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JOINT SELECT COMMITTEE ON THE RETAILING SECTOR

Reference: Industry concentration in the retailing sector

THURSDAY, 15 APRIL 1999

SYDNEY

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JOINT COMMITTEE ON THE RETAILING SECTOR

Thursday, 15 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, Forshaw and Murray and Mr Baird, Mrs Elson, Mr Fitzgibbon, 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).

WITNESSES

Committee met at 9.04 a.m.

BLANDTHORN, Mr Ian John, National Assistant Secretary, Shop Distributive and Allied Employees Association

DE BRUYN, Mr Joseph, National Secretary-Treasurer, Shop Distributive and Allied Employees Association

CHAIR—Welcome. I declare open this public hearing of the Joint Select Committee on the Retailing Sector. Today's hearing is part of the committee's inquiry into industry concentration in the retail sector. The committee prefers that all evidence be given in public, but if you wish at any time for the evidence to be taken in camera, then I am sure the committee will examine that, but we should warn you that the Senate may decide at a future time to make the evidence public.

The committee has before it submission No. 214, dated 30 March 1999. Are there any additions or deletions that you wish to make to that submission?

Mr De Bruyn—No.

CHAIR—I now invite you to make your opening statement and we will follow that up with questions directly to you.

Mr De Bruyn—Firstly, a few comments by way of background: the Shop Distributive and Allied Employees Association, or the SDA as we are commonly known, is the trade union which covers employees in the retail and fast food industries. We have 211,000 financial members at the moment and that makes us the largest trade union in the country. The retail industry as a whole covers approximately 13 per cent of the work force, so it is very big, and the part of the retail industry which is the subject of this inquiry—the food part, the supermarket part—is obviously a large part of that 13 per cent employment. As a union, we are concerned about the welfare of the employees in the industry and we are also concerned about the welfare of the industry itself.

We take the view that if the industry is prosperous then it is capable of playing a role within society, creating employment, creating well-paid jobs and good conditions of employment. So our concern is for the welfare of the industry as well as the employees and we often say publicly that we regard ourselves as an integral part of the industry itself. We are not outsiders. I personally have worked for the union full time for 26 years and I have been the national secretary for 20 years. Ian Blandthorn has been with the union for 18 years and he has been the assistant national secretary of the union for 12 years.

The three companies which are of special interest to this inquiry—Coles, Woolworths and Franklins—all have industrial agreements with the union. Generally, these agreements provide for rates of pay which are in the order of $40 to $50 in excess of the award rate and they also provide, in certain respects, better conditions of employment. If, as the committee has been requested, there were to be a cap put on the market share of these three companies of 80 per cent, that would effectively place a limit on the number of higher paying jobs in the retail industry. We say that this is not in the public interest, it is not in the interests of the retail industry and it is not in the interests of the employees in the industry.

If, as again this committee is being requested, the market share of those three companies is to be wound back to 75 per cent, then that would mean a reduction in these better paying jobs and, at best, a substitution of lower paying jobs. Again, that is not in the interests of the employees in the industry, it is not in the interests of the industry itself and, we say, it is not in the public interest either. I think it would be regarded as outrageous by the people affected, by the people who lose their jobs. It would be regarded as outrageous by those people who, if they are lucky, transfer from a higher paying job to a lower paying job. I think they would show that outrage if that were to happen to them because they would lose at least part, if not all, of their livelihood and the jobs on which they depend.

Separately from the submissions we have made, in preparing for this presentation I decided last week that I would have a look at a regional area of Australia and just see what in practice the retail industry and the supermarket industry represented. So I asked an organiser of the union who is based in Dubbo and who is the Deputy Mayor of Dubbo to prepare for me a listing of the local townships, the population in each of these towns and the supermarkets which exist in these towns, and I would like to present that to the committee in the form of a document.

CHAIR—That is accepted. Thank you. Please continue.

Mr De Bruyn—On the third page you will notice that there is a map which is taken from the telephone book of the local area. That is to give members of the committee an accurate picture of where these towns are in relation to each other in this western part of New South Wales. I have given the population for each of the towns by local government area, and the supermarkets which operate in those towns. I want to emphasise that we have only listed the supermarkets. We have not listed the myriad businesses which would come under the title of milk bars, convenience stores, fast food outlets and general cafes and even restaurants which are all in one way or another competing in the same area of the market. We have simply picked those places where a member of the public can do their weekly grocery shopping.

In Bourke, a town of 3,779 people, there are two independents. None of the three major companies is represented. In Cobar, a town of 5,437 people, there are three independents competing against each other and none of the three major companies is represented, and so on down the page. Condobolin has one independent operating there. In the regional city of Dubbo, which is obviously the largest in the list, there is one Coles supermarket, there are two Woolworths supermarkets, there are two Franklins stores, and then two independents.

I have been familiar with the town of Dubbo since 1977, having been there many times in the period from 1977 onwards, and I know personally that there has been a Coles stores there for the whole of that period and at least one, and for most, if not all of the period, two Woolworths supermarkets. Franklins came to the town somewhere between 10 and 15 years ago, I believe, and now has two stores there. But despite the fact that these major companies have been in this city for those periods of time and longer, there are still two independents who are able to operate, obviously successfully, within that city.

In Forbes, Woolworths is there competing against one independent. In Gilgandra there are two independents. In Narromine there is a Bi-Lo store, which is part of the Coles Myer company. In Nyngan there are two independents, and in Parkes there is a Woolworths, a Franklins and an independent. In Warren there are two independents and in Wellington there are two independents and another Bi-Lo store, which is part of Coles Myer. So if you summarise that information over that area, you see that there are four Woolworths supermarkets, three Coles or Bi-Lo stores, three Franklins stores, and a total of 18 independents.

I acknowledge that the number of stores is not the only consideration—obviously turnover is another consideration—but if you look at the spread of these stores and the number of stores, it is clear, in our submission to you, that the independents in this region are flourishing. There are a significant number of them. Eighteen of the 28 are independents. Obviously, because the majors have been in these towns for many years, these independents continue to exist and to flourish. If they were not flourishing they would be out of business and would have been out of business long ago. So I think this is an indication that independents can exist in regional areas, often on their own without any competition from the major companies and, where one or more of the major companies do exist, the independents can exist alongside them and compete, and compete successfully.

If as a result of a capping of market share or as a result of a reduction in market share the large companies were required to close some stores, this would have a dramatic impact on this sort of community. If, for example, Coles were to say, 'Well, we are required to reduce our market share in this area. Let's close, say, the store in Wellington'—which is fairly close to Dubbo, and they might say that that would be perhaps the best way of reducing their market share a little bit in this region—the effect would be that 59 financial members of our union would lose their jobs. In the store as a whole, the total number of people who would lose their job would be even greater because there are some people in that store who would not be union members, including the management.

If Woolworths were to be asked to reduce market share they might say, 'Look, we have two supermarkets in Dubbo. Let's close one of them.' If they chose to close the Riverdale store, 95 members of the union would lose their jobs. If they chose to close Orana Mall 116 members of the union would lose their jobs. These are dramatic consequences arising from what is being put to this committee and, of course, in each of those Woolworths stores there are more employees than there are union members—again, because some people are not in the union for their own reasons and because there would be members of management who are not in the union—so the total number of jobs affected would be even larger than the figures which I have given, which are simply the number of union members that we have.

If you take Franklins, they might equally decide to close the smaller of their two stores in Dubbo. That is the No Frills store. There are 26 union members in that store, and they would lose their jobs. This is, in practical terms, is what it would mean to the employees in these regional areas if, as a consequence of decisions which are made of reducing market share, stores were to close. People will lose their jobs. The impact is local. It is not somewhere in the city where it might be easy to get another job. A local loss of jobs would occur, a local loss of livelihood and that is not in the best interests of these employees, it is not in the best interests of these regional communities and it is not in the public interest.

The other thing which I thought might be of interest to the committee is to have a look at this region from another perspective and that is to ask: in each of the towns in this area, how far does a person have to travel from where they live in a town to the nearest Coles, Woolworths, or Franklins? The argument might be that if you travel far enough you might get to one of these large companies and, therefore, you would ignore the local independents. There is a table here which I would like to put before the committee which has this information.

CHAIR—That is accepted.

Mr De Bruyn—What this document shows is that for people who live in Bourke—remembering that in Bourke there are two independents—if they want to shop at Woolworths they have to travel 372 kilometres to get to the nearest Woolworths supermarket. They have to travel 372 kilometres to get to the nearest Franklins supermarket. They have to travel 332 kilometres to get to the nearest Coles store, which is the Bi-Lo store in Narromine. Similarly, I have done the figures there for Cobar and so on. What you can generally see is that, because of the spread of these townships, if a company is not represented in the local township you generally have to travel a long way in order to get to the nearest Coles or the nearest Woolworths or the nearest Franklins. Therefore, this gives those local independents in the town a natural in-built advantage over these major competitors, which I am sure assists them in competing.

Having put that before the committee, the other thing I would like to do quickly in my opening statement is to make some comments about how we find these three companies to deal with. We have many thousands of members in Coles, Woolworths and Franklins. We have something like 150 full-time officials scattered around all the states and territories of this country and they are, on a daily basis, dealing with each of these three companies at varying levels, so we know these companies well. It is worth saying to this committee that our experience of each of these three companies is that they are each willing to enter into agreements with the union which provide for better wages and better conditions than their competitors. They are all committed to employing people on the basis of those wages and conditions and, if ever there is any suggestion of anybody not receiving their correct money or their correct entitlements, those things are invariably fixed up without any delay.

The other thing which is worth the committee knowing is that the nature of employment in these companies is changing, partly as a result of negotiations which the union has had with them. About six years ago, Coles came to the national executive of the union and gave us a presentation. In that presentation, they told us that they wanted to become the preferred employer in the supermarket section of the retail industry. Arising out of that presentation, the union sat down with the company to negotiate the first full industrial agreement that we had ever made with that company nationwide.

A very important part of that agreement was the commitment of the company to convert a substantial proportion of its casual employees to part-time employment. That represented, for those individuals involved, a consolidation of hours of work, because casuals often work only three or four or six or eight hours a week, whereas the minimum at that time for a part-timer was 10 hours a week. So there was a consolidation of hours, and therefore more substantial employment. Part-time employment is more secure than casual because you have the entitlement to a week's notice, rather than a casual where there is, under the terms of the agreements, no security at all, and also it had the effect, because of the greater security, of reducing the turnover of employees in the company. That agreement was put in place and in the period that followed there was a very substantial conversion of casual jobs to part-time, which had a beneficial effect on employees and on employment, because it provided people generally with more hours and it provided people with greater security in their jobs.

Having negotiated that agreement with Coles, we then found ourselves negotiating agreements with Woolworths and with Franklins at different times, and this same feature of converting casual jobs to part-time jobs was adopted by those two other companies as well. So among these three companies in the years since then there has been a substantial improvement in the nature of employment which we believe is of benefit to the people who work in the industry, which we sought and which we welcome.

There is a further change in progress which has only recently commenced. Last year, Coles opened a new store at Langwarrin and, rather than staffing it under its traditional structure, it decided to substantially increase the number of full-timers in the store. It decided to consolidate the hours of the part-timers also in a very significant way, so instead of the average part-timer working say 10 to 15 hours a week, the average part-timer works 25 hours a week and therefore that is a far more substantial job. And the number of casuals in that store is almost zero—there are just 10 casuals.

What I have done in another document, which I would like to table, is put this on paper to illustrate how this is a totally different and better employment structure for a supermarket.

CHAIR—It is moved that that be accepted.

Mr De Bruyn—What this table does, if I can continue, is—

CHAIR—Is your presentation going on for much longer?

Mr De Bruyn—This is essentially the last part.

CHAIR—Okay, fine.

Mr De Bruyn—What this table does is shows how the store would have been staffed under the traditional staffing structure, which would have been 57 full-timers, 80 part-timers and 113 casuals, but under the new employment structure there are 97 full-time jobs, there are 38 part-timers who average 25 hours, and there are just 10 casuals. This is a revolutionary change for the better in employment in a retail store. It was initiated by the company of its own volition. The union is absolutely delighted with this new employment structure because it puts into effect what we have been seeking for I would say the last 20 years or more: greater full-time employment, more hours for part-timers, and the reduction of casual employment to the absolute minimum that can be achieved.

Coles has been experimenting with this and I understand that the company has now decided to set up similar trial stores in each of the states to trial similar employment structures in existing stores and, if the company, as we hope, decides that this is the way to go, there will be a substantial change for the better over a period of, say, the next five years in the employment structure in this company, providing far more full-time jobs than before, providing far more substantial part-time jobs and reducing the worst type of employment, which is casual employment, down to an absolute minimum. If Coles does go ahead with this, I have little doubt that Woolworths and Franklins will follow because they will see it in their interests to follow.

This different employment structure is being accompanied by the new employees all being inducted as trainees, under either retail traineeships or management traineeships, and the people in the store are offered career paths with the company in a way that was never available before. I put this on the record because it needs to be appreciated that the companies against whom a lot has been said—which I think is detrimental in terms of publicity—not only pay higher wages, not only provide better conditions of employment, but there has been in process an improvement in the way they employ people in the stores, which is to be commended and which is in the best interests of the industry.

In conclusion, we say that there should not be any cap put on market share for these three companies. They are providing good high-paying jobs, both in metropolitan areas and in regional and rural areas of Australia. And it is the consumer who will determine where they wish to shop; if they want to shop in these companies' stores then that provides well paid jobs with these companies which we believe to be both in the public interest and in the interests of the employees of the industry.

CHAIR—We appreciate your very clear presentation and your strong advocacy in terms of the moves that you suggest are under way at the moment. I find it very interesting that the unions are out there so strongly. I do not think we have seen quite so strong a representation, apart from NARGA, in terms of the big end of town. It surprises someone like me. Obviously, some of those points are of interest to us: the impact on country towns, the question of full-time and part-time employment. If one is cynical about this, is this all really to do with the level of union membership? What is the level of union membership amongst the majors versus the independent retailers? Could you provide an outline of that?

Mr De Bruyn—Yes. I think that is a reasonable question and it was not unanticipated.

CHAIR—I like to be predictable.

Mr De Bruyn—I think I should say for the information of the committee that the union does not always see eye to eye with what you have called the big end of town or these large retailers.

CHAIR—I am sure they will be very pleased with you today.

Mr De Bruyn—Just as an example of that, I should say to you that from about the middle of 1997 onwards to the end of last year, an application for an extension of retail trading hours in south-eastern Queensland was dealt with by the Queensland Industrial Relations Commission. The major companies—Coles, Woolworths and Franklins—were all very strongly in favour of that extension of trading hours to include Sundays, but the union was in that inquiry over the 18-month period very strongly arguing against it and, therefore, joining with the smaller retailers, who also made the same submissions to the Queensland Industrial Relations Commission, and in the end we won. The submissions that were made by the small retailers and by the union against Sunday trading being extended to south-eastern Queensland was the submission that was adopted by the full bench of the Queensland Industrial Commission.

We do not always find ourselves on the same side as the major retailers. It depends upon the issue, and there are times when we find ourselves putting a totally different point of view to those of the major retailers, and we do that without fear or favour, in the same way as we are here acting in what we believe to be the best interests of our members and the employees.

CHAIR—Mr De Bruyn, you still have not answered my question in terms of union membership.

Mr De Bruyn—No, I am going to come to it. I wanted to just explain that we do not always support the big end of town. On the question of union membership, union membership is high in Franklins as a company, in Coles as a company—

CHAIR—What are the percentages? Do you have those?

Mr De Bruyn—No, I do not. I would be guessing. I would say that in these companies it would be somewhere between 60 per cent and 90 per cent membership.

CHAIR—And what would it be amongst independent retailers?

Mr De Bruyn—It depends on the individual. In many of them we have no members. Some of them would be well unionised, others would just have small numbers of membership.

CHAIR—Which ones are well unionised?

Mr De Bruyn—If you take the Ritchie stores in Victoria, my understanding is that they are reasonably well unionised. That is a chain of independent stores in Victoria which is expanding. The union does have representation in there which is significant. If you take the old stores of the Jewel company, which are now owned by Davids and are being sold off to independents, again union membership there would be quite high.

CHAIR—But how many members do you have of your union in total who belong to the three majors and how many do you have in total who belong to the independents?

Mr De Bruyn—I would have to get those figures from our branches and provide them to the committee.

CHAIR—Isn't the reality that the numbers are vastly different?

Mr De Bruyn—Yes, they are.

CHAIR—So this is basically about self-interest of the unions?

Mr De Bruyn—No. I think I answered the question before by saying to you that we represent the interests of the employees in the industry, the interests of the industry as we see it and the interests of our members, so sometimes we find ourselves on the side of the major companies and sometimes we find ourselves putting submissions to tribunals, or whatever they are, which are quite different.

CHAIR—Yes, but you are still interested in union membership. On the level of employment, the independents would claim that there is much greater employment per billion dollars of turnover amongst the independents than in the major retailers. Do you have any views on that?

Mr De Bruyn—No, I cannot say of my own knowledge whether that is correct or not.

CHAIR—The second part is that it is claimed in Western Australia that the level of pay with some of the independent chains was higher amongst the independents than it was with the three majors.

Mr De Bruyn—Sorry, who claimed that?

CHAIR—In Western Australia, a couple of the independent chains claimed that their salary levels were higher. I think that was Mr Gale.

Mr De Bruyn—It depends who those companies are.

Senator MURRAY—Mr Chairman, the point we are making is this: if you do not have members in independents, how do you know what their pay levels are?

Mr De Bruyn—Exactly. I do not know what these companies are.

Senator MURRAY—So you are making allegations that you have got no supporting evidence for.

Mr De Bruyn—What I am saying to you is—

Senator MURRAY—You are saying they are lower paid than Coles, and yet you have no members. How do you know that?

Mr De Bruyn—We do have members in some of the independents and we do know. First of all, we say in our submission that we have agreements with some of the independents and we also provide in our submission the rates of pay in those independent stores where we have agreements. When we recruit and where we have members in independents where we have no membership, generally it is the award rates of pay which are applied, in our experience. I cannot say of my own knowledge what is paid in a company where we have no members and where we have never been. But, generally speaking, when we go into an independent in order to recruit, we find the wages that are paid are generally at the award rates.

CHAIR—Did you have further questions, Senator Murray? I am happy to let you continue.

Senator MURRAY—I have just a couple of brief ones, Mr Chairman. You made the assertion that, if divestiture was in force by statute or regulation, your members would lose jobs. Why would you think somebody buying a Coles or Woolworths or Franklins business would get rid of well-trained and highly motivated employees? They would take them over, wouldn't they?

Mr De Bruyn—They might.

Senator MURRAY—So why did you say they would lose their jobs?

Mr De Bruyn—Because I know of no guarantee that if a store were closed, that somebody else would necessarily buy it and go in for retailing in the same way. There is no guarantee that I know of, which has been proposed, that if a store of Coles or Woolworths were closed, that another independent would come along and would take over those people—if that was known.

Senator MURRAY—Let's pluck a figure from the air and say that the government required 200 stores to be divested. You do not honestly think those companies are just going to close and forgo the sale of that business to somebody else.

Mr De Bruyn—If as a result of a government decision stores had to be closed, then, prima facie, people would lose their jobs. If another retailer were to come along and say, ‘We will take on all these people,’ then those people would hopefully have continuity of employment. But because the industrial instrument that covers that place would then change from the agreement to presumably the award—this would be what would happen in most cases—the legally payable wages and conditions would be different and, by and large, lower.

Senator MURRAY—Australia presently has a competition policy which restrains size. Every day of the week you can read in the financial newspapers that the ACCC has acted to prevent mergers or market power increases—and it has done so before with the supermarket industry; it has prevented or approved takeovers of chains—yet in your submission you seem to state that competition policy which restrains unacceptable acquisitions is wrong, yet that is the existing policy that Australia has now.

Mr De Bruyn—I must admit to you that I cannot recall any occasion where the ACCC has said to a retailer, ‘You can’t acquire this or that business because of questions of market size.’ I am not aware of those. I think there are problems that small business has, which we go into in detail in our submission, but which are not related to questions of market share. I have seen in the retail industry in the mid-1980s Woolworths, as the company, fall into a hole. Profits were down, sales were stagnant and possibly even falling. The company was in serious difficulties. The company did not go to the government and say, ‘We want you to put restrictions on our competitors so we can survive.’ The company basically reinvented its marketing and a lot of other things and pulled itself out of the hole in its own way.

Senator MURRAY—So philosophically you are saying to us that your union has no concern if, notionally, four chains achieved 95 per cent or 100 per cent of the market.

Mr De Bruyn—I do not think they can. I do not think that these three companies, Coles, Woolworths and Franklins, can get to 100 per cent, because there always will be independents. You only have to look at the material which I have submitted this morning to see that, in towns where the companies have been for many years, independent stores, independent supermarkets exist and operate and obviously flourish; they obviously make a profit. There always will be parts of the country where the major chains will never go because the nature of the operations that they have are not suited to those smaller communities. So you will never get to 100 per cent.

Senator MURRAY—So providing it is minor, rats and mice stuff, you do not mind independents having that, but major stuff you think the chains should have exclusively.

Mr De Bruyn—No, I have not said that. I made the comment earlier with the case of Ritchies. Ritchies is an independent operator which is expanding in Victoria. It is an independent chain of supermarkets in Victoria and what they demonstrate very clearly in that Victorian marketplace, where Coles and Woolworths and Franklins are all represented, is that if an independent provides the type of operation which the customers are looking for, they can grow and flourish.

Senator MURRAY—That is all I have, Mr Chairman.

Senator FORSHAW—Mr De Bruyn, just a couple of things. What is the experience of your organisation with training and so on in respect of these independents as they have been called?

Mr De Bruyn—Perhaps I will ask Ian to answer that because he is far more expert in this training area than I am. **Mr Blandthorn**—As we say in our submission, the major companies, particularly Coles and Woolworths, have played a most proactive role in promoting and training, and Mr De Bruyn made some reference to that with the new approach that Coles are taking. I notice in the press this morning that the minister is on record as saying yesterday that there has been an expansion in the number of apprenticeships and traineeships in the country. When we look at the industry, we see that the vast majority of formalised structured training that is being made available to employees is being made available through the major companies. In comparison, the take-up of traineeships, for example, among small companies, among independents, is very low and very disappointing—and I say this as the joint chair of the National Wholesale, Retail and Personnel Services Industry Training Council, so I have some knowledge of this—and attempts to involve the small companies in the take-up of traineeships have been very disappointing.

Senator FORSHAW—You have used the term ‘independents’ a lot and, whilst I have not had the opportunity to be at all the other hearings, we are hearing this reference to independents versus the big three or the big end of town. But these independents are not corner shops, are they? They are not classic small businesses that may no longer exist in many regional and country towns or even in the suburbs. What I am interested in is: if the groups, particularly the independents, are complaining about the market share or whatever of the big three, who is speaking for those that are just the little family owned corner shop businesses, and what is the impact of all of this upon them?

Mr De Bruyn—I think the independents really constitute an enormous range of sizes. There are chains like Ritchies in Victoria where there might be a dozen or so supermarkets scattered over quite a large part of the metropolitan area of Melbourne. That is one end of the scale. Then you go right down in this industry to very small operators, supermarkets where the business is simply one supermarket, whether it is in the metropolitan area or a country town, and then you go right down to the local milk bar. That is an enormous range from one end to the other.

Senator FORSHAW—You would not get that impression if you read all the newspaper articles and looked at what has been put to this committee.

Mr De Bruyn—I have not been present previously at this committee, but I do not believe everything I read in the newspapers. The independents are a wide array of different types of businesses. There is an enormous scale there, from the large to the small. They are mostly—not all, but mostly—supplied through the Davids buying group, if you exclude Western Australia and a small component that are supplied by a subsidiary company of Woolworths, and through that Davids buying group they get many of the advantages of size because there is one buying group, Davids, buying off the manufacturers and then distributing to those independents. So many of the advantages of the large companies in being able to buy big are repeated within Davids in its buying on behalf of the independents.

Senator FORSHAW—My point is that the larger independents could be squeezing out the very small independents.

Mr De Bruyn—The larger independents would undoubtedly be competing against smaller independents and putting the squeeze on them. The one thing that we as a union know is that in the retail industry there is constant change, there is constant competition and the effects of that competition are occurring all the time, and unfortunately sometimes stores are closed. We have experience in this sector of the retail industry where stores do close and people lose their jobs. That is unfortunate when it happens. If somebody takes over the business then you would hope that people would get continuity in their jobs and continuity of their rates and conditions, but you cannot guarantee that because sometimes stores close and they are not taken over by another operator.

Mr NAIRN—Could I come back to the question of wages and jobs. Don't you feel that you are making a fairly wild assertion? Stores close, you have a reduction in jobs, people lose their jobs—that is the first claim you made—and, secondly, higher wages are being lost because even if they did get jobs they would be going to lower wages. I ask you to comment on that on the basis that, first of all, the comparisons you provide between rates in the large chains compared with awards are presumably making comparisons with awards for normal hours and do not take into account penalty rates that a lot of the small people have to pay their staff because they are not party to some sort of other agreement, and combine that with quite a number of submissions that we have had to this inquiry, which say that for every job that is created when a large chain sets up, putting out of business a smaller store, 1.7 jobs are lost.

You are asking us to believe that if there were a cap which forced a store to close, all of those jobs would be lost—that is, nothing else would replace it—and there is evidence that has been put forward to us that in fact smaller people might come in and take that market share, because that market share is not going to disappear. That market share will still be around there somewhere. It might be taken up by several small shops who employ at higher levels of numbers than the larger chains, and certainly there is evidence provided to us that small people feel they are disadvantaged because they are paying higher wages as well, particularly when they have got wages for after hours and weekends and those sorts of things.

Mr De Bruyn—I stand by what I have said. If you take, for example, the rate of pay here in New South Wales in the area I have been talking about, on Sundays, under the award it is time and a half, under the agreements it is time and a half, so there is no difference, no higher penalty, that an independent working under the award has to pay. The only difference is that Coles and Woolworths and Franklins are paying time and a half on a rate of pay which is between $40 and $50 higher.

If a large company, as a result of a decision made by government to either limit or reduce market share, closes a store, I suppose there are two possibilities. One is that somebody else comes along and takes over that store, takes over the employees, and then all you have done is retain the same amount of competition. There is no relief for the other independents because another independent has come along and taken over the Coles store or the Woolies store or the Franklins store, so the same amount of competition is still there as before and the existing operators, the existing independents, have got no relief whatsoever from the level of competition. What has happened is that a store of a large chain has become an independent but the level of competition is still the same. The observation I make is that if all those people are taken over by the new independent operator, the legal minimum wages will be less than the major company was paying under its agreement.

If, on the other hand, the major company closes a store and another operator does not come in, then obviously there is a market share there which is then spread in whatever way the local consumers decide amongst the remaining operators. Whether that leads to an equal amount of job growth as was lost in the closure of the store is a matter of speculation, but there is absolutely no guarantee that those, say, 50 or 100 or 150 people who have lost their jobs in the supermarket will precisely be the ones who pick up the jobs arising out of the change in the market shares in the remaining operators—no guarantee whatsoever.

So this whole proposition is fraught with problems and it creates a sense of insecurity in employees in the industry, who now find that in addition to all of the other factors which are there arising out of a constantly changing industry, there is a potential new factor which may involve some of them losing their jobs or, if they get taken over, they might find a reduction in employment, and that is the interest we are representing here.

Mr NAIRN—Just to follow up the chairman's earlier question regarding the break-up of your membership, would you be prepared to provide the committee with some sort of break-up of that membership, the 211,000? What percentage are working in the larger chains and retail outlets as opposed to smaller operators?

Mr De Bruyn—Yes. That will take a little bit of time to obtain but I am happy to supply—

CHAIR—Perhaps you could add to that the questions of wage levels, following the statements you made that the wage levels were higher with the three majors, if you would like to provide some evidence on that, and also the question of—

Mr NAIRN—There is some in the submission.

CHAIR—Yes, but in terms of the question of casual versus part-time and full-time employees in the two groups would be useful.

Mr De Bruyn—I will do my best to get that information to the committee.

CHAIR—Thank you.

Mr JENKINS—First, I suppose this submission and presentation have challenged some of our views about some of the problems and I thank you for doing that. I might add, for fellow members of the committee, that I come from a section of the party that does not necessarily have to say nice things about the SDA.

Having said that, I think the important thing is that your submission has tried to outline some of the problems that confront small business, and that has been helpful. You have a very good discussion of extended retail hours and your role in that and, I must say, in reading it I was interested and slightly surprised that you come to the conclusion about the fact that you would never see the past being rolled back. I accept that is probably in part on the basis of the disruption it would cause to much of the work that you have done on behalf of your members.

Also, you are an organisation which not only has to look after the welfare of its membership directly but also indirectly, and therefore you would have an interest in what was happening perhaps in prices and things like that. I am wondering whether you have done any work that indicates whether extended hours, whether this 'dominance', has in fact led to an increase in prices which, of course, then indirectly has some effect on your membership.

Mr De Bruyn—No, we have not done any work on that. Prices are a constantly changing feature of the retail industry. Companies are constantly looking at each other's prices on particular items and adjusting their own prices in the interests of competition. Really, it is a moving feast. At the end of the day the consumer will go to where the prices are the cheapest and any other things which they want—for example, range, one-stop shopping, all those other things which consumers are after—but prices are undoubtedly an important feature.

There was a time, if you go back to Victoria before Sunday trading came in—that is now two or three years ago—when the independents were able to open on Sundays and the major companies were not. Then Jeff Kennett changed the law and brought in Sunday trading across the board and that undoubtedly created an advantage for the major companies, and the small independents have been the losers in that—undoubtedly. You only have to look at the changing market shares that have occurred in the state to realise that that has been the consequence. It is as a result of the fact that with the majors opening on Sundays and being able to choose between the independents and the majors as to where they shop, they have obviously, in increasing numbers, gone to the majors rather than to the small ones.

That is not as a result of market share; that is as a result of the extension of trading hours, and that was done by Kennett in Victoria. I have lived through changes in trading hours almost continuously in my time with the union and I can say to this committee that we have always opposed extensions of trading hours. We have done it for a range of arguments and one of them has always been that we believe that it was not in the interests of small retailers. I said that to John Fahey when he extended retail trading hours in 1991 here in New South Wales, but he would not listen and so it went on. We have had to live with the consequences of longer trading, which are not easy to live with as a union, because two problems arise. One is that many people do not want to work on Sundays and, while some retailers are quite happy to leave it to employees as to their own choice, there are some retailers who need the experience and the skills of their key salespeople whenever their stores are open, who want to be able to require their people to work on Sundays.

So you have this conflict. The retailer is seeking to be able to require people to work and the union is resisting because it knows that its members do not want it. If I go back to 1993, when we were negotiating our first agreement with Myer Grace Bros, the department store chain, one of the things the company insisted upon was that people be required to work on Sundays after the first 12 months of the agreement. The delegates of the union threw it out. They threw it out, they did not want it.

The second thing we face with Sunday trading is that once trading starts, apart from the question of whether people can be forced to work, there is the question of the penalty rate.

The penalty rate is currently time and a half and that is pretty generally the case around the country, but you find retailers trying to reduce it and then you have the practical problem of dealing with employees who find that the rate they have agreed to work for on Sundays is, in the proposition of the retailers, to be reduced. If you go from time and a half to ordinary time, as sometimes a retailer might seek, you are taking one-third of the hourly rate off people and that is very difficult. So longer trading has always been a problem for the union from those two perspectives.

Senator BOSWELL—Mr De Bruyn, are you concerned at the market share slippage from the independents to the chains? The second part of the question is: how much further can the market slip, in your opinion? You have been in the game 26 years and you have been at the cutting edge of it. What market share, in your opinion, will sustain an independent wholesaler? Is it 10 per cent, is it 14 per cent, or what is it?

Mr De Bruyn—What market share will sustain a wholesaler?

Senator BOSWELL—That will supply a retailer. What I am saying is that to have an independent retailer out there you have to have a wholesaler with enough critical mass to be able to perform buying at similar prices to the chains and also distributing.

Mr De Bruyn—I have to say to you I would be guessing.

Senator BOSWELL—Your ballpark figure would be appreciated.

Mr De Bruyn—I do not even know that I could put a ballpark figure on it. I am not in that side of the business. I represent employees. I can make some observations, though. Woolworths have recently set up their own subsidiary company which competes with Davids to supply to the independents. They talk about reaching, I think, critical mass at something like a turnover of $500 million. That is my recollection of what Woolworths say. Obviously Davids, as an independent supplier, has a market share that goes into billions of dollars. In Western Australia you have a separate independent which supplies the independent supermarkets in that state. Obviously its share is much smaller in terms of dollars, but it is a very successful operation.

Senator BOSWELL—But it has a larger market share.

Mr De Bruyn—It has a larger market share, yes.

Senator BOSWELL—But even that market share has slipped from 50 to 40 per cent.

Mr De Bruyn—Yes, it is reducing.

Senator BOSWELL—And if it reduces at the same level it will be down to probably 30 per cent in another four or five years.

Mr De Bruyn—I could not comment on the future. I would be guessing.

Senator BOSWELL—What this committee is coming to grips with is the sustenance of an independent sector. You commented that Coles or the chains can never get into these smaller towns like Bourke and Cobar and Gilgandra. If the independent sector is not there, who sustains these stores in these small towns?

Mr De Bruyn—But the independent sector, in my judgment, will always be there.

Senator BOSWELL—But it must have a critical mass to be there. What I am asking you to do is address your mind to what that critical mass is.

Mr De Bruyn—I do not have the confidence to answer that question.

Senator BOSWELL—It just cannot stay there because it has to be sustained. It has to have a viable operation to keep it there.

Mr De Bruyn—Whether a business has a critical mass depends upon buying, selling, and costs in the process. They are the dynamics. It is possible to have a viable business where the turnover is relatively small. Davids went into serious losses with a turnover of billions of dollars, obviously because of poor business decisions that they were making. I do not think that you can sort of pick a figure and say, 'This is critical mass and below this it can't be sustained, but above that it will.' It depends on too many other factors.

Senator BOSWELL—We got evidence on another line of questioning in Western Australia—in fact, it is public—that one of the reasons that small business were doing it tough was that they were paying a higher rate of wages to their employees than the major chains. We can make that evidence available to you today. That was one of the reasons given in Western Australia as to what was advantaging the chains. You have given us a different view today, so I think we will take the opportunity of writing to you and just asking you to clarify that.

Mr De Bruyn—I am happy to clarify it and, if you want us to respond to something in writing, we will be happy to do that. I can say that possibly two years ago Coles took over a chain known as Newmart in

Western Australia and the company then came to us and said, ‘We want to negotiate an agreement for Newmart,’ so we sat down and we negotiated and we reached an agreement. But certainly what had been an independent and which is now part of Coles came off a very low base in terms of wages and conditions. That was our direct experience at the time when we went in there and we started to negotiate on behalf of those employees, and we negotiated an agreement.

The agreement that is there now is different to our general national agreement with Coles, but it provided significant improvements in both wages and conditions from what had previously applied in the independent. If you have got evidence that there are other independents paying higher wages, I have not been party to these proceedings so I cannot comment, but I would certainly be interested in that because, from my experience in the retail industry, that is not generally the case.

Senator BOSWELL—I will just close on this, but one particular person put evidence to us that the union offered to negotiate wages down and he said, ‘No, I won’t do that.’

Mr JENKINS—I think, Senator, what might have been put was that they could reduce labour costs. There are two slightly different questions being asked. Overall there might be savings through the other things that Mr De Bruyn has discussed, not only just the salary.

Mr De Bruyn—If there was evidence about what an official of our union did in Western Australia, I am happy for that official to come here and explain exactly what he did, if that is what you want.

CHAIR—I think that is a very interesting question as well. I think Kay Elson has a brief question.

Mrs ELSON—I had a few questions but timing has now restricted that. In this submission you made today to us on all the supermarkets throughout regional and rural areas, did your inquiries into Dubbo go as far as how many small businesses have closed down because of the influx of supermarkets? Had Payless and Foodtown been in town many years before the others came into town, or have they just opened up recently? To put it another way: did you lose membership within the town of Dubbo? I know from of the publicity stating that recently that lots of small businesses have closed down in Dubbo. Did your union lose membership in Dubbo when that happened, or did you gain when the bigger stores came into town?

Mr De Bruyn—Trying to take those questions one at a time, my understanding is that those two independents have been in the town for a long time. They are not sort of new additions to the town, they have been there for a substantial period of time.

Mrs ELSON—Have any of your union delegates talked to the supermarkets or independents to see how they are faring, whether they are losing or ready to close up?

Mr De Bruyn—I have no knowledge that they are ready to close up. My understanding is that they have operated in the town for many years, traded alongside these major companies for many years, and obviously competed successfully for many years so that they remain in business, and that is what I said earlier on. I did not ask our organiser to provide any information about what had happened with smaller businesses. I simply asked him to list those businesses that could be classed as supermarkets to give me an indication, so I could give this committee an indication, of the independent supermarkets and the major supermarkets in this whole region, to put it into perspective to provide to the committee. What are we talking about there, as far as I know, is the representative part of regional and rural Australia in terms of independents and the big—

Mrs ELSON—Yes. In your submission you state that the 211,000 members come from hairdressing, modelling, pharmacies and so forth. That is why I was asking that question: did you lose membership in the town with the bigger chains coming in, or did membership increase in the town of Dubbo?

Mr De Bruyn—No, retailing is constantly growing and employment in it is almost constantly growing. It takes quite a severe setback in economic growth for there to be a decline in employment in retailing generally. So over the last, say, 25 years, through the growth of the retail industry and the growth of jobs in retailing, our membership has been growing and I hope that continues. As the industry grows and as employment grows in this industry I hope our membership will continue to grow, because the growth in turnover means more jobs and out of those greater number of jobs we seek to recruit as many people as we can to the union.

CHAIR—Thanks very much. Thank you, gentlemen, for your frankness in answering and we look forward to the further answers to questions we have asked you to send through to the committee.

Mr De Bruyn—Are you going to put these requests in writing, or are we just to take what you have said verbally?

CHAIR—No, we have given them formally to you today—and the *Hansard* will provide you with what the terms of those are.

Mr De Bruyn—Thank you.

[10.12 a.m.]

HOLLAND, Mr Nevin, Executive Commissioner, New South Wales Farmers Association

JORDAN, Ms Beverley Anne, Economist, New South Wales Farmers Association

KEOGH, Mr Michael John, Policy Director, New South Wales Farmers Association

WARDEN, Miss Katherine Anne, Administration/Research Assistant, New South Wales Farmers Association

CHAIR—Welcome. The committee prefers all evidence to be given in public but, as you know, at any time you can ask for all or part of your evidence today to be given in camera, and the committee will consider that. But we should warn you that the Senate may require that all of the evidence given becomes public. I understand that you asked that your submission today be confidential, but that after today's hearing you are happy for it to be distributed. Is that right?

Mr Keogh—Yes.

CHAIR—In terms of the submission that we have before us—No. 216, dated March 1999—are there any additions or deletions that you wish to make to that submission?

Mr Keogh—No, there are not.

CHAIR—Fine. We invite you to make your opening comments and we look forward to what you have to say, and we will follow that up with questions.

Mr Keogh—Could I first apologise for our President, Mr John Cobb. One of the hazards of farming during the cropping season is a major machinery breakdown, and that happened to him at about 4 o'clock yesterday afternoon.

Mr NAIRN—It might be the hail.

Mr Keogh—It did not go that far west. He is about four hours west of Dubbo. He apologised profusely but he could not get to a plane to get here.

Thanks for the opportunity to appear before you today. The issue you are dealing with is of strategic importance for farmers who are suppliers to the retail food sector. As you are no doubt aware, the farm sector in Australia is composed principally of relatively small to medium scale enterprises. By its nature, agriculture is a long-term high risk business. In the past, governments have aimed to address the uncertainty and power imbalance farmers experience in their markets by statutory market intervention and regulatory control. Most now recognise that to be competitive in global markets such intervention is no longer appropriate.

Restrictions on market participants' ability to react to market forces are largely disappearing as agricultural marketing boards are disbanded and farmers take greater control of their marketing. However, it is pertinent to remember that the fundamental imbalance in market power between a farmer and a large commercial organisation still remains. This is magnified in situations where a relatively small market like the Australian fresh food market becomes highly concentrated. It is also pertinent to remember that unfair use of market power by commercial organisations can reduce community welfare and distort resource allocation decisions in much the same way that ill-judged government intervention can.

The New South Wales Farmers Association has approached the questions raised in this inquiry very much from the perspective of an organisation representing farmers who are suppliers to Australian food markets. Before commenting on our submission we would like to clarify a point that has emerged in recent days concerning the market share of the major retailers. We are aware of comments that the relevant markets should be defined as 'share of stomach' and that restaurants, hotels, clubs and takeaway food outlets should be included. Under that definition the market share of the three major supermarket chains falls to less than 50 per cent. We reject that definition and note that both US and UK authorities have also rejected such a definition. For example, in June 1995 US Federal Trade Commissioner Varney stated:

> . . . the commission has found that full-line, self-service supermarkets with annual sales volumes of $2 million or more represent a relevant product market. Consumers view large supermarkets as providing a unique service, offering a broad array of products for one-stop shopping.

On the question of market share, we are aware of the confusion that exists between dry package grocery markets and fresh food markets. For dry package groceries we accept the December 1998 AC Nielsen data which put the share of the three major retailers at 80.4 per cent. We are unaware of any objection by the major retailers to this figure when it was published and find it curious that it is now rejected.

We are aware that the position is less clear for fresh food markets. Roy Morgan data indicates that the three major chains generally hold at least 50 per cent of each of the main fresh food categories. Recent Nielsen data indicates that dry package groceries account for 76 per cent of consumer grocery spending and fresh food about 24 per cent. These figures, if correct, would mean that Franklins, Coles and Woolworths together may account for around 70 per cent of the total dollars Australians spend on groceries, and this figure appears to be increasing.

This increasing concentration of food retailing in Australia presents our members with a dilemma. On the one hand, they appreciate the professional and efficient role that major supermarkets play in food markets and, on the other hand, they have reported situations where the major chains appear to have used their power to influence the operations of the marketplace. On the one hand, some members have negotiated satisfactory commercial arrangements with major supermarket chains to the mutual benefit of both parties; on the other hand, members have also claimed that practices adopted by the major chains appear unfair and an abuse of their commercial power.

The association believes the concerns raised by members are sufficient to justify some action to prevent such practices becoming more commonplace. This is especially so from the perspective that further increases in concentrations in these markets may occur. At the very least, measures are needed to ensure that the transparency of markets is maintained and farmers are fully aware of effective alternatives that they may have available.

We reject calls for capping market share, an action that would introduce its own set of inefficiencies and represent an attempt to control the retail market. It would not solve the fundamental problem of ensuring markets remain transparent and that fair practices prevail. The association has conducted a limited investigation of the approach taken in overseas countries to these issues, in particular the UK and the US. Committee members are no doubt aware that a review of supermarket concentration is currently under way in the UK as a result of concerns raised by farmers and others.

The US has dealt with the challenges posed by unfettered markets for considerably longer and has progressively implemented various pieces of legislation throughout this century to ensure that large corporate participants in markets remain honest. US legislation includes the Agricultural Fair Practices Act which outlaws buyer discrimination on the basis of farmer membership of associations. However, the two pieces of legislation of most interest to farmers are the Perishable Agricultural Commodities Act and the Packers and Stockyards Act. Both these acts require (1) post-farm market participants to be licensed and to enter into financial arrangements that provide security for farmers' proceeds; (2) comprehensive record keeping and disclosure provisions to facilitate investigations of unfair market activities; (3) summary powers to enable government agencies to investigate and penalise unfair practices; and (4) a reliance on free and open information flows to ensure that the market remains transparent and efficient.

The New South Wales Farmers Association believes that elements of these acts are appropriate to the Australian situation. While not seeking legislation as stringent as that existing in the US, the association is recommending the establishment of a fair trading authority with comprehensive powers to require information disclosure in concentrated markets. Such an authority, and an associated tribunal, would also require power to investigate and penalise unfair practices. Its role would predominantly be a preventative one, implementing measures to ensure markets remain fair and transparent while at the same time enabling competitive forces to generate efficiency gains.

The association does not wish to be overly prescriptive about the potential role of these bodies beyond setting broad principles. Undoubtedly different market situations will require some variation in approach to ensure that markets remain transparent and efficient. The association is also recommending implementation of a program aimed at encouraging farmers to combine into cooperative or other collective groups to enable them to better match the commercial skills of major corporate organisations involved in food marketing.

In summary, the principles evident in the US legislation should be implemented in Australia as a strategic measure to ensure food markets remain fair and transparent for farmers, consumers and supermarkets alike. Again we thank you for the opportunity to present our submission to you and welcome your questions.

CHAIR—Do any of the rest of your panel wish to contribute at this point?

Mr Keogh—No.

CHAIR—Fine. Senator Boswell, do you want to lead off the questioning?

Senator BOSWELL—Mr Keogh, you have come up with a figure that says 70 per cent of all food—excluding in clubs, hotels and cafes—whether it be groceries or meat, is sold through the major chains. You then put some recommendations down which I find difficult to understand. What you are saying in the recommendations that we have is that all transactions between a major chain and a farmer must be available to someone to look at. Is that correct?

Mr Keogh—No. We are saying that the potential should be there for a greater degree of transparency to occur in specific markets where it is felt that the concentration is too great. Whether the requirement would go as far as saying that all transactions have to be made available to a third party, that is probably going a fair way. It might even come back to something like the US where it says that information has to be readily available and present for inspection if a problem arises. Or there may be some intermediate thing where a greater degree of information is provided to participants in the market via a number of mechanisms.

Senator BOSWELL—You mentioned it would be advisable to get together with cooperatives so you can have some countervailing power with the majors. At present that would be against the Trade Practices Commission.

Mr Keogh—No, you can seek exemption.

Senator BOSWELL—I know you can seek exemptions and they cost you $7,000. Is that correct?

Ms Jordan—I would not be sure of the exact figure but it would cost you to seek an exemption, and you would have to seek that.

Senator BOSWELL—So if a group of tomato growers wanted to negotiate with Heinz, or with Coles or Franklins for that matter, and they wanted to form into some sort of a cooperative that could negotiate a price, would they have to get an exemption?

Ms Jordan—As the legislation currently stands, yes.

Senator BOSWELL—And are they hard to come by?

Ms Jordan—I think there is the question of being able to justify that that buying cooperative will not influence the level of competitiveness in the market and so, from a farmer's point of view, there is a level of difficulty there, in that they would have to mount an individual case.

Senator BOSWELL—So we really do have an imbalance where you have got a buyer from one of the majors that is controlling 70 per cent of, for instance, the greengrocery market negotiating with Joe Bloggs the farmer. He is really at a disadvantage in market—

Mr Keogh—Although groups do exist and do form.

Senator BOSWELL—And a group will then negotiate?

Mr Keogh—My understanding is that that occurs in a variety of industries, yes.

Senator BOSWELL—What experience have you had? There would be increasing numbers of direct negotiation with farmers and therefore there would be lesser use of the fruit and vegetable markets. What effect does that have on setting prices? What are the market forces that set your price if only a third of the market is going through the markets?

Mr Keogh—That is a problem we are focusing on in the proposals we have put forward, because increasingly in some markets you find it very difficult to get hold of market information to understand what is happening in the marketplace. So you are right. The further you go down the track of direct negotiations between a farmer and a supplier, which have advantages in some senses, suddenly the market becomes less and less transparent and the public auction system becomes less a real indicator. In fact, in some ways it becomes detrimental because typically it can be the lesser quality produce that is going through those markets, which effectively acts as a brake on the potential price for the better quality stuff that is not going publicly.

Senator BOSWELL—I would have thought if you took product out of the market, the prices would rise in what was left in the market, but we have been informed that that is not the case and that the prices are actually set by the negotiations.

Mr Keogh—Yes. That would normally be the case.

Senator BOSWELL—So with 70 per cent of food products going through three people—and Franklins have 13 per cent of the market—we are really looking at two people, as the major shareholders and they have tremendous strength to set market prices, and there is no other force out there if the independent sector is not there.

Mr Keogh—Yes, that is a correct situation.

Mr JENKINS—Can we just clarify the 70 per cent? Is that supermarkets in toto?

Mr Keogh—No. Based on the available data, that seems to be an indication of what the three major supermarkets—

Mr JENKINS—Thank you.

Senator BOSWELL—I just want to develop this a bit more. We are faced with two major players and a third player that has 13 per cent of the market—it did have 14 per cent, but it is down to 13 per cent—and for the other sector, which is the third player, the independent sector, the market is slipping very quickly. I do not know what a critical mass is, but I think it is on the point of being a critical mass now. Any further erosion of that will see the demise of a relatively efficient independent sector. Your recommendation might help farmers, but it does not help the overall problem of how we sustain an independent sector that is absolutely, I think you would agree, essential to give your constituents a reasonable price. In your recommendations you are giving farmers some protection if the chains move and change their agreements, and that is important, I understand that, and I have heard complaints from various farming groups such as you have mentioned here, but it does not offer any solutions to the overall problem.

Mr Keogh—We recognise that dilemma and the dilemma exists within our members, because some of them will say, 'I have satisfactorily negotiated an arrangement with one of the majors and it's been very good for my business,' and they will say, 'And if I have to deal with 10 independents, that would be a real problem.' So there is a real dilemma in this whole issue, and that is why we have tried to focus on outcomes rather than process, so the outcome as far as we are concerned from a farmer's perspective is to try and keep these markets fairly transparent and open and allow farmers the opportunity to maximise their prices. Whether you have got four major players, five major players, or whatever, it will be the behaviour of those players that determines that, rather than any limits on them. So even if we did limit to 20 per cent and we had five major players develop, the problem would still exist as far as our members are concerned.

CHAIR—But it seems to me that what you are really saying is, ‘We don’t really care who dominates the market, whether the three majors have got 80 per cent, as long as it’s open and transparent.’

Mr Keogh—We might not perhaps go as far as saying that we do not really care. There will be a threshold where perhaps it will start to get too extreme, but certainly our desired outcome is markets that stay open and transparent.

CHAIR—But as Senator Boswell has said to us, and this is the problem for us—this is all very fine—by not putting up a mechanism in which you can stop the growth of the major three, then you are really saying by that that you do not really care.

Ms Jordan—I will try to address that from the point of view of the efficiency and the workability of the market, because I think the essence is not the number of players in the market, the essence is the level of competitiveness in that market. If you have a concentration in the market—and Senator Boswell referred to the imbalance of power between the three majors and individual farmers when it comes to negotiations—that is addressed by the ease with which those individuals can gain information, because it is the access to information, and the threat of competition from another buyer entering the market which essentially governs the power of those individuals in negotiations.

CHAIR—That is kind of Economics I theory, but if you have got the markets tied up there is not going to be too much hope to enter the—

Ms Jordan—And that is where the pragmatic answer, we believe, comes in, ensuring that the regulator has the power to provide that kind of information if the number of players within the market is insufficient to ensure that that market mechanism provides that information. It is the essence of regulation rather than attempting to control the size of each player’s market share.

Senator BOSWELL—Ms Jordan, could I give you a hypothetical. There is a cattle sale on in Dubbo, and we take all the export cattle out, and we are now bidding on the domestic market. All the export cattle have gone and we have now got 70 per cent of the domestic meat market in the hands of, really, two players. So the other 30 per cent is spread out amongst the remaining butcher shops. What happens if Woolworths do not turn up? What does that do to the sale if the Woolworths buyer has a puncture or something and he doesn’t make the sale? Isn’t that where we are going?

Mr Keogh—Certainly it is a question of how far. I mean, the situation that prevails, as we have indicated in our submission, is where the two major buyers in a market like that send one commissioned buyer to buy for both of them.

Senator BOSWELL—I would say you are getting very close there. That happens, does it?

Mr Keogh—Our members have indicated to us that they have run into those sorts of situations.

Mr NAIRN—Can we get some specific examples of those sorts of things? We get a lot of these sorts of stories, and unfortunately the story with this inquiry, to some extent, is that when it comes down to absolute specific examples—not only in that situation but in other situations as well people say, ‘Oh, well, yeah. Well—’

Mr Keogh—Believe me, most of the information that came forward from members was on a strictly confidential basis because they are the members who are dealing with the organisations we are talking about.

CHAIR—Why do you say that, Mr Keogh? Is it because the growers are intimidated by the majors?

Mr Keogh—I do not think the word ‘intimidated’ is correct. I think the potential there is that they are involved in commercial negotiations with those players and they obviously do not want to jeopardise them. They do not want to jeopardise their business by—

CHAIR—Yes, but why would they jeopardise it? Because they think that there will be a backlash from the majors?

Mr Keogh—Potentially.

CHAIR—Some retribution?

Mr Keogh—Yes.

CHAIR—I think that is a concern in itself if that is the way the majors operate. If there is retribution if they speak out honestly on the market situation, shouldn’t this committee be very concerned about that?

Mr Keogh—That is the point we have made in our submission. We do believe there is sufficient information there to suggest that there is a need for some concern.

CHAIR—On that point, though, they would certainly be able to provide that information in camera if they had come along. As you are probably aware, the Coles and Woolworths people are here today, but they would be banned from hearing what actually happened. We invite your members, if they actually want to make that submission, to do so because that is the very thing we want to hear about—the concentration of market power and what that leads to.

Senator BOSWELL—I think the protocols of Coles and Woolworths would be against that. I think if Mr Williams and Mr Corbett knew that was happening, they would jump on it. But I think it does happen down in the ranks. I am sure it does happen down in the ranks. I know the management would not condone it and would rule it out, but there is often evidence given to me, saying, 'Oh, well, we'll give this grower a holiday. He's kicking over the traces. He's too hard to deal with.' It does happen but no-one is prepared to bell the cat. But it is given to me in evidence continually, and I am out in the farms quite often. So it does happen out there.

Mr NAIRN—Maybe just sticking with that slightly, with the flexibility in supply contracts, both Coles and Woolworths have given evidence that they believe their contracts with suppliers are very flexible, and that that can sort of change, depending on market things that occur, so that prices can fluctuate so the suppliers are not left holding the baby, so to speak. What extent of information have you got from your members that that is the case?

Mr Keogh—The comment from a lot of members—and we commented on that in our submission—is that contracts are often verbal or, at best, very rudimentary, so there may be situations where there are more detailed contracts entered into, but certainly the most frequent comment from our members was that there is almost a discouragement from going to too formal a contract.

Mr NAIRN—Would that be contracts with agents, though, rather than directly with the—

Mr Keogh—No, that is with both agents and directly.

Mr NAIRN—I am surprised to hear that the larger chains would be running verbal contracts.

Mr Keogh—They may contradict that, but certainly the comments from members were that there is not a great deal of encouragement to go towards more formal contracts.

Mr NAIRN—You mentioned before that some of your members do say that they have a very good relationship with the chains and it gives them an opportunity to plan ahead. Are they predominantly some of the larger providers, or does that cross all sorts of sizes?

Mr Keogh—I think those comments would have come from larger suppliers, and even they have made the comments, 'Well, you have to be able to deal with it.' For example, if you are a fruit grower you need the coolroom capacity and the technology to be able to hold fruit if you suddenly get it stopped. If you have got a fair volume of your produce going to one outlet and suddenly there is a change, you have to be big enough and have the infrastructure to be able to cope with that. Once they get to that stage, yes, they do concede that there are advantages in those sorts of arrangements.

Mr NAIRN—The other question I had: I was pleased that you are putting on paper some recommendations, which is good to have in some of the submissions. With a lot of submissions we just get told the problems, but I am pleased you have gone to some point in proposing some changes which could take place. One of your recommendations is to establish:

> A Fair Trading Authority which would have the ability to recognise 'vulnerable' markets, and implement a series of measures in these markets designed to prevent unfair practices, rather than attempting to provide relief after they have occurred.

Can you give the committee just some sort of practical, on-the-ground example of how that authority would actually work, given a complaint from a supplier or something like that?

Mr Keogh—One example is under section 51, I think it is, of the Trade Practices Act. There is the opportunity there for industry codes of conduct to be established. I am not aware how many there are, but the mechanism is there to establish a code of conduct that all players understand in the market and operate by, and not operating by that code of conduct is actually illegal. So the opportunity exists, but I suspect the problem with that provision is, who is going to do it? The legislation says it can occur, but the question is: who is going to do it? How do you get that code of practice into place and get the players in a particular market agreeing that that is the code they will work by?

Mr NAIRN—Yes. Does it exist in any other form now? There is the oil code that is being developed at the moment in the oil industry.

Senator BOSWELL—That was in the report the fair trading inquiry put out on franchising.

Mr NAIRN—There are precedents for that sort of thing.

Mr Keogh—Yes.

Mr NAIRN—The last quick question I have: why is it that you have referred to the US and the UK for comparisons, along with many other people? I find it a bit perplexing because really the markets are just so different. The size of those markets is so huge that I find it difficult to really even take any interest in the things that are submitted to me about the US and the UK. There must be other better examples.

Mr Keogh—There potentially are. I guess one point would be that by and large it seems that developments in the US are mirrored in Australia at some stage down the track, so in some respects it is a bit of a forward indicator of what is happening. The other point is we have a common background in terms of the legal developments that occur in those three countries. I think the third one probably is that that is the most readily available information. There is not an evident volume of information available about other constituencies or other countries that are as accessible.

Mr NAIRN—I think you mentioned Canada in some stage in your submission.

Mr Keogh—Yes. It potentially looks the same sort of thing: a very diverse geographical country with a smaller population.

Mr NAIRN—Yes. It is a pity that the information was not available.

Senator BOSWELL—Where did you get those figures from, because we are having difficulty with them? Did you just pick them up from someone else's submission or did you actually develop these market share figures from overseas countries yourself?

Mr Keogh—No, the only place that we obtained the overseas information from, I believe, was information provided by the National Association of Retail Groceries, which were quoting—

Senator BOSWELL—Yes, I know. Someone says something and it gets repeated and then it becomes part of the vernacular.

Mr Keogh—Yes, I think we cited that in the submission. Certainly the Office of Fair Trading in the UK has published information and that was where the UK figures came from.

Senator FORSHAW—This is more of a comment, but I have also got a couple of questions. Just picking up that last remark about the US, we had some figures given to us by the ACCC, I think, at one stage which said that, by comparison with Australia—where it is alleged that the big three control 70 per cent or 80 per cent—in the States the top 20 chains control 40 per cent. But at least one maybe meaningless statistic out of all that is that on a population comparison it is about the same critical mass for each of the chains—20 chains into 40 per cent of the US population is about the same as three here.

Anyway, I just had a couple of questions. This inquiry is focusing upon supermarket retailing. Are there situations where there is market dominance with respect to other activities of farmers, such as in their own trading of goods or purchase of farm supplies? Are they a matter of concern? Maybe if I can add a bit here. For instance, we know all about single desk selling for some sectors of the agriculture sector which is strongly supported by growers, particularly in the sugar industry. In that industry you can limit it to about two major refiners, I think.

In banking there are the big four, and that applies virtually for the entire population. There are other outlets, building societies and so on, but the big four control it—probably in country centres it may only be the big one or the big two. There is also a long history of the operations of major pastoral houses such as Elders and Dalgetys essentially controlling the entire market between them—or in Western Australia it is Wesfarmers. I know for instance with respect to your own organisation and other farm organisations in other states that they have very close links with insurance companies which have a major, if not almost monopoly, share of the provision of insurance to the rural sector because there are advantages by way of payments back to the association if farmers take out insurance—I think it was with Eagle Insurance at one stage—and so on. Having said all that, I go back to my question: isn't it the case that we have market dominance in a whole range of areas that impacts upon the farming community—in retailing, buying and selling, whatever—that may be reflective of a similar situation in the supermarket trade?

Mr Keogh—Yes, I think there is that point. In relation to the links between farm organisations and insurance companies, I think you will find that the penetration of those particular insurance companies is not anywhere near as high as you might think, much to their disquiet, I suspect.

Senator FORSHAW—I know in the area of superannuation it is very high because of particular agreements that exist.

Mr Keogh—Yes, I think those problems occur throughout the economy in various different areas, and we have got various different measures to deal with them. For example, the Australian Communications Authority essentially deals with what is close to our biggest monopoly and in a sense plays a bit of the role that we are suggesting here. It makes the information about that market more transparent and keeps the players a bit more honest. But we have not focused on those aspects in this particular submission. Even in wool broking, where people might say that the pastoral houses have the dominance, they have had their market share chipped away continually by independents and by other marketing mechanisms, so it varies from case to case.

Senator FORSHAW—I have read your submission and I appreciate the fine line that you are occupying here, but is there something in particular about retailing, particularly supermarket retailing as compared with all other retailing—whether it be furniture or whatever—and its supposed dominance and supposed impact upon retailers in regional Australia that should be a matter of concern when it is compared to all these other areas where one can point to overwhelming market dominance in the hands of a very few operators?

Mr Keogh—I would make two points. The first is that certainly in food markets the product is perishable. An orchardist or a vegetable grower or even a livestock producer for that matter has a very limited opportunity for marketing, so typically ends up in a fairly weak position. The second thing is that it is this particular issue that certainly has generated a level of response from members that is stronger than, for example, concerns about practices of some of the pastoral houses or those sorts of things.

Senator FORSHAW—Somebody, I think, mentioned oil. We have just gone through the annual publicity again about how the prices of petrol went up just before Easter and went down again and its impact upon country areas. So that is another example.

Mr Keogh—We have certainly attempted to take some action in that market and we believe that has had some impact on bulk fuel prices in New South Wales, but it is a very difficult market.

Senator FORSHAW—That market used to be operated by eight distributors or retailers. It is now down to four and the proposal is to reduce it even further. The final question I had has just slipped my mind, so maybe I will leave it at that.

Mrs ELSON—If I could just take that a little further. We have heard in evidence before this inquiry that smaller farmers are very concerned that they are being squeezed out of the market and that, as you have said in your submission, the major suppliers will grow, in contract per farmer, in other words, and that eventually all the little farmers will get squeezed out like the independent grocers are and then the major chains become the supplier to our hospitality industry and so forth. Have you got figures that you can supply to us of how many small farmers have gone out of the industry of producing over the last three or four years?

Mr Keogh—There are statistics available and I do not have them to hand, but we can certainly provide them for you.

Mrs ELSON—I would really like to see that to see if it is escalating fast. Small farmers have also told us that they cannot get bank loans and so forth unless they have a major contract to make sure their money is being well and truly looked after. If that is the case, again we are going to see exactly what we have seen in the retail industry happening in our farming industry and sending our farmers off the land.

Mr Keogh—The difficulty with that is that there is a combination of factors driving those sorts of things. For example, in the south-west of the state, five years straight drought plus low wool prices is going to do a lot more to reduce farm numbers than perhaps the sorts of issues we are talking about here.

Mrs ELSON—But is there a concern amongst members of your organisation?

Mr Keogh—Certainly. That is a strategic issue that has been discussed quite a few times: where is the end-point of all of this?

Mrs ELSON—That is where your recommendation is addressed.

Senator BOSWELL—I do not think your recommendations do cover it.

Mrs ELSON—No, I did not think they did. That is why I was—

Senator BOSWELL—I think your recommendations are protecting the farmer and that is what you are there for, but I do not think your recommendations come to the point of how we keep enough countervailing people in the market so your farmers are going to have someone to sell to; you have put that in the too-hard basket.

Mr Keogh—I do not know that we have put it in the too-hard basket. We are aware of attempts in the past through soldier settler schemes, through a whole range of other things, to try and take those sorts of actions one way or another, and I am not sure there is any shining light of success in that list of examples. I guess we are shying away from taking a more regulatory approach to it.

Senator BOSWELL—Mike, can I ask you one question that does relate to your submission. Has it ever been put to you by your growers, after having entered into a contract, that the market price has fallen and the buyer has come back and reduced the price by means of a credit for faulty goods or any other means to bring the price down to what is being reflected in the market?

Mr Keogh—Yes, we had one or two groups who made that—

Senator BOSWELL—So you are going around in an ever decreasing circle. You are putting less into the market, so the price falls, so the buyers reduce the price to where the market is indicating, and you are going around and reducing your own prices by having—

Ms Jordan—And it is exactly that outcome that we believe these recommendations would go a long way to addressing, because it is not just the level of supply and the number of players in the market; it is also information about quality. For example, in the kind of instance that you have just referred to, a way in which that price can be manipulated is because high quality produce has been taken off in direct contracts. Then, yes, the market price goes down. That contract price is now negotiated only against that public market price, and that information about quality is not readily available. It is in those cases where the kind of recommendations we have made would make that kind of pricing trend transparent to the growers who are receiving that price decrease, and it would give them the power to counter that negotiation.

Senator FORSHAW—I have just remembered the question I wanted to ask earlier. You mentioned in your comments encouraging the development of cooperatives. There are around the country cooperative supermarkets. I am familiar with a number of them, as I have travelled through New South Wales. But is that a realistic proposition? My evidence or information is only anecdotal, but I thought that the trend was, if anything, for them to be winding up or finding it harder to compete.

Mr Keogh—Yes. Certainly we were not talking about farmers establishing cooperative supermarkets. I guess we are more talking about farmers acting more collectively in their marketing to the supermarkets or to the other outlets.

Senator FORSHAW—Am I right in what I just said about the trend? This has been a longer-term trend, I think, with cooperatives in a whole range of—

Mr Keogh—They have a very poor record.

Senator FORSHAW—But that is reflective of what is happening in a whole range of other areas: finance and so on. Thank you.

ACTING CHAIR (Mr Jenkins)—What are the deficiencies, as you see it, in the present Trade Practices Act that makes the type of protection offered inadequate to cover some of those points? For instance, you highlight approaches out of legislation in the United States, where there is some element of those within our TPA, but how would you characterise the deficiencies?

Mr Keogh—We believe the deficiencies are that whilst the legislation is there, in part IV, I think it is, or around that section 51, we provided a situation where potentially a group of our members was making a request to the ACCC about a problem that arose in relation to that, and the response they got back from the ACCC was basically one of going away and sourcing all the information, which was really out of their reach and not readily available. So I guess we would be arguing that while the provisions are there in the act, they are not operable in the sense that a small individual or a small group of individuals simply does not have the wherewithal or the resources to make use of them. We are saying that the example we have seen or we understand from the US is that there is an agency there that has the resources and the wherewithal to make use of those provisions.

ACTING CHAIR—You are saying that, not only for the individual people involved but for you as an umbrella organisation, the type of information, as in this example that was required, was beyond the resources to mount the case. You believe an independent body, properly resourced, should be able to adequately do that.

Mr Keogh—It would have a better chance. Certainly one of our members put it to Professor Fels, I think it was, that if he was a policeman and I was murdered, you would want me to prove the case before you would do anything about charging. That was the sort of example he was using.

ACTING CHAIR—I think your South Australian counterparts suggested that there was a need for education for your members about what protection is available to them, and a lack of that, and indicated that they thought that perhaps the ACCC should be involved in that type of education program as well.

Mr Keogh—Yes, certainly, and I think we made that comment in our summation of some of the things that such an agency could do: that making players aware of what the rules are is probably just as important as having them there.

ACTING CHAIR—You raised the question of potential for codes of conduct. In the Reid inquiry there was also a special mention about the code of conduct that we mention, which was about franchising, which is under a separate piece of the act. But also out of the Reid inquiry there was a suggestion that there should be a code of conduct for retail tenancies. In the government's response to that, they indicated that there may have been a jurisdictional problem—they suggested that—because it being seen to be in state jurisdiction. Do you think that in some of the activities where you are suggesting we might look at using this code of conduct there is not sufficient Commonwealth jurisdiction for a code of conduct? Have you explored that?

Mr Keogh—I do not think I would be qualified to provide a technical answer to that one. I suspect that someone better versed in the trade practices law might need to respond to that one.

Ms Jordan—I also would not be technically qualified, but I think there are some areas where that would be a concern and would need to be looked at. I think in New South Wales there is state legislation that would govern auctions, so that would definitely be an area that would require a closer look.

Senator MURRAY—Mr Keogh, just an apology from me for the discourtesy of being away for some of your submission because I had to take a conference call. Much of this inquiry so far has been focused on incipient monopolies but at least oligopolies, and we all understand what that means. But really the question you are addressing is incipient monopsony or, really, oligopsony, which is where you have a few buyers dictating the market. In those circumstances you are suggesting in the interests of better and fairer competition we need to make adjustments to the law based on appropriate international precedent. Is that summary of my understanding of your submission accurate?

Mr Keogh—That is correct.

Senator MURRAY—You have regarded this as a relatively slow and gentle approach to the problem which should then be reviewed and subject to further change, if it did not work appropriately. Is that correct?

Mr Keogh—Yes.

Senator MURRAY—The idea of a tribunal or an office of fair trading may, in institutional and budgetary terms, somewhat alarm the government as yet another mechanism. I assume you would not be adverse to that kind of approach or that kind of system being incorporated within the ACCC framework, providing it had the elements that you consider essential to it.

Mr Keogh—That is correct. Certainly we knew the question of budget would come up. We were interested to note that the US grain inspectors, stockyards and packers administration is actually funded out of the licence fees that are charged to the participants who have to be licensed before they can operate in the market. We are not suggesting that, we are not going quite that far. Certainly we think that even if the organisation or the administration we are talking about was within the ACCC, that would be fine but we do not perceive the ACCC to be able to deal with the sorts of issues we are talking about where smaller individuals are dealing with larger corporations.

Senator MURRAY—Does this submission have the support of the NFF as a whole?

Mr Keogh—No. Due to the processes, the next NFF council meeting is in May, and it will certainly be on the agenda then, but the timetable is such that—

Senator MURRAY—Have you been asked to advise the committee if the NFF does decide to support it? Obviously it will have greater weight if that happens.

Mr Keogh—We would be happy to do that.

Senator MURRAY—Thank you.

Senator BOSWELL—I understand the NFF are putting in their own submission.

Mr Keogh—Yes, they did.

CHAIR—Is everyone satisfied in terms of questions? I am sorry I had to leave you. The only thing that I would like to ask for, and perhaps Ms Jordan could provide it to us, is a little more information fleshing out these proposals you have in your submission for the two bodies, the proposed fair trading authority and the fair trading tribunal. We have a brief summary but could we perhaps have an outline from you?

Secretary—We have already done it.

CHAIR—We have actually asked for that?

Mr NAIRN—I asked a question in relation to how it would actually work.

CHAIR—Okay, but I would like that, because that is the nub of your—

Ms Jordan—We can certainly try and flesh that out a little bit.

Mr NAIRN—That would be useful.

CHAIR—Fine. Thank you.

[11.09 a.m.]

NAYLOR, Mr Phillip Gordon, Chief Executive Officer, Australian Retailers Association

CHAIR—Welcome. The committee prefers that all evidence is given in public but if at any stage you wish to have all or part of your submission or recommendations today made in camera then you certainly can ask for that. But we need to point out to you that the Senate may, at any time, request that that be made public. We have before us your submission, which is No. 57, dated 23 March 1999. Are there any additions or deletions that you wish to make to that submission?

Mr Naylor—No.

CHAIR—We now invite you to make your opening statement and from that we will provide further questioning.

Mr Naylor—In November 1998, after it had been announced that the government would be holding an inquiry into the retailing sector, the National Council of the Australian Retailers Association—the ARA—passed the following resolution:

That the ARA should make a submission to the inquiry but, because of potential divisiveness in the retail industry, such submission should confine itself to economic and factual empirical matters and should be signed off by the National Council before lodgment.

I might add that resolution was passed prior to the terms of reference being finalised, but I think they were fairly public and there was a fairly general idea as to what the inquiry was all about.

The submission that is before the committee is framed to accord with that resolution of the council. As the submission states, the ARA's general philosophy is that where legislation or regulation enhances competition it ought to be adopted but where it inhibits competition it should be abolished or rejected. The intention of the submission is to provide as detailed a background and analysis of the dynamics of the retail industry in Australia as possible to give this select committee an understanding of the framework in which it will be making its deliberations and ultimate recommendations. As the committee will observe from our submission, the industry's dynamics over the past few decades have produced a cavalcade of changing fortunes for different segments of the retailing sector.

In line with the terms of reference the paper also examines the trade practices competition laws in other OECD countries to demonstrate in general their similarity in thrust, although there are differences in detail. This thrust seems to ARA to be that market share in itself is not a breach of such legislation but, rather, whether there is evidence of misuse of such market share or market power.

As part of its analysis of the Australian retail industry, the submission notes the differing fortunes of large and small retailers in both the food and the non-food sectors and poses the question: why has this occurred? Have these differing fortunes been as a result of efficient versus inefficient operations at points of time, or have they resulted from other factors? In particular, given the particular attention in this inquiry on the large versus small supermarkets, why is it that in the non-food sector small retailers have been able to compete successfully against larger retailers, whilst in the supermarket sector they have been significantly less successful?

It seems to us that if the latter issue is the focus of the inquiry—which it obviously is—the following points should be taken into account to put that issue into context. Firstly, the supermarket sector is about 30 per cent of total retail sales, the independent supermarket sector constitutes about six per cent of total retail sales, some 93 to 94 per cent of retail shops are not small supermarkets, and over 60 per cent of shops are in the non-food sector, the balance being in speciality food, including takeaway food. As our submission comments in a very short form on page 23, small retailing is alive and well; it has just moved from food retailing to non-food retailing.

Given that our basic philosophy is that you should not encourage regulations, legislation or other restrictions unless it can be demonstrated that they will enhance competition, it seems to us that some of the proposals that have been given some publicity over the last few weeks about market capping may well not really address the problem. No doubt the committee has heard a lot of submissions and a lot of ideas, far more than I have read about, as to the problem. But it just seems to us that the market capping idea may be a double-edged sword and may well produce by-products that will not help the sector that it is intended to protect or help.

We note when the terms of reference were finalised the chair made some comments about the wide interpretation of the terms of reference. We simply remind all that, at the end of the day, the consumer interests are paramount or ought to be paramount. Any retailer which does not follow the old retail credo that the customer is always right as its key operating driver will soon be in trouble, irrespective of size, type and location. Given that the thrust of the Australian trade practices law and its OECD counterparts is to foster competition in order to benefit consumers, and given the complexity of the factors determining the structure of the Australian retail industry, our submission concludes with the comment that there must be a clear demonstration that the power and remedies available under the existing Trade Practices Act have been fully employed and shown to be wanting before any further layers of regulation are considered. Thank you.

CHAIR—Thank you. That is interesting, coming from you, in terms of some of the points that you make and it perhaps contrasts with some of the other retail groups around Australia. I would like to allow some of the people on our committee now to ask some questions.

Senator BOSWELL—Mr Naylor, your membership includes Franklins and Coles and Woolworths, as well as other—

Mr Naylor—That is correct.

Senator BOSWELL—Is your association concerned with the market concentration getting into 70 per cent? You say 60 per cent.

Mr Naylor—No, sorry, I did not say it was 60 per cent.

Senator BOSWELL—I thought you said that there was 60 per cent—

Mr Naylor—No, I said 60 per cent of shops in the retail industry are in the non-food sector.

Senator BOSWELL—Sorry, I thought you said 60 per cent of the food was going to—

Mr Naylor—No.

Senator BOSWELL—I am sorry. We heard in the last submission that there was about 70 per cent of all food and dry goods going through the major chains. You have been in the retail industry for a long time. We have crossed swords a few times.

Mr Naylor—Not always swords.

Senator BOSWELL—What do you reckon would constitute the minimum level to sustain an independent sector in the food industry?

Mr Naylor—Senator, I do not know. I would be kidding anyone if I professed to make a comment about it because I do not know enough about—

Senator BOSWELL—You see, the market has slipped about 14 per cent into Queensland. Surely that must be getting somewhere near a critical level. It must not be able to go much lower than that to be able to sustain a distribution service.

Mr Naylor—That might be right, and I am not qualified to say whether that is right or not, but what we are trying to say in our submission is that before you impose a solution, you should really identify what the problem is. I know it is easy for me to say that. You are the ones who have to identify the problem. But it just seems to us, from reading some of the media, that there seems to be this rush to find a solution before really identifying what the real problem is. What we are saying is that if there is a problem and it can be clearly identified, and you can establish that competition will be enhanced by making some amendments to the Trade Practices Act, that is something that this committee ought to look at. But you should not—and I am not suggesting you would—just flippantly impose some bandaid over the whole lot and say, 'Well, let's hope that fixes it.' I cannot answer your question, Senator, because I do not really know.

Senator MURRAY—Would you like me just to summarise, if I may, the problems that have been presented to us. These are essentially the problems. The market share of the majors has been growing at a rate which in some states is exponential and has resulted in the market share available to independents being at a level of stress which makes the viable wholesale distribution to that sector at risk. We have been reduced to three wholesalers in the entire country, and in every state, I think, the wholesaler is now a monopoly, simply because there is not room for anybody else. There has been a process of creeping acquisition going on, whereby the majors have continued to acquire viable and successful independents on a progressive basis.

What NARGA and the NFF and a few others have done is proposed a series of solutions for problems where you have few buyers or few sellers, depending on what the market situation is. Really that is the nub of the questioning by my colleague Senator Boswell. Those problems are known and really the question to you as an experienced leader in your field is what solutions can you offer to problems which affect the nature and the viability and the fairness of competition?

Mr Naylor—I have tried to answer that in our submission by saying, yes, we recognise that has happened in the supermarket sector, but why has it not happened in the non-food sector when you have small retailers essentially dealing with the same companies? That might not answer your question, but I am saying if you are really looking at trying to find what the problem is, and you want to help that sector, surely you would be saying, 'Why have small retailers in the non-food sector been able to compete with the Myers and the Big Ws and the K Marts and the Targets and the David Jones, and do it very successfully, and not only do it successfully but take away market share from them quite considerably—as our submission shows—yet small retailers in the supermarket sector have not been able to do that?' I do not know what the answer is, but I am saying we really need to analyse why that has been the case.

Senator FORSHAW—Does it have anything to do with the source of the product being retailed? I have been interested in this issue about what happens in the non-food retailing sector and, just off the top of my head, I would imagine that a substantial or a greater proportion of that product may be imports, particularly in the electrical line, rather than in food. I know from just in my own area that you talk to retailers who sell TVs, washing machines, fridges, all those things, and they will say to you, 'I will match whatever price you can get from DJs or Grace Bros or Retravision or whatever,' and they just local. Is that a reason? I would be interested to know why the same picture is not replicated.

Mr Naylor—It might be a reason. Although Senator Boswell says I have been around for a long while I do not know what the answer is. All I am saying is I am trying to look at the whole industry because it is my bailiwick to look at the whole industry. Why has it occurred in one sector but not in another when you are essentially dealing with the same companies?

Senator MURRAY—Let's assist you a little more. The sectors in which the greatest number of independents operate and where the small business sector is strongest are all regulated markets: liquor, pharmacies, newsagents, taxis. In those kind of sectors the major chain entry has been relatively restricted. If you pursue the line of questioning that has been outlined by Senator Forshaw, the supply opportunities for a clothing chain, for instance, seem to be far greater than the supply opportunities for the supermarket sector, by nature of the goods and the process of purchasing. I think the evidence given to us in Western Australia was that an independent cannot source more than 40 per cent of his goods from markets and other suppliers; 60 per cent has to come through a monopoly supplier.

Probably Senator Forshaw would know, in the Sydney manufacturing market, that clothing suppliers would be far more diverse. So our question to you as a specialist in this area is: you would surely have an ability to analyse the major sectors and tell us how differently the market is regulated or how different the supply situation is and assist us in understanding why this sector is under more stress than, say, clothing or toys or any other retail sector we might outline, and whether those sectors, incidentally, are now subject to major pressure from chain attack through the category killer categories and all those sorts of things.

Mr Naylor—Senator, the first point I want to make is to disagree with your assertion that a large majority of independent retailers are in pharmacies and newsagencies which are protected. According to the statistics we have shown in our submission, based on the ABS figures, the vast and growing majority of small retailers are in clothing, household goods, jewellery, sporting goods, and they all compete very effectively against the majors. Certainly they are under attack by category killers and the Big Ws and the K Marts, but, without being too blunt about it, they are beating them.

Mr NAIRN—Thank you for your submission. I think there are some excellent data in that submission and I am very pleased to see some comparisons from countries other than the US and the UK. Some of the examples of things in Canada, Germany and various other countries are all very useful information for us.

Mr Naylor—Thank you.

Mr NAIRN—We have got a lot of evidence in the inquiry so far that where a lot of the small supermarkets have lost ground is where trading hours have been deregulated. I think a lot of submissions have shown that that has been a major contributor to the loss of market share and ultimately the loss of some stores. You do not make any real comments in your submission about trading hours.

Mr Naylor—Yes, we do.

Mr NAIRN—I have obviously missed it.

Mr Naylor—I was just ahead of you. As you were talking I was looking it up.

Mr NAIRN—I thought when I read it the other day I did not see it, but then I had a quick look at the index and I could not find it.

Mr Naylor—It is on page 18 going over to page 19. I know there has been a lot of argument about how much market share the majors have and whether it is 80 per cent or some other figure, but I just relied on the figures that have been produced by A.C. Nielsen, and I assume them to be correct.

Mr NAIRN—No, sorry—

Mr Naylor—I am leading to a point. If you look at the market share of the majors in each state and then try and relate that to the level of regulation or deregulation of trading hours in each state, there appears to be very little correlation. The state that has the highest level of concentration of the majors is Queensland. It still has fairly significantly regulated trading hours. Yet the state with the most or totally deregulated trading hours, Victoria, has far less market share domination by the majors.

Mr NAIRN—What about Western Australia?

Mr Naylor—In Western Australia it is lower but I would argue the reason that the market share is lower in Western Australia is not directly related to trading hours; it is related to the fact that there has been a very strong and disciplined independent group operating there for, I think, nearly 100 years. I would think that is more the reason why Western Australian independents are so strong.

Mr NAIRN—That is FAL.

Mr Naylor—Yes, and its antecedents.

Mr NAIRN—The evidence we got in Western Australia tended to suggest that they believe one of the reasons the independent operators have held their market share much better than the other states was because there are not deregulated hours. Certainly there is a move to deregulate, which they are opposing.

Mr Naylor—All I am saying is a lot of this stuff has to be based on assertions. I have just looked at the market shares of the majors in each of those states as produced by A.C. Nielsen and then looked at the degree of regulation or non-regulation of trading hours, and all I am saying is there does not appear to be any direct correlation between that, so it seems to me there must be other factors.

Senator BOSWELL—Your argument falls down there because Western Australia have got restricted trading hours and they have got the highest share of the market.

Mr Naylor—Yes, but what I have said there is that I sense that one of the reasons for that is the fact that they have traditionally had a very strong and disciplined and independent group in FAL and its antecedents.

Mr NAIRN—But in a general sense, given the sort of diversity that your organisation represents, does your organisation have a general view on shopping hours regulation or deregulation?

Mr Naylor—In terms of our national body, because trading hours is a state issue each state division of the organisation or each state association determines its own policy. I can tell you that each state division of the ARA has a policy of gradually freeing up trading hours.

Senator FORSHAW—Could you give us some figures for, say, 10 years ago or 20 years ago where we can actually look at what the proportions were under more strictly regulated trading hours in these other states? Is that possible?

Mr Naylor—The market share figures I am relying on are the A.C. Nielsen figures. I do not know how long they have been producing their figures but, yes, that can be looked at, for sure.

CHAIR—They do not go back for too long. Victoria was only about four years ago, wasn't it?

Mr Naylor—Right.

Senator FORSHAW—We know that it has increased but it would be interesting to know, say, by how much has it increased in the states where there has been deregulation. If Victoria, for instance, has only moved by a percentage point or two, then your analysis would be supported by that sort of information, whereas if there had been a substantial movement in the more restrictive trading hours period, then it might tell us something entirely different.

Mr Naylor—What we tried to do in our submission, starting at the middle of page 18, is that we looked at the supermarket sector and we said that the supermarket sector started in Australia in about 1960—to pick a date—and it had its greatest period of growth, going from nought per cent market share to 40 per cent, in about 13 or 14 years, and during that period trading hours right around Australia were totally regulated to Monday to Friday plus Saturday morning. So that is when the so-called three majors got their biggest spurt of growth. Whilst they have still been going after that, the rate of growth has been slower. There could be a whole range of other factors as to why that has been the case but I would argue that it is a very tenuous argument to say that it is because of trading hours.

Mr NAIRN—This is more of a comment than anything I suppose. It is interesting to see some of the figures here of what the number of grocery stores and other shops and things have done, but was 1991-92 the most recent ABS statistics you could get on that? I would be very interested to see what has happened since then.

Mr Naylor—Unfortunately, they are the latest figures. They ran out of money and they could not do a census last year.

Mr NAIRN—I think one of the interesting statistics that you provide there is in the increase in bread and cake shops, and bread in that area is seen as something that the major supermarkets theoretically ought to be able to cream in some way, the same as they do with other lines. To me, knowing what has happened in the marketplace, that bread sort of shop, with a totally new product that has been produced over the last decade or so, is an example of the old baker who has found a new way to present a product and has survived against the big guys, which has not occurred with a lot of other similar sorts of shops.

Mr Naylor—That is correct.

Mr NAIRN—Would that be a fair comment?

Mr Naylor—I agree with you the figures only go to 1991-92, but I am positive that trend has continued. With apologies to Woolworths and Coles who might be in the room, those bread shops have absolutely creamed—to use your expression. Maybe that is too strong, but they have done very well. It has been largely because of their success that the market share of specialty food operators has not gone back to what it was 20 years ago, but it has started to move up again.

CHAIR—They are becoming chains themselves though, aren't they, and franchising?

Mr Naylor—They are franchised, yes, but independent operators.

CHAIR—But they are distinguished as niche and narrow-range retailers rather than broad-range retailers, which is what a supermarket is.

Mr Naylor—That is true. I guess all the things that are coming out during this discussion just show how complex the industry is and that you have got to be careful about making generalisations.

Senator FORSHAW—They have followed the trend of increasing their opening hours as well, haven't they?

Mr Naylor—Absolutely.

Senator FORSHAW—You can drive through Sydney now and you will find bread shops open all weekend and so on. They are actually catering to that sort of market. Years ago they did not.

Mr Naylor—There is a good reason for that: that is when the customers want them to be open.

Mr NAIRN—You could ask the question: why hasn't the butcher been able to do a similar sort of thing? I answer my own question and say that in a lot of locations they actually have. I know of a number of butchers that have survived because they have provided that niche product, the sort of prepared meal for Mum racing home at the end of the day and being able to put a meal straight onto the table—that sort of thing. So some have actually found that market that others have not.

Mr Naylor—And some fruit and vegetable retailers have done very well, too.

Mr NAIRN—Yes.

Mr Naylor—There are some classics around Sydney that just sit next to Woolworths or Coles but do very well. I know the fruit and vegetable retailers will say, 'We've been devastated,' but some are doing it right. So there must be a secret somewhere. A point that you made, Mr Nairn, is interesting though, and that is: where independent retailers have been able to beat the big guys is where they have identified a niche and they have concentrated on it. That is where the independents in the non-food sector have done well. Harvey Norman would not regard himself as a small retailer any more, but he was, and he took the department stores on in an area that he was good at and he did better than them. A lot of the specialty clothing chains took the department stores on. You can go right through that non-food merchandise where they have focused on an area that they can do better.

I know some of the department stores are now relooking at their strategy. It is public knowledge that Myer have a strategy and certain ways of getting the customer back into their stores, and David Jones have got a different strategy. But history shows that those stores have lost massive market share to the specialty retail sector over the last 20 years.

Senator MURRAY—May I add a point to this discussion. You will also agree, I think, Mr Naylor, that specialty retailers such as Harvey Norman and many of the others—bread shops and people who have gone for niche markets—often operate outside the major shopping centres, in High Street situations or in stand-alone stores. They have been able to lower their tenancy costs as a consequence and therefore can compete on space costs as well.

Mr Naylor—Yes, that is part of the reason. But I will give you another example: the phenomenon of Bras n Things and Sanity music, which is a chain of about 300 stores now, started by a fellow who is probably about 35 years of age now. He started the thing about 15 years ago from one store in the country. He operates in shopping centres. He pays the exorbitant 15 per cent occupancy costs that specialty retailers pay in shopping centres, yet he is still able to compete with the department stores who are paying much lower occupancy costs.

Senator BOSWELL—That is the first time we have heard of the 15 per cent. Could you give us an expansion on that?

Mr Naylor—I have probably ventured into an area that this inquiry is not supposed to go into, the question of occupancy costs, but I will explain it. Basically, the average occupancy cost to specialty retailers is 15 per cent of their turnover. Their wage percentage to sales is probably about 12 or 14 per cent, the amount they pay to the landlord is 15 per cent, their gross profit is about 38 per cent, their general admin costs are about eight per cent, so they operate on one or two per cent net profit. I know this is not part of this inquiry, but if you are talking about oligopolists the experts are in that industry.

Senator MURRAY—Don't set me off!

Mr Naylor—Nor me!

CHAIR—We have already looked at that.

Senator MURRAY—Can we return to the major issue we are faced with, and that is that, where there are competition policies working effectively, all competition policies in modern Western democracies, including Australia, seem to be triggered by three main considerations when the regulator gets involved: either considerations of size, as to whether that becomes a market restraint or results in an abuse of market power; or where there is excess profitability—and that is an indication of, again, monopolistic characteristics; or unfair or restrictive buying and selling practices. As I understand the submissions put to us so far, principally those who want greater attention to our competition policy are focusing on 1 and 3. I do not think the allegations of excess profits are really being laid down well. Most of the attention has been on size and on unfair or restrictive buying and selling practices. With that in mind, they have proposed some solutions. The question people such as yourself who defend the status quo really need to answer is: are the problems of creeping acquisition or excess chain dominance—potential or actual—or the effects it has on a viable independent wholesale sector, appropriately addressed within our existing competition policy or not? If they are not, how would you deal with it? Because that is what we face.

Mr Naylor—I understand that.

Senator MURRAY—What we really want to know is: when is too big too big? When is the market share that independents need to have to retain a viable sector at risk? When do the practices that the NFF exposed to us—which are essentially what could be described as oligopsony, which is a few buyers—come into play, and how should they be reacted to?

Mr Naylor—My understanding of the competition law and the trade practices law in other OECD countries—and I have referred to that in our document, and I do not profess to be an expert on it—is, as I said at the start, that the breach is not the size of the market share but it is what you do with it when you have got it. That seems to be right across all those countries that I have looked at. I do not know that the size of the market share is all that relevant unless you have a trigger—as you have in some countries—at which an individual company's market share reaches a certain point, and that is a trigger for the regulators to say, 'Well, we'd better have a look and see what this company is doing.'

Senator MURRAY—Which is the British approach.

Mr Naylor—Not only the British approach, For most of them, judging by the case law that I have reported in our submission, there seem to be rules of thumb about it. I think Britain is 25 per cent, the USA is about 40 or 50 per cent and Canada talks about that. It is not prescribed in the act so much, but it has come from the case law, where cases have been taken to their respective trade practices courts.

Senator MURRAY—Let us pursue that. Do you think there should be trigger mechanisms in our law which do not say that is automatically wrong but say that is the time when the regulator takes a closer look and monitors it more closely? We already have trigger mechanisms. In Corporations Law when you reach a certain size there is a certain reporting requirement.

Mr Naylor—Yes.

Senator MURRAY—There are lots of those kinds of instances, where a certain size or certain characteristic results in a different regulatory approach. Would you, as an industry, support a trigger mechanism which does not say you are wrong to be at 25 per cent or whatever, but simply says you are subject to more scrutiny than you might be before then?

Mr Naylor—I do not think we would be in issue with that because that really is the trend around the world in a lot of those other OECD countries, that there is a trigger at which people will take a closer look at what is going on. It is not a presumption of guilt, it is just saying, 'Look, there is a certain concentration of power here and we'd better have a look at it just to see whether that power is being misused.'

CHAIR—Are there examples of where they have taken action in terms of divestment, for example, or have they just looked at it?

Mr Naylor—From my reading, you look at the market share and you say, 'Is that company or that group of companies misusing that market share by engaging in unfair practices against their suppliers or other people they deal with?' As I said at the start, I do not think it is the size of the market share that determines whether you are operating inappropriately, it is what you do with the market share once you have got it. That is, I think, what Senator Murray was putting to me.

Mr JENKINS—In Britain it is rumoured that the Monopolies and Mergers Commission is going to hold an inquiry into supermarkets. Part of the reason is to look at whether competitors are getting into that market, but also the popular suggestion that supermarket chains are profiteering. Your submission goes to an earlier article in the *Economist*. That article indicates that the British supermarkets' profit margins are at about six per cent. I note you make a comment that you believe that to be at least double to three times the average Australian figures. What figures were you basing that comment on?

Mr Naylor—The ABS figures is, I suppose, the short answer. But I think they are on the very first page—

CHAIR—I think Tony Dimasi, who is on next—I heard his presentation at the Gold Coast—will support of what you are saying there as well. We will ask him specifically. I think he is up the back there now.

Mr Naylor—Obviously there will be later figures than this, but the net profit percentage of turnover in the supermarket sector throughout 1991-92 was 2.1 per cent. Some companies will be more than that, some will be less, but there are not too many that are getting substantially more. No-one is getting six, I know that for sure.

Mr JENKINS—Another issue that you raised in your submission that has been raised in other submissions—and we have not really had the opportunity to look at, of course—is the question of Internet trading, which would change the nature of retail. I note in your submission, based on discussions at an international conference, the suggestion that in food retailing the share of Internet trading would be about 20 per cent by the year 2010, which is a fair slug of the market.

Mr Naylor—Yes.

Mr JENKINS—You also make the interesting comment that you think it would be the freest of markets. For some reason I started on the basis that perhaps it was the bigger players that might be better placed, especially in the food retail market, to take advantage of Internet trading. I just wonder whether you want to comment further.

Mr Naylor—It is on the public record that some of the majors are already experimenting in the Internet area. The great thing about the Internet is that there are no boundaries and the costs of operating on the Internet are minimal. Certainly you do not have to pay 15 per cent of your turnover in rent. You can run a site on the Internet very inexpensively. The challenge is that once you get all your customers in you then have to be able to deliver on time, and quality and all those other things apply.

I think the Internet has the potential to be the great equaliser because it will give opportunities to the smaller operators. For those who live in Sydney there is a greengrocer.com.au, which is a guy who has set up a greengrocery operation on the Internet and doing very well. I am not sure how big his business is but he has got a fantastic business. You make your orders on the Internet. I am not sure what the delivery period is. I heard him speak recently and he is now even saying that he is looking at going into packaged groceries as well. He is a one-man operation.

CHAIR—A great equaliser in terms of giving them market strength and buying power of the majors? Are they likely to get better deals than the majors in terms of price?

Mr Naylor—I do not know. But I am saying that in having access to customers, providing you can cover all the other things—get the product right, get it delivered fresh and all that sort of stuff—you have got no boundaries. Firstly, you do not have to worry about trading hours laws—they are just a thing of the past. We say in our submission there has been a lot of hype attached to the Internet. I mean there have been all sorts of way-out predictions as to what might happen, but I think there is so much evidence now that Internet trading is increasing. In the USA it is increasing and in Australia it is increasing. A lot of Australian consumers are buying from USA retailers merely because there are not enough Australian retailers providing that service. So it is a challenge. All we are saying is it is a retail sector inquiry. There are a whole lot of other things outside of just the focal point of what is going on in the independent food sector.

Mr JENKINS—The small players would probably put to us that it is a greater challenge for them than the bigger players.

Mr Naylor—If you use my example of greengrocer.com.au, he would certainly argue against that. He would say, ‘I have taken the big guys on and I am beating them.’

CHAIR—You made the statement twice that it is not the size of the market share that is important but what you do with it.

Mr Naylor—Yes.

CHAIR—If you were a member of the committee would you say that the majors actually use their market share fairly?

Mr Naylor—If I was member of the committee and I heard all the evidence I would be in a position to determine that, but I have not had the luxury of hearing all the evidence.

CHAIR—No, but being in your position I am sure you would know more than most.

Mr Naylor—The strength of our organisation and the things that make us successful are the common interests between all members. Where there are competitive issues between large and small, they are issues that my job does not warrant me getting involved in.

CHAIR—One of the pieces of evidence that we had in Western Australia, for example, was how the representatives from the majors would come down with clipboards to those who supplied cigarettes and so on, the small guys just operating a small store and selling some Lotto tickets and so on, to get the pricing, and very shortly thereafter they would find that their prices were undercut. A number of those people have gone to the wall because they are no longer able to compete. Would you regard that as being in line with your statement that the market size is not as important as what you do with it? Do you think that is dealing with their market size fairly?

Mr Naylor—If that happens, and you are satisfied it is happening, it is something you have to take into account. It is of the nature of predatory pricing. I think the act already provides some remedies there. Whether they are strong enough or not, I do not really know.

CHAIR—What about your membership, Mr Naylor? If I heard Senator Boswell rightly from what he asked you first up, you have got the majors belonging to you.

Mr Naylor—Yes.

CHAIR—What is the total membership?

Mr Naylor—It is 10,300.

CHAIR—Signed-up members of yours?

Mr Naylor—Absolutely, yes.

CHAIR—I presume that there is a varying membership fee, however.

Mr Naylor—Yes.

CHAIR—So the majors would be paying what type of fee to you?

Mr Naylor—It varies according to size.

CHAIR—It is not hard. Coles, Woolworths, Franklins—I am sure they are up there.

Mr Naylor—The reason I have to pause is that the fee they pay to us goes to our state divisions.

CHAIR—Of a rough order.

Mr Naylor—I would think Woolworths probably pay us, across the nation, about $200,000.

CHAIR—And Coles is similar?

Mr Naylor—More, because when you use the term 'Coles' I am talking the Coles Myer group, which covers Target, K Mart. I would probably say—again guessing—$300,000.

CHAIR—A small retailer who joins you would join in their own right, would they?

Mr Naylor—Yes.

CHAIR—Sign up in their own right?

Mr Naylor—Yes.

CHAIR—How much would they pay by comparison?

Mr Naylor—The scale of fees is $220 plus $18 per employee. So if you had one employee you would be paying $238. Ninety per cent of our membership have less than five employees.

CHAIR—What is your total funds that you receive from membership—roughly?

Mr Naylor—I think about $5 million across the nation. I can get that information to you because I would not want to mislead you.

CHAIR—Yes, I was interested. When you say that you represent the retailers, we want to make sure that it is a representative group because there is a disproportionate amount paid by three of your members—almost 20 per cent. Is that right?

Mr Naylor—We would argue it is a proportionate amount because the bigger you are, the more you pay.

CHAIR—I understand that.

Mr Naylor—But that does not impact on the governance of the organisation. The governance of the organisation is that there are state councils in each state and they have a variety of different types and sizes of retailers on them.

CHAIR—How many members have you got in total?

Mr Naylor—There are 10,300.

CHAIR—Are you confident that all 10,300 would be happy with what you were saying, that you do not see the need for a market cap in any way, or any divestment?

Mr Naylor—You can never be confident of that, but you have to go on what the elected governing body of your—

CHAIR—Has this been put to your members at large?

Mr Naylor—It has been to all the state councils, yes.

CHAIR—Is that made up of small people as well as the large people?

Mr Naylor—Yes. But bear in mind that in my initial comments I said the submission was framed deliberately understanding that there are divisive views on this issue. If you ask the majors whether they thought our submission was strong enough, I would be surprised if they agreed, and there may well be some people who think we have gone too far. But I note, just reading some of the submissions that have been made to the committee, that one of the submissions—I think it was Foodland in South Australia—copied slabs and slabs of stuff out of this submission. So obviously it has been a useful reference point. That was really the basis of it; we tried not to come down either way.

CHAIR—Or they do not have your funds for research or whatever.

Mr Naylor—I do not mind helping the industry. That is what I am here for.

CHAIR—You can see our difficulty, though. You say you represent these retailers. NARGA comes here and they have three people who come to see us, two of whom are wholesalers, one of whom, I understand, is actually employed through Davids, and one who is there as an independent consultant who, with the NARGA group, is saying that deregulation has been unfortunate and then the next day is with Mitre 10, who all say that deregulation has been great for them. I have been asking these questions because I want to know how confident this committee can be that you represent the views of—

Mr Naylor—I do not purport to represent NARGA. It would be silly to say that. NARGA have seen our submission in its draft form before it was presented. It was quite open as to what we were going to say. We did not expect people to agree with it or disagree with it. We said, based on what the national council said, 'We're going to try and give this committee as much information as possible about what's happening in the retail industry.' The comments that I made this morning about capping were an observation based on what I had heard in the media and based on the—

CHAIR—It is obviously relevant from two points of view, because the view on capping is constantly repeated. Do retailers understand what that is likely to mean in terms of capping, because it does have implications for a lot of small retailers? Some seem to want it and others do not. So you are confident across the board—you have not done a questionnaire to all of your members saying, 'Are you in favour of market size capping, do you want divestment, do you want—'

Mr Naylor—No.

CHAIR—That has not been done. How many people are on the representative group that it went to in terms of your organisation?

Mr Naylor—It went to each of the state councils, and they are typically, say, 15 or 20 people; then the national council is about 21. I suppose it is contrived democracy, in that 12 of the national council have to be single state retailers, six of those have to be small retailers. There are three major retailers on it and there are six specialty chains, the likes of Angus and Coote, and Lowes and those sorts of people. So we have deliberately structured our rules so that we make sure there is a reasonable representation on the national council.

CHAIR—Thanks very much. We appreciate your input. Also I think your submission was excellent. Whether you did it, or some of your researchers, it is a quality submission and we appreciate your input today.

Mr Naylor—I will pass on your congratulations to those concerned and I will take some of the credit myself.

[11.59 a.m.]

DIMASI, Mr Anthony Dominic, Joint Managing Director, Jebb Holland Dimasi

CHAIR—Welcome. I have had the opportunity to hear Tony Dimasi give a presentation to the shopping centre managers conference which was put on by the Property Council on the Gold Coast. The committee prefers all evidence to be held in public but if you wish your evidence to be given in private or part of it to be given in private then the committee would consider that, but we would also say to you that the Senate may decide that the evidence given in camera be made public. The committee has before it submission No. 228, dated 25 March 1999. Are there any alterations or additions you wish to make to the submission at this stage?

Mr Dimasi—No, Mr Chairman.

CHAIR—I would now like to invite you to make an opening statement. At the conclusions of your remarks we will proceed to questions. I might say to my committee members that, having seen the presentation that was given to the conference, I asked Mr Dimasi whether he could give the same one here because I thought it was quite interesting.

Mr Dimasi—Thank you, Mr Chairman. I have a presentation that should take about 10 to 15 minutes to run through. I have also some bound copies of all the colour charts that appear in this presentation for distribution later on. As Mr Baird has already remarked, this is essentially the same presentation as I gave two days ago to the Property Council conference on the Gold Coast. In view of the terms of reference of the committee, and specifically the requirement to consider the issue of concentration and market share, I would like to address today these three key issues: what is the market for supermarkets in Australia; who accounts for this market; and why is the real or perceived success of the chain supermarket groups under scrutiny at the moment?

What is the market for supermarkets in Australia? We need to be very clear about what we are referring to when we talk about markets and market share, and I note that that has already been an issue. When we start talking about market share, it obviously always begs the question: market share of what? In Australia in 1997-98 we spent about $123 billion on retail goods and retail services, and this is the breakdown of how we spent those $123 billion. Food and groceries to take home accounted for 38 per cent of that, or about $47 billion. Liquor to take home was $5.5 billion. Food catering, which is cafe and restaurant expenditure, was $13.2 billion. Non-food goods, apparel, homewares, gardening, et cetera, was $52 billion. Retail services, which is video rental, optometry, hair and beauty, those types of things, was $5.4 billion.

The total market for food we can then consider, I guess, a number of different ways. If we look at all food and grocery spending in Australia, in 1997-98 that was $65½ billion. It comprised $19.7 billion spent on what we call fresh food, which is meat and poultry, fresh produce, fresh seafood, delicatessen and dairy goods and bakery goods, and another $27 billion on packaged groceries and frozen food, accounting for about 41 per cent of the total market for food and groceries. And when we get to this point later you will see that the 80 per cent confusion—which is what I think it is—is because that 80 per cent sits in that $27 billion and relates to the spending on some of the goods in that $27 billion worth of packaged groceries and frozen food. We then spent another $5.5 billion on bottled liquor and $13.2 billion at cafes and restaurants, making up a total market of $65.4 billion in 1997-98.

I would like to turn now to the question of who accounts for food and grocery spending in Australia. First of all, if we consider numbers of outlets—and this, of course, does not represent market share but simply represents outlets share, if you like, or numbers of locations where Australians can choose to shop for their food and groceries—what we find is that Woolworths supermarket and liquor stores numbered 585; Coles/Bi-Lo/Liquorland, 800; Franklins, 260; and independent supermarkets and grocery stores, 2,285. Typically, of course, they are much smaller than a standard Coles or Woolworths supermarket, but not in all cases. Then fresh food and other food specialty stores, which includes meat and poultry specialists, greengrocers, bakeries, delicatessens, milk bars, et cetera, number about 22,000.

As you can see, Australians, when choosing to purchase food and groceries, have roughly 26,000 or 27,000 outlets from which to choose. This is not including takeaway food stores or restaurants or hotels or taverns. If we do include those types of outlets—because they are alternatives where people can choose to buy food, and supermarkets would certainly contend that they do compete at the very least with takeaway food stores and with what are termed quick service restaurants such as a McDonald's, KFC and the like—then we find that in addition to those food and grocery outlets that I have listed previously we have about 20,000 takeaway food stores, about 14,000 cafes and restaurants, and about 5,400 hotels and taverns. So which of these are competitive with supermarkets? This is the question, I guess. My view is that, to a greater or lesser degree, they all are. Some are very clearly and very obviously competitive with supermarkets, some less so. But in my view, in terms of the competitive model that supermarkets face in their day-to-day business decisions, I would take the view that they are all competitive.

If we have a look at the retail sales and floor space shares for the major retailers—and this is at an aggregate level, we are not looking here specifically at food and groceries but we will come to that in a moment—to paint a broad, aggregate picture of the degree of concentration or market share held by the major retailers in Australia overall, what we find is that the four major retailers—Woolworths, Coles Myer, Franklins and David Jones—together account for 23 per cent of retail floor space nationally and 34 per cent of retail sales. The two major retailers, Coles Myer and Woolworths, between them account for 21 per cent of retail floor space and 30 per cent of retail sales. These figures are based on the official reported annual report sales for the major retailers. The denominator of total retail sales is reported by the Australian Bureau of Statistics nationally.

The reason why, in my view, a supermarket competes with those various alternative food and grocery retailers is because of what it sells and how its business is made up. The fresh food departments of a typical or standard supermarket include meat and poultry, produce, service delicatessen, bakery goods, fish and seafood, accounting for 26 to 30 per cent of store sales—typically, though, they all vary, depending on their sizes. It sells packaged groceries, which account for about 46.5 per cent. It sells perishables, which are frozen and other goods of that nature, 16 per cent. It sells take-home liquor—again, not in all cases, but on average, or typically—accounting for about 4.5 per cent. It also sells non-food goods—what are termed general merchandise items: various crockery, cutlery, small apparel items, gardening goods, et cetera—which account for about seven per cent.

So clearly this store competes with butchers, it competes with poultry specialists, it competes with greengrocers, it competes with delicatessens, with fishmongers, with other supermarkets and grocery stores and also with liquor stores and hotels. It also competes with pharmacies for health and beauty and baby goods and with convenience stores and with milk bars. To some degree it also competes with non-food retailers for the seven per cent of its business that is in non-food items.

Less obviously, it competes with takeaway food stores and quick service restaurants in the food catering area, because consumers spend on food and drink and on meal solutions—these are terms that are being thrown around increasingly these days—reflecting the fact that consumers are increasingly time-pressured, and they have less and less time that they are willing or able to devote to food preparation and to cleaning up afterwards. So supermarket operators take the view that, in order to remain relevant to consumers, they must keep offering what are termed meal solutions, so that instead of buying the takeaway meal at KFC or McDonald's or wherever on the way home, the consumer is just as likely to pop into the supermarket and purchase something which may be considered perhaps a little more healthy but can be prepared with almost as little trouble as eating a takeaway meal purchased at a quick service restaurant.

CHAIR—Tony, we might be running into some time problems soon, so I wonder whether you could move through.

Mr Dimasi—Certainly. I have just about finished.

CHAIR—Quite a lot of this information is also familiar to the committee.

Mr Dimasi—Okay. So if we look at the market shares of all food, liquor and grocery spending—the $65 billion that I referred to earlier—and we consider the market shares of the major operators on that basis, then we find that Woolworths, with sales of $13 billion through its supermarket division, accounts for 20 per cent of that market for food and groceries, Coles accounts for 17.3 per cent and Franklins for 5.8 per cent, with other traders accounting for about 57 per cent. If, on the other hand, we say that it is really only the market for take-home food, liquor and grocery spending, and we leave out food catering, which is the cafes and restaurants, then we find that, on that basis, Woolworths accounts for 25 per cent of this market, which would now be $52 billion in size, Coles Myer for 21 per cent, Franklins for 7.3 per cent and other traders for 46.4 per cent.

Why are the chain supermarket groups under scrutiny? First of all, before we consider that point, what is the reality of competitiveness in food and grocery retailing in Australia? Certainly the share of disposable income devoted by Australians to food purchases continues to gradually decrease. In other words, Australians are choosing or needing to devote less and less of their disposable income to their total food purchases, and they are devoting more and more to services—to financial services, health services, recreation.

The consumer base is increasingly demanding. It is very fresh food focused these days, a meal solutions emphasis because of those pressures on consumers that I was referring to earlier. We find that independent grocery store owners themselves becoming small chains. We have Ritchies in Victoria, for example, with about 13 stores; we have Drake in South Australia with 21; Cornetts and Progressive in Queensland with 12 and six; Advantage in Western Australia with four. Of course, the major independent in Western Australia is not really an independent, it is a chain, because Action is in fact a group of stores owned by FAL, the Western Australian wholesaler. So in the same way that Woolworths operates stores or Coles operates stores, the Action stores, which are the most successful independent stores in Western Australia, are in fact a chain of stores.

The sales success has not been limited to supermarkets, and indeed it has not been uniform for supermarkets. It is a well-known fact in the industry that Franklins has been struggling, for example, over the last few years as it needs to invest hundreds of millions of dollars into its stores to make them relevant to the modern-day consumer, and has not been making very much profit, and I think two years ago it actually did not report a profit. Five years ago the headlines for Coles were negative rather than positive in terms of its success. Of course, just over 15 years ago, Woolworths was almost on the verge of bankruptcy. So it is not a guaranteed success for the supermarkets. We also have the example that specialist food stores such as Lenard's Poultry and Bakers Delight, which are probably the two outstanding specialty stores, have actually outgrown supermarkets over the past decade. They have each been opening 25 to 30 new stores a year typically, whereas the three supermarket chains in combination over the last decade have opened a total of around 22 new stores net each year.

So why do we have the current confusion leading to the retail inquiry? I think probably one of the most significant reasons is this 80 per cent confusion, so it is worth while spending just a little bit of time on that. The 80 per cent relates to market share data published in retail trade publications which in turn is based on A.C. Nielsen data reflecting sales of various types of packaged groceries that occur through chain supermarkets and through independent supermarkets and grocery stores. But if I can just tell you a little bit about the A.C. Nielsen data, this is based on a discussion with A.C. Nielsen and in no way reflects any problems with the A.C. Nielsen data or any criticism; it is just that I think it is being misused.

A.C. Nielsen is concerned with the measurement of sales of these dry packaged groceries, as I say. The total estimated value of sales through supermarkets and food stores as covered in the A.C. Nielsen survey is around $18 billion to $19 billion. In other words, they are measuring about $18 billion to $19 billion out of that $27 billion spent on packaged groceries and frozen food that I indicated earlier. It measures only data for those stores which are included in the survey, and that includes only supermarkets and grocery stores, independent grocery stores. So it does not include sales of fresh food, obviously. It does not include sales of bottled liquor or general merchandise. It does not include sales of goods which are termed 'direct delivered to store'—in other words, those goods that are not purchased from the wholesaler. Now these are very important key grocery products—for example, bread is direct delivered to stores; in most cases milk is direct delivered. Biscuits, snack foods such as chips and so on, eggs and those things are not included in the A.C. Nielsen measurement.

So they are important reasons why it is a very narrow view to adopt in any market share assessment. Also, it does not include the sales of the same sorts of goods which occur at store types other than supermarkets or grocery stores. So, for example, health and beauty products sold through pharmacies or baby goods sold through pharmacies are not included. Cigarettes and soft drinks sold through all store types other than supermarkets or grocery stores are not included. Milk, as I say, and bread, et cetera, are not included. Confectionery—chocolate bars, et cetera—sold through store types other than supermarkets or grocery stores are not included. And of course all those specialist fresh food areas are not included in there either. So it is a confusion, I believe, and it is a very narrow view to take of the food and groceries market. I am not suggesting, by the way, that A.C. Nielsen would take that view.

The second reason I think we have this current situation is the notion of combining the three major retailers together as the chains versus the independents, but I find this quite meaningless because the chains are three major competitors who compete very robustly with each other, and in fact I would suggest that the real competition occurs between the three chains. The big versus small issue is always an emotive issue in Australian business. As to the perception that the chains have been growing somehow unfairly, my analysis over the past 10 years shows that indeed they have been growing, and they have been growing quite rapidly, but in terms of new stores that they have opened, for example, the increase has been about 1.8 per cent each year over the past decade, and this is against a backdrop of population growth averaging about 1.1 per cent and spending growth in food and groceries averaging about three per cent.

The reason I believe they have grown so rapidly is essentially through same-store sales growth. That is the key reason. That is because they have refurbished their stores. They have spent a lot of money on stores, and they have focused much more closely on what it is that the modern food and grocery consumer has told them they want in the supermarket. I will leave it there. I think that is probably a good place to stop it, and then you can get on with the questions.

CHAIR—Thanks very much. We really appreciate it. To turn to my interest in the whole question of who owns who and how independent are spokespeople, who do you work for? Are you a consultant to one of the majors?

Mr Dimasi—We work to the retail industry and to the shopping centre industry nationally, so we certainly have done work over the years for a number of retailers. We have certainly done work for Woolworths, for example, and we have done work for Coles Myer through their retail property division, going back for a long time.

CHAIR—So what percentage of your work relates to those two majors?

Mr Dimasi—Probably somewhere in the order of 10 per cent, I would say.

CHAIR—So did they ask you to put this submission forward?

Mr Dimasi—No, they did not, but the study that we prepared was commissioned by Woolworths, so I guess they asked us for an independent assessment of the supermarket and grocery industry.

CHAIR—So in many ways we could regard this as an extension of the Woolworths submission or presentation?

Mr Dimasi—I suppose you could do that, yes.

CHAIR—All right, yes.

Mr NAIRN—Mr Chairman, it was included in the Woolworths submission.

CHAIR—Yes. I just think it is appropriate we do make it clear that this is—

Mr Dimasi—Certainly.

CHAIR—As we have seen throughout, there are various angles and interests, and I think it is appropriate we just do put it on the table.

Mr Dimasi—Certainly.

CHAIR—Questions, gentlemen?

Senator FORSHAW—You mentioned the growth in small specialty chains, I think you may have called them, such as Bakers Delight and Lenard's Poultry. I am not that familiar with the operation of those stores except that I have noticed in a couple of the newer supermarket mall developments around parts of Sydney that they have been established in the same complex as one of the majors. Can I read anything into this? I know, for instance, in my own area both Woolworths and Franklins have been involved in mall developments in recent years and maybe another 25, 30 shops open up as part of that complex, and in both cases these specialty shops have gone in there. Is that a factor that might influence or might affect the ability of other small independents or even very small businesses in other parts of the suburb in their operations, or isn't there any data on that yet?

Mr Dimasi—The fact that they are not in the mall, you mean, Senator?

Senator FORSHAW—Yes, that is really what I am getting at—in other words, specialty traders and maybe just one-off family or locally owned businesses getting into a development with a major supermarket operator. What impact does that have?

Mr Dimasi—I could not give you any accurate data on that because it is not something that is measured. Certainly I would say that it is increased competition for the equivalent specialists who might be outside that centre, who might be in the strip centre.

Senator FORSHAW—It has been something that has been raised—I must say this is just in one particular local area of Sydney where I live—by the chamber of commerce, concerned about longstanding businesses in the main street being threatened by either the major supermarket expanding its operations, getting into fresh fruit and meat and liquor, which it was not in a number of years ago, and, secondly, developing a complex which establishes a speciality Bakers Delight shop, a Lenard's Poultry, one of these delicatessen chains, Igloo or something—I forget the name.

Mr Dimasi—They are no longer around.

Senator FORSHAW—There is one—I cannot remember the name. Then what you get is the retailers up the main street that have been there for 20 to 30 years, saying, 'Hang on a minute. We're being affected here.'

Mr Dimasi—They are two quite separate issues, because the shopping centre is almost never related to the supermarket. The shopping centres are developed by individual landlords, and whilst one supermarket operator, Woolworths, does do some shopping centres, in the total scheme of things it is a very small amount.

Senator FORSHAW—Might I say that is not necessarily the impression that the general public would have.

Mr Dimasi—No, I believe it is not, that is exactly right, which is why I make that point.

Senator FORSHAW—They look at this development and think, 'Well, it must be owned by Woolworths,' because they are the biggest component of the development.

Mr Dimasi—Yes, precisely. We have about 800 shopping centres in this country and, believe it or not, they actually account for only 25 to 30 per cent of total retail sales. The bulk of retail sales still happens in strip centres and in freestanding stores, and again that is something that people are not aware of. The perception is that it is all happening in the shopping centre and particularly in the big shopping centres. That is simply not the case. And then if we look at those 800 shopping centres, one company, Woolworths, has probably built about 15 to 20 of those over the past four or five years, so that is the extent of linkage, if you like, between the shopping centre industry and the supermarket operators. So they are two quite separate issues, and I guess the provision of additional retail floor space and what impacts that has on established strip centre traders is a different issue to this one that we are looking at.

Senator FORSHAW—The other factor too, I suppose, is that it is arguable that the existence of the major supermarket operator, say, in the case that I am thinking of in Engadine, Franklins, means they can have a Bakers Delight and a Lenard's Poultry and a tobacconist store and some other operator operating successfully within the one complex. In other words, it appears that their trade is not being affected by the supermarket selling those products as well only a matter of metres away.

Mr Dimasi—That is exactly right, and I think if you walk into those stores you can probably see the reasons why, because of the types of business that they run and the presentation that they have. In fact in those niches they have actually outperformed supermarkets. Lenards have done poultry better than supermarkets and Bakers Delight have done bread better than supermarkets.

Senator FORSHAW—Are you able to say why that is? If you have got Franklins or Woolworths selling meat and fresh fruit and vegetables, and right next door in the same shopping mall, where the trolleys are scattered all around the corridor sections, you have got a butcher and a baker and a chicken shop, the average person might think that unless they can actually match or beat their price, they are not going to go too well. Yet I see constantly that the prices are maybe a dollar or so higher for those operators but they still seem to survive.

Mr Dimasi—You are exactly right. It is not just about price. I think the supermarket is about a number of things. First of all it is about delivering as cheaply as possible the staple groceries which people want to buy at the absolute lowest price possible, but then it is about meeting all those other aspirational needs relating to food, and that is not necessarily just about price.

Senator FORSHAW—Including the specialties, so, for example, Lenard’s Poultry does not sell just chicken breast fillets.

Mr Dimasi—That is right, yes.

Senator FORSHAW—It sells prepared chicken dishes and so on.

Mr Dimasi—Yes, and very well prepared, at prices that are still considered value for money but not necessarily the cheapest possible.

Senator FORSHAW—And not frozen packaged or whatever, yes. Thank you.

Mrs ELSON—Mr Dimasi, have you been commissioned to do any other industry analysis before this one?

Mr Dimasi—Of the supermarket industry?

Mrs ELSON—Of the retail supermarket industry, yes.

Mr Dimasi—We do lots of strategic analyses as part of our consultancy work, so, yes, over the years I have done lots of industry analyses.

Mrs ELSON—Have you seen a rapid change in the supermarket dominance over the period of time from when you first started doing it?

Mr Dimasi—I have seen a gradual, continuing change. I am not sure that it has been rapid, but it has certainly been very steady and it has been happening for certainly the decade that I have been looking at the industry.

Mrs ELSON—So you have seen a decrease in individual retail businesses?

Mr Dimasi—I have seen a decrease in the market share of independent supermarkets and grocery stores over the last 10 years, not necessarily all types of small businesses. As I said, those two particular examples, Lenards and Bakers Delight, are very good examples of rapid growth. But certainly for the independent supermarket/grocery store which is selling the same things as a chain supermarket, there has been a gradual decline in market share for at least a decade.

Senator BOSWELL—Mr Dimasi, we were told last week by the manager of Davids that they had something like 700 banner stores, and yet they sell to about 4,000 outlets, and I imagine that some of those outlets would be cafes and even providoring and so forth. So let’s take all those out and say that the 700 banner stores would roughly compete with the 585 Woolworths stores and the 801 Coles stores and the 261 Franklins stores. Is that a reasonable assumption to make?

Mr Dimasi—Not really, because those stores are so different. The Davids stores would be a whole range of different store sizes and so on.

Senator BOSWELL—I accept that. Davids would sell to milk bars and obviously tobacco shops and they would have a wide range. If we can just narrow it down a bit, the 700 stores which carry a banner, whether it is Clancys or Tuckerbag or IGA, would seem to fit roughly into the number of stores that would be comparable with the stores of Woolworths, Coles and Franklins that you have shown us.

Mr Dimasi—In number terms perhaps.

Senator BOSWELL—We are having a lot of trouble on definitions here.

Mr Dimasi—Certainly, yes.

Senator BOSWELL—In my mind the figure that we are looking for is the dry groceries—which, I think, everyone agrees is around 80 per cent—the butchery, the greengrocery. What market share of those three products have Coles, Franklins and Woolworths got of the total grocery market? I think that is what we are looking for.

Mr Dimasi—Yes. I do not have those figures at my disposal because to do that you would have to break down the sales of the various groups into those different product categories.

Senator BOSWELL—You see, what you are coming here and saying is, 'Here is the big total market, and there are football clubs, and if you buy a pie there that goes into it,' and you are comparing all unequal things. But the equal things that I think we are looking for are what is sold out of those 585 Woolworths stores, 800 Coles stores, 261 Franklin stores and 700 Banner stores that Davids have around Australia.

Mr Dimasi—Of course, you have to put the FAL stores as well—which is not Davids—into that total pie, if you are going to take that approach.

Senator BOSWELL—Yes. But for the sake of my argument that does not matter.

Mr Dimasi—Sure.

Senator BOSWELL—Yes, that is quite correct and you probably have to put in some sort of equation for Tasmania, too, but for the sake of the argument it does not matter.

Mr Dimasi—Sure.

Senator BOSWELL—What I am trying to establish is: we have agreed the percentage of the dry grocery market is about 80 per cent; what percentage of butchery and grocery, and then add those three product ranges up and then say, 'What share have the chains got against the independent?'

Mr Dimasi—Against the independents—but are you saying excluding, for example, the fresh food specialty stores who also might sell bread and meat and so on?

Senator BOSWELL—Yes, I am saying let us compare the chains that sell everything, that have a butchery, a greengrocery and the dry goods. You could probably throw bakery in there but let us just keep it to those three things. Then I think you get a comparison of what market share the chains have as opposed to the independents. What size would that market be?

Mr Dimasi—I guess to work out that market you have got the sales for the chains, because they are reported. You would have to have a stab at the sales for the independents, which is not an easy thing to do because they do not report in any way, shape or form. So someone would have to estimate the retail sales of the independents at store level. That is not an easy exercise to do, but it is something that someone could possibly do.

Senator BOSWELL—You can see where I am coming from.

Mr Dimasi—I can see where you are coming from, yes.

CHAIR—It was suggested that we should do a comparison, and this is really Senator Boswell's question, although he has defined it more in terms of categories. We should do a comparison of everything that is currently in the three major supermarkets, compared to everything in the other supermarket groups, the independent retailers.

Mr Dimasi—Yes. I honestly do not see the relevance. If I can also buy my meat at the butcher on the way out of the supermarket or my bread at Bakers Delight or my chicken at Lenard's Poultry then of what relevance is the proportion of chicken that is sold through Coles and Woolworths versus—

CHAIR—We are just trying to define the size, that is all.

Mr Dimasi—Yes. The missing element in that, as I say, is the sales of the independents. The other information is well known and it is publicly reported, but the sales of the independent supermarkets and grocery stores are not.

Senator BOSWELL—Have you defined what market has gone from the butchery business to the chains, what market has gone from the greengrocery business to the chains? Is that definable, measurable?

Mr Dimasi—Within reason it is, yes. There has been relatively little change or little transfer over the past few years in those markets. Both butchers and greengrocers appear now to be holding on to the market they have.

Senator BOSWELL—We have evidence—and I cannot find it here—that there are maybe 2,000 butcher shops who have gone out of Australia and an equal number of greengrocery stores. We have evidence here somewhere. But you maintain that has stabilised now.

Mr Dimasi—In the most recent couple of years. Again, if you look back over a decade, my recollection is that it has probably gone from somewhere in the order of 60 per cent that was held by the specialist operators to now about 50 per cent held by the specialist operators in those categories. It is of that sort of order. In one of those categories, in meat, A.C. Nielsen has published what they call volume shares over most of the past decade based on data from the Australian Meat and Livestock Corporation which showed those sorts of trends. But I think that would be the order of transfer that has occurred.

Mr NAIRN—Just two quick questions: where does most of your data come from in your analysis and—if I can throw my second question in to speed it up as well—who commissions and pays for the research of the A.C. Nielsen survey?

Mr Dimasi—It is probably best asked of A.C. Nielsen, but, based on my discussions with them, the manufacturers of the packaged groceries. They are A.C. Nielsen’s key clients. In terms of our data there are two sides to this equation. On the one side there is the size of the pie: how much do people spend and what do they spend it on? That is essentially based on ABS data sourced from household expenditure surveys, corroborated by retail turnover series. So we put it together using those two sources of data to determine that Australians spend $123 billion on retail goods, and that it is broken up in those proportions that I showed earlier.

The other side of the equation is: what are the sales of the various operators? In the case of the chain supermarket groups, of course, those sales are publicly reported so we are able to source their share, if you like, of that total pie based on their publicly reported figures. As I say, where it gets difficult for the independents is that there is no public reporting of the activity of the independents at the retail level. There is certainly public reporting of the wholesale sales of Davids and FAL, but not retail level.

Mr NAIRN—So in many respects you are having to make some assumptions based on the overall expenditure, household surveys, all those sorts of things. You have an idea of the size of the market, take out what the chains report, flow the Davids and FAL stuff from a wholesale into a retail assumption, I suppose, and out of that you get what is left.

Mr Dimasi—Yes, you could do that.

Mr NAIRN—But that is sort of the basis that your analysis is done on, I presume.

Mr Dimasi—Our analysis is really saying the factual data on the chains, on the one hand, versus the ABS data on how much people spend and what they spend it on, on the other. So there are no assumptions, if you like, in terms of coming to the view of what is the market share of the chains. It is a question then of ‘the everybody else’.

Mr NAIRN—Yes, that is what I mean. ‘The everybody else’ is what is left over.

Mr Dimasi—Yes, that is right.

CHAIR—Thanks very much, Tony. We appreciate your input. I know that you are highly regarded by the Property Council and that is why they asked you to present yesterday and look at some of these issues. Thank you for coming today and for the professionalism of your presentation.

Mr Dimasi—Thank you.

Proceedings suspended from 12.43 p.m. to 1.40 p.m.

CHARALAMBOUS, Mr Christos, Planning and Analysis Manager, Franklins Ltd

CORNELL, Mr Ian Grainger, Chief Executive Officer, Franklins Ltd

FORAN, Mr Gregory Stephen, Merchandise and Marketing Director, Franklins Ltd

HALLAM, Mr John MacLennan, Company Solicitor, Franklins Ltd

CHAIR—Welcome. The committee prefers that all evidence be given in public, but if you wish the evidence to be taken in camera the committee will consider that request. However, we should point out that the Senate may decide at a later date to make all evidence public. The committee has before it submission No. 200, dated 26 March 1999. Do you wish to make any deletions or additions to that submission?

Mr Cornell—No.

CHAIR—Fine. I would now like to invite you to make an opening statement and from there the committee will ask you questions.

Mr Cornell—Good afternoon, Mr Chairman, members and senators. This inquiry is a significant event in the development of the Australian supermarket industry. I would like to thank you for the opportunity to put our case to you.

There are a number of important points that I would like to present to you over the next few minutes. I would like to describe who Franklins is and our commitment to the Australian consumer; to describe our definition of the market, our part of it, because we believe that we do not form part of a so-called concentrated market; to talk about the reason why we have had to move into fresh foods, which will partly explain the pressures being faced by independent retailers; and to describe why it is important for Franklins to continue to grow.

Franklins is 100 per cent owned by the publicly listed Dairy Farm International group, which operates over 1,400 stores in nine countries in the Asia-Pacific region. We have a long history in Australia as being the genuine discounter. Our vision is to be the customers' champion in the Australian supermarket industry by giving our customers the lowest price possible and the best value for money. We only operate stores within four states, namely, New South Wales, Queensland, Victoria and South Australia. In two of those states, Victoria and South Australia, Franklins is significantly smaller than the independent supermarket operators. We do not operate in Tasmania, Northern Territory or Western Australia.

Franklins have 270 stores and offer employment to more than 25,000 staff members. Franklins have invested heavily in its people, its stores and support infrastructure to ensure that it remains a sustainable competitor into the new millennium. We view ourselves as supermarket operators, solely focused on food retailing. In this marketplace our primary competitors are full-line supermarkets including Woolworths, Coles, Bi-Lo and other independent supermarket operators. It is for this reason that we have defined our market as being grocery and fresh product retailing in our submission. Using this definition and based on ABS supermarket segment data, we have estimated our market share at nine per cent, the independents at 29 per cent, Woolworths 35 per cent and Coles 27 per cent. We do not perceive this to be concentrated, and Franklins, especially, hold a small but very important portion of it.

Franklins is a viable alternative to the established full-line supermarket operators. We are most likely to be the only player that will enter existing geographic areas serviced by Woolworths and Coles and introduce significant competition into that area to the benefit of our customers. Franklins provides benefits to all communities that it operates in, inclusive of rural communities. By being the customers' champion, we believe that we should offer the benefits of lower prices to rural communities just as we offer them to metropolitan customers.

We have a large number of customers who are pensioners or large families who struggle to make ends meet every month. We enable them to put more in their trolley for less and to make their dollar stretch that much further. Placing a market share cap on low-price operators such as ourselves will make the lives of these everyday battlers that much harder. Over the years a number of *Choice* surveys have proved that Franklins is the lowest price retailer, inclusive of independents, in the states that we operate in. In states where we do not operate, consumers have not enjoyed the same benefits of having a discount operator. We are unashamedly a discounter, keeping prices as low as we can afford and passing on as many of the benefits to our customers. This has been achieved over 50 years by stripping out all the services that add no value to our customers.

Being the lowest price retailer has another important effect. In the markets that we operate in it is Franklins and not the independents that create competition. We ensure that prices remain competitive and that the average consumer gets the best deal possible. Today we are undergoing a major metamorphosis. Over the last 20 years Franklins No Frills operated a successful business model. Our No Frills stores only sold grocery products complemented by a number of independent fresh retail operators. Customers then could achieve the same shopping experience as they could when shopping in a Woolworths or a Coles store.

This business model increasingly became less relevant and is no longer sustainable. This business model has declined for two major reasons. Our customers have demanded the convenience of one-stop shopping, as being offered by Woolworths and Coles, and this has been reflected by the steady decline in the sales of our traditional grocery-only No Frills stores as customers have taken their business elsewhere. Franklins made major losses in 1995 and 1996 due to its delayed response to these changes. Coupled with this, our time poor and activity rich customers have supported the introduction of extended shopping hours. Customers have a preference for those supermarkets that allow them to shop when it suits them and not when it suits the retailer. Our competitors were able to adapt to these changes quicker than Franklins because they already offered a one-stop shopping experience. We experienced resistance from the small fresh food retailer complementing No Frills to extend their trading hours to match our competitors' trading hours.

These changing consumer demands also needed to be addressed by the independent retailers. The customer does not differentiate between chain stores and independent operators. Customers will shop when they want to shop in the most convenient store. We have had to adapt to these demands and have made major investments to transform ourselves. Since we made the decision to introduce fresh into Franklins five years ago, we have invested over $550 million. These investments include store upgrades to include fresh food, the construction of new produce distribution centres, investments in people and investment in information technology systems. These investments are focused on delivering a more contemporary offer to our customers at a lower price. Franklins have had to develop and manage the evolving supply chain as the fresh part of our business has grown. A positive spin-off for suppliers is that there is now a new and viable fresh food supply channel outside of our major competitors. We are also introducing a number of our fresh food suppliers to export market opportunities within our Dairy Farm group, markets that may not have been otherwise available.

It is imperative to grow our business to achieve comparable economies of scale with our competitors and to return our company back into profitability. In the last 18 months our major competitors have expanded their businesses by building in excess of 80 new supermarkets and refurbishing over 180 stores. Franklins have had to respond to this growth to remain relevant in the Australian supermarket industry, and we have invested over $90 million in 13 new stores and refurbished 17 in the last 12 months. We have to grow to achieve the economies of scale that our primary competitors enjoy in logistics administration, information technology and advertising to ensure that we are not placed at a competitive disadvantage. These economies of scale are critical in a small and geographically dispersed Australian market. To be able to offer customers lower prices and achieve an acceptable level of profitability we need to achieve these economies of scale.

Turning to the inquiry, we do not believe that placing a cap on market share will address the underlying issue of the growth of the three major retailers. Placing caps will create new, unenvisaged and unintended problems. As an example, let us take the liquor industry, where licences are allocated on a needs basis in most states. In many areas the major liquor retailer has dominance, which precludes any further entry based on the needs test. Franklins cannot create competition in these areas because of our difficulty in obtaining licences. Legislative restrictions stifle competition, ultimately leading to consumers paying a higher price.

In our submission we have cited the New Zealand supermarket industry as being an example of how a successful independent business sector can and does exist. This New Zealand success story raises a number of questions that need to be asked. For example, how have the independent retailers adapted to consumer changes in New Zealand and achieved a 50 per cent market share? How have independent stores overcome procurement disadvantages? How has the independent sector been able to build large, modern, highly competitive supermarkets over the last decade? What role have the wholesalers played in the success of the independent operators in New Zealand? It is our belief that an independent sector is viable in Australia provided that it continues to reinvent itself and that collaboration takes place between wholesalers, suppliers and retailers, as has happened in New Zealand.

In summary, we are a small player in the Australian supermarket industry, holding only nine per cent market share. We create real price competition in the supermarket industry in those markets that we operate in. We believe that, to survive, retailers, including independents, have to be innovative and adapt to meet ever-changing consumer needs. There will always be opportunities for all retailers to be successful, provided they employ good strategies and implement with excellence. We feel that there is no need to introduce further legislation, due to the existence of the Trade Practices Act. Finally, we wish to highlight to the committee that it should refrain from proposing any legislative restrictions that will limit our ability to effectively compete in the Australian supermarket industry. Thank you. We are prepared to answer any questions that you may have for us.

CHAIR—Thanks for that.

Mr FITZGIBBON—Mr Cornell, unfortunately in a way this inquiry has become one about three major players and how they interact with other major retailers who are independent. Some of these retailers are almost as large as you are. I want to focus more on the impact on regional towns, rural towns in particular, and the impact on other small businesses like the local butcher, the bicycle shop owner, those who merchandise clothes, et cetera, and how the expansion of the big retailers and indeed the expansion of their ranges has impacted on those small businesses. What would your reaction be to the concept of a legislative requirement to undertake economic impact studies in towns where you intend to expand or establish a presence? Those economic impact studies would, for example, take into account current levels of competition in the areas where you intend to embark, whether that competition exists already or whether it does not and whether the prices in that community in those ranges are competitive with prices, for example, in other communities.

Mr Cornell—Mr Fitzgibbon, when we look at opening new stores we do a very extensive study of the metropolitan area or the rural community that we intend going into. That includes a study of the customers and a study of the competitors. It finishes with a financial analysis to see whether or not our company can achieve a return on the investment that it would make by putting $3 million to $4 million of capital into a new store. In doing that study we look very carefully at what customers in those areas are able to purchase. We are certainly representative of only the food side of the business and we would only be going into those areas where we believe we could offer real value and real choice. Selectively where we have opened in rural communities in New South Wales, Queensland, Victoria and South Australia we have been welcomed as being a third or fourth alternative that offers real value for money. For most people in those communities, that is exactly what they are looking for.

Mr FITZGIBBON—Therefore, given that you put your resources into that research already and given that you are sure you would only be moving into an area where you know you can be more than competitive, you have no reason then to fear a legislative requirement that you lodge that impact statement for authorities to determine whether that development should be approved.

Mr Cornell—I am not sure what perceived benefit there is in having to do that.

Mr FITZGIBBON—The whole argument on your side is that what you produce at the end of the day is more competition and therefore benefits the consumer by way of lower prices. I think there would be some benefit to the community to be able to show, by way of an economic impact statement, that that would be the result of your presence in that town.

Mr Cornell—If that were to prevent a competitor going to a rural town, I would disagree with you, because the consumer is the one who should be making the ultimate choice as to whether they wish to participate in shopping in one of the alternatives available.

Mr FITZGIBBON—Let me take, for example, a local butcher shop. If there are already three local butcher shops and no major retailer in that part of the market, and people in that community are paying no more for their meat than people in a neighbouring community where a big player is present, then theoretically at least the competition in that township is sufficient and, therefore, the introduction of a major player would only result in pushing one of those small players out of the market.

Mr Cornell—What actually happens when you have these situations and we open a store that includes fresh foods is that we are appealing to customers who want to be able to do all of their shopping in the one location at the one time. If we were to be prevented from doing that, then the status quo remains and they are not having the same choice as they would by shopping in other locations. That is what we see in many of the towns that do not have a chain store operating; customers are actually leaving those communities, not shopping in those butcher shops and going to alternatives elsewhere. It is very important that we are able to provide the choice for consumers to make their own decision.

Mr FITZGIBBON—I will ask you a question that I put to both Woolworths and Coles. Are you prepared to say that Franklins never seeks to enhance its market position by undercutting the prices of its small competitors?

Mr Cornell—Absolutely not. We do undercut our competitors' prices. For Franklins, that is the whole reason for being; it is a discount operation. We are going into these areas specifically to offer our customers better value than our competitors. We do not have the range of merchandise or the services that some of our competitors have. That is what is providing the choice for them to shop with us or to shop elsewhere. Part of the deal of shopping at Franklins is value for money. We see ourselves as a modern-day discounter.

Mr FITZGIBBON—I expected the same answer from Coles and Woolworths but I was surprised that I did not get it. Can I take that on one more step. Would you say, therefore, that you send staff out to monitor the prices being charged by small business operators to ensure that you are offering a better price?

Mr Cornell—We have, as part of our total team, price checkers who monitor prices in supermarket chain stores and independent operators. That is their job: to go out and check what prices are available to consumers and to make sure our prices are in line with the strategy that we set.

Mr FITZGIBBON—I think you said during your verbal submission that you do not really believe the Trade Practices Act has to be tightened any further. Would you like to expand on that?

Mr Cornell—From my understanding of the Trade Practices Act and from actions taken over the last few years, I would have thought that there was plenty of evidence to suggest that certainly the ACCC have prevented monopoly situations. They have prevented abuse of market power and have acted as a very good check and balance to the market economy.

CHAIR—Could you cite examples of that to us in terms of action taken by small independent retailers against the majors?

Mr FITZGIBBON—Particularly with respect to abuse of market power.

Mr Cornell—No, I cannot cite you examples.

Mr FITZGIBBON—I would submit to you they have not done all that much of that—

Mr Cornell—I would agree with that.

Mr FITZGIBBON—because basically they do not have too much power to take action under section 46 and certainly they do not have the opportunity to take representative action for damages for smaller players that may have been damaged by misuse of market power. What would your reaction be to giving the ACCC the opportunity to seek damages for an injured party under section 46—that is, abuse of market power?

Mr Cornell—Without being about to look at the full context of what you are proposing, it is a very difficult question to answer, other than to say that our analysis of what the current rules are is reasonably clear in supporting the correct marketplace. If you are able to give us something firm we will take it away and have a look at it and give you a direct response back.

Mr FITZGIBBON—Under section 46 now the ACCC can fine you up to about $10 million, I think, but that is not much good to the smaller operator who has been injured. I am talking about giving the ACCC an opportunity to collect damages on their behalf. Given that you are confident that Franklins does not misuse its market power, you should not then have any concern with that sort of proposal.

Mr Cornell—I think, once again, it comes back to actually looking at what you are proposing in detail. I do agree with you; I do not think that Franklins does abuse its position—that is true. But I would have thought that the current legislation is quite successful as it is today. Maybe there needs to be a clearer interpretation of some of those facts and more support given, but I certainly would not like to see any further legislation.

CHAIR—Can I just follow up on that. I thought that you guys were the small operators who were—we have not got Andrew Murray here—making the bastards honest. There is a submission we have received—I think it is between Nos 70 and 80—that concerns me. It actually concerns you as an organisation doing exactly what you claim should not happen. It cites the example of a small shopping centre where Franklins were invited in. Part of the deal on which they were invited in was that they wanted some shops there—they wanted a butcher shop, a greengrocer and some others. So they all agreed and signed up, everyone was happy. Then, lo and behold, you guys entered into the vegetables and fruit area and undercut their prices. Their income drops dramatically. Within a period of six months that business has gone to the wall and, in time, all of the small businesses in that small shopping centre have gone to the wall.

It is quite an interesting case because the family talk about how they had invested their life savings into that particular shop, and they saw it totally evaporate. I have to say that that concerned me particularly and it is the type of abuse of market position that would concern us. There is the free market and then there is absolutely predatory pricing, especially given the basis on which, according to the submission we have—and we do not know him; we accept it at face value—there was an insistence by Franklins of what type of shops would complement you when you were strictly in dry goods. So you go in on that basis. In they go, invest their savings, you expand, you blitz them out of business, they have lost the lot.

Mr Cornell—I think, without knowing the specific details of this issue—

CHAIR—It is in the submissions actually.

Mr Cornell—Having read many of those, I am sympathetic to their case. But the reality is that, as we put in our submission, in 1995 and 1996 Franklins lost money also and they lost money because they no longer remained relevant to what consumers were asking for. The No Frills store of the 1970s and 1980s and early 1990s was going nowhere. In fact it was in decline. We had lease arrangements with many of the landlords of our properties that prevented us from selling fresh foods, but progressively as the leases have expired we have taken our option, our choice, to be able to start to sell a wider range of merchandise, particularly as trading hours have been extended, to make sure that our business was kept strong and that people were not leaving the entire shopping centre and choosing to shop elsewhere.

CHAIR—As I understand it, you are 100 per cent Hong Kong owned. Is that right?

Mr Cornell—No. Dairy Farm is a public company, of which 53 per cent is owned by Jardine Matheson, which is in itself a public company, and there are other significant shareholders. We report back through Hong Kong, that is true.

CHAIR—So the other 47 per cent is owned by—

Mr Cornell—By independent shareholders.

CHAIR—Out of Hong Kong?

Mr Cornell—No, out of anywhere. There are Australians, we have traded on the London Stock Exchange—

CHAIR—But you can see the problem as to why we have arrived at the stage that we would have this inquiry, if an overseas owned operation comes in and forces the little battler out of business. That is the reality. You went into this shopping centre with an agreement, that is what you want. I understand that you changed the market share, but you have got all the backing of this Hong Kong money to use your pricing, and out they go, backwards. Don't you think that we as a committee should be concerned about that?

Mr Cornell—I think you also have to look in context at some of the operators who have gone out of business, exactly what type of offer were they providing to the consumer, whether they have been prepared to change, as we have made changes in our business to continue to be relevant—and we could quote you plenty of examples. I am quite happy to take you on a tour of shopping centres and strip centres in Sydney or elsewhere where there are independents that are thriving because they have adapted their business to suit changing needs. There are independent fruit and vegetable operators that operate outside of Franklins, a Coles and a Woolworths all in the inner city area here of Sydney which I could take you to and which are thriving, based on changing their offer in terms of width of range, in terms of quality of merchandise, in terms of customer service. There are people in every business every day who go broke. There is no doubt about that. I do not feel sympathy for those people who go broke because they have not had the ability to adjust to changing consumer demands.

CHAIR—Even when the reason for them going broke is because you have used your market power and your capital backing out of Hong Kong to force them out of business.

Mr Cornell—I do not agree with that. I think you have to look at each specific case on its own. Do we know that these operators actually did anything to protect their business, whether they were prepared to make changes? It is okay for people to sit back and complain, but if they have not actually gone out and done something to change their business—

CHAIR—Yes, but if you suddenly expand into being fruit and vegetable suppliers, when you went into a small shopping centre on certain conditions, and away you go—and it could have been the butcher, it could have been whatever—

Mr Cornell—But if we exercise our option to walk away from a shopping centre because our No Frills store is no longer viable, I can tell you that in most cases that would also close down the rest of the shops that depend upon Franklins being their successful operator.

Mr FITZGIBBON—I am not questioning the practice, but you have conceded yourself you are prepared to go out there and have a look at the prices of your competitors and seek to beat that price. The point to be made is this. The local butcher can only be so innovative in the way he presents to his customers. There is not much he can change. But you are in a position to make no profit on that particular line for months, if not longer, to ensure that you are price competitive against that person. The strict definition of predatory pricing, as I see it, is when you are selling below your own wholesale price what you are paying at retail for that good. But of course, because of the way in which you are vertically integrated, you can manipulate your wholesale price to any level that you like. The thing we have got to grapple with is how do we deal with these issues—that is, the issue of your sheer purchasing power and your size. and how that impacts on smaller business.

CHAIR—For example, you have got a Coke there—and I am sure they would appreciate your promotion, especially when we have *A Current Affair* coming and looking at you—and one of the complaints that comes through in the submissions is that the small retailers cannot buy wholesale for anything like the price that the major supermarkets are selling at retail for. Is that a reality?

Mr Cornell—You would have to ask the wholesalers that question.

CHAIR—We have.

Mr Cornell—I am sure that their purchasing power for Coca-Cola for wholesale, into the major wholesalers in Australia, is the same as our pricing power. If we go back to Mr Fitzgibbon's point, we do not engage in predatory pricing; we set a price structure to give us an edge in the marketplace on price. We do not go out there deliberately to engage in predatory pricing and deliberately undercut and put people out of business. We want the consumers to make their choice based on a total value equation. Now there are good butcher shops out there who are being successful. If you look at the people who have gone into franchise operations—the Brumbys, the Bakers Delights, the Lenards—there are many examples of people who have put together what are relevant offers to customers today. They can source their materials just as economically as we, and they can value add to those.

CHAIR—Bakers Delight is becoming a bit of an overworked example at this stage.

Mrs ELSON—I was going to ask what percentage was Australian owned, but I might rephrase that and ask: how much of the profits that you take from Franklins and Big Fresh stays in Australia?

Mr Cornell—If you go back to my comment, $550 million invested in Australia in the last five years.

Mrs ELSON—I know you cannot take that back, yes.

Mr Cornell—And Franklins made no money in 1995 and 1996; we made 0.5 cents in the dollar in 1997; we made 1.5 cents in the dollar in 1998. It is quite clear that all the money that Franklins are making in the business is being reinvested back here in the infrastructure and in jobs.

Mrs ELSON—I can answer my many constituents now because that is the question they ask me the most. Thank you. Do you buy your fresh produce direct from the producer or do you go through the markets?

Mr Cornell—It changes by product and product category. The majority of our produce, merchandise, is purchased out of the markets at Flemington here, or at the markets in the other capital cities. We procure some merchandise direct from growers, some from agents, but the majority is coming from the market.

Mrs ELSON—Thank you. That is about all I wanted to ask.

Mr NAIRN—If I can just continue on with that, with the ones that you buy direct from growers, do you have specific contracts signed with growers or suppliers in the fresh food area? If so, what is the nature of your contracts? Is there flexibility in the contracts so that when there may be some disaster as far as a particular line is concerned it does not leave the supplier still only getting a price which basically they would not be able to supply it at? What sort of flexibility do you give the growers?

Mr Cornell—Because most of our merchandise is bought from the markets we do not have many contracts in place. We do have some very formal contracts. We do have some memorandums of understanding. But the key issue for me—and it is one of the areas where I am sure industry can get a lot better—is to put in place a situation where these contracts are made flexible enough so that both the retailer and the producer can make a fair profit out of it all. In many cases I have been personally involved with trying to establish long-term growing contracts, because the key issue for fresh food retailers like ourselves and the others is to procure good, consistent, long lines of supply, and particularly in produce a lot of that is forward contracted. I think that very much is more the future of the way the industry is going so that you can get the proper standards, specifications, quality assurance and HACCP into all of the plants that protect the consumers.

I think at this point there has been a reluctance from many of the growers and producers to come to terms with how a contract should be phrased because they see themselves locking themselves out of an opportunity, perhaps, when the market becomes tighter and the prices go up. So in many cases the growers are trying to say, 'Well, we want a contract when the prices are good,' but when there is a short supply and the demand in the market is much higher and the price goes up they would also like to share in that as well. You cannot have it both ways, although in some of the contracts there is flexibility on both sides to meet the market. But I would say that there is definitely an opportunity for that area to be further worked at between retailers and growers. Certainly Franklins, as a company, are more than happy to sit down with either representative bodies or growers themselves and look at ways of being able to do that on a fair basis.

Mr NAIRN—But currently you do not have many contracts like that at all?

Mr Cornell—No, we do not. We have a couple of contracts in the meat business in terms of slaughtering and processing, but in terms of fresh food supply very little.

Mr NAIRN—With your regional towns, where your stores are in country and regional towns, are you always competing with one of the other big ones? Or do you have any locations where you are only competing with the smaller ones?

Mr Cornell—Because Franklins traditionally was a Sydney metropolitan trader, they have been quite slow in moving to the other states, and they moved first to the metropolitan cities and then to some of the rural areas. So in the majority of cases we are the second chain store to come, or the third chain store in some locations. But in the last two years we have opened in smaller country towns a Franklins store which is the only chain store in that environment.

Mr NAIRN—What sort of sized towns would interest you?

Mr Cornell—We look at a population of around 5,000.

Senator FORSHAW—How many of your stores are now retailing meat and fresh fruit and vegetables? Is it your intention to eventually have all Franklins supermarkets doing that?

Mr Cornell—In the longer term it is our intention to sell fresh foods in all of our outlets but that could take a very long time indeed. We have a number of No Frills stores that are the older style format that sell groceries only and we have very long leases that could be 10 years or beyond. They are successful in their own right and, unless we can expand them and get more space, it would be pointless for us to put fresh foods in—as long as there is a good fresh food complement of independents that are trading in our vicinity to help support our grocery offer. But longer term, as we build new stores, as we get the opportunity to extend, we are certainly adding fresh foods into our business.

Senator FORSHAW—So this demand by consumers for what I think some people refer to as one-stop shopping, that is fairly universal across Australia, whether it is regional or metropolitan? Or are there differences from town to town or region to region in terms of consumer loyalty and what consumers may be looking for?

Mr Cornell—Generally, my experience is that this is a universal trend. It does differ proportionately in some areas but, as we look back and trace changes over years, there is no doubt that as every year goes by people are looking for convenience more and more. So I would say that really we are following what is very much an international trend. The same thing has happened in the United States of America and the UK, where people are looking for one-stop shopping. I think extended trading hours has really changed the lives of many of our people. If you look at Sunday trading, for example, in our stores today it is very successful; it is a very busy day. A lot of people would have said 10 years ago, 'That won't be the case. You'll never be successful on a Sunday.'

Senator FORSHAW—Yes.

Mr Cornell—And for those stores where we are precluded from trading on Sunday we get an enormous number of complaints.

Senator FORSHAW—The reason I asked you that is because there has been the particular focus of this inquiry—as Senator Boswell would no doubt agree—about the impact in rural and regional areas, where at least there may be anecdotal evidence that there is a greater degree of consumer or local loyalty, or whatever, or concern about the impact upon smaller retailers in those areas than there might be, for instance, in metropolitan Sydney where people can travel from one suburb to the next in a matter of minutes.

Mr Cornell—My experience would be that there is very little difference between rural towns and metro.

Senator FORSHAW—All right. Just a couple of other quick issues. What about liquor retailing? What is happening in respect to your stores there? You mentioned that you have picked up a number of areas. I am aware of the difficulties or the way in which the system operates where licences will not necessarily be issued if there are already a number of liquor outlets in that vicinity and so on, but what is your long-term aim there, without giving any trade secrets away?

Mr Cornell—It is no secret that we would like to sell liquor in all of our stores. That is just part of the one-stop shopping experience and part of the convenience. Where we have been able to sell liquor in our stores we have been quite successful. Each of the licences that we have I would say has proved to be very worth while. Certainly from the research that we have, our customers enjoy the opportunity not only to be able to buy grocery and fresh but, if they can, liquor as well.

Senator FORSHAW—And then go and fill up with petrol as well?

Mr Cornell—We do not have any ambitions for petrol at this point.

Senator FORSHAW—You are at least different in one respect from some others. I think that is all.

Senator BOSWELL—Mr Cornell, how long has Franklins been a public company and been aggressively moving into the market? When did you take Franklins over? I suppose that is the question.

Mr Cornell—Franklins have been going for around 50 years in Sydney, and started as a couple of private individuals who put it together. They sold their chain store in the early eighties, I believe.

Mr Charalambous—1979.

Senator BOSWELL—Is your market share growing? I see you put yourself down here at nine per cent. I thought it was about 14 per cent.

Mr Cornell—Our market share of packaged grocery as measured by Nielsen is 14 per cent and has been declining over the last three or four years.

Senator BOSWELL—Was 14 per cent and now is nine per cent?

Mr Cornell—No, our total share of how we would measure our business, in terms of including fresh food into that set of numbers, we would have nine per cent. Our fresh food business is growing at a higher rate than our grocery business as we add fresh to many of our stores.

Senator BOSWELL—This is the problem: we are having trouble getting a definition, a kind of formula now that will give us some sort of reality. You have got how much of the grocery market—14 per cent?

Mr Cornell—Fourteen per cent.

Senator BOSWELL—Do you have any trouble in buying power? Does your 14 per cent generate the buying power that is needed through your warehouses to compete?

Mr Cornell—In terms of the goods that we sell, I do not believe that we are at any disadvantage in buying power. Once you get to a certain stage I think it becomes less relevant. Perhaps in some other areas of our business, in information technology or the services side in procuring contracts for supply of energy or telecommunications, we may be at a marginal disadvantage. But in terms of goods I believe that we can buy as well as anyone in terms of fresh foods. Many of the independent operators can in fact buy better than us because they are procuring smaller supplies, so they are able to wheel and deal with many of the smaller producers and take up opportunity buys where it would not be viable for us to do so.

Senator BOSWELL—You have just bought Beerwah in Queensland.

Mr Cornell—That is right.

Senator BOSWELL—Have you made any other acquisitions similar to that?

Mr Cornell—We have made over the last year a number of acquisitions of independent operators. In Victoria during this year we have made four acquisitions, I believe, and overall it is a handful. Beerwah has certainly been the most recent of those.

Senator BOSWELL—When does market competition become predatory pricing? If a competitor has a price and you match it, he goes down and you match it again, or undercut and undercut, is that predatory pricing?

Mr Cornell—What we do is set our own price that we would like to achieve on a product, based on its cost price and the standard margin we would like to realise. If then we are undercut by a competitor we will drop our price to match them, but that is match them, not undercut them. So we do not want to get ourselves in a price spiral where the retail price of goods goes down through the floor, and that is the reason. We set our price; we set it on the basis of having a discount strategy. That means being marginally cheaper, and if someone then is undercutting us, as a policy we will go out and match them. I do not see that as predatory pricing, I see that as trying to maintain your competitive situation and your business.

Senator BOSWELL—Are you finding it easier now to gain market share through acquisition and finding new sites and going through the process of designing new stores?

Mr Cornell—We are actually building more stores and increasing the size of existing stores at a far more rapid rate than acquisitions.

Senator BOSWELL—Are you having trouble getting sites, or do the better sites go to Coles and Woolworths and you are struggling in there to get sites?

Mr Cornell—In some cases we struggle to convince our landlords that we would make the best tenant, and therefore it is difficult for us to procure a site in selected locations, particularly in the larger shopping centres. In general, we can get sufficient sites to keep up with our strategy. As we are only having a much smaller number than our major competitors, the gaps in the property network are a little broader for us.

Senator BOSWELL—Do you see the slippage of market share of the independent as being sustainable? Can the independents lose market share at the rate they have been losing and still sustain a viable distribution service?

Mr Cornell—At this point I am sure they still have many opportunities to be successful. Where people have elected to contact us to sell their businesses we are very happy to look at that and, if it stacks up in terms of our own financial criteria, to make an offer to purchase them. If not, we go out and look at other alternatives ourselves. But, as I have said, there are many independent operators who are doing a very good job out there, and you have had some submissions from some very good successful independent retailers who are performing quite well because they have differentiated their offer and provided the customer with better overall value than perhaps we might be able to provide.

Senator BOSWELL—Is it your intention to move, in time, into Western Australia and South Australia?

Mr Cornell—We have no plans at this point to do that because the majority of the population is on the eastern seaboard, and we have infrastructure set up with our distribution centres for grocery and produce, et cetera. We have our work cut out fixing our existing store network up. Given time, we may look at opportunities elsewhere, but certainly in the short to medium term there is no point in us moving out.

Mr JENKINS—Mr Cornell, do you have a feel for the degree of purchasing power you have compared to Davids—the relative sizes? I know it is hard to make that comparison.

Mr Cornell—I would believe that Davids can purchase from the major packaged goods suppliers at the same price as us. Where there is a point of difference would be in the direct negotiations that retailers have with suppliers, or wholesalers have with suppliers, on what they can do for them in promoting their own brand and what they can do for them in store activities. So there is a difference only, to me, in what can be negotiated on a direct basis. But the list price, if you like, for a wholesaler or a retailerm is, to my understanding, one and the same.

Mr JENKINS—What would be the relative size of the quantums that you are actually purchasing?

Mr Cornell—I am sorry, I do not understand that question.

Mr JENKINS—There is a question here of the critical mass of, say, the independents who rely on the ability of their wholesalers. I am trying to get a feel for this: if you have nine per cent or 14 per cent—whichever figure we take—of a market, how does that size up to what business Davids is doing?

Mr Cornell—As I said, the independents in totality that are purchasing out of Davids have more total buying power than Franklins. When we look at specific instances in fresh food, I am sure there is a mixture of both: that independents can, from time to time, buy cheaper than Franklins, and vice versa. In packaged grocery, I am sure the purchasing power of Davids is at least as good as we have at Franklins.

Mr JENKINS—But you would say you had sufficient critical mass to run a successful business.

Mr Cornell—With 270 stores we would have critical mass, yes.

Mr JENKINS—One of the examples of business practices that will probably be pursued tomorrow in evidence—and I was not sure whether Senator Boswell was going to mention it—was a case that was mentioned in the report of the Reid fair trading inquiry which involved a case in Maroochydore when a Big Fresh store opened up. It is on the record. It was in the report as a case study involving a fruit and vegetable operation where there was a fairly savage price war which I think probably goes outside of the way you have described it to us now. That case, of course, is now four or five years old. Would you see that back then, when you were establishing those stores, perhaps the competition was a bit more robust than the way you have described the parameters you are using at the moment?

Mr Cornell—I would think competition is just as robust today as it was five years ago, if not more so. There will always be some specific outbreaks of activity, but when you get price war activity it is always driven by two parties; it is not driven by one party. In the case of opening new stores I think it is a relatively common practice for retailers to go in with an opening program of specials and handbills and marketing activity to generate sufficient critical mass in that individual store to justify the investment and to make sure the staff we employ have ongoing careers in the company. So we would go in traditionally and make sure we had a campaign to get a store up and running.

The same situation applies if we are running a promotional activity to bring people into our new store and a competitor undercuts us; then we would match that competitor. If the competitor kept dropping his price then we would also match that price. So it is very much a two-way street. There is no intent on our part in doing anything else other than establishing new businesses. We depend on a critical mass in each business to make them viable and to make sure that we do not hire people we then have to retrench.

Mr JENKINS—I note in your submission, at 7.1, that you indicate you have put in place:

. . . a fully computerised trade practices compliance program certified under Australian Standard 3806.

to ensure that people who are working for you understand what the obligations of Franklins are under the TPA. What motivated that and what is the intent of the program?

Mr Cornell—I might defer that question to John Hallam, our solicitor. The intent of the program we run in Franklins is to make sure our people act responsibly. Part of that program is educating our staff who have jobs particularly in the procurement side of the business so that they do act within the law and they are responsible. As you are aware, there are personal fines and company fines attached for not behaving appropriately. Perhaps I could ask John to make comment on that.

Mr Hallam—Mr Cornell has summarised the intentions. Franklins is extremely aware that the pecuniary penalties under the Trade Practices Act are quite severe. In fact, there are severe penalties for individuals. It is, we believe, an innovative and probably a most effective way to ensure that our employees understand the obligations under the law. We strive to make sure we operate a legally compliant business. It is one of the ways we think we can achieve effective compliance, and any compliance program must be effective. That was one of the reasons why we went to a computer based system. To date it has been quite successful. It is still in its embryonic stages. We hope that if it is successful and does produce an effective form of compliance we will then transfer that to other areas. Being a corporation involved in trade practice issues every day, it is something we need to make sure our employees are aware of.

Mr JENKINS—It is really about ensuring that what head office hopes is happening out at the coalface is actually happening.

Mr Hallam—That is really one of the issues on effective compliance. Head office is not on the ground and we need to make sure we are giving our employees the tools so that they are able to be fully aware of the legal obligations. I am not saying it is a perfect system, but we believe it has still got some further development. We would like to think it is one of the more effective means.

Mr JENKINS—Do Franklins have special access to markets? When I ask that I am asking directly, for instance: would you be allowed into the wholesale fruit and vegetable market an hour earlier to do business or things like that?

Mr Cornell—To the best of my knowledge we have no special arrangements at all. We are treated as anyone else would be. The only arrangements that are special are those arrangements which we have direct with growers. That is also a two-way street. That is a special arrangement because it works well for them.

Mr FITZGIBBON—Mr Cornell, I just want to return to the relationship between your retail entities and your wholesale entities. Would you be prepared, in confidence of course, to provide the committee with the details of the terms of trade under which they operate? Secondly—I will ask this second question because you might want to mix the two—would you fear or have a problem with a mandated industry code of conduct which covered those sorts of relationships and how those entities interact?

Mr Cornell—On the first question, I would have a concern unless I knew the relevance of that request, because they are undertakings between ourselves and another party. On the second question, I would believe that, in many of these areas we are talking about, a code of conduct is very much the appropriate way to handle some of these activities. When we go back to the relationship between retailers and growers, to me it would be a far better alternative to have a code of conduct on how contracts are put together, and it may even be to the point where there are some dispute settlement issues that can be resolved in a more professional manner than is done today. So, on that second point, certainly I think that would be something well worth considering.

Mr FITZGIBBON—I am pleased with your attitude on the second point. The relevance to the first part of the question is this: in a situation where you are vertically integrated or, in other words, you own and operate both the wholesale and the retail end, you can simply avoid what is technically predatory pricing by manipulating downwards the wholesale price, the price at which the retailer purchases that good.

Mr Cornell—Mr Fitzgibbon, I do not believe that is the case.

Mr FITZGIBBON—I am not saying it is the case. I am just saying it is theoretically possible.

Mr Cornell—If we consider our arrangements which are directly negotiated, they are done on the basis of what value we can give a supplier. All of those differ on the basis of how we should manage their particular products. In the case of grocery, all major chain stores are now very well developed in category management principles, which is based around providing the consumer with what they want in the best and most efficient manner. There is a lot of work that is undertaken directly between suppliers of products and ourselves to ensure we do that in a professional way and manage the profitability in the sections of our stores. To me that is proprietary information.

Mr FITZGIBBON—What is the relationship, if any, between the person who makes decisions about retail prices and wholesale prices?

Mr Cornell—In our business, as in the wholesaler business, their category manager is responsible for the procurement of the product and he is also responsible for assisting in making sure our retail prices are kept within our policy.

Mr FITZGIBBON—What is his or her relationship with the person who determines wholesale prices, the price the retailer is charged for that good?

Mr Cornell—That is direct negotiation between the company and the supplier but, as I say, the price lists that you will find for manufacturers across the board are the same for a wholesaler and for a retailer, to the best of my knowledge.

CHAIR—Just as a follow-up in terms of how you view various issues such as a code of conduct, I do not know whether you have seen the submission from the New South Wales Farmers Association which came in to us today. It talks about creating a fair trading authority and creating a fair trading tribunal. The submission says the authority would have powers that would include the ability to identify markets vulnerable to unfair trading, to facilitate development and codes of practice for those markets, to impose and enforce information disclosure requirements on participants in those markets, et cetera. It says the tribunal would have powers to impose summary penalties on participants in vulnerable markets on reference from the fair trading Authority et cetera. Do you have any views on that?

Mr Cornell—Unfortunately I have not seen that presentation.

CHAIR—In general terms?

Mr Cornell—It very much depends on the way that it is written. To me, a code of conduct is very acceptable because it is something that is worked out between the parties. But to set up tribunals that may have powers which seek proprietary information I would not be happy with.

CHAIR—What about the question of market creep, the fact that people such as the majors can quietly buy up independent supermarkets and their market share grows by stealth, and the ACCC does not have the power currently to look at that. Are you in favour of the ACCC being given that power or would you be totally opposed?

Mr Cornell—That is a question I would prefer to come back on. I really could not give you a good answer to that. Our share has been creeping downwards, so it is not a case of something we have considered.

CHAIR—Not when you add in the fresh vegetables and fruit and so on. Your market share has been growing. Is that right?

Mr Cornell—Our market share in total has grown to nine per cent, yes.

CHAIR—All right. Are your employees under state or federal awards, and what percentage of your employees are casuals, part time and full time?

Mr Cornell—I could not answer that one for you. John, are you able to give an answer to that?

Mr Hallam—No.

Mr Cornell—We have enterprise agreements with our staff that are on state awards. The majority of our people are full time and part time, and a lesser proportion are casual.

CHAIR—Are there any further questions?

Senator BOSWELL—I will give you the opportunity to answer this because tomorrow there is a Mr Natoli appearing before the committee and he will give evidence, but I think there has been evidence given in the Reid report. Are you familiar with that?

Mr Cornell—No, I am not, Senator.

Senator BOSWELL—At Maroochydore there was an occasion where this Joe Natoli got into a price war. In the first week of the opening, Big Fresh sold extra large eggs at 33c a dozen. What happened there, from memory, was that it came to a price-cutting war, and you went down and he went down. He ended up—to make a point—by giving 6,000 dozen eggs away. I mention this because he will be giving evidence and I thought you should have the opportunity to put your position on that.

Mr Cornell—Perhaps I can ask Greg to make some comments—he is more aware of that situation than I. But I would just like to make the point that these price wars are the result of two parties trying to protect their turf.

Senator BOSWELL—Yes, but I believe what he is saying is that he went down, you undercut, he went down, matched, undercut, matched, undercut—to the point where he gave 6,000 dozen eggs away.

Mr Cornell—Well you can see from that type of behaviour that this is perhaps not a typical case.

Senator BOSWELL—No, it is not a typical case, but because we are going to get evidence in that case I believed that you should have the opportunity to know what we are going to hear about tomorrow, and maybe put your position.

Mr Cornell—Thank you for that opportunity. Greg, would you like to comment?

Mr Foran—It certainly was a reasonably vicious price war that occurred in the Maroochydore centre. Our perspective on that situation was along these lines. It appeared pretty clear to us that Mr Natoli—and I understand his brother is in the business as well—was pretty determined to hold on to his share of the business. In fact, even before the store opened there was considerable price checking activity on his part in terms of assessing what we were doing in relation to our opening specials, and I think it is pretty clear from the outcome that the situation escalated from there.

The view of our people in the store was that Mr Natoli really did not do anything to differentiate his business at all. There was no expenditure on his store to improve his offering. Clearly, one of the things that possibly aggravated the situation even more was that not long after he opened—and obviously we took some business off him, as we would, because we were selling similar lines—a number of his staff actually ended up applying for jobs with us in our Big Fresh store there. After a number of months it was clearly a difficult situation and it was very aggressive.

Senator BOSWELL—Well, that is whether people apply for jobs or not, but I just wanted to make it clear that the way it has been explained to me it was not a question of you matching, it was you undercutting and him matching, and following each other down. I believe he gave the eggs away to make the point.

Mr Foran—Senator, I guess our response to that is that sometimes it is hard to see what comes first, the chicken or the egg, who undercut who first. Clearly, we have a set of specials that we would run each week. The way it is regarded generally in the trade is that, as each person has their set of specials, you let them get on and run their specials because you know that your turn will come when you will be able to run your items at that particular price. I am not aware that in that particular situation we went out there and adopted a practice of deliberately undercutting him on every special. We would argue that in fact what we were doing was protecting our business because he was being extremely aggressive towards our pricing.

Senator FORSHAW—One final question, and I have always wanted to know this: when I go into a Franklins store—and I suppose, for that matter, Woolworths or Coles—and I buy a product and it has got 'Toothpaste 29c off', it is off what? What does it mean?

Mr Cornell—We establish a standard shelf price. So if you are purchasing your product for $2 on a week-to-week basis, when we advertise it as a special at 29c off, that reduction will be off the $2 price.

Senator FORSHAW—How often does the price list change?

Mr Cornell—The list price does not change at all. Suppliers give retailers a case deal to promote their products and that is reflected in the special price for a limited period of time, but in any given week you would find perhaps 1,000 specials in a typical supermarket.

Senator FORSHAW—Maybe I have misunderstood you, but I understood you to say that the 29c off is off a price that you set.

Mr Cornell—Yes, it is. It is off the retail price that we establish.

Senator FORSHAW—How often do you then review your retail prices? I know that the prices are changing every day.

Mr Cornell—Thanks, Senator, I understand now. We have our price checkers out there who are monitoring our competition on a regular basis and we check each category, if you like, on a cyclical basis, so it may be that toothpaste is checked every six weeks, for example.

Senator FORSHAW—So it is not a monthly list. It is a regular basis.

Mr Cornell—It is a regular basis according to a schedule, but there are selected items that we would check very regularly to ensure that we are making sure we hold our position as a discount operator.

Mr FITZGIBBON—Just to assist Senator Forshaw, we can be sure that it is not 29c off the wholesale price?

Mr Cornell—No, it is off the retail price.

Senator FORSHAW—I knew that. I was just interested. I have in the back of my mind: how the heck this is all going to work if we do have a GST on food? A can of Coca-Cola one day will be at a vastly different price to the one that it will be a week later.

Mr Cornell—Yes, it will.

CHAIR—Thanks very much, Mr Cornell, Mr Charalambous, Mr Foran and Mr Hallam. I appreciate the forthright way in which you answered the questions and the information you provided. I think we admire the fact that you are taking on the market leaders in providing a degree of competition, but in many ways you are also seen as being part of the three majors, so you are in a unique position. Thank you for coming today. We appreciate it.

[2.51 p.m.]

STEPHENSON, Mr Patrick Julian, Managing Director, Liberty Liquors Pty Ltd

CHAIR—Welcome. Is there anything you wish to add about the capacity in which you appear today?

Mr Stephenson—Liberty Liquors Pty Ltd is owned by a company called Dileum Pty Ltd and by Austie Nominees Pty Ltd.

CHAIR—The committee prefers all evidence to be taken in public but the committee can examine requests for evidence to be taken in camera. When that is the case, obviously they will consider it, but with the warning that at some stage the Senate may decide to make it public. I understand that you have requested that your evidence be given in camera. Is that right?

Mr Stephenson—That is correct.

Evidence was then taken in camera—

Committee adjourned at 3.34 p.m.