

National Federation of Independent Business (Gold Coast) Inc.

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Submission to the Trade Practices Act Review June 2002

The Secretary
Trade Practices Act Review
C/- Department of Treasury
Langton Crescent
PARKES ACT 2600

The National Federation of Independent Businesses represents thousands of small business families throughout S.E. Queensland and, through its alliance with other groups, in every other state in Australia. The NFIB is a voluntary, non-profit organization modelled on the NFIB in the United States. We have no paid staff but we have been fighting for the rights of small business owners in Australia for about nine years now.

We beg the TPA Review Committee's indulgence in lodging this submission after the official deadline and ask that it be accepted.

Small Business owners are not afraid of competition. They thrive on it. Small Business owners have built the domestic economies of most major companies and the symbol of a true free enterprise system is the independent and small business entrepreneur, not the corporate organisations.

Small Business owners are committed to the concept of true free enterprise unfettered by government and bureaucratic intervention.

Having said that, the current level of market concentration in Australia distorts the equilibrium of power and, even with the current Trade Practices legislation still allows major corporations to use their market strength to gain an unfair competitive advantage in dealings with small businesses.

This is particularly the case in the retailing industry where two major chains, Coles-Myer and Woolworths control almost 40% of the total retail market and more than 80% of the fresh food and grocery market.

This allows them to virtually dictate the terms of trade between themselves and suppliers, to almost dictate the prices they will pay to the market for fresh food, to charge enormous amounts to suppliers to stock their goods, to have their

own employee awards, and to gain an unfair advantage in rental arrangements with shopping centre landlords.

All the above provide these two chains with enormous market strength that serves to eliminate competition from small suppliers and food retailers. But an observation of the overall market place will show that the price advantages they gain are only passed on to consumers in areas where they have not eliminated the local competition.

Changes to retail legislation drawn down from the 1997 Fair Trading Inquiry have failed to equalise the bargaining position between shopping centre tenants and landlords who still take advantage of their power to renew leases. They can still force up rents far above the true market value without any performance accountability in terms of trading through the centres.

This organisation will continue to fight for stronger anti-trust laws similar to those in place in the United States. In the meantime whatever changes have been made to Trade Practices legislation in Australia still discriminate against small businesses owners because of the high cost of accessing the law. Landlords and other big business use their knowledge of this situation to deny small business owners their rights and to enforce unfair terms and conditions on them to gain a commercial or market advantage.

That there have not been many judgements awarded against big business in unconscionable conduct claims only serves to underline the fact that the law needs strengthening and ignores the fact that the financial and emotional burden of pursuing their case, and the unfriendly and almost officious nature of the courts, especially when confronted by the power and aggression of the corporate lawyers discourages small business owners from making a claim against a big business, especially a landlord.

The only glimmer of hope for most small businesses has been the role of the Australian Competition and Consumer Commission. This organisation is of the view that there is a need not only to maintain the commission's power but to increase it. At the same time, we remain committed to the fight for stronger anti-trust laws to ensure that, eventually, there is a truly equitable competition policy that holds big businesses accountable for their performance in the market place and denies them the right to use their market strength to gain the unfair competitive advantages they currently command.

Yours sincerely,

Vincent Schofield
President