be normal, therefore it is fair. It might be grossly unfair and always has been, but is getting worse in actual fact. So the matter of predatory pricing I think once again is one of the things that your committee or a committee beyond that should be having a look at, to decide where the lines eventually might get drawn. I accept there has to be competition, but competition must be real and not in the end predatory in the meaning of the word that we are saying—in other words, destructive.

Mrs ELSON—Thank you. Could I just ask one more question of Mr Symons.

CHAIR—Yes.

Mrs ELSON—You mentioned that there was a very large increase of small, independent grocery stores closing down just recently. Is that because there have been major chain stores developed in that area around them?

Mr Brownsea—It is partly that, but also the fact that there is extended trading heading our way in June. I suppose they get to the stage where they say enough is enough; they have got WorkCover, superannuation; their turnover has deteriorated and they just cannot work and make enough money to pay their expenses. That is what is basically happening.

Mrs ELSON—Thanks.

CHAIR—Thank you very much. Further questioning?

Mr NAIRN—Mr Brownsea, you mentioned that you felt that all these things that have occurred have basically created a non-competitive circumstance. How do you then rationalise the fact that over the last 25 years—this is according to ABS figures—the real price of food has in fact dropped by 25 per cent? How does that correlate with a loss of competition? And as a sort of associated question, I suppose, you also said that there were far fewer independent supermarkets now with an increase in major supermarkets, but hasn't there been quite a substantial increase in specialty stores, individual stores, during that same period?

Mr Brownsea—There certainly has, and the comment was also made recently that really small retailers are not dying out and that is correct within the context of what is said. But then you look at the context of those businesses within their categories and you will find that one category is dying while another one tends to grow. I mean, the growth of the fast food industry has been phenomenal. Now, of course, the extension of trading hours we are soon to see in Adelaide is really to enable the major supermarkets to move into the takeaway business to take back what they arguably lost to the takeaway industry. But of course the takeaway industry cannot move into retailing of groceries because in many cases their leases

will stop them—and here is another practice we have a problem with: the competition that one can do as opposed to the other is different.

But your point that perhaps it is the strength of the supermarkets that allegedly has brought about this price advantage: we have also got to consider whether this is also due to manufacturing processes. It may be nothing to do with the supermarket industry whatsoever. But I do acknowledge that competition has brought prices down and stabilised them, and we do not step away from that because the market is extremely competitive. Why does Adelaide have the cheapest groceries in Australia? We also have some of the shortest hours. The clear implication is that, if you have one day less, arguably, for everybody to compete for the business, you have got to try that much harder to get it, so therefore our grocery prices are cheap—and I have given you the figures there in our submission—and they have been for years and years. And we certainly do not want to move to the situation in Sydney or Melbourne where retailers are paying a price for that so-called convenience—and everything does have a price, quite clearly.

Mr NAIRN—Can I just ask a further question on that. You mentioned as part of your opening statement, or indicated that there was a problem with the supermarket chains charging a lot more than the retailers, didn't you?

Mr Brownsea—I am sorry, I do not follow that.

Mr NAIRN—In part of your opening statement you were saying that people are finding that what it means in terms of increased prices—that is not what you meant? Is that right?

Mr Brownsea—No, I do not really follow what you are alluding to there.

Mr NAIRN—It just seems to be an argument which goes both ways; it seemed that on one hand people were arguing, well, they put their prices up, and on the other hand there is predatory pricing and forcing people out of business.

Mr Brownsea—Certainly predatory pricing has been addressed on national TV on more than one occasion. Franklins, for instance, are moving into fresh food. They originally had a policy in shopping centres of asking the shopping centre owner to bring on-site a good fruit and veg operator, an individual retailer. They are now moving into fresh themselves, and those retailers are literally being destroyed on the spot. The landlords are not providing any rent relief. They refuse to acknowledge there is any problem at all. So this is part of the problem. And, of course, once that small retailer is destroyed the prices move up again, and they move up beyond what they were anyhow, so the public finish up paying.

CHAIR—Do you have evidence of that?

Mr Brownsea—We can find the evidence. It certainly has been on national TV, as I said. Certainly through—

CHAIR—Being on national television does not guarantee that it is right. I wonder whether you would like to come back to the committee in terms of—

Mr Brownsea—I would be delighted to.

CHAIR—that particular, where you can provide evidence of prices having gone up when they have forced competitors out of the market.

Mr JENKINS—Just on that point, to try these things in front of Justice Ray Martin is sort of good entertainment, but I do not really think it gets the outcome that even you people would like to see. What is the impediment to taking these things into the court? Is it that the Trade Practices Act is just so deficient? Is it that, for instance, during the fair trading inquiry it was put that, because there is a purpose test to misuse of market power, it is more difficult, whereas if that was changed to an effect test it would be obviously easier? Is it that, because these small business people that you have brought along are too busy doing business rather than worrying about legal cases, it is too hard? Should there be class actions? Should it be associations like yours, Mr Brownsea, that act on behalf of others? Or is it even too difficult for you?

Mr Brownsea—You have actually asked the right person, because I have been successful in getting the first ever case in Australia up and running in terms of harsh and unconscionable conduct, and that has taken me some time, I might add.

Mr JENKINS—Which case is that?

Mr Brownsea—That is the one relating to a firm called Leelee and the appellant is Choong and it is the first one in connection with harsh and unconscionable conduct.

Senator FERRIS—Could you just describe the case to us briefly.

Mr NAIRN—I think it is under action at the moment. I think it is a shopping centre case, isn't it?

Mr Brownsea—It is a small food court where one tenant—this is really away from this subject but I suppose—

CHAIR—It is before the courts at the moment?

Mr Brownsea—It is, yes.

CHAIR—Okay, well, that is—

Senator FERRIS—He can still describe it.

CHAIR—I am not sure whether it is appropriate to discuss it.

Mr Brownsea—I am not keen to discuss it. I have an involvement in it.

CHAIR—I think we appreciate the fact that action is being taken, because that is—

Mr Brownsea—Yes. But in answer to what you are saying, it has been very difficult to get to that point and it was only because we were not prepared to accept defeat that we have got there, essentially. So you have got to be pretty determined and I think that perhaps the parameters are set too high to enable these cases to get off the ground. Of course, you are right in that many of these people are too busy. I mean, I have my members told by landlords and so on, ‘Look, you can take us to court. You’ll win. But we guarantee you’ll be broke by the time you get there. What do you really want to do?’ So that is part of the problem. In boxing the two fighters are essentially equals, but in this industry there are not equals when it comes to the fight.

So I take your point, and it has been alluded to elsewhere. This is the beauty of the American system, that you can go for a decision via what they have in place, whereas it is not really overly possible in Australia. The ACCC of course have some money now to investigate these areas but once again that is moving quite slowly, and I understand why—because they really would not want to lose any of these early cases; that would be extremely damaging. I suppose the other problem is that perhaps we need a tribunal system of experienced people with good expertise in these areas who can look at these things. But certainly at the moment I do not think that has been opened up enough. I believe that many retailers—and I have alluded to the fact that I have just travelled around much of the state talking to retailers—have simply given up. They do not believe that the governments of Australia, no matter who they might be, are really overly interested in their plight.

CHAIR—We are still on Gary Nairn’s question. This is a subset of his question. You talked about accessibility in terms of the Trade Practices Act in the States and antitrust. Why do you believe it is easier to access? I imagine the corporate law bills would be pretty high.

Mr Brownsea—Yes. I suppose at the end of the day everybody knows that system is there—they understand their antitrust laws—whereas here if there has only been one case and it is not yet finished, for instance, the thing I was alluding to, well, who knows about it? Not many people.

CHAIR—I see.

Mr Brownsea—And it is only by people being successful or otherwise in these cases that people decide in their own minds that if they have got a case it ought to be pursued.

CHAIR—Yes.

Mr Brownsea—Another thing that is holding it back is the absence of anything which might say that you can get in there and have a chance.

CHAIR—Yes. Part of the problem of this committee is that we are confronted with the situation of saying, ‘To what degree have you tested the existing provisions?’

Mr NAIRN—It is becoming painfully clear to me in this inquiry that one of the major problems that the smaller retailers are experiencing comes out of the changes to trading hours. It seems that the deregulation of trading hours and 24-hour trading or seven-day trading is probably one of the more major causes of problems for smaller retailers. I think

that is highlighted and it is something that we federally do not actually have any say over. But it is one of these imposing things in this whole inquiry. Would you agree with that?

Mr Brownsea—I would absolutely agree with it and I would also point out that the fact that trading hours have finished up being the sole means of some small businesses continuing their existence is most unfortunate, because that should not be the thing that keeps them in business; it should be real competition and the ability, as we have said before, to enter the market competitively and decide what they are going to sell their products for, coming off a decent base.

Mr NAIRN—Just on that point, by the way, I think it was Mr Symons who said, ‘All we want is a level playing field.’ If you have had the ability to open at extended times, isn’t it a level playing field—that the major supermarkets do that as well?

Ms Brittain—That is not the issue.

CHAIR—I think there are several issues. One is that you are confronted with a changing workplace where you have got a much greater participation by women in the work force; we are not back in the fifties. If you look at the participation of women in the work force, it has changed significantly. Secondly, one of the competitive advantages of small retailers is their ability to open at various times. Then you say that you want a level playing field and the majors come into it and suddenly you are saying, ‘Well, our competitive position has been eroded.’

Mr Symons—The ability for the major chains to open seven days a week is still there. We have five Bi-Lo stores in this state now which are trading seven days a week.

CHAIR—I know.

Mr Symons—I have just heard today that the first one is going to open 24 hours down by the airport. This same store, a Bi-Lo store, put a Foodtown store out of business just down the road. That was probably 12 months ago. I have heard that if this store is successful trading 24 hours—this is Coles Bi-Lo—they will open the other five stores 24 hours. I mean, Woolworths have the same ability and are doing it interstate now. They are opening convenience stores 24 hours a day.

CHAIR—But you have held up the US as a prime example of a model that we could follow in terms of antitrust. You could not get out at any airport and go five miles before you run into a 24-hour supermarket. Isn’t that true?

Mr Brownsea—The American market is a very different one to ours—population, weather, and so on—and they have grown up with a different market domination. Nobody really dominates the American market to a point where something is of benefit to them, an absolute benefit. These things tend to benefit everybody in America.

CHAIR—So the question is not the concern with the 24-hour shops; it is more in terms of the market domination of some particular brands?

Mr Brownsea—Well, there is a domination, and the other factors that go with it, the much cheaper rent they pay, and in fact demand, because they argue they attract people to shopping centres—and it is not that long ago that the property manager of one major retailer phoned me and said in relation to one shopping centre, ‘Why aren’t your people attracting people to our business, because we’re not going well?’ but in that centre I would say that 60 per cent of the tenants are not going well. Such is the nature of the trading environment in this state, which has probably a slightly smaller spending dollar and also too many shops, which is another problem. You see, the further we go the more things we find to add to the mix.

CHAIR—Yes, that is right.

Mr NAIRN—I will ask my last question—to give everybody else a chance—to Mr Powney. You mentioned before about the disadvantage you feel you are at with regard to the big retailers’ refurbishment of shops and things.

Mr Powney—Yes.

Mr NAIRN—We took some evidence yesterday from Davids, who told us that that is one of the aspects that they help their independent clients with, regarding refurbishment and all those sorts of things. Can you, being a client of Davids, say whether there is some assistance that you can have access to?

Mr Powney—Most of the assistance that they do offer—and they are very good about it—is short term. If you wanted to do a refurbishment on your store, they would assist you to source everything, purchase everything at very good prices, and they would then give you what they call a plant account which would go for six months, and at the end of that six months you would be required to pay the total cost. So you have got to have guaranteed bank finance or leasing finance before you can commence any of that. So, yes, they do help but, as I say, you still have to pay for it in a short term rather than a long term.

Senator FERRIS—So they basically help as consultants?

Mr Powney—Yes.

Senator FERRIS—Fee for service.

Mr Powney—And they do carry the debt for you.

Mr NAIRN—For six months, yes.

Mr Powney—But you have to have the funds at the end of the six months.

Mr NAIRN—It is better than a poke in the eye.

Senator BOSWELL—Keith, you made certain allegations which I consider pretty serious, and they would be definitely a breach of the Trade Practices Act, if you are being excluded from the market. I want you to consider this very carefully, because it will have

pretty serious ramifications. Are you saying that you are being denied product? How are you denied that product? When you see this thing on the television, whatever it is, you ring up Davids and say, 'I want a dozen of those,' and that is Davids' response?

CHAIR—Can I say before you answer that these hearings come under parliamentary privilege but at the same stage there is a responsibility in these hearings in that there is such a thing as misleading parliament.

Mr Powney—This is from my experience, and that is all I can say, and I think it would be very difficult to actually prove, but there was a case of a new cigarette that came on the market that was generally available through the major stores. It was definitely three weeks before it was available through Davids, and I queried that and they said, 'Well, we couldn't get the stock. We ordered it but we couldn't get the stock.' I am quite prepared to do further research and come back to you with some further evidence, if you wish.

CHAIR—That would be good. We find that particularly interesting.

Senator BOSWELL—You have mentioned one case. Are there any other cases where this has happened, where you have been excluded from the market?

Senator FERRIS—Where you have not been able to get new stock?

Mr Brownsea—I think, Keith, I can just answer that. From time to time Davids do make comments as to the unavailability of certain stock and it is a matter of concern to them, and from time to time I have seen them listing companies that they have trouble getting stock from. That is not to say it is deliberate, but why should some get it and not others? Obviously if there are not enough stocks, some have to miss out, I suppose, but certainly Davids do have that as a concern that in some cases they really cannot supply when there is high expectation.

Senator BOSWELL—Obviously every retailer and every manufacturer runs out of stock from time to time, but what I am asking is: is there any evidence that there is a manipulation of the market where the retailers are denied stock on opening products? This is a pretty serious allegation.

Senator FERRIS—And this is a question of market power very clearly under the Trade Practices Act.

Mr Brownsea—Yes, I am aware of that, and from time to time we hear people complaining about this, but there is a difference between somebody complaining and the fact of the issue—did they get their order in on time; there are a whole lot of other things—and once again that might be something that we all need to look at. I believe that Keith is commenting correctly, that he has a problem, and if that is a problem that is the truth of the matter. But whether it is a deliberate matter or a logistical matter is something that he obviously does not know.

Senator BOSWELL—That is a very serious matter. I ask you, Mr Brownsea, could you take that on notice and, if you do find anything, let the committee know. Mr Brownsea, in

your opening address you suggested that you may have other solutions to this problem. This committee is made up of parliamentarians across the board from all parties, trying to come to grips with a very serious problem. You have gone out and you have put in your submissions that you want an 80 per cent cap. Have you thought or have any of your organisations thought of any other way to approach this matter with the outcome that you maintain a sufficient critical mass to keep the independents in existence?

Mr Brownsea—We have had to go along with NARGA because we are part of NARGA. I am aware of the comments being made that the 80 per cent is not reasonable in itself but at this stage, to some degree—like the trading hour issue—it is the best thing we have to stop the process right now. I believe that, given some more time, we will be able to come up with some equitable arrangements.

Senator BOSWELL—We would certainly welcome any recommendations.

Mr Brownsea—But I would not be prepared to do them off the cuff now, because you do not get the right answer that way.

Senator BOSWELL—No.

Mr Brownsea—Certainly we believe there are other issues amongst all of this that go to the core of the smaller retailer's ability to compete. It is all about the dollar at the end of the day. It is the dollar that decides.

Senator BOSWELL—Mr Brownsea, I am going to get cut off by the chairman—he's pretty vicious on this!—and so I have to get short, quick answers. What share has the AIW got in South Australia?

Mr NAIRN—The wholesaler? They are not in South Australia at all.

Mr Symons—Twenty-eight per cent.

Mr NAIRN—Oh, 28 per cent.

Senator BOSWELL—No, hang on a moment.

Mr NAIRN—Market share.

Senator BOSWELL—We have got a pie, and that represents the wholesale market. What share of that wholesale market has Davids got and what share has AIW got?

Mr Brownsea—I put the figures in front of you actually. They are there.

Senator BOSWELL—Can you give them to me off the top of your head? Which? These ones here?

Mr Brownsea—That is the large one, yes. That is the Nielsen report which are the only figures we actually have, and Nielsen of course are reliable and credible.

Senator BOSWELL—Well, can you assist me. Where is AIW here? I cannot see AIW.

Mr Brownsea—No, because it is not there.

Senator BOSWELL—So AIW do not sell in South Australia?

Mr Brownsea—No.

Senator BOSWELL—So you only have one wholesaler and that is Davids?

Mr Brownsea—That is right, and some would see that as a problem, but if Davids is the only one here, that is not Davids' fault, is it? It might be to our disadvantage to some degree.

Senator BOSWELL—I would have thought it might have been to your advantage because you are getting a critical mass and that should push your prices down.

Mr Brownsea—On the other hand, you look at the critical mass that is Davids, and between December 1995 and September 1998 they have gone from 32.6 to 25.1, so there is a clear message there.

Senator FERRIS—Yes, but Davids admitted that there were other reasons for that difficulty in their evidence yesterday.

Senator BOSWELL—I understand that.

Mr Brownsea—And we are, of course, dealing with the new Davids now compared to talking about the old Davids in the comparative figures.

Senator BOSWELL—The cheaper wholesale prices: you are maintaining that Davids are not buying at the same rate as Coles or Woolworths.

Mr Brownsea—Not necessarily. They may well be, but then you look at the warehousing process. Coles and Woolworths, I presume, go straight to Kelloggs and it comes straight out of the factory to their warehouse or, indeed, to their store. If it is Davids, it may well go through two or three other processes.

Senator BOSWELL—Yes, it goes to the factory, to Davids' warehouse and then out to you.

Mr Brownsea—Yes.

Senator BOSWELL—I can understand there is sales tax on this, but even Coles, who own their own warehouses, in running those warehouses would incur a cost. It may not be a cost to earn profit. But what I am asking you is: are you suggesting that 20 per cent of the market share is not a sufficient critical mass to encourage the manufacturer to offer the same prices to Coles and Woolworths?

Mr Brownsea—I suppose more than one thing comes into this. How good negotiators are Davids compared to the others? We can only suggest probably they are equals. Purchasing power is still a matter and, once again, you or I will never be party to what really goes on. We can presume certain things, but ultimately things are dearer from Davids. Many of my members, for instance, have to buy from a cash and carry, so there are three processes there, three lots of transport, three lots of warehousing, which absolutely guarantees the price has to be dearer before they start to compete.

Senator BOSWELL—But if your members who normally buy from Davids find that it is cheaper to buy from Woolworths or Coles, wouldn't that suggest there is some disparity in purchasing ability?

Mr Brownsea—Certainly it does. We obviously lack the evidence—and in many other areas. We have asked questions in the past. We do not get answers and they are not necessarily obliged to provide them either.

Senator BOSWELL—Let us assume that we fix the sales tax problem up. Is that going to have a major effect on—

Mr Brownsea—We are not so sure the GST will in fact solve the problem.

Senator BOSWELL—No, I am not saying that. Some people say it will, but we do not want to get into that debate. We are a bipartisan committee here, trying to come up with a solution to a pretty vexed problem. If by some process the sales tax was removed or you paid the same rate of sales tax as the majors, would that wash your problem out?

Mr Brownsea—It would certainly be a major help, as would many of the other things we have talked about. It would be. We are not even suggesting that that ought to be the case, because that would in itself be an unreasonable argument and you would then raise the matter of market forces and so on and we would be on to a new subject straightaway, but certainly the huge disparity that might be there—and it is not just the price they might pay; it is the shelf fees, the marketing kickbacks and so on that all—

Senator BOSWELL—But surely Davids get all those kickbacks.

Mr Brownsea—They certainly do. I do not know if they get the same ones though. I have no idea. You would have to ask them. They alone would know.

CHAIR—I think we in fact did and they, when talking about the price disparity, said that there were promotional deals done with some chains at this time and others at different times. It depends on when you take your snapshot is the issue.

Senator FERRIS—I am interested in the infrastructure costs of your businesses. In each case, I would like to know whether you actually own the building and the land and whether you pay differential rates for your electricity to, say, larger businesses. You have already outlined the industrial relations difficulties you have got and, of course, the shopping hours, which is also an infrastructure cost in a way. Are there any other costs, leaving aside the stock question, that impact on your business profitability which are outside the question of

market dominance and cover such issues that you have already spoken about? Rents is probably one.

Mr Brownsea—Rental is one, yes.

Senator FERRIS—What about telephone? Are you able to negotiate lower telephone costs?

Mr Brownsea—Yes, certainly. I will answer that. The Small Retailers Association have been involved in three different rental schemes, and it is another area of huge problems. We even had the second largest company in the world just tear up the contract and throw it in the bin—and said, ‘We’re finished with you.’ So there are huge problems in that area. This is the rest of the problem, isn’t it, that there is no equity any of the way through. Certainly in rents, the smaller you are the more you pay, and that is the rule of the market, one of these norms.

Senator FERRIS—Yes. What about electricity?

Mr Brownsea—That certainly is a problem. You talked about the cost of salaries. Jenny’s employees might, for instance, contribute in terms of \$2,000 or \$3,000 turnover a week, whereas for the employee of a large Coles or Woolworths it might be, just as a simple comparison figure, \$150,000. So, clearly, even though there might be different margins, those employees are earning far more at Coles and Woolworths for the company than Jenny’s are but Jenny’s are providing hands-on service, so there is a difference here also. This is part of the real problem: the smaller the business the more labour intensive it tends to be and the greater the cost of having that employee there. Ignoring penalty rates, it is still a difficult process and we have to accept some of those. That is also the rule of the market.

Senator FERRIS—There is one thing which I would call an infrastructure cost and, interestingly enough, no-one has mentioned it this morning, and that is the cost of corporate philanthropy. A number of witnesses that we have had in the last day or two have talked about the way in which a small business in a small suburban area or a small town contributes to the charities in the town—the local footy team and so on—and the extent to which the corporate philanthropy of the bigger groups is often targeted more at a large, if you like, national charity which does not flow back into the community. Can you just tell me whether you would consider contributions to the local charities to be also a significant annual cost or is it an ad hoc thing?

Mr Brownsea—I will answer that. Port Pirie in our mid-north some time ago did have a trading hour debate and in the course of that debate Port Pirie did move to 24-hour trading. Many small businesses were in fact debilitated and that damage is still occurring six years later. In the course of talking to some people around Port Pirie at that time, one small bicycle shop owner said to me that he had had to say after the event to the local BMX club that he could not really provide a donation any more. They said to him, ‘Well, you can please yourself, but we guarantee that none of us will ever shop with you again if you don’t give us a donation, even though your business has been affected.’ Now, there is the law of the market, you might say. Why people would say that in a local community I do not know, but certainly that is the case. We increasingly hear that the major retailers are withdrawing

from small things like that. I remember years ago you could go to Coles or Woolworths and there would always be a donation to the local fete. That is no longer the case and that is a commercial decision on their part, but certainly the smaller people are expected to do these things whether they can afford to or not, because it is part of them being in the town. So you are quite right.

Senator FERRIS—Would any of you be able to tell me what you might contribute in a year to charities in your area? Would it be \$500, \$1,000?

Mr Symons—Foodtown at this stage are supporting Kids With Cancer. We have donated at this stage, I believe, \$20,000 but we have collected that by selling products for the charity itself within stores and also donating, through our promotions, a certain percentage of what we sell.

Senator FERRIS—But it is income forgone, isn't it?

Mr Symons—Yes. We support it as much as possible.

Senator BOSWELL—If QIW or AIW were here, would many people go across, or would any banners go across I suppose is the question?

Mr Brownsea—I suppose we could see the same trends as we have seen in Victoria and so on. Of course, some jumped for short advantage and came back. I think anybody that came into the marketplace and was serious about competing in South Australia would find it quite difficult, they might lose money in the short term, and that would be a commercial decision. Certainly there would be those that moved to them, and certainly I am aware of small retailers right now that have accounts with Woolworths. It is happening. It is there, albeit that it is not talked about very much.

Senator BOSWELL—Would your organisation support a ban on creeping acquisitions if it affected your members? If Coles, Woolworths or Franklins wanted to buy any of your members' shops, would you accept prevention of that?

Mr Brownsea—In many cases they obviously target these stores very well and I realise they have made a comment in recent times that the cap would in fact make those businesses impossible to sell because they would not be able to buy them, so that is a very interesting comment in itself. We certainly see very good businesses go to them. They will never target a poor business because a poor business will always be a poor business if it has got to that point. So that is also probably getting in the way of what might be commercial reality. Should we in fact stop that process and stop someone genuinely wishing to sell and Coles and Woolworths genuinely being the only people in the marketplace is another matter. There are a lot of supermarkets in South Australia for sale, and there are no takers. What is the reason? Is there no money to buy them? Or really is the marketplace very apprehensive that in fact in due course those businesses may not be there due to policy?

Senator BOSWELL—You cannot come to us and complain about creeping acquisition and then complain that we are not doing anything about it. I mean, you cannot have it both

ways. You are either for creeping acquisition or you are against allowing Woolworths and Coles to—

Mr Brownsea—I guess we have a problem with chequebook competition because that is winner take all, once again, and it does take out of the marketplace people who are good retailers, and the community may not necessarily benefit from that at all.

CHAIR—Thank you, Senator Boswell.

Senator FERRIS—Would you want government policy to stop those people being able to sell to Woolworths if they want to?

Mr Brownsea—I have never actually considered that, and I think it would be a very hard thing to get up and promulgate—worse than all the other things we are talking about in real terms.

CHAIR—Yes, I think that is a problem.

Mr JENKINS—One of my problems with the inquiry so far is definition, and it goes beyond just the A.C. Nielsen definition in the grocery sector. Mr Brownsea, your association obviously covers a whole host of small retailers. You have mentioned the bike shop owner. So what characterises your membership? Is it anything goes?

Mr Brownsea—Almost. It is a very broad membership, 50 per cent of whom are in the food industry.

Mr JENKINS—All right. If we took the bike shop owner or the sporting goods shop, they might be concerned that there is a dominance of some of the bigger players in that sector.

Mr Brownsea—It depends whether or not you say that K Mart is that person because they sell bicycles. They also argue they are very big in hardware and people should be open when all hardware shops are open. At the end of the day we are really talking about the ability of anybody in the market to compete by whatever means and that might also be service and quality: buying from the local bike shop, you can get after-sales service, but it is doubtful if you can get it from a chain store because they are not equipped to do it.

Mr JENKINS—This inquiry seems to have gathered evidence that is concentrated on grocery, supermarkets and convenience stores, and the major suggestion that has been put consistently is the notion of a cap. That has led us into a discussion about what it is that we would actually be capping. We will seek some advice about different definitions. A.C. Nielsen have even put in a ‘disclaimer’ about the use of their information. If we take some of the evidence that we have heard this morning, and if we take convenience stores, it is suggested that a convenience store has suffered not only because of the extended hours but because what might be described as an independent supermarket has taken away business. So how in fact would a cap protect the market share of some of the convenience stores?

We have heard in evidence that convenience stores and small supermarkets have survived because of some of the other lines that they have had. Cigarettes are not listed in the 105 categories under the A.C. Nielsen ‘dry and packaged grocery’, so already we have that contradiction. I suppose all I am putting to you is that we have a great problem about definition, about what sector it is. If we are going to look at it sector by sector within retail, how would we make those definitions? I wonder if you could make a comment.

Mr Brownsea—I can see the point. Perhaps we should be looking at the whole marketplace. I will talk about this state alone. The Commercial and Retail Shop Leases Act only covers tenants under a certain size. In other words, the major retailers are not covered by the act at all. They are free from it, not affected by it. But nonetheless, the leases that the smaller tenants have absolutely restrict them as to what they can sell. It is quite clear they are in a certain business, and restricted. It could be that the major supermarket in that centre decides it will move in on one of their areas. There is nothing they can do about it because their lease absolutely stops them. So there is a further commercial restriction, punishable literally by being accused of breaking your lease if you do compete.

Is this what you were alluding to, the fact that the problem does go further, and should we be looking at the whole industry rather than just the grocery sector? That, of course, is NARGA’s focus, quite rightly, but our focus would also be broader because increasingly we are seeing the supermarkets target what appear to be new or successful products in small shops, and all of a sudden the magic fridge magnet in the card shop is being sold by a Coles or a Woolworths for a dollar less, and they really do that just to annoy people, almost, but they also recognise that that card shop has done some research and has decided that here is something they can afford to sell, because they also cannot afford to make a mistake. If small business gets a product wrong, they pay dearly for that.

So, once again, the major retailers do pay a lot of attention to what small business is doing. If you speak to a greengrocer they will say they might see the staff from the local major supermarket in their shop twice a day writing down prices so they can go back and reduce them. And I notice in a comment made in the media very recently they are saying they never go below anybody else; they merely come on line. But that is not the case. In many cases it is small business that is setting parameters for prices and big business is merely making sure it is cheaper.

Mr JENKINS—I suppose what I am suggesting is that we really have to look at some solutions that might be generic rather than specific to some of the market.

Mr Brownsea—I think the narrower the view the more difficult it might be to solve in some ways, and we are looking at a plethora of problems within the industry, not the least of which might be the terms of the lease. But, on the other hand, do you say, ‘Well, it’s a free-for-all. Everybody can sell what they like,’ and then that is, once again, winner takes all. There are comments which state clearly that if you are to have competition, and good competition, you must also have rules.

Mr JENKINS—Mr Brownsea, your association was an active participant in the Reid inquiry.

Mr Brownsea—We certainly were.

Mr JENKINS—Just a very quick answer about what you think has happened post the inquiry and some of the implementation of the recommendations.

Mr Brownsea—I think some of it has been a bit slow, but on the other hand, as you come to know more about governments, you realise that things do essentially happen quite slowly; reform is a slow process. So we are happy about some of the things from Reid. We are not happy about others, because they have not been adequately implemented. I notice the New South Wales government is now changing its leasing laws to implement more of what was in Reid, and that was a promise that the Labor Party made quite some time ago and it has taken them time to do it. So I think there will be a flow-on and it is up to associations like mine to make sure that the flow-on happens, as much as it might be for a government to ensure that it also pushes on. So Reid, I think, was a very good groundbreaking exercise, but we will need to keep on revisiting it to make sure that things just do not get lost with the passage of time and changes in government due to elections and so on.

CHAIR—Thanks, Mr Jenkins. One of the points you have made here in your recommendations is to introduce Australia-wide ‘very specific requirements regarding greenfields shopping centre developments and capital retail development at an economically sustainable level’. What did you mean by that in terms of ‘greenfield’ sites?

Mr Brownsea—I am talking about a major retailer—and it may not be a Coles or a Woolworths—deciding to set up a totally new shopping centre on the fringe of a town, and that then splits the shopping opportunity of that town. The public are obviously always attracted to something that is new and glitzy. That is a natural human failing.

CHAIR—Yes, that is what has happened, but how would you plan to stop that?

Mr Brownsea—Well, the English have stopped it. They have put an absolute cap on it. I think Bluewater, which has just opened in England, which is arguably the biggest shopping centre in the world, is the final stage of that type of process being allowed. The English have recognised that, if you continually move development out of a town, the town itself will die.

CHAIR—So in terms of greenfields, if you knock down a warehouse that is already there, that is okay?

Mr Brownsea—I am not saying that. I am saying that, if you want to build a bigger supermarket, you build it where you have already got a supermarket.

CHAIR—On existing sites?

Mr Brownsea—Yes. The warehouse thing—in the end they are saying, ‘Oh, you must now change the zoning,’ so the argument kicks off, and you have in fact got a greenfields site when you have got the zoning change.

CHAIR—What about the expanding urban areas that go into—

Mr Brownsea—I think that is an entirely different matter. Logic says you have got to provide facilities and services for people, and that is an entirely different issue.

CHAIR—Yes.

Mr Brownsea—We would not become involved in that argument. But of course we notice in many of the development plans of local government they only talk about centres, and here in South Australia a centre is three or more shops, so the matter of one or two shops together is off the agenda. The ability for a small business person to kick-start themselves with something they might totally own is fraught with some difficulty given the focus on centres, and arguably the bigger the centre the better in many cases and then the public pay for that infrastructure.

Mr NAIRN—You have just mentioned that in England they have got a cap, but that is not really the case, is it? It is more something to do with the planning deliberations, not so much a cap on numbers or whatever.

Mr Brownsea—Well, as I said, it is an aspect of their planning rules. As I understood it, it meant that there would be no more greenfield sites. If anybody wanted to develop, they were certainly entitled to, but they would not be digging up a paddock outside town to do it.

CHAIR—Could you provide the committee with information that you have got on that. We are not aware of that and I think it would be interesting to have. Last night we ran into one of your state ministers here and there was some criticism about a particular development and so on, so I think it would be of interest.

Mrs ELSON—I have just got one quick question just to clarify a point that I believe Mr Powney made before—that Coles are opening up no-name convenience stores. Is that right?

Mr Powney—They have had a no-name store. It is on Goodwood Road. It has been there for a lot of years. They used to trade it as a Coles—I cannot remember the exact time—but, yes, now they trade without a name on it, just as a seven-day supermarket.

Mrs ELSON—And that is the only one you are aware of, is it?

Mr Powney—That is the only one I am aware of. All the rest of the seven-day stores are Bi-Lo's.

Mrs ELSON—Thank you.

CHAIR—We have their representatives at the back, so no doubt we will be asking them. Thank you. We have gone over our time, but it obviously is a fertile area and we appreciate your submissions and your frankness in answering questions. It certainly was a constructive addition to the submissions we have received to date. Thank you for coming here today.

[10.28 a.m.]

BISHOP, Mr William Neville, Market Analyst (Horticulture), South Australian Farmers Federation

CAMERON, Mr Alexander Gordon, Chief Executive Officer, South Australian Farmers Federation

O'DEA, Ms Marie Catherine, Executive Officer, Commerce and Community Services, South Australian Farmers Federation

CHAIR—Welcome. The committee prefers all evidence to be given in public but you may at any time request that your evidence, part of your evidence or answers to specific questions be given in private and the committee will consider any such request. I point out, however, that evidence taken in camera may subsequently be made public by order of the Senate. The committee has before it submission No. 218 dated March 1999. Are there any additions or alterations that you wish to make to that submission before we start?

Mr Cameron—No.

CHAIR—The National Farmers Federation were the first organisation to make contact with me: within one day of the committee being established they were knocking on my door. So I certainly congratulate you on the speed with which you took notice of this committee having been formed. We look forward to your comments today and I am sorry that we have had a bit of a delay. For reasons you probably appreciate, the retailers were particularly interesting to talk to but we are looking forward to your submission, particularly because it relates to the general question of supply.

Mr Cameron—Just by way of introduction for those on the committee—and Senator Ferris will not be one of those who do not know about the Farmers Federation—we have 5,000 members. Our focus is very much on policy development and representation of the rural sector in this state and as a result our submission and our comments today are very much focused on the issue of the impact of market concentration on primary producers, particularly on those that have the closer links with the supermarkets—horticulture, to a lesser extent the pork industry, the flour industry, et cetera. We also have strong links with the South Australian Dairy Farmers Association but we are not here representing them particularly.

As I said, the comments we want to make and the sort of focus we would like to bring to your attention is the impact of market concentration, particularly the issues of supply as they impact on our direct membership. I will now ask Marie to give you a bit of a run-down as to how we have gone about gathering evidence for this submission.

Ms O'Dea—What we did was seek input directly from our commodity sections through our executive officer system and main responses came through from the horticultural section, which is hardly surprising because of that direct comment. We have not actually named anyone in particular although there were a number of members who in verbal responses were

quite prepared to actually say, 'We would have our name put to the evidence if it seemed worthwhile.' The key issues are the power of the major retailers and how they can misuse that power perhaps, or use it; their strength versus the relatively low strength that producers have in that position. Making some comparisons there, we do actually have some other policies in other industries, particularly banking, where we have four-pillar policies. Why should supermarkets or retailing be any different?

On the issue with overseas comparisons, I am aware of the UK in particular, having spent some time there, where you have farmers there complaining about supermarket power and concentration. They have nowhere near the concentration, and certainly a lot more opportunities for sales than our producers in this country. In terms of purchasing practices, we have made references to specials and the impact they have in Pooraka markets. Bill Bishop, who works in the Pooraka markets on a regular basis, reporting on prices, is better able to talk about the impact of those.

It is probably best if we leave it to the committee to ask questions. We have not actually commented at all on how the supermarket concentration impacts on our membership as consumers. It is probably a lot more relevant to them how they are as suppliers, in terms of a great impact on the bottom line for them, than it is as a consumer.

CHAIR—Mr Bishop, did you want to make some comments?

Mr Bishop—Thank you, Mr Chairman. My role for the Farmers Federation is to report prices in the Adelaide market. I do not report the prices that are paid by supermarkets for produce but I do for agents and small retailers in the Adelaide market. I spend four hours out there three days a week from about half past three to half past seven on Monday, Wednesday and Friday and from six to about half past seven on Tuesdays and Thursdays. I pick up a lot of stories. A lot of it is hearsay but people are prepared to prove it if necessary.

I get a little concerned about the methodology that supermarkets use in getting their produce in greengrocery sections. They have over the years perhaps encouraged producers to grow exclusively for them and they do it by various means. They can encourage them to produce more, which means greater infrastructure. They have to have more land perhaps but they certainly have to have better packaging facilities, put in more irrigation and so on, and it is a tremendous amount of money that is spent on behalf of the supermarket—I emphasise—by some of these people. At the end of it all they are thoroughly in the hands of the particular supermarket and should they wish to get out, they are unable to do so—because what do they do with their product? There is no profitable market for it because the alternate market for that product is already catered for, yet there are plenty of suppliers who are ready to fill the breach for the supermarket if they choose to drop off a particular supplier.

The problem with the growth of the supermarkets is that there are three major categories of people affected. They are the suppliers, which may be producers or agents that work on behalf of the supermarket; the small retailers, and some of them are not so small but to the supermarkets they are the real enemy. The supermarkets are not enemies amongst themselves; they know exactly what each other is doing and they can take whatever means they like to counter it. The people that they really have problems with are the successful small retailers who offer service and quality, and prices that are generally speaking no dearer

than the supermarkets but they will offer high price goods which are very much specialist items. They can also offer cheaper products because there is a range of prices in the Adelaide market and if they offer that product quite often the quality is as good as the produce seen on the supermarket shelves.

They are the people that, in my opinion, the supermarkets most fear—and they suffer. But ultimately if the supermarkets can eliminate more of them and get more stores throughout Australia, it is the consumers that will suffer because the consumer is getting much better value overall out of the private greengrocer than they are out of the supermarket. The supermarkets could not compete if their costs were the same as those attributed to the small greengrocer. I do not believe that they could. They get a rebate on everything that is supplied to them. They get a rebate when they pay their cheque; there is a rebate there for advertising.

CHAIR—Are you talking about the majors?

Mr Bishop—Yes, the majors—and not so majors, some of them; 2½ per cent on the part of the majors, and I believe one smaller supermarket chain charges 10 per cent for an advertising rebate. So all this stuff that comes out in the papers and so forth is largely paid for by suppliers. They get cheaper rental space in their shopping centres. Every shopping centre has to have a supermarket in it to attract custom; that is the first thing a new shopping centre looks for. Small businesses in the shopping centre are paying up to three times and more per square metre space. What is a supermarket, after all, other than a conglomerate of small shops? Each department is the equivalent of a small shop and the supermarkets are expanding their area of influence to cover businesses that they have never covered before, such as photography, florists and so forth.

The other thing in another area I am involved in is farm chemicals. Everybody in the country who sells farm chemicals and dangerous chemicals has to have a trained person in control of the outlet. In the case of farm chemicals, every seller has to be trained in the use of those chemicals and do the farm chemicals course or its equivalent for retail sectors. We try to get the supermarkets to do the same thing and have at least one responsible trained person in charge of their home garden services where they sell backyard chemicals and they cannot afford to do it; it costs too much. They are not doing it and they are the only people in South Australia not doing it.

I believe the supermarkets get away with murder and the reason they are as profitable to their shareholders as they are is that they are not paying their fair dues compared with the rest of the retail sector.

CHAIR—Thank you for a very interesting and headline grabbing contribution.

Mr Cameron—Bill's contact with particularly the horticultural industry is quite intimate. He does spend a great deal of time in the Pooraka market and obviously has a lot of contact with the growers and agents and others who are experiencing some difficulty. We do not necessarily come to this review on the basis that we think supermarkets are in any way evil. Their market position has evolved over time because of the advantages in the economies of scale they have been able to develop. Our major concern is the impact, both potential and

real, of the level of market concentration and the market power they are able to bring. From our perspective we are talking about producers and suppliers who, generally speaking, occupy a very weak position in that whole agribusiness chain.

Regarding comments Bill made earlier about the fact that there are any number of willing suppliers ready to pitch in and take someone's place in the event that you get offside with your major customer—suppliers typically are drawn into the net—it starts off with a process of encouragement of expansion that Bill mentioned. In other words, 'We think you're a good supplier. Why don't you expand your operation, packing sheds, land, et cetera?' It then might be a process of getting tied in with a quality assurance program which is quite specific to that one buyer. Once that happens your business is effectively tied and there really is not sufficient robust competition out there.

As for the comments that have been made—and we have been obviously following the press about divestment or capping or antitrust—I think they are options the committee should seriously consider. The major point we would like to make is that there is an unhealthy level of competition in this particular market segment at the moment. It is incredibly complicated to actually sit down and do something about it, and I really do not envy you your role in trying to come up with solutions. But I think you need to respect the fact that from our point of view we get a little bit confused by the federal government's very strong and quite clear position, for instance in the wine industry, where there are restrictions on purchases of smaller boutique wineries by the three majors, or the banking industry where the federal government has quite clearly said four pillars and will not allow any further merger or concentration of the industry until such time as it can be demonstrated that there is robust competition. Yet we have had this concentration build-up in the retail sector almost by stealth and it is only now that it has become such a problem that we are actually trying to address it.

So our point is that it is unhealthy at the moment and it does need to be addressed. Whether that comes through forced divestment, whether that comes through some sort of a capping, or whether that comes through antitrust laws based on the US model is perhaps for federal government to decide. But we just want to say quite clearly that, from a farmer's perspective, it is not a comfortable nor healthy situation to be in to have so few potential customers in the marketplace, and they can exert an amazing level of control.

Here are a couple of examples. Specials: they can come into the market, even one of them can come in, and say, 'We want to run a special on cauliflowers,' or whatever it might be. It pushes the price down across the board. The strawberry industry: we only have very few suppliers in fact of strawberries in this state, but the three majors account for 75 per cent of strawberry sales, so they control that market. If you talk to the flower industry, the floriculturists—and there are some comments in our report about that—it is very difficult to break into that market and they do control prices. The floriculturists are very concerned about the impact on their market because in fact the quality of the product that you buy through supermarkets is not really up to scratch and it does not do their industry any favours.

The main concern we have—and the main point that I think is coming across from the farm sector Australia wide—is that concern about the impact of concentration and the fact

that the market, in terms of its level of competitiveness, is just not a healthy environment at the moment.

CHAIR—Thank you for your contribution. I think it was a very comprehensive coverage. I know that Senator Ferris would like to kick off the questioning.

Senator FERRIS—Thank you very much for coming in. I would have to say that this submission of yours is one of the most disturbing that I have read of those we have seen so far. You sum it up yourself by describing strong and serious assertions relating lack of market access to major retailers. I am sure it will not surprise you when I tell you that on Tuesday when we had both Coles and Woolworths before us, I asked them quite specifically questions related to this area, particularly the area you have covered, Mr Bishop. Not surprisingly I suppose, they said their contracts were not exclusive—they were flexible, they did reflect market forces such as seasonal conditions and so on. In fact, they basically suggested exactly the opposite to what your evidence this morning suggests.

Could I talk to you first about a comment you make on page 5 of your submission related to price control. One of the things that I am interested in, particularly in relation to the horticulture industries, is the degree of flexibility in a contract, which may even be an exclusive contract. If, for example, there is a flood in another state which affects the supply of that particular product—cauliflowers or tomatoes or lettuces or whatever—is there a capacity in the average contract with a big supplier to reflect the fact that they will be able to charge higher prices for that product in their stores and yet still try to source the product at the lower contracted price that the supplier might have agreed to when different market conditions prevailed?

Mr Cameron—I think Bill is probably best qualified to answer that.

Mr Bishop—As I understand it, the main thing that applies when a contractor digs his toes in is that if there is a problem with that, the major chains especially will source it from interstate. They bring watermelons in that are directly imported from Queensland. When the season is on, they import things from interstate very readily. This mention of cauliflowers has been going on for some time this morning, but it is something that occurred. In the last month there are at least three items that have been artificially suppressed in price and I believe it is because of supermarket specials on at the time.

Senator FERRIS—Are they all horticultural products?

Mr Bishop—They were all horticultural products. One was cauliflowers. One was lettuce; they were kept down. The way it happens is that the suppliers—and they are not necessarily growers—as agents in the market contracted to supply the supermarkets put in a quote. I do not know the length of time that that quote is valid for. I was getting some hay the other day. The gentleman who sold me the hay also grows cabbages and cauliflowers for a particular agent in the market. He was queried whether he could grow more cabbages next year because they wanted to put in a quote for the chain that the agent was supplying. He has just finished, his season has just finished, and he is being asked whether he can supply more next year and at what price. This is virtually 12 months in advance. I do not know how these things work. People are very loath to discuss the details of their contracts with

supermarkets. I have a fairly good reputation for keeping my mouth shut, apart from talking too much, but I do not give away secrets.

CHAIR—We appreciate it!

Mr Bishop—It is a problem. By the supply and demand situation, the price of cauliflowers should have been up another 50c. They stuck on \$2 because a particular supermarket had a special out at \$1.99. Now, okay, they were paying \$1.85 for them, which was not too bad, but there were no cauliflowers around and people were scratching around trying to find them. It is only a relatively minor crop, but this sort of thing goes on all the way through.

Senator FERRIS—I suppose there would be some growers who would be pleased to be able to have that long-term contract offered to them, but one of the aspects of your submission that also concerns me in relation to that is at the bottom of page 6 where you talk about the effect of a partnership arrangement, which is effectively one of these long-term contracts, where you suggest, quite insidiously I think, that the contract and the partnership are gradually extended so that the supermarket is able to get access to the gross margin details and the farm profitability and that could then be used to move prices down and reduce margins. Surely a farmer would be aware that that was an insidious process that he was part of.

Mr NAIRN—Or she.

Senator FERRIS—Yes, or she. My colleague reminds me there are very many successful female farmers. Are you suggesting that that is done so insidiously and so carefully that people just do not realise that they are giving away what is essentially critical information to their own competitive business?

Mr Cameron—Can I just refer you back to the previous question quickly. The comments that we have written on that page 5 that you were relating to in relation to price control are direct comments from our members who are in that situation. So as far as we know and as far as we are aware, they are fact. Those things actually happen—that the market does not reflect kick-up prices and that there is that level of price control. So just supplementing what Bill was saying, you can take that as read because that is a direct submission from strawberry growers in that position.

Ms O’Dea—Just on that, one of the other ways of doing it in terms of the contract is the discounts that can apply. One of those discounts on a number of contracts is ullage, which is actually loss of water, which is a very hard one for producers to argue the point on: the fact that there has been a loss of water so a loss of weight. That is a source of discount which is a fairly interesting discounting factor. If the supermarkets think the price is too high or whatever, then they can just add the discounts. My main experience has been with the meat industry in WA and how the discounts apply or have been used.

Senator FERRIS—What about this question in relation to this insidious creep into farm business profitability details?

Ms O’Dea—New South Wales farmers are probably going to be in a really good position to present this issue because they, in discussions, have been reminding me of this factor. A lot of the strategic alliances where it does become more insidious is with meat producers, where they get trapped into it, I suppose. When you have got a meat carcass, there are different levels of value on that carcass and if you get a strategic alliance going with whoever, you have the primal cuts that are the best, the high value, but you have to get rid of the mince and the lesser value somewhere and it is like a compromising situation: if you do not get yourself into that position they will only take the primal cuts. So there are a number of those things. If you are already in a quality assurance system that is aimed directly at that particular supermarket, and in the future if we are talking about producing products that are Woolworths special tomatoes or Coles own brand tomatoes or broccoli, you would probably be under licensing agreements that you cannot sell it outside of that supplier.

That is a move that is happening an awful lot more in the US. You get supplied a particular seed and you have to supply exclusively to the people who provided you with the seed. What are your alternative options when you have invested a fair bit of your management down the line? The whole model being used in the aircraft industry, I believe, was where it started. The idea was that each part of that chain can share the benefits, but when you start talking about fairly small producers on the bottom end and working in groups perhaps, as to what power do they feel they have in terms of saying, ‘No, we want our fair share,’ when you are trapped into a system with a chain—

Senator FERRIS—On the question of QA, as you have pointed out again in your submission, big chains have a different system of QA and if you are a grower and you lock into that particular system of QA it may preclude you, in the later event that you might want to have the choice, from being able to sell into other markets, because you actually have not met the QA that those markets might need.

Ms O’Dea—And if you end up by having yourself under several quality assurance schemes, then you have to be audited by those different schemes, so you get an auditing cost.

Mr NAIRN—Can I just comment on this point?

CHAIR—Sure.

Mr NAIRN—I just find this a bit intriguing actually, with quality assurance, having spent a number of years trying to put a QA system into my own business. Most quality assurance is now linked—in my experience anyway—to an ISO, an international standard, whether it is ISO9100 or another one. There is a whole series of different ones. I fear that we are mixing up exclusivity aspects with suppliers and quality assurance. I would be really surprised if the major retailers are running or insisting upon QA systems which are not transportable within the industry, and if that is the case I would like you to comment a bit further on it because that would, I think, be quite different from what seems to be happening in other industries, or virtually every other industry that I have ever had anything to do with.

Ms O’Dea—It is part of not necessarily the exclusivity but their requirements for some of the quality assurance, which are essentially, I suppose, the branding mechanisms. In the

meat industry, the cattle care and flock care, the supermarkets are asking for some extras which I suppose do not actually really fall into what would be seen by a general industry as true quality assurance and meet certain standards of production, but there are these extra bits that are being required outside of, say, what would be seen as the ISO requirements. So there are the extra bits that have been added on.

Again, from experience in WA, some of the extra bits that have been required within the UK supermarkets—Tesco, for example—to some Australian suppliers is that they have been asking not just about the quality parameters but also about what happens to irrigation water on their paddocks because they have an environmental impact—freedom farming in the UK where they have parameters about how well treated the animals are, which is somewhat outside of quality assurance but it is again the parameters that Woolworths and Coles or whoever it might be use to sell their food as being superior to others.

Mr Cameron—The answer is there would be a common foundation. It would be based on ISO or SQF but there are additional modules that are required specifically for those different organisations. That is in actual fact quite common. In the wine grape industry there are two quite separate quality assurance systems that are running, one which is more focused on wine grape production and the other one which is more focused from the winemaker's perspective but involves wine grape growing as well.

Mr NAIRN—But a QA system for winegrowers for supplying wine grapes to Hardys as opposed to Southcorp would not be—

Mr Cameron—As I understand it, there is.

Mr NAIRN—What you are saying is that there are add-on modules to the standards in the QA systems.

Mr Cameron—Yes, and with quite significant add-on costs. It is part of the exclusivity of the relationship—‘I am the purchaser, you are the supplier and these are the parameters you must meet.’

CHAIR—Can I return to Senator Ferris's concluding question and remind the committee that we are approaching our time for this period.

Senator FERRIS—On page 7 you talk about the need for the ACCC and the Trade Practices Act to be better understood so that farmers, for example, would know when the umpire can blow the whistle and you suggest that there is a greater need for people to understand their rights and obligations and so on. Whose responsibility would you see that to be and in what sense would you think the Trade Practices Act and the ACCC could improve the way in which they are understood by the community?

Mr Cameron—If you surveyed primary producers, particularly those that deal direct with the supermarket chains, their knowledge of the Trade Practices Act and the role of the ACCC in enforcing the Trade Practices Act would be virtually nil. We have actually done a bit of work with Peter Beckworth—I think he is—here in South Australia in putting forward a number of articles in our membership magazine and referring a number of inquiries

through to him but I think there is this quiet assumption that people do have an intrinsic understanding of what the Trade Practices Act is able to effect.

I think basically they need more of a marketing budget. They need stronger educational campaigns. They need to be more rigorous in their attempts to get out in the marketplace and let people know what their role is and how they can help. There is no doubt that in a number of cases they can help. They can probably step into some of these situations and straighten out the parties and let them know what the rules of the game are. The short answer is that most people have absolutely no idea.

Ms O’Dea—And the other issue is that with primary products we are talking about perishable produce, so you need to have somebody there to be the umpire fairly instantaneously because with the conditions of the product or whatever you are in a bit of a quandary—

CHAIR—What type of issues would they suddenly need to umpire?

Ms O’Dea—Some of the quality and market power stuff. It is also having people who are the umpires who actually understand primary production and the issues that surround it. In horticulture we are also talking about a lot of ethnic communities where their understanding of English often is not particularly good, so understanding Australian law—

Senator FERRIS—Very difficult.

Ms O’Dea—And where they might be able to position their power. I suppose the other area with farmers is where they have had traditionally a lot of statutory marketing authorities, or worked in cooperatives, so it was very clear as to what the boundaries were and they worked on gentlemen’s agreements. They get scared about what does fall outside of a gentleman’s agreement and again this power that if they take on a supermarket—I mean a court case means nothing to Woolworths and Coles compared to the family business where it is not only their business but it is their house. Everything is resting on any arguments they may have.

Senator FERRIS—Just one final question to you, Mr Bishop. In your previous life as a very significant horticulturalist in this state, in fact a cherry grower, did you have any particular experience with market power for many of these large groups that you would be able to relate to us now that you are no longer in the industry?

Mr Bishop—I did not quite catch that.

Senator FERRIS—Now that you are no longer in that part of the industry, did you have any particular experiences in relation to market power and pricing and so on that you could give as first-hand experience? It does seem that many large growers are very cautious about speaking out because they are worried about the effect that might have on their business.

Mr Bishop—Previously I was an apple and cherry grower. We were pulled out of the market virtually for grading our own apples. Once the supermarkets—in the interests of their efficiency, not ours—decided that they needed individual labels on the fruit so that the

checkout people, rather than being trained to understand what they were handling, were able to read it on the side of the apple and thus be able to tell the difference between a Granny Smith and a Red Delicious. I have heard that because squash did not have a label on the side of them, a checkout lass was confused and thought it was a mushroom. I think yellow mushrooms are very dangerous to eat, at least the ones that are that yellow.

But now that we have price look-up numbers on fruit and tomatoes and oranges and God knows what, the price look-up number for Woolworths is not the same as Coles. So once those labels are on there, you are virtually tied in to the supermarket. If the supermarket rejects that and somebody else makes an offer for it, what do you do with the damn labels? Are they the property of the supermarket or can you sell them to a Torrens Island Sunday market and get rid of them that way or what do you do with them? Yesterday I was watching a guy in one of the stores in Adelaide, out at Pooraka, picking the labels off tomatoes in trays because he wanted to sell them to a greengrocer. Unfortunately the Vietnamese grower had put the wrong labels on the tomatoes. They were not only price look-up numbers that were wrong but it was the wrong variety and so forth, so what the hell he was going to do with them anyway I do not know. This is a problem and it is one way that the supermarkets tie you in—if you have to have price look-up numbers, they are exclusive to them.

In America, when the big stores over there went into this, they paid the growers, the co-ops, to do it. In Australia the growers, the co-ops, pay for the privilege of doing it on behalf of the supermarkets. I find that abominable.

Senator FERRIS—Did you have any personal experience of strongarm tactics being used?

Mr Bishop—We could never sell to—

Senator FERRIS—What about cherries?

Mr Bishop—Not cherries so much because cherries are a fairly unique product inasmuch as it has a short season.

CHAIR—It is hard to put the sticker on.

Mr Bishop—It is very hard to put a sticker on it. It has a short season. We have no Northern Hemisphere competition but we do have interstate competition. One of the things that we did find was that once upon a time what was sold in South Australia and produced in South Australia was the province of South Australians. Now, because of the transport availability for produce in Australia, if the price is too dear for cherries in South Australia they just hook them in from Young or Victoria. Product picked on the same day in Victoria can be on the market in Adelaide at the same time as fruit, and vegetables for that matter, harvested in South Australia. They can harvest cauliflowers for instance on Tuesday morning and have them on the Adelaide market at 3 o'clock on Wednesday morning, ready for the market, so it is an Australia-wide market system now.

Senator BOSWELL—I think Senator Ferris's questioning was very much to the point. She obviously has a very good knowledge of the problems in your industry, so I think she has asked a lot of the questions that we needed to ask. But, Marie, I got lost in your presentation about ullage. Were you suggesting that a supermarket contracts for a price, the market falls and to balance the market up they claim ullage? Is that what you are suggesting?

Ms O'Dea—No. One of the interesting discounts that they have is ullage, which is a very hard one. If they are talking about, say, fruit or vegetables not being ripe enough or coming in with blemishes of some description, they are probably a lot easier to query, or for the producer to say, 'No, I don't think this does fit the description.' But ullage relates to evaporation and to have the producer wearing that cost—and it is a hard one to argue the point on as a discount—that makes a question about the contracts and where the fairness is. It is probably breaking the cold chain so it is quite likely to be an issue of transport or storage within the supermarket itself, not a producer problem.

Senator BOSWELL—Mr Bishop, can you tell us what happens if the chains contract at \$2 for X and that contract is a long-term contract and the market then falls and the product goes on the market at \$1.50. What happens to the forward contracts? Are they committed or honoured or are they adjusted?

Mr Bishop—That is something I cannot honestly answer. I am not privy to all the aspects of contracts.

Senator BOSWELL—So is it flexible both ways? If the price goes up and—

Mr Bishop—From my understanding it is much more flexible in the first instance than it is in the second instance. In other words, if the price goes down it is readily flexible; if it goes up it is not so flexible but they would be more likely to adhere to the contract. It is an example of how supermarket chains can be flexible. Last year I was up in Brisbane with my opposite number and they do condition reports on imported produce and in this case it was American citrus for a Queensland supermarket chain. They had a strict five per cent reject level that they adhered to. He was going through cartons of oranges that could not possibly come up to that standard. This was a Saturday afternoon and they wanted them for the weekend. He was told that they had to have a certain number of cartons. He had been through two containers of citrus and he said, 'You're just not going to get them. There's too much fungal infection in them.' They immediately upped the reject level from five per cent to 10 per cent so that they could get the quantities they wanted and they fell within their reject parameters.

So they are flexible, depending on how urgently they require the produce. I would suggest that, in the case of the price coming down, it usually means that there is a flood of produce on the market, so they could be very selective and if they held the supplier to his contract they would be able to find a lot more damaged produce and the discounts could be greater. They are in the business to make money, and the person that they are out to do the right thing for is their shareholder, not the consumer.

Senator BOSWELL—I understand that. What is the effect on the overall price of the chains picking out an item like cauliflower and buying a huge quantity—say, 10,000? What does that do to the vegetable market? Does it set the price? The effect of the chains going and buying direct from the market, does that put the floor on the price?

Mr Bishop—If they buy a huge quantity, and they are able to get it supplied to them—and sometimes the supplier will provide them at a loss so that he can maintain their custom. he can get it back when prices are the other way around.

Senator BOSWELL—Yes.

Mr Bishop—But what it does is remove that number from the short market; it removes a large percentage of the product from the short market—

Senator BOSWELL—Wouldn't that send it—

Mr Bishop—which is a supply and demand situation. It should force the price up.

Senator BOSWELL—Yes.

Mr Bishop—But it doesn't, because the suppliers also have to deal with the small retailer. Now, how can a small retailer, buying them at \$2.50, compete with somebody buying them at \$1.85? So the pressure by them onto the supplier is very great. A hell of a lot of argy-bargy goes on during the morning, and this last month has been one of the most disruptive times that I have seen in the market, where everybody has been at each other's throats. Usually it is a very placid and relatively easygoing atmosphere in which they work, but there has been a hell of a lot of controversy in this last month because of this very thing, where the supermarkets have insisted that they want to put out a special when something is short, and the only person who loses out in that situation is either the supplier or the producer.

Senator BOSWELL—But if you take a huge amount off the market, shouldn't that push the market up?

Mr Bishop—Yes, it should.

Senator BOSWELL—But it doesn't?

Mr Bishop—It doesn't. It is artificially suppressed. Nobody was game to put the price up because they would not sell their cauliflowers, and everyone said it should be up, but they were not going to do it.

Senator BOSWELL—Yes. What happens is the growers or the agents then accept that as the floor in the market, or the ceiling in the market, and that they will not sell at above—

Mr Bishop—I spoke to one gentleman who is probably the doyen of cauliflower growers in South Australia and he was selling cauliflowers outside the market direct to the retailers for \$2.20. Now, they were happy to do it because they were excellent cauliflowers, they

were above the average quality, and they could get the money for them. But the same cauliflowers in the market were selling at \$2.

Senator BOSWELL—Thank you, Mr Bishop. Mr Cameron, just a bit of advice to you: if at any time you want the ACCC to go out and meet your growers, they are very happy to do it, and they have done it for me on occasions when I have asked them to go somewhere. They are quite happy to put someone on the ground to talk to your people at your request.

CHAIR—Thank you for your brief questioning, Senator Boswell.

Mr Cameron—Could I just say, Mr Chairman, that is very true, but one of the things we really noted with putting this submission together is the remarkable lack of volunteers who want to come forward and give us case study examples.

Senator BOSWELL—Yes, no-one wants to bell the cat.

Mr Cameron—That is right. It is another reflection of the market imbalance, if you like, because people are obviously very worried as business people that that might have an impact.

CHAIR—If you were a member of this committee what would you be actually recommending, not theoretically but in genuine practical terms which the community will accept?

Mr Cameron—Thank you very much, Mr Chairman! I think firstly you need to have a very close look at antitrust and whether there is a place in Australia for that type of legislation to control this type of market. Secondly, I think you need to put resources into a very well thought out and researched socioeconomic study as to what exactly is the level of market concentration, not just in fresh food but across the retail sector, and what are the potential costs to the Australian community as a result of that, and whether therefore you can support divestment. I mean, divestment is an enormous ask, and I am not sure the Australian community would support it. You will notice that we have raised that it should be in consideration, but we have not recommended that it should happen. I mean, we do not feel well enough researched or qualified to make those sorts of commitments.

I suppose those are the two things that you should really be looking at very carefully: the antitrust, strengthening the role and the level of education information that is available about the ACCC and what the Trade Practices Act can provide, but also making sure that if any decisions are likely to be made about capping or divestment, that you actually have some hard data to show what are the potential benefits or costs of taking that action. I mean, at the end of the day the supermarkets, from our point of view, are a very important part of the chain. Some of what is happening in terms of the vertical linkages where they are becoming more and more involved in growers' businesses and growers in effect are becoming more involved in their businesses is actually quite healthy. It is just where the balance gets so far swung one way that effectively the supermarkets are potentially exerting an unhealthy level of control over prices, margins, and the businesses that these growers are involved in, that the situation becomes a problem.

We suspect from the feedback that we have had and the information we have been able to gather that that is where we are at. So I think partly there is an issue of goodwill here also from the supermarkets to actually say, 'Some of these practices, whilst we are in a position to exert that level of control, we should consider amending.'

Mr JENKINS—When you are suggesting education, are you satisfied that the current provisions of the TPA give signals about the right balance? I mean, these are judgment calls about what is aggressive commercial activity as against misuse of a market power or a dominance.

Ms O'Dea—I suppose it has actually been the Victorians who have tried to use the act, particularly in meat trading, and there probably have not been satisfactory outcomes, but I am not sure if it is a function of the act itself or how you can interpret or how you can collect evidence either way. And again perhaps there have not been enough opportunities to really test the act to see if it is robust enough in this area to do its job, or the job it is meant to do.

Mr JENKINS—The tenor of your submission is that you are not really suggesting that the major supermarkets are exerting unfair advantage, for instance about people's lack of knowledge of their rights. I mean, if they were doing that, that would be unconscionable conduct and would be covered by the TPA. You are not suggesting that, but you have given us the rider that people are not coming forward so are there some doubts still in your minds about it?

Mr Cameron—Yes, I think there are still some doubts in our minds. As I said, Bill received a number of warnings in his process of gathering information. People were quite paranoid about it, saying, 'For goodness sake, don't indicate anything that might enable the committee or somebody else to draw conclusions about who was putting this information forward.' So that is real and whether that is paranoia on their part or whether that is a real commercial concern we cannot comment on.

In relation to your particular question about the Trade Practices Act, I must say I am personally not well-researched enough on the act to discuss with you whether its provisions are adequate or not. I would merely suggest that in fact most growers, certainly most of the people who are probably the weakest link in terms of the particular market segment we are talking about, would not be aware of the provisions of the act and would not be aware of their rights under the ACCC. We have a role, as I think Senator Boswell pointed out, to provide that education, but I do think you ought to seriously think about beefing up their resources to get out there at the small business end. I think big businesses usually have the resources to look after themselves anyway, but at the small business end I think there is a problem with a lack of knowledge.

Mr JENKINS—Thanks very much.

Mrs ELSON—It has been suggested by farmers within my electorate that there seems to be a bigger picture here where farmers are being squeezed out of the industry and there is going to be a dominance of farmers connected or contracted to the major chains. Is there any evidence of this? For instance, they tell me that in this state cauliflowers might go down \$2

and in another state they will go up to \$4 to indicate to the market here that some of the farmers will not grow it next year, so the farmers that are left are the contracted ones to the major chains. Is there any evidence of that here?

Mr Cameron—Broadly speaking, yes. If you look at the US, there are a number of market segments over there where up to 70 per cent of the produce is actually produced through a contracted arrangement. If you look at our chicken meat industry in this state it is absolutely dominated by Steggles and Inghams. I actually believe that that is not necessarily, as I said before, an unhealthy thing. When you look at a lot of farm businesses suffering from relatively poor levels of profitability, one of the ways they can improve their performance is by vertically integrating. The problem comes when that does not provide benefits to their business but comes at the cost of their business.

So I do not think that is something you can necessarily change or stop and I do not even think that it is necessarily an unhealthy trend that farmers and processors—and retailers, if needs be—form strategic alliances. The question is one of market power and the way in which those arrangements are formed and enforced. So, yes, I would expect to see in this country, as we have in the US, possibly a reduction in the number of businesses that are just growing produce uncontracted. I think that there is going to be a significant increase in the level of contracts, particularly also with biotechnology. The Monsantos of this world will own the biotechnology for a particular variety, and will contract people virtually the whole way through the chain. The question is the market power: the level of market power and the level of options that you have got in the event that an arrangement with one or another of the potential purchasers falls through.

CHAIR—Thank you, Sandy Cameron, Marie O’Dea and Bill Bishop for your very professional presentation and submission to us. We really appreciate it. Thank you and good luck.

DRAKE, Mr Roger, Chairman, Foodland, and Owner, Drake Food Markets

HALL, Mr Barry John, Manager-Owner, Hope Valley Foodland

McLAUHLAN, Mr Mark Ashley, Chief Executive, Foodland Supermarkets

CHAIR—I welcome Mr Mark McLauchlan, Mr Barry Hall and Mr Roger Drake. The committee prefers all evidence to be given in public but you may at any time request that your evidence, part of your evidence or answers to specific questions be given in private and the committee will consider any such request. I point out, however, that evidence taken in camera may subsequently be made public by order of the Senate. The committee has before it your submission. I will now ask if you would like to outline your opening statements and following that we will go to questions.

Mr McLauchlan—Thank you, Mr Chairman. In our submission we have turned our attention to the grocery supermarket industry and the market share in that industry is skewed in such a way that is unprecedented in any other market in the world. It is our contention that there needs to be an investigation into both the size of the major players in that market but, more importantly, the influence that they can bring to bear in going about their normal trade. That can be with suppliers and certainly in a competitive nature with their shopfloor competitors as such. We can eventually get down to some examples of where some of that muscle, if you like, has been used in a way to exert influence over what would normally be seen to be a competitive situation.

In our submission we did not draw finite conclusions but in further studying our position we are probably at a point now where we would contend that the option would be to put a ceiling on the share as it exists today and look at a way of maintaining the balance in its current state. I do not know that it is tenable to ask these large corporations to sell down or to divest their business, but certainly we need to look at maintaining our status quo and, more importantly, at predatory pricing issues. There are examples we can talk about of where this situation has taken place, not only to the detriment of independent retailers who compete in that market but ultimately to the consumer.

CHAIR—Mr Hall or Mr Drake, would you like to make some comments at this stage?

Mr Hall—I guess it comes down to whether the dominance of the chains should be allowed to grow and if that is good for Australia and consumers or not. If we say that is good for our consumers, then we are really wasting our time. If we say it is not, if we say that we need a force in there to be able to compete with those organisations, then we have to try to do something about that. My background is that I was with Coles Myer for 22 years, then with Independent Holdings, now Davids, for some 13 years, and I have been running my own business now for six years.

It seems to me that in the South Australian scene we are able to demonstrate that there is a consistent price advantage if you buy your groceries in South Australia to anything up the eastern seaboard. Twenty years ago the South Australian independent industry had over 50 per cent of the market share. That has now come down to something like 30 per cent. Over that time it has consistently shown that the sell price to the consumers of groceries has been

four or five per cent below the eastern seaboard. To my mind, all of the manufacturing locations are basically on the eastern seaboard and therefore you have got a freight component to get that product to South Australia. So why is it that we sell at a cheaper price? I believe it is simply our competition; our strength in the independent industry ensures that the competition stays at a level that the consumer will benefit from.

That is being eroded now substantially, and we have a situation where, if you go back over the price indexes from the Bureau of Statistics, I think you will find that we are getting closer to the cost price of goods, or the sell price to the consumer of goods, on the eastern seaboard. We are closer now. We are still five per cent under it, in my opinion, and I think we can show that, but as our market share is eroded further then that gap is certainly closing. So I am saying we have to keep the independent industry alive because it is a large employer and I think we can show that it employs more people than the chains do for their operating retail level.

CHAIR—Thank you, that was a good summary.

Mr Drake—Let me start off by saying that I do not think we are frightened of competition and I think competition is terrific, but there comes a point in time where the dominance of the multinationals gets such a hold that there will be no competition. I think we have seen it, especially in this state where we have lost independents, and that could be by a large store opening and where you have got a single owner-operator who has got one store; he can only sustain the pressure that is put onto him by an existing store. You can say that is market forces and that is the way it is going to happen. But I think we have got an ageing population and as we really need shops and facilities and services closer to the ageing population, you have got a situation where it is having the reverse effect.

As one store opens we can say that it creates jobs; it also loses jobs. You have got the private independent operator who has an external accountant, an external legal adviser and so on, so he employs a whole group of people around him. Sure, the multinationals would have a group of solicitors, but nowhere near the infrastructure that you have to have when you are a small operator. I am concerned about the predator pricing tactics that are placed on us by the multinationals. If they can sell at one price it should be one price across Australia, maybe subject to freight.

I find it difficult when you have got a store that is alongside and wants to gain market share that it can sell a product for 89c and the rest of the chain can sell it for \$1.69. If they are going to have a pricing it should be right across Australia and subject obviously to freight, which covers the country stores and covers the freight component. I think it would be unrealistic to ask the multinationals to divest their market share now. I think it probably needs to be capped now before it becomes a situation that cannot be withstood by the independent operator.

CHAIR—Thank you for your presentation. Mr Jenkins, would you like to kick off the questioning?

Mr JENKINS—Thank you. To get an understanding of how the independents have been getting a diminished share of the market here in South Australia, although at a much higher

level and often a much higher base, in the chequebook losses, in table C to the main submission from Foodland, which is a list I think we had presented to us before, there is only one South Australian supermarket mentioned. What other elements to the phenomenon are occurring here outside of the chequebook losses?

Mr McLauchlan—Primarily it is in cases where there has been a nest, if you like, of strong independents in a region in South Australia. They are stores independently, or jointly, within the Foodland group performing strongly. The large corporations, Woolworths and Coles mainly, see that these people are trading strongly and they see an opportunity to go in and they attack by setting up specific zones and substantially reducing the retail price. The supermarket retail industry in South Australia is predominantly a price driven one, so they will go in and offset some of the profits they make in what you might call a profit sanctuary region by attacking and cutting the guts, if you will pardon the expression, out of their margins in a specific area. The independent retailer, given that he has no other way of offsetting his profitability either, is seen to be too expensive in that market and his customers drift away, or he tries to match those prices to his own detriment in the shorter term and simply shuts his doors after a period of time. There are examples of that over the last number of years where they have just used their strength to come in and attack a certain region and send people out of business.

Mr JENKINS—Are you able to supply us with figures that exemplify that?

Mr McLauchlan—Yes. I do not have them today but we could go back and show where there have been independents trading that have eventually been overtaken. That list that you see there is from 1 January 1995 until, I think, the end of or mid-1998. There have been a few more sold since then in the Northern Territory which we kind of envelop in our discussion here. But also prior to that period a large chunk of what was deemed to be independent business was the Bi-Lo business which obviously sold to Coles Myer. So there was a big chunk that suddenly disappeared with that.

Mr JENKINS—Yes. In this A.C. Nielsen extract Davids has reduced from December 1995, 32.6 per cent, to September 1998, 25.1 per cent, and it aggregates Bi-Lo out, so I think we are trying to look over a similar time span. These examples would go to the problem that I think the Drake submission indicates where you list, say, eight or nine categories and have presented that to the ACCC and get the response that you have. I suppose that is eight or nine categories over, I guess, thousands of categories that you would be carrying and then there becomes a bit of difficulty about getting a feel for it, whereas these mass figures might, if there was a trend, indicate that trend a little bit.

But, Mr Drake, in your dealings with the ACCC—obviously, the tenor of your submission is that you are not at all satisfied—do you believe or have you discussed with anybody ways in which perhaps the legislation under which the ACCC is acting could be altered to make it easier for people like you to produce the case?

Mr Drake—Again, if they had a common price. We know that the multinationals have two or three price structures across the board and I find that a lot of the product is produced on the eastern seaboard, comes over to South Australia and is sold at a lower sell price than on the eastern seaboard. Then you break it up even further when you have got one store

specifically after growth or market volume selling substantially below all the other stores in the state. If you had a common price in the metropolitan area, and if the chains are going to sell a product for \$1, then it is sold for \$1 to give all the consumers the opportunity to purchase it at \$1, not in one specific store for 50c and all the other stores for \$1. I find it difficult to understand how they can pick one store to sell it at 50c and the rest of the stores sell it at \$1. Surely, if 50c is the price, then sell it across the board for 50c in all stores and give all the consumers the opportunity to buy at 50c. Why should it be that in one store they can sell it at 50c and at all other stores they can sell it at \$1?

Mr JENKINS—For the Drake group is Davids your wholesaler?

Mr Drake—Yes, it is.

Mr JENKINS—For both Foodland and Drake. Is there some degree of uncomfortableness about the fact that Davids is the monopoly wholesaler in the region?

Mr McLauchlan—No.

Mr JENKINS—Do they operate their IGA banner group in South Australia?

Mr McLauchlan—Yes, they do. They have a toe in the water.

Mr JENKINS—Is there concern that their relationship with their own banner group might mean that they exert different influence over that banner group to what is available to you?

Mr McLauchlan—No. We represent a large share of Davids business in South Australia and I guess for them to go down that path would seem to be ignoring a large share of their customer base.

Mr JENKINS—Are the different banner groups or groups able to negotiate separate prices with Davids?

Mr McLauchlan—No. Davids sells at one price to all customers.

Mr JENKINS—How does Davids, as a multinational or transnational, have such a squeaky-clean corporate image amongst its clients?

Mr Drake—I think, like any wholesaler, we always think they are probably charging us too much. It would be foolish to say that we were always buying at the best price, but I think our relationship with our wholesaler is of a pretty good nature.

Mr McLauchlan—The other thing that has happened here is that Davids came in and bought Independent Holdings about four or five years ago, and prior to that Independent Holdings was something that grew out of a cooperative of retailers and so retailers felt they had an interest, I guess, to a degree in running the wholesale operation.

Mr JENKINS—And that philosophy has still continued under the new ownership?

Mr Drake—Yes, it has.

Mr McLauchlan—Yes, to a degree. I think you would find that the relationship between retailers and their wholesaler in South Australia is certainly better than it would be in Victoria, for example, from my personal experience.

Mr NAIRN—Could I just get something on the record. Mr Drake, you kept referring to the multinationals and I presume you meant the large chains, but can we just get it on the record that both Coles and Woolworths are actually Australian owned. The irony in all of this, I guess, is that Davids, as Mr Jenkins just pointed out, is in fact the multinational in this overall thing. It is just an esoteric thing, but I just make the point, because sometimes the emotions of what is discussed tend to dominate some of the things that are pulled out of transcripts, rather than the actual facts themselves.

Mr Drake—As I see it, Davids are a wholesaler more so than a retailer and where I refer to multinationals I really should summarise it by saying Coles, Woolworths and Franklins, because they are the only three.

Mr NAIRN—Out of those, Franklins has overseas ownership, but Coles and Woolworths are Australian owned.

Mr Drake—I refer to them as the three groups with enough clout.

Mr NAIRN—Okay. I just thought I would clear that up. Mr Hall, you spoke before about competition and price, and I think you were basically saying that, with the perceived decrease in competition with the dominants, that ultimately is going to push prices up. I asked this question of some of the other groups earlier on. Given that sort of argument, it seems strange that over the last 25 years, according to ABS figures, the actual prices in the food area have come down by 25 per cent in real terms, so if you look at those sorts of figures the consumer has benefited from whatever has happened.

Mr Hall—Certainly.

Mr NAIRN—Would you like to comment on that?

Mr Hall—Certainly. I think that the grocery industry in itself is one of the most efficient industries in Australia. We can place an order with our wholesaler before midnight tonight and we can have 1,000 cartons on our doorstep the following day by midday. That is a very efficient industry and, without question, that is what has brought the prices down. We handle stock in a different manner than we did years ago at retail level. There has been a whole series of efficiencies gained from within the industry. Originally we were handling stock coming in at the back door one carton at a time into our back storeroom. We then picked it up on a two-wheel trolley and we ran it into the shop. We then put it on the fixtures one bottle at a time and hand-priced it. Today that comes into the store in pallets off the back of a truck. It is filled of a night, where the efficiency is substantially better than it is during the day when your customer base is there. So the industry has been able to become much more efficient over the years than most other industries, in my opinion.

Mr NAIRN—But hasn't a lot of that efficiency been driven by competition?

Mr Hall—No question about that.

Mr NAIRN—So there has been good competition. What you are saying is that the competition is reaching or has reached a plateau—

Senator FERRIS—A threshold.

Mr NAIRN—or a threshold whereby that saving or that benefit to the consumer is now going to start to disappear.

Mr Hall—I think if you were able to go back to the profits generated from the chain store operators over the years, my understanding is that that has improved both in dollars, obviously because of their volume, but also in gross margins, in profit at the bottom line percentage-wise. I believe Coles years ago produced under two per cent in a profit line—about 1½ per cent bottom line. Today they are producing about 3½ per cent. That means that the efficiencies have come in, but their ability to generate greater profits has also come in. We are talking a 20-year block. We are talking the difference between when the chains—not Coles necessarily—were 40 per cent of the market and the independent retailers were something like 60 per cent, whereas today it is 80 to 20. So, as the competition is being eliminated by whatever means, they have been able to gain much more margins out of the whole thing.

CHAIR—But, Mr Hall, is that a bad thing in itself? You have said that their pricing is pretty keen.

Mr Hall—Absolutely.

CHAIR—So if the consumer is not complaining and gets looked after, why should this committee be concerned about the profit levels increasing?

Mr Hall—I think the example should come from Mark, who has been involved with the development of fairly large stores through the Northern Territory. I might hand over to him.

Mr McLauchlan—Just before I address that, you made the point, Mr Nairn, that prices of groceries have shrunk over the last however many years by 25 per cent. That is certainly true. But I guess we are contending that perhaps it could have been 30 per cent. If you look at regional areas and say, 'Okay, what's happened to the pricing in this region and why has this been sharpened even further?' I think you will see a pattern that, where independents are still strong and a viable part of the market, the price is still at a keen edge. In regions where Coles and Woolworths have gained a dominance, certainly they are still cheaper because of efficiencies in business process; but in terms of margin on cost, in areas where Coles and Woolworths have a dominant position they are certainly higher than where there is an independent in there brawling with him on a day-to-day basis.

I used to work for Independent Holdings, which became Davids, and we opened a supermarket up there under an independent banner in Alice Springs to compete with

Woolworths and Coles. We saw an opportunity there because there was, from what we could estimate, a large volume of business being transacted in that city and the independents were not represented at all. Our price checking of what Woolworths and Coles were doing showed that there were very healthy margins and that perhaps we could go in there and make a statement about price and get a share of that business. That is what we did and we put together a very good retail offer.

Mr NAIRN—What year was that?

Mr McLauchlan—That was probably about 1993. We opened, I think, in December 1993.

Mr NAIRN—There were independents in Alice Springs.

Mr McLauchlan—Yes, there were.

Mr NAIRN—Owned by Leo Venturin.

Mr McLauchlan—That is right; but not competing with those guys. We are talking about Coles and Woolworths with stores of 40,000 square feet; Mr Venturin has stores of about 8,000 square feet. It is a very different retail offer. So we went in with a 35,000 square footer. I guess the mistake I made was making a big noise about how much cheaper we were going to be than Coles and Woolworths. We applied what was a normal retail margin in an Adelaide metropolitan store but with a freight component added in. We thought, ‘We know we can run a business on these costs and that at that margin we will make a dollar.’ We found that that was substantially cheaper than Coles and Woolworths, so we thought, ‘Here’s an edge,’ and we really pushed it. Of course, what happened was that Coles and Woolworths overnight dropped their across-the-board pricing on every product in the store to a level that was equivalent to our cost price into the warehouse in Adelaide.

CHAIR—So did you do something about that?

Mr McLauchlan—I guess it happens on two levels: it is across-the-board pricing on something like 15,000 line items but also it is in promotional pricing. Because we were tied in with Davids at the time, we got catalogues from Woolworths, for example, from Sydney, Adelaide and Alice Springs in the same week and they were running a national promotion on Cadburys block chocolate. It is only one SKU, but it is a line where people are familiar with the price. On this given week in Sydney it was running at \$2.49, in Adelaide it was \$2.29 and in Alice Springs it was \$1.89. We wrote to the Trade Practices Commission and basically were fobbed off, which is a similar experience to Mr Drake’s example in his submission.

CHAIR—They did not take any action?

Mr McLauchlan—It seemed that this price was acceptable in terms of the cost at which Woolworths were purchasing the product, which was nonsense.

CHAIR—How many products were involved?

Mr McLauchlan—I guess that we used that as an example of the need for an investigation.

CHAIR—But you said that you went in and you did your pricing and it was cost plus and so on. Was it right across the board?

Mr McLauchlan—Across the board, yes.

CHAIR—Every product?

Mr McLauchlan—I guess to a degree there is the old 80 to 20 rule, that 20 per cent of the products in a supermarket represent 80 per cent of the volume, and they are the ones that people remember on a day-to-day basis: the price of coffee, for example. No-one really remembers the price of Radox bath salts, for example, but everyone knows the price of Nescafe. They are the ones that really hurt, and they brought those to a level that we could not compete with.

CHAIR—So what happened to your stores there in Alice Springs?

Mr McLauchlan—The store is now owned by Coles Myer.

Senator BOSWELL—Did they buy you out?

Mr McLauchlan—Yes.

Senator FERRIS—How long did that take?

Mr McLauchlan—About three or four years.

CHAIR—I would be interested in some more details, if you could put a supplementary submission to the committee on that particular case. I find that very interesting.

Mr McLauchlan—Yes, I can do that. I was responsible for the performance of the store.

Mr NAIRN—In some of the examples, we have talked about what can happen also in the petrol industry with Woolies at the moment. There has been talk of Coles, as well, opening a petrol source. One of the difficulties we have as a government, I guess, and, in my own particular electorate, it is one of the most commonly raised matters by constituents—and I represent a rural and regional seat—is the cost of fuel. The file on that in my electorate office is one of the biggest. Where Woolworths have opened fuel outlets the price of fuel has come down substantially. There are other things happening in the fuel industry as well which are actually dropping the price in country areas and have done over the last six months or so. But we are faced with this sort of predicament that the consumer is demanding a better price for fuel in rural and regional areas.

Mr McLauchlan—Sure.

Mr NAIRN—One of the major problems is how the competition has not worked properly in those areas as to the price. I know there are other matters. The people who can provide that competition are organisations like Woolworths and Coles which bring it down, but then that affects some of the small businesses that are providing it. Would you like to just comment. You can apply that across a number of items, I think.

Mr McLauchlan—I would like to make two points there. Firstly, with the petrol industry I am not sure that it is the retailer that is determining the price, but in days gone by it has been—I hate to use the word ‘monopoly’ but you could at least call it the strength of the refineries. There were not any choices for where an independent fuel retailer could buy his product.

Mr NAIRN—Yes, and a number of those things are being addressed.

Mr McLauchlan—That has been addressed. We see Woolworths retailing fuel as being a very dangerous thing for our business. If they want to open a petrol station and sell fuel at whatever price, that’s fine. They have a deal going whereby, if a consumer spends \$30 in a Woolworths store, they get 2c off the pump price. The ACCC are kind of turning a blind eye. If an independent retailer went to his local bloke around the corner who sells petrol and said, ‘How about we do a deal here?’ we would actually be operating outside the law.

Mr NAIRN—Some are doing that, though, I think, as I understand it.

Senator BOSWELL—Are they outside the law?

Mr McLauchlan—Yes, they are, but under the strict letter of the law they should not be, but the ACCC has kind of said, ‘If we don’t hear about it we won’t do anything about it.’ They have turned a blind eye. I guess it is a concern that that is allowed to happen. We cannot do that. In my role at Foodland I am trying to come up with new business practice that is good for Foodland as a group. I cannot do that because we do not have the wherewithal to buy our own fuel stations. To negotiate with independent fuel retailers to try and put together a deal like that is impossible. At the end of the day we are not contending that Woolworths and Coles should not be allowed to go out and do business—that is fine. It is how they exert influence on the market because of their size that is the concern—and that is another example of it.

Mr Drake—If I can make a comment: where is the profitability coming from? If Woolworths are going out and opening fuel outlets on their own, that is not a problem—they can compete in the market—but are they subsidising it out of their food sites? It is difficult for an independent who has got his own supermarket there, if he cannot do a deal with a fuel station.

CHAIR—You can still regard it as a lead loss item, though, can’t you, which is regarded as being normal practice.

Senator BOSWELL—We seem to be going through a process now in which we have probably had 10 or 15 presentations from people such as yourselves. It is all getting very standard now and the problems are coming through very clearly. On predatory pricing, Mr

Drake, do you ever put a loss leader out or put a product out at under cost to get an advertising advantage?

Mr Drake—Yes.

Senator BOSWELL—Would you see that as being the same as the chains are doing?

Mr Drake—Absolutely not. We are one store in just a very small group. We have only got one store and there is a limit to how much you can do it.

Senator BOSWELL—Have we got an actual definition of trade practices, of predatory pricing?

Senator FERRIS—It is in the Trade Practices Act here.

Senator BOSWELL—Can you help me, please. I just want to get a definition of predatory pricing and see whether the example that you quoted of one store or one particular chain store coming in would affect that.

Mr NAIRN—This is on predatory pricing.

Senator BOSWELL—That is a case study, but it is not the purpose test. I want the purpose test. Anyhow, while they are finding that purpose test—

CHAIR—The question talks about the purpose. The question is simply ‘whether a firm with a substantial degree of market power has used the power for the purpose as prescribed in the sections, thereby undermining competition’—that’s the theme.

Mr NAIRN—One of the judgments quite specifically says, ‘The charge of predatory pricing must be related to the costs incurred by the price cutter,’ which is one of the rulings.

Senator BOSWELL—I will get that ruling in a minute. While we are having a look for that, I think you are being realistic in saying divestiture is going to be hard to implement and what are the downsides when you do it, and you have suggested a cap. A cap is a problem too. Let us assume that we went for a cap. What then happens to some of your stores that want to sell out to Coles, Myers, Franklins or anyone? The cap will prevent that happening.

Mr Drake—I am probably in the best position of most of the retailers in South Australia. By asking for a cap I am actually reducing my opportunity to sell my business. We have got some of the best stores in Adelaide.

Senator BOSWELL—You have got 100 stores, haven’t you?

Mr Drake—No.

Senator BOSWELL—What have you got, Mr Drake?

Mr Drake—I have got 21 stores.

Senator BOSWELL—It would be difficult for you to sell your stores, I would imagine, holus-bolus, because you would then, as I understand it, come under the merger test.

CHAIR—Or are they individually owned?

Mr Drake—No, they are all owned by myself. I just happen to own 21 stores, and by putting a cap on it I am probably reducing. But what is the best for Australia? For me, the best thing would be to have no cap, and sell to Woolworths or Coles—not a problem. Without question, I would not need to be sitting at this table today. I would not have a worry in the world. That would be my best option. My family is working in the business, my wife and my children. What is best for Australia long term? That is what we are about, surely—not what is best for Coles Myer, or Woolworths, what is best for me and what is best for Australia.

Senator BOSWELL—No, what I am suggesting is: is it best for the retailer not to be able to sell at the highest price?

Mr McLauchlan—There has got to be some sort of judgment, though, on what is a realistic price to be paid. That is how Coles and Woolworths have picked up so many of the stores on the list that Mr Jenkins referred to earlier.

Senator BOSWELL—Yes.

Mr McLauchlan—An old rule of thumb in the supermarket business is somewhere between five and 10 times weekly sales. If you get eight that is a pretty good number, if you get 10 you have probably starved the purchaser, if you get five it is probably because your business is a bit long in the tooth. Woolworths and Coles have been paying 15 to 18 times weekly sales, and another independent operator cannot come at a business at that price.

Senator BOSWELL—I understand that, but what I am saying is that, by putting a cap on, you are going to prevent the people getting the 18 going for gold.

Mr McLauchlan—That is only going to exist for a period of time until the independents are of a size that they will just diminish and die anyway. They are only paying those prices currently because it is pretty hard out there on the shop floor to grab market share, so they are doing it by paying over the odds prices for a business. But the ultimate conclusion to that will be that there will be no competition and then there will not be any businesses bought or sold and the opportunity for someone to come in and buy a supermarket or get up and run a supermarket will be gone.

Senator FERRIS—I am interested to follow up a point that was raised by Mr Jenkins earlier in the evidence relating to Davids Holdings. Does it concern you that Davids Holdings is in fact holding a significant market power themselves as a wholesaler, because they are in fact determining the price. I am not sure how many clients they would have in South Australia, but probably hundreds; if not, maybe 1,000 or 2,000. Does the level of choice that you have in sourcing your supplies from one quite powerful wholesaler concern any of you? Your choice of moving to another one is pretty limited in terms of source of supply.

Mr McLauchlan—Sure.

Mr Hall—If we have a relationship with our wholesaler who has no supermarkets—he has sold off all the markets that he owned, so they are either in the hands of independents or they have gone to chains—if that wholesaler wants to stay in business he must ensure that we stay in business, otherwise he has not got a business. Therefore he has got to make sure that he is efficient enough to provide us with a product at a price that we can compete, because without us he is dead; he is gone.

Mr McLauchlan—In this business on the shop floor there are a hundred things to do at a given time. It is very much a hands-on business. If you look at the market share in South Australia and Western Australia, where for a long time there has been one wholesaler, the independents in those two states are stronger than they are in any other state. To a large degree there has been posturing going on in Victoria and New South Wales in the last two years with, first, Davids buying out Composite Buyers and then AIW spinning off and the retailers wondering if they wanted to be with Davids, and then they wanted to be with AIW and then half of them coming back to Davids—they are more interested in worrying about what is coming in the back door than looking after their consumer. What has happened is that while all that has been going on their market share has disappeared.

In South Australia and Western Australia we have a very strong alliance with our wholesaler, we are all focused on selling more groceries, and we understand that there is a profit to be made at either end—they need to make a dollar, and so do we—and we work together to diminish the costs in that process to the best of our ability to continue to trade.

Senator FERRIS—I was only raising the issue or the theory of choice for you in terms of source of supply. That is all.

Mr McLauchlan—Yes.

Mr Drake—But it is also a matter of volume. I think warehouses survive on volume—critical mass—and we would love to say that there would be another wholesaler to choose from but we know that it is just not economical and worldwide the food distribution is very much a high volume related one and it is an efficiency one. So to split another warehouse here, it would be short term. Long term they just could not sustain that efficiency.

Mr McLauchlan—One of the real strengths of Foodland is that we are 93 stores strong and represent some 23 per cent of this state market. What has happened is a tragedy. I am sure all of the independents that have swapped camps in Victoria think it is the best thing for them in the short term, but what you have got now is again two independent banners that mean nothing in Victoria, whereas you could have had one that was in there competing on level terms with the big guys. That is really where we need to be focused as independent retailers, taking on Woolworths and Coles to the best of our ability.

CHAIR—We really appreciate your presentation today, the clarity of your presentation, the comprehensiveness, and your openness. We appreciate you coming here today. Thank you very much.

[12.16 p.m.]

RANKIN, Mr Christopher James, Executive Officer, Newsagents Association of South Australia Ltd

CHAIR—Welcome. The committee prefers that all evidence be given in public but you may at any time request that your evidence, part of your evidence or answers to specific questions be given in private. The committee will consider any such request. I point out, however, that evidence taken in camera may subsequently be made public by order of the Senate. The committee has before it submission No. 56 dated 17 March 1999. Are there any alterations or additions you wish to make to the submission at this stage?

Mr Rankin—No.

CHAIR—I invite you to make an opening statement and we will follow that up with some questions.

Mr Rankin—Thank you. Our understanding is that this inquiry examines the retail market in Australia and the market concentrations within that environment. The supermarket sector of retailing is the market sector that the association believes has the most obvious concentration and it is to that sector our submission is focused and which I speak to today. The association recognises the need for the availability of magazines and newspapers and other publisher products across a broad range of retail outlets including retail newsagents, small mixed businesses and supermarkets.

Supermarkets, both independent and large national chains such as Coles and Woolworths, deal directly with publishers to effect a range of product that would suit their particular customer base. Similarly supermarkets continue to provide a range of products including books and greeting cards, stationery and publications, all of which are sold in retail newsagents, and the suppliers of those products to both retail and the other areas accept that they are different but important markets to be catered for, as do newsagents.

The association believes that the dominance of a few firms in retail, and in other markets for that matter, is leading to the demise of small to medium independent businesses in those markets. We are also of the belief that the demise of small to medium businesses is resulting in the loss of full-time employment opportunities in the retail sector, the shrinking of shopping opportunities to fewer and larger retail chains and locations, which in turn is leading to the contraction of living standards to many Australians.

Australia has one of the highest concentrations of packaged groceries in the world and I do not know that we need to labour this because I am assuming that you have heard this over and over again. So unless you would really like me to speak to the retail—

CHAIR—Yes, that is right. Cut to the chase, as they say.

Mr Rankin—Okay. Suffice to say that in Australia generally—South Australia perhaps less so, Queensland perhaps more so—the fact is you have two to three retail chains which

are perhaps controlling something in the order of 80 per cent of the market. Conversely, if you look at the USA, the United Kingdom or the EU, you would struggle to find any of those places where the top 10 chains have somewhere between 34 and 80 per cent of the market. There is no doubt that the market share of major supermarkets oligopolies, which is what I will refer to them as, continues to grow at the expense of independent supermarket operators in retail and small retailers generally.

Even the limited review undertaken by this association shows that the United States through the Federal Trade Commission has expressed concerns about the high concentrations of retail markets into fewer major chains. Their concerns about power buyers are said to be radically changing their retail environment and in the view of the commission are killing off small retailers in the acquisitions by way of acquisition, vertical and horizontal alliances with suppliers. Similar concerns have been expressed in publications in both Britain and the EU. The United States has historically taken the view, in the area of monopolies and oligopolies, that the necessary purpose can be drawn from the objective circumstances; that is, if a dominant firm operates in the market, the behaviour of that firm will maintain its position above all else or, to put it more simply, if it walks like a duck and it quacks like duck and it has feathers like a duck, it is probably a duck.

The association is concerned that state and federal governments have so far displayed an unwillingness to actively pursue intervention in retail markets to ensure that retail markets are truly competitive markets. Rather, governments seem to favour a *laissez faire* approach with a faith in the market forces and the importance of efficiency in competition above all else to effect their changes. The association is concerned that the market logic which says that the efficiency of a firm in due course will lead to a dominant position by that firm which effectively will bring on lower prices, increased output, higher quality of goods and services, is not necessarily so. Such a controlling firm may not be pulled by the consumer in any of these directions but rather use its dominance to push to control output, thus price, as well as to use market dominance to control and drive down the cost of inputs and the benefit of this dominance and efficiency is not passed on to the consumer necessarily.

In a highly urbanised population these dominant retailers may strategically place their stores so as to segment the retail environment; that is, the consumer will have to travel considerable distances to compare prices between one retail chain and another. The association believes that, where dominant retail supermarkets are less challenged by the presence of small independent supermarkets, grocery prices in those areas are regularly shown to be higher.

The association is of the view that government should take a stronger role to ensure competitive markets are maintained and that the diversity of ownership within retail markets prevails; further, that the best way for the government to effect such an outcome would be to review major corporate players in the retail sector along with the structure of those retail markets generally. Perhaps the Australian Competition and Consumer Commission could undertake this process in a transparent and proactive manner. Moreover, such reviews should occur regularly and our suggestion is at least every five years.

Further, the association believes that if this inquiry, subsequent ACCC inquiries or other inquiries find that dominant retail firms are detrimental to a market, then legislation requiring

those companies to divest their interests to a level that is no longer a threat to the competitive structure of that market should be enacted. The association also believes that the introduction of legislation similar to the French and, I believe, European law relating to the resale of goods at a loss should be considered. The application of such legislative approaches would place the onus of proof on the retailer who is purported to be predatory pricing, rather than the government body responsible for trying to prove that such an activity is or was taking place.

In closing I would like to quote a piece that I read recently that I have reflected on for some time:

The ideas of economists and political philosophers, both when they are right and when they are wrong, are more powerful than is commonly understood. Indeed the world is ruled by little else. Practical men, who believe themselves to be quite exempt from any intellectual influences, are usually the slave of some defunct economist.

It was actually written by a really unpopular economist called John Maynard Keynes in 1936. Nonetheless I do not think it detracts from what he had to say. That is my opening statement. You have a copy of our report. I was wondering whether there were any questions.

CHAIR—Thank you very much. I will start with the questioning. I think one point to be said is that the newsagents are being subject to a separate review in the various submissions made.

Mr Rankin—Trade practices, yes.

CHAIR—We are looking at it because we have made this inquiry broad ranging but specifically our focus is on the supermarket end. If you look at the fifties, when my father was a small retailer in a shopping centre, the store that has transformed the most, in going back to the original shopping centre, is in fact the newsagent. The newsagent is now like a supermarket. It has diversified into all types of products. In fact the one that I hear lots of complaints about is the predatory approach of the newsagents in market expansion. I wonder whether you would like to comment on that. It seems somewhat ironic that the newsagents have moved into so many product areas in diversifying—and I have to say I have no criticism of that; I congratulate them on adapting to market forces. But isn't it the case of the pot calling the kettle black?

Mr Rankin—Yes, I thought that might be raised and it is for that reason that I specifically put a section right at the beginning of my report. Without trying to beat anyone over the head with it, I tried to explain the differences in the South Australian—and for that matter Western Australian—so-called system of newsagencies. I will say here and now that, from our state association's point of view, the very reason we have put in our own application is we would prefer really not to be tarred with the same brush. We do not operate under the same restrictive practices as in the entire eastern seaboard. We do not have blocked areas attached to shops.

The vast majority of retail newsagents in this state—which is what you allude to in the range of products—are stand-alone retail newsagencies. They compete in the marketplace

just like everyone else. They do not serve as subagents. They do not have block territories. They do not have home delivery rounds. We know what it is like to compete in the marketplace. We are quite happy for Coles, Woolworths, or any other independent for that matter, to range the complete range of stationery, books, cards and other items. They do now and we do not have a problem with it. We do not have a problem doing the same, but I might hasten to add that as retail newsagents the constraint is never placed on us by Coles, Woolworths or anyone else. It is placed by the landlords and the landlords are very specific about what ranges we will and will not stock, particularly in large shopping centres.

They are more than happy for the larger chains in particular—as supermarkets that seems to give them some exclusive right to participate in any market they choose without restriction because in their permitted use they just put the word ‘supermarket’; that seems to be an apology for everything. If you try to get the cake shop to sell clothes or you try to get them to compete at some other level with the supermarket, you will be very quickly told by your landlord to back right off.

CHAIR—So it is a leasing problem?

Mr Rankin—I think that from your point of view it is probably not relevant in that the environment that you perhaps are alluding to—we do not have a block system so the idea of competition is not one that we would have an argument with. We knew that this would be thrown up as soon as we came to this inquiry—‘Why are you here? You’ve got exclusive territories.’ Well, the fact is we do not. It does not apply. It does not apply here; it does not apply in Western Australia. It has not applied for something like 20 years.

Senator FERRIS—Are you saying that, in a shopping centre a cake shop that might want to sell something that is only just on the edge of being called cakes, it would be determined by the owner of the shopping centre, as part of some deal he has made with the supermarket, who will sell cakes?

Mr Rankin—No. What I am saying is that when you sign a lease you usually have quite prescribed permitted uses that tell you what you can sell. It does not tell you what you cannot sell. It will be up to the landlord to determine what you cannot sell the minute you try and sell it.

Senator FERRIS—But he could easily have done a deal with, say, the supermarket in the shopping centre to not allow any of the smaller shops to actually sell a particular range of goods.

Mr Rankin—I would not be able to speak to that because that assumes that there is some sort of unwritten conspiracy.

Senator FERRIS—That is illegal.

Mr Rankin—I know and I do not think that is necessarily the case, but it does not have to be a written agreement. The landlord’s best interests, from his perspective, are best served by having a major tenant that has a wide range of products. I do not basically have a problem with this issue of competition. Our argument, the whole presentation that we have

made, is that there must be a point that is reached in a purely competitive market or, as we try and move towards perfect competition or pure competition or however you want to term it, you must draw a line sooner or later that says when somebody has a market share of greater than X it cannot be good for the market.

CHAIR—That could be equally said about newsagents though. They have a market share of 100 per cent.

Mr Rankin—They do not have a market share of 100 per cent. The supermarkets would represent probably in excess of 20 or 30 per cent of retail sales in this state.

CHAIR—In terms of the distribution of newspapers, selling newspapers, you have a monopoly market.

Mr Rankin—Home delivery agents do, yes, but that is a matter of supply. If the publishers wish to have any other body determined to deliver their products more efficiently, I guess they will. Make no mistake, I do not think Rupert Murdoch or Kerry Packer are known for their generosity. If they could find a better way of doing it, they would do it tomorrow and drop the newsagents like a hot cake.

Senator FERRIS—But, conversely, the *Canberra Times* in the ACT has broken that agreement itself and the *Canberra Times* itself is now doing that distribution, so it is not that it has not been challenged.

Mr Rankin—No, that is exactly right and nobody has an argument about that. But I really would like to move off ‘Is the pot calling the kettle black?’ because it does not apply. It is not relevant, I believe, and particularly so in this state. Nobody will be more pleased than the newsagents in this state when the ACCC and newsagents in the eastern seaboard get it resolved. We have been waiting for them to catch up for a long time.

CHAIR—Get which part resolved?

Senator BOSWELL—I really do not think we should be getting into this because we will then get conflict with the different states.

Mr Rankin—It is an unresolved issue.

Senator BOSWELL—Let us just leave it as an unresolved issue.

Mr Rankin—Yes. As I said, I do not wish to suggest for a moment that we are in conflict, but the fact is that I think we are perhaps a different structure and I do not think it should necessarily influence our comments. I would like to think that it does not.

CHAIR—All right. Can I throw it open to questions.

Senator BOSWELL—I read your submission this morning and I thought it was a very good one.

Mr Rankin—Thank you.

Senator BOSWELL—What you were saying, I think, is that there is not enough countervailing market power to offset the three chains. That is in essence what you are saying, isn't it?

Mr Rankin—Absolutely.

Senator BOSWELL—And you are not saying it from a newsagency perspective.

Mr Rankin—No.

Senator BOSWELL—You are saying it from a general perspective.

Mr Rankin—Senator, you only have to read any amount of literature, either based nationally and compared internationally—and I would have thought it was self-evident. Yes, that is exactly what I am saying. We have no particular axe to grind other than eventually, if it affects one, it will affect all.

Senator BOSWELL—One of the problems, as I see it, is that we do not have stand-alone newsagencies.

Mr Rankin—Yes.

Senator BOSWELL—But if the chains take over the chemists and what is the newsagents in other states, then in a town we are left with nothing there; there is nothing in that town. People drive to the next town. We are shrinking the towns down and putting them into regional centres. I think that is what you are saying, that has got to be stopped if we want to maintain our towns. In South Australia there are only probably two or three regional centres, apart from the city.

Mr Rankin—Yes. As I said, in the submission I went through a number of issues, not least of all the matters that you addressed. But at almost every level it seems to me that if you had more players you would have significantly fewer problems, problems that seem fairly obvious, be it on leasing, be it on employment, be it the impact on primary producers, be it the impact on regional areas. It does not matter. Our argument is that there must be some point that is reached where somebody has to accept that moving towards oligopolies and monopolies cannot be good for an effective market competition.

None of this work is mine. Everything that is quoted in here is from another work. This is not groundbreaking stuff. Baker's work, for example, on the spatial segmentation of the Sydney markets—and other markets for that matter—in the supermarket position is extraordinary and yet it is being ignored by the ACCC. They said, 'That's just an event. The mere fact that they only compete physically in one space in Sydney head to head is merely circumstantial.' The mere fact that you have to drive suburbs to get a price comparison is extraordinarily difficult.

In a place like South Australia, which is often considered to be a lesser state—and it is said that we have the most restrictive trading hours—we also happen to have the highest level of independent supermarkets and historically and consistently the lowest price of groceries, and yet we are also probably the furthest away from markets and distribution. Conversely, Sydney which is the largest market—it is the most agglomerated, it is the most urbanised, it should have the best benefits of economies of scale—regularly has the highest prices. I am not an academic but I have difficulty with that. If the market is working so well, why doesn't Sydney have the lowest prices all the time? Be that measured by either choice or by the regular basket of goods that is done by—

Senator BOSWELL—Retail costs and real estate costs would impact upon that, I would imagine.

Mr Rankin—I am sure it does. There have been so many works and so many publications that seem to say that over and over again—and it is not just happening in South Australia or Australia; it is happening across other continents—but we seem to be so much later in addressing it. America panics when Walmart has more than four per cent of the total market. They are at their wits end when the 10 biggest retailers have 34 per cent of the total market, and we sit here saying it is not a problem. The Americans are not backward about imposing legislative change. You have only got to have a look at their legislation which has been in place since the Standard Oil Co. issue, about the impacts of monopolies and the monitoring of oligopolies, and so it goes on. Some have said it is not terribly effective legislation but they are having a go.

CHAIR—Are there any further questions, bearing in mind that we are beginning to have a time problem.

Mrs ELSON—Mr Rankin, how many jobs would be lost if the supermarket did gain a fair bit of your industry. How many jobs would be lost?

Mr Rankin—Of newsagents in South Australia?

Mrs ELSON—Yes.

Mr Rankin—I must say I do not know. I can come back to you, I suppose, and look at our total employment levels at retail. In South Australia there are over 300 retail newsagents, I suppose, and on average they would have four owner-operators/employees. But I do not anticipate that in the short term anyway. We are more than happy. Supermarkets, from a newsagent's point of view, are a separate market; they are almost a complementary market. We do not see it as necessarily being a threat to us, be they independent or large chains. You will see that the most successful retail newsagents are directly opposite the checkouts of a supermarket.

CHAIR—So the core problem for you then as a newsagent is the tenancy agreements you have got to enter into, the restriction from that?

Mr Rankin—The core problem that we have is that we look at the market which will eventually flow through to us and will impact on us. There are different levels of distribution

arrangements between larger supermarkets and newsagents now about delivery times and packing and requirements. There is already starting to be a segmentation of focus. But effectively there are a whole host of issues, not least of all leasing issues, where we believe that once again because you happen to be a very large supermarket you are going to get preferential choice. Is that a reasonable market assumption or have they grown to such a position where they can demand extraordinary positions, be it in the cost of goods, leasing arrangements from landlords who are not exempt from being leveraged either? But is that a true reflection of the market? I find it difficult to imagine that it is when you have got two major chains that are so dominant, and it flows across a whole host of things, all of which I have put in my submission.

Mr NAIRN—Mr Rankin, you mentioned the suggestion of the French legislation. Can you just enlarge on that slightly?

Mr Rankin—Yes. In France in particular, and I believe it is being translated in some way across the EU, they have actually got a section that relates to the resale of goods at a loss and the text of it basically is as follows: that any trader who resells a product in an unaltered state at a lower price than its actual purchase price should be liable to a fine of X dollars. The actual purchase price shall be assumed to be the price of an invoice plus turnover tax and specific charges relating to resale and where appropriate cost of transport.

The difficulty you have with predatory pricing is that if you look through the act nobody wants to touch it because it is really hard to prove. It is exceedingly difficult to prove. Like so many other things in the Trade Practices Act it would be a lot easier if you just reverse the onus of proof. Why go around trying to put out fires when you can simply say, ‘Look, you may believe there are predatory practices out there.’ The exceptions that they provide in here—the exceptions that they provide to this legislation—are numerous, particularly to perishable goods, goods of an outdated mode, outdated technology and the like. Perhaps that is the way to approach it.

Mr NAIRN—I can understand the reasons why you say that, but it could have the effect of a non-tariff barrier, if you are talking about trying to make a comparison in a trading sense, that if you reverse the onus of proof you could have all sorts of furrphies being thrown up constantly.

Mr Rankin—I think the onus of proof would place the emphasis back on these large organisations, or small ones for that matter, to think very carefully about what competition is and about the behaviour that leads to true competition, as against trying to position yourself in the market. It does not address the areas, for example, of controlling the price at the farm gate by having the golden share—as a couple of economists have referred to it, particularly you—but it might address, at least on the shelf, this idea that you have to do better than predatory price to be truly competitive in a retail market. Everyone keeps bleating about predatory pricing; it is very difficult to prove. Everyone assumes it is going on. I do not necessarily, but at the end of the day you would make short work of it. You would simply, ‘Well, fine.’

Senator FERRIS—But you would still need a small person to come along to make that allegation to have presumably one of the larger stores—

Mr Rankin—Like the Trade Practices Act—in many areas you could have any person that would come along and make the assertion.

Senator FERRIS—Yes, but if we are going to improve it—you are suggesting that we can improve it by bringing in the French legislation—there is still a degree of reluctance by a small retailer to make allegations of any kind against a big retailer for fear of retribution. So I am just not quite sure how you think it will improve it.

Mr Rankin—I must say that at the end of the day I do not know how else to approach it. I, like so many other people, am just saying, ‘Where do you start? If you have such a level of market dominance, where do you begin?’ We have by disinterest or by enormously quickly changing markets found ourselves in a position where everyone is starting to be concerned. I do not know that it is the answer. It is an answer that has been tried and it has been in place in France, I believe, since 1966, so maybe we could ask the French how it is working. Maybe it does not work at all. But it seems to me that putting a cap, for example, which has been suggested by a number of people, perhaps has some merit but becomes awfully mandatory. Who is going to control the cap? Do we get to the four-pillar system and sell to the banks or to somebody who knows a lot about publishing, what is a controlling interest?

Senator FERRIS—More importantly, is it a breach of the Trade Practices Act?

Mr Rankin—That is exactly right. I would really like to see a lot more academics have a thrash at this and say, ‘All right, we have had the practical input from the retailers who feel the pinch. We have had the politicians who were feeling the political pressure.’ Maybe it will take a combination of some of the academics and others that have travelled or experienced it overseas to say there is a way or there is beginning to be light at the end of the tunnel about how other people are attacking this.

Senator BOSWELL—The buck stops right here.

Mr Rankin—I am sure it does.

CHAIR—Thank you. I think you were actually trying to put yourselves in our position in the suggestions that you made. You have obviously thought through these issues a lot and we appreciate that. We appreciate you coming today and outlining it for us. The committee now stands adjourned.

Committee adjourned at 12.42 p.m.

