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Productivity Commission

PRODUCTIVITY COMMISSION

NATIONAL INQUIRY INTO ECONOMIC STRUCTURE AND PERFORMANCE OF THE AUSTRALIAN RETAIL INDUSTRY

MR P. WEICKHARDT, Presiding Commissioner
MS L. SYLVAN, Commissioner

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY ON TUESDAY, 13 SEPTEMBER 2011, AT 8.58 AM

Continued from 12/9/11

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MR WEICKHARDT: Good morning, ladies and gentlemen. Welcome to the public hearings of the Productivity Commission National Inquiry into the Economic Structure and Performance of the Australian Retail Industry. These hearings follow the release of the draft report on this topic in early August. My name is Philip Weickhardt, I'm the presiding commissioner on this inquiry, and my fellow commissioner is Louise Sylvan. The purpose of this round of hearings is to facilitate public scrutiny of the commission's work and to get comment and feedback on the draft report. We have already held hearings in Melbourne on 5 and 6 September and these hearings in Sydney on 12 and 13 September will complete the round of public hearings in this inquiry. Having considered all the evidence presented at the hearings and in submissions, as well as other informal discussions, the commission will complete its final report to government in early November.

Participants in the inquiry will automatically receive a copy of the final report once released by government which may be up to 25 sitting days after completion. We like to conduct all hearings in a reasonably informal manner, but I remind participants that a full transcript is being taken. For this reason, comments from the floor cannot be taken, but at the end of the proceedings for the day, I will provide an opportunity for any persons wishing to do so to make a brief presentation.

Participants are not required to take an oath but should be truthful in their remarks. Participants are welcome to comment on the issues raised in other submissions. The transcript will be made available to participants and will be available from the commission's web site following the hearings. Submissions are also available on the web site.

To comply with the requirements of the Commonwealth occupational health and safety legislation and common safety practice, you are advised that in the unlikely event of an emergency requiring the evacuation of this building, you should follow the green exit signs out that door or out the side door and the assembly point is across the road and to the right in the park.

Our first participant this morning is the Australian Dental Industry Association. If you please could give your name and the capacity in which you're appearing for the transcript.

MR WILLIAMS (ADIA): Troy Williams, executive officer of the ADIA national office.

MR WEICKHARDT: Okay, thank you. We've received two submissions from you. Thank you for those. You should assume we've read those but if you want to make some brief comments before we start our discussion.

MR WEICKHARDT: Certainly. Thank you for the opportunity to come and reinforce a couple of the salient points raised in ADIA's submission and the subsequent one dealing with the draft report. It's probably worth saying from the outset that the importation of medical devices, dental product, isn't a large issue in terms of the total supply. We're looking at about 2.5 per cent to maybe 4 per cent of product in some discrete areas and that does vary. As a general rule, people don't import dental chairs via the Internet - they're just too large, too bulky - but consumables, medicines, bone grafting materials are important.

That information we have - we conducted the first survey earlier this year - but the trend seems to be increasing, so it's a problem that will get worse over time. This part of the commission's work here and some other work we've been doing with the Therapeutic Goods Administration and the Department of Health and Ageing is probably mentioning. ADIA isn't looking for the imposition of any import controls or indeed any protection. We're quite comfortable with the current regulatory framework. It was designed in a different era but by and large is capable of dealing with imports, so long as it's properly policed.

When we look at the standards that apply for medical devices, one of our key policy priorities is international harmonisation of standards for dental products, so any requirements that are peculiar to Australia as a general rule we would impose, simply because 95 per cent of the product is imported. We have very little local manufacturing capacity. What ADIA is really looking for in the broader dental industry is simply for the Commonwealth, through the TGA, to effectively enforce this legislation.

We know in the draft report some advice the commission has received from the TGA and in our second and subsequent submission, and it's probably fair to say that the commission hasn't quite understood the regulatory framework. The way that it works - and the TGA can go through it further with you - is any product that is improved for a supply in Australia by one manufacturer, if another importer wants to bring that product in and supply it, he needs to seek a separate approval. So product A available in Australia through XYZ Pty Ltd, if another importer wanted to bring product A in, even if it came from the same overseas manufacturing plant, it was the same in all other respects, it needs to seek a separate approval. That framework exists largely to manage a recall process. It's quite often not understood. So people will look at a product, see that it's been approved by the TGA and believe that they can import that product into Australia. That isn't the case.

What we've also found is that the TGA seems a little ill suited to dealing with this new challenge. It culturally is designed to work with supplier space in Australia, when it is dealing with overseas suppliers selling directly to health care practitioners or indeed to individuals. It doesn't react poorly, it just doesn't really know how to deal with that. We have one notable instance of nine dentists brought in a bone-grafting material; rather than work with those dentists who had apparently imported product outside the Therapeutic Goods Administration, the TGA worked with the overseas manufacturer to stop that importation. Now, that makes sense if the TGA was able to work with every overseas manufacturer, and if you're dealing with suppliers, say, from the US or from Europe, that would be possible, but when you're dealing with suppliers in Pakistan, in India, in China, it's just not possible for the TGA to liaise with those.

What we've seen previously with the imports of products are fairly benign in nature, just instruments. We're now seeing some medicines, particularly bone-grafting material, and the risk associated with those are escalating. As I said, at this point in time, our primary concern is the health care risks associated with those. If we're just dealing with simple instruments, the TGA considers those to be low-risk products and the risks associated were low. We're now seeing biological products can be brought in, filling materials can be brought in outside the framework, and that incidence is increasing.

In terms of outcomes from the commission, ADIA and the dental industry is broadly seeking an acknowledgment that the medical device framework, insofar as imports from the Internet are concerned, is both unenforced at this point time and largely unenforceable; that there is a need for regulatory agencies, predominantly the TGA, to move - a cultural shift - from dealing with manufacturers and Australian suppliers to the fact that it now needs to deal with a broader consumer market that's bringing these products in, not only for their own use which is permissible but for use on patients and an acknowledgment that in some instances, the TGA just hasn't followed through on its enforcement activities. Thank you.

MR WEICKHARDT: Okay, thank you. We can have a discussion about this. I have to say I think it's a very long bow to suggest that this is within our terms of reference which are really primarily about the retail industry. The issues you're raising, I understand your concern; nonetheless, as I say, it's a bit of a long bow to suggest - - -

MR WILLIAMS (ADIA): The assistant treasurer believes otherwise. We can tender the correspondence but we asked in the initial terms of reference whether this was an issue for the inquiry and the assistant treasurer's advice was that it fell quite within the remit.

MR WEICKHARDT: You can read terms of reference broadly. I'd have to say it sits at a far periphery of the terms of reference. Anyway, Louise.

MS SYLVAN: I've been thinking about the problem that you raised and I wondered whether the nature of the approval, which is the approval of the importer, in a sense, which is quite unusual I think, this presumably applies to both therapeutics from the point of view of medicines as well as medical devices.

MR WILLIAMS (ADIA): Correct.

MS SYLVAN: I can't think of another regime which also has requirements for product recalls - for instance, toys often have a product recall - attached to them, other products do, where the effect of prior registration of the importing entity is required by the regulator. Your suggestion falls within the scope of the current process and in a sense, that's why I also felt a bit like Commissioner Weickhardt and I think it's almost a case of whether the current processes, given a global economy - and obviously one wants to see good quality, much lower priced products being able to be imported by your members.

MR WILLIAMS (ADIA): Yes.

MS SYLVAN: I mean, that's good for their businesses. So it seems to me that every dentist that might import something which is either in the biological class or whatever having to register - which I take it, it means they accept liability in the event of a problem - it may not be a process for a global arrangement. It almost seemed to me that it needed much more of a look at how the TGA manages its processes. I mean, it does in drugs; I don't know if it does in medical devices. It essentially says, "This approval process and these manufacturers are acceptable in Australia." It doesn't redo the whole process again. It seemed to me a little, quite frankly, archaic, the nature of the processes that are involved.

MR WILLIAMS (ADIA): That's more an accident of history. The framework in Australia is not inconsistent with that that operates in Europe, broadly consistent with that in Japan and to a lesser extent, that in America. You've identified the primary reason, which was the event of a recall and in the event where there's an issue currently being reviewed, as I said, a class 1 biological bone-grafting material. In its most simple sense, in some medical procedures, a bone will be broken, work done, and this particular material helps the bone regenerate. Now, that was subject to a recall. It was manufactured overseas. The reason of requiring each importer, each Australian supplier, to effectively register with the TGA was to provide the TGA with surety that that product, both the health care practitioners had been aware of it, to review the status of their patients if indeed there had been an adverse effect, but also to be sure they got the product of the shelves. That is, you're quite correct, in terms of other product areas, a requirement that in many cases just simply doesn't exist and some would consider it to be onerous, but of course the level of risk with children's toys, even those, as we've seen in previous times, containing lead, is still not commensurate with bone-grafting material.

MS SYLVAN: But it seems to me a complete duplication by the regulator of something the manufacturer already knows which is why they have sold their product. I mean, you go to the manufacturer when there's a recall - some of these are voluntary, some are required by governments, as you know - the manufacturer knows precisely where they have sold their products, they've got records, so why would the regulator be requiring people to register - - -

MR WILLIAMS (ADIA): Because nobody has any confidence that a manufacturer probably outside the Western world actually does know. We have a number of products come across our desk where, for different reasons, the overseas manufacturer can't be identified, and in some cases where the product was clearly substandard, the overseas manufacturer disowned all knowledge of it. Now, it wasn't too hard to identify it coming from them. But for many companies, as I said, operating particularly out of the South-East Asian region, they're simply interested in moving product. Record keeping is not their forte in some cases; it's just not done.

So the framework that exists, you're correct, the premise that an overseas manufacturer would keep those records is true, when they're working predominantly in Europe, North America, Japan and elsewhere, but for many of the suppliers into Australia, that can't be relied on as an effective recall mechanism any more.

MR WEICKHARDT: But if you were to start again and redesign a system, might it not be more efficient for the TGA to say to a manufacturer, "Before you're going to get Australian approval, you have to indicate to us that you have the capability of tracking where you're sending product into Australia and have the capability to organise a recall?" and then the TGA are simply approving the product and the manufacturer and their capacity to organise a recall. To suggest the regulator should be involved in the recall in every case and take responsibility for it seems a bit unusual.

MR WILLIAMS (ADIA): No, the regulator is not involved. I'll deal with the first issue. The primary reason the TGA can't even do that is it has of course no jurisdiction over overseas manufacturers. Within Australia, not a problem.

MR WEICKHARDT: It has jurisdiction in regard to issuing an approval to them and so it could make a condition of approval that, "You demonstrate to us you've got this capacity."

MR WILLIAMS (ADIA): That's effectively how it works now, but for the sponsor of the product who is bringing it into Australia. It's drawing a very long bow for the TGA to effectively approve overseas manufacturers for importing into Australia. How does it police that? A manufacturer operating in Shenzhen, you simply cannot do it. It can however police it on the importer and that's the way the framework is established and indeed the responsibility for a recall does rest with not so much the TGA but with the sponsor of the importer of that product. Effectively imposing import licences on overseas manufacturers would have, I would imagine, considerable problems with our trade obligations and in many respects it's unenforceable.

MS SYLVAN: I could understand why the TGA wants a touchpoint in relation to a recall, and there are only some products that are at that level of risk, as you suggest, and I guess probably the responsibility of the association will be to tell its members who are using imported product that they in fact accept the liability, I think, whether they have to register as the sponsor or whatever happens there in terms of that process, which is normal; if a product comes into Australia, the importer label goes on it, if it's canned goods, et cetera.

So it seems to me one can align this with a major, quite different bureaucratic process. It seems to me that therapeutic goods - I mean, obviously particularly the risky ones - and therapeutic devices are dangerous, but there are lots of products in the market that are dangerous as well.

MR WILLIAMS (ADIA): Yes. The challenge of course is that most of them don't go into your body and in many cases you're also aware and commensurate with the risk, whether it be an exercise bike which, under the old Consumer Product Safety Standards, were there. My previous life was with the Fire Protection Association and it was a heavily regulated sector. The risks associated with the failure of the device was often quite apparent; that's not always the case with medicines and indeed medical devices and that's why we have the framework.

The biggest challenge we have is not, at its most fundamental level, with businesses within Australia importing the product. ADIA members account for about 90, 95 per cent of the product. They're very cognisant of their statutory obligations. The challenge we face is when health care practitioners - for example, there's about 300 companies operating in the dental sector and there's about 10,000 dentists - whether it's the dentists themselves or somebody within that practice buying this product online and doing so outside the regulatory framework. If the risk was low, quite frankly, the TGA and the Therapeutic Goods Act wouldn't exist but we have a fairly robust system and it's there for a purpose because, putting the instruments aside, the bulk of the product that the TGA deals with, there is a considerable amount of risk, and at the moment, the current regulatory framework isn't suited to dealing with imports because it's structured to deal with companies within Australia that by and large do do the right thing.

In fairness to the TGA, if you've got an Australian business that is operating under the Therapeutic Goods Act, as a general rule it's quite good at first informing them to meet the statutory obligations and in its most egregious sense, if there's a continual breach, they do prosecute. But what we find, the bigger risk we find, is health care practitioners bringing the product in and the TGA is reluctant to follow them through.

MR WEICKHARDT: I'm assuming there's an association of Australian dentists. Have you had discussions with them about this and what sort of response do you get from them?

MR WILLIAMS (ADIA): The ADA, which is the professional association for dentists, is aware of the problem and their advice has been pretty supportive. The advice of their members is to import product in accordance with the regulatory framework. It's compromised by the fact that there's no requirement that all dentists belong to it, and also of course there is a commercial advantage for their members in operating outside the framework. For many of the reasons identified in your report, of course the cost of supplying product into Australia by Australian companies is infinitely higher than buying them online for much the same reason; we don't have issues with retail space but nonetheless we still have a supply and logistics team in Australia that needs to be maintained which does add to the cost.

MS SYLVAN: One of the things I wasn't clear about was whether the individual has to register essentially as a sponsor for anything. Do they have to register if they want to import trays?

MR WILLIAMS (ADIA): Yes, in most cases. The class 1 medical devices, as a philosophical debate, there is a reason to visit that. The regulatory framework escalates the compliance obligation commensurate with the risk. So trays, for example, if there's a requirement, if it's deemed to be a medical device, yes, but in most cases it's simply a case of including it on the ARTG, the Australian Register of Therapeutic Goods, as a simple case of filling in the framework, demonstrating you've got the supporting documentation required; it's pretty much a self-assessment process and the burdens aren't complex. When you start going to, as I said, other types of product and indeed bone-grafting material medicines of course, the regulatory framework - - -

MS SYLVAN: They start to become high risk. We haven't looked at this with care but it seems to me that the regulatory system grew up in a different world, as you say, and it's going to have to change. It's going to be an enormous regulatory burden if the TGA tries to register every single individual who might import forceps or a tray or whatever because they're cheaper from a supplier in another country. I mean, that's just an unworkable system.

MR WILLIAMS (ADIA): That's a valid point.

MS SYLVAN: So your suggestion that they should enforce that system, I think we would probably have a great deal of difficulty - - -

MR WILLIAMS (ADIA): Or go through a fundamental rethink.

MS SYLVAN: That's right.

MR WILLIAMS (ADIA): We wouldn't be opposed to that, but every indication is that the current framework - it was put in place for a reason. There's also of course a need to be internationally consistent and we've argued in some cases that if Australia's obligations were less than those that existed overseas, that doesn't present a problem in a global context, where it would be a problem if our requirements were more onerous. But that is a philosophical debate that we have internally, and not just the dental industry has but other device sectors. Those higher-risk products, what is the real outcome of the regulatory framework if it's proven to be unenforceable? I think you've argued that no matter the difficulties that existed with, say, biological materials or medicines, they should always be there because of the greatly enhanced risk, but for those lower-risk devices, that is a legitimate debate.

MR WEICKHARDT: At the end of the day, as we said, we're driven very much by what's in the interests of the overall Australian community and you'd have to say if dentists can offer a cheaper service to their patients without risk, then that's got to be good. Therefore, finding some way through this that makes it possible to police the higher-risk areas with appropriate recall and yet not completely prevent dentists offering lower-cost services to their patients has got to be an objective. As I say, I think it's beyond us to suggest to the TGA how they might redesign that but it sounds from what you've told us as if that's the way that probably the thing should go.

MR WILLIAMS (ADIA): On balance, our members wouldn't disagree. We face a considerable regulatory burden. The fees and charges paid to the TGA are not inconsiderable.

MS SYLVAN: It's a full cost-recovery agency, isn't it?

MR WILLIAMS (ADIA): Yes. That said, we do have a question why those fees and charges are payable when the legislation is unenforced. To lessen the regulatory obligation would reduce the cost of product and would ultimately reduce the cost of health care. That said, I think we've all agreed that on some of those high-risk devices, it should be in place, but at its most fundamental level, if the framework is unenforceable, why have it? That is something we recognise.

MR WEICKHARDT: All right. Thank you very much indeed for your submission and thanks for coming along today.

MR WILLIAMS (ADIA): Thank you.

MS SYLVAN: Just given the end point of our conversation, at the moment your submission says, "This is the system we've got. It ought to be enforced." It was designed well before we had global selling but nevertheless we should kind of enforce the system. If you want, it might be useful to have that slightly nuanced or maybe redesign the thing, which seems to us to be probably needful and probably in a bit of a hurry as well, given the way the markets are going.

MR WILLIAMS (ADIA): Yes. That's something we've raised on a couple of occasions at an international level and what we cannot find is a solution which keeps the regulators happy. I know it sounds bizarre. As you would expect, most companies are actually, as a general rule, in favour of a free market. If the legislation was offering a degree of consumer protection level as it's designed to, business would support it, but at those lower levels, it just isn't doing so.

MS SYLVAN: It's clearly got to be a regulated market in some risk areas of it, but you want that to be as light as you can while giving the objectives of safety.

MR WILLIAMS (ADIA): Yes, and that's at its most fundamental level. The challenge that we have, as I said - and credit where it's due - Australia has aligned itself fairly closely with the Europeans and to a certain extent with the Americans and that was a great step. That's when the legislation was brought in in 89; the Therapeutic Goods Act was designed to achieve that. But it's amazing, in legislation that's now approaching 20 years on, as we said, it was designed for a very different environment.

MR WEICKHARDT: Okay. Thanks very much indeed.

MR WILLIAMS (ADIA): Thank you.

MR WEICKHARDT: We'll adjourn briefly.

MR WEICKHARDT: We'll resume the hearing. Our next participant is Service Skills Australia. If you could please, for the transcript, give your name and the capacity in which you're appearing.

MS McMAHON (SSA): Sure. My name is Kit McMahon, I'm the general manager of Service Skills Australia, we're the industry skills council, in amongst the industries that we represent, the retail industry.

MR WEICKHARDT: Thank you, and thank you for your submissions which you should assume we've read. If you want to give us a brief outline of the things you want to cover.

MS McMAHON (SSA): Firstly, we'd like to thank the Productivity Commission for taking the time to investigate and have a look at the retail industry. Service Skills Australia's role with the retail industry is to work with the retail industry on workforce development and planning issues. So to that extent our responses to the report that was released was confined around chapter 11, the employment skills and training.

I don't have so much to say about IR, but do have over a decade's worth of experience of working with the retail industry in terms of training, skills and development questions. We were delighted that the commission gave a chapter to skills. It is our view that retail at its hubs don't - obviously, this is a people business, and it will be the capacity and the capability of the industry's people that will actually support the change that the industry is going through. We acknowledge that the industry is going through the change, and it will be the industry players that actually determine the nature of that change. What we know is that it will be the capacity and the skilling of its people to respond and adapt to that change, and we know that great leaders and practitioners in the field at the moment are battling with those questions as a result of the economic changes that that needs, in terms of their business model and what it means for the skills of their people.

That's probably the broad sense of what we'd like to talk to. There was some very specific points that we responded to around chapter 11, and I'm happy to take any questions that you have.

MR WEICKHARDT: Thank you very much indeed. Certainly this is an area that we do think is very important. As you will have seen from our report, we've expressed considerable concern that the comparative productivity - relative productivity - of this sector overall, based on all the different blends as we've been able to apply, looks to be a significant gap to that of some overseas retail industries. Whilst this is a big and diverse industry - and there are clearly leaders and laggards in every sector - overall it does look as if there is a lag, and improving productivity is not something you dial up, it's complex. But all the evidence that I've seen suggests that this is best done at an enterprise level.

We had ANRA along yesterday and we were talking to them a little bit about training and skills and they were complaining that the government has removed funding from the apprenticeship scheme in the retail industry. One of the things that I suppose I have a concern about is the degree to which a generic industry package here may frustrate the importance of employers owning the responsibility to skill their employees. If you can send people off to go and do some training rather than - I, the employer, have identified what I think for this organisation are the essential core skills, and having invested that time and effort in training my employees, I desperately want to retain those employees and form a long-term relationship with them.

It's a bit different from going through the motions of saying, "Look, as part of our arrangement we're going to have a skilling program. The government are paying for some sort of training program." So we would be interested in your comment on the degree which you found employers in this sector take ownership of this and responsibility for this, as opposed to seeing it being the government's job to fix this problem.

MS McMAHON (SSA): Yes, okay. From an appreciative inquiry, the good employers do this really well. Let me tell you what they do really well. They've actually got a breadth of management and leadership expertise and they understand that the key part of a productive business is knowing what they need to achieve productivity. It sounds quite simplistic but that question, "What do I need?" is a very important question. Good leaders know they need to ask it and then they know how to get it answered, and they pull in capability to answer that.

What we know from working with the enterprise based PPP funding - and now the new National Workforce Development agency - is that there is merit in a funding model that delivers the funding to an enterprise, if you consider the enterprise is the productive unit. There is merit in putting the funding there and encouraging that enterprise, and therefore the leader of that enterprise, to make some decisions that are encouraged on the basis of a work plan. By that, I mean, "Where are you going? How are you going to get there? What's the role of people, and therefore what are the gaps you need to close?"

It sounds very simplistic but that is not a skill in business owners - whether it be retail - that is common. We tend to hear the bad side but it needs to be more common than it is. Our role in that enterprise based PPP is as a broker. It's to encourage that reflection to occur as far as the people improvement goes. From our perspective, what industry was shocked at, or what industry responded with great strength to, with the expert panel, was that, yes, certificate II funding has gone, but it was that the retail industry was at a lower class of industry than the other industries. I need to be quite clear there. Yes, the threat of funding was gone and people were reacting against that, but it was the language in the document that posited the skills in the industry as being at a lower level than other sectors.

MR WEICKHARDT: Who was using that language?

MS McMAHON (SSA): The language was in the expert panel report, the words of "lower" and "lesser" and "not as many skilled". We've heard that about retail again and again.

MR WEICKHARDT: Who was the expert panel?

MS McMAHON (SSA): The expert panel was a series - I can't remember off the top of my head. I've just gone blank. There was a representative from the ACTU from industry - Skills Australia representatives et cetera, they came together. There was a whole lot of research that came into that. I think we referred to that in our first submission to you as well. As far as funding goes, funding for vocational skilling in Australia, as you know, is a very complex space. Certificate II qualifications are being used more and more by schools. The certificate III funding is still in place, but we are about to enter into a new agreement between the states and the federal government that will result in more demand-driven models.

For the good employers that deliver certificate II really well - and ANRA have members that do that - it is a significant issue for them because they do use the certificate II funding to train young people. When I say "train young people", for a retail industry, certificate II is entry level. It's things like turn up on time, speak nicely, be part of the team, things that young people need to know to have a productive work life. There's some great employers out there who do that very well. One of the challenges that we're having as a nation at the moment in terms of its organisational development structure - and I don't want to try and complicate that - is that we need to ensure that the VET providers are delivering the qualifications the way the industry need.

The funding issue is one issue. If it is being delivered appropriately in the first place, in the channels where it's going to - which is in schools - then probably the industry players wouldn't be arcing up as much as well. We have gone situations at the moment where retail qualifications are highly used in VET and school spaces, and there are some challenges as to the way it's being delivered. The capacity of the trainers or the educators doing it, they're not skilled appropriately, industrially. Their pedagogical skills might be fine but they don't have an appreciation of what it means to be in retail. The assessment methodologies are not things that industry would strongly support.

We've been on public record for many years having concerns, for instance, in New South Wales. My dear colleagues at the Board of Studies - we've had arguments over this - assess the student in a non-industrial mechanism by an essay which is not how you work in retail. The delivery of skills, part of it is funding, and the other part of it is actually ensuring that it's being delivered in the system in a quality way. What you've had over a number of years now is that retail is an easy skill to train. We spend a lot of time at Service Skills Australia saying, "It's not just retail. You can't train this just because you shop. You actually need to understand the business of retail." We have strengthened those qualification frameworks over a long time. We've put more words into those units of competency. We're going to have released and will go through endorsement a new qualification profile that will now have a vocational graduation certificate in retail which is about the strategic management of a retail business, recognising the career path that exists.

So funding is one, and industry were quite anxious about that, not only because of the threat of withdrawal funding but also because of the language that was used in that report which is just black and white, what's been said for a decade. There's also a concern with the quality of skilling that occurs, and then the recognition that needs to occur of the nature of retail as a career that actually skills young people up and gives them meaningful careers. There is a lot of churn in retail. We absolutely agree with that. Our experience is that it might be a job term that occurs but there is a tendency to what we call "occupational retention".

What I mean by that is they will move from one job to the next but they will stay within retail as an industry. There is a pattern of career pathway and progression whereby they move from one organisation to the next and develop their career as they go. Some of the resistance to training is, "Well, I'll train them and they'll leave." I'd suggest to you that would be a characteristic of a not so good employer. The good employers know if they train them, "then at least I can get them to stay in the industry and I might get them back in five years' time, but they're also going to be a consumer."

The good employers do demonstrate both an enterprise understanding of the return on investment that they're getting, but also an industry-wide understanding of the return that they're getting. That's a very complex way of answering questions that under that workforce development gaze there are many complex factors that impact the development of that individual and retaining them within the industry. I guess that's the focus of some of the things we were saying.

MS SYLVAN: Is part of the issue here - I was just looking it up because I couldn't remember the exact figures, but in comparison with many other forms of employment, retail is striking for the lower percentage of firms that actually employ a significant number of workers. When you look at the distribution, for example, the businesses that employ one to four people are 49 per cent of the retail business. It's a huge number, in a sense.

MS McMAHON (SSA): Yes.

MS SYLVAN: I'm wondering whether these kinds of programs speak to those sorts of businesses - - -

MS McMAHON (SSA): The traineeship programs, yes.

MS SYLVAN: Yes. They're often family-style businesses. The wife has a position and helps her husband to do the accounts or vice-versa.

MS McMAHON (SSA): Yes.

MS SYLVAN: Do you know what I mean?

MS McMAHON (SSA): Absolutely.

MS SYLVAN: This seems very directed at people who employ a reasonable number of - - -

MS McMAHON (SSA): Look, I'll be quite honest and say that one of the major complaints that we regularly receive about the traineeship program is the complexity of the program. We're not Robinson Crusoe, and lots of other people have talked about it. The expert panel put this on the table very clearly: the need for greater simplicity of the traineeship and apprenticeship system. Now, that takes the form of less paperwork, less bodies in the room, "Can I only deal with one person? Why have I got to have five signatures on the bottom of that paper in Victoria?"

I think if you go to what's being tested at the moment in terms of delivery of funding through enterprise based PP and the National Workforce Development - and these are some of the things that are coming out of demand-driven funding models, like, in Victoria and Queensland have some interesting things to say. What you're actually looking at is the idea of the ownership of the decision of skilling, landing in the enterprise itself. That is good for the majority of the businesses - the structural majority of the businesses in the industry. In terms of the skilling of the people though you've got a lot of small businesses but a lot of people being employed in these large firms.

Now, to some extent those large firms in retails are engine rooms of skill. They invest in the skill and they develop an Australian retail culture as well that trickles back through the industry. If you measure the return on investment economically that the investment gives, you can measure it to the organisation but you can also measure it to the industry as a whole. In terms of those SMEs, a brokered model that has a conversation with the enterprise based on their needs that is nimble is the optimum response. That's being trialled at the moment. There's some thought going into Skills Australia about what that should look like.

MR WEICKHARDT: Going back to the issue of the productivity gap, I would say that skills training is necessary but certainly not sufficient to close that gap.

MS McMAHON (SSA): Absolutely.

MR WEICKHARDT: You could have the most trained and skilled workforce who, for whatever reasons, were demotivated, didn't have the right sort of attitude, or who weren't led and managed in a way that helped release these skills, and you'd get a poor outcome. We've all shopped in shops where you get either fantastic service and you go out with a smile on your face having bought something you didn't know you needed, or you go around not being able to find what you want, or not being able to find somebody to pay for what you've already selected. In terms of your perception, at the moment if you try to look at the weak links here, is it that we've got an unskilled workforce that is the fundamental gap, or is it that we've got a skilled workforce that aren't being led, managed and motivated appropriately, or is it a combination of the two?

MS McMAHON (SSA): It's actually a combination of the two. Workforce development does not assume that it's only going to be one thing that fixes this. If I can turn your gaze to some other conversations in other industries where they're trying to tackle the complexity of how to adapt the people to respond to a change in dynamic. The tourism industry have had some thoughts about what they call supply side issues. Within the complexity of tourism itself, the industry developed their own national strategy, but then you've got the state based conversations going on as well. Those strategies actually understand the complexity of factors that impact upon behavioural change in a workplace to increase productivity, and they understand there's multiple levers.

We're doing some work at the moment with the sports industry. They're in a change process. They have actually changed their gaze to participation. They use participation to get more people on the field, so trying to improve participation in sport. The question is then, "Hang on, what do we need to do, not to improve the capacity of our athletes, but the people who are supporting these athletes. What can we do to develop them?" That includes planning. "What have we got now? Why might people leave?" Asking some very hard questions of themselves. It actually kicks back and reflects on the leadership questions as well.

Those conversations have gone on in other industries, and what they do discover is that the complexity of levers that need to be pulled to change the behaviour is vast. In our view, in retail, it will be things like ensuring the efficacy of the skill outcomes and that is backed up by the quality of the education system. That's a huge workforce development issue, and the Productivity Commission have investigated that. That's one lever.

The other one is actually making sure that culturally the industry as a whole consistently - and that's an aspirational goal - appreciates the value of a skilled workforce, not only in the frontline but right up the chain and within the enterprise that there's a congruence between what I say and what I do, both in the models of leadership in the people that are doing what they're measured on, the link to the strategic plan or whatever the plan - you know, these sort of things. The other part of it from a national system perspective is to ensure that the system is flexible enough to accommodate those small businesses, that it's not going to burden those businesses with more paperwork, it's not going to make them more difficult, and that the mechanisms for delivery are going to be just in time.

The industry does get benefit from full qualifications, I have to say, and it gets value from that in a number of ways which is that it's a personal recognition of the individual skill - "You can get a certificate in retail?" "Yes, you can." But if you think of the transient nature of the workforce, it's actually something that can stick with them over time. Part of the challenge that we've got at the moment is some of the measurement systems of the country don't actually accommodate, they're actually - this is a personal view - discriminatory towards transient workforces because they don't track over time, so you get stuff about completion rates and things like that going on, but there is a complexity.

So I would say in answer to your question, it's both. It's an unskilled workforce but you've got to make sure they're being trained appropriately, quality based, and the leadership question is also part of it as well. You know, you can be trained but if you're working and your boss is not a good model, it's just going to go out the back door, isn't it, and you're going to be measured on different things to what you're trained on. But the complexity is understandable. People are doing it, they have done it. There are really good folk out there that are doing it and an appreciative inquiry process to model it is highly doable. There are really good people out there that want to have that conversation, so it's doable.

MR WEICKHARDT: It's disturbing, from what I gather from your comment, that an "expert panel" made up of the unions, employers, apparently concluded from what you're saying that the skill levels required were very low.

MS McMAHON (SSA): Yes. There was a very strong visceral response to those words and I'm happy to send in the submission that the association has made in response to that. But I think in fairness to the expert panel, they were probably describing something or an attitude to the industry or the skill in the industry that's been apparent for quite a while and over time has been gradually denuding that perception and it presents itself everywhere from a kid saying, "I just work in retail." There's no career through - their parents are saying the same thing - to the black and white written word in a government report, through to funding. There's a whole range of ways that that perception that was put as black and white on the page is reflected throughout our society.

The reality is that if you engage with a great retailer - you walk into a good retail establishment and you can smell the competence. It's everything. Good decisions are being made, great measures are being put in place, the staff are motivated. Everyone understands their role. They're engaged, they're committed to the brand and the product. They can see the future. That's achievable, but it is disturbing, yes.

MR WEICKHARDT: I suppose one great concern I've had during this inquiry is that old sort of adage that you can't solve a problem till you recognise you've got one, and to a degree what we've seen, just looking from the outside of this industry, is it is now facing a brand new competitive landscape.

MS McMAHON (SSA): Absolutely, yes.

MR WEICKHARDT: There are multiple things that will need to be addressed to accommodate that change and that response to that new competitive landscape. Productivity is up there. It appears from some of the reaction that we've received that (a) there's some denial, "No, there's not a productivity problem," we would differ; secondly, some people seem to have either misunderstood or deliberately misunderstood what productivity improvement actually means. They've characterised it as either paying people less - that's got nothing to do with productivity improvement - or that it means whipping people and making them work harder; again, a very unproductive approach to productivity in my view.

MS McMAHON (SSA): There's some retailers that I've been talking to - you've probably heard of this to - they're talking about lean retail and how they actually change the back end of the business model. Now, in all the conversations that I've had with them about this - and I predominantly deal with HR directors and L and D and all development managers - their whole conversation is about, "How can we support the people through a change process?" So if you pull on your change management hat, that's what they're engaged with. The ones that are considering the diversification of their business model from a people site, what we observe is that their thinking is around, "How do I bring my people with me? How do I write a really good returns policy that accommodates if someone buys something online that they can walk into any shop and they won't feel penalised?" They're actually not talking about shrinking their workforce but in some cases having to change the job role model, create different career pathways, offer more expanded pathways inter-organisation as opposed to intra-industry.

So there are some very interesting conversations in that cohort of people that we deal with who are struggling with how to actually engage in that changed process because they realise that the market is changing, and the conversations are the complex nature of productivity for sure.

MR WEICKHARDT: I guess the process you're going through from the sound of it is a changed process in itself.

MS McMAHON (SSA): Yes, it is, absolutely.

MR WEICKHARDT: We would certainly applaud that change process, as I say, as a necessary but not sufficient part of the answer and to the degree that your work with the industry helps the industry understand the importance of this whole area, as you say, the industry has got to play an important part in demanding from the VET sector what it needs and making sure that it delivers what it needs.

MS McMAHON (SSA): It's the absolute key question. To know what you need is the first step and that's often the hardest thing. I think the Skills Council's role is not to set the industry direction. That's up to industry. Our role is to assist them in developing their people to respond to those changes. But that's where I started, the key question - that good leaders know to ask the question: what do I need my people to be doing? Then the rest can just occur.

MR WEICKHARDT: But then, as you also pointed out, I think all the experience of training people is that unless they exercise those new skills quickly on return from training, they very, very quickly atrophy.

MS McMAHON (SSA): Absolutely.

MR WEICKHARDT: Again, a good leader needs to ensure that they empower people and motivate them to use those new skills and stretch them with those new skills, rather than simply say, "Get back to the normal job you were just doing before."

MS McMAHON (SSA): Yes, that's absolutely right. That's culture change in itself. That's generational culture change of different leaders coming up through the sector and modelling different behaviours, and you've seen that.

MR WEICKHARDT: Okay. Thank you. We're going to adjourn now until 11 o'clock.

MR WEICKHARDT: We're going to resume the hearings now. Our next participant, National Association of Retail Grocers. If you could each separately give your name and the capacity in which you're appearing for the transcript that would be helpful.

MR CUMMINGS (NARGA): John Cummings and I'm the chairman of the National Association of Retail Grocers of Australia.

MR HENRICK (NARGA): Ken Henrick, I'm the CEO of the National Association of Retail Grocers of Australia.

MR van RIJSWIJK (NARGA): Gerard van Rijswijk, I'm the senior policy adviser.

MR WEICKHARDT: Thank you. We have received two submissions from you which you should assume that we have read. Thank you for those. If you would like to outline the topics you would like to cover today, that would be helpful.

MR CUMMINGS (NARGA): Thank you for the opportunity of talking to you. Just to pre-empt, as the chairman of NARGA I actually do this on a voluntary role and I'm just a poor dumb retailer from Perth, that's my day-to-day activity.

MR WEICKHARDT: Okay.

MR CUMMINGS (NARGA): So I actually stand in a shop and do all those things that retailers do and employ people.

MR WEICKHARDT: Good. Thank you for coming along all this way.

MR CUMMINGS (NARGA): No worries. The first thing we'd like to address with the commission is market share in the grocery sector and I understand that the commission has probably taken evidence from Woolworths that puts a market share of the two major chains at a lower than what we would and in the past they have argued that their market share should be taken as a whole of stomach and the easy way to put that is that they think a whole-of-stomach market is the sandwich you buy at lunchtime, restaurant food et cetera et cetera which is not the way the grocery sector looks at it and not the way that our suppliers look at it. In very simple terms, if you were Kellogg's cornflakes, you have three customers in Australia. You have Coles, you have Woolworths and you have Metcash which is the supplier to the independent sector and of those three customers, you would find that Coles and Woolworths would take about 80 per cent of the supply of what Kellogg's manufacture in this country.

So in packaged groceries, clearly those two chains have 80 per cent of the market and you have a situation where now with the number of suppliers because of the way that supply chains have worked and an example is Arnott's biscuits, I, as an independent retailer, cannot any longer buy directly from Arnott's, I can only buy through one of those wholesale chains. So my options to buy Arnott's biscuits for my business is to go to Coles' warehouse, Woolworths' warehouse or a Metcash-owned warehouse. There are no other options. So we would strongly contend that in Australia the market is extremely concentrate with those three people. If you look at other submissions, people like National Foods, the manufacturers of Pura milk, have put forward, they say exactly the same thing, that Coles and Woolworths have 80 per cent of their market when they are talking about the supply of yogurts, ice-creams, et cetera et cetera outside of the food service sector. So that's the first point.

I think the second point we'd like to make is that when we were reading the initial response that the commission put out, it seemed to us that there was an assumption that there was a level playing field in the grocery sector or in the retail sector in Australia and that is not the case. Prime examples of this is just even in pay rates. If you look at current pay rates - and Fair Work Australia is very difficult for a small business to understand what a pay rate is. As a matter of fact if you were to ring up Fair Work Australia and ask them as, say, a small independent supermarket in Western Australia employing 10 people in total, if you ask them what rate of pay you should be paying your staff, they will tell you to look at their site, they will tell you, "You have to decide how you're paying them off the information in that site," and they will not give you a simple answer of what is a Sunday rate for an adult, as an example.

If you look at that, you're probably aware that Coles and Woolworths in the grocery sector have union-negotiated EBAs that are still in place and they went to a lot of trouble to get those in place before Fair Work Australia came in. Now, my reading of Fair Work Australia's web site would be that to employ a casual on a Sunday, you would pay $42.10 per hour which would include the loadings. If you read Coles and Woolworths' EBA, they would pay around $29.47 per hour for the same person. We have put that forward time and time to government when Fair Work Australia was going forward.

Also you may recall there was the conversation about reducing casuals' time period from a three-hour to a two-hour minimum and that was for school children so that they could actually work, especially in country towns. It was actually the union who objected to that and said you couldn't do it, the union-negotiated EBAs for Coles and Woolworths have both got that provision in there. They can actually do it. I just don't understand how that works. I don't understand how that is a level playing field. That's where we in business look at these things and go, "Well, hang on, there's this whole tide of things coming at us, then you tell us we're all equal but in reality we're not equal."

We also have another example and that's the supply of electricity. In our business in Western Australia we, of course, run refrigeration and lighting, as Coles and Woolworths do, it's all in the same modules. Refrigeration tends to be 48-foot modules, run off racks in exactly the same way, so it doesn't matter if you're running three racks or four racks, it's the same cost, same delivery, same cost of power. If Coles were to run my business, they would pay 20 to 25 per cent less for power than I would. Again, we just don't understand how that has been able to occur.

So when we read the language that came out of the commission's first thing, it appeared to us that there was this belief that there was a level playing field and we just contend that there is nothing like a level playing field out there. The market in Australia in a lot of retail has changed, in the grocery sector has changed. When I first bought into the business 26 years ago, the independent sector had 59 per cent of the market in Western Australia. Today the independent sector has got 30 per cent of the market in Western Australia and in that period of time, one independent retailer has closed down or gone broke. Coles and Woolworths have increased their market share by buying out independents, by creeping acquisition over that period of time and at the end of the day, they will not be satisfied with 100 per cent of the market, they will want, if mathematically able, to have 110 per cent of the market. That is where they are aiming.

The idea that there is no barrier of entry for anybody else, I mean, anybody who thinks that an international or an overseas company or a group of individuals would look at the grocery sector and say, "Let's start up a chain to compete against Coles and Woolworths," to start off with, you have to find 750 to 850 retail sites. Where are the 750 or 850 retail sites you're going to find?

MR WEICKHARDT: Aldi is having a go.

MR CUMMINGS (NARGA): But they're not full service supermarkets. Coles and Woolworths run 5000-square metre supermarkets. If Aldi opened up 5000-square metre supermarkets, they'd be broke. I don't think there's any doubt about that.

We've also brought up that in all aspects of retail, there is anticompetitive price discrimination occurring, whereby retailers cannot source product at the same price. Once that occurs, that retailer is completely at odds and can never get that money back. An example of this and how the market changes is perhaps given in the supply of fuel. You've got situations - and this has been put forward by the Service Stations Association to the ACCC prior to this - that as the market has changed and Coles and Woolworths now have in excess of 50 per cent of that market, they demand a better price for fuel, and examples are given whereby a fuel truck from the same company will call into a country town, deliver fuel to a Coles-owned or Woolworths-owned site at 16 cents a litre less than what they deliver it to down the road; no economies of scale, no difference, same invoice, some company, same truck, yet there's this 16-cent difference in a retail market that has a margin of four to six cents. Obviously that retailer can never compete, who's paying 16 cents more. That occurs in the supply of electricity, as I said, that occurs in the supply of bread, milk, a whole pile of different things, and that has been extremely well documented in submissions that have been given to the Senate inquiries into the milk sector, where they have basically said that.

So we have said, clearly, that to make Australian retailing more competitive and give more competitors an advantage, it would be desirable to reintroduce a prohibition on anticompetitive price discrimination into competition law in this country which is a law that is in many other jurisdictions, including the UK, Europe, Canada and the United States.

MS SYLVAN: By anticompetitive price discrimination, if I could just clarify exactly what you mean, would that prohibit me going to the local $2 shop who's got lanterns for sale for whatever it is, $2, and saying, "I actually want 10 of these and I'd like them at $1.50"?

MR CUMMINGS (NARGA): No, that's fine.

MS SYLVAN: Most of the things you're talking about are in fact probably attached to volume discounts because of the largeness, which has been a feature of markets for a long time.

MR CUMMINGS (NARGA): Sure, yes, absolutely.

MS SYLVAN: In a sense, leaving the grocery market aside, there's no law against monopoly. If you've got wonderful positioning into the market and attract all of the consumers away from your competitors - currently significant globally dominant entities because they have a good - not necessarily even a deal, I would have thought, but they've got a good proposition for consumers - Apple comes to mind who just went around and did a completely different product which really appealed to consumers - so the fact that competitors can grow large, including to monopoly point, and that may then be a problem for competition and the competition regulator, but the fact that they can because they do their job well, because they grow or haven't grown, can get volume discounts et cetera - and you do have an accelerating situation that happens when that starts to occur - in a sense is a pretty fundamental part of a free market.

MR CUMMINGS (NARGA): Absolutely.

MS SYLVAN: So the level playing field, I wouldn't have thought that you're describing, has ever really existed. Markets have always had these - - -

MR CUMMINGS (NARGA): It actually does, and it's interesting, if you look at different companies, as I said, anticompetitive price discrimination is actually in the UK and in the United States and the laws have been there forever, and Europe, and companies who operate in those jurisdictions actually do those things. It still takes into account economies of scale but economies of scale are not never ending. Economies of scale are finite. Once you get to a level, you can't - - -

MS SYLVAN: So just tell me exactly how this anticompetitive price discrimination operates.

MR CUMMINGS (NARGA): Sure.

MS SYLVAN: The supplier has to give the same price to everybody?

MR CUMMINGS (NARGA): Similar terms and similar conditions for similar volumes. If somebody has a 20-pallet buy price and you want to buy 20 pallets of the same stock, you would expect to pay the same price as the next person.

MR WEICKHARDT: Sure. But Walmart buy more at a better price than the mum and pop store in the US.

MR CUMMINGS (NARGA): Absolutely, because Walmart go direct to the supplier. I used to work for Nike; Nike owned the factories in China. You can still do that. If you've got enough money to go and open a factory in China, you go and open a factory in China. You don't have to use a wholesaler. That still works. But if you're talking about branded merchandise, if you're talking about the supply of milk, what you actually get - and this was documented again in the inquiry into the milk sector - is where you have got a company, a processor, recouping their lost margin to supply to a large retailer from supplying at a higher price to a small retailer.

MR HENRICK (NARGA): That was given in evidence by National Foods and they admitted that they were making zero profit on the sales of their private label milk to Woolworths and Coles and that therefore they had put up the prices of milk and other products to all of their other customers. That means that those other customers can never compete, so competition is eliminated before it even gets to the store.

MR CUMMINGS (NARGA): With the theory that this market is contestable and the market is open, one prime requirement of that market being successful is full knowledge. You need to have knowledge for a market to work, don't you?

MS SYLVAN: Very few markets are perfect.

MR CUMMINGS (NARGA): The theory of the perfect market comes with full knowledge, right, and as much as I try, if I ring up a supplier and say, "Excuse me, how much are you selling this product to Coles for?" they don't tell me.

MS SYLVAN: In a sense, the model that you're positioning is interesting. Let's take two suppliers buying the same pallets, two suppliers of the same size, buying the same pallets.

MR CUMMINGS (NARGA): Yes, but let's take electricity.

MS SYLVAN: One is a much better negotiator than the other as a businessperson.

MR CUMMINGS (NARGA): Sure, and that can occur.

MS SYLVAN: But what are you saying, the law should say that that skill should be discounted and the person should not be able to negotiate?

MR CUMMINGS (NARGA): No, what we're saying is if the price discrimination is anticompetitive, if the outcome of that is anticompetitive - - -

MS SYLVAN: You've got a competition test attached.

MR CUMMINGS (NARGA): Totally, and that's the way it works in the UK. Let me tell you, in the UK they still have discounts, they still have specials.

MS SYLVAN: Can you tell me how many cases in the UK have been taken?

MR CUMMINGS (NARGA): No, I can't.

MR van RIJSWIJK: If you have the law in place, observance is not necessarily dependent on the cases being taken. We're in a worse position; we don't have the law in place. In America, very few cases are taken against the Sherman Act in America on price discrimination because over the years, companies have realised they just can't do that.

MR WEICKHARDT: Just tell me how it works in practice. I came from an industry where it would be quite commonplace to sell one customer, let's say, $10 million a year of product X and $100 million of product Y. It would be quite common for that customer to say, "I'm buying $110 million from you. I'd like a 10 per cent rebate across the whole lot.

MR van RIJSWIJK: Absolutely.

MR WEICKHARDT: Yet that's 10 per cent on the $10 million deal as well as on the $100 million deal because the customer has got a total relationship with you. There might have been another customer who is buying $10 million of product only and they didn't get a 10 per cent price break.

MR CUMMINGS (NARGA): Sure. It takes into account again that one of the reasons for a price differentiation might be that you're giving me prime retail space, therefore I'm prepared to pay for that prime retail space. That's still allowable. It's only if the effect of the price discrimination is anticompetitive.

MR van RIJSWIJK (NARGA): And not giving the same opportunity to other people to do that.

MR CUMMINGS (NARGA): Absolutely.

MR van RIJSWIJK (NARGA): The deals become exclusive.

MS SYLVAN: The reason I was asking you whether cases have been taken, you would know the misuse of market power provisions under our Trade Practices Act or the new consumer competition law. In a sense proving some of those things is extraordinarily hard to do and proving an effect on competition is very hard to do, extremely hard to do. So in a sense the existence of a law - when you say people change their behaviour, I'm just wondering what it is people do in the UK that's different to here. We have as the head of Coles at the moment somebody who came from Tesco, I believe. He's bringing the Tesco model. He is doing the milk stuff. I mean, that's how Tesco competed, that's how they grew. They actually changed their retail formats to accommodate changes in UK planning as well, so they've got little stores, they've got big stores. Do you know what I mean?

MR van RIJSWIJK (NARGA): Yes, but we're not focusing here on anticompetitive behaviour. What we see with anticompetitive price discrimination - section 46 is pertinent because that targets the use of market power to actually influence the relationship.

MS SYLVAN: Yes.

MR van RIJSWIJK (NARGA): What's happening in other jurisdictions, UK, EU, United States, Canada, is that price discrimination clause is simply an extension of 46. We're just saying a particular example of misuse of market power is pricing pressure you put on which is only due to your size and what they're saying is you can't use size to push the price down so low that others in the industry are disadvantaged. That's all it means.

MR CUMMINGS (NARGA): In that case that you used of Tesco, the difference is if you look at milk, Coles have probably got their house-brand milk down to, two litres, about $1.50, being the transfer price from the processor. That processor's list price for that same two litres without a house brand on it, with one of their brand labels on it is $3.50. Now, like it or lump it, I, when I buy milk from that supplier I am subsidising them to supply cheap milk to my competitor. That's the only way it can work because they have to equalise their margins. The managing director of National Foods reports to Lion to Kirin, his boss couldn't care if he made no money out of selling milk.

He's got to make X amount of return on the funds at the end of the day and he's got to manage his margin to make that work. So they're managing the margin in milk by me and that is what is anticompetitive about that price discrimination.

MS SYLVAN: As I say, proving anticompetitive conduct is very difficult - - -

MR HENRICK (NARGA): It's important to understand there is a bit of history to this and we used to have a specific prohibition on anticompetitive price - - -

MS SYLVAN: Yes, we did and withdrew it under the act.

MR HENRICK (NARGA): Section 49. It was repealed on the recommendation of the Hilmer committee who said that section 45 and 46 could do the job. The parliament has never said anticompetitive price discrimination is acceptable conduct. That section 49 was repealed on the argument that it was unnecessary because of the other two sections. Now, neither the Trade Practices Commission nor the ACCC have ever taken a single case and it's quite clear from statements made by the former chairman of the ACCC earlier this year in Senate Estimates that he thought that section 49 no longer applied and therefore that conduct was okay.

MS SYLVAN: Can we come to the Aldi competitor in terms of how the markets work. This is a new entrant in an area which is very difficult apparently. You said there are barriers to entry and I'm sure that's true. In a sense when there are particular barriers to entry people find the niche and they enter. In a sense this is the ongoing conversation we've been having about online. The grocery industry is not particularly in this space. Who knows whether they will be. You would suspect not because of shipping costs but we would have predicted any of this 15 years ago either.

It's come in, it's now got close to 4 per cent of the market, I think which is - those are big numbers when you entering. It came in with a particular model, a model it uses everywhere in the world that has been very successful against huge competitors frankly and it comes in and people I think now would say that they supply to four, they supply to Aldi under its brand, because that's becoming not just the three. So in a sense when you say the market, because of its concentration is insufficiently competitive and so on, we've actually got a really quite astonishing example. If you want to come in and be a full service supplier, somebody might say, "Is that a reasonable proposition as an entry point into the market," you know, a new competitor coming in, brand new. But in a sense that's part of the business sense of choosing where to compete, isn't it?

MR CUMMINGS (NARGA):   Aldi have been successful in what they've done. The guy who used to head up Foodland in Western Australia, Trevor Coates, used to actually be the managing director of Aldi in the UK. So through my conversations with him I got to know quite a bit about Aldi. A lot of people saw Aldi as being a threat to them but there is actually a friend of mine who owns a small independent supermarket in Rouse Hill here, Aldi opened up 400 metres from his front door and his sales went up by 40 per cent.

MS SYLVAN: Because people shop in two places.

MR CUMMINGS (NARGA):   Because you can't buy everything you need for dinner in an Aldi supermarket. So they are a limited - - -

MS SYLVAN: That's right.

MR CUMMINGS (NARGA):   All he lost was selling loss leader toilet paper at no profit margin and picked up high profit margin other sales.

MS SYLVAN: Because people were coming to shop at the Aldi.

MR WEICKHARDT: But the fact that a lot of people came to shop at Aldi and therefore went next door suggests that Aldi were fulfilling a need and finding a customer that wanted to shop there.

MR CUMMINGS (NARGA):   Absolutely. UHT milk, I call it pensioners' milk. You don't sell it unless it's really discounted and it's always people my age and older who buy. So there's a market for that, I'm not denying that. We all have house brands within our businesses. Digressing on that, I've often wondered - like, if I was Coles or Woolworths and had a huge supermarket and Aldi were taking some of my business and opened up down the road, I would just simply open up an Aldi in the corner of my store. You know, if you look at the size of the turnover, don't tell me that Coles or Woolworths couldn't buy house brands cheaper than Aldi could in this country. I mean, if Aldi are making money out of our house brands, how much would Coles and Woolworths be making out of their house brands? They would have to be buying at a better price you would think, wouldn't you, just on volumes.

MR van RIJSWIJK (NARGA):   The UK Competition Commission looked into their grocery industry about the same time the ACCC did here.

MS SYLVAN: Yes.

MR van RIJSWIJK (NARGA): They characterise Aldi and stores like it, because there are three chains, Aldi, Netto and Lidl in Europe, as LADS - - -

MR HENRICK (NARGA): Limited assortment discount stores, and didn't regard them as direct competitors with supermarkets for that reasons.

MR van RIJSWIJK (NARGA): And therefore excluded them from their study. They did not regard them as competitors for the major chains in the UK.

MS SYLVAN: They have a different proposition.

MR HENRICK (NARGA): It's the same here.

MR van RIJSWIJK (NARGA): What I think has happened in Australia is that the ACCC in particular has used the entry of Aldi as an excuse to do nothing about market concentration. As is typical of the ACCC they found an excuse and most often the excuse is contestability theory. Contestability theory is a nice cop-out and that's what we're seeing in Australia. Australia has become a giant economic laboratory for contestability theory and a failure of that theory is what we've got to deal with.

MR WEICKHARDT: Maybe. There are some consumers would say the contestability theory is giving them increasingly better and better deals and the entry of the Aldis and the Costcos might be in different niches but nonetheless there are consumers that are getting benefits and there are consumers that are getting benefits from discounted milk.

MR HENRICK (NARGA): The contestability theory has never been validated anywhere in the world.

MS SYLVAN: There is an economic argument about it, I agree.

MR van RIJSWIJK (NARGA): Should Australians be victims of an economic debate and I think that is what has happening in Australia at the moment, nothing is being done on competition matters because that contestability theory provides the cop-out.

MS SYLVAN: On grocery, in a sense I think the arguments were not that it was - it was not the contestability because there is not a single supplier. The general sense was there must be contestability, we just had an entrant, as I recall the ACCC report.

It's not the same thing as a Coles or Woolies because an entrant - - -

MR HENRICK (NARGA): We have had two entrants in fact, Franklins as well - - -

MS SYLVAN: That's right.

MR HENRICK (NARGA): - - - by Pick 'n' Pay and that experiment has failed.

MR CUMMINGS (NARGA): Can I just make the point you're being a bit egocentric about this?

MS SYLVAN: Are we?

MR CUMMINGS (NARGA): Yes, indeed.

MS SYLVAN: My apologies if we are.

MR CUMMINGS (NARGA): There's no Costco or Aldi in Western Australia or South Australia.

MS SYLVAN: There's only two Costcos in Australia, and very new as well. Aldi hasn't moved into Western Australia and South Australia.

MR CUMMINGS (NARGA): We've been selling milk for $1.79 in Western Australia for - - -

MS SYLVAN: Aldi told us we might get to these issues that they're not in Western Australia and South Australia because of the planning - - -

MR CUMMINGS (NARGA): It's just a bit parochial there. Being from Western Australia it would be a very unusual characteristic.

MS SYLVAN: Anyway, I don't think we should sit and debate the economic point. I take what you're saying in a sense, but if I understand what you're saying to us, you think section 49 explicitly would make a difference. The ACCC examined that in far more detail than we were able to, and didn't recommend that in their report. I suspect that from the point of view of a competition analysis - and they were in full inquiry mode with coercive powers in relation to that inquiry which we're not. So we can't do a better job than they can, I have to say, on that analysis.

MR CUMMINGS (NARGA): We'd like to make the point that the market is changing in such a dramatic way. When the ACCC looked at the petrol market five years ago, it wasn't the market that it is today. If you look at the packaged alcohol market today, it wasn't what it was a few years ago. If you look at the milk market today, it wasn't what it was a few years ago. The milk market has changed again since the ACCC's inquiry. We would put forward that in the market that is changing with these large retailers so rapidly that competition law needs to be a moveable feast as well, and take into account those things. I think that might be some of the frustrations that are expressed by small business that at times is not seen to be kept up with the change of the market.

MR WEICKHARDT: As you say, these things are complex, and looking at the total supply chain and how all that relates to the deal that the end customer gets is also a factor. It's interesting that in the milk industry there are some suppliers who have a business model where exports is their alternative. At the end of the day the local purchaser cannot drive their price below the export parity price because their option is simply to export the residual. In some cases, for Australians - and the gas price - if I can go to another industry - in Western Australia is a classic example of this, which quite frankly some of your colleagues over there complained like hell about.

MR CUMMINGS (NARGA): Sure.

MR WEICKHARDT: The LNG industry provides the gas industry with an export alternative which is a far more attractive option than a domestic price. These things have a range of complex dynamics and, as Louise said, we're not in a position where we can analyse every nut and bolt in this inquiry.

MR CUMMINGS (NARGA): I understand that, and I accept that in the dairy sector - we put forward that the dairy sector is just the tip of the iceberg, the unintended consequences of the concentration of the market by Coles and Woolworths. Right? I'm not blaming them for that, I'm just saying these things are occurring. Your example is the milk industry having an export alternative. They don't have that alternative in Western Australia.

MR HENRICK (NARGA): Nor Queensland, nor New South Wales, it's only Victoria.

MR WEICKHARDT: That may be because of their relative lack of economics.

MR CUMMINGS (NARGA): Because there's no manufacturing going on in Western Australia any more. As that concentration of market has occurred the manufacturing has concentrated further down, so we don't have - - -

MR WEICKHARDT: Because that's where the lowest cost suppliers are.

MR CUMMINGS (NARGA): Well, I'm not too sure that that was the case but, I mean, the reason why Peters and Brown closed down their ice-cream factory wasn't because it wasn't making money, it was because it was bought by Fonterra who decided to do it in a different way. I'm not too sure that is the case in every instance, but what does happen - and that's one of the consequences of this - is it changes the landscape of retailing. It then changes what consumers can have. It's not overly dramatic to say this, but it is not beyond all realms of possibility that places like parts of Queensland and Western Australia will not have the availability of fresh drinking milk.

MR WEICKHARDT: I was intrigued from a personal experience, having left Australia in April to go to the United States this year - with the milk debate in full battle - to go to Wyoming, which I wouldn't have thought was the centre of a fantastic dairy industry, given their climate there, and to buy a US gallon of milk for 79 cents at the supermarket. Despite price discrimination apparently in the US, milk prices have dipped down a fair way there.

MR CUMMINGS (NARGA): Again, if you look at the supply of milk in Australia - and I don't know the sums there - you've got a situation where out of the available gross margin - before this $2 stuff occurred - the retailer was taking about 80 per cent of the available gross profit. The processor was taking about 16 per cent and the farmer was getting about 4 per cent. The pressure has gone down to the weakest link in the whole chain, who's the poor farmer who's getting it in the neck time and time again. Whether we like it or not, I don't think we'll be canning tomatoes in this country for much longer. Coca-Cola have basically said, "That's it." If people think that's a great idea - - -

MS SYLVAN: Not to belittle your point, but we don't make microwaves here any more either.

MR CUMMINGS (NARGA): Hopefully we'll get to a stage - - -

MS SYLVAN: I mean, these things evolve over time, and some come back.

MR CUMMINGS (NARGA): - - - where we just mine stuff and send it overseas and bring everything back in, and we can all sit at home and do nothing. If that's what we want, let's do it, let's get there quicker. Drive every small business person out of - - -

MR WEICKHARDT: I don't think any of us want to sit around and have our employees and workforce sit around, but the economy at the moment, despite the changes that have gone on, and there are significant changes that have gone on already in manufacturing and in other parts of the sector and other parts of Australian industry, despite that we've still got a fairly fully employed industry. This is because there is adaption and migration of labour to places where it can add most value.

MR CUMMINGS (NARGA): There is a very, very strong small business componentry in that employment point of view and, you know, I would rebuke some other comments that I've heard being made. Small independently-owned businesses, like ourselves, we train our own people, we train our own staff. The experience is that a young kid who comes to work for us in our supermarket, they learn a work ethic from myself and my wife and from our senior staff. They don't learn it from a textbook or a piece of paper that's given to them. I can assure you our experience is that every one of those kids when they go to university, if they go and apply for a job at Coles or Woolworths and they say, "I worked IGA Duncraig," they go, "Not a problem. We don't have to train you, you're in." That's the way small business works.

In the global downturn - as I have said to state governments and to federal governments - none of our colleagues put off staff. We all kept people working on there because they tend to be our family. They are not numbers, they're actually people that we know. People don't seem to understand that the kids that I employ I drink beer with their grandfathers on a Friday night. I'm not there to beat them down in wages and treat them in any other different way. I think that's one of the resiliences. Small business has actually been the driving force of this economy. Some of those figures - if you go back to before the global financial crisis when Australia's economy tipped over 1.3 trillion dollars, or 1.1. trillion dollars, at that time you had funds under management with superannuation sitting at about 1.3 trillion. You had the stock exchange sitting at about 1.4 trillion, and you had a family-owned enterprise worth about $4.5 trillion.

MS SYLVAN: Can I come to a point that I meant to come to earlier, which was your wholesale and purchasing. You said there were really effectively three suppliers at the moment, in the sense that you could buy from a small grocery retailer which was Woolworths, Coles or Metcash. In practice it's Metcash that one would need to buy from. I don't know how open Coles and Woolies are to - - -

MR CUMMINGS (NARGA): But you can, under - - -

MS SYLVAN: You can buy from anywhere, if you choose to. Your contractual arrangements aren't prohibitive?

MR CUMMINGS (NARGA): In the liquor industry - and there would be some small grocery retailers who would perhaps go to Coles and Woolworths and buy Coke on a special price at below cost as to what's - - -

MS SYLVAN: When they've got a loss leader in the market, yes.

MR CUMMINGS (NARGA): Yes.

MS SYLVAN: So you're free to do that. There's no prohibition in your supply contract that prevents you from getting a price if you can do it?

MR CUMMINGS (NARGA): There is no - absolutely. The way it works now is in the grocery game, if I wanted to deal with Kellogg's, Kellogg's would say, yes, they would supply me but I would have to buy a pantech full of one variety.

MS SYLVAN: Which is the issue. Can I ask whether any of your members - some are reasonably sizeable, some less sizeable - have any of them looked at parallel importing?

MR CUMMINGS (NARGA): Sure. People look at that all of the time.

MS SYLVAN: Is that happening?

MR CUMMINGS (NARGA): Yes, there are a number. In Western Australia, you've got Manassen Foods, you've got Worldwide Foods, a number of small wholesalers who parallel import. Some of them bring in Nescafe out of Indonesia; others bring in Jacob biscuits from England. We actually have one importer over there who brings in Tesco home brand products, so you can actually buy some of the Tesco - because Tesco is nearly a brand as well as a home brand in the UK. So a lot of importers like that, Manassen Foods.

MS SYLVAN: Do you see that as minor or is it something that's growing, given the new - - -

MR CUMMINGS (NARGA): In our business - and we can each do it individually - I would buy about 45 per cent of what we sell from a Metcash warehouse. The right of it I would buy from local suppliers. Some may choose to buy more from that warehouse. In that, I'll give you an example, is cigarettes. I could actually buy cigarettes from the tobacco companies at a slightly better price but I would have security issues, order issues, whatever, so I just put it in with the - - -

MS SYLVAN: So you have to handle it individually as opposed to handling it through - so there's a trade-off that you choose.

MR CUMMINGS (NARGA): Absolutely. So because we night fill, it's easier to get all your groceries in in one delivery, so you get 20 pallets of groceries in, get your team in, throw it all up on the shelf, do it. If you're going to deal with 20 suppliers, you will have 20 deliveries through the day, you've got to put them somewhere, then correlate that to get it together for the night-fill people, so your efficiencies are being lost all the way down the track.

MR WEICKHARDT: Can you talk to me a bit about the Arnotts example you gave.

MR CUMMINGS (NARGA): Sure.

MR WEICKHARDT: Arnotts will only supply Coles, Woolworths and Metcash. Is that correct?

MR CUMMINGS (NARGA): Yes. Arnotts have a route trade and this is the way it works.

MR WEICKHARDT: A what trade?

MR CUMMINGS (NARGA): A route trade, so they had their own trucks on the road. When Arnotts were manufacturing in Western Australia, they had a factory down in Fremantle, they would have their own trucks. They would deliver the biscuits on their own trucks to Coles, Woolworths and independent stores like our own. Then Coles and Woolworths said, "No, we want a better deal, we want this, we want that," so they forced them to go into their warehouse. When that occurred, it made running their trucks less efficient.

MS SYLVAN: They got rid of them.

MR CUMMINGS (NARGA): Then they started to charge us to deliver the same product; whereas Coles and Woolworths were getting an FIS price, we were getting the same price but then a 5 per cent surcharge.

MS SYLVAN: For delivery.

MR CUMMINGS (NARGA): On Arnotts biscuits that you make at 9 per cent GP, a 5 per cent surcharge was just unacceptable, so that forced it to go into the Metcash warehouse and the forces come from there. Coca-Cola did exactly the same thing. Smith's Chips haven't done it but they're about to do it. They've done it in Tasmania, they've done it in Victoria, but they haven't done it in Western Australia yet. So again, we're all looking for the most efficient way to get the products to our shelves, and that's all legitimate sort of stuff, there's no problems there. We get back to the anticompetitive price discrimination; it's only when the like terms aren't being applied for it.

I'll give an example. The best example is in the liquor trade, where in New South Wales, because of the market - historically, the independent sector has actually got the second highest percentage of the packaged liquor market in New South Wales, so it's Woolworths, number 1; the independent sector, number 2; Coles, number 3. The brewery did a deal with Coles and Woolworths where they said, "No, don't deliver to us, we'll call past and we'll pick up a truckload of beer but we want this price to do that." So the breweries did it. Then the independent supplier in the middle found out about this, went to the brewery and said, "We want the same price. We'll send our truck around, we'll pick it up." They said, "No, we can't afford to do that. We can only afford to give that price to those two. We can't afford to give it to you as well." That was put forward to the ACCC and the ACCC said, "Nothing we can do about it, fair cop." I just don't think it is.

MR VAN RIJSWIJK: This is where the law says, "Like terms for like trade." If you're negotiating an equivalent deal, then you should get an equivalent price. That's what it's all about. If you look in detail at US law, the US law clearly allows discounts, but you can't discount to a level where the discount doesn't reflect real savings within the entity that's doing the trade. So the discounts go deeper than what the savings are in relation to that deal.

MR CUMMINGS (NARGA):   A prime example of that is the supply of electricity. I've taken that up with the minister for energy in Western Australia. I've taken it up with the premier. They have said, "There couldn't be that difference." I said, "Well, here it is. Here is the difference." They said, "But you can't justify that." I said, "I know you can't justify that."

MR WEICKHARDT: How do you have that evidence?

MR CUMMINGS (NARGA):   Look, I got it from a mate of a mate who works with the supplier who quoted for Coles business. Government can find that out. How can you justify it? In today's environment, how can you justify charging somebody 20 to 25 per cent more for electricity that comes from exactly the same plant, goes down exactly the same wires, delivered in exactly the same way? Maybe there's a difference of 4 per cent because you centrally bill it or 3 per cent or whatever, but it's not 20 or 25 per cent.

MR WEICKHARDT: It does seem like a very big number to me. I've bought a fair bit of electricity in my life.

MR CUMMINGS (NARGA):   We have actually seen a situation in New South Wales where two service stations, they were franchised service stations, exactly the same size, pulling exactly the same power from exactly the same supplier - a 30 per cent difference in cost. The only answer of why they're charging that would be because they can get away with it.

MS SYLVAN: Or they actually selected different plans potentially. In the consumer markets that are completely deregulated in the UK, people pay very differential prices because of plans - - -

MR CUMMINGS (NARGA): Is that what we want?

MS SYLVAN: It's like telecommunications, I get my service for 10, somebody else is paying 50 for it and it's the same service.

MR CUMMINGS (NARGA): That's fine. So if we want a society - and that's what I've said to the Western Australia government. If we want a situation where in Nedlands you turn on every light, you use a heap of power, you pay less than the pensioner in Mirrabooka, fine, do it.

MR WEICKHARDT: What response did you get?

MR CUMMINGS (NARGA): They didn't think it was a very good idea at the time.

MR WEICKHARDT: Okay. We've spent a fair bit of time on that issue. There are a few others you've raised in your submission. Do you want to talk about any of those?

MR CUMMINGS (NARGA): Yes.

MR WEICKHARDT: Okay.

MR CUMMINGS (NARGA): The labour - Fair Work Australia - is definitely an issue with us. We just see this getting more and more confusing. There are a number of small retailers, not just in our sector but probably smaller, who quite honestly do not know correct rates of pay to be paid at the moment and those variations, when you've got an EBA, to what it is, I mean, you have got the situation - which is what we said to government at the time - where you will have a country town somewhere, be it New South Wales, Western Australia or somewhere, perhaps a pair of twins living in one house, one goes and works on a Sunday at an independent retailer, another one goes and works at Coles and they have this difference of rate of pay for doing exactly the same job.

MR WEICKHARDT: Of course that will only apply whilst that EBA is still in force.

MR CUMMINGS (NARGA): Will the EBAs be re-signed? I mean, I understand Fair Work Australia have actually redone EBAs. We actually did an EBA - this is where Fair Work Australia is awfully hard to understand. I'll go back one step. In my workings with industrial relations, I've learnt to live by one rule: whenever you get into negotiations, you get a big piece of paper, you write the word "logic" on it, you put it into the centre of the table. You all look at it. You then rip it up and you never refer to it again because it just went out the window. We did an EBA - - -

MS SYLVAN: He's laughing in sympathy, I think.

MR CUMMINGS (NARGA): You've experienced it. We did an EBA with the union, and I get on very well with the union, no problems, and I did that because I wanted a third party to set a rate of pay. We did that. The union sent off for ourselves and for another business in Western Australia, two days apart, exactly the same EBAs. One got passed and the other one got knocked back.

MR WEICKHARDT: The EBAs typically have a two or three-year currency and they come up for renegotiation and the renegotiated version, I guess, based on the submissions we received in the first round, as a number of the large retailers pointed out, the implication of the new FWA penalty rates was going to see a very significant increase in their rates. So I'm simply making the assumption - I don't know that for sure - those new EBAs will reflect the new FWA penalty rates in due course.

MR CUMMINGS (NARGA): I don't share that view.

MR WEICKHARDT: We will check that out.

MR CUMMINGS (NARGA): I still think you will find that the union will be happy to do deals with some of those big employers.

MR WEICKHARDT: I guess the - - -

MR CUMMINGS (NARGA): Sorry to interrupt but I just point back to the fact that they fought and went against employing schoolkids for two hours after school when they've got it in EBAs they've signed. The hypocrisy is breathtaking.

MR WEICKHARDT: Certainly the points that were made by the ACTU and the SDA in the Melbourne hearings suggested that they are looking to try and ensure that those new conditions are in place all round Australia and, of course, the short-term employment issue is under appeal to FWA at the moment so - - -

MR CUMMINGS (NARGA): It still applies to Coles and Woolies and I bet you it's reintroduced in their new EBA.

MR WEICKHARDT: So your point of view, apart from that differential and apart from the point about trying to find how much you should be paying employees and, of course, our recommendation 10.1 was an attempt to address that. I don't know whether you feel that was a sensible recommendation.

MR CUMMINGS (NARGA): Yes, indeed.

MR WEICKHARDT: In terms of the other recommendation we've made in 10.2 about the review of the act and also the award, do you feel that that addresses the issues that you're concerned about?

MR CUMMINGS (NARGA): Yes, indeed. I think it needs to be looked at again and we need to understand that it's not working in a lot of areas, that it's caused confusion, that it hasn't - - -

MR WEICKHARDT: Apart from rates of pay and differentials, are there other areas where you're finding it difficult to get the sort of productivity improvements that you would be looking for or the working environment that you're looking for?

MR CUMMINGS (NARGA): What tends to happen in retailing from a productivity point of view - and in small business you tend to lag behind, so every time you have an increase in pay your wages go up and the over a period of time you get it back down to what it is. So in our sector, in the independent grocery sector, we would all try to run our businesses at below 10 per cent of wage cost. My own experience is that we went up to about 12 per cent and then through attrition, not replacing some casual shifts, not replacing all of your night-fill staff to get the numbers back in line, you tend to bring it back down over a period of time to that period. I don't think any small business person views it in the words of productivity. I think they see it more as a cost of business.

You know, you try and keep your overheads to a certain level that are industry norm, you'd find that most clothing boutiques or sports stores - which I've had some experience in - would have occupancy costs of around 10 to 15 per cent and they have a wage cost of somewhere around 18 to 20 per cent. Whereas in our sector we have an occupancy cost of somewhere around 3 per cent and a wage per cent of somewhere around 10 per cent and that's more reflective of the margin that we work with than anything else.

MR WEICKHARDT: In terms of, I guess, if you're paying individual people at a higher rate and yet containing that overall wage cost to revenue ratio that would be, in most people's language, a productivity improvement.

MR CUMMINGS (NARGA): Sure.

MR WEICKHARDT: In those circumstances are you finding any difficulty in achieving those targets under the new act?

MR CUMMINGS (NARGA): Some stores still are very much finding it document and there's not a lot of room to restructure in a lot of instances. So if you're a small business and you've employed a lot of full-time people, you've now got extremely expensive redundancy rates that never applied before. You've still got - which I still find fascinating - the wrongful dismissal things and it's not actually - nobody wrongfully dismisses. In small businesses you don't actually wrongfully dismiss somebody. Nobody thinks it's a good idea to go in and say, "You're sacked because I don't like the colour of your hair or your tie or something like that." But when you do make that decision to dismiss somebody, you find that everybody is against you.

Fair Work Australia go into reconciliation on wrongful dismissals with one objective, to get something for the employee and they openly up-front will say, "This is all about giving him an extra two, three, four, five weeks or whatever we can get out of you for him." So it comes back to that terrible term which is, "Piss off, mate," and that's what people object to.

MR WEICKHARDT: The provisions are there to safeguard employees rights and there are examples of employees who have been terribly mistreated, just as there are cases of employers who have probably been made to pay out "go away money" on grounds that are a bit dubious, so there are extremes.

MR CUMMINGS (NARGA): Sure, and I take that on board. A couple of things as a retailer firstly, I don't like being categorised as a ratbag employer and person who doesn't pay tax. But I accept that there are retailers who are ratbag employers and some who don't pay tax. I understand that. But it doesn't mean we all have to be tarred with the same brush in that regard. We have actually had a situation in Western Australia where a butcher was caught by the police stealing product, quite substantial amounts, was charged by the police, was in front of the courts and went for a wrongful dismissal - the guy lost his chewy and sacked him on the spot - the guy went for wrongful dismissal and they agreed with him and in the end he got convicted for stealing. I don't quite get that one.

MR WEICKHARDT: No, I accept, on the evidence you've just presented, that sounds a bit bizarre. Any other suggestions – if you were sitting on the review panel of the Fair Work Act or the award and you were all-wise and appropriately fair to all parties – what things would you want to see changed in either the award on in terms of the act. And, as I say, on the basis of being fair and equitable to all parties, what would you like to see changed?

MR CUMMINGS (NARGA): I would like to see a situation where every retailer is paying the same amount and that works in some markets. If you take a butcher as an example, butchers are covered under the Fair Work Act and I think the rate is 650 or 670, I forget what it is. But the reality is you can't employ a butcher for less than $850, so you pay $850. That's the market determining that. But we've got this situation, as I said, where you've got pegs all over the hill as to what rates of pay are as to what people should get and nobody quite knows what it's all about.

MR WEICKHARDT: Part of that, you're saying, is an interpretation and finding your way through the award.

MR CUMMINGS (NARGA): They're EBAs. I can't see why if somebody thought it was a good idea that retail should pay that amount of dollars per week, everybody should pay that amount of dollars per week if they want to pay it.

MR WEICKHARDT: I'm not sure I buy that entirely. If I walk down the road here and there's a shop that's got a sign Grocer which, if you haven't been to, you should go there.

MR CUMMINGS (NARGA): I've been to the Grocer, yes. Owned by Woolworths.

MR WEICKHARDT: I would be surprised if it was owned by Woolworths. It might be but let me say, it's not selling on price, it's selling on variety and it's a somewhat eclectic sort of design. I would guess that the staff there are different to the sort of staff that you mind find in some other shops of the same sort of size. It would seem to me entirely appropriate that the owner of that store did a deal with their staff to pay them on the basis of the sorts of service and sorts of knowledge and skills they wanted.

MR CUMMINGS (NARGA): You misunderstood what I said. I meant that the base floor should be the same. You can still pay people more. You're allowed to do that and you would pay people more, so that would still occur. But you don't get the situation where you have a person standing behind a till who is taking money, operating an electric cash register and saying, "Have a nice day, sir," and the difference is 42 bucks to 28 bucks, depending on the brand of the store. That's the situation that hasn't been addressed. What I could not understand, if Fair Work Australia was going to come in and it was going to raise the price - do all those things that Fair Work Australia was going to do - why did they allow the EBAs to still continue on?

MR WEICKHARDT: I'm not sure I can answer that question, except to presume - and it is a presumption - that part of this is a sort of phasing in, a transition. We will look at the examples you've quoted and try and understand it, but the FWA has only been in place for two years and EBAs sometimes run for at least three and we're certainly seeing in some other industries the phase-out of a whole range of individual agreements and things like that. To expect that there could be transition problems would not be an unusual situation.

MR CUMMINGS (NARGA): Sure. It gets back to the electricity argument. I'm not here saying I expect to pay the same price for electricity that Coles do, but it wouldn't hurt me if they paid the same price that I did.

MS SYLVAN: Could we move to trading hours. Your position I thought I was a little ambiguous.

MR CUMMINGS (NARGA): Okay. Again it comes back to - in the trading hours in Western Australia, as an example, the government of the day has already announced what their next move on trading hours will be and they acknowledge that there needs to be some restriction. The reason that they acknowledge that is that they do recognise that there is some degree of unlevel playing field in relation to occupancy costs, in regard to occupancy costs, in regard to rates of pay for staff, the cost of doing business et cetera et cetera with the majors, and that the majors do see it as a way of upping their market share and they're happy to phase that in, phase in the change to trading hours to give small business time to adjust to it and to hopefully see that more level playing field.

Quite frankly, if you were a small retailer and you were paying the same rates of pay as the large retailer down the road, the same for electricity, had the same import costs, it would be difficult to argue that trading hours shouldn't be more lenient, less regulated et cetera. If you go back to South Australia, I think it was the Moss report, he clearly came to the conclusion that any further relaxation of trading hours in South Australia would see a market shift from small business to big business, and that was what it was about. There wasn't any economic benefit to it, there was no extra economic activity. People who say it's lower prices - I mean, I don't get that. Just because David Jones open on a Sunday, do they drop the price of ties on a Sunday? The tie is the same price, whether you buy it on Monday, Tuesday, Wednesday or Thursday. Prices don't alter on what day the people are open.

MS SYLVAN: So basically you're saying deregulated hours from your point of view is fine but there needs to be a transition for the adjustment.

MR CUMMINGS (NARGA): It needs to be back to that more level playing field so that we've all got - I think it's okay in theory, what I'm saying there. The way I read that was in a market where everybody is equal, there should not be a regulation of trading hours. Well, that's fine. What do we do? Do we deregulate trading hours, then try and make the market equal or do we make the market equal and then deregulate trading hours or do we only do one of them and not the other? I think there was some recognition that there needed to be work done on occupancy costs on leases, on how all that works, and there needs to be something done on wage costs.

MS SYLVAN: Moving to planning, where I got the same kind of almost chicken and egg issue that you were raising, I would have thought it's quite clear that some of the issues arise because of the lack of availability of sites and if you do have somebody who is negotiating a whole lot of major sites and in a sense with a lot of clout, the more availability there is, the easier it is for somebody who's not big with a lot of clout to negotiate space et cetera. If we take the new entrant, Aldi, they're quite clear that they're having difficulty moving as fast as they want to. We're told they're actually moving quite fast in Australia but it's still not at the pace that they need to justify their big distribution centres. So I was a little bit surprised that we didn't get from you sort of a bit more on the planning, particularly from the small business perspective where I think this is a major impediment to their success.

MR CUMMINGS (NARGA): Yes. From our point of view and from our members' point of view, it's fairly difficult to get a handle on. We are doing a lot of work on it behind the scenes. The Master Grocers Association has just commissioned Deloittes to look at the whole planning issue, as to what that all means. One of the reasons why it tends not to be a huge issue for our membership is that most of us would have 20 to 30-year leases on our premises, so they're a once or twice in a lifetime thing that occurs with your lease. On greenfield sites, nowadays especially in the larger ones, probably Metcash or one of the wholesalers needs to be involved in some of those areas as well or it's left up to the larger groups of independents to do it. Those larger groups of independents tend to have their own expertise in property management and things like that.

But we take on board the two sides of it; firstly, you don't want to inhibit any growth in any areas, but secondly, I think planning has to take into account commercial areas and especially in country towns. There's been a lot of country towns where an inappropriate shopping centre has been built that's killed the centre of the town off. An example in Western Australia is the city of Albany. If you've ever been there, York Street has got one of the prettiest streets in Australia to actually shop in but they killed off downtown by building an inappropriate centre out of town and it's taken years for it to come back.

MR WEICKHARDT: I assume that's because the out-of-town centre was more attractive to consumers than the one in town.

MR CUMMINGS (NARGA): It probably was because Coles or Woolworths went in there at a better deal than it could get in town, so it dragged the people away.

MS SYLVAN: Usually parking is easier and a number of things as well that impact on it.

MR CUMMINGS (NARGA): There's plenty of parking.

MS SYLVAN: I don't know the town, so - - -

MR CUMMINGS (NARGA): Yes. I just make that comment. The government have just built some bloody huge entertainment centre in Albany for millions of dollars to try and draw people back down into that area away from where it's all gone.

MR van RIJSWIJK: I think the planning issue is quite complex. We address it from the point of view of a leap back to competition. The difficulty we have with Planning Australia - and it was brought out by the UK Competition Commission's report into their supermarket sector; they found two problems within local areas because at the end of the day, grocery competition is local, regardless of what the bigger structure is. The first problem is that it was often difficult to get a competing entity in the area because of land bank. They addressed the land banking issue by working out who has what land and asking entities that had land banked to dispose of sites so that others could enter.

We have land banking in Australia as well but not to the same extent; in terms of vacant land, although there is some of that, it keeps out competition. But our land banking has more to do with alternative brands, so Woolworths may stop a supermarket developing in competition with it by putting a Dan Murphy's into a site that could have a supermarket or one of their other formats in that site. If you look at shopping centres around Australia, you will see quite a lot of the sites that could support a supermarket competing with a major being occupied in that sense. So that's land banking Australian style. Now, that kind of problem will be fixed by freeing up the availability of space and making more space available, unless of course spaces are also taken up by similar sorts of entities.

It points to another problem within the system, where the competition people looked at the profit margins of Coles and Woolworths and said, "Look, their profit margins aren't excessive and therefore competition must be working." The profit margin is enough to keep the shareholders happy, but a lower profit margin masks a whole range of activities within those two giants where they are continually growing and establishing formats, doing just what I said, taking up the spaces that are available which compete with their major business which is the supermarket business.

MR WEICKHARDT: So you suggest they're throwing money away?

MR van RIJSKIJK (NARGA): No, not at all but there are a lot of their stores which are operating sub-optimally. There are some stores that are not making the margin that a good store would make, or some stores are not making a margin at all. Only when you're as large as they are can you afford to do that. This is why size and concentration are a specific issue. The other thing that the UK commission came up with is the need for competition at the local level. What we're seeing in Australia quite often is that when space does become available in a centre, one of the majors will take up that space. We heard yesterday that Hurstville is one of the councils that has a competition clause in their planning regime.

We find it surprising that with that competition clause in place that Coles, having a major supermarket in the Westfield centre, was they were talking - to buy the space across the road and build another Coles store within the same shopping centre. So the competition clause isn't working. What the UK Competition Commission said, "Sure, stores can expand and stores can have other sites within a local community but there needs to be a mechanism which ensures that local community has the space for a competitive entry. What they have proposed is a floor space ratio test which says that a store cannot expand to take up more than 60 per cent of the grocery space within a particular community. That leaves the other 40 per cent for competitive entry.

Where you're talking about a contestability theory, you're always talking about, "Hey, a competitive entry can always come in." Under our regime it's very difficult; not only from a space availability perspective but because of the capacity of the larger players that take up the space that's available. Unless there's some sort of mechanism that ensures that the space that does become available is made available to a competitive entrant, that problem won't be solved.

MS SYLVAN: I take it that you support the Canberra prohibition?

MR van RIJSKIJK (NARGA): From our last inquiry that's not working as well. That is not being kept - Ken could talk about it more.

MR HENRICK (NARGA): Yes. When Mr Stanhope was the chief minister he accepted all of the recommendations of the Martin report. That included, effectively, not allowing Woolworths and Coles to acquire sites until the market had become more balanced. Woolworths and Coles are being given leases anyway since Mr Stanhope stepped down from the chief minister's job. There are issues running like this all around Australia. The market power of the big chains allows them to do things that small business simply can't do, but the effect of that is often anti-competitive.

Let me give you an example that occurred recently. Woolworths wanted to build a shopping centre at Youngtown on the fringe of Launceston. It's about 10 minutes from the CBD and five minutes from the next nearest shopping centre, Kings Meadows. That was to include a large Big W, about 5000 square metres, from memory; a supermarket; two mini majors, which I took to be, say, a Dick Smith and a Dan Murphy's, and about 23 specialty stores. That business was going to take $80 million a year out of the local market. That would have crushed a lot of the small businesses in the CBD and a lot of the small businesses at Kings Meadow. In the end, Launceston City Council was wise enough to get in a consultant to analyse the situation for them, and he recommended against the development.

He recommended that Woolworths be encouraged to build the Big W- there is no Big W in that region - adjacent to the existing Woolworths supermarket at Kings Meadow. That's what the council has decided to go with. It's up to Woolworths whether they accept the offer but that's the direction. There will be very limited damage to all of those other businesses that would have been affected otherwise. These are businesses that have paid taxes and employed people and paid rates and been good corporate citizens for many, many years, and could be forced out of the market.

MR WEICKHARDT: But that's what competition is about.

MR HENRICK (NARGA): Yes. Well, if that's competition then, you know, really - - -

MR WEICKHARDT: It doesn't mean to say the good guys always win.

MR van RIJSKIJK (NARGA): You get to the stage where you have a competition without competitors. The formula doesn't work. You can't have competition without competitors.

MR HENRICK (NARGA): I've put that proposition to Mr Samuel on a number of occasions: "Please demonstrate how having fewer competitors improves competition."

MR WEICKHARDT: I've lived in an industry that had a very high market share and every orifice of the universe used to pour out chemical products when we nudged our price by 1 per cent. So there are markets that have very high concentrations.

MR van RIJSKIJK (NARGA): You had import competition.

MR WEICKHARDT: Yes.

MR van RIJSKIJK (NARGA): You can't have that in a supermarket.

MR WEICKHARDT: No, I understand that. But you're saying, "Give me an example." There are examples of very concentrated markets with huge levels of contestability.

MR CUMMINGS (NARGA): Yes, and I think there's examples the other way as well, would be the only point. It's not a one size fits all.

MR WEICKHARDT: That's the reason why when we were thinking about this issue, we were very concerned about local councils attempting to make decisions on these issues. They're very complicated issues. You've got to consider local issues.

Local issues don't stop at council boundaries. You've got to have a level of sophistication and knowledge to really understand these issues. I don't think any councils and, with respect, most consultants, are well equipped to be able to rule on these things. I'm not suggesting that the ACCC shouldn't be very mindful of these things at all, but I don't think it's the role of the local council to do this.

MR CUMMINGS (NARGA): Absolutely. Let me give you another example about big business versus small business, local communities and how communities work. As we know Coles and Woolworths have gone into the pub business in an absolutely huge way. They nearly own every pub in Western Australia. The local tavern that I go to that is just in Duncraig, a normal suburban area, owned by Coles - not doing it all that well - they now have a skimpy day on Thursday where they black out all the windows so that naked girls can run around inside the pub for all the tradies which is great in a local neighbourhood. I wonder if Wesfarmers board of directors go down to the local pub for a pint, a perve and a punt after they have had their board meeting. Now, is that really what Coles want to do to pubs in suburban Australia? Well, they've done it.

We had that situation where Woolworths had a pub in Victoria where they had a creche and they put a glass wall up so that the little kiddies could see mum and dad playing the pokies when they were playing in the creche. I mean, pubs have turned into drug areas because it's not the publican who's there, it's just some manager who doesn't care. Those things are happening right now, and that's a consequence of market concentration of big business. It's a societal thing that as a society I think we need to address.

MR WEICKHARDT: I'm not trying to condone any of that behaviour and I'm not sure that it's directly related to market size though, but anyway we'll let you make your points on those issues separately.

MS SYLVAN: Just one last item. You talked about creeping acquisitions, which is part of your market concentration argument. I think I detected that you wanted Coles and Woolworths prohibited from acquiring.

MR van RIJSKIJK (NARGA): No. I mean, there's legislation going to parliament as we speak which, as a result of quite a lot of effort, makes changes to section 50 of the act which will now require the ACCC to look at all markets, including local markets. It makes it quite specific. Now, with that amendment there's then the potential for ACCC to look at acquisitions within localities, even new site acquisitions or new leases which will, to some extent, address these competition issues.

MS SYLVAN: Presumably we'll be looking at a set of acquisitions which is the issue?

MR van RIJSKIJK (NARGA): No, individual ones.

MR HENRICK (NARGA): Creeping acquisitions.

MR van RIJSKIJK (NARGA): One by one.

MS SYLVAN: But the creeping acquisition issue is that when you're looking at a single acquisition, if somebody has already got 80 per cent of market the addition of an additional store means nothing because there are, to give you an example: the creeping is that you can look backwards and actually look at the acquisitions over time to see where you've got to in the market.

MR van RIJSKIJK (NARGA): That mechanism has not been put into the act, the ability to look backwards. But what has been put into the act is a need to apply section 50 at the local level, rather than to say, "Well, they've got 80 per cent of the market, so what's an extra half a per cent?" So the ACCC under the new section 50 will look at the local market as well as regional, state, territory and national markets. That provides a level of protection which means that even incremental increases in market share can be looked at.

MS SYLVAN: So from your perspective the creeping acquisitions issue is dealt with by this - - -

MR van RIJSKIJK (NARGA): The only gap in that system is that, unlike almost every other jurisdiction worldwide, we still don't have a notification requirement. The only way the ACCC actually finds out what's going on within a local market is by accident or if somebody tumbles to the fact that a new site has been acquired or a new lease has been signed and then triggers a review. Without a notification requirement there's still a gap.

MR HENRICK (NARGA): That amendment has been through the House of Representatives and it could be in the Senate this week.

MR WEICKHARDT: Okay. On your market share issue, I guess we'll wait for the Federal Court to opine on that very issue because more learned people than myself are thinking deeply about those sort of issues.

MR HENRICK (NARGA): Sure.

MR WEICKHARDT: Okay. Thank you very much indeed for your submission. Thank you for coming so far to talk to us.

MR HENRICK (NARGA): Pleasure.

MR WEICKHARDT: We appreciate your first-hand experience and knowledge of the industry.

MR CUMMINGS (NARGA): Thank you.

MR van RIJSKIJK (NARGA): Thank you.

MR WEICKHARDT: We're going to adjourn now and we're going to resume as soon as the next people are here after lunch.

(Luncheon adjournment)

MR WEICKHARDT: We'll resume the hearings now. Our first participant after lunch is Frontline Hobbies. If you could give your name and your capacity in which you're appearing, please.

MR SCOTT (FH): Certainly. I've prepared a small opening statement which explains that, if I could start with that.

MR WEICKHARDT: If you just give your name for the transcript and the capacity in which you're appearing, please.

MR SCOTT (FH): My name is Colin Scott. I'm the owner of Frontline Hobbies which is a retail store. I also own Hobbies Australia which is a hobby import distribution business. I'd also like to represent the Australian Toy Association. I'm a director and board member of that. I'm also a director and board member of the Australian Retailers Association and vice-president.

MR WEICKHARDT: Thank you. Thank you for your submissions. We've read those and thank you for putting those in. If you'd like to outline the points you wish to cover, that would be good.

MR SCOTT (FH): Certainly. As a medium enterprise business owner, I'd like to present the case for lowering the threshold, the low import value threshold of $1000. I'm a firm believer in facts and have drawn my examples from the commission's own draft report and from the Australian Customs financial report which I have to hand.

The main point I would try to get across to you is the fact that the quote from your own draft report says if the threshold were lowered, costs of collection would exceed tax revenue by over 3 to 1. Well, my figures totally are in the opposite direction to that. I have again drawn from your own figures which include the collection costs and the handling fees. The end result in my submission there shows $2.6 billion you can collect.

MR WEICKHARDT: I understand your arithmetic but some of those collections are costs; in other words, it's money you're collecting from consumers to cover costs.

MR SCOTT (FH): Of course.

MR WEICKHARDT: That contributes nothing to anyone, if you like. It compensates you for a cost that you incurred. It's not actually a net benefit to the community or to the taxpayer.

MR SCOTT (FH): Again I would like to dispute that and my reason for that is if it is a cost to the consumer bringing the product in, it would also be a partial deterrent for bringing product in under that threshold because the disadvantage is to the retailer at large. It just compounds. I'd just like to show you the example, that a person in the street can buy something online from the US or China. First of all, they do not pay any local domestic export tax; then they do not pay any Australian import tax. They do not pay Australian Customs duty or the handling charges and they do not adhere to the Charter of Australian Standards. So you add all that together, sir, and Australian retailers are behind about 40 to 50 per cent in competing because I, as a retailer and an importer, have to pay the import tax, the customs handling fees, the duty, and I have to adhere to the standards of Australia and it costs money to do that.

So we're talking about the same product costing the same from the manufacturer in China but the end result, getting it to the consumer, going through the Australian company procedures, is a far greater end result than if the man in the street buys it himself. Part of the problem of the average person bringing in product under the $1000 is that they do not comply with the Australian standards of safety. They can onsell these products through eBay, which they generally do, and they're not safe.

MS SYLVAN: Some of the products are safe. Let's just take your argument with that, the safety argument, which I think is a different issue entirely. I guess looking at it from an economy-wide point of view, not the protection of an industry or anything else, no industries have a right to exist, if your proposition is correct that the individual consumer can bring these things into the country, assuming that the standard is the same and it often is globally, they can bring it into the country at less cost than the retailer can bring it in, then it would be of benefit to the economy to make sure that happens because everybody would have more money to spend. There would be no retailers in the extreme case of that, and of course that would never happen, but you see my point.

MR SCOTT (FH): There would be no retailers.

MS SYLVAN: If we take even one particular industry and say it's clear that an individual person can actually bring in a product that might be completely equivalent - lots of the products are imported, there's no Australian standard - and if that is true, then that's obviously a set of businesses where we have no advantage at all in the global economy and we ought to be ought of it and we ought to be importing it individual if that's the cheapest way for us to do that.

MR SCOTT (FH): But they're only doing that because they can get away with the free GST and no - - -

MS SYLVAN: Even with the GST added at 10 per cent - - -

MR WEICKHARDT: We had a gentleman here from the snow sport business yesterday, who made some similar points to your own but then conceded that he had been in the United States only recently before then and had bought a pair of jeans which he quite liked for something like $30. He thought, "I'd like some more of those," when he came back, so he went to buy some. The cheapest price he could find was $180 in a store here. He found one I think for 200 and one for 180. He went back online. Surprisingly, he ended up at exactly the same store that he'd bought the first pair of jeans and I think he landed them in Australia for $50 or something of that sort. The GST would have made absolutely no difference to his decision to purchase. There was no safety risk. On that occasion, if - and this is a big if, of course - the supply chain were unable to cope with competing with that option, Australians are poorer if that person is not able to avail themselves of that much better proposition.

We are coming at this not from the point of view that the retail industry has a right to survive regardless, the retail industry has to earn its right. We accept your point about tax neutrality, don't accept your point about costs being part of the revenue, but accept the point that there should be tax neutrality. We think that the costs should be low as possible. But the retail sector does not have a right to say, "We, government, deserve to be here regardless of how efficient or inefficient we are, regardless of how well we serve our customers." The retail industry has to earn that right and that requires it to offer customer service and be efficient, to offer competitive prices and deals. That's our proposition.

MR SCOTT (FH):   I totally understand that, but the retailer, his end retail price point is governed by the importer. He can only mark up a certain amount that the importer tells him, "This is your cost price." That initial cost price is too high and it's too high mainly because of Australians' conditions and wages. Our average wage - - -

MR WEICKHARDT: Maybe. Maybe the intermediary, the Australian agent or the wholesaler or the subsidiary of the brand owner is getting an uncompetitive price themselves. Maybe some profit is being shifted somewhere else.

MR SCOTT (FH):   The Australian retailer cannot compete with the overseas market because of the double whammy on double taxes. The end user does not pay the American domestic tax or the Chinese domestic tax because it's - - -

MR WEICKHARDT: They pay income tax presumably in those countries.

MR SCOTT (FH):   No, it's coming out of their country, so they're not paying their local domestic tax. So that's one point. They're now doubling up with our own GST which is a double tax whammy they're getting, plus the customs duty. Australian retailers will never be able to absorb something like 25 per cent and be competitive. There is no way.

MR WEICKHARDT: Well, I think we've seen examples when we've done some sampling, shopping, there are some sectors where those price differences, even 25 per cent was large in comparison and there are some sectors where very big gaps, 60, 70, 80 per cent gaps occur. So it depends on the sector and the pricing in the sector.

MR SCOTT (FH): It's just not simply a matter of Australian retailers reducing their margins. They can't do that.

MR WEICKHARDT: No.

MR SCOTT (FH): It is totally a function of the price they pay for the product in the first place.

MR WEICKHARDT: But in some places they're not buying competitively.

MR SCOTT (FH): I'm a bit of a hybrid because I have a large import distribution business in the hobby industry and I supply 300 other stores and I know the costs of importing and warehousing and distribution. Try as I may, I cannot get the price down to my retailers to be competitive with retailers in the US.

MR WEICKHARDT: Is the price at which you buy lower - - -

MR SCOTT (FH): Is the same price - - -

MR WEICKHARDT: - - - than the sort of price that somebody can buy for online?

MR SCOTT (FH): The price I buy for, for my radio-controlled products out of China or Japan, is the same price that the US people buy for, but they have an average wage of $7.50. They can produce things and manage things a lot cheaper. They have no compulsory superannuation to pay. They have no compulsory workers compensation to pay. They have no sick leave built into their award. Our award system is so high, we're on nearly $17 an hour; I think America are from $7.50. So the cost of doing business, that's the impediment. So the average person buying out of the US is produced to the retailer at a cheaper price point. It's exported with none of their domestic tax, none of our domestic tax, and it goes on. So it's a minimum 25 per cent Australian retailers are behind the eight ball to the person bringing product in under the thousand dollars. That is the crux of the matter.

MR WEICKHARDT: We accept your argument about the tax. We're on the same page there and we've said that in our draft report. Our only point about the tax is that at the moment the process for collecting that tax is inefficient and that inefficiency is a dead-weight cost on the economy. It's not a good thing. The inefficiency in collecting the tax ought to be removed before the tax is lowered. Once that happens, then the sort of so-called level playing field will be level, but if local costs are too high, still, and people can still even with the GST and the appropriate duties applied buy more cheaply directly, then that's what's going to happen.

MR SCOTT (FH): The cost factor - this is the financial statement of Australian Customs - their total cost of staff, customs and border protection Australia-wide, is $318 million. It's not a great deal of money.

MS SYLVAN: Not at the moment, no.

MR SCOTT (FH): The collection fee that could be put on product coming in under $1000 at $48 a unit raises a billion dollars.

MS SYLVAN: Which has to be paid for in staff examining the parcels coming in.

MR SCOTT (FH): Which is paid for by the consumer.

MS SYLVAN: Let's say we do that. So we pay a billion dollars here, we have lots more bureaucrats which is what you're recommending, lots more people having jobs examining parcels coming into Australia. So collect a billion dollars from the consumer, pay a billion dollars out to more public servants - I mean, the point I think Commissioner Weickhardt is making is it's not exactly what you call a benefit to the economy.

MR SCOTT (FH): It is, because less people would then want to import under that thousand-dollar threshold because it would cost them a bit more to do that. People are buying overseas because of the price point. If they were told, "Okay, you can bring this product in but it may be delayed a week while we put it through the system," or even two weeks, they would accept that. The problem is the people buying these products are doing it because it's cheaper of course, because of what we've talked about, and it's a loss to the Australian economy. All that cash goes overseas and is lost forever. It is a drain on our economy. It would affect the balance of payments. In the customs report - - -

MS SYLVAN: Your products are being imported to begin with in your industry as I understand.

MR SCOTT (FH): Yes, but I'm paying all the taxes and the handling fees.

MR WEICKHARDT: The point that might be difficult for you and other people in the retail sector to accept is that if those people who are employed in the sector at the moment and have got money invested in the sector decided that this sector is not actually adding sufficient value to attract consumers to shop there, even after appropriate taxes are applied, then in the long run, people will take their money, their capital, their entrepreneurial knowledge and spirit and they will invest it in another sector that adds more value. In the long run, that's a good thing for the Australian economy. It might be very painful in the short term and we understand that, but the point is that under our act, we're asked to look at this from the whole Australian economy perspective, for the welfare of all Australians. Whilst you might see it's a benefit, that it's expensive for an individual consumer to have to buy overseas and pay all this inefficient cost, wait two weeks to get the delivery of things, actually that's not of benefit to Australians. To the consumer being able to buy more cost-effectively from overseas is a net benefit to that consumer. It means they can spend their money doing something else.

MR SCOTT (FH): That consumer would in effect be costing Australian jobs. The retail sector is the largest employer of people. Where are all the shop assistants going to go? What's going to happen to them?

MR WEICKHARDT: They will eventually go to other roles. People said this about manufacturing 20 years ago when tariffs were reduced. I was in the manufacturing sector at the time. The business I had shrank by three and a half thousand employees. It was very painful. Nobody enjoyed it, myself included, having to tell people that their jobs were redundant. But net-net, the world hasn't ended. Those employees have actually, after time, found new jobs in other industries and unemployment in Australia is comparatively low. We're perhaps blessed by having a whole lot of natural resources which are doing particularly well at the moment. Whether that continues to be the case, we don't know. But in the long run, the economy is better off if people are working and being paid high wages, and we are paid high wages in Australia. They're better off if they're in industries that are adding value rather than us trying to protect industries that aren't.

I suspect the retail industry will adjust. I know there are lots of people who say we'll all be doomed and ruined, but actually local retailers do add value in many cases. They provide service that customers want, and customers have told us they would prefer to shop locally, but there's a price point at which they say, "I'm sorry, it's too big."

MR SCOTT (FH): I do understand that, but why do we have a $1000 threshold in this country?

MR WEICKHARDT: We're not trying to defend the thousand-dollar threshold. We've already said the threshold should be reduced as low as possible. I think there's no reason why we shouldn't aspire to getting the threshold down to the sort of Canadian level of $20.

MR SCOTT (FH): Well, the Canadians, the US and the Brits are all virtually around the same price point and that seems to be the way to go. The second part about the importing under that threshold is the non-checking of the safety standards which is a major concern.

MR WEICKHARDT: In some product areas, we accept that that is a concern. But I think so far as we're able to see at the moment, apart from things that are just recognised by the ACCC as completely illegal imports, and there are some and customs work to prevent those things coming into the country, apart from those things, I think the only practical option is consumer education here. We just can't envisage a system, and we talked about this yesterday at the hearings, where customs opened every single product that comes into this country and inspects it and decides whether or not it complies with a standard, that it's equivalent to or superior to an Australian standard or not. So it is a case of caveat emptor here. The buyer has to be educated and in some cases, I think you can see already that the buyers are very cautious about what they buy from overseas. They understand there are risks and that's indeed why some of them choose to buy from Australian sites.

MR SCOTT (FH): Part of the ongoing problem with the whole issue of the $1000 is that the people supplying the goods in the first place or the people buying them, they're not telling the truth on the value of the product. They know they can get it in with no tax under a thousand, so they fudge the dollars. That is widespread and I would say that at least 50 per cent of the parcels coming in here are well over a thousand dollars.

MR WEICKHARDT: That's not the evidence that customs I guess arrived at, after having increased their level of surveillance. We are aware of the examples that have been quoted and no doubt, just as there are some people who evade paying income tax or who speed in their cars, there are some people who do exactly as you've described. But customs increased their level of surveillance and found remarkably low numbers of examples of undervaluation. They're quite alert to the areas. Indeed they're quite responsive. They say when people draw their attention to the fact that a particular product line is being imported or a particular web site is advertising, "Don't you worry about this, we'll just put $999 on," whatever, they take action and they increase the level of scrutiny in those sort of risk areas. They're conscious of the fact. But are there examples where people do the wrong thing? I'm sure there are.

MR SCOTT (FH): I understand that retailers have to tighten up, I do, but there's only so much they can do. I just don't see in the short term how it's going to get any better because by the time the report goes to government and government make up their mind, a lot more retailers will go to the wall because it's through all facets of retail that this thousand-dollar threshold is responsible for a lot of the retailer demise. The cosmetics industry, for example, you can get brand cosmetics overseas and a lot of the women in my life are aware of it and they can land it, packaged beautifully, for half the price point than in David Jones. It's not only cosmetics, it's fishing tackle, it's almost everything.

It's a problem that is just getting worse as more and more people tell each other about it. More product is coming in. Retailers are selling less product and it's hurting - well, it's hurting retailers for sure. It's hurting just about everybody who has a bricks and mortar store.

MS SYLVAN: Are there examples in your particular industry of people providing either bricks and clicks or simply an online business?

MR SCOTT (FH):   It's generally an online business, similar to my own in the US or China but they're operating expenses are infinitely - - -

MS SYLVAN: No-one in Australia is providing a different model?

MR SCOTT (FH):   They can't afford to.

MS SYLVAN: We might have thought too but we have had some wonderful examples of shoe stores online where I would have thought an online competitive bid was extremely difficult - - -

MR SCOTT (FH):   Is it Australian?

MS SYLVAN: Yes, absolutely, Shoes of Prey, if you want to have a look at it, a brilliant online site. There's a whole lot of others, just pure plays, as they're called, online, in areas that one would have predicted would be difficult. I thought in this industry in particular, given it has a certain potential interactivity which is quite important which lends itself to an online model for exchange - you know, people talking to each other and so on - I just wondered whether anyone - there mightn't be as many retailers but I wonder whether some are graduating to a different proposition to the consumer.

MR SCOTT (FH):   Are we talking businesses that do not have bricks and mortar, they're just purely online?

MS SYLVAN: Can have both. Most have both, as you know, in the world.

MR SCOTT (FH):   In my industry of hobbies, I import radio-controlled product. If I cut out selling to stores, retail stores, I could possibly do that and be competitive but the whole fabric of our community is the retailer. That's what we've all grown up with.

MS SYLVAN: I'm interested that you say that model - presumably if there's an opportunity there, somebody might just grab it.

MR SCOTT (FH): The problem in our industry is the brands. The manufacturers want a distributor to sell to other retailers. They don't want to do it themselves. In no way would the manufacturer of radio-controlled product, world brand names, want to sell to 300 individual store owners. They just wouldn't do that. They want one person to do that work for them.

MS SYLVAN: Speculate with me for a minute because I'd be interested in hearing what you say, given the industry you're describing. Let's say the GST tax neutrality is in place, so it's not going to be zero but let's say it's $25 for the sake of argument, so quite low. Australia Post, Customs, have got their costs down seriously, so there's no delays in the market, so people can still import. We still have many of the issues that you've raised. We have higher wages, we have potentially higher distribution costs.

MR SCOTT (FH): We certainly have the higher wages.

MS SYLVAN: So those problems aren't going to go away.

MR SCOTT (FH): No, but the Australian retailer would be able to compete on the world market, price-wise. If the double taxes were neutral and the customs duty and the handling fees, all of that, were neutral to a person bringing it on the street, there would be no advantage for it because they could buy the same product from an Australian retailer.

MS SYLVAN: Let's just look at that. We've looked at a variety of products on the market. Let's take your example of cosmetics. You have women in your family - - -

MR SCOTT (FH): I do, indeed.

MS SYLVAN: - - - and they go to, whatever it is, one of the global sites, and some of those prices are 150 per cent different. I don't know where your industry sits in terms of its global competitiveness with some of the other sites being offered because they have different advantages, whether those happen to be labour costs or whatever it is, but you can have good quality, excellent product at much, much cheaper prices, where a GST difference, even if they're paying an amount, whatever that might be, to process that into Australia, the differences are still so substantive - - -

MR SCOTT (FH): No, quite - - -

MS SYLVAN: - - - there's simply not an offering that will compete unless you're going to get service, matching your colour or whatever it is in all of that service.

MR SCOTT (FH): This is the whole crux of the matter. If there's a lady importing cosmetics, a $200 item, that $200 item is immediately 10 per cent cheaper from the point of origin because you're not paying the export tax. It's also 10 per cent cheaper at point of entry because you're not paying the GST, and you're not paying the 5 per cent customs or a handling charge. If you had to pay all of those things it would be the same price point overseas as it is here.

MS SYLVAN: I bet you some of those price differentials are just too big to - - -

MR SCOTT (FH): Some of them may be too big and they go back to the wages. $7.50 an hour in the US, $17 an hour here, plus superannuation.

MS SYLVAN: We're probably not going to be able to change that. That will be a global economy op. This is the first time the retail industry has been trade exposed, and the analogy to manufacturing is absolutely right. We don't do microwaves any more, we don't make them because we can't compete, and that's okay, we get a good price from the ones we import. People have moved on to do other things because they couldn't compete in that area. I don't think the price points will be the same at all. There will still be huge advantages in other economies. That's the nature of free trade which is people who can do it cheaper, because your economy benefits - if you enable them to do that, and what you do, you do well, so that you can exchange those products where you've got the competitive advantage.

MR SCOTT (FH): If the retail industry is in jeopardy - as it could very well be, if we don't lower this threshold - where does that leave us in the future?

MS SYLVAN: We estimate that maybe 40 per cent of the retail industry is trade exposed at the moment. It's still not the majority of the retail industry, so there will pretty will a big majority of it left. Food is not trade exposed at the moment. A whole lot of other things - big things aren't because people don't import plasma TVs. It's done through other channels, individuals don't tend to do that. Some do but it's not common. People don't import dentist chairs because they're too heavy. Dentists import equipment that transports easily. So it's smaller, commoditised or things that people can get into Australia otherwise because there's a lot of product that isn't here. Still the majority of the retail industry is not trade exposed, it will continue to exist. There's a big indication from consumers to us that people will buy in Australia if they can.

There's about a 20 per cent point there and if it's even 20 per cent more they will buy in Australia to get the comfort. That's a lot of bricks and mortar stores that will have advantage, and people pay for service. Now, how much they will pay, I don't know. So they will pay to be assured, they will pay to get the service they want. Maybe they will import the bicycle but they'll need help putting it together. So maybe the retail models just have to evolve to accommodate where we've got some advantage in either the service offering or in the protection offering or whatever. So I think you're absolutely right that the retail industry will change, but that it will disappear is highly unlikely.

MR SCOTT (FH):   You estimate 60 per cent will expire.

MS SYLVAN: Some will disappear. Some will find models that make it work in a new trade exposed environment.

MR SCOTT (FH):   In my home town of Newcastle, my business is 10,000 square feet. It is the largest independent retailer in the city. David Jones walked away from the city in January. Angus and Robertson, Borders, vacated the city. We are virtually an anchor tenant and on a Saturday we would have hundreds of people in our store, and it is a joy to watch these people pick things up, touch them and ask questions. So certainly you're correct, 60 per cent or so will survive, but it is the rest that won't because they're exposed to the world market.

MR WEICKHARDT: They won't survive if they don't change. That's one of the points that we've been trying to communicate in some of the discussions we've had that whilst we accept the argument - maybe for different reasons than the ones you've articulated, but we accept the argument that in principle the GST ought to be applied to all products on the grounds of tax neutrality and we are keen to see that happen. We are trying to impress upon the people we've spoken to that if they rely on that alone they are, I think, in many cases making a big mistake.

MR SCOTT (FH):   I think that's what the media is missing totally. They're just focusing on the 10 per cent GST and it's not correct. It is the export tax from wherever the product comes from that isn't being applied either.

MR WEICKHARDT: But that's true of anyone who exports. It's true when you buy a product that's exported. There's no difference.

MR SCOTT (FH):   Sure. The media are just picking up on the 10 per cent difference and that is not true.

MR WEICKHARDT: Well, I mean, the thing that causes, if you like, a distortion in economic terms is the differential in tax that an individual might be exposed to when they import incorrectly, compared to somebody such as yourself. In that situation both parties ought not to be paying a value-added tax at the point of export. They've probably both paid things like income tax in the country of origin and the payroll taxes and land taxes and other taxes but exports are generally exempt from value-added taxes. So at that point in time both parties are equal. That's when the differences start. In your case you're probably bringing in container-loads of product. The individual is bringing in probably one item. There's a significant freight difference which most people seem to ignore, but there is a significant freight difference.

In many cases we've been told, for example, clothing that the unit cost of importing a shirt in a container-load might be 20 cents; the unit cost of importing one shirt is $20. Those people who buy in bulk do get some advantage. They, of course, then at the point of origin, as you say, start paying GST, they start paying duty. They may have to pay some AQIS charges if there are quarantine issues. As you say, they then have some local costs, they have some local margin. The local costs and the local margin are things that have to be, if you like, set against the value the consumer is prepared to pay for that local service, and if the local service is sufficiently good, the feel and the touch and the knowledge of the product and the after-sales warranty and things of that sort, then consumers will continue to buy. But if it's not the consumer will say, "I'll take the risk."

We've had multiple examples of people coming to this inquiry saying, "It is ridiculous, the differentials that I have to pay." We had a gentleman here yesterday who bought a car part from the United States and it cost $20 in the United States and the closest price he could get here was something like $180. Why on earth should we deny the person the right of being able to buy that product for $20, even if he had to pay the $2 of GST? It's a ridiculous differential and the people who are, if you like, somewhere in that supply chain extracting that difference in price aren't adding any value at all.

MR SCOTT (FH): Am I able to move on to the Australian Retailers Association claim for penalty rates?

MR WEICKHARDT: Yes.

MR SCOTT (FH): Penalty rates: I've been in the industry 30 years. Penalty rates were around then but they were around then because we didn't have Sunday trading, we didn't have Saturday afternoon trading. I closed my store at 1 o'clock. We had every public holiday off, we didn't trade. Penalty rates were brought in to compensate workers for such an extra outlay of labour. The rates today really are out of step and they're archaic, is the best word I can think of. Retail in general is now a well-established seven-day-a-week business. Why should a Sunday be any different working to a Monday. If my employees work a Sunday, I pay them twice as much. This all goes to exasperate the Australian retail industry. The rates are just too high.

With every new year of progress the unions generally go for better conditions, the penalty rates increased last year. 10-minute breaks have increased, you now get two instead of one. The actual penalty rate has increased dollarwise. Every time there's a general adjustment of the basic wage to keep in touch with CPI or whatever - this year it's 3.4 per cent. I employ 30 people and that 3.4 per cent costs me

$30,000 in extra wages, when you add on the extra superannuation you have to pay because the wages have gone up and the extra workers compensation and payroll tax. I can't just keep increasing my retail price point, I have to absorb that.

The penalty rates are just too high and the retailers have never been able to be in a position to talk to the people making the rules. It has always been the unions and the government of the day. There has never been a retailer, like the association, at the table.

MR WEICKHARDT: We have heard from employees and we've heard from unions on this matter and clearly there are differences of viewpoint. I guess the unions are doing what unions are supposed to do in trying to get the best deal for their members, are intent on trying to secure what they see as reasonable compensation for people working in what they see as being, I guess, hours that are not family friendly or not to their particular desire. I guess the issue we were debating with the union is if penalty rates to get to a level that retailers cannot trade profitably and pay those rates, then eventually there will be an employment effect and that's not, I think, in the interests of those unions or their members. So there is a clear balancing point here.

But the other issue we hear conflicting claims on is the unions, I guess to make a case, portray employees being forced to work at times they do not want to work and, therefore, having to be compensated for that. Other people have put it to us that in today's world there are some people who are very happy to work on a Sunday because Sunday is not a particularly important day to them and they'd rather work on a Sunday because it fits with their other activities or a public holiday, for that matter. With your employees, in your experience, if you simply lived in a world where there were no penalty rates - let's accept the basic award rate - and you simply said, "Who's prepared to work on a Sunday?" and they had to bid for a rate at which they were prepared to come in on a Sunday, what sort of rate, do you think, would attract enough people into your store to operate your store on a Sunday or a public holiday?

MR SCOTT (FH): It would never happen. The reason that Saturdays and Sundays are held in great esteem by the general populous is that the normal working week for an office worker is Monday to Friday and they think that's the norm. But in the retail industry it is not the norm. The norm is seven days a week.

MR WEICKHARDT: I understand that. But assume you're not going to coerce employees to come into your store with the point of a gun or by whipping them and they just have an ability to volunteer, I'm assuming there will be a point at which you can attract enough people into your workforce by paying a certain wage on a Sunday, even if they don't, in some cases, particularly relish it but they're prepared to because there is a bit extra there. The question I'm trying to get at is, how much is a bit extra in your judgment compared to what the award says?

MR SCOTT (FH): The award is double time. In my judgment that's too high. Again I'm probably a unique employer, I pay my employees a Sunday rate, whether they work it or not.

MR WEICKHARDT: Sorry?

MR SCOTT (FH): Whether they work a Sunday or not I pay them a Sunday rate. I pay four days ordinary rate and one day Sunday rate. That is part of my agreement. I also give my employees six weeks' leave instead of four. That's because I want to do that, I'm fair. But I expect a bit in return and for extra work there's give and take.

MR WEICKHARDT: So that's an enterprise agreement?

MR SCOTT (FH): Enterprise agreement, yes.

MR WEICKHARDT: Was negotiated post the Fair Work Australia?

MR SCOTT (FH): Yes.

MR WEICKHARDT: So it passed the better off overall test?

MR SCOTT (FH): Exactly right. The reason I did that is because we're a seven-day-a week business. My employees will work one weekend day, either a Saturday or a Sunday, so I elect to pay the higher rate so their wages are the same every week. I do not have to calculate different rates every week and it works well.

MR WEICKHARDT: The employees are happy with that?

MR SCOTT (FH): Very happy.

MR WEICKHARDT: You said that the penalty rate is, if you like, too high.

MR SCOTT (FH): It is.

MR WEICKHARDT: What do you think your employees would have accepted? If you were renegotiating this deal and just say the award simply said - and this is hypothetical - "This is the basic minimum you can pay and then anything you do with the employees in terms of penalty rates for working Saturdays and Sundays is purely a matter between you and your employees." What rate do you think you would have ended with happy employees?

MR SCOTT (FH): It is very difficult. With my Australian Retailers Association hat on I would rather see - if we take the average way of 650 a week I would rather see that increased, say, to 750 even and allow people to work any five days of the seven. There's got to be a trade-off, I understand, and if we can get rid of these penalty rates on public holidays and weekends and have a more even pay scale, then employees can work any of the five days out of seven.

MR WEICKHARDT: I can understand that model might work in your business. For some businesses that only trade five days a week, they might be very unhappy with that.

MR SCOTT (FH): Five days a week is different but I'm just looking at a commonsense approach. Working out the wages - I've done that again for 30 years - it is a pain really. Too much time is spent working out the wages.

MR WEICKHARDT: So if your role was suddenly changed and you were in charge of Fair Work Australia and you were wise and benevolent and you wanted to strike a fair deal, what would you do?

MR SCOTT (FH): I would invite both parties to the table, the retailers and the unions. But then again the unions are not fully representative of all the workers in the retail industry, not at all. They may not represent 20 per cent of them.

MR WEICKHARDT: So you would listen to these competing claims - and there would be competing claims - and what would you - - -

MR SCOTT (FH): I would put my point of view across and I would like an arbiter in the middle.

MR WEICKHARDT: No, you're the arbiter.

MR SCOTT (FH): It's difficult.

MR WEICKHARDT: You're absolutely right, it is difficult.

MR SCOTT (FH): I would just like to put the point of view that the penalty rates are too high and if I have achieved that, it's great.

MR WEICKHARDT: I think what you're highlighting is that in many circumstances the best arrangements with happy employees and happy employers is where the arrangements are between those two groups at an enterprise level and they're designed to fit the needs of both and provided we have fair employees, fair employers and reasonable unions, you could probably let that system work without very much legislative oversight. The trouble is that there are, in some cases, unreasonable demands by all parties and so the legislation is there to try to protect people from that. At the end of the day it's very difficult to design an award or legislation that really fits the needs of all people.

MR SCOTT (FH): My award goes further than that. As well as paying them the Sunday rate every week, I expect them to work two public holidays during the year at no extra. So it works very well for me because I can get reasonably good service out of them on a public holiday for no extra - well, I'm paying them extra to start with but the wages stay the same.

MR WEICKHARDT: Your employees, if they were here, would step up to the microphone and say, "We think that's a pretty fair deal too"?

MR SCOTT (FH): I don't know why not. I pay them six weeks' leave instead of four, plus the Sunday rate and we work it out for them on the whiteboard. The extra money they're getting is generally about $5000 and two days working public holidays is acceptable.

MS SYLVAN: Do you find that that kind of valuing of staff, which is really what you're talking about and the communication of that which you tell us that you're doing as well, does that affect your retention? It seems to effect the flexibility of how your employees can work, does it affect your retention in comparison with others in the business you might compare with? I assume not all these people are casual, you're actually talking about - - -

MR SCOTT (FH): I have two casuals and 28 full time. We generally do not get a rotation of staff anywhere near the industry average. People tend to stay because they have a good award. I do not insist any of my staff have to work at any time, it's always volunteer. It works well.

MS SYLVAN: You're both a wholesaler and a retailer.

MR SCOTT (FH): Two different companies.

MS SYLVAN: You're looking towards the consumer directly and then you've got a wholesale business attached to it. Is that a typical model in this industry?

MR SCOTT (FH): No, not at all. I'm a bit of a hybrid.

MR WEICKHARDT: Thank you very much indeed for coming in and thank you for your thoughts. It's useful to hear your perspective from both roles as a wholesaler and a retailer.

MR SCOTT (FH): Thank you. I just had to get my point across and I thank you for your time. You've listened wisely and thank you very much indeed.

MR WEICKHARDT: Our next participant is John Swainston. If you would just give your name and the capacity in which you're appearing, please.

MR SWAINSTON: My name is John Swainston. I'm here today in the capacity as a private citizen. I am also the managing director of an importing wholesale business in the photo imaging industry and have the role of senior vice-president in our Asian interests. It's an overseas-owned company. Prior to that I ran my own business for 25 years. In total I have some 40 years in the wholesale and retail business and passionate interest in it and great enthusiasm for it.

MR WEICKHARDT: Thank you very much indeed and thank you for your submission and your notes. If you would like to just run through the key points you want to talk about today, that would be very useful.

MR SWAINSTON: I have three points by way of introduction. I have read the first transcription on the Net so I have some sense of the framework. Firstly, I'd like to thank the commission for allowing me to appear as a private individual. The hearings are clearly about, as we've just seen, the disruptive nature of change in the retail industry and that's not only for bricks and mortar businesses but for clicks and bricks and indeed, online retailers in the pure-play environment. They amplify many of the sensitivities and concerns in the written submissions and are well captured in the draft report.

In my opening remarks I would like to briefly comment on three matters from the report itself and first like to record that I'm encouraged that the commission agrees with the need to remove the artificial imbalance and inequity in the current low value threshold settings. I won't go over that, it's clearly an established position. However, I would like to say that failure to act quickly does put at risk the employment of significant numbers of Australians, indeed 1.2 million employed in the retail sector directly. Failure to act promptly simply delays the evident need for dramatically more efficient import process into this country. Putting it off is just putting it off. Just like retailers being asked to make structural change, so should the department responsible. There are indeed 140,000 retail businesses that are currently held hostage to that and there are 55,000 wholesale businesses who have to incur those costs.

I found it most interesting in evidence to the commission report in today's media from the online retailer eBay yesterday that there was such concern that lowering the threshold to $500 would add up to 40 per cent in their costs which would make their business unprofitable for many of the participants and that was not the 10 per cent GST which, in the example given in the media would be just $60, it was the other $140 of process cost involved. It is the embedded inefficiency that in fact all other importers, retailers and hybrid clicks and bricks retailers have to pay and every day and it's one which is the principal cause of the imbalance in a certain part of retail competitiveness. If such structural systemic costs existed in a commercial enterprise, industry would promptly redesign the process because they had to. It's called survival. Government doesn't necessarily have to survive on quite the same time frame, but as customers of customs we do. So the task force should comprise - since there's been some debate on this matter who it should comprise - simply the very best minds who have expertise in process, logistics and just take the cost out of the process.

We should urgently learn what the strengths and weaknesses of the three other countries that have successfully implemented the LVT at a much lower level. They may not in fact be efficient, but we should learn from them. The first issue is one of urgency and it should be one of “the marketplace decides what the best system is”, and we should employ that.

Another element that has been perhaps not covered in the evidence that I've read is in that many cases the price difference reflects the fact that the goods are in fact counterfeit. Now, we know that in retail today there are many fragrances and perfumes that are in fact not original goods. So the price difference is very often simply because they are very good copies. I can tell you that my largest competitor in China is “us”. In my brand, in China, the company I work for, our biggest competitor is counterfeit product. Our legal bill is horrendous trying to defend that. Intellectual property is not respected universally. That's the first point.

Secondly, even if those costs do exist today, in our egalitarian democracy, of which I think all of us in Australia are so proud, I don't understand the logic of allowing one sector of the population a subsidy on their imports. Online retailers in the field of technology operate in a field where a majority of transactional values are indeed under $1000. They also operate in a business that offers just single figure gross margins in terms of hardware, despite the costs that are embedded in our Australian society. They are much higher than those found overseas in some countries.

This means that a host of technology web sites now exist here in Australia offering a wide range of goods that they don't actually stock. Now, I've been brought up to believe that if you advertise something that you don't stock, that's a breach of the former Trade Practices laws. These entities import from either Hong Kong, China, or the USA, on a piece-by-piece basis using direct shipment to the consumer and taking advantage of avoiding customs charges, clearance costs and incidentally the GST.

There is apparently no limit to those transactions. So while online business is estimated at some 4 per cent of retail activity – according to the draft report, and it's not a figure I would disagree with – in some industry sectors, anecdotally, such as the one I participate in – cameras, computers, software, books – the percentages are much higher, and we've seen the disruptive nature of that on the book industry. The book industry is a little special because where you can take a product whose value is the content and turn it into a byte, the value is only in the content, not in the product. Therefore the distribution service, the value-added service, provides you the information of what it is you want to buy. That's actually the only added value, hence the low price of Amazon *[with their Kindle e-reader]*.

As I said in my original submission, simply limiting the number of transactions a person or a business can bring in under the LVT could gather large amounts of revenue, the costs could be covered on a user-pays basis which is a facet of Australian society that has grown and a significant improvement to the playing field would be achieved.

My third and final point is to ask the commission to much more heavily consider the weighting and importance of product safety and security. There are three elements to this: electrical safety compliance; product stewardship, and the Competition and Consumer Act of 2010. They're all embedded, legislative initiatives, both federal and state governments, and they're designed as part of our society to protect our citizens and to ensure the safety of those citizens. The current LVT now creates actually two classes of retail business: those that have no apparently enforceable limit to what they import – and might I call them unconventional importers/retailers – and on the other side, conventional importers/retailers who have to meet all of those stipulations.

So while policy of government on the one hand requires traditional business to put electrical goods through electrical testing processes that ensure goods are free from both electrical safety and radio-borne interference, it also requires compliance with warranty obligations, as it should, that have both time and value consequences in the new act and are fairly onerous. As yet, it's unquantified in the courts and in legislation. Lastly, before the parliament – government is establishing an industry by industry Product Stewardship Act to deal with environmental recycling processes; again a desirable, societal decision.

The online retailer selling goods under $1000 appears not to be subject to oversight on any of those requirements. To me that is a society judgment, not just an economic or equity one. It is one about which the society has to decide what it wishes to do. Society has decided over many, many years that employment should be protected in certain ways. On the other hand, when the new Australian tax laws were introduced, $14 billion of income tax reductions were made to allow people to be compensated for that new tax. It does seem to me that people are double dipping when they choose to take advantage of the income tax cuts and then selectively use their purchasing power to then buy in an environment that doesn't seem to be subject to the same laws that everyone else is.

MR WEICKHARDT: Thank you for your points. Louise.

MS SYLVAN: Just starting in your order with the LVT, your main point there is urgency, though I think you support the notion that the processes need to be dealt with. When we say "inefficient", I might just challenge that. We didn't look at them from that point of view. What we have is a set of systems that have evolved, to me, a very high threshold, relatively, in comparison to many parts of the world, not all. So you wouldn't expect the processes, particularly such a big logistics process as Australia Post, to have evolved to meet a threshold of $20 when it didn't need to, in a sense. We weren't actually attacking Australia Post and customs for inefficiency. They've got processes in place that are designed to meet a certain volume which is really all they have to meet, whereas if you lower the threshold you're into millions and millions that they've never had to deal with before.

What we found in looking at overseas countries, which you've mentioned, is their systems evolved to deal with that because their threshold was very low, so their processes actually have evolved to deal with that, either in a postal system in the UK, where it has a big postal handling set of arrangements, and as far as we can see in Canada, a lot goes through the brokers and the private sector, as opposed to coming through the postal systems. So they've evolved to meet the conditions they were faced with, basically, from the point of view of efficiency. But to get back to your point, you're basically saying that the task force, looking at this big logistics problem from the point of view of efficiency - because a lot of businesses are importing and it affects the whole system, as you say quite rightly.

That's our nervousness about imposing - you know, going through a few thousand parcels to millions of parcels to be handled and to be looked at. That will affect everybody, not just Australian consumers. Is what you're suggesting that our time frame, as proposed, is not tight enough? It's pretty tight.

MR SWAINSTON: The history of government of either colour has been one of delay in response to many, many fine Productivity Commission reports over the years. I remember making a submission on the other side of the equation some 20 years ago in relation to the raising of the duty-free allowance for overseas passengers and it took some seven years for government to actually act on what was recommended seven years prior. I am concerned for the significant marginal profitability of large numbers of retail businesses in which gross margins and net margins are much smaller than I think are – how can I put it? – quoted in the report. Retail is the second highest return on shareholders' funds at 22 per cent. That is actually only two and a half times the cost of risk-free money. It's not a huge return by any means, it's just better than others. So given that many of the retail businesses in this country operate on after-tax profits of 3 per cent or less, a variable of 5 per cent in the top line may in fact take a business that's making 3 per cent into a negative business.

I've been in a business where average margin seldom went above 3 in the best years and regularly was under half a per cent and that's through a 25-year period. We have observed retail in the Australian Bureau of Statistics numbers show only 1.3 per cent growth in the July numbers published a couple of days ago. Your report talks about the rate of growth of the online business at being 10 to 12. I'm not a great mathematician and I'm a failed economist, but I think I'm right in saying that if you take those two figures, the real danger is that retail will actually not grow in the traditional sense of the word; it will be hollowed out in part by new retailers which is the market working as it should, and in the other side, by another group of people who are playing on a different playing field. If you remove 5 per cent of retail, I would venture to suggest that a very large number of those 200,000 retail and wholesale businesses would be at some risk, faster than our society is able to absorb that issue.

MS SYLVAN: The transitions are important in these kinds of global changes.

MR SWAINSTON: Correct.

MS SYLVAN: I would agree with that. We were talking with the hobbies association representative and the NARGA representative last session about the fact that even with that levelled, it looks like some of the price differentials are huge. So would you accept that there's some marginality there anyway, now that we are in a trade-exposed area, simply because - - -

MR SWAINSTON: I don't understand your term "marginality", sorry.

MS SYLVAN: We agree with you about the LVT, it should be lowered. We should have tax neutrality, we should have efficiency to achieve that as well. But we think that that will not make as big a difference as many people think it will make, that some of the price dispersion that we're looking at - and I have to say we're quite interested in the differential between bricks and mortar here having really good value as compared to even some online businesses on occasions. You could find all kinds of spread of prices. But there was a trend - you know, a very limited analysis - for certain segments of the market to be much, much cheaper overseas. In other words, Australia cannot import and resell or manufacture some of these things in any competitive way as far as one can determine with a quick look at it. It seems to me there's some people who will be marginal under either scenario, simply because the market is now trade exposed.

MR SWAINSTON: And that's the market the way it should work.

MS SYLVAN: It's going to go.

MR SWAINSTON: I think I'm probably more concerned about the historic nature of how the world was treated by many of the manufacturing principals. We've moved from an era where people were uninformed about other markets to one where others would be really proud. We have perfect competition, in the sense that everyone is equally informed of what the world's lowest price is. But that doesn't necessarily justify, on the other hand, us abandoning all the principles that Australian society is set up for. We have determined that people should be appropriately rewarded and they should not be forced to work under certain conditions. Whether we like what the union movement does or not - and it does only represent 20 per cent of the employment - nonetheless, there are some elements that we have decided as a society that we shall have, as we have warranties, as we have with safety and as we now have with environmentally appropriate behaviour in terms of product stewardship which is going through the parliament at the moment.

If you impose those issues upon society on the one hand, it is maybe efficient to say, "Okay, we'll take the best of the other lot: but it is inequitable," and I think your two tests, as I've read so far, are that the changes that are made should meet both equity and efficiency. I would say they also have to be effective, and to be effective, they must also meet the other criteria and societal values that we've set up, carefully considering what the implications are. So I do get concerned that when I bring in an item, I add at each of the 12 or so stages of bringing in that product a cost that my counterpart may not incur and because I'm a small country and I have one-thirteenth of the population of the United States, I have an inherent cost disadvantage.

I tend to look at this as a holistic issue. I don't tend to look at it in isolation of the 13 per cent of the working population that's involved in retail. I look at all of the other elements and say, "Is the overall mix of that ripe for taking a society forward?" The imbalance of the mining industry, making certain elements of Western Australia society so incredibly inflation prone currently and working conditions that may or may not be acceptable to others, all of those are things that are trade-offs. In retail, if you stack it just a little bit too heavily on one side, you actually make the imbalance unsustainable for probably more people than is reasonable.

MR WEICKHARDT: Can I go back to this point about the regional pricing strategy of brand owners. Cameras have been talked about a lot. We've been told in some circumstances that some of the major camera brands have a regional price for Australia which is significantly above the sort of price that would be offered in the United States. I take your point to some extent about the differences in terms of electrical supply, but my latest mobile phone came with a charger that's good for 240 volts, 110 volts, 50 cycles, 60 cycles, and with a universal adaptor that had a multiplicity of international plugs for, didn't require any special Australian design. It seems that might be the way the world goes in some of those simple low-amperage type of products.

But we've been pondering in this inquiry the pricing differences between regions and the degree to which they're likely to be washed away by this rate of visibility of those sort of differences around the world. I seem to remember reading about three or four months ago that one major Japanese supplier had decided to revise their pricing to the Australian market. I think it was said at the time because they wanted to keep their local retailers competitive, which is, I would have thought, a sensible thing to do. If you want somebody to service your product, offer after-sales service and upsell customers to a better model, describe features and benefits and all that stuff, then having a local presence makes sense. But pricing the local presence out of the market doesn't make much sense. Have you seen any other responses of that sort where the principals are starting to decide that maybe these regional prices where the Australian market is treated as a bit of a sucker and prepared to pay or able to pay high prices - have you seen some of that start to be washed away?

MR SWAINSTON: I think it varies by country of origin. In the photo industry, in the post-war period, it was predominantly sourced from Japan. That is now not universal. So we're beginning to see some of that break down. The company to which you refer has recently lowered its prices by some 20 per cent on some 90 items. That brings it closer. It brings it closer but not quite close enough. There's some of those other costs. But that same company, which I think should remain nameless for the purpose of this commission, is also employing some 600 engineers in this country, doing primary research for the rest of the world. So it has a huge investment in this country and it wants to see its brand well represented. It does an outstanding job.

There are obviously various intricacies in international pricing and we have certain laws to deal with that issue as well through the Taxation Department. So I'd say the marketplace is determining that. In my own company, right now we're going through a process of some 20 to 25 per cent price reductions now that some of our forward positions in currency that were bought over a year ago have unwound, and we're beginning to implement that. But of course retailers want to be immediately able to be competitive, so we have to then credit any inventory they have. That is a huge cost to the wholesale industry and we live in a country where we have the fourth most active currency in the world. It has the widest average band of movement in any year; it's just been 7 per cent in a week. That's normal for the Australian dollar. So if you don't cover it, you're really not running a very smart business. I think there is a lot of misunderstanding of why some of those margins are built in; it's just simply because we have the country that we have. Those currency issues are a nightmare for all importers.

MR WEICKHARDT: No, I can empathise with that. I understand that entirely.

MS SYLVAN: I wanted to come to your points in relation to, first, counterfeit, and you mentioned perfumes. I don't think we know how much counterfeiting is going on and so on and we haven't had any evidence particularly of that. Perfumes, I was surprised that you mentioned it - it may be true globally - but you can't deliver perfumes through the mail, so a lot of individual buying wouldn't occur, it would have to be imported through the carrier system.

MR SWAINSTON: Might I suggest you visit the markets more regularly.

MS SYLVAN: Indeed. So somebody is bringing it in but they would be coming through our cargo and so on, they wouldn't be coming through the mail system through individuals. These are people who are handling a market in a particular way, not individual consumers parallel importing themselves I would think.

MR SWAINSTON: But we see it in the industry that I'm in, in the bag business, the cut and sew business. It's rife, as you know. The French have different regulations to the rest of the world. It is a very significant issue. The lack of, if you like, available justice to protect IP because the costs are so high to prosecute are basically acting in favour of the person who unstitches your product, finds the same source of material and uses the latest imaging technology to copy all your labelling. That happens a lot in China. We have full-time staff just dealing with that issue.

MS SYLVAN: On the product safety matters that you raise, and Commissioner Weickhardt has mentioned them as well in terms of the electrical standards and so on, the information we've been given from consumer surveys and from some of the retailers themselves who operate here is that just for the sense of safety and security, consumers do prefer to buy from an Australian retailer often, not at any price, but they certainly will buy. It looks like about 20 per cent; the numbers vary and it's just surveys. You never know until you've got somebody spending the money what will actually happen, as you know.

MR SWAINSTON: Yes.

MS SYLVAN: But it does appear to be the case. The ACMA survey in particular found that 80 per cent of Australians will buy in Australia even when there's a price differential because of warranty provisions and so on. So I wasn't absolutely sure what you were suggesting should be done in relation to safety. Basically consumers are starting to learn that if they're shopping online, they're shopping without their regulator because they can't guarantee that they've got a warranty. Hopefully they're taking a great deal of care. Some people have suggested - I think it was from ANRA yesterday - that every single product would need to be examined, including what you buy travelling overseas as you come back into the country for safety, labelling et cetera. It slows down an awful lot if we attempted to do that.

So we've kind of come to a balance, I think, and we're not sure that it's a wrong balance, which is you need to let consumers know that if they don't know what they're shopping from, they ought to be careful, if they're shopping outside of their jurisdiction, and globally massive numbers of consumers are doing precisely that. There's sometimes no product safety issues at all with a whole lot of commodities - buying a book, whatever - and a lot of those global retailers are way above the statutory standards in any event in their guarantee of returns and so on. So I wasn't quite sure where you were positioning this differently as a society than we have positioned it already.

MR SWAINSTON: The standards that relate to electrical safety have been changed obviously progressively over the years as the technology has changed. We no have an environment of testing, that a regular importer has to comply with. So if I'm the brand owner of brand X and that product is classed as a product that may be subject to radiation issues, I have to incur the cost of having that certificate issued under the C-Tick legislation and I have to be able to prove the document is a valid document from a valid tester. It's five years since I've been involved in the camera business but I seem to remember it cost us about $7000 for each model that we put through those tests and that was a cost we bore. That's to do two things: that's to ensure the product is compliant with the radiation regulations, so that if someone switches on a camera on an A320 electronic aeroplane, it doesn't suddenly send the autopilot into some mode that it would not understand why it's operating that way.

MR WEICKHARDT: That would seem to be a universal desire rather than a peculiar Australian requirement.

MR SWAINSTON: I'm not saying it is unique but we've decided that that's an important way to ensure - - -

MS SYLVAN: I guess that's the heart of my question. We had a fascinating discussion about bicycle helmets where there is a unique Australian standard. It may be slightly more safe, and people could actually not even assure us of that definitely. We've got a unique Australian standard. There is no manufacturer in Australia. So global manufacturers need to manufacture for a very small economy a quite particular standard of bicycle helmet where nobody has actually asked the cost-benefit equation on that and whether Australian consumers are getting value for what is a very expensive process now for testing that it's got the Australian standard et cetera. What's happening, as you might predict, is a lot of people are buying overseas product done to the US standard, the European standard and so on which many argue is equivalent. So I'm wondering if your recommendations here are that a lot of these are actually more global in their orientation of standards - you know, if these things are already tested by the manufacturer and they pass a good European standard, as we do for therapeutic goods now where the TGA says, "If it just passed the Swedish government and just passed this government whose processes we have looked at, it passes the Australian government standard" - I'm wondering if that's the nature of the recommendation in particular that we should be more efficient at what we're doing here, rather than parochial in our approach.

MR SWAINSTON: If the effect of that is to progressively reduce elements of unnecessary bureaucracy, then that would be beneficial, but in the case of products like the battery, for example that comes with a camera, I think you should be aware and I'm sure you're aware that there are very tight regulations on the air transport of lithium batteries. Most cameras today have lithium batteries. I was involved in the distribution of a camera that we found a fault in Australia just after we got the first prototype, using just regular AA batteries. We reported it. Two weeks later, the factory said, "Yes, there's a problem, we're going to have a global recall." The first thing I did was I went straight round to the duty-free stores because I was terrified that they had got sold to a traveller. Two weeks later, we got a call from someone who had actually just bought one before we were able to catch it. Indeed they were in the plane and it did in fact start smouldering. Only through good fortune of being wrapped in an Australian wool sweater as opposed to a polyester sweater was there not more serious damage during the transport on that plane.

All of these sub-$1000 items are coming in unsupervised. They are passing through a lot of these devices and they're coming in planes illegally. There is no regulation for that and there should be. There should be a means by which we can protect those kinds of things while taking your position and saying, "There's a perfectly good regulation on something else." Noncompliance is in many cases the biggest bugbear of all. Why should we take all the reasonable steps to prevent those lithium batteries coming by air and bringing them in by sea for good safety reasons and then have another side of the government say, "It's all too expensive, we'll take the risk."

MR WEICKHARDT: When you say they're coming in illegally, whilst I don't profess to be an expert on airfreighting lithium batteries, I have some knowledge of airfreighting explosives and chemicals and it's not illegal to do that.

MR SWAINSTON: There are some very strict regulations however.

MR WEICKHARDT: But there are very strict regulations; you can't airfreight them on passenger aircraft and all that sort of thing, but if they're properly segregated and packed and identified and labelled, then they can be airfreighted. Are you suggesting that many of the cameras with lithium batteries are actually coming in incorrectly labelled and therefore I guess not complying with those airfreight rules?

MR SWAINSTON: I know that anecdotally. I cannot quantify it. However, I'm also concerned that from some of the sources, the battery that came from the manufacturer is being substituted with an off brand that may not be made to the same standard. In my previous company I had two recalls of our own batteries and I also had to put up on our web site notices indicating that, "A battery that looks like this isn't quite the same as this and please note the difference because this one is potentially lethal." That I can't deal with, so I would counsel that those kinds of regulations must be maintained, while the ones that you so rightly point out - Australian Design Rules in many of the cars, helmets and there's a host of other things - are the inefficient obstacles to freedom of trade.

MR WEICKHARDT: They may be.

MR SWAINSTON: Yes.

MR WEICKHARDT: We're not suggesting we know enough to be sure of that but certainly somebody yesterday was talking about a particular Swedish design of car seats that the Swedish, who normally are fairly particular about safety, claim is the safest in the world, but that would be illegal apparently under the Australian standard. So there may be some examples where the Australian standard is not serving the consumer in the way intended. There are others, as you say, where the consumer is genuinely being protected and we want to make sure that they are properly protected. But for international products like a camera, one would have thought that the requirement that the battery doesn't burst into flames or bring down an A370 would be a fairly universal requirement that most countries would be fairly concerned about.

MR SWAINSTON: And that is normally done by the manufacturer through the normal channels. It is very much harder to secure that behaviour when a number of other intermediaries are involved.

MR WEICKHARDT: Yes, I take your point. Thank you very much indeed, John, for coming in, appreciate your submission which was very thoughtful and contained a number of good points. Thank you for the comments you've made today.

MR SWAINSTON: Thank you very much and I wish you well on the final report and I hope it gets acted on.

MR WEICKHARDT: Okay. That's certainly out of our control but we'll do our best to frame our recommendations in a way that hopefully seem reasonable and appropriate. We're going to adjourn briefly now and we'll resume in about 10 minutes' time.

MR WEICKHARDT: Okay. We'll resume the hearings now. Our next participant is United Voice. If you could, just for the transcribers, individually give your names and the capacity in which you're appearing, please.

MS TARRANT (UV): Thanks very much. My name is Louise Tarrant. I'm the national secretary of United Voice. With us today we have Kerry Jones, one of our members - - -

MR WEICKHARDT: If you let her speak and then at least the people transcribing this can identify the voice.

MS JONES (UV): Hi, I'm Kerry Jones, I'm a cleaner at Macarthur Square.

MS McCULLY (UV): I'm Kirsty McCully, I work in the national office of United Voice in the cleaning and security area.

MR WEICKHARDT: Thank you. Thank you very much indeed for your submission which you should assume we've read, and we've certainly got some questions, but if you'd like to outline some points that you particularly want to draw to our attention, then we can have a discussion.

MS TARRANT (UV): Thanks very much. Thanks for the opportunity to address you today. We're not going to go over all the elements of our submission but welcome questions and any follow-up material you may see. I guess we wanted to do two things today: one is actually talk to the global picture of what you're grappling with in this inquiry which is how do we ensure that retail, as a very dominant sector in our economy, actually can compete in a more trade exposed globally competitive environment.

But we also thought it was an opportunity - and that's why we're very pleased to have Kerry with us today - for you to hear from people who work in shopping centres, and I think are the subject to much of the heat that's been in the debate around the inquiry today, particularly around labour force issues. I'd also like to provide apologies from Kathy Daniels, another of our members who had hoped to be here today, but she injured her back and so is not able to travel.

If we go to the intent of the inquiry - and I know this is a big issue that you're grappling with - this is a sector that has, as all the contributors have said today, morphed incredibly over many decades as the nature of retail has changed. It's now increasingly challenged by an almost invisible competitor in the form of the Internet. The question is, how does it respond to that challenge. In the debate that has been ensuing over recent months, we're quite depressed to see the limited response of the sector to that challenge, in that we saw that simply having a reactive response limited to issues like the GST and the competitiveness and neutrality of the tax regime, yes, that's obviously significant but only one part of the picture. The other side which is reducing labour costs is not really, we think, the road to responding effectively to this new challenge.

We come from a point of view, particularly focused around shopping centres, that is, we think that shopping centres have the potential to become increasingly a significant civic space in communities. You'll see in the shopping centre - council's own submission - they talk about shopping as a leisure activity, increasingly shopping centres have become a focus for entertainment, for leisure, for outings, the family goes shopping. The utility of it is still there but it's significantly encased in other values. You see, for example, the appearance of cinemas in shopping centres and a range of non-traditional retail activities encroaching.

We think that's the part of the future for these centres which is recreating the community common, if you like. The question really is, if that's the differentiation, what is it in that quality shopping experience or leisure experience are people looking for, and how do shopping centres distinguish themselves from the convenience and potential price competitiveness of an Internet purchase. We think it has a lot to do with, obviously, the ambience, the cleanliness, the facilities, the environment, the staff and the quality of service that people then experience. Well, does it become an experience or does it just become a purchasing process. If you're looking for an experience then we think the quality of workforce becomes critically important. It's like any service sector. So in our submission we do touch on that, the fact that the interrelationship between staff working in the retail sector and the customer has got to be an intrinsic part of how we look at issues, even like productivity, if we're really going to get to look at what are the defining commercial distinctions that give this sector a point of difference to the Internet.

It plays out in many ways and this is not the focus of what we'd present today, but it plays out in terms of planning and regulation, which I know you touch on in your report. We actually think there is some real value in maintaining commercial precincts that have some level of limitation around them because we look to the US where there is a vast oversupply of retail space which then impacts on the quality, the standard, the service provided. It impacts on the viability of those retailers and shopping centres themselves.

Having an oversupply is not always the best outcome. But more importantly we think there's a community dividend that shopping centres need to start to think about if they're going to become places of attraction for their local communities. We think part of the regulatory planning process needs to take on board what is this new future role for shopping centres if they're going to become part of the community precinct. That's one aspect, and I'm sure others will have plenty of views on that. But the bit that we really want to focus on is, if you don't have a quality workforce then you're not going to have a quality leisure or recreational experience. That operates at all levels.

Obviously for us the members that we represent in the retail sector include particularly people in cleaning and security, and some areas of hospitality, but particularly people like Kerry who work in ensuring that these centres are clean, safe, secure, pleasant environments. What we're saying there is the raw end of cost-cutting to a point that's become economically unviable, both for individuals and also the cleaning contract companies that are trying to operate in this business environment.

Whilst we have projected this vision of where we think the sector could and should go in terms of points of difference to it, and the Internet, if that's the competitor, then in fact the business practices on a day-to-day basis - particularly in areas like cleaning and security, which are pretty critical to the integrity of shopping centres - is being severely eroded. I'll just very briefly introduce it and then let Kerry talk a little bit about her experiences.

In shopping centres, basically, the employer of cleaners and security guards are cleaning contract or security contract companies. They're not necessarily specific to retail, indeed those that have specialised in retail, companies like Reflections, which is a major contractor in Australia that specialised in shopping centres, went belly up just in the last two years, mainly because it's an unsustainable market to really be viable in. There's a range of reasons for that. It's a high labour content sector. The contracts are incredibly thin. There's very low value in them. Increasingly the risks have been shifted from the shopping centres to the contractors, particularly in the areas of public liability. In fact that was one of the key issues that brought Reflections undone.

What that means is that you've got this pincer arrangement where you have a contracting industry with very lean margins, and the only way they can operate is really to squeeze the workforce. We looked with some incredulity at the debate around increasing labour productivity, when all we've seen over years in shopping centres is a reduction in cleaners, a reduction in cleaning hours, a speeding-up of work, very little movement in wages, and in fact it's an interesting comment about this sector, that when we talk about wages in retail, we talk about the award rate and we talk about the cash rate. There's not too many industries where you have to talk about a cash rate because basically there's so much pressure on contractors to try and do the job and meet the contracts that they can't always do it by doing the right, appropriate and even legal thing.

They're the sorts of things that we think ultimately will unravel the desired outcome of where these shopping centres should travel to. But we also think that they're very instructive in terms of the debate that's been ensuing around labour market issues. For us productivity comes around improvements in labour force output which comes from training, it comes from retention, it comes from stabilising a high turnover workforce. It's by giving people the right equipment, it's by paying people to stay. We know, for example, in hospitality, which is very analogous, research shows there that about 25 per cent of the payroll bill is turnover costs.

When you start to cost in some of these poor management practices, we think they're the inhibitors to labour productivity that really should be being focused on. They really set managerial prerogative in a way in terms of how they structure their workforce. I should let Kerry share her story about what it's like working very much at the coalface.

MS JONES (UV): I'm Kerry Jones, I'm a cleaner for Grade Contracting at Macarthur Square, Sydney South West. We're on minimal wages. I work 28 hours a week. For the amount of work that we do and the jobs that we have to do by cleaning up people that have been sick, blood, syringes, it's not enough money. I only earn 630 a week there. I pay 320 a week rent. I'm a single mother. I've got three children and two grandchildren. I work every Saturday and Sunday because the penalty rates, that little bit comes in extra so we can survive, and my kids and my grandkids can have a better life than what I do.

At the end of the week I'm exhausted, even every day. I also do a second job so I can have a little bit of money for myself to do what I need to do. We have a workload that is just ridiculous. Every time we get new contractors or whatever they put the squeeze on from the top down to the contractor onto us. We lose workers so our workload is a lot bigger, so therefore that makes the workers stressed and then it's not a good environment for customers because everyone is running around cranky.

We have to do 15-minute loops which involves starting at one point under a camera, running halfway around the shopping centre and coming back to the same camera within 15 minutes. It's cleaning toilets, stairwells, sick, whatever is on the floor. It's a minimum of 32 K's a day without doing anything else. We have no family time for anyone. We have to work every public holiday. We're not like others in society where they get 13 public holidays, we get three a year. We're not allowed to have holidays when our children are on holidays. I have two grandchildren - one is 7 and one is 4 - and I've only ever been to their first birthday party because my roster is every weekend. I need to survive.

The workloads need to be lessened, and better pay conditions, because you can't do the work that they're asking you to do. It's a hazard for us, for our workloads, and safety for us and for the customers. It's just a ridiculous thing. Yes, I'd like to have better pay and better workloads and family time because there's none in the cleaning business for retail.

MR WEICKHARDT: Okay. Thank you. Thank you, Kerry, for coming along here. It's not meant to be an endurance process and I understand that probably added to that fairly onerous set of responsibilities, coming along here doesn't help your leisure time either. You might be surprised that there's a lot in your submission and what you've said that we agree with. However, there are some things that I strongly disagree with, and that is the implication that we are in favour of pushing productivity by reducing people's wages and conditions. We haven't said that anywhere in our report and I personally, strongly disagree with that. In my experience in business, if you expect people to be productive, to be effective, to offer service to customers, the last thing you do is mistreat them. So the comments that you have made here about "squeezing productivity gains from the workforce" and you have talked about "gutting people's conditions", the focus on reducing wages, "pursuing productivity improvements within the economy, the upshot of this is increasing inequality, increasing disadvantage". You go on then later on to talk about the ideology of increasing productivity.

I don't want to for one moment say I have an immediate solution to Kerry's situation but if you look across the economy, the only way we will all get the opportunity to earn more money is if we improve productivity across our workforce. The reason for being so focused on productivity is that it gives the ability for people to be paid more because they're actually producing more. So it's not a doctrine or a mission to whip people, it's a desire to try to find ways of increasing efficiency and effectiveness so that we can, as a nation, become wealthier and so that employees who are working hard can enjoy some of the results of that and certainly the very last thing we're trying to do by saying that productivity in this sector needs to improve is to suggest that that comes out of screwing people. That's not what we're on about.

But nonetheless, when you look at the sector overall, and it's a big and diverse sector, Australia's productivity in the retail sector does not compare well with international performance. That's got nothing to do with the issue of how much people are paid in Australia compared to how much they're paid overseas, it's a rate of trying to compare the value added that is created per hour that's worked. So it's not about working people harder or longer or paying people less. It's about trying to find smarter ways of people actually being more productive or offering things that customers value, better customer service.

Now, in an industry that is as labour intensive as the cleaning industry, I can understand that people will scratch their heads and say, "You must be from another planet to think that this is possible." I don't pretend that I have sort of immediate answers for any for this. What I suspect, however, is that with the smart involvement of employees and equipment there are ways of doing most things more efficiently and I stress that doesn't mean to say whipping people to run 38 kilometres faster. It might mean giving them scooters or equipment to ride on or things of that sort. But across the sector what we've been trying to say is we understand fully that this sector is going through a difficult adjustment time. It's now exposed to a more competitive environment and we all as consumers want a better deal.

I'm sure people like Kerry, who are struggling to make ends meet, are grateful when they can buy things at a cheaper price. So on the one hand we all want a better deal as customers, on the other hand we want people to be treated fairly and equitably. That's the society we choose to live in. So we're trying to find the sweet spot of how you achieve this and we think the only answer to that is to try and find smart ways of employers and employees working together to actually do, if you like, more for less, creating more value added for less yours worked. That means people can be paid more and we're not in a situation where wages break out into an inflationary cycle.

So that's our focus and, as I say, you might sort of think, "Well, you guys are living on another planet or smoking illegal substances if you think all that's possible," but what we do know is that in other industries where employees and employers and unions have worked constructively together to try to find better ways of doing things, they've been able to do that. Whether that's possible in a step change in the cleaning industry, I just don't know. But across the retail sector I'm convinced it is. We all know of walking into shops where you get great customer service, somebody convinces you need to buy something you didn't even know you needed and you walk out and you feel happy and we all know of going into stores where you get terrible service, you can't find what you what, you can't find somebody to pay and you think, "I'll never go back there again." I think we'd all be happier - the employees and the employers - if we had more of the former and less of the latter.

I think if people get their mind around the fact that the status quo is really not a tenable one because we're not going to be able to get the prices and the deals that we really would like to, that we know the rest of the world get by just going on the way we have gone on in the past. So it involves a whole complex range of things and you've talked about skilling and we certainly agree with that. But upskilling people is a necessary condition. if employers don't use those skills and give people the equipment and the empowerment to use those skills in an effective way, then you don't get productivity improvement.

So in our look at the sector, what we are intent to try to say to government is, "What can government do to both get out of the way of this process happening or encourage it to happen where they are able to do that productively." In most cases I think productivity - when you look at the history of these changes, productivity improvements mostly happen within organisations, within enterprises because the conditions that create the value added that you're looking for are very different in different organisations. Trying to say something is right in the cleaning industry and then something is right in the local grocer down the road is not going to be very helpful in most cases.

So those are the sort of issues that we're wrestling with and, as I say, we agreed with you that it's important people are treated fairly, people are paid fairly. But it's important that we do get that increase in productivity and we're not wanting to be ideological, we're wanting to be practical.

MS TARRANT (UV): There is a lot there to unpack, so if I could respond to some of what you've raised there. Let's start with productivity because that's clearly the buzz word of the day, not just in this sector's considerations but certainly there is a very big push from the employer community around this issue. We think it suffers severely from a very narrow framing of what productivity could and should be. I think by and large - and perhaps this is evidenced by our reaction in the submission to some of the proposals is that our experience and I think the intent of much of the debate at the moment is really all about cost cutting and risk shifting from business to individuals and we've seen a lot of that happen over the last two decades and we just don't think it's sustainable.

So for us productivity should not and can't be equated to an ongoing erosion of people's basic rights, conditions and resources because ultimately - - -

MR WEICKHARDT: We're in heated agreement.

MS TARRANT (UV): So I think it's really important that we start to think about, "What does productivity mean in a service sector," because productivity as a notion has really come from manufacturing from other sorts of industries where in an hour's time you can produce a widget and you can count it and you can see and you can count the inputs. I think when you come to the service sector what is the cost of a quality shopping experience when somebody points you to right size straightaway or the right product or the right service. I think those things are very hard to quantify and we would argue that it goes to the quality of staff, not only - you're right, trading is an aspect, what you really want is a stable workforce that is well remunerated, that sticks around, that you start to get the benefits of that training from, so there's a whole lot of issues related to that. We also think though that not only does the definition - and productivity also goes to management practice. We find that there's a lot of poor management practice in Australia and we don't hear much debate about that - - -

MR WEICKHARDT: Absolutely.

MS TARRANT (UV): - - - the quality of middle management, the incapacity to roster appropriately, to know how to induct and train and retain staff, how to cope with bullying, harassment, all the issues that I know we deal with on a day-to-day basis are actually severe inhibitors to any real productivity, both in times of time lost, in terms of staff lost, in terms of instability of staff but also because of morale. So the whole notion of productivity does need broadening.

I think also though that there's also an implication in the current debate that increasing productivity equals increased shared access to wealth and the experience in Australia is quite contrary to that. Despite productivity increases over recent decades, the wealth has not been shared equitably. What we've seen is a significant shift away from wages to profit sharing in the economy and so it's not an automatic axiom that increasing productivity, however defined, necessarily is shared equitably. We see that in retail. If you look at the average income of retail workers or certainly if you look at the pay cheques of Kerry over the last 10 years or so and compare that to the profits in retail - and you yourself in your report have indicated the significant levels of profitability in this sector - they are not commensurate. So yes, let's have debate, but let's have a debate about how the gains or whatever reforms are put in place are shared more equitably and I think that's a really big issue.

I also want to give you an example of something that may seem a bit counterintuitive. If you look at many of the same owners that own shopping centres, they also own big office towers in the city. In fact 16 of them own the majority of the real estate property in the CBDs around this country. Over the last few years we've sat down with them in the sector and worked through how to actually rebuild a quality cleaning service for those owners. In fact it's ended up with increased wages for workers. It's actually increased minimum starts for workers. But in return, we've been able to develop a service that I think those owners are now really benefiting from in terms of quality and security. They're proud, they feel that they're performing ethically. We've built a sustainable business model but we've done it, as I say, counterintuitively, not by actually ratcheting down but actually by I think creating a more stable and professional workforce.

We've also done it on an industry level. I disagree that productivity gains come just from an enterprise focus. I actually think in many of our particularly low-wage sectors, if you go enterprise by enterprise, it's too hard. Very rarely is the employer in charge of their circumstances. A cleaning contractor in a single contract in a single site cannot make major changes to productivity by and large. It's got to come at an industry level, I think, in many of our circumstances because actually the people that control and make the difference are usually the owners or the clients. In contracting, it's very rarely the employer that is the significant player in terms of decision-making. So I think those dynamics are a little different and certainly in retail, the shopping centres are really the key determinants of what happens in this sector for the contractors and ultimately the cleaners.

MR WEICKHARDT: Sorry, there might be a difference between our definition of who the employer is, but your point, which I totally agree with, is that there are poor managers around, but the workforce generally have to be engaged, motivated, empowered, skilled, trained and managed in a way that creates that desire and that combination of working in an effective way. So when I talk about the employer, I'm talking about the managers that directly lead those people and they have to be heavily engaged in agreeing, "What is it that works in this situation?"

MS TARRANT (UV): It's very hard to be a decent manager when you've got no money in the contract. When Westfield has just cut 20 per cent of ours and a whole range of their contracts around shopping centres in Australia, you can be the best supervisor or line manager in the world but if you've suddenly got to chop 20 per cent of hours off all your cleaners, it's very hard in those circumstances where there is actually a pincer going on to be what we would hope to be a very quality focused manager.

MR WEICKHARDT: Sometimes managers have to walk away from those sort of deals and say, "I'm not going to do it."

MS TARRANT (UV): The reality is one of the biggest cleaning contractors in Australia, ISS, will not bid for retail work because it's not sustainable. Now, we think that that's not actually economically in the best interests of this sector when the big quality players who have the capacity to do the training, have the good equipment, have the shared overheads, do all the things actually that enhance productivity when they're not able to create a sustainable business activity in the sector, something is fundamentally wrong.

I think the other thing that we want to say is it's not just about the labour process and it's not even just about management, there's a business model issue in retail. How are the shopping centres going to respond to the competition around the Internet I think is a really interesting one. You're seeing differences now. You see a new Westfield centre that's a very particular type of business model; you see people like Woolies out there now; one of the biggest gaming owners in the country. So I think we've also got to look at how capital works; is it lazy capital, is it working capital? So much of the debate just ends up focusing on Kerry, and Kerry can only be stretched so far and I guess that's the emphasis we wanted to make, that unless those other issues are responded to, then I think ultimately - because at the end of the day, what's really interesting about retail is you've got over 10 per cent of the workforce, nearly 11 per cent of the workforce directly employed in the sector, the impact on them having any loss of wages, for example, or conditions or sense of security on the economy, they and the accumulative buying power of their families is a dramatic impact on society.

So I would challenge, for example, when we get into - and I know the ACTU has done a good job on this, so I won't repeat it, but if you compare Australia to the US, you really have to be careful what you're comparing when you look at the wage levels. You look at the subprime difficulties in the US and how much of that has been generated through a very expansive and expanding working poor. They're not the scenarios we want to import into our economy and society. I know you're not advocating that, but that is the danger is you just take a ratcheting down of costs approach.

MS SYLVAN: In your example of the industry level negotiation which you initiated, I gather from what you're saying, who was around the table and what precisely was the outcome? Would it happen to be that you actually did a baseline productivity measure and a subsequent one in relation to your achievements there? That would be lovely.

MS TARRANT (UV): Okay. So this is the Productivity Commission. Under Australian law, under the Trade Practices Act, workers can't actually in any way negotiate with the people that actually make the decisions about their lives which is, in our case, the clients. So the focus of that negotiation, in the first instance it was obviously with the employers which were the major cleaning companies around the country, but obviously we had to have a dialogue with the building owners as well, the clients that actually source the contracts. So through the auspices of the Australian Property Council, there was a dialogue at that level as well to say, "This is not good business practice for you." Through that dialogue, they came to understand that there was actually real benefits, commercial benefits, as well as reputational benefits, risk benefits or reduction of risk for them by going this path.

So what we ended up with was a clean-start agreement. It's an interesting agreement. It's an agreement that only triggers when the majority of the market is signed on to it. We don't want to have a competitive disadvantage for anybody that pursues this and that's now be triggered in five CBD markets around the country and has been in place a couple of years. We're just about to do a cost-benefit analysis. I don't know if Kirsty wants to add to this, but we've been going around - it's been in place now a couple of years - just in recent months meeting with all the property owners to see how it's going. What's been interesting is how much they have taken on changed practice in terms of contracting and a focus on quality. They see that it actually does have real commercial benefits for them.

MS McCULLY (UV): Yes, I think there's also a range of benefits around accountability and transparency within the contracting cycle as well. I think one the things that having an industry standard in place that's focused on quality delivers, is an understanding across the industry of what the expectations are at every level. I think what it has meant for cleaners that work in office towers and cities is some certainty around the conditions that they can expect, and what it has delivered for owners of buildings is some certainty around what they can expect from their cleaning contract as well.

I think it has highlighted a range of issues in the industry that we all knew existed. Sometimes it would be poor treatment in the workplace; sometimes it would be a lack of superannuation payments being made; sometimes it might be illegal subcontracting happening in the industry. I think what we've seen over time is those issues lessening because it's clearer when those things are happening and there's an avenue to resolve them.

MR WEICKHARDT: That model sounds like it had good outcomes. Do you see extending that model around the shopping centre owners?

MS TARRANT (UV): Thank you for that question. If anyone in the audience are reading this transcript, they all know that, yes, we are seeking to extend this to retail. Unfortunately, we have a significant contractor like Spotless at the moment refusing to bargain with its workforce, and in fact trying to go the individual flexibility agreement route which I think is ultimately counterproductive. That's been a source of some disappointment because the rest of the industry is ready, I think, to go through a reform process. But that's what we're hoping we can do with retail as well, is actually build a sustainable business model that works both for cleaners in the sector, the cleaning contractors, but also the client. That's ultimately.

That's where I would argue, when we talk about productivity, let's broaden it to look at what is it that builds a sustainable business model that is a winner for all parties. We believe that's the quality course that we'd like to see pursued. We think it works. We think it should be applied in retail.

MR WEICKHARDT: That's what productivity is about. Your point about the equitable sharing of the benefits of that, we understand that. We're not here to adjudicate on that, but unless you create that surplus, you're not in any position to even start talking about what's an equitable sharing of it. In the first instance it's vital that that sort of cooperative and creative approach is taken to - how do we turn people's hard work into something that gives them a reward.

MS SYLVAN: Can you explain for me your comment, which I didn't quite understand. It's the risk-related issue. This was the public liability issue and I think the failure of a company you were indicating and that liability is somehow being passed on to the cleaner, I gather. This is in the event of some kind of accident. The insurance has to be carried there or something.

MS TARRANT (UV): What we find now is that public liability, which is a very big issue in shopping centres, and having slips or falls or any sort of accident by the public, has obviously got real financial repercussions for the shopping centre. But basically that public liability exposure has been passed to the cleaning contractor. So the contractor now carries that liability which is quite a high cost to them, in terms of their business costs, but also if they are hit with any claims then that obviously has a severe impact on them. That was certainly a contributing factor in Reflections' demise.

What it means though in particular for people like Kerry - and she talked about the 15-minute loop - what we see is, and we've mentioned in our submission, that particularly in high-risk areas, workers are required to keep a very close eye, hence the heightened workload to ensure that there are no slips, there's no time delays. We actually get that that's important and that's appropriate in terms of ensuring public safety, but because the contracts are so lean it means that workers are being asked to work to unrealistic time lines, trying to do too much work and try and meet those sorts of requirements to progress their work and get back to a certain point within a very limited time frame.

What we see is that the risk has been shifted from the very broad shoulders of the shopping centre to the very frail shoulders, actually, of cleaning contractors for whom really they're just a labour supplier. There's not much else to their business model. So to take on quite a high risk, inevitably means higher workloads and higher exposure of cleaners to occupational health and safety problems et cetera. Hence we've got, in cleaning, the second-highest injury rate of any industry after construction which is quite extraordinary. That's the price that cleaners end up paying, because they're right at the end of that risk chain and the least capable of being able to respond to it.

MS SYLVAN: In an industry where you have this kind of industry pressure and, in a sense, from the shopping centre point of view, passing on that risk makes a lot of business sense, you know, to the next level who then passes it on to their employees and so on. But if we take altogether the pressures that you're outlining - and that Kerry has personally outlined - that would be an industry where I would have thought there was not a lot of employee loyalty, necessarily. There might be some in some companies, depending on how well they're managed. We were suggesting that they probably have some management problems and so on. It is an economy close to - well, has got reasonable employment and so on.

What we should see - and I'm not for a minute of the view that people can just up stakes and immediately change jobs. They've got responsibilities, they've got families and they've got to be careful of what they do. But I would have thought that with some of the stuff you're describing that we would see people walking away from this industry to jobs that either pay better or pay the same amount with less stress demand. Now, is that happening? Is that what we're seeing?

MS McCULLY (UV): Yes, we see huge levels of turnover in the cleaning industry, absolutely.

MS JONES (UV): Like, there is loyalty there. It's because your contractor is changing so much, they just get rid of half the staff and bring in their own workers or whatever. Where I am there's some people that have been there 14 years, 10 years. I've been there six. But if this contractor goes, the next company comes in, they will bring workers with them that could be cash in the hand or whatever, and the rest get pushed out gradually.

MS SYLVAN: So you don't have a guaranteed tenure. It goes with - - -

MS JONES (UV): No.

MS SYLVAN: It goes with whoever gets the contract.

MS JONES (UV): We don't even get long service.

MS TARRANT (UV): I think I would like to say that one of the things that will strike you if you talk to our members around Australia is a very strong sense of pride in the work that they do. For all the work is often quite difficult - and Kerry has alluded to cleaning toilets and cleaning up after people is not always the nicest aspect of the job - people are really proud about what they do. They also work quite close to where they live, so there's advantages around that. Also we have a very high level of migrant membership working in the sector. The transferability of skills or even acknowledgment of skills is often quite difficult. For a whole range of reasons, the hours, a range of family tag-parenting arrangements, those sorts of things do add up to why there's actually a core of workers that are very stable.

Mind you, around that we have markets like Brisbane that are significantly overseas students where every six months the workforce will turn over. It's a bit hard to generalise. But certainly retail as opposed to CBD, because it has offered longer hours has become a home for many people, a stable home. What we're now finding is that people now can't stay because they are finding it difficult to cope, and there are other options. But basically we want to be able to create decent jobs where these people can stay. That's really what we're trying to achieve.

MR WEICKHARDT: Thank you very much indeed, all of you, for coming along. Kerry, for you, this is extracurricular activity, I suspect.

MS JONES (UV): First day of my life.

MR WEICKHARDT: Thank you very much indeed. It's good to hear your story and I hope you can find a way forward that means everyone gets what they're looking for here.

MS TARRANT (UV): Thanks very much and thanks for your time.

MR WEICKHARDT: The next participant is the Restaurant and Catering Association. If you could each please, for the transcript, give your name and the capacity in which you're appearing.

MR HART (RCA): Thank you, John Hart, chief executive officer, Restaurant and Catering Australia.

MR PLACE (RCA): Justin Place, legal and policy officer, Restaurant and Catering.

MR WEICKHARDT: Thank you very much indeed for coming along. Assume we've read your submission, but if you want to outline some key points, please do.

MR HART (RCA): Thank you. Firstly, perhaps to address the issue of scope and why we're here, we understand this isn't a proceeding that's looking at hospitality but at retail. We believe there are three areas in which we have an interest in retail. Firstly, a number of our members are in the quick service and retail industry, and have a number of members that are officially within the category G of the ABS definition. We also fall within the definition of retail trade for the purposes of the gathering of retail trade data by the ABS, and that data has specifically cafe and restaurant turnover in it. Therefore, any of the references to retail turnover that are drawn from that retail trade data include turnover from all of our sectors.

Thirdly, there is a blurring of the lines between hospitality and retail that's going on as part of the structural change that we're going through. Simply examples like - that was used earlier - the new Westfield complex in a city where we have restaurants that are opening in major retail centres, and trading in both a retail sense and a hospitality sense. Those businesses are more and more prominent on the landscape. Businesses like Fratelli Fresh, for example - that are primarily retailers but then have a very large amount of restaurant and catering business as well - not only form part of our membership but are a part of the expanding retail and hospitality landscape.

The other area that is of some interest is the movement of staff between retail and hospitality. That movement goes on quite consistently, particularly flowing from retail into hospitality, but also a lot of people flowing back as well. That has implications for some of the skills issued that are canvassed in various parts of the draft report. That's why we think the views of our members are in scope, and we have plotted out in our submission - and in my summary comments today - those views that have come through the fairly exhaustive policy process that we have within the association.

Just a couple of summary points then, if I can. Firstly, the performance of our sector as reflected in retail trade data shows that we've had a very significant growth in turnover that has gone one for many, many years. In fact the turnover figure for July was the first month in which we had a month-on-month reduction in turnover. If you plot that against the consumer confidence index you'll see that that first month of decline also follows a fairly significant decline in consumer confidence that occurred in July; the point being that the whole fate of our part of the world is in the hands of consumer confidence. As soon as we see a dip in consumer confidence, we see a significant dip in turnover.

Also for the first time ever we've seen closure rates of our businesses, including both those that are directly in the retail scope and those that are in hospitality. The closure rate for the first time has exceeded the opening rate. We haven't seen that since the entry and exit figures have been collated. That's a fairly worrying trend to think that businesses are going out of business at a faster rate than they're entering what is a very competitive sector of the economy.

To the structural issues that we outlined in our report, and in our response to some of your draft report comments on structure, yes, this merging of hospitality and retail has a whole lot of very significant impacts on the way that the industries are structured. Particularly, the more we morph retail and hospitality together, the more we see an extension of hours that people are looking to use these services and by-products, and with the onset of - again to use that example - the new Westfield complex in the city.

The more hospitality businesses in those precincts that are fronted by shops, the more we have to have those premises open through 10 o'clock, 11 o'clock, and we have initiatives now by the Sydney City Council to have those businesses open till 2 am. The more we change the way consumers are behaving in this space, the more we morph retail and hospitality, the more pressure there will be on opening hours and therefore the more pressure there will be on all of the pay and conditions that go along with opening through until 10 o'clock or even 2 am if the lord mayor of Sydney gets her way. There's quite a significant structural change going on there.

There's also a very significant structural change going on in relation to employment. Our sector, including all of the take-away food employees, and those that are crossing hospitality and retail, employ 456,000 employees. That is projected to grow at 2.6 per cent per annum through until 2015. That gives a huge thirst for additional labour requirements somewhere around 60,000 people. Those that desire to bring in - or the need to bring in - all those additional employees, means that the business has to change the way it is structured. That sort of structural change is causing a fair degree of pain right at the moment.

We're also seeing, whilst you've got that first "driven by growth" for the number of additional employees, an increasing vacancy report. A report that came out today from DEEWR attests to that, particularly in the food trades that are employed across hospitality and retail. There's this sort of groaning of the employment base of the industry, as the industry changes, to deal with what is a growth in turnover.

To productivity: if you remove the accommodation, cafe and restaurant data from the overall productivity set, that is in terms of labour productivity, you see a decline of about 10 per cent per year in productivity in our sector. That decline in productivity is being driven by a number of factors but mostly by very significant increases in wage costs. Those significant increases in wage costs are driven not only by pay rates, not only by minimum rates, but also the market rate that is increasing very significantly year on year.

MR WEICKHARDT: Sorry to interrupt but I'm not sure what methodology you're using to measure productivity, but productivity is not normally measured on the basis of wage rates, it's measured in terms of output per hour worked.

MR HART (RCA): Indeed. What we end up seeing here is that because we have these increasing costs, it's changing the way that those businesses are made up. So they're in fact getting less output for every hour that's worked in those businesses because they're changing the way that their employment base works. You've got a coincident skill shortage that is driving down the levels of skills of workers in the business, grouped with, at the top end, an increase in market rates for more highly-qualified people. You're getting a lower level of qualification and skill that's been driven into these businesses through that skill shortage and increase in rates that's pushing productivity down.

It's not the wage rate per se that's driving productivity down, it's the change in the make-up of the businesses that is being driven by those increasing rates that gives less skilled people the opportunity to work in those businesses which pushes productivity down. There's less output of those businesses. We have an example today from one of our members who told me that 10 years ago they were employing one staff member per 15 people in their business to work in the function area. They're now employing one person for 10 people in those businesses, but the front-of-house staff then has to be doubled to deal with all of the other requirements of those functions. In fact their overall rate of employment for the same output was about 16 to 17 people per employee.

It's the skill shortage, coupled with those increases in wage rates, that's driving the downturn of productivity. You can see it very clearly in the number of people employed and the industry's turnover rate. We're not getting the same bang for buck out of the hours of people that have worked in the industry. That isn't evident until you split out labour productivity and capital productivity. That split is where we can see very clearly that it's labour productivity that's taking a dip. Capital productivity is virtually unchanged in our sector, and we believe that it's not until you get into the detail of that analysis that you can see the clear picture of the way employment is operating within the industry.

Perhaps if I can just turn to some of the skills issues first, and that is that the very significant skill shortages are having a very dire effect on the way all of our parts of industry are operating. Those skill shortages are being driven by direct policy decisions to reduce the investment of skills in hospitality and retail through traineeship/apprenticeship programs, as well as in terms of overseas workers coming to this country, we are no longer able to bring in higher-level workers. We're no longer able to bring in cooks and chefs to fulfil the gaps in the food trade market, and it's that lack of being able to bring in overseas workers and lack of investment in skills locally that's creating this downward, average level of skill working in our businesses. We're about 3000, three and a half thousand cooks short in the country, and that skill shortage is widening by the day.

MR WEICKHARDT: In most industries where there are accepted skill shortages, people were able to bring in overseas employees through 457 visas. Are you saying that doesn't apply in this industry?

MR HART (RCA): Well, there's a skilled occupation list that allows various occupations to receive attention through the skilled migration program. Cooks and chefs have been removed from that list and therefore they cease to be a priority for overseas workers. That has meant that we've had a very significant reduction in the number of cooks and chefs.

MR WEICKHARDT: Why were cooks and chefs removed from the list - because the responsible authority didn't think there was a skill shortage there?

MR HART (RCA): No, the requirements or the criteria for inclusion on the skilled occupation list was moved from a demand based criteria to a criteria that was based on the value of the occupation, and the value of the occupation was determined by the length of the qualification, how many people stay in that occupation after they're trained, and a range of other criteria around the value of that occupation to the Australian economy and the like.

MR WEICKHARDT: There's some restaurants with chefs where I can attest to the fact that they're very highly paid and they charge like wounded bulls. So I'm surprised that they're not seen as being highly skilled and highly sought-after.

MR HART (RCA): I totally agree with you. That set of criteria is now not only applied through the immigration system but also applied through the prioritisation of investment and skills through other means. There is a priority occupations list that also doesn't include food trades. There are a number of areas where the focus has moved away from those types of occupations to others that are more valued.

MS SYLVAN: Would that include the reductions in immigration in relation to the students coming in to be trained as well? There's been a significant reduction in that figure. I think quite a few of those people were being trained in the food industry, broadly speaking.

MR HART (RCA): That's correct. That movement is then on top of our reduction in numbers coming in that are already skilled. The two are linked insofar as part of the attraction for the overseas students was the pathway through to permanent migration, and a range of those students were being trained in cookery and then going into other occupations once they had obtained residency. That really was a problem with the training system and the way that those courses were being sold, rather than a problem with the working environments in which they found themselves. So what it has done is addressed the problem. We've got a whole lot of people studying cookery that never worked in it, but created another problem in that we're now some large number of cooks and chefs short in the industry, let alone those that were overseas students that were working front of house for us, and we now have a shortage there as well.

MS SYLVAN: Can we assume that there's been a reduction in investment and skills and there's a shortage of supply with the prices being seriously bid up?

MR HART (RCA): In terms of wage costs?

MS SYLVAN: Chefs and so on.

MR HART (RCA): Sure. Absolutely. It's a twofold increase in price: one is a regulatory increase and then there's the market rate that is moving upward at the rate of 10 per cent plus a year as well.

MS SYLVAN: I was intrigued by the comment in your submission that there should be an exemption in relation to the wage increases for your industry, I take it. How would you retain people if they were in short supply and you paid them less?

MR HART (RCA): Well, the reality is that what we're suggesting is the minimum hourly rate - that an exemption should be considered from the minimum rate. That, of course, isn't what we're paying people because there are considerable overlays of penalty rates that apply to almost every employee in our sector, and it's the overlay of all of those penalties on penalties that bids the rate up to the types of rates that we're paying. The logic of calling for that minimum rate to be frozen is based on the fact that that's not really what people are getting paid. It's the escalating rates of penalty on penalty that create the rate that is actually being paid.

MS SYLVAN: I guess if we're looking at the labour market as a standard market, and there are, of course, some arguments that you can't quite look at it that way, but is one of the clear factors in the levels of turnover and there's also casualness, and people don't see this as a career often, do they? Is part of that related to, in fact, as we've been hearing, the way they're managed, the fact that they're not valued, paid well et cetera. It seems to me you get into a cycle you can't get out of where the behaviour of people hiring essentially determines an outcome which is that nobody is committed to staying or being trained or upskilling and so on.

In a sense the retailers have been telling us exactly the same thing. They've got a casual force, so they don't invest in the skills - some do but lots don't. Lots of people don't see it as a career because nobody treats it as a career. Ultimately you have a self-fulfilling prophecy.

MR HART (RCA): Yes, and we certainly see that. But I think the issue here is how you get out of that self-fulfilling prophecy and how you break the cycle. I think we have managed to start to break the cycle by intervening with a considerable number of programs aimed at upskilling managers, a considerable number of programs that are aimed at giving recognition to the workforce for the skills they have so that you can start to lift skill levels through plugging people's existing skills into further education and training and the like. Unfortunately, by removing our industries from the list of priority industries, by disconnecting our industries because of that very casualisation and the deemed low value, it basically removes us from any of that intervention to try and break that cycle.

That's where we find ourselves today. There's a lot of things we can do to try and correct exactly what you portray as the status of the industry, but we can't do any of those things if governments aren't prepared to invest in building capacity back into the industry.

MR WEICKHARDT: Well, what about the industry investing to build capacity back into the industry?

MR HART (RCA): Well, the industry does invest.

MR WEICKHARDT: So it should.

MR HART (RCA): Yes, certainly. I guess the industry's capacity to invest is only determined by its capacity to have the resources to invest. As we stand today, the level of average profitability for businesses in our sector is 3.6 per cent. The average take-home pay of a restaurateur is $42,000. There's not a huge capacity for these very small businesses to make that investment, but they do, and they need to ensure that their investment is matched by government investment to build capacity back. The reality is that whilst there's this sort of view of value that's determined by all of these formulae that say, "Value is determined by how long people stay in careers," and the like.

There are reasons why people working in our industry don't stay for the periods of time that they're determining in these equations. That's basically because people are working in our industry whilst they're doing other things. The industry shouldn't be cast aside just because it's fulfilling a social need to employ people that want to work part-time. There is investment by employers and there also needs to be investment by government to intervene to ensure that we're building capacity back into a large sector of industry.

MR WEICKHARDT: Okay. We've got about another 10 minutes or so. Are there other key points that you want to move on to?

MR HART (RCA): The other area that we canvass in our submission is the Fair Work Act and what that has meant for our industries, in particular, the onset of the modern awards. We certainly see that the recommendation that's made in your draft report to look at what the Fair Work Act has meant, and the modern awards have meant, to the way that industries operate. Obviously in retail the conditions are pretty much the same in the modern awards as they are in hospitality. We have a range of issues with not only the straight hospitality businesses but those that are straddling hospitality and retail in that there is very little flexibility within the Fair Work Act or within the modern awards.

We believe that that review that you have called for in that recommendation is absolutely vital. We believe that that review needs to be comprehensive enough to consider the aspects that you mentioned in terms of agreements, in particular, and not just the modern awards. That is probably the highest order issue for our members in terms of how their businesses are going to operate moving forward. We certainly believe that that's a very important part of what needs to come out of this exercise.

MR WEICKHARDT: Of course I should stress that what we were suggesting was that the Fair Work Act review, which was promised at the time the act was put in place, given the exemption from the regulatory impact statement, that review and also the review of the award itself shouldn't just necessarily be done from the point of view of industry, which I think were the words you used, it has got to be done from the point of view of all the stakeholders - and there are employees and employers involved in this - and it has to balance all the needs of those and be appropriate in terms of both encouraging the productivity improvements and the efficiencies that we're looking for, but also the equity and the fairness that we're looking for as a society.

MR HART (RCA): Certainly. I guess when we talk about industry, we think of both employers and employees and their interests. We say in the submission that we believe that it's just those objectives of the award modernisation process that we need to get back to and make sure that the outcomes are measured against those objectives. If the review can achieve that I think it will have achieved a lot.

MR WEICKHARDT: Just in terms of the individual flexibility agreements, which you raise in your submission and make some comments about, what are the issues of concern to your members in terms of utilising those individual flexibility agreements to create the sort of environment that you think is going to give rise to good outcomes for all parties?

MR HART (RCA): The central concern in individual flexibility agreements is the lack of capacity to negotiate monetary conditions. We believe that essentially the individual flexibility agreements don't mean much unless you can negotiate both monetary and non-monetary conditions in an IFA. That would mean, of course, that a whole range of the monetary conditions, including allowances and the like, could be built into a series of conditions that better matches the needs of employee and employer in the workplace. We certainly believe that that is the benefit that was envisaged for IFAs that is not being achieved.

MR WEICKHARDT: When you say you need to be able to negotiate monetary, I'm assuming that you can negotiate monetary, but you can probably negotiate them upwards. You're suggesting you want to be able to negotiate them down?

MR HART (RCA): If what we can do is do as we did in the past, and that is negotiate an hourly rate that builds in a whole lot of other monetary conditions; for instance, meal allowances, penalties, a whole range of those sort of terms and conditions, and wraps those conditions up into an hourly rate, for example, that provides flexibility that an employer and an employee can work with. That is not possible within the system as it currently operates. An individual flexibility agreement cannot do that because some monetary conditions are being traded off against others, albeit that the overall impact might be a positive impact for both employee and employer.

MR WEICKHARDT: I mean, it's interesting we had a participant in here a couple of hours ago who was talking about the fact that he pays his workforce on a five-day week, he pays them for working on a Sunday, as if one of those days was a Sunday, regardless of whether they work on a Sunday. He pays them for six weeks' annual leave. He requires them also to work on two public holidays. Whether they do or they don't is part of the roster. He said he'd negotiated all this under the Fair Work Act and that there was a certified enterprise agreement. It sounded to me from what he said - and I don't want to contend I've seen the agreement or understand any of the details - that he'd traded off some conditions, some pluses and some minuses, and come up with an agreement that presumably all the employees had signed off on and Fair Work Australia had signed off on. Are you suggesting that's not possible?

MR HART (RCA): No, I'm suggesting that in an individual flexibility agreement that's not possible. In an enterprise agreement it may be possible.

MR WEICKHARDT: Okay.

MR HART (RCA): Our concerns with enterprise agreements are different to those with individual flexibility agreements. Our concern with enterprise agreements relate to the process of working through enterprise agreements and the lack of consistency in their acceptance, and the process for approval in relation to then negotiating conditions with individual commissioners. There are other concerns in relation to enterprise agreements that certainly are able to look at negotiating monetary conditions, but there are other concerns that we have in relation to those agreements.

MS SYLVAN: One of the things we looked at - because a number of the employer organisations said that they had lost flexibility. So we went back and looked at the agreements in retail - we didn't look at your sector as part of retail - and we produced those in an appendix to our draft report. What was surprising is that with the opportunity, apparently, to do this previously having been taken away, there wasn't a lot to show for the fact that that flexibility could have been negotiated in, so I just note that. It didn't appear to have been used with the opportunity was there. I don't know how that applies to your sector previously.

MR HART (RCA): Yes. I would say that we certainly used a considerable amount of that flexibility in the agreements that we had in the past and particularly because of the range of hours that our businesses are open, the very example that was just given in relation to an enterprise agreement negotiating rates across days of the week was the type of flexibility that we were negotiating into a very large number of agreements. Our concern is that moving back to a more centralised system doesn't allow that to take place. We see a centralised basis that's based on a very 9.00 to 5.00, Monday to Friday type frame that really doesn't apply well to hospitality or retail or a mix of both. It simply doesn't acknowledge the way those industries work.

MR WEICKHARDT: In your submission you raise a concern about the Fair Work Ombudsman giving advice to both employers and employees and say this is clearly a conflict. If the Fair Work Ombudsman is helping both employers and employees understand the way the act should work and the way the award should work and giving the same advice to both parties, why is there a conflict of interest?

MR HART (RCA): I think the key is in your caveats; that is, I'm not sure that that's the case, that there is consistent advice being given to both. There are too many circumstances that we've come across where, not for any reason other than the basis of their advice is unclear, we have had differential advice going to employee and employer. It's the capacity to be able to have that advice consistent and reliable that has to be built into the process and that is not currently there. It's not until you interrogate some of the advice that's been given that you realise why it is incorrect or inconsistent. It's really the way in which that advice is being provided that creates that conflict.

MR WEICKHARDT: You use the word Fair Work "Ombudsman" as if there was one person there; I suspect there's probably a lot of people. So when this different advice comes out, it's presumably from different people, is it?

MR HART (RCA): Most likely, yes. But if there is to be this dual role, there needs to be processes in place to make it very clear what it is that is to be provided as advice on the basis on which that advice will be provided and that is not working effectively as we stand today. That's probably a function of the newness of the system and because there is areas in which there is not a clear answer, but the point being made in the submission is that that gives rise to all sorts of difficulties in the workplace when you have that conflicting advice from employees and employers in the same work space.

MR WEICKHARDT: Clearly the new act, as any new piece of legislation going through, I guess there's a process of bedding in and people understanding what it really means. You refer to the litigation McDonald's have gone through and I assume that that now has set some sort of precedent, so people can better understand the way that act should be interpreted. Do you feel that that is actually happening, that things are becoming clearer as we move forward?

MR HART (RCA): I'm hopeful that they will eventually. I think what we've seen to date is that every new decision creates another series of questions and as these things go, there needs to be a lot of these decisions to add to the evidence base so that things do become clearer. At this stage I think we still have a very large number of unanswered questions and a number of the decisions that have been made do give rise to a whole lot more questions and really, there are a lot of outstanding items on our list of areas where we have to provide advice that there is no clear advice. That's not a good way to be implementing a new system.

MS SYLVAN: Just a couple of things: I just wanted to note to you that the comparison that you do on minimum wages in various countries, which is just a currency equivalent, it's difficult even to get reasonable comparability on purchasing power parity, let alone a currency equivalent, so I don't know how useful that is. I'm sure you're aware of that.

MR HART (RCA): Yes.

MS SYLVAN: I wanted to come to the rental issue that you raised very briefly.

We characterised some of those issues as really land availability issues in the retail space. They were planning issues as opposed to retail tenancy issues. I wondered whether you agreed with that characterisation or not. You don't really indicate.

MR HART (RCA):   I might ask Justin to address that, if I can. I didn't really look at that area.

MS SYLVAN: You raise it in terms of leases; we're saying there's already stuff happening there. There's a question of how that should be continued but we didn't want to see more work done on leases, we actually think that it's a supply issue.

MR PLACE (RCA):   Sorry, the question?

MS SYLVAN: The question is, you are silent on that issue, so I'm wondering whether our characterisation of the problem as essentially not a lease issue but in fact an availability of supply issue in the end is from your point - you can take that on notice. If you want to comment on it, that would be fine.

MR PLACE (RCA):   Yes, from the way we've drafted it, what I'd like to do is have a look and see what we've stated there, just how we've got it written here.

MS SYLVAN: That would be useful. Thank you.

MR PLACE (RCA):   Yes, I can come back to you on that one.

MR WEICKHARDT: Basically what we've simply said is if you've got very high occupancy rates in centres, 99.5 per cent full, supply is short, demand is high, it's probably true that rent is expensive. The way of fixing that is not to try and intervene in that negotiation; it's create more space, create more competition and then prices will come down. We're out of time. Thank you very much indeed for coming in. We appreciate your input.

MR HART (RCA):   Thank you.

MR WEICKHARDT: We'll move to the next participant, the International Fashion Group. If you could give your name and the capacity in which you're appearing, please.

MR MENDELS (IFG): My name is David Mendels and I'm the manager director of International Fashion Group.

MR WEICKHARDT: I don't think we received a submission from you, David.

MR MENDELS (IFG): I haven't made a submission. I rang and asked if I could speak to the commission verbally. I am a member of the FDAA that did make a submission to you in Melbourne; that's the Fashion Distributors Association. After reading the press reports from the Melbourne hearings and viewing the minutes, I felt compelled that I would like to speak to you because I am concerned there is a lack of understanding of the real problem facing the fashion industry and I think other industries as well in relation to the thousand-dollar threshold.

Just to give you a bit of background about me briefly, I was the youngest person in this industry when I came in. I've been in it for 52 years. According to Solly Lew, I'm the oldest one left. My concern is my company deals with 650 boutique retailers right now, plus the majors. We did have more boutique retailers. We have lost approximately 150 over the last couple of years, predominantly due to the threshold being as high as it is. The area of the business I am in is the premium market. I am the distributor for four of America's major premium denim brands - being True Religion, Paige Premium Denim, Joe's Jeans and Adriano Goldschmied.

These are premium brands. They're made in the United States. They're made from fabrics coming from the US, Japan and Europe, and they're of the highest possible quality. We've been importing them now for some five and a half years. In 2009 I realised that the online business, especially out of the United States, was having an impact on my retail market. I wrote to the government at the time, both Messrs Swan and Shorten. Mr Shorten and I have been communicating quite regularly. He's still in denial and I'm still throwing facts at him.

One of the problems facing us - and I think facing the commission, from what I've been able to read - is the lack of information that has been able to be made available. I'm deeply concerned that there is not a complete understanding of what's going on. I noticed in the minutes from Melbourne there's a continual referral to the postal department, but there's no discussion in relation to the couriers. The amount of parcels coming into Australia, no-one really knows. The post office has a certain record. The couriers do have records but don't disclose it. It is, I believe, a lot greater than what anybody really understands.

MR WEICKHARDT: I think the CAPEC carriers have certainly disclosed in their submission, their volume, and we've got a pretty good fix on Post - there's a degree of sensitivity of Post revealing exactly their numbers in the most recent year. In broad terms there are around 10 million parcels that come in through the CAPEC carriers, and around 40 million that come in by post.

MR MENDELS (IFG): I believe that what's coming in through the couriers is actually higher. They're known not to disclose the truth in the past. They were the ones that went to the Howard government and had the threshold increased to the thousand dollars. Originally, the threshold was a hundred, then it went to four, and then it went to a thousand. They're the ones who pushed for it because it made their life easier.

MR WEICKHARDT: I think they pushed for it, technically speaking, on the grounds of competitive neutrality with the postal service, and I think the threshold went from 250 to 1000.

MR MENDELS (IFG): The thing is, I think it's much greater. From my observations of my part of the industry, I would say we're losing about 30 per cent of our consumer market, it's is going overseas, predominantly to the United States. The reason being is a price of an item from the United States, when it's shipped to Australia - and it's encouraged to be shipped; the US retailers encourage it, and their online people - is that they don't have the overheads and costs that we do here. By the way, I'm not against online retailing, I'm quite the reverse, actually, and I've encouraged a lot of my customers to get involved in it. But I think we've got to be able to compare apples with apples.

The US retailer does not pay sales tax when they ship to Australia. They're competing against a product being sold here that does incorporate the GST, the duties and all the costs involved. Therefore this makes it an uneven playing field. I've actually done a costing on one of my products and if duty and GST was charged on one of my lines - the brand True Religion, which is one of the most popular brands being imported - I can assure you it runs into more than 30,000 units coming into Australia from online retailers in the United States. You're getting the information back from my supplier.

The price differential between the product being sold by an Australian retailer, incorporating the GSTs and duties and costs et cetera, works out to be approximately $9 difference. So it's $9 more expensive than if the product that came in online paid its duty and GST. If it was to pay its duty and GST then the couriers, of course, then would charge for administration which then would probably bring it online. The thought that it's going to be so much cheaper is only because of the lack of the charges involved on duty, GST and other costs, as an importer, we incur.

I don't know if you're aware but I was part of a 60 Minutes program recently and they interviewed a stylist who bought a handbag online from Pret-a-Port in England. She said the price from Pret-a-Port in England was the same price as the handbag here, but she wanted the experience. What 60 Minutes didn't point out was that if she'd bought it here she would be paying a duty and a GST, where she didn't out of the UK. The cost of imported online goods coming from the UK is not that much cheaper. The cost of goods coming from America is because they don't have the weight structure. The wholesalers, the retailers, pay approximately one-third of the salaries that we pay here.

I'm not looking to see that we reduce our wages here, or our benefits. I don't think that's the way to go. I think this is God's country and you pay a price to live in God's country, but I don't think it's fair that we're making American retailers more wealthy and more successful because we're allowed to buy online and avoid all the costs that keep our country, and give us the benefits that we have here - the Medicares, the long service leave, the four weeks' annual leave et cetera, which they do not have.

MR WEICKHARDT: I mean, we're in heated agreement that something should be done about the low value threshold and that tax neutrality should apply. To that extent we agree with you. We had somebody in here yesterday was from the snow sport industry who was also, I guess, in a similar situation to you, feeling that the current situation wasn't fair. But they did quote an example which is probably something you know a hell of a lot more about than I do. I can't remember the brand of jeans but they said they were in the US and they bought a brand of jeans, that they quite liked, for $30. They came back here, he liked it and he wanted to buy another pair, went shopping in Australia and found prices of 180 and 200 dollars, He went back online and surprisingly found that the same retailer he'd bought from in Denver was advertising online for $30. He landed the product for 50, I think. Now, in those circumstances you can't say that that's only the GST or duty.

MR MENDELS (IFG): No, I agree with you, but what you have to understand in the US, a lot of those retailers who are selling those brands, are also selling off-price merchandise. Don't forget, we reverse seasons. If I'm selling for our current season, which we're going into summer, they're going into winter. So whatever they have left over in their winter, they may clear to an American retailer who then gets the benefit of a price, he sticks it back on online and therefore this is the differential. This is where a lot of the differentials come from. I don't think you're ever going to stop that, and I don't think you're ever going to stop people from being able to buy that online. If they can still buy it at $50 and pay the duty and GST then, okay, fair enough.

I personally believe it runs into billions of dollars of unpaid duties, GSTs and other taxes. I'm very convinced of it. Just about every second person you speak to today buys something on line - the cosmetics, the sporting goods, snow boots. It just goes on and on. I feel we've come to a stage where we have to instigate this, and I note in the minutes that you believe that the cost of instigating it is higher than the return.

MR WEICKHARDT: If it was done with the current processing system, and that's not what we're advocating. We're suggesting that the processing system should be revised and made more efficient. Once that happens the threshold should be lowered. But we also agree with you that there should be better data, and we've made a recommendation to that extent. I have to say that it would be surprising from what we have seen if the penetration in any sector was up to 30 per cent. It's possible, but we've done our best job to triangulate from a whole range of perspectives. We've had credit card records from banks. We've had the estimates of a whole range of different people. We've looked at the number of parcels coming in, and we've done our best estimate - - -

MR MENDELS (IFG): I appreciate that.

MR WEICKHARDT: - - - but it is only an estimate.

MR MENDELS (IFG): I appreciate that, because there's no true records. I've made some copies of some information that you may find helpful. One is something that was sent out by American Express to all its cardholders, inviting you to buy online now. If American Express goes to this sort of trouble to invite you to buy from American retailers using credit cards, then it must be a pretty good sort of business for them to invest in. That's one.

MS SYLVAN: They're proposing, as I understand it, to offer effectively the guarantee.

MR MENDELS (IFG): Sorry?

MS SYLVAN: The guarantor of the transaction, in a sense.

MR MENDELS (IFG): An American Express guarantee.

MS SYLVAN: If you don't receive the good or whatever, they'll make sure that - - -

MR MENDELS (IFG): But you're buying online through an American site.

MS SYLVAN: That's right.

MR MENDELS (IFG): You're not buying online through an Australian site. It's going straight into the US coffers. It's helping Mr Obama, it's not helping our

Treasury. I've brought here a copy - and I don't know if you are aware of it - from a customs agent with regards to the declared value of $1000 where he refers to things and he gives some facts on it. I've got that for you. I've also brought you a copy of what it costs me as an importer - and the costs that I incur - to bring goods to my warehouse. I felt I wanted to give you that sort of information because it may help you get a stronger feeling for what's really happening.

MS SYLVAN: Are we to use your materials as a public submission?

MR MENDELS (IFG): It's up to you. There's nothing secret about it. Whether I was to give it to you or someone else was, it would make no difference. As I said, I've been around a long time, I've seen the demise of the industry in a lot of ways and I've seen us fight back. I agree with the commission, I think retailers have to do a lot more, and I'm encouraging my customers to get in there, make their shops more attractive, get staff on board. I've spoken to the heads of the major retailers about increasing their staff, and I think you're going to see in the next few months, both Myer and David Jones are going to start doing that because they too now realise that they've got to do something to grab that dollar.

My biggest fear is that we're going to force some of these bigger guys to set up their businesses online and to have a showroom in their offices and ship you out of China and Hong Kong and you'll get it duty-free, tax-free. I'm looking at it and saying, "Hang on, we want hospitals, we want schools, we want all these things." I mean, that's what we pay our taxes for - the duties and the GST. That's what it's there for. We're losing that. Whether it's a billion dollars or whether it's $5 billion or more, it's still money that we're losing as a country and yet we all still want the benefits that we get that they don't get in other countries, and yet we're making other countries more wealthy. That's really all I wanted to say. I thought I had to come and say it.

As I said, I've been around a long time, I've seen them come and go, and I just hope that the commission can drive - because I've found Bill Shorten totally in denial over this. I know he set up this Productivity Commission. I'm hopeful that this will help us survive as an industry because I know retailers who are just on the edge of it and they're going to lose - I mean, every small business person puts their home up as security. The banks have got all of us. I've seen people who are going to lose their homes, the way things are going. The double pressure of the economic situation and the online business is having that sort of lasting effect. I'm very confident if the threshold is dropped completely or lowered to a level equal to that of the UK or Canada, I'm sure you'll see greater increase in sales in retail, and I'm sure you'll see a greater increase in revenue for the government. That's all I want to say.

MS SYLVAN: Thank you very much. We appreciate it.

MR WEICKHARDT: Thank you for your input. We're grateful for it. I have to say my faith that the industry will respond and adapt is a bit greater than yours, and I don't think Australians want to see the complete demise of bricks and mortar retailers. There are some that might but many want to go and touch and feel and explore. The US model and the European model of bricks and clicks seems to make a lot of sense to us. I think people will find a way of doing that and give customers what they're looking for.

MR MENDELS (IFG): I have to tell you, I met an executive of Nordstrom stores in America. He's very happy with the fact that we have this threshold because he admitted to me that the business that they're getting out of Australia is definitely filling a gap that they've been losing over there.

MR WEICKHARDT: That is interesting. Nordstrom are a pretty confident store.

MR MENDELS (IFG): Yes.

MR WEICKHARDT: Okay. Thanks for coming along.

MR MENDELS (IFG): Thank you for giving me the time.

MS SYLVAN: Thanks very much. Thank you for that.

MR MENDELS (IFG): That's just a little bit of information and that gives you costs - - -

MS SYLVAN: This is your fees out of - - -

MR MENDELS (IFG): Yes, all the way through, which of course we pass on.

MR WEICKHARDT: Does that include the component?

MR MENDELS (IFG): Yes, everything is there.

MR WEICKHARDT: Okay.

MR MENDELS (IFG): The duties - and the other interesting thing is here, just from the airport to my warehouse there's GST.

MR WEICKHARDT: Yes. Thank you very much indeed.

MR MENDELS (IFG): Thank you for your time.

MR WEICKHARDT: Now, that concludes these public hearings and today's scheduled proceedings. For the record is there anyone else who wants to appear today before the commission? No? In that case I adjourn the proceedings and I close the hearings. Thank you.

AT 4.54 PM THE INQUIRY WAS ADJOURNED ACCORDINGLY