

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

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MR WEICKHARDT: Good morning and welcome to the public hearings for the Productivity Commission National Inquiry into the Economic Structure and Performance of the Australian Retail Industry. The hearings follow the release of the draft report in early August this year. 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. Following these hearings in Melbourne on 5 and 6 September, hearings will also be held in Sydney on 12 and 13 September. We will be then working towards completing a final report for government in early November this year, having considered all the evidence presented at the hearings and in submissions, as well as other informal discussions. Participants in the inquiry will automatically receive a copy of the final report once released by government which may be up to 25 parliamentary 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. 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.

Today we have a number of members of media here. Our rules for media are that recordings cannot be made whilst the hearings are in process and filming cannot be made. People are welcome to take notes and clearly they can access a transcript. To comply with the requirements of the Occupational Health and Safety legislation and commonsense, you are advised that in the unlikely event of a fire or an emergency requiring the evacuation of this building, you should follow the green exit signs to the nearest stairwell. Lifts are not to be used. Please follow the instructions of floor wardens at all times. If you believe you would be unable to walk down the stairs, it is important you advise the wardens who will make alternative arrangements for you. Unless otherwise advised, the assembly point for the commission in Melbourne is at the Suncorp Plaza at 447 Collins Street which is between William and Queen Streets.

Our first participant for the day, the Australian Retailers Association, and if you could give your name and the position in which you're appearing please and then give us a brief synopsis of what you'd like to say. Assume we've read your material

but obviously if you'd like to outline that, please go ahead.

MR ZIMMERMAN (ARA): Russell Zimmerman, executive director of the Australian Retailers Association. Just for the record, we are an industry body, we represent about 5500 members. Most of our members are from the larger retail chains down to the small retail stores. We probably have predominantly in our membership fashion and footwear retail stores.

MR WEICKHARDT: Your colleague?

MR MICHAEL (ARA): Heath Michael, policy director for the Australian Retailers Association.

MR WEICKHARDT: Thank you.

MR ZIMMERMAN (ARA): We would like to start by thanking the commission for the opportunity for being here today and just to highlight some of the points of what we have put into our recent submission letter. We would firstly note the support for the low value import threshold by other groups and industry bodies and we would note to the secretariat of the Fair Imports Alliance that we will address some of those issues that will be also addressed by the Fair Imports Alliance later.

We find ourselves as the ARA in agreement with the SDA Union on the matter of low value imports, in particular the recommendation to the PC to improve the performance and the efficiency of Customs and Australia Post and furthermore, the establishment of the task force to address and rectify the ineffectiveness. That being said, we would like to see the end of industry bodies that are affected also involved in the task force, not just the carriage service, as has been suggested under the Productivity Commission report. We would further like to see the time process for the process for the reduction of the \$1000 threshold to be tightened up. We feel that there is a long lag and that there is an opportunity for that to be sped up and to be tightened up.

We further would also note that in the report from the Productivity Commission that they talked about the tightening up of the ABS figures and we would certainly agree and support that. It is worthy noting that in the current retail figures other retailing was listed as being about 7.2 per cent increase. That being said, other retailing we know includes online retailing but we would also like to see those figures broken down so we have a real true indication of where the online retailing is in relation to the other retailing.

In relation to planning and zoning that has been listed in the Productivity report, we would like to see greater coordination through COAG and an opportunity

to work closer with COAG to instigate some of the recommendations. In relation to tenancy in our submission, we feel that there is an unfair market dominance by various tenancy landlords and the ARA will be discussing with the state governments how there can be a more transparent tenancy regulation and we are looking to the federal government to support that so that retailers can have a far more level playing field in their negotiations. We feel at the moment it's very difficult to negotiate. We feel it's very much one-sided by the landlords, and the retailer doesn't have as much opportunity. We feel that if a retailer had more knowledge and information that that would be an opportunity for retailers to be able to negotiate their leases in a far stronger position.

We also believe there needs to be more flexibility in relation to workplace relations. The cost of labour on weekends and public holidays is causing many retailers now to reassess how they run their staff. We had a number of retailers at a meeting on Friday in Sydney, and a number of them were telling us that they are finding now that they have to look towards junior staff for weekends and public holidays due to the inflexibility of arrangements and to the cost of operating those staff. That being said there are some people in the retailer industry who would be very happy to work on weekends and public holidays and yet they are not really looking for higher wages. It would suit their lifestyle to be able to work on weekends but the employer doesn't have the ability to employ them due to the high costs.

Some small-medium retail enterprises, we are being told now, are closing on weekends, particularly in country areas, particularly on Sundays due to the incredible costs of the wages that are needed to be paid by employers to senior full-timers. Retailers are struggling in the online space at the moment. Realistically, if you look at what's happening in the online space, the small to medium retailers really have not had a model to follow. We've even seen some of the larger retailers only just getting involved in the online area and therefore they're struggling to understand what their position is, how they should be in the online space. We see a great need for the retailer industry to have support from government in training, education, through industry bodies such as the ARA to assist these retailers to engage in the online space to ensure that efficiency and productivity remains.

MR WEICKHARDT: Thank you very much indeed for your comments and for your participation in the process of this inquiry so far. You've made a number of comments, first of all, about the low value threshold and I know this has been an issue that a number of people in the industry have been heavily focused on. The commission, after having looked at this issue, made some comments in our report where we said we felt that the issue of tax neutrality was an important principle and yet at the moment it would not be cost-effective to collect the revenue on the vast majority of parcels coming into Australia.

You made a point that this was due to the inefficiency of Customs and Australia Post. I don't think that's a fair characterisation. Their process is quite efficient for the current policy setting. It's if the policy setting were changed that their process would become incapable. I don't think it's fair to criticise them for the way they're operating now. They're operating according to the current government policy requirement. But the point I wanted to come to is that we concluded it would take some time. You're expressing impatience with that time, but we outline the reasons for that; one of the reasons being that our initial impression is that one of the steps that might be made to make the whole process more efficient would be to do, as they have done in Canada and the UK, which would be to involve Australia Post in the actual collection of the GST. That alone would require a legislative change in Australia, not the sort of thing you just snap your fingers at. You involve an independent statutory authority who are in the parcel area operating in a competitive marketplace. There are quite a few steps to be taken here.

But the important point I wanted to come to is that we said in our report, whilst we understood many retailers might express disappointment that you couldn't just click your fingers and change these settings overnight, we didn't feel this was the major factor really driving the use of the online medium at the moment by many consumers, and we outlined four reasons for that. Now, I'd be interested in your response to that because there has been a lot of focus in your submission and also in the Fair Imports Alliance submission about the GST issue. We fear that if retailers are focused on that issue they may miss the point. This is a new competitive landscape and we think that if people just think that solving the low value threshold is going to change the landscape, we fear that retailers are going to be sorely disappointed.

MR ZIMMERMAN (ARA): Well, certainly I hear what you're saying and I agree. We've also said today and in our report that there are a number of other factors influencing the retail sector. I think it is also quite clear in what we said today that retailers are struggling with the online space. They do need assistance, they do need education and support, and we would look towards the government to assist. In relation to other reasons why people are buying online, yes, there are many and varied reasons why people will purchase online. What we are definitely seeing though is that because of the threshold - and it is possible to bring in those products at the \$1000 market, and in some cases even over the threshold by splitting them up. I hear what you're saying but it is still a huge issue from what we're being told by our retailers that they are not able to compete whilst that threshold is so high. You've also said in your report that you would like to see the threshold brought down or you believe it could be brought down to \$500.

MR WEICKHARDT: No, we didn't articulate any figure at all. We simply said

that once a more efficient process was put in place the LVT should be lowered as far as was practical, as long as it remained cost-effective. A theoretician would say, "It would be lovely for it to be zero," but the tax system has thresholds throughout it, simply because it's not practical to collect tax from people. We would all be filling out income tax returns and making a dollar income if there were no thresholds. Thresholds exist everywhere because there is a practical recognition that sometimes it's just not cost-effective to collect taxes at certain levels. We were saying, "Lower it as far as you can whilst remaining cost-effective."

MR ZIMMERMAN (ARA): The Australian Retail Association has also said that we would like to work with those people that have the carriage of that to assist in bringing that down. We are very aware of the fact that there needs to be work done and we would like to be involved in assisting that area to ensure that that happens as quickly as possible.

MR WEICKHARDT: Can I just follow that up, because our recommendation in the report was that there was an independent task force set up, and we had in mind a group of people who were expert in the sorts of processes that would be required to re-engineer a system for examining incoming parcels, scrutinising their value, assessing the duty and the GST and then billing customers correctly and efficiently and with minimum hold-up of parcels. Now, forgive me, I'm not sure I see the Australian Retailers Association or indeed the retail industry necessarily bringing particular expertise to that issue.

This is not an issue of setting up a task force that has stakeholders represented on it, it's trying to set up a task force that has expertise. We specifically said in the report that we wanted it to be independent because we recognised people like Australia Post, Customs, and indeed the CAPEC carriers, all have some sort of, if you like, vested interest in the outcome of this. We didn't think that they should be directly on this task force, it should be independent, charged with a set of terms of reference. We thought the composition of that task force should have expertise in the particular area, and if the Australian Retailers Association feel they bring that expertise, well, we'll certainly take that on board, but I'm struggling for where you would actually make an input of expertise and knowledge about what's best practice around the world in that area.

MR MICHAEL (ARA): I think our thoughts were along the lines of involving those retail importers, those who do experience some of the difficulties bringing products through the system, and we've certainly got members who have expressed concerns in the difficulties they have had when they're trying to get products through the current system and believe they would be able to engage and give some level of knowledge to improvements. I think that's probably where we're coming from.

MS SYLVAN: So if I can summarise it, it's really to be able to provide input of experience with the system.

MR MICHAEL (ARA): Yes. I think it's fair to say overall with this particular issue, we have met with quite a few people within government, and indeed the opposition, on it. We do understand that retail is changing. This is an issue that the sector has become fixated upon. It is something that the government can do something about. It's only going to become a bigger section of the retail sector over time. It's only going to become a bigger issue, and now is a good time to start to address it, as Australian retailers do engage online. I think the bricks and mortar of Australian retailers to desire having an equal playing field as much as possible and practicable.

One minister - or shadow minister - did make the comment to us that this is a situation that is only going to get worse over time, as overseas online retailing increases and more revenue comes in to that particular sector. We would like to see some action undertaken now.

MS SYLVAN: Can I come back to Commissioner Weickhardt's question which you've just raised in a slightly different way, Mr Michael. Even if we, let's say in theory, manage to get the LVT down to zero and it was fully applied across all products coming in, calculations that you've done, that we've done, show that the price discrepancies in relation to certain product categories that are now clearly trade exposed are so significant, and the choice factor is also critical, as we've seen by a number of surveys and what consumers have told us themselves. Let's say the government had fixed this problem, I guess we'd be interested from a point of view of the evolution of the retail industry and how you see yourselves going forward in relation to what is effectively a global challenge to your industry in certain areas.

MR ZIMMERMAN (ARA): I think it comes back to retailers need to be in the space. We've never moved away from that. We've said that retailers must be involved in the online space. Now, once you move into the online space, some of your costs will - depending upon how your modelling is - start to reduce. But that doesn't take away from the fact that it will be a progression over a period of time. This is not something that's going to happen overnight obviously, and retailers can't get into that area overnight. They're moving into the area, they're trying to understand it. I think one of the big issues is that retailing has changed very rapidly whereby probably it has moved much quicker than what we've ever seen in the past in the retail industry.

I think long-term you are going to see a number of different models of Internet retailing. We've already seen retailers who are based as an Internet retailers. There will be retailers who will be bricks and mortar who will have an online space. How

that will evolve I think will be a period over time for retailers and they will do it in many different ways.

MS SYLVAN: The other thing that has puzzled me as we have examined this industry - and correct me if I'm wrong on this - the evidence in front of us seems to point to Australian retailers being quite slow to move in this area, in comparison to many of their counterparts overseas. Do you agree with that?

MR ZIMMERMAN (ARA): I think it's probably fair to say that that has been the case but you've also got to look back at history, because if you look back probably 10, 12 or 15 years ago, a number of retailers went to the online space. When they got involved in the online space they got their fingers burnt, they lost a lot of money and they moved out of it, as any retailer would. But now the game has changed, there is a long way more competition, so retailers are moving into that space. Some are doing very well already. That comes back to my earlier point that retailers need some education and assistance in this area to get them into the online space. Yes, you are right, it has moved very quickly and, yes, some retailers in Australia are still looking at it, trying to decide what their involvement should be, how they should be involved and how they're going to get in that space and become competitive in the marketplace.

MR WEICKHARDT: Can I follow that up. Forgive me, but why is it that government should help retailers in this area? Are you asking government to assist in the latest ladies' fashion and hem lengths and whether or not you should be ordering more T-shirts or fewer T-shirts or whether or you should be carrying three months' stock or four months' stock? I mean, why government? Is it practical? Why should taxpayers generally be paying retailers to do something that's part of their normal business?

MR ZIMMERMAN (ARA): Currently we have government support in large amounts of training, and that can be in a multitude of areas: merchandising, financial. There's a whole gamut of areas that we already do training in, that the industry already does and is assisted by government funding. I think we've got to make sure we keep an industry that apparently employs 1.2 million people. My major concern would be if we don't support that industry that you won't have an industry and it will be shredded to bits and pieces.

MR WEICKHARDT: But ultimately government don't have any money themselves, they only get it from other people by taxing them. So I guess the issue is, is it more efficient for the government to tax, if you like, your sector less, tax employees less, or to recycle some of that money to your members to help them in an indirect way with training? It just seems a bit bizarre that every time an industry comes under pressure they turn to government and say, "You've got to help us." In

some ways I would have thought government are the least likely to be able to help small, nimble retailers respond to the competitive dynamics of an online marketplace.

MR MICHAEL (ARA): I think it is actually government who has been talking to us about this to a degree. They see it as a way of re-targeting some of the funding that's available for productivity training which was announced during the federal budget, and other forms of training to staff, and retailers to assist to get those staff and retailers up to speed in the online sector. As Russell mentioned earlier we've seen even the big retailers within Australia struggle to enter the space. It has been documented through the media over the last 12, 18 months. There has been no clear example for smaller retailers. As someone said to us recently, "Are your members scared about the space?" I think the honest answer is, "Yes." In a lot of cases they don't know how to engage. They don't know even where to take the first step to set up a web page. It's something that we as an industry body want to try and assist them to enter in. That's why they joined bodies such as ours. But we're very aware that it's not only the SM and Es, it's the big guys who do have the resources to enter the space who are struggling at the moment and that's why we have talked to government on the issue and government have suggested training as an option.

MS SYLVAN: Can I turn to retail tenancy and planning and zoning. Our recommendations on retail tenancy were really to progress the things that were already agreed in the 2008 Retail Tenancy Report. We draw a clear relationship in our draft report between the competitive ability of entry, in other words, the planning and zoning requirements and where we think the pressure ultimately results which is in the retail tenancy negotiations. I wonder if you'd like to comment on that. In other words, we're basically saying that the thing that needs to be fixed here, isn't some more regulation around the nature of a commercial negotiation but in fact you need more competition in the market which enables more providers of retail space to potential SMEs.

MR ZIMMERMAN (ARA): If I talk to my retailers and I talk to them about tenancy, they have some very major concerns. The first is that depending upon which state you're in, you don't actually - can I come back. In some states you can go and you can actually find out where you are sitting in relation to other retail tenancies, so there is a register of tenancy leases in some states. In other states, such as Victoria, there is no tenancy register. So the first part is that I would say to you in relation to just general tenancy knowledge is power and right at the moment retailers don't have very much knowledge.

The landlord does. The landlord has a whole swag of things that comes to him. He knows your turnover figures. You are expected to hand those back to him each month. He knows that the size of your shop and all the details around it so he knows

- without being rude - just how far that can be pushed so that it becomes an economical position to be in but only just. In other words, you almost become an employee for the landlord. The second thing is that when you've had a lease for five years with a landlord, you get to the end of the lease and you really have no real guarantee of tenure. So at the end of five years you may have spent some three or four hundred thousand dollars fitting out a shop which you probably have written off over that five-year lease and then the landlord and you sit down to negotiations again and quite honestly in this day and age there are tenants saying to us on a regular basis, "We cannot justify what the landlord is charging us." So they either have to walk away, which is fine if you've got 20 or 30 shops you can walk away from one or two, that's fine.

But if you're a small independent retailer with maybe one or two shops and you walk away, you may see your life savings going down the drain literally because you can't afford to continue with that. So we would like to see some kind of assistance for a market review or something in that area. Part of the other problem is that what you really have out in the marketplace is a whole lot of shopping centres that are cross-owned by varying landlords and they're inter-related. So they actually have the power between centres and so the whole thing becomes extremely uncompetitive for a retailer from the negotiation at the beginning of the lease to when he ends the lease to knowing what his next five years will be and it just becomes very, very difficult to negotiate through that landscape.

MS SYLVAN: If I can just come back to that, is the problem not specifically that there's not other places easily to go? In other words, there are limited - - -

MR ZIMMERMAN (ARA): Yes, that's part of the problem. There is also insufficient competition within the retail space to allow for retailers to pick and choose and say, "Well, if that's the case, I'm not going to go in this centre, I'll go to the one two blocks down the road and go there where I can get a better deal."

MR WEICKHARDT: That would seem to us quite frankly to be the absolutely critical issue.

MR ZIMMERMAN (ARA): It is, it's a huge issue.

MR WEICKHARDT: When you've got 99.5 per cent occupancy in retail centres, then it's clear the laws of supply and demand suggest that the prices will be high. We spent in 2008 as a commission a lot of time looking into all those sort of issues that you're raising about the bargaining power of both parties and whether or not people were using unconscionable conduct in these negotiations and, as we say in our report, we didn't intend to traverse a lot of those issues which you've raised again in this latest submission. There has been some action taken since the 2008 inquiry but we

really feel the most crucial issue is this issue of the supply and demand balance. If there were options for retailers at the end of their five-year lease to say, "Well, quite frankly the renewal terms aren't acceptable to me and if you don't give me something that's more acceptable to me, I'm going to go down the road," then, if you like, the bargaining power might be even.

The major landlords, if they were here - and I'm not a party to represent them - but they have put to us that it's in their interests that retailers succeed. They get no pleasure and no benefit commercially from retailers who fail and whilst I know there's an attitude that they exercise huge amounts of influence because they know a hell of a lot about what the retailers in their centres are doing, their point would be, "We offer a hell of a lot of help to retailers to help them succeed." So there are arguments on both sides of that equation.

MR ZIMMERMAN (ARA): I would like to take that point though. 10 or 16 years ago when you were dealing with a landlord, the landlord would actively give you, for instance, turnover figures for a centre. There would be the top list of retailers of the centre, how they've done - not down to the dollars but whether they've traded up to 5, 10 per cent. You can't even get a door count from a landlord at the moment to know how many people have gone through a major centre. So, I'm sorry, the landlords can say they can give you some help but if you can't get a door count to know how many people are going through a shopping centre currently at the moment, then I think it's a little bit beyond the pale to say they give assistance. Yes, they may give a lot of assistance commercially to advertising and various other things, but there is hardly a retailer in Australia who can get a true door count and if you ask a landlord to put that in writing, invariably they won't.

MS SYLVAN: I guess the question is how you approach this issue and whether you approach it in a regulatory fashion trying to force the landlords into certain sorts of behaviours, like giving you the door count, prohibiting them from having retail figures from small businesses and so on or whether you simply say the problem is the bargaining powers between the two and you need the entities who are renting space basically to be able to rent space elsewhere which changes the bargaining position.

MR ZIMMERMAN (ARA): That's right and when you change the bargaining power, they would have to be more assisted in some of those things that we're looking for.

MR WEICKHARDT: Can I come back to the low value import issue for one moment. One of the other things that you did say during your presentation was that it's possible for people to split orders and, therefore, effectively rort the \$1000 limit. These allegations were made earlier this year. Customs organised a trial process and a significant increase in sampling and found very, very little evidence of that sort of

behaviour. Why do you continue to make these comments?

MR ZIMMERMAN (ARA): Only that we're only told that that's happening so we can only go on the - the Bicycle Industry Association will be appearing later today may be able to give you some fairly good examples of where things have been brought in, parts of bikes in various areas and our other industry bodies are telling us it's happening. We have seen a couple of consignment notices where - one instance was a guitar that was brought in that I think was worth \$5000 but had been listed as \$500 and it was supposedly error. But, you know, these errors happen, I think, than what we're being told. We are being told from our other industry bodies, members of ours, that that's what has happened.

MR WEICKHARDT: No doubt there are cases where these sort of things happen, just as there are cases where people don't pay tax or people speed or break the law. The issue, however, revealed in that sampling was that the cases identified were of very, very low percentage, and I think if your members have evidence then they ought to be reporting that to Customs. Customs would only be too pleased to follow direct evidence that these things are being rorted.

MR ZIMMERMAN (ARA): We'll take that on board.

MR WEICKHARDT: Can I turn to the issue of workplace relations for a moment. It's a topic that we'll be spending more time on later today. The ACTU and the SDA are both appearing at the hearings later today. You raised the issue about higher penalty rates which was something that a number of participants commented on in submissions to the inquiry before the draft report. The ACTU in their submission, and I think the SDA, have both pointed out that in their view the award harmonisation process didn't take a highest common denominator approach to penalty rates. It looked at the most frequent and prevalent rates and tended to adjust to those most frequent and prevalent rates. That seems to not be the impression you're giving. Are your members telling you that penalty rates have, across the nation, gone up as part of award harmonisation?

MR ZIMMERMAN (ARA): I think it would be fair to say that in the majority of states, yes, they have gone up. There may be one or two states that haven't, but across the majority of the states they have gone up. For instance, if I was to use an example, NSW, you paid on a Saturday the normal labour rates, plus a loading on a Saturday - I'm talking about pre the modern award. You paid a normal Saturday rate plus a loading for under three or over three hours' work. That loading was something like, from memory, four or five dollars for under three, and went to about \$8 for over three hours. That was on a Saturday and the time reported on a Sunday. We are now moving towards a period of time whereby once this is fully completed we will see labour rates being paid at a time and a half on Saturday and double time on Sunday.

Obviously those trading days are very important to retailers, but the retailer can't charge more on a Sunday because he's got a customer walking in the door, but the rates have got to be paid. They have gone up substantially and I would probably say in virtually every state but Victoria.

MR WEICKHARDT: The ACTU have addressed that in some detail in their later submission and it would be very useful if you can look at that in some detail and come back to us if you feel that your members are seeing a different picture because they presented a picture which is at some variance with the comments that were made to us before the draft report, and we'd like to get that absolutely clear if we can.

MR MICHAEL (ARA): We did actually meet with probably half a dozen to a dozen of our bigger members on Friday and this was one of the issues raised and they were giving a number of examples. We did talk to them about collecting some of that evidence and we'll try and get it into you.

MR WEICKHARDT: I mean, at the heart of this lies an issue that's clearly of concern to your members and clearly of concern to the community that want to shop at hours that are convenient to them. But it's also of clear concern to the unions in terms of trying to provide fairness for their members who are employees. You've made the point that if penalty rates are pushed too far, the outcome may well be that shops simply don't open. I guess the consequence of that will be that consumers will spend their money elsewhere. Some of it will be online, some of it may be going to the pictures or doing something else instead of shopping. That said, the unions would make a strong point that their employees are not well paid and if they don't get some penalty rate for working on times that they would rather be with their family, they would think that's unfair.

How do you see, you know, balancing this in a way that's fair to both the employee and the employer? I mean, at the end of the day, as you say, if people are keen to work on those days and don't want this higher penalty rate, how do you see all that working its way through the system?

MR ZIMMERMAN (ARA): Well, certainly, currently if you have an employee that wants to work on a Saturday or Sunday because it suits their lifestyle - dad may be home to look after the children - whatever it may be, but currently if you want to work that employee on a Saturday or a Sunday you will still have to pay the time and a half and/or double time as we progress through the stepped arrangements. So there is no opportunity under the current legislation to even negotiate something that would be more reasonable to the employer. Whether there will be an opportunity for that to occur, that may be a possibility. What you're finding now is that what retailers do is they don't employ those senior people in many instances, and people

who actually want to work those times, because they can't afford the labour rates, so they go back to using their junior casuals.

That's a little bit of a self-fulfilling problem because if you employ people on weekends when it's probably the busiest time and they're not senior employees and they don't have the knowledge and the experience, you're probably doing yourself a disservice. But it is a costly exercise and retailers just can't afford that.

MR WEICKHARDT: That said, I'm sure the unions' response would be that you get junior employees, or even senior employees, who aren't necessarily worldly-wise and they may end up being exploited and working for no fair recompense. There's a significant tension between the interests of the two parties at the moment. I'm just wondering how you see that being resolved.

MR MICHAEL (ARA): In our discussions with some of our members we have discovered that there is a belief there should be some sort of recompense for working those days, but at a lower level than it's currently set.

MR WEICKHARDT: In saying "at a lower level", are you saying at a level that previously existed before the award was harmonised, or are you saying even that rate was unfair?

MR ZIMMERMAN (ARA): I think we'd have to sit down with the employers and the unions and try and nut this out. I don't think it's something we can resolve here in this room today, quite honestly, but I think there's got to be some middle ground somewhere or other that both the employees and the employers can accept, because you cannot continue to pay those wages. It's a self-fulfilling prophecy, it's not going to work.

MR MICHAEL (ARA): The reason it's hard to identify a figure, we discovered this on Friday, we think of the 10 or 12 members that were in front of us, probably represented over 10,000 retail outlets around the country, but I can tell you we had 10, 12 different suggested amounts as to what was an appropriate level and I've got to say none of them suggested that there shouldn't be some sort of recompense. The only discussion really was around what level of recompense there should be for working on those days. Employers are conscious that employees need to have some sort of benefit working outside those normal hours.

MS SYLVAN: Can I just be absolutely clear about what your preferred, ideal position is, just so I understand it in terms of the flexibility that's being talked about. I understand from submissions that we've received that because of trading hours which are now in some states completely deregulated, and partially deregulated in others, so there's a possibility of essentially working a seven-day week and even

potentially 24 hours, I think, depending on the jurisdiction that you're looking at.

What is your ideal model? Would it be a model which says that there's an X amount of work per week for this job and it could be over - let's say a store that closes at 8 pm - a time period within that week, depending on the employees' preferences and the way the employer wants to have them work. What's the model that you are thinking is the model that would suit your industry?

MR ZIMMERMAN (ARA): That is a very difficult question to answer because it will depend upon different retail industries. For instance, if you're running a clothing store you're probably only going to run what we call poor trading hours, Monday to Friday 9.00 till 5.30, Saturday 9.00 till 4.00 and Sunday 10.00 till 4.00, and they might vary just slightly. If you're running a pharmacy, it probably would be totally different because you may want to extend those trading hours. So I think it's varying hours and varying - so I don't think there's a one size fits all in this, I think it's a situation whereby it needs to be very closely looked at. I would only say to you that retailing, in your own words, is now a seven-day-a-week business and the consumer wants that and the retailer is happy to give it. But it is costing, as you get increases in penalty rates, that has to be got from somewhere and that makes it uncompetitive in the retail environment, particularly online retailing.

MR WEICKHARDT: That brings me to a topic that we spent a bit of time in the draft report talking about and that was productivity improvement and the point that we made in the draft was here you've got a sector that's now for the first time partially exposed to international competition and yet when you compare it with its international counterparts, labour which is the highest cost after the cost of goods purchased for resale, labour productivity does not look particularly good. There has been considerable capital deepening going on in the sector but labour productivity and multifactor productivity seems to be lagging what's happening in the United States and a lot of other European countries.

Given that ultimately, unless productivity improves, it's very hard to get additional reward to either shareholders or to employees and it's very hard to pay for penalty rates and working on weekends and doing things consumers want, what's your reaction to the comments we made about productivity and the fact that it appears to be lagging in Australia?

MR ZIMMERMAN (ARA): It certainly is lagging, there's no risk in the world and it needs - - -

MR MICHAEL (ARA): We need more flexibility.

MR ZIMMERMAN (ARA): Yes, I think it comes down to the flexibility

arrangements within the workplace to improve that productivity. I think it's probably fair to say that in some places throughout the world commissions are paid. It's very hard to pay commission in Australia which would probably improve productivity. It's very hard to do here in Australia on the rates of labour you're paying. But I'm sure that commission rates to employees would assist productivity.

MR WEICKHARDT: Can we just talk about flexibility. It's a topic that clearly is important. If you're going to change productivity, you've probably got to change working practices that requires some sort of flexibility. We have been through an era in workplace relations until the change of government where there as apparently considerable flexibility and yet employers do not seem to have availed themselves of much of that flexibility. Indeed, when we've looked at the enterprise bargaining outcomes, we find very few descriptions of agreed outcomes which would suggest there wasn't much focus at all in those negotiations on productivity. Again, I'm a bit mystified as to why that is so.

MR ZIMMERMAN (ARA): I can really only answer that by saying that obviously individual retailers have run their own agreements and it behoves retailers when they're doing that to be sure that they do get productivity gains. Why it didn't happen, I really can't answer.

MR WEICKHARDT: I think - and I say this from a considerable distance from the industry - but just looking from a distance, and it's very big and diverse industry clearly but the impression I got is that the competitive landscape in the past has perhaps jolted as much pressure on really attending to that area as it is now and it seems to us that this is going to be a very important thing going forward and probably, and regrettably, there will be some pain and business failures until both employees and employers get their mind around the fact that they have to work on that together. Does that make sense?

MR ZIMMERMAN (ARA): Yes, I think that that makes fair sense and I think it's probably fair to say too that retailers, unless they embrace what's going on out there in relation to the online retailing, there will also be failures there. But that's part of improving productivity in any case.

MR MICHAEL (ARA): I suppose with any industry when it's under pressure there will be cost savings sought and I think it's fair to say that I would expect after this downturn we will see a more competitive industry come out at the end of it. We are going through some quite significant structural adjustments, whether it's been caused through the high Australian dollar, lack of credit available, online retail, it's a sector, as with many others in Australia, that's probably been hit first - and we've seen manufacturing problems in recent times but now is an opportunity and a lot of the recommendations in this report do paint a picture of where retail can head.

I know that we as an association have sat down and taken a serious look at this and a number of the suggestions - some of which we agree with, others we don't - but as a possible means of a blueprint to move the industry forward and come out the other end and so our retailers are being more competitive in the online sector than their overseas counterparts and even customers coming to Australian retailers for the first time. It's a reality of what will be happening.

MR WEICKHARDT: That would be a great outcome.

MR MICHAEL (ARA): There will be a lot of pain and suffering and we need to help the sector through that for the time being and we're very conscious of that.

MR WEICKHARDT: The point I just wanted to come back to re this task for issue, in your submission you said in representing why the ARA should be involved, you said you have greater skills and industry knowledge not available to the public service. Let me say, there was nothing in our mind that suggested in framing the recommendation about an independent task force that it should be made up of public servants. It might be but certainly that was not a limitation and we accept the fact that the task force needs to have an understanding of the experience of, if you like, the customers of the system and, as you pointed out, the customers of the low value imports are not just consumer, they are other businesses in many cases, a point that we were very conscious of. Conscious of for two reasons: first of all, that there is no GST leakage in most cases when the low value import goes to another business, but secondly, other businesses could be significantly frustrated if they have large hold-ups in terms of delivery of things that they're ordering as an input for their own business. So that is an important point.

Thank you very much indeed for your participation. Let me say, please have a look at some of the other submissions that are coming forward in response to the draft report and have a look at the transcript of the sessions that we will be having over the next few days and if you've got further input and reaction, please send us another brief submission.

MR MICHAEL (ARA): Is there a date that we would need to do by?

MR WEICKHARDT: Of course as soon as possible. We are under a tight time line ourselves and as soon as you can get us something, the more likely we are to be able to incorporate it in our deliberations. Thank you. We will adjourn now until 11 o'clock.

MR WEICKHARDT: We will now resume the hearings. Our next participant is the Shop Distributive and Allied Employee Association. Thank you for appearing. For the transcript if you could give your names and the capacity in which you're appearing, please.

MR de BRUYN (SDAEA): I'm Joe de Bruyn, I'm the national secretary of the Shop Distributive and Allied Employee Association.

MS BURNLEY (SDAEA): I'm Sue-Anne Burnley, a national industrial officer.

MR WEICKHARDT: Thank you very much indeed for your original submission and also for your second submission. Assume that we've read those, but if you'd like to make some comments and we'll then get into a discussion.

MR de BRUYN (SDAEA): We want to thank the commission for the opportunity to be here to make some further submissions. We believe that the key issue for the Productivity Commission in this inquiry is the unfair competitive position between overseas online retailers on the one hand, and Australian retailers - including Australian online retailers - on the other. Australian retailers all have to pay the GST on all merchandise that they handle, and they have to pay any import duty on this merchandise. On the other hand, overseas based online retailers do not pay the GST on merchandise which is priced under \$1000, and they do not pay any import duty that may be applicable. That gives the overseas based online retailers a price advantage of up to 20 per cent over the Australian based retailers. Therefore we have an uneven playing field.

This is, in our view, unfair competition. The magnitude of the disadvantage that is suffered by Australian retailers is substantial for an industry where profit margins are generally quite small, and so this is not a sustainable situation. There are many countries who deliberately protect domestic companies from overseas competition, but here we are doing exactly the opposite. Government policy in this area actually penalises Australian retailers against their overseas online competitors. We believe that the view of the commission in the draft report that the situation should be fixed only once it becomes cost-effective is not an adequate solution. It's a second-best solution.

We say that the Australian retail industry is already a modern and competitive industry. We say it has an extremely flexible workforce and it has an efficient mode of operation by any standards. It is as advanced as the retail industry in any other country. The government legislates to impose taxes and duties. When it does that, it has the obligation to any industry, including the retail industry and its employees, to ensure that the taxation regime does not disadvantage any companies, whether

domestic or foreign. It has a duty to ensure that there is a level playing field. But what the government has done here is to have a taxation regime which imposes unfair competition on Australian retailers, so it is the government's taxation regime which creates the problem. The government taxation regime creates the uneven playing field by the way it operates.

Therefore we say that to approach this problem and say it should not be fixed until the collection of taxes is cost-effective, is actually imposing an unfair and unwarranted burden on domestic retailers, simply in the allegedly greater interest of collecting revenue. It really cannot be substantiated. So what the Productivity Commission should do, in our respectful submission, is recommend to the government that in any collection of taxes and duties, a fair, competitive environment between companies must be preserved. If the government's action has created an unfair advantage to overseas companies then it should be remedied without delay. Overseas online retailers ought to pay the same taxes and duties, whatever they might be, as their Australian based competitors.

On the issue of trading hours, which is also the subject of a recommendation in the draft, we believe that that matter should be left to state governments where the issue properly lies and always has. On the issue of industrial regulation, again we respectfully submit that this should be left to the new tribunal Fair Work Australia and to the industrial relations parties. It really should not muddy the waters on what is the clear and foremost issue that is before this commission which is the issue of the online retailing, the unfair playing field that exists at the moment and how that might be remedied. Thank you.

MR WEICKHARDT: Thank you very much indeed. We can come back to the issue of the low value threshold and the GST, but you suggested that this is the foremost and most important issue in this inquiry. I have to say that we take a somewhat different view, as you would have seen from our draft report. We felt that there is a significant, new competitive environment that's impacting upon this sector, that for the first time has exposed much of the sector to international competition. Whilst we understand the issue of the unlevel playing field, as you've called it, regarding the GST is an issue here. In our view it was by no means the biggest issue. Indeed there was significant evidence from submissions that it was probably a very small issue influencing the decision of many of the consumers that sent submissions to us in regard to why they shopped online offshore. They raised issues that could be summarised broadly in terms of price, convenience and choice.

On price, many of them put to us that the price differentials they were seeing were very much more significant than could be accounted for by the GST and duty. Indeed some of them said to us they would be very happy to pay a premium for local supply that was of the same order as the GST and duty, because they would get local

warranties and they would get service and all that sort of thing - better security of supply, maybe instantaneous supply. In terms of choice, many put to us that they certainly couldn't get sometimes the things they wanted, and in terms of convenience some of them pointed out to us that in some cases they just couldn't get to stores, physically, or the stores weren't open at the time.

For those, and a number of other reasons, the evidence put to us before the draft report suggested to us that the issue of the GST was in principle not desirable but it certainly wasn't a major competitive issue facing the retail industry. I'd like your response to that because you can't solve problems until you recognise them. Our concern is that retailers - and you're in good company in making the point you have; the ARA have just made the same point - may risk not addressing some central and crucial points in terms of their competitiveness if they focus only on this issue of the GST.

MR de BRUYN (SDAEA): The retail industry is a dynamic industry which changes all the time. Having worked for the SDA now for more than 38 years I have seen a lot of things come and go, so the industry is constantly changing. There are new competitive pressures that occur all the time. If a retailer can't adapt to all the changes that occur and continue to provide an efficient service to the consumer, then they won't survive. It's in that context that I see online retailing, whether it's domestic or overseas. It is simply a new phenomenon in the retail industry, a different way of consumers being able to purchase what they want, and it's therefore a phenomenon which the retail industry will have to meet.

I think over time online retailing will increase to a certain level - we can all guess as to what that might be - and then it will probably stabilise, because conventional retailing, if I can call it that, with bricks and mortar shops, will continue to be overwhelmingly the dominant way in which people do their shopping. So if online retailing can provide some items of merchandise more cheaply, for whatever reason, then the retail industry will need to adapt to that, and I believe it will because the retail industry always adapts to a new phenomenon. There may be individual players who can't adapt but overall the industry does adapt.

I get back to what I believe to be the key issue and that is for retailers to be able to meet and compete with this new phenomenon of online retailing, they need to have a level playing field. Then there will be fair competition and the consumer ultimately will determine how the retail industry evolves in the final analysis. But we don't have a level playing field. The fundamental reason why there isn't a level playing field is because in imposing its taxes and duties, the government has created a difference between Australian based retailers and overseas based retailers which is unfair and which cannot be substantiated. It is just wrong for the government to say, "We're going to impose some taxes and here they are. Here is the regime of taxes we

impose." Then when it's pointed out that it creates an uneven playing field, it's just not acceptable for the government to then say, "That's your bad luck. Until such time as we can make the collection of the taxes more efficient, we will leave that unfair competition in place and it's only when that problem is fixed that we will seek to change it."

Whatever the phenomenon of online retailing, however it might develop and whatever its effect might be on conventional retailing, so be it. I mean, it's just one of the many challenges that exist in retailing and will always be there. There will always be change. But you cannot justify having an uneven playing field in an industry where margins are small - and profit margins are very tight in retailing - for there to be a competitive disadvantage which is between 10 and 20 per cent on the price of an item. You simply cannot have that situation continue. So we simply say that it's not good enough to propose that, "Yes, it is unfair but let's look at how we might fix it and then we might do something for you." We believe that the government's responsibility is to have a taxation regime which is fair in the first place. If it's not fair it shouldn't be imposed.

MR WEICKHARDT: Of course, there are two principles of taxation - and I'm not an economist - - -

MR de BRUYN (SDAEA): Fairness and equity.

MR WEICKHARDT: - - - but equity and efficiency I think are the two that are normally quoted and it's an issue that clearly I hear your point of view on, but we are concerned with efficiency, as well as with equity, and it would be nice to try and find the sweet spot where we could get both. Just on the point of a level playing field, I hear your comment about having a level playing field and yet some retailers have put to us that they compete on a non-level playing field with the online space in terms of opening hours, and yet you reject - you make a point that we agree with, that is that it's the role of state governments to sort this out. We certainly agree with that. But why do you reject the concept that if you've got a retailer that wants to open certain hours, who has employees that are happy to work at those hours under certain conditions, that the retailer should be prevented from doing that at a time when consumers actually want to shop?

MR de BRUYN (SDAEA): Well, if you look at the regulatory regime on trading hours in this country, it is already largely deregulated.

MR WEICKHARDT: In many states, yes.

MR de BRUYN (SDAEA): Well, we can go around the states if you like, but if you take Victoria here, retailers can open 24 hours a day, seven days a week, with the

exceptions only of Christmas Day, Good Friday and the morning of Anzac Day. Nobody can tell me that that very limited restriction is in any way an impediment against competing with online retailing. You can go to shopping centres or you can go to the Bourke Street Mall at 2 o'clock tomorrow morning - am - and you'll find nothing open.

MR WEICKHARDT: Let's go further west.

MR de BRUYN (SDAEA): Okay. Let's go to Western Australia. In Western Australia it's the only state in Australia which does not have Sunday trading generally. There is total deregulation in Western Australia north of - I think it's the 24th parallel or something. There are parts of the state where you do have deregulation, both in the north, in the holiday areas and even parts of the Perth CBD, such as Fremantle, the CBD of Perth itself and so on. It's only what left where you don't have Sunday trading. The reason why there isn't Sunday trading in Western Australia is because about six years ago the government of the day decided to have a referendum. The people of the state voted roughly 60:40 against Sunday opening. That was the people expressing their point of view. Now, you can argue as to whether they made the right decision but they did freely go to vote and they freely ticked a box and that was the result.

Governments since then have had to acknowledge that the people of the state had spoken and they didn't want Sunday trading. Now, that issue, of course, didn't set trading hours in that state in concrete forever. The current government has already extended trading hours so that you now have five late nights instead of one. It says that in a new term of office it will deal with Sunday opening. That's what it says. One presumes that that is likely to happen.

Putting Western Australia aside, all the other states, by and large, have seven-day trading. I think there are parts of very rural Queensland which still don't have seven days, but I don't know of any retailer who is particularly interested in wanting Sunday trading in those parts of Queensland, because I've discussed it with them and they never express any interest.

MR WEICKHARDT: We weren't suggesting in our report that anybody be forced to be open at any particular time. What we were suggesting is that retailers should have the option between the employer and the employee of deciding when it was sensible for them to trade, when consumers would trade with them, and I guess nobody can help but be surprised from a situation where I grew up, the idea of shopping on Sunday was unknown. You walk down the streets now and you'd have to say consumers are voting with their feet. They actually enjoy shopping on those days.

MR de BRUYN (SDAEA): They do. I have lived with the phenomenon of Sunday opening since it was first introduced on a general basis in New South Wales in the early 1990s, because I was there. So I know all about it. I also know when at the time the government spoke to retailers about it, and spoke to us about it, that the retailers typically said, "Yes, we would like to open and we don't mind the penalty rates. We'll pay them." Similarly, when the question comes up about whether you can open on a public holiday, they say, "Look, we just want to open, don't worry, we'll pay the penalty rates." The second thing they say is, "We will make sure that nobody is required to work at that time." So they say, "Voluntary work, don't worry about the penalty rates."

But we also find that once they get the right to open, they then start to grizzle about the penalty rates and they start to grizzle about the fact that people have the right to refuse to work. They then start to seek ways of requiring people to work. This continues to be an issue. Even now, 20 years after Sunday trading started in New South Wales, we still have issues with employees having their arms twisted way up their back to force them to work on Sundays. In our negotiations 12 months ago with Myer, for example, one of the key issues was that we were seeking relief from the company which was requiring people to work three Sundays out of four, as the employees were complaining.

We sought a reasonable settlement and the employees were prepared to accept a settlement of two Sundays in four. But the company said, "No, we insist on working people three out of four." So this issue of forcing people to work at times when they don't want to be there, for family reasons or sporting reasons or whatever it might be, continues and lives on after trading hours are deregulated which is one of the reasons we don't like trading hours on Sunday, because retailers invariably force people to work against their wishes.

MR WEICKHARDT: Is that possible under the current act?

MR de BRUYN (SDAEA): Yes.

MR WEICKHARDT: I thought the act allowed people to indicate if they did not want to work particular hours, they weren't forced to.

MR de BRUYN (SDAEA): The act addresses the issue of working public holidays, but it does it in a way which is inadequate. It looks like it is a way of people being able to refuse to work on public holidays. In reality, in the real world, it doesn't protect them at all. When that legislation went through the Parliament - I think it was called the Barnaby Joyce amendment - we realised at the time that it would not provide the protection which the politicians thought that it would. Now, that legislative section does not go to the question of working on Sundays at all, it's only

for public holidays.

You've heard the retailers here this morning talking about penalty rates. There are penalty rates for work on Sundays. They complain about them. There are penalty rates for working on public holidays. They complain about those; not before they get the deregulation, but only after, because before the deregulation they say, "Don't worry, we'll make it voluntary and we'll pay the penalty rates. But the tune changes once they achieve their objective, and we are left with the consequences. We then have to fight to protect the penalty rates which supposedly are agreed. We have to fight to protect the right of people to be able to refuse which was supposed to be there, but after a while it disappears.

MR WEICKHARDT: I can totally understand and imagine your concern about protecting people's ability to decline. But retailers put to us - certainly during our original discussions, and I can't quote the statistics on this, but a number of retailers we saw said they have no shortage of volunteers who are happy to work at some of these hours that some of us might regard as antisocial, but they said, "You ask somebody who doesn't see Christmas as a particularly important day. They're happy to work on Christmas Day." They said, "We get no shortage of people who volunteer to do that."

MR de BRUYN (SDAEA): Christmas Day is not a day of trading.

MR WEICKHARDT: Well, it is for some stores. There are obviously some convenience stores.

MR de BRUYN (SDAEA): Very few indeed. Even places like the Northern Territory and the ACT where there are no restrictions at all, the retailers overwhelmingly do not open on Christmas Day, and I do not think you'll get significant numbers of people who want to work on Christmas Day.

MR WEICKHARDT: That may well be the case, and there are probably not many people who want to shop on Christmas Day either.

MR de BRUYN (SDAEA): Exactly.

MR WEICKHARDT: But the point was generally made to us by a number of the retailers we saw that they found that people were volunteering to work at that time.

MR de BRUYN (SDAEA): If you take Sundays, there's no doubt that there are many people who are happy to work on Sundays. That is also our experience. We have no difficulty with that. Where we have a problem is where you have people who for sporting reasons, family reasons or perhaps religious reasons say, "We don't

want to work on a Sunday," and the retailer tries to require them to work. That's where we have a problem. For 20 years I've been saying to the retailers, "Could you please ensure that you employ people who are happy to work on Sundays," and to different degrees they seek to do that, but clearly they're not entirely successful because there continue to be people employed by retailers who complain to us about having to work on Sundays when they don't want to.

MS SYLVAN: I wanted to come back to the low value threshold questions that you raised and sort of wave a magic wand and say that we have a perfectly competitive low value threshold regime in Australia. You've got a long length of service in relation to the retail industry. I'd be really interested in how you see this online challenge, both for the retailers and for the employees in this industry. It seems to me to be qualitatively different to previous challenges and that a whole sector of retailers now trade exposed. Of course there have been many changes in the past but this one seems to me to be quite different, and I think raises some challenges that are quite substantial.

Let's assume the neutrality issue, that somehow the cost efficiency was manageable, although I would point out there is no regime in the world, as I understand it, that actually bases its threshold at zero for different reasons. Let's assume we've achieved all this. I'd appreciate your experience in terms of what you think this will mean.

MR de BRUYN (SDAEA): Well, I'm not sure what the question really - - -

MS SYLVAN: It's really the challenges in how the industry will need to adapt to what is really a quite substantial and I think a qualitatively different challenge to those in the past.

MR de BRUYN (SDAEA): Yes. I think, like all the challenges that the retail industry has faced in the past and will face in the future, the retailers will have to adapt themselves as best they can, get into online retailing themselves and make that part of their offer which clearly a number of retailers are now seeking to do. But I'm quite confident that conventional retailing in bricks and mortar retail stores will continue to be a significant part of the industry, in fact the overwhelming part of the industry, simply because there are many people - and I'd be one - who wouldn't want to buy a pair of shoes online; who wouldn't want to buy a suit online; wouldn't want to buy anything much online. I'd buy a book online because you know what you're going to get.

But even with a pair of shoes, I might go down to Myer and try on a pair of shoes and I've got the brand name and I've got the size and so on, but if I then ordered that overseas it might have been made as part of a different batch. It might

not fit me quite as well as the one that I tried on but refused to buy in Myer. So I wouldn't take the risk. I think there are many people who are in the same boat. They like to look, feel, see and try on first. Whether it's their groceries - the apples, the oranges and so on; whether it's the clothes they buy, whatever it might be. So online retailing will grow for a while and it will reach a plateau and it will simply be part of the retail industry.

You are right in saying that it's new in the sense that it makes us, for the first time, trade exposed in the retail industry, but only to a limited degree. I do believe that the retail industry will adapt itself and will survive.

MS SYLVAN: I wanted to continue with the question of the efficiency and your recommendation to us that somehow the fairness and the fairly competitive issues should be predominant, that sort of recommendation. We did some estimates, which I'm sure you're familiar with, in the draft report of the costs that are involved in the current situation, if we simply imposed the system that we have currently, which has, of course, devolved under a high threshold. They're very substantive. In fact our estimates, using only some of the costs, really, a very conservative estimate, would cost you about \$3 to collect a dollar of tax which strikes us, even from a commonsense perspective, to be not something that would be welcomed by Australian consumers and those buying product. I don't know if you're suggesting that even those numbers are fine and the recommendations should simply be to collect the tax at all costs.

MR de BRUYN (SDAEA): I don't think the government should have a taxation regime in the first place which creates an uneven playing field. That's what I say.

MS SYLVAN: We agree with that.

MR de BRUYN (SDAEA): In other words, the government should not have created the problem in the first place. Looking at your report on page 160, it actually looks at the threshold of a whole range of countries. There is one that's zero, which is Switzerland.

MR WEICKHARDT: Except, I stress, for gifts. I have a son in Switzerland at the moment. I'm told there are a huge number of gifts that go in Switzerland. Anyway - - -

MR de BRUYN (SDAEA): Then it goes through a number of other countries. I mean, some of them are extremely low. For example, Canada, it says \$A19, the UK is 28, and so on. There are a number of countries where it is quite low. How they can collect their taxes efficiently, I don't know because I'm not familiar with the situation. I go back to my fundamental submission to you and that is that the

government should not have a taxation regime which creates an uneven playing field. The problem was created by the government. It's not a problem that suddenly we find ourselves in. It was a problem that was created by and only by the action of the government in having the particular taxation regime that we have. It shouldn't do that if it's going to create such a significant, unfair, competitive disadvantage to Australian retailers. Going by the amount of noise the Australian retailers have made on this issue, it must be a significant issue. I don't believe that you would have had the big campaign by the CEOs of those major companies late last year unless they believed it to be a significant issue.

MR WEICKHARDT: Can I just say, lots of people make lots of noises to the Productivity Commission over different issues. Those employers also made lots of noise to us about an issue you wouldn't agree with, and that is around penalty rates and things of that sort. What we're trying to do is analyse as objectively as we can. I hear your input and certainly we will be considering as much as we can the evidence as to whether or not the sorts of accelerations of changing the system that had been proposed to us by others could be implemented.

I want to come to an issue of the cost structure of the industry and going to the point that Louise raised earlier about whether the industry is ready to respond to a new competitive landscape. In your original submission to us, and indeed, I think, in your verbal comments you made in the introduction of this, you made comments about the fact that the retail industry in Australia has high performance and productivity. Now, even as a non-economist I recognise that measuring productivity in a sector that is as diverse and big as the retail industry is, is challenging. This organisation has some form and track record in terms of those sort of difficult tasks. The experts in this organisation have looked at all the evidence and they have concluded that the productivity of the retail industry in Australia is lagging significantly with that of overseas countries.

In that situation I guess I'm interested in your observation as to how the retail industry is likely to respond to that because I totally agree with you that the retail industry will continue to be predominantly bricks and mortar and that it will respond, but I'm interested in your analysis of how they're likely to address this very different productivity level that appears to exist and recognising that labour costs are a very important part of a retailer's cost structure and, as you've pointed out, individuals in the retail industry, in comparison with other employees across Australia, are not highly paid. Those employees want to buy goods at competitive rates. They're consumers who probably aren't all that affluent in many cases, so they want a good deal. How are we going to find this sweet spot where employees are able to earn a sensible wage, where they're able to compete with international competition which has higher productivity and yet your members want to be paid a fair rate?

MR de BRUYN (SDAEA): I suppose the best way of starting to discuss this question is to really ask the question, what do we mean by productivity? I have to say that while I haven't gone and done calculations on productivity of the retail industry in Australia compared with overseas, I do know from my own knowledge of looking at the industry overseas, compared with Australia, that the Australian industry is as modern and, prima facie, is as efficient as any in the world. If you look at Australian supermarkets, they are far more attractive and far more diverse in what they offer than many of their counterparts in overseas countries, such as in Western Europe or in Japan, and on a comparable basis to anything that you find in the United States.

If productivity is calculated by looking at rates of pay, then are we expected to say that rates of pay in Australia must be reduced so that the industry becomes more competitive, because that would be unacceptable, totally unacceptable.

MR WEICKHARDT: We certainly didn't make that point in our report.

MR de BRUYN (SDAEA): No.

MR WEICKHARDT: I suspect it's a number of your members who have written to us in submissions since we published our draft report, saying, "It's outrageous that the commission recommended that wages should be cut." There is nowhere in our report we make that comment. Indeed, in terms of labour productivity, the chart that we showed in our report was comparing gross value added per hour of employment. It had nothing to do with rates of pay. I mean, I understand your comment about, anecdotally, when you walk in and look at other shops, do they feel better or worse. All I can say is that the numbers that we see across the industry suggest that in Australia, labour costs as a percentage of sales are higher in Australia than they are in many overseas countries. The productivity in terms of gross value added per hour of employment appears to be lower.

So I come back to the point that I made at the start: what we're concerned about is the retail industry - and I'm including employees, employers and the unions here at the moment - are fixated on the issue of the GST and yet I think this issue of productivity is just as important, if not more important, to the industry in its future ability to survive and give everyone a good deal.

MR de BRUYN (SDAEA): Productivity is always important in trying to make sure that an industry has the capacity to pay good wages and to provide good conditions of employment. One of the struggles that I have as a union official is that where there are productivity increases, how do you get them for the employees, rather than them going to the bottom line and going to the shareholders. That's one of the struggles, because unless you can get improvements in rates of pay which are in

advance of inflation, you are not going to get any share of the productivity.

But the issue of productivity is one that I think should not be related in any way to the rates of pay which are paid in the industry. The rates of pay which are paid in the industry are the result of a process that takes place in the wage-fixing tribunals of this country and by negotiation with retailers. Traditionally, in the retail industry in this state there was a balancing of the rates of pay for the shop assistant against other types of occupations in and near the retail industry where the shop assistant fitted in just below the clerk which in turn was below the tradesperson's rate. But the shop assistant was above a storeman working in a retail warehouse and above the level of a cleaner and certain other classifications.

There was a relationship there that was built on the value of the work that was performed which was assessed over many, many years, over decades from time to time so that the rate that was paid was fair for the employee and also fair when compared with the value of the work of other classifications in the retail industry. That's where the shop assistant sits. Any suggestion that they should be paid less - and I'm not saying that you're saying it because we haven't said that anywhere - really would pull the rug from under them because it would mean that without looking at the value of the work, without looking at whether that takes away a liveable wage, suddenly they're going to find themselves earning less tomorrow than they do today for exactly the same amount of work.

MR WEICKHARDT: But I'm assuming you wouldn't complain if through a process of upskilling, through improved customer service and improved productivity, your members enjoyed some of the rewards for that and started to earn more. From our point of view, just looking at the industry from the outside, it would seem the concern we've got is that the opportunity, if you like, to share a productivity dividend at the moment is not there, and we're asking ourselves why is this so? It doesn't appear that in the past the industry has availed itself of the sort of flexibilities that might have existed. People are saying to us, "Well, it's the new regime and FWA." We haven't at this stage formed any firm conclusion on that. What we're trying to do is, however, understand why is it that this industry is at the moment lagging the international position and what could be done to improve that.

MR de BRUYN (SDAEA): I think the suggestion that there have been no improvements in productivity and no improvements in efficiency is quite wrong.

MR WEICKHARDT: No, we don't say that. We point out that if you benchmark against other Australian industries over the last decade, the retail industry has actually seen some quite good productivity improvements.

MR de BRUYN (SDAEA): Yes.

MR WEICKHARDT: The problem is that our international competitors - and they are now international competitors - have done more.

MR de BRUYN (SDAEA): All I can say is that I'd be very surprised if there are retailers overseas who are significantly more efficient and productive than retailers in Australia, taking into account that Australia is unique in the sense that it has a relatively small population scattered over a very large land area and, therefore, any retailer that tries to operate right across the nation faces much bigger costs and logistical challenges than if, for example, you were comparing Australia with a country in Europe which was a quarter of the size of Victoria. I mean, the differences in the population densities overseas may very well be a factor in why retailers there are on some calculations said to be more productive.

But you will not get a productive retail industry by taking away people's penalty rates and thereby reducing their earnings. Can I just go on to say there has been a lot of discussion in recent times, particularly about the Fair Work Act and its ability to increase productivity. I have to say to you that the door of the union is always open to retailers to come to us to negotiate agreements which sit on top of the industry award, and there are significant numbers of retailers who have done that. You received a submission from a company called B and T which said to you these words, "From July 2011, our business spaces increased penalty rates for night and weekend work, as well as increased casual loading rates."

Now, when I saw that I just couldn't believe that a company would make a submission like that because this company last year came to the union wanting to do an industrial agreement. They had their own views as to what they wanted and they put that in front of us. That proposal, with a few relatively small changes that we suggested, then went forward, was accepted by the employees, went to Fair Work Australia and was certified. It doesn't involve any increased penalty rates for night and weekend work from July 2011, and the increased casual loading that applied from July 2011 was what the company proposed to us it wanted to pay.

Here you have a retail company that is putting to you a position which is simply not correct. When I read that I rang up the managing director of the company and she acknowledged to me that that was not correct. All I can say is that the chief financial officer - I'm not suggesting that he's trying to mislead this commission - is not aware of what his IR people and his managing director did last year when they entered into an agreement. He's totally unaware of it.

I would put it to you that there are other submissions that retailers have put to this commission which create an impression which is fundamentally wrong. The Fair Work legislation does provide the opportunity for all sorts of flexibilities and all

sorts of improvements. Every award and every agreement has to have an individual flexibility agreement, a clause, which provides the opportunity for the employer to improve flexibilities by agreement with the employee, provided of course that the employee is no worse off. There is the opportunity to improve flexibility, efficiency and productivity by making these individual arrangements, provided that the employee is no worse off. The suggestion that the Fair Work legislation doesn't do these things is fundamentally wrong, fundamentally mistaken.

MR WEICKHARDT: Thank you for clarifying the issue with that company. I mean, this is an important part of our process that people have the opportunity to correct information that has come forward, and the important part of the process in terms of getting people to comment on the draft report is that we want to get the facts right, maybe to the displeasure of some people. We don't take at face value everything that they're told. We try to verify and cross-check. But on individual flexibility agreements, I think it was your submission - I was just quickly looking at it - that made a point about the business transfer conditions. If it wasn't yours, it was the ACTU submission.

Anyway, the point was made, which I understand - I'm paraphrasing - a deal is a deal. If you sign a deal, who would sign a deal that could be discarded and thrown out the window immediately. In the individual flexibility agreements, one of the issues that has been put to us by many retailers is that these agreements can be negotiated, they can be signed off between the employee and the employer and, I'm guessing, where relevant the union involved can bless them. But then the employee, after four weeks, apparently can give notice and say, "I don't want to do these any more." In those circumstances where we're trying to look at ways of enhancing productivity and customer service to give retailers better competition, why or how can an individual flexibility agreement work if it can be just thrown out the window after four weeks' notice?

MR de BRUYN (SDAEA): Well, it may be that whatever is the flexibility that an employee has agreed to no longer suits that employee.

MR WEICKHARDT: Well, it might not suit the employer either.

MR de BRUYN (SDAEA): No, and therefore they would also terminate the arrangement. It goes for both sides.

MR WEICKHARDT: It doesn't seem consistent with trying to strike an agreement between the two parties.

MR de BRUYN (SDAEA): Have the retailers given you evidence of where individual flexibility agreements have been entered into and then terminated with

that four-week period of notice, because I would be amazed if that is happening in any significant degree at all.

MR WEICKHARDT: Most of them have given us the impression - and I stress it's an impression I've got - that they haven't bothered because they didn't think it was worth the effort to negotiate a deal that could be then discarded.

MR de BRUYN (SDAEA): I would have to say to you that if you've put a proposition to an employee which improves productivity, and the employee is happy to enter into it, then prima facie they're likely to stick with that. Unless they can show you concrete evidence to the contrary, I would suggest to you that there is no basis for accepting what they have said to you at all.

MR WEICKHARDT: Can you address this point as to why this four-week notice issue is in there? You wouldn't accept a wage outcome where the employer said, "After four weeks I can tell you if it doesn't suit me."

MR de BRUYN (SDAEA): The reason is simply that because it is an agreement to do something different to what the award provides or the agreement provides, if the employees' circumstances change they should have the right to be able to exit from it, albeit that it is likely to be used quite rarely.

MR WEICKHARDT: It seems to me a bit curious, I have to say.

MR de BRUYN (SDAEA): I think it is an essential part of having an arrangement because don't forget that where you do an agreement with a company, the company is supposed to come and put on the table all the things that it wants to see changed or available to it as part of a new agreement. You negotiate and then you are entitled to expect that when you have concluded your agreement you've got some certainty and stability going forward for the duration of the agreement. Now, for there to be a legislative requirement, as there is, for an individual flexibility agreement available, that creates the possibility of something different. So it is really only an acceptable and viable clause provided that both parties enter it voluntarily and can exit it if they want to.

MR WEICKHARDT: I hear your comment. I must say it does seem to me to be quirky.

MR de BRUYN (SDAEA): Late last year and early this year we negotiated the new EBA with Coles Supermarkets. Coles were very ambitious in the changes which they wanted. It made the negotiations extremely difficult. You should know that we dealt with every single item that the company wished to have changed which improved efficiency and flexibility on their merits, and reached agreement on every

single one of those. The agreement that was concluded, which was voted on by the employees, gone to Fair Work Australia, awaiting certification, is one which significantly improved efficiencies for the company in all the different areas where the company sought improvements in productivity.

That is an outcome of the Fair Work legislation for a major company which led to a range of changes which to me shows the legislation working most effectively.

MR WEICKHARDT: I'm heartened to hear that.

MR de BRUYN (SDAEA): Yes. That's the story that gets repeated with every retail company who comes to us and wants to negotiate. We don't have any difficulty in doing deals with flexibility and efficiency is improved, provided only that it is not to the disadvantage of the employee. Very simple. If a company says to us, "We want to reduce penalty rates," we say, "No." But if they say, "We want to improve flexibility in such-and-such a way," which is genuinely a benefit for the company and which has its advantages for the employee, we have no difficulty.

I'll give you one example that we did with the Coles agreement. The company wanted there to be what they started off calling "a new class of employee" where the employee would negotiate with the company, for the ensuing 12 months, the times when they would work and the times when they would take time off without pay, in order to deal with the phenomenon of employees, often women, who wanted to be home at the time of school holidays. We thought about that and we decided we would embrace that, because it is just as much a problem for the union with employees coming to us saying, "I want time off during the coming school holidays and the company won't let me." So here was the company saying, "We'll negotiate these contracts a year at a time in advance and then we have certainty about who is there during school holidays and any other time that the person might want off, and we can make provision for replacing those employees and we know that well in advance.

That was something that was embraced by employees when we rolled the agreement out, and it is something that the company is very happy with because it enables them to have certainty about rostering going forward and it works extremely well. These are the sorts of deals that we are prepared to do, and all this happens under the Fair Work legislation which obviously is legislation that does enable employers and unions together to work out things which provide for flexibility and efficiency at the workplace.

MR WEICKHARDT: I'm very guilty of the fact that I'm hogging the questions and we're out of time by a long while, but if you can provide us some examples of where these individual flexibility agreements have been agreed, or other productivity

enhancing agreements that have been put in place over recent times, that would be very helpful.

MR de BRUYN (SDAEA): I mean, the reason why retailers come to us and do agreements is because they know they're going to get efficiencies and flexibilities which they don't have under the award. That's why they do them. That's why we have agreements with virtually every single major retailer in this country.

MR WEICKHARDT: That's the way it should work.

MR de BRUYN (SDAEA): That's right. That's how it does work.

MR WEICKHARDT: I'd have to say that so far we haven't seen enough evidence about closing this productivity gap with international competitors that suggest that things have been pushed as far as they need to be.

MR de BRUYN (SDAEA): Yes. I mean, I can't comment on calculations that I haven't seen, but I would say to you that you should treat those calculations with some caution because I would be surprised if they are as you say they are.

MR WEICKHARDT: Well, they're recorded in our report and the references are there, and if you have other data that would provide a different perspective then we would be very happy to see them.

MR de BRUYN (SDAEA): Yes.

MR WEICKHARDT: I'm sorry, we are out of time and we are being discourteous to our next participants by taking more time. I've got lots more questions but thank you very much indeed for coming along and thank you for your submission and your input.

MR de BRUYN (SDAEA): Thank you.

MR WEICKHARDT: Okay. I'd ask our next participant, the ACTU, to come forward, please. For the transcript if you could just give your name and the capacity in which you're appearing, please.

MR LAWRENCE (ACTU): Jeff Lawrence, secretary of the ACTU, and with me, Mr Joel Fetter who is our industrial director.

MR WEICKHARDT: Okay. Thank you for your submissions. Assume that we've read them, although it was with certain irony as I was reading about employees working on Sunday that I found myself reading this on a Sunday, but anyway assume that we have read them. If you would like to give a brief outline of what you'd like to talk about and then we'll have a discussion.

MR LAWRENCE (ACTU): I'm happy to do that. Can I just say at the start that our submission deals with the industrial relations issues and we support the comments that Mr De Bruyn made with respect to online and other issues that were dealt with. I understand also that there's some 50 submissions which were lodged by individual workers which I would also direct the commission's attention to. I wanted to make some opening comments - - -

MR WEICKHARDT: Can I just ask on that question - because we have received a number of those submissions - that it suggested to us that somebody had misled the people who wrote those submissions to us about what we'd actually said in our report, and I'm not sure who that is, but most of those submissions started off saying that it was outrageous that the Productivity Commission suggested that people's wages should be cut, and unless they're reading another version of the report that I've never seen, there is nowhere that we make that sort of comment. Can you help me understand why those people have been motivated to write to us about an issue that we've never raised?

MR LAWRENCE (ACTU): I can understand how they would get that impression because, as I will explain, our view is that the way in which the commission approached this whole issue was inappropriate, and I'm particularly concerned about this because the Productivity Commission has been given a number of tasks into the future as well which will lead it into the industrial relations area. I think it was quite reasonable actually for people to get the view from the initial report that the commission was advocating, essentially, reductions in wages and conditions.

MR WEICKHARDT: Well, I fail to see and understand why, and it certainly wasn't our intention and I don't think we used those words.

MR LAWRENCE (ACTU): Well, you might not have used those words but that's

a clear inference from a range of the aspects of the draft report as I think I'd like to demonstrate.

MR WEICKHARDT: Okay.

MR LAWRENCE (ACTU): Can I say first of all I think there's a process matter here. We do believe that the workplace relations sections of the report were based upon little evidence - either no or insufficient evidence or hearsay or really repeating assertions made by so-called industrial relations experts like Judith Sloan or Heather Ridout, neither of whom are unbiased. So for that reason we do think that the workplace relations section of the report should be removed or it should be significantly amended. The point here is that the commission was asked to look at the employment structure of the industry. It wasn't asked to undertake a review of wages and workplace relations in the sector, and it wasn't an invitation to usurp the statutory functions of Fair Work Australia.

Our general point is that if the Productivity Commission is going to stray into this area, an area in which it has no expertise, then - well, first, it shouldn't do that, and if it's going to make some comments about this, then it should base those on evidence. It should base them on evidence which actually comes from both sides. What's been relied on in this report are really assertions, as I say, hearsay, and really a lack of evidence and certainly a lack of countervailing evidence. There were 43 submissions made by industry associations or large employers but only 11 of those submissions even discussed labour market issues and, of those, only seven expressed any substantive criticism of the existing level of wages and conditions or of the industrial relations regulation.

Two major employer groups, the Australian Industry Group - who actually didn't even make a submission but yet the commission quotes Heather Ridout, the executive director of the Australian Industry Group. We've reviewed the submissions as well and there was in fact little comment on industrial relations issues that came from the major employers' organisations. So our general point is the points that have been made in the submission, in our view, really weren't based upon the material that was in front of the commission. So therefore we think that the inclusion of the issues that were raised were inappropriate. Really what it does represent is a recitation of some critical comments from some employers but not based upon evidence or analysis.

Leaving aside the actual specifics, which we'll come to, we think there's an important point of principle in the way in which the report was put together and, indeed, the way in which the commission might address these issues in the future. Certainly there has been no weight given to the interests of workers in the retail sector, or their families, or the submissions that have been put forward by unions as

their representative. The call for the government to consider "retail industry concerns as part of the planned post-implementation of the Fair Work Act", in our view, is unnecessary and it's inappropriate because it is not based on evidence and is, as I said before, based upon a range of assertions and hearsay from other parties, some of whom didn't even make submissions to the report. Our specific review is that certainly the draft recommendation at the end of the chapter should be deleted and there should be a lot of work put into restoring the balance in the final report.

Can I also say that these issues, as the commission is well aware, are the subject of considerable political controversy in this country, and therefore the commission does need to proceed, I think, cautiously and, as I say, based upon careful consideration particularly when there is an organisation, Fair Work Australia, which is charged with dealing with these issues.

Can I go then to some of the specific aspects that are raised in the report, and I anticipate there will be some questions about a range of those, and Mr Fetter and I will be more than happy to try and answer them. I also adopt, of course, the views that were put forward by Mr De Bruyn in terms of the effectiveness of the current legislation. The first point in our submission deals with the general question of wages and this is really dealt with particularly on pages 5 and 6 where we compare the level of wages in Australia in the retail industry as against other countries in an international comparison which actually shows that in fact it's cheaper to employ labour in a retail business in Australia than in any other developed country in Europe - except for Portugal - so an average Australian labour cost at 27 per cent cheaper based on nominal exchange rates.

I think there have been a number of points made about the level of wages in Australia, but we have a wage fixation system which is developed over a number of years, and an award system which has been developed through a process where there's been, apart from the Work Choices period, an overall acceptance of the way in which that has developed. But in any event, the figures that are on page 6 show that Australian labour costs are in fact comparatively low compared to comparable developed countries.

Similarly, with respect to penalty rates, there is a bit of a myth out there that somehow or other penalty rates are unique to Australia. It's simply not the case, nor is it the case that there aren't provisions in industrial regulation for things like annual leave loading which in fact are extremely common around the world. So the figures on pages 7 to 9 show that there are compensations for working on weekends which are developed right around the world so that Australia is not in fact out of kilter with some of those protections that exist.

In any event, the question of penalty rates is an important component of

people's take-home pay. So if it is considered that a payment of a penalty rate somehow or other a lack of flexibility that is really constraining employers' ability to make profits and it's therefore advocated that a penalty rate should be removed, either directly or by some device, such as an Australian workplace agreement, then effectively what's being advocated is a reduction in people's take-home pay. I can understand that when penalty rates appear to be questioned in the way that it was questioned in the draft report people would come to the view that what's being advocated is actually a reduction in people's take-home pay.

Similar sorts of points have been made in respect of award modernisation. It's often said, particularly in the pages of the Murdoch press, that somehow or other, award modernisation has led to - in this industry and other industries - an increase in labour costs for employers. In fact we all know - and the evidence is very clear here - that the result of award modernisation was a mixture. Because of the development of national standards there were a range of workers who actually lost out, and that is the truth. To assert that employers have had some sort of significant increase in costs is not the case and is not the case in the retail industry as well. Indeed, on page 10, when we look at the increase in labour costs, in some of the major states those figures will actually substantiate that point.

The fact is that the commission have relied on some selective examples which are really used to seek to buttress this allegation that there has been an increase in costs of award modernisation. We make the point, in the middle of page 11, that the commission quoted the NRA figure put to Fair Work Australia of an increase in overall costs of award modernisation of 1.6 per cent. However, it's never been explained where that figure comes from and, in our view, it just simply is incorrect.

The question of productivity we deal with on page 12 through to the top of page 13. The issue around productivity is, of course, a subject of particular debate at the moment. Our position on this is very clear. If you look at the figures with respect to productivity growth during the period of Work Choices, as against the period after Work Choices, it actually shows the position under Work Choices was worse. There has been a decline in the long-term rate of productivity growth - I'm talking about economy-wide now - since the 1990s in Australia, like other countries. There's no way that that can be attributed to the provisions of the Fair Work Act. In any event, issues around productivity need to be addressed, in our view, by looking at some fundamental questions of investment in plant and equipment, investment in training and skill development, rather than measures which are designed, not to increase productivity but actually to increase profits.

The distinction needs to be clear and that issue in our view needs to be debated much more frankly than it has been so far. We want to clearly draw the distinction between issues around productivity and issues around cutting employment conditions

and take-home pay. In any event, our view is that those issues can only be addressed through collective bargaining. As Mr De Bruyn demonstrated, the result of collective bargaining in this industry has meant results that have been acceptable to employers and acceptable to employees, and it enables the particular issues of the individual workplace and company to be addressed.

As we say, we particularly object to the bandying around of this term "flexibility". Our submission deals - as does the SDA submission - with a range of things that have been achieved through collective bargaining, and the extent to which in fact flexibility on the employee side is actually quite constrained within the retail industry. The submission goes to those issues, in particular on pages 14 and 15. In any event, the point needs to be made here that the bandying around of this term "flexibility" really needs to be confronted because if in fact what is being talked about here is a reduction in conditions of employment and a reduction in the protections that people have, then people who are saying that should be up-front about that, and they should acknowledge that what's being advocated is essentially a return to Work Choices; a return to a system which strips away people's conditions of employment and protections.

There are a number of issues that are specifically dealt with in the paper that go to that general issue. The commission deals with the question of performance pay and we make the point that care should be taken to claim that performance pay actually enhances productivity and we think there are a number of assertions about that in the report that don't have any substance, based upon the submissions that have been made. Similarly, with respect to individual flexibility agreements, some of the employer complaints about these have been aired in the report but there's no balanced view or critique which is provided, or an acknowledgment that they were introduced to deal with some confined issues which are set out in the legislation, and that's the way in which they should work.

Again if it's being actually advocated that we return to Australian workplace agreements then that should be said up-front and that argument should be had. I don't think the commission on the one hand can say, "Well, we need more flexibility" - it actually questions at one part of the report the "better off overall" test, but yet say, "Well, we want to maintain the safety net." Those things are inconsistent and the commission should recognise that, if in fact that's what's being advocated and therefore be up-front about that. We think the protections that are there for individual flexibility arrangements and awards are appropriate because they do provide a continued mechanism that enables some protections to exist, and anything else will effectively be an Australian workplace agreement.

There are also a range of issues which are dealt with in the report dealing with unfair dismissal, again one of the myths that is out there about the operations of the

Fair Work Act. The truth is of course that the unfair dismissal protections in Australia are relatively weak, and there's a range of international material that we've provided that substantiates that which I don't think we've done in the past. We would ask the commission have regard to that, including the analysis that we provide and the way in which the provisions within the legislation have actually worked in the past.

Similarly with respect to transfer of business, again on pages 20 to 21 we deal with the justification for those provisions and the importance that they have in ensuring that employers are not able to actually get out of the agreements that they've made and the undertakings that they've made by legal devices. Then, finally, the question of minimum shifts which is a specific employment condition which is very important in industry, particularly in service industries and one which has received some publicity in this industry in particular. The draft report identifies - and I think it says "prescriptive minimum shift length rules as a constraint on employer flexibility" and implicitly recommends a levelling down of standards.

Now, again if the commission is actually saying that it thinks it is fair that a worker be required to travel from one end of the city to the other and receive an hour and a half's pay as against the current award standard, then it should say that and it should say why it thinks it's fair and why it thinks it's justified. In our view, obviously, it's not justified. Minimum starts exist. In this industry they exist across industry to ensure that people get a reasonable amount of pay and are not subjected to excessive insecurity.

What happened, of course, in this industry in award modernisation was that there was a three-hour minimum start, apart from two states, and the minimum start in Victoria was increased, but the minimum start in Tasmania was reduced. In fact for most workers in most areas the minimum start is three hours which it has been forever, for a long time. The only increase in the minimum start took place in Victoria and that then led to a stunt that some of the employers decided they would run through the pages of The Australian to try and test that issue. It's still the subject of litigation within Fair Work Australia. So we are absolutely determined to make sure that minimum starts are maintained and a range of industries enhanced because we do think it's an important protection that people have.

Can I say in conclusion we are very concerned about the draft report. We think it goes beyond the terms of reference of the commission. We think it's based on unsubstantiated assertions from a small number of employers. We think it contains numerous errors and unsubstantiated conclusions. We are very concerned about the Productivity Commission taking to itself a role which it does not have, in our view, and we will be concerned about that into the future.

With respect to the retail industry itself, in our view, our submission substantiates that contrary to some of the assertions that are there and implied, Australian retail workers are in fact low paid. Penalty rates, if you look at them overall, are moderate by Australian international standards. There in fact hasn't been an increase in costs through award modernisation, and productivity growth and, for that matter, profits in the retail industry is high and still growing. Proposals to increase individual flexibility arrangements or to reduce protections in unfair dismissal or transfer business provisions or to reduce minimum shift lengths are effectively a reduction in people's take-home pay and, therefore, we don't believe should be part of the commission's report. That's why we do think the chapter should be deleted or at the very least there should be significant amendments to it to ensure that it is balanced.

MR WEICKHARDT: Okay. Thank you for you input. I'm going to ask Louise to ask the first question, but I'm going to make a comment, first of all, of the appropriateness of the Productivity Commission being involved in this area. Let me say our reading of the terms of reference is very different to your own. Our reading of the terms of reference which asks us to look at the structure, performance and efficiency of the retail sector and impediments to its contribution to the Australian economy and drivers of structural change and cost structures and employment structure and any other regulatory or policy issues which impact on structural change in the industry, for an industry where labour costs is the largest single cost apart from the cost of goods sold, for us to have ignored that issue would have been a complete dereliction of duty, I think.

That said, we are very anxious to avoid any errors or imbalance in our commentary and we certainly take your input seriously and we will be inquiring of everyone in this process we go through in the draft report to try to make sure that any errors in our draft report are corrected for the final report. But productivity in this sector seems to us central to its future, its competitiveness and its ability to give consumers and all Australians a good deal. Retail is an incredibly important sector. It provides most of us with things that we buy on a daily basis, and to most of your members and most of the community, getting a good deal, good customer service, is pretty important. So getting the employment structure in a situation which is delivering good outputs to your members and also delivering good outputs to consumers is, we see, vital and a point of very legitimately interest to this inquiry. That said, Louise, I will give you an opportunity to ask a question.

MS SYLVAN: Okay. In a sense, I'll come to a question that we also asked Mr de Bruyn, which is irrespective of how it's been interpreted, the issue that we were putting out there for consideration in relation to these particular matters has to do with a challenge that doesn't appear to have happened significantly previously which is that sections of the retail industry are becoming trade exposed. That has

major challenges obviously for the retailers. It will have major challenges in relation to the workers. So the context within which these issues are being raised has to do with the ability in a sense of retailers to respond to this challenge in a way that enables them to be competitive. By definition, that competitiveness needs to be in response to the way consumers are demanding that service be provided.

So if I understood you correctly, in a sense I think you were telling us this system is just fine and it will enable retailers to respond adequately and their workers to respond adequately in relation to their jobs under this major competitive challenge and that it's not a matter that one needs to specifically spend much time considering.

MR LAWRENCE (ACTU): I think with respect to the non industrial relations issues, I heard what Mr de Bruyn said and his knowledge and experience in the industry and I'm sure the industry will seek to adapt to all those challenges it has in the past. But dealing with the industrial relations issues, the employment regulation issues, I think that there are always issues that are addressed in the workplace and in the industrial relations system. You see, it's not true to say that the award system, for example, has not been adaptive in this country in the past and it's not true to say that it's not adaptive now. But as well as that, we have a collective bargaining system that really sits on top of the safety net. So our particular view is to make sure that the safety net is maintained. We see that a range of the issues you raise in your report actually tend to undermine the safety net. We think it's very important that the rights of collective bargaining and what can be achieved through collective bargaining is emphasised. So those issues as they arise, and they always do in any enterprise in the country, can be addressed and should be addressed through collective bargaining.

MR WEICKHARDT: Okay. That said, you've said - and I think we would agree with you from the evidence that we've seen so far - that improvements in productivity shouldn't necessarily simply go to increased profits in this industry; in fact the evidence we've seen is that this industry has over time done quite well in terms of its profitability. Of course it's a big, diverse industry and there are always exceptions to that, but overall, parts of the industry have done quite well from a profitability point of view.

The people who haven't done particularly well are the consumers. The evidence of that is from the vast price disparities that have applied or have been visible in the eye of consumers when they have bought product online, and these vast disparities won't be changed by GST being applied. Price differences of 50 per cent or more are huge. So we've asked ourselves the question: why is this so and what's going to change? Now, I don't think there's a simple answer to that. It seems to us that retailers themselves have not been as effective as they could be in terms of their purchasing practices. They probably start behind the eight ball in terms of the cost of the goods that they sell. But when we look at the cost structure, it appears that

Australian retailers are paying more as a percentage of sales for their workforce than international comparisons and that they're paying more in rent.

In those situations, you ask yourself how are consumers going to get a good deal and yet employers still make some profit, not an outrageous profit but still make some profit, so they can invest in the future? Something has to change. I guess what we've been trying to understand is what is inhibiting that change? You yourself pointed out that, in the past, flexibilities haven't perhaps been used to give productivity improvements. So what is it that's going to make this industry catch up with what's happening overseas so that it can compete more effectively?

MR LAWRENCE (ACTU): I might ask Mr Fetter to go more specifically to the international comparisons of cost and so on which I think is one point of this. But I think there are clearly a range of things that employers can do to improve their efficiencies and so on that are separate to labour costs and labour protections and so on; I think that's the first point. The second point is that Australia, because of its geography and it always has a range of particular issues that have to be addressed - and we are going through some of those at the moment or I am - with Qantas, for example, so I think we need to really separate those things though from issues around the wages and conditions that people receive and the way in which work is organised in a way which maintains people's rights and protections. So in essence, that's really our bottom line, to ensure that those things are protected.

We always seek to address the particular issues that people have through collective bargaining, and there are different circumstances that exist in various parts of the industry. I notice even the sales figures that came out on Friday which actually showed that there had actually been a bit of a pick-up. Of course it varies a bit from particular segments of the industry. But let me go to Mr Fetter to deal with this labour cost issue because I think we should specifically address it, given it's been raised twice.

MR FETTER (ACTU): Just a few points to make. The first is that in looking at the structure of costs in the industry, it's important not only to look at labour but other costs as you've identified, including the cost of goods. But there was a report just the other day that Australian retailers pay the highest rents in the world, that it's more expensive to rent, say, in Bourke Street, Melbourne, than on the Champs Elysees in Paris.

So clearly the whole range of costs need to be looked at, and we do think though that the emphasis in the report is unbalanced, that there's more pages on labour costs than on the retail rents, for instance, whereby it's much easier, we would submit, to do something about rents in a way that doesn't harm people, compared to doing something to reduce labour costs. The first point to make is that we'd rather

see more emphasis on the non-human costs in the sector.

MR WEICKHARDT: There might be some humans behind rent costs too.

MR FETTER (ACTU): Yes. We were disappointed in fact to see that one of the strongest employer submissions on labour issues was in fact Westfield which is not a direct employer of retail employees really but is itself, we would submit, trying to deflect attention from a very significant problem in the sector which is rents; not only the level, as has been identified, but many of the restricted conditions put on the tenancy agreements which are particularly inflexible for small retailers. Some of those issues are looked at in the report but, as I say - - -

MR WEICKHARDT: Do you agree with our recommendations in regard to the whole issue of zoning and planning which is the thing that we see as being crucial to address this issue?

MR FETTER (ACTU): Well, as you have got to understand, we're not experts in terms of those matters, but to the extent that measures need to be taken to increase competition in that area, then that would seem sensible, yes. The second issue in terms of making comparisons of labour costs is to get the right figures and make the right comparisons. We were disappointed that the commission relied on a research note by an investment analysis firm looking at a very limited number of large retailers to derive its labour cost figures. We have gone to the national statistical agencies in our comparator countries - the United States and developed Europe - and have produced figures, as Mr Lawrence said on page 6, that showed that our labour costs, whether measured on a direct basis or adjusted for purchasing power, are very competitive, in fact are lower on either measure.

So in gross terms we don't think there is a problem with labour costs in Australia and the retail industry. Then though the commission uses figures comparing labour costs to turnover to get a proportion of sales. We have a lot of concerns about that because, as Mr De Bruyn set out, we don't think it's fair to compare markets that are very different structurally. In particular, Mr De Bruyn said, in the United States and the United Kingdom - which were two comparisons that were used in the appendix to the report - there is a very large population, plus in a very small geographical area.

In an environment where, in a sense, base labour costs are fixed you must staff a shop with at least one worker. In a European or an American shop you might sell a thousand widgets, paying only one person's labour costs, but in Australia you might struggle to sell a hundred widgets. The ratio of total turnover to labour costs is going to incorporate some of those structural differences in the economies, and it's necessary to separate that out, if that's possible. With respect, it's not possible, in

which case those figures should be used with a lot of caution.

MR WEICKHARDT: I accept the fact that we are different, but on the other hand, the so-called KOALA factor is sometimes overused. I mean, we're also the most urbanised country in the world. We've got some very big cities. If the cost of buying goods in Woomera was more expensive, most people would understand the reasons for that. But when you're shopping in Melbourne and Sydney, I think your members and most consumers would say, "Hey, I don't want to pay twice what I pay if I buy product online." In those situations we've got to look at the questions of what the retail industry are going to do to respond. As I said before, there is no one answer in our mind but I think, from the evidence we've seen, productivity of employment in this sector is an important part of the answer. That's all we're trying to get to.

MR FETTER (ACTU): Yes, and we fully support measures to increase productivity, properly understood. What we don't like - as Mr Lawrence has pointed out - is employers and others using the word "productivity" or the word "flexibility" as cover for something entirely different which is wage cost reductions. Now, strictly speaking, any economist will tell you that that is not an increase in productivity to have the same labour input just at lower cost. That seems to be what a lot of the debate is about. We are happy to engage in a debate about genuine productivity improvements, but not on the basis of labour costs.

If I can just finish that second point though about the comparison between the structure of our industry and our geography and others, it's true that we have large urban centres in Australia, but I think what is a difference is that they're very far away from each other and that the regulatory differences between different states may be more significant than when you cross a state border in the United States. My guess about this is that it would be much easier if you were in Massachusetts to expand into a neighbouring state than it is if you have a shop in Melbourne and you want to open in Sydney; not only because of the transport costs but also because of some of the regulatory differences there.

As I say, this isn't our area of expertise but since you've raised the KOALA factor, I have to say I do think there is something to it, that the economies of scale are different in larger countries and that the distance between our major urban centres means that it's much more difficult and much more costly, for instance, for an employer to expand, to manage staff based in two different locations, where an employer can't just drive from one store to the other as they might be able to do between Boston and an adjoining city - I'm not sure what actually abuts onto Massachusetts - but I think that there is something of the KOALA factor there. We think those figures need to be treated with caution. The other thing about the international labour costs and productivity comparisons is that - - -

MR WEICKHARDT: Can I just wind back a moment then. If there is this KOALA factor, I mean, what are you suggesting the implication of that is and what should be done? Are you suggesting that consumers shouldn't be able to avail themselves of the right to buy product online and avail themselves of the better and more competitive prices they can get at the moment?

MR FETTER (ACTU): No, of course not. I'm just suggesting that there may be structural features to do with the industry in Australia which means that we will have higher costs than international comparators. If that is a small cost differential it may not matter. As Mr De Bruyn said - and I think you acknowledged - many consumers are happy to pay a small premium for the convenience of buying in a local store. If those differences became very significant then of course we would have a problem. But the point I'm making is I think some factors are unavoidable and that should be acknowledged by the commission; others, such as high rents, something can be done about it.

A third area is what are allegedly high wages. I think that's made out on the evidence. Even if it were, the cost of doing anything about that is very significant and needs to be borne in mind. I'll just make my final point about these questions of productivity. I think Ms Sylvan asked if we thought that everything was perfect in the sector and nothing needed to be done, and of course we don't think that. It's clear that the exposure to international trade will cause changes and naturally the market will respond. But we think that another area that needs to be looked at, as we set out in our submission, is the high degree of insecurity that retail workers face. 40 per cent of retail workers work on a casual basis, so they have no annual leave and no sick leave and no long service leave. But in addition to that they have no guarantee of a minimum number of hours every week and they face the loss of their shifts at short or no notice.

In light of that - and combined with a lack of training often for casuals who are treated as second-class workers in the sector - what we have is a picture where you've got a workforce that is not treated well but their employer and don't necessarily feel that they're being looked after properly. So in circumstances where the employers want to run a very flexible workforce like that, then they can't turn around and complain that it's an allegedly unproductive workforce, that you have to - as we've been saying - invest in people, invest in training, give people a real sense of their future in the sector if you want to get labour productivity improvements in terms of the intensity of effort and commitment to the business.

You also have to show a genuine commitment to fairness which again is where we think unions have a valuable role to play because unions, in a business, make sure that that commitment is credible and can be enforced. We think that employers can't on the one hand demand flexibility but then on the other hand make complaints - if

that is the complaint and it's nowhere directly expressed - about the commitment of employees to the business. In cases where 40 per cent of retail employees are second-class citizens, 20 per cent have no unfair dismissal protection; 33 per cent of workers have pay that varies from week to week. The challenge will be for employers to get those workers on board to convince them that the business as a whole must increase its productivity, not only through increased effort but, as we're saying, increased training, increased commitment from the employer to the workforce and increased capital and technology investments.

We are confident that the retail sector, doing all of that, with the involvement of unions, will be able to meet the challenges of online retailing. We'll never be able to compete on labour costs with China and we don't think that we should even try, but we should try to compete with the developed European countries, with the North American countries, and we should try and compete on quality, which is what developed countries do. On our assessment of those figures which we include, we are competing very well on labour cost measures, hence our submission that the balance of this draft report is off. In that area we are doing all right and yet it gets a very long chapter addressed to labour issues. Other areas we're not doing so well, and there's only a brief discussion.

We think that that workplace chapter needs to be looked at again. We think it is unfortunately repeating many so-called facts and figures that the employers have put to you and, frankly, they've misled you or only given you half the picture. At the very least we would like the commission to take on board what we're putting to you now and restore the balance. We do think that the discussion in there at the moment is seriously flawed and would need essentially rewriting from scratch if it was going to properly capture what the real challenges are in the sector and what the true labour cost issues are in the sector.

MR WEICKHARDT: I hear what you say. Part of the reason that that chapter is lengthy - indeed part of the reason our reports are lengthy - is that issues are often quite complex, and trying to actually analyse and understand that complexity takes space. But certainly if there are factual errors there we will seriously address them.

MR FETTER (ACTU): But also we submit just emphases that no employer submitting to you placed. So there's a discussion there of unfair dismissal laws with the suggestion that Australia's laws don't get the balance right. As far as we can see that wasn't put to the commission, at least in the public material. Then in light of the facts about how the jurisdiction works in Australia, we don't see how you could come to the view that it operated as any sort of significant constraint on the employers' decision to hire or fire.

To the extent that the employers might have told you that in private, of course

we suggest to you that you should treat that with a large degree of scepticism because of the self-serving nature of those comments in an environment that Mr Lawrence said is currently politically contested. We are trying to make sure that the commission doesn't merely ape unsubstantiated concerns put in by employers. I don't think that unfair dismissal laws were really raised by anyone as a significant problem, in which case we don't understand why it appears in the report.

MR WEICKHARDT: Well, let me stress, we treat everything with a healthy degree of scepticism and I think we've very careful in that chapter to make sure that we referenced where different comments had come from. If they're incorrect then that's something we will address. Coming back to a point that you made earlier, I don't think anyone who has been involved in employing people who are dealing with customers would ever believe, if they were saying, that they would get a good impact by mistreating their employees. Most people who are badly treated, treat other people badly too.

So what we were advocating is certainly nothing of the sort that some people have characterised it as, that employers should get out their whips and tell people to work harder otherwise they will be thrashed every night. That's not the sort of society we want to live in. But we do want to live in a society where we have industries that serve us that are competitive. We put to you and to everyone reading our report, that doesn't mean the status quo is acceptable. That's, I guess, the issue.

MR LAWRENCE (ACTU): I think the difficulty is there are a number of parts of the section that you can really take to be advocating changes to the safety net and reductions in conditions of employment. In the context of where some of those things weren't even raised by employers, and in the context where we do have a system of industrial relations within Fair Work Australia where people have the opportunity of putting a case and having that refuted, and evidence being called and so on, so at least there is a process that's gone through that's transparent which enables both sides to be put.

There is not the sense that that actually happened here. Leaving aside the specifics of the various issues, that's our particular difficulty. For example, on page 325 in the second-last paragraph, you said:

Participants have indicated that provisions in the Fair Work Act governing the making and approval of enterprise agreements in particular, the "every worker must be better off overall" test, are increasing the cost and complexity of negotiating enterprise agreements and making productivity improvements more difficult to achieve. At the same time it's claimed that constraints on the negotiation and operation of individual flexibility agreements -

et cetera. Then you go on and say:

More generally the concern raised by industry suggest there's scope to improve the operation of workplace regulation to enhance flexibility and adaptability whilst ensuring reasonable safety net provisions are maintained.

But the point is it's not possible. Those things are contradictory. If on the one hand you're saying, "Well, 'the better off overall' test is a problem. Let's get rid of it," that means actually going below the safety net effectively. That's what AWAs did. That's not consistent with maintaining the safety net.

The problem with the whole report is it deals with minimum staff, it deals with penalty rates, it deals with actual rates of pay in a way where the whole implication of it is in unfair dismissal, where the whole implication of it is that this actually is a problem. It's just feeding into the sort of issues that are there that are being argued every day in the Murdoch press in particular about the Fair Work Act that are a real concern.

I am concerned that if the Productivity Commission, more broadly, for example, in the future is looking at the way in which superannuation is industrially regulated, I'm very concerned that these issues are properly dealt with in a way where we can have confidence, and employees and the Australian society can have confidence, that there's a balanced approach.

MR WEICKHARDT: Well, I think we're in heated agreement on that issue. That's the thing that we seek to do on a daily basis, and it's part of this process that we're going through right now.

MS SYLVAN: I'm looking - because I'm left with some dismay in a sense - about what you're telling us about the interpretation of what's been said in relation to flexibility and so on, the agenda really here and the words are really a cover, that we want to reduce these people's wages. One of the implications of what we're talking about and the ability of industries to respond to a significant global challenge is that employer groups are going to have to work very closely together. Employers are going to have to get, as you say, far better outcomes. Some of the competitiveness is going to have to be through quality of service et cetera, or they're going to lose out to this international competition.

The picture you present doesn't leave me with a great deal of hope in terms of how you're characterising it. Do you have examples of an outstanding competitive outcome in Australia of the employer and the employees working together to really

lift productivity so we can see it in relation to the outcome for the business, which would be both on profits and on shared outcome? So if we've got some examples of those, because I don't think they're in your submission, we would be very pleased to see them, to see that there is this ability and the responsiveness is there and employers are interested in competing effectively.

MR LAWRENCE (ACTU): I think you asked a similar question to Mr de Bruyn in one sense and I think he indicated to you that there are many examples where, through collective bargaining, agreements have been made right across industry. It is the case, as I understand it, with major retailers. But of course we have lots of people here who are seeking to use some of these issues in a way which is actually about increasing profits. I don't think I need to say this, but this is a very heavily contested area. We have at the moment employer organisations who have an agenda to change the Fair Work Act, to actually push that back and to get the Liberal Party into a position where it will become its public policy. So it is of course a heavily contested area and I'm just concerned to the extent to which the report gives support to that sort of agenda, and if not intended, that is a concern.

Our bottom line here is that through collective bargaining, and this includes in this industry, these issues have been addressed. They are being addressed every day in industry, including this industry, and the union, the SDA, can substantiate that. But to the extent to which the report goes into or provides any substantiation to the fact that overall wages should be reduced, that penalty rates should be reduced; that somehow or other award modernisation led to an increase in costs on employers, when in fact that wasn't the case; that the word "flexibility", which is really code for reducing people's conditions of employment, is something that should be promoted through weakening the better off overall test or protections like transfer of business or minimum shifts, to the extent to which they're considered to be somehow or other solutions to issues around productivity or issues around flexibility, to the extent to which the commission gives any support to that, it is effectively really saying that the industrial relations system should be changed in order to go back to the sorts of things which were part of Work Choices and of course unions are adamantly opposed to that. I actually thought that there was some measure of consensus around those things.

So really we're saying that unions, the union movement and the SDA is more than up for looking at a collective way around the issues that confront employers and we do that every day, but we are very concerned if the commission is giving any sense in its report to these agendas which are not about increasing productivity but actually about reducing people's wages and conditions and the sort of protections that they have in the workplace.

MR WEICKHARDT: Do you have any concern - a number of people on the issue

of penalty rates have put to us a picture which you may say is not factual but they've put to us a picture that penalty rates have actually increased as a part of the harmonisation. Now, I notice, and we will study in great detail, your comment that that is not the case. But they have gone on to say that because of the penalty rate structure, it really is no longer profitable for some of these retail outlets to open at weekends or public holidays. If that is the case, that has an employment impact, I guess if people choose not to open at those times. I know it's in a different industry but I was struck by the 7.30 Report the other day that was looking at the hospitality industry and there were some young employees in one restaurant - and this is not statistically significant, so I'm not trying to generalise this but I'm just sort of saying as an example - where a young lady was saying, "I'd rather work for a lower penalty rate than not work at all."

I know this is highly sensitive, and please don't give me a lecture about employers screwing and exploiting employees - there are sinners among employees and there are sinners among employers - but do you have any concern about a sort of trade-off between penalty rates and employment in this industry?

MR LAWRENCE (ACTU): The hospitality industry is one that I'm much more familiar with than I am with the retail industry. I well understand the issues that are there. I did see that 7.30 Report. I have to say it wasn't the high point of ABC balanced coverage, you'd have to say, but nevertheless, I think these are issues that have been played out in different industries in different ways, and in the hospitality industry there have been some changes or moves towards loaded rates in various ways. There are different structures of regulation.

But I think our point is that the level of penalty rates actually hasn't increased, (1); (2) they're actually quite moderate compared to what happens in the rest of the world. It's not true to say that somehow or other penalty rates are some sort of Australian invention or something, which seems to be some sort of a myth out there. (3) in the end, the fundamental question is they're actually part of people's take-home pay, irrespective of the way in which you structure things. People's take-home pay and what they actually get, which is really what matters to them in the end, is dependent upon the way that these things are made up.

MR WEICKHARDT: That's provided they work these extended hours. Of course, as Mr de Bruyn was pointing out, some of them don't want to. If the retailer decides not to open, those extended hours or penalty rates might not be available at all.

MR LAWRENCE (ACTU): The retailers do open clearly where they - but the point is that if those things were to change, it means that people's take-home pay will actually be reduced. That is the point about that, apart from all the other aspects that are there. Clearly people and unions don't want to have and Australians - the whole

point about the better off overall test is that people's take-home pay can't be reduced.

MR FETTER (ACTU): Can I just add on this issue of penalty rates, we have to look at what we're actually talking about which is set out on page 7, that in the retail industry, you would think that casual employees would work predominantly on the weekends, while the permanents would work during the week. So looking at the casual employee, it costs an extra 8 per cent to employ a casual on the weekend compared to during the week and an extra 60 per cent on Sunday, whereas the traditional 9.00 to 5.00 pattern for other awards would have the casual earning an extra 50 per cent on Saturday and an extra 100 per cent on the Sunday.

The point about it is that as the industry has changed, the penalty rates have come down to reflect industry change and that this is all being done through Fair Work Australia and its predecessor which is the proper place to do this. They have detailed submissions from the parties about the extent to which businesses trade on the weekends, the extent to which the sales go up on the weekends. In many sectors, I would guess that the weekend revenue - I mean, it must do, it must more than cover the increased wage costs - and for a Saturday, you can see that you would only have to sell 8 per cent more and you've covered an 8 per cent increase in penalty rates. In some industries where it's based on weekend traffic, that should be very achievable.

It's a different debate about whether one does or doesn't think that in this sector Saturday is any different to any other day, and employers put the argument all the time that there's no such thing as a weekend any more, but our point is that Fair Work Australia is the proper place to decide this and they have consistently ruled that there is something special about the weekend, even for casuals, even for juniors, and that it's important not only for those people but of course to ensure that everybody has fair access to work in the retail sector. If it was the case that all minimum rules were abolished and workers could bid for shifts, bidding down, based on the lowest rates of pay and the shortest shifts - we raised this in our submission - it would have the effect of displacing from employment a lot of people who need the income compared to a lot of people who are available to work those shifts.

MR WEICKHARDT: So you think people would bid the rates down, do you?

MR FETTER (ACTU): Some people clearly who live next door to their workplace would be happy, perhaps, to do a half an hour shift and then go back home. If you live a 40-minute drive from your workplace, you would be underbid by the person who lives close, so it would discriminate against people who have significant travel times or costs.

MR WEICKHARDT: That may give flexibility to the people who did live close.

MR FETTER (ACTU): Yes, and if there was a huge problem with unemployment for people who live next door to their potential workplaces, that's something that Fair Work Australia would look at. But we think that what would be likely to happen if minimum shift lengths, for instance, were reduced, is that mostly women with young children working during the day would have their shifts cut back, to bring in young kids to work in the afternoons or even during lunch, if that's permitted, while on school holidays, the result of which would be, it's true, increased employment for 16-year-old kids, but at the cost of decreased employment for working mothers, to take the typical case, who rely on that income, not just for pocket money but to support themselves and their families. So there are significant equity and distributional issues here that have to be balanced against the interests, which of course we accept in having young people exposed to the world of work early, but we think Fair Work Australia is the proper place to do the balance and we think that Fair Work Australia, subject to its most recent decision, has got the balance right.

The other thing in terms of minimum regulation is that as we showed by comparison with our peers - now, we're not going to compare to China here - but we actually are less restrictive than most of our OECD competitors. Most OECD countries follow the lead of the International Labour Organisation and restrict the work of children aged under 18 on the weekend because it's important for their development and their studies that they don't work and can spend time with their families, with their friends and studying. So in fact Australia's retail industry is supported by a huge pool of cheap young labour which other countries simply ban. It is frustrating to us that Australian employers either don't know how good they have got it by international comparison or they know but of course they don't choose to put that in light.

It's a similar issue, as we've set out, in relation to unfair dismissal laws. We show that Australia's laws are some of the weakest out of all of our OECD competitors; there's a 52 in a million chance of ever having an unfair dismissal claim taken all the way to judgment against an employer. In that rare event, the most you will face is an order for six months' pay, whereas in other countries, there are minimum orders that are made against employers which are of the same order as our maximum, and in many countries there is no limit to the damages that are paid and in many cases with longstanding workers, you would be facing a compensation bill of two or three years' pay if somebody is dismissed unfairly towards the end of their working life.

We don't of course oppose the commission's attempt here to look at Australia's retail sector in comparison with our international peers. Clearly we have to compete, clearly we have to be productive. But we think the comparison has to be fair, and if you do in relation to workplace relations issues make the comparison, everybody from the OECD down, hardly a radical leftist organisation, recognises that we have

very flexible labour laws and very weak labour protections. On that basis, we as a society then have to ask ourselves how low do we want to go? We're already out-competing our European and American peers in terms of labour costs on our analysis and flexibility. Do we want to put our sights on China and try and compete against them? The union movement is very firm in our belief that we don't. We see, particularly in a service economy and a service industry like retail, productivity, which will drive higher profits and higher wages together, will only be achieved through better use of technology, better investment in the workforce, and through a more efficient combination of labour and capital.

Notionally, the role of combining labour and capital falls to managers and we're not convinced that managers in Australia do a very good job of it. So the attention in productivity is always with the labour side - employees should work harder, minimum wage laws should be reduced - but we think that the attention is entirely misplaced, that in a service economy and a knowledge economy, you've got to look at the way that management and the workforce interact. It's our firm view, as Mr Lawrence has said a couple of times, that it's through having an employee voice in the workplace, generally through unions, that you cement the bond between management and labour and you have a shared commitment to productivity but also that's underpinned by fairness. Employees will of course work productively when they know that they're looked after.

Our point about productivity is that of course improvements in productivity are the norm. It happens every day of the week in every business and the statistics show that every year, we increase our outputs by 1 or 2 or 3 per cent without increasing the input, so productivity growth is the norm; the debate is whether it could be higher of course, but it's there as the norm and it's generally unremarkable. It's only remarkable of course when there's an obvious example of a productivity impediment.

For instance, I went down to my local supermarket the other day and all the checkouts have gone. I now have to swipe my own vegetables through. So the business is able to sell as much, if not more, but has made a saving on labour. Now, that is a form of productivity improvement. It might not be one that is something that the unions are necessarily going to support but the point about it is - - -

MR WEICKHARDT: It might not be one that the customers actually like either.

MR FETTER (ACTU): That's right. But the point is that that's something that's been introduced and I assume the union has been consulted about it, but it's entirely unremarked. There's no front-page story that says, "Productivity going ahead in leaps and bounds." It's only when the businesses are under pressure from something else, be it the high Australian dollar, be it political difficulties of the Labor government and employers perhaps sniff an opportunity, that all of a sudden we have

what we think is a false debate about productivity, because the productivity that the employers are talking about is not the same productivity that the unions are talking about. They're talking about wage cost reductions and also they are scared essentially to engage in the dialogue and cooperation that we are offering to employees because it comes at a cost of having a union in your business that you will have to talk to about that process. But we don't think it happens effectively without the unions. We think that it's unrealistic to think that in an industry where 40 per cent of workers are second-class workers, casuals, that magically they will come to trust their employer to make workplace changes, to introduce new technology and to cooperate actively in those changes. Why would they? We think that collective bargaining has a very important role to play in service industries like retail in cementing that bond between management and the workforce which will allow it then to take measures which will improve productivity.

Now, it's not something you can necessarily see in the text of an agreement and it frustrates us that people keep reading enterprise agreements and thinking that they can see in the text of it what the productivity enhancements will be because the truth is that it's the change in employment relationship that collective bargaining marks that will lead to productivity improvements.

MR WEICKHARDT: Okay. As much as I agree with you, on the subject of productivity I'm going to be accused by my colleagues of having absolutely none at all because we are well over time, so we're going to have to wrap this session up. But it's an important area; notwithstanding your initial comments, it's important that we do understand it and we intend to try and understand it as well as we can and to present a factual final report on this matter. I 100 per cent agree that productivity improvements will not happen without good cooperation between employees and employers. Both have to be motivated to want to make it happen. The observation we're trying to make in this report is that unless it happens, I think there will be more business failures and there will be fewer employment opportunities in this industry. So we think it's really important that the industry get its mind around the fact that driving further productivity and efficiency and customer service and things that consumers want - I don't think many of us want to go and be our own checkout operators personally, I don't - I'd rather have somebody doing that for me with a big smile and doing it efficiently. Anyway, thank you very much for coming along.

MR LAWRENCE (ACTU): Thank you.

MR WEICKHARDT: We'll adjourn now and we'll start at 2 o'clock. Thank you.

(Luncheon adjournment)

MR WEICKHARDT: We'll resume the hearings now and our first participant after lunch is the National Retail Association. If you could please give your names and the capacity in which you're appearing today, please.

MR BLACK (NRA): Yes, thank you. May it please the commission. Gary Black, executive director of the National Retail Association and I have with me Mr John Wood who has assisted the association in the presentation of its views throughout. John has had extensive retail experience, including a lengthy period of service with Coles and he was instrumental in the establishment of the Coles e-commerce facility - I think in the 90s, John - so he's particularly been helpful in the work we've been doing around the impact of the price differential where we've tried to convince the commission, if you like, that we can't have a sustainable online retail sector in Australia for so long as this price differential is maintained.

MR WEICKHARDT: So you're an independent consultant?

MR WOOD (NRA): Yes, that's right.

MR WEICKHARDT: Okay, thank you. Assume that we have read your submissions but if you want to give a brief introduction or make some overriding comments, then we'll get into a discussion.

MR BLACK (NRA): If I could ask the commission by way of guidance, does that comment suggest the commission would have questions for us or - - -

MR WEICKHARDT: We certainly will have questions for you.

MR BLACK (NRA): Okay.

MR WEICKHARDT: So don't fill the entire time you've been allotted with a monologue because that won't be the most productive way of using our time.

MR BLACK (NRA): Yes. We're in a difficult situation, in that the draft report has probably been a little bit more prescriptive than we would have liked, so we don't know how much room we have to manoeuvre. I think appealing from Caesar to Caesar is not an easy challenge, particularly for someone like me who tends to be more direct than he ought to be in a lot of circumstances.

MR WEICKHARDT: We're used to people being direct, that's not a problem. As long as you're factual, you can be as direct as you like. You shouldn't assume anything in the draft report is unchangeable. The only thing that will be unchangeable is our pursuit of truth and logic and good reason.

MR BLACK (NRA): Good, thank you, commissioner. From one perspective, the draft report is helpful in that it acknowledges the fundamental principle. It's what big retailers and large retailers and small retailers have been saying for some time, that we don't have a level playing field, we're not looking for protectionism, what we want is the opportunity to compete, particularly for the online retail sector with foreign competitors. We can't do it under the current customs and tax regime.

But the report also, in establishing processes for the task force et cetera, really projects I think a time line which means that the retail sector in Australia is unlikely to see any resolution of this anomaly, as we refer to it anyway, much before 2013, at which point we're likely to be in election mode. There may be a change of government. The pessimistic view would be that if the report isn't altered insofar as it's focused on the implementation of actions of recommendations, there will be no relief for the Australian retail sector until perhaps 2014, and even then we don't know what form the relief will take, given there will still be arguments around the retention of a significant threshold.

We are keen to canvass with the commission options to try and accelerate this process. We believe it's an urgent issue. We've spent considerable time in trying to explore the effect of the price differential on the Australian retail sector. The centrepiece of the main submission was to try to, as factually as we could, address what we expect to happen, and what we expect to happen is that the online share of the Australian retail market will grow significantly over the next five years and longer. We don't know what the share is now but the measures in the US are that it sits currently at around 8 per cent and in the UK higher, around 11 per cent. We would be surprised if in Australia we're not on a line heading in that direction. So our fundamental proposition is that if the online sector grows from 3 or 4 per cent of total retail trade to somewhere around 8 per cent or higher, what share of the online trade will the Australian domestic sector claim?

In our view, and John's work in this regard has been crucial, the price differential of between 11 and 23 per cent, which is attributable to the customs and tax regime, depending on duty, will mean for the most part that the Australian online retail sector will be uncompetitive in its challenge of competing with foreign retailers and therefore the majority of that trade that will move online will be taken by foreign retailers.

We say therefore that the consequences of that has to be a significant contraction of the Australian retail sector resulting in a significant contraction in retail employment. We measure that at around a 7 per cent contraction in employment. Depending on the category of retailer, the proportion of retail trade lost might be somewhere between 10 and 15 per cent. So the consequences we say of

doing nothing are high and the cost to the Australian community and the Australian retail sector will be high. Hence, for our view, the urgent issue confronting the commission in the interests of the Australian retail sector is how can we accelerate this reform and how can we implement as quickly as possible a level playing field?

We are concerned about transparency and I say this with respect. The two major beneficiaries of an outcome which effectively means nothing will happen until 2013 or 2014 or whenever are Australia Post and the express carriers, CAPEC members. They're the two major beneficiaries. Australia Post has declined to make its submission public. We don't know what its view is. We presume that they are arguing for the threshold to be retained of \$1000 but we don't know that. The commission's own draft report spends a considerable amount of time expressing concern about the predicament of Australia Post and its inability to deal with any immediate reduction in the threshold.

It's a really difficult issue for Australian retailers that these views are not made public. What I'm told by some is that the memorandum of agreement entered into between Australia Post and Customs and Border Protection is being reviewed or has been reviewed and that the effect of that might be to further streamline the processing of low value imports by Australia Post. In other words, Australia Post may have now in place business strategies which are focused on the exploitation of this loophole. I put it that way. Obviously it's focused on the exploitation of a trend towards Internet shopping. We accept that, but nevertheless part of that is that it's directed at the exploitation of this loophole. We don't know their views and it's an issue for transparency.

The other matter that concerns us is in respect to the CAPEC view. CAPEC provided extensive work to the commission designed to support a proposition that the threshold shouldn't be lowered, but it didn't, on my reading anyway, utter one word about how it interacts with the Customs and Border Protection jurisdictions in other countries. This would probably be one of the most highly relevant areas for consideration by the commission. We don't know whether the commission has asked CAPEC to provide that information, but for the Australian retail sector, it's highly relevant and it doesn't appear to be before the commission. So as a matter of transparency, it is open to the cynical view that the commission's work is not about providing a benefit to the retail sector but in doing what is necessary to protect Australia Post and its current business model and ensuring that the impact on CAPEC members is minimised. That would be the cynical view. It's difficult not to conclude that the commission's draft report is not more preoccupied with the predicament of these operations and less preoccupied with delivering an expeditious solution to Australian retailers.

Just to finish off, may it please the commission, we would beg of the

commission in its final report that it does give consideration to the sustainability of Australian online retailing when confronted with this price differential. That's the fundamental question no-one seems to want to answer. When you've got differentials ranging from 11 per cent to 23 per cent, depending on the duty applicable, we know that Internet shopping is highly geared towards price comparison and product comparison. We know that both Australia Post and the express freight carriers are exceptionally efficient in door-to-door delivery. I don't see and we don't see how an Australian retailer can compete. It can't compete on price. It's very unlikely it's going to be able to move the goods from the warehouse, complete the pick-and-pay operation and get it to the consumer's door much quicker. In our perspective, it's not sustainable.

The second matter we would bring to the commission's attention is this proposition around the de minimus exercise. The de minimus exercise seems to be clouded in mystery since the Board of Taxation commented on it in 09 and we note that the Customs Brokers Association expressed a view that that process lacked transparency. So no-one really knows how the de minimus calculation is struck. But for us, if we are faced with the status quo for anything up to 2013, 2014 or whenever, we would again strongly beg of the commission that when it does its cost-benefit analysis, it takes into account the cost to the Australian community and to Australia's retail sector of persevering with this uneven playing field in an environment where the Australian dollar is expected to remain high for the foreseeable future.

In the context of what we think will be - and by albeit anecdotal measures, it's occurring, this exponential and rapid take-up of online shopping - it would seem to us that these next two or three years will be pivotal, and in terms of behaviour change, we would expect if nothing is done within three years, consumers will be highly geared to Internet shopping and will have a very significant disposition towards buying from foreign retailers. So in the environment where nothing is done, we then are confronted with this very difficult situation of having to recapture and change behaviours.

My final observations go to the task force. In (xxiv) of the commission's report, it deals with the principles that might apply. We would ask the commission with respect to consider including in those principles or perhaps including an overarching principle that simply reminds everybody that what we're trying to achieve here is a level playing field for the Australian retail sector; that is, what we're talking about is the implementation of an equitable customs and tax regime.

We note that the principles include making provision for a large expected increase in parcel volumes associated with the growth of online retailing. We would say that if the commission acted to do something quickly - for example, recommending the imposition of a handling fee or making consumers make a

contribution to the infrastructure of Customs and Border Protection in Australia - then the number of low value packages entering Australia would drop. Now, we don't know by how much but if the threshold were eliminated, we would have a strong view that the volume of low value packages arriving would drop substantially and we would ask the commission to have regard to that consideration.

The commission also indicates in one of its bullet points that a principle should be that we should not be opposing an added barrier to trade or protection of the domestic industry. Of course one of the great complaints the retail sector has is that it doesn't want protectionism, it wants a level playing field. At the moment we have protectionism. We have protectionism that enhances the profitability of foreign enterprises. So we have a system of reverse tariffs at the moment where Australian industry is punished, and foreign industry is rewarded by the current tax and customs regime. So we don't think that, as a principle, that has any bearing upon the work of the task force. In our submission in reply, we did indicate that we don't favour the task force. We don't think the task force is necessary.

If we're going to level the playing field, if we're going to substantially reduce the threshold, we can't see how a task force could assist the members of CAPEC. These massive multinational organisations must have millions and billions of interactions with the Customs and Border Protection services in Canada and the UK and Europe. They know precisely and intimately what it is they have to do to comply with the threshold that's around \$A20. It makes no sense to us to say there should be a task force that might help CAPEC come to the party. CAPEC will only come to the party if it's told what to do, otherwise to suggest that the principle antagonist to what the retail industry is trying to achieve would constructively engage in a task force and work towards an outcome that would reduce the threshold in our view is not believable, nor do we see why Australia Post needs its hand to be held. It would be an incompetent organisation, we would say, if it didn't know what comparable organisations in other parts of the world were doing and how they were managing this issue, whether it's via benchmarking with Canada Post or UK Post or whatever.

We would urge the commission to contemplate, as an alternative to the task force, giving directions, giving more specific directions about what it is we should be doing to reduce the threshold to acceptable levels to provide a more even playing field and it is a matter for Australia Post and for CAPEC members to decide how they're going to comply and we have no doubt at all about their capability to do that. I thank the commission for bearing with me. I apologise for any insensitivity.

MR WEICKHARDT: No need to apologise. Thank you for your comments.

MS SYLVAN: Can we start with the price differential issues which you have been

talking about. The two issues there that I'd like your comments on and Mr Wood's on: one is that just on the evidence that consumers gave us in their submissions and other surveys that have taken place, it would appear to us that the evidence suggests that a lot of the purchases in the areas that are particularly trade exposed now - and we can name a number of those, some are not at all like food and so on, others are very, very exposed - a great deal of the differential, even if you completely eliminated the GST, would still have a major differential and that one of the reasons which is major that consumers give for shopping online isn't simply price. There's a choice issue. They can buy stuff online which is just not available in Australia and they can shop at any convenient time that they like. So there are a number of factors in play that are not simply price differentials but there still is a significant price differential, even taking into account the GST which you're particularly focused on. I'd appreciate your comment on that.

The other thing is I'm sure you've looked at appendix E, which is just a little bit of a snapshot of a completely identical product. The thing that struck me about that when I saw the results of that was how unpredictable it was. Everybody simply assumes that international online is going to beat us totally - you know, "No Australian retailer will have" - in fact, some of the bricks and mortars were far more competitive even than their Australian online counterparts. Sometimes it was the Australian online counterpart that was more competitive than the online retailer of the bricks and mortar. So it seems to me the story is a lot more complicated than we're being given from Mr Black. I think obviously there's a whole set of dynamics that informs the price positioning of a retailer in these areas.

MR BLACK (NRA): Before John responds, commissioner, that's retail. I can go to my local shopping centre and there will be significant differences in price. There are a whole range of factors that would influence what price retailers set. We know in a severely depressed economy in the US and the UK, there's probably extensive dumping of stock, so you would expect that there would be opportunities, but there must be 20, 40 thousand, 100 thousand items in - how many items in Kmart or - - -

MR WOOD (NRA): 50,000.

MR BLACK (NRA): So we are very concerned that these sort of price comparisons might work against us. We know that they're there but the strength of your conclusions around them we think are difficult.

MS SYLVAN: We do note conclusions actually quite carefully because this is not a statistical sample; it's just noteworthy on a sort of arbitrary look at the market. It doesn't shape out as simple.

MR WOOD (NRA): Following from Gary, I think the two issues you raised, one is

how do you work out the price difference between different competitors? The reality is that they will be all over the place and it depends on the day of the week, time of stocking, inventory movement; there's a thousand factors. What you need to look at really is the cost structure of those businesses and this is part of what we've done as well, looking at the cost structure and how they compete on cost, because retailers primarily compete on price, and cost is the basis of that. The biggest in the world, being Walmart, works primarily on a productivity loop. Woolworths here is the same. Wesfarmers are now following that same model. So retailers understand very simply that the cost model for their business is in terms of profitability and sustainability. In this case, embedding a cost disadvantage of this amount - from a retailer's perspective, a cost advantage of 5 per cent is kind of "game over" between you and the competitor - this is embedding a cost advantage of between 10 and 23, which means that an investor in a business with that cost advantage when it's driven by cost structure will not invest. So the first point to that is the cost structures determine competitiveness in retail. Domestically if I was an investor in an online business and I had to get money for an online business from Coles Myer's board, they would say to me, "There's no way I'd invest in a company with this sort of differential on cost." Forget about the price.

MR WEICKHARDT: Can I just interrupt you there because, as you say, this is a complex matter. You're saying you start with a cost disadvantage of - - -

MR WOOD (NRA): 10 to 23 per cent.

MR WEICKHARDT: - - - 10 to 20 per cent. Let me put it to you that a retailer typically is buying more than one item at a time. If a retail purchasing manager cannot buy at a better price than a consumer can buy online with no negotiation for, I find that difficult to conceive. So, first of all, you're suggesting - - -

MR WOOD (NRA): Are you presuming that the consumer is dealing not with a retailer?

MR WEICKHARDT: The consumer buying online is dealing with a whole range of parties. Some of them might be direct manufacturers selling, some of them might be a third party on eBay, but what you're suggesting is that a retailer, buying in multiple quantities, first of all, can buy no better than a consumer can buy a single item for, and secondly, that their logistics, in terms of freighting those items and clearing them through customs has no economy of scale whatsoever. I find that almost incomprehensible. If you combine that factor - that is, there ought to be some advantage in the retail supply chain that gives them a better deal than a consumer buying a single item - and the comment that multiple people have made to us that they would be prepared to pay a premium to a local supplier for a locally produced product where they don't have a risk of supply, they don't have a risk of not having

after-sales service or warranties or things of that sort, I find this whole sort of simplistic analysis that simply says that retailers are at a price disadvantage or a cost disadvantage of 11 to 20 per cent or whatever it is just doesn't stack up. It's incredible.

MR WOOD (NRA): So what you're saying is you're prepared to embed a cost on one competitor - irrespective of who they are, you're saying to me you're quite happy as a commissioner of this government to give this competitor who happens to be overseas, irrespective of who they are, whether they're a manufacturer, whether they're a retailer, whether they're a bulk-buying organisation, you're saying to me - because anecdotally you think that it doesn't matter that you will give one competitor, international competitor, a cost advantage of that amount because you have a view that somehow they deserve that?

MR WEICKHARDT: I didn't say anything about deserving it - - -

MR WOOD (NRA): You've inferred that by saying it.

MR WEICKHARDT: - - - I'm just saying analysing the cost difference between the two - - -

MR WOOD (NRA): But forget about all that. I'm just saying we're dealing with one issue: it's a cost impost to one competitor versus another. That's what you're saying. You're saying you're prepared for one of those competitors - to give them a cost advantage over another one because you think they're able to handle it and these ones aren't? That's all we're talking about. We're not talking about any component of the build-up - I'm not even going to debate the component of the build-up of the industries because I can debate you forever on that. What you're proposing, you're prepared to say one competitor, give them a cost disadvantage - that happens to be a domestic competitor - over an international one, irrespective of what the business build-up is.

MS SYLVAN: I think you're not getting the point, John.

MR WOOD (NRA): But that's what you're saying.

MS SYLVAN: No.

MR WOOD (NRA): You're saying by imposing a tax on one and not on another - - -

MS SYLVAN: No, in fact the draft report says the opposite, if you've read it.

MR WOOD (NRA): It does say the opposite but that's not what was said.

MS SYLVAN: No. The point here - - -

MR WOOD (NRA): What was just said was that - - -

MS SYLVAN: Just listen. The point here is that your analysis on price - - -

MR WOOD (NRA): I'll get to that.

MS SYLVAN: - - - takes it as if retailers are purchasing in the same way as an individual consumer would.

MR WOOD (NRA): No, it doesn't make any presumption in the way in which the business operates.

MS SYLVAN: In fact they don't. They have advantages as a business - - -

MR WOOD (NRA): No, it doesn't say any of that. All it says is, "What would happen if I have two competitors, irrespective of what their business model is?" I really don't care what the business model is, and nor should you. What you should be concerned about is what impost are you putting on one versus the other. They all have to compete. What you have is the opportunity to allow them on a tax and duty basis to compete directly with each other on whatever basis they want to. Now, what our report did was say if you just take that component, none of the distribution, none of the logistics, none of that, just take that one component, and quantify the impact of that change in price to consumers, nothing else - we weren't considering all the supply chain issues, we weren't considering different competitors - we were saying if I took two competitors, whether they're like or not like, and I imposed a tax on one and not on the other, it would flow through to consumers at this amount of price difference. Okay, you've got one fact.

The next fact is, once it flows to them on price difference, how will they change their behaviour? Irrespective of who it is they flow through from, how will they change their behaviour? There will be a quantum movement to the competitor with a better price than the other only by that amount. We didn't look at movements of consumer spend based on a 50 or 60 per cent changing price, we only did it on 10 to 23 per cent change. How much would switch if you, as one competitor, and you as the other had a difference in price of that amount? That's all we did, and that's all you should be dealing with because that's the only thing you deal with. If you're dealing with the structure of the industry, it's a long story, and we deliberately didn't get into that. We said, "Look, all we're interested in is knowing why this government is imposing a tax on domestic competitors, not international ones, and what's the

impact of just that tax, and that's all we did.

MR WEICKHARDT: It might have been all you did - and forgive me now, I'll speak directly - I think it's grossly simplistic and naive and it's not helpful and it's certainly not persuaded the commission at all. I understand you're paying Ernst and Young to do some modelling, and if they don't take into account some of the factors that we've just talked about and indeed some of the factors that we talked about in our report and articulated and direct them to page 194 where we articulated some of these reasons - if they don't take that into consideration, quite frankly you'll have no influence on our point of view at all because what you're suggesting is just overly simplistic and naive.

MR WOOD (NRA): May I ask a question? Does the commission have a view on the difference that that sort of price difference has to a consumer? I would propose if it doesn't, then you don't have facts that you're working on correctly. That is the prime issue that you - - -

MR WEICKHARDT: What we do have is a significant amount of evidence from consumers who have written to us and said that they would be prepared to pay a premium for a locally supplied product. You seem to completely disregard that.

MR WOOD (NRA): But we were talking a minute ago about anecdotal evidence.

MR WEICKHARDT: No, it's not anecdotal, it's written down multiple times.

MR WOOD (NRA): Maybe the commission can show the community you have some robust information that tells you that this price differential doesn't have an impact. That's what you're saying.

MR WEICKHARDT: In terms of consumers' behaviour, multiple people have told us and the submissions keep pouring in, and they poured in after the draft report, that 10 to 20 per cent would not sway their purchasing decision to buy overseas.

MR WOOD (NRA): Okay. There's a study in our report from the US, a proper study done scientifically, about movement of consumers' demand based on price, Internet price, which I presume someone has read there; further to which we have tracked, in the case of Coles Myer, Fly Buys, Shell discount card, 5.5 million homes in Australia, based on movement of price of 6.7 to 10 per cent, also included in this report - these are not anecdotal - "Does the consumer think they might or might not shop?" This is consumer behaviour based on movement in price and their volume with that price differential.

MR WEICKHARDT: This is taking into account different supply and warranty

conditions.

MR WOOD (NRA): No, the consumer doesn't care. A consumer is sitting on a screen and sees two products - this is the premise - one product is 23 per cent cheaper from one supplier than another. Everything else is the same, okay?

MR WEICKHARDT: That's why I'm saying your analysis is simplistic because that's not the situation we're comparing.

MR WOOD (NRA): We are, because we're only comparing the tax impost on the consumers' price. If you want to compare the others, that's fine, but you'll go down a rabbit hole you'll never get out of it. The only thing you have the ability to impact here is that tax differential. So why don't you at least isolate that tax differential, isolate what impact it has on consumer behaviour, isolate what impact it has on business models in Australia in isolation, because that's the only thing you can deal with. That's what we did. Now, in that case, just on that differential, there is substantial impact to the Australian consumers and to the domestic economy in terms of the retail sector. That is only on that component. That's all we're arguing, is for that - - -

MR BLACK (NRA): Two quick observations, if I could make them, commissioner, is that in terms of the economies of scale proposition, I don't think that's been measured, so there should be some economies of scale that would lead to retailers importing product en masse that should be cheaper than the individual consumer buying. I don't what that measurement is. We're dealing with a 10 to 23 per cent differential, what would be the offsetting quantum. I've just lost my train of thought momentarily; I'll leave that at the moment until I pick that up. But that hasn't been measured. Sorry, coming back to the pricing behaviour of consumers, what we all acknowledge is that in terms of the global retail marketplace, Australia is not going to be a low-cost supplier, so you would presume that our products are going to be priced higher than products, for example, sold in the American retail marketplace.

MR WEICKHARDT: Why should we assume that? Our manufacturing industry, apart from the protection that it gets - again, you might not want to believe this but they do get some protection from the fact there's a big moat around us - apart from that, they get no break at all in terms of - they don't have a disadvantage, I'll take that point as well, although they may do in terms of other taxes that are being proposed right now, but the facts of life are that Australian consumers have got used to being able to buy products at a world price, and why shouldn't they?

MR WOOD (NRA): But we're not arguing anything but a level playing field on tax. That's the only issue we've raised - - -

MR WEICKHARDT: Okay. Perhaps then we'll leave to one side the analysis of all that and say if there is a price differential of 50 per cent, based on your analysis, then the consumer will still continue to buy offshore - - -

MR WOOD (NRA): And that's how we analysed it. If it's 50 per cent, we only took the 23 per cent - - -

MR WEICKHARDT: Okay. But let's say the GST and the duty goes on, so you close half the gap.

MR WOOD (NRA): Yes.

MR WEICKHARDT: At the moment, people are saying there's a gap of 50 per cent at least in any - - -

MR BLACK (NRA): Surely you can't generalise like that. I think that's entirely unfair. You've got a synopsis in your appendix of about 30 or 40 price comparisons.

MR WEICKHARDT: Let's take that example. If those price differentials continue, why won't consumers keep buying those products online?

MR BLACK (NRA): They will, but see, your proposition was that the consumer will always pay more - they would prefer generally to pay more from an Australian retailer because of the consumer law and other considerations, but what do we estimate that differential to be? Let's say it's 10 per cent. If we're talking clothing and we've got this 23 per cent as well, then the differential is 33 already.

MR WEICKHARDT: Most people articulated - and I accept the fact that this is not measured over a mass survey - but most people in their submissions said 10 to 20 per cent would be a premium they would be happy to pay to get instant delivery of a product they wanted - and this is a big if, because some people have said they would buy offshore because they can't buy what they want here, at a time they wanted and they got service for it - then they would be prepared to pay a premium. I guess I'm saying to you if there are significant differences like 50 per cent that exist, closing the GST is not going to address that.

MR BLACK (NRA): But if it's 33 per cent, and you used 50 - now, it may be 40, but if it's 23, take the 23 off 50 or 40 and you're getting down to that zone where the consumer will say, "I'd still rather buy from the Australian online retailer."

MR WOOD (NRA): But you may be comparing apples with oranges as well. We haven't gone down and said, "Okay, let's define a number that is the difference

between the domestic and international competitor." We haven't done that. That's what you're arguing about, "Here's the number here," and there's 50 per cent difference. All we've said is, "Okay, there is" - there's a long story about supply chains, difference in prices, mix of products, time of season. There is a thousand factors in that debate and a lot of this 50 per cent is anecdotal as well. So if someone can show me a portfolio - there's 1.4 million SKUs in a department store. Have you priced 1.4 million items yet? Then you've only taken the department store category. Okay, now let's go and price discount department stores, 50,000 SKUs. Once you've come to me and shown me you've got 50,000 plus 1.4, you've done them over a season, because the season changes based on the time of year selling discounting product, take the average over a season, do that by retail sector and compare that with the international online competitors, including cost of delivery, and then you tell me there's a difference of 50 per cent, I'd be surprised, but I don't know what the number is. I don't see any of that in your report. So before people come out with these numbers of 50 per cent difference based on, "Someone rang me up and said I could buy this one SKU online 50 per cent less than the other" - and the only ones they select out to buy online is the one where they can find 50 per cent.

Why don't you go and do an actual mix of the portfolio of a product provided online from the US retailers, the 20,000 SKUs, 50,000, 1.4 million of them, compare the average with the Australians. Then you could have an argument about what the price comparison is between the two sectors. No-one has done that. I don't see it in any of these reports. So we said, "Rather than do that, let's deal with the issue we can deal with," which is tax differential. Now, whether it's 50, 30 or 20, all we do is identify the amount the tax had on that and then looked at the incremental movement of consumer spend based on that. That's all we did.

MR WEICKHARDT: All I'm trying to say to you is I'm finding this a deeply unproductive discussion because we're in heated agreement that to the extent that it's possible, there should be tax neutrality.

MR WOOD (NRA): Yes.

MR WEICKHARDT: To the extent that it is efficient, there should be an equity in tax neutrality.

MR WOOD (NRA): Good.

MR WEICKHARDT: All we've said is, however, at the moment that's not possible. You say it's due to - I think - I don't know whether you used the words "incompetence of Australia Post" - Australia Post and Customs and the CAPEC carriers have all got a system that's perfectly acceptable given the current threshold. They didn't mandate the government policy. It's not their fault. The government set

a policy and they've got systems that cope with that. You suddenly suggest that you change the rules on Australia Post and that they should immediately have a system that is world's best practice to efficiently operate under that environment and shouldn't hold up - and you used the words, "Wouldn't there be a big reduction in the number of parcels coming in?" This would be a huge detriment and a cost to consumers, some of whom are businesses, some of whom might be your members. There are lots of businesses that import product under the low value threshold. Delays to the processing of those goods would be of direct detriment to them.

So simply to say these guys ought to immediately respond and the government ought to immediately change this to help the retail sector doesn't actually address the terms of reference that we have or our act. What we've got to look at is what's good for Australians overall, and whilst there might be some benefit to some retailers from lowering the LVT immediately, there would be huge costs to consumers, there would be huge costs to the businesses affected and we just don't think it makes any sense at all.

MR WOOD (NRA): Can I make a point just on that one? I agree, tax neutrality makes sense, and you have said that, so I think that's a good thing that that makes sense. The question is transition, how do you get there? My point to you on this issue is twofold: you just told me about the retail sector, how it's inefficient, the distribution doesn't work, they're not bulk buying properly, all of that stuff that you mentioned earlier on. I would apply the same logic to these guys. You have a group of people who are bringing product into this country and on one hand you're saying, "Retailers need to lift their game," these guys have got to lift their game as well. The question is how do you make them lift their game and do it efficiently - - -

MR WEICKHARDT: When you say they have got to lift their game, you're talking about customs, are you?

MR WOOD (NRA): Customs and the importation people through CAPEC, because everybody else in this country pays tax, pays GST and duty. These guys are saying to you, "Look, it's a bit too hard for us to do this, so why don't we not pay tax because we're really not good at doing that sort of stuff."

MR WEICKHARDT: They're not saying that to us at all.

MR WOOD (NRA): Well, they are by their submission.

MR WEICKHARDT: No.

MR WOOD (NRA): You just said it just then. You said it will be too expensive for the Australian community. My question on that is twofold: one is if this

distribution economics of bringing product into this country and not paying tax is driven just because they don't pay tax, then it's a very flawed business model and if you have a business model that doesn't comply with Australian duty and tax law, you should be looking at making them comply. The question is, how do you make them comply? You don't give them an opportunity to task force to drive an outcome. You say, "You have to comply," and they are smart guys. They will work out how to comply most efficiently.

MS SYLVAN: They already do comply with a great deal of the stuff that is coming through, from CAPEC in particular.

MR WOOD (NRA): But what they're proposing will be too expensive for the community to comply with the new changes in the lower threshold. That's their whole argument.

MR WEICKHARDT: Those are our words, not theirs.

MR WOOD (NRA): That's right. But I would only offer one more thing on that: this is a business model that they run that can't collect tax. Australian retailers have been collecting GST tax through point of sale for many years and have borne the cost of that in their business.

MS SYLVAN: Are we having an argument about timing basically?

MR WOOD (NRA): No, it's also about - - -

MS SYLVAN: Because they already have systems that collect the tax, depending on where the threshold is. They have systems, and with the CAPECs - probably I think it's the majority of their stuff - is coming in on that side.

MR WOOD (NRA): We're arguing about two things. One is - - -

MS SYLVAN: So it's not an efficiency question or anything of the sort.

MR WOOD (NRA): Okay. But the last point I just want to make on that is that if you are saying - I'm just taking your point about it's too expensive for the Australian community - there is nowhere in the draft report that looks at the impact of this not happening quickly in the Australian community. We've estimated - and our estimation may be incorrect, it may not, we're trying to get it verified independently - that 80,000 jobs will go on five years; just on wages, that's \$3 billion. Just taking that as a point, if you've got an equation here that says it's going to cost me arguably 1.6 billion to collect 600 million tax and we can't do it, and you haven't taken into account 3 billion of lost wages over here, it's a blind spot that is just not appropriate

not to consider that. There has to be some impact on the domestic economy of not having this threshold lowered quickly. We've given our estimate. There is no estimate from the commission. The commission is saying that there is no impact on the domestic retail economy at the threshold at all and therefore the only thing we'll consider is the 600 million tax collected versus the 1.6 billion of collecting it. Now, to me, in terms of simplistic debate, if it doesn't - it either has a presumption that there's no impact on the Australian economy, which is what we're arguing, there is an impact on the domestic economy; if it is, it hasn't quantified any of it.

MS SYLVAN: Your argument rests on one absolutely critical thing which is that you believe the real driver of those losses is that GST below \$1000. We're actually saying - - -

MR WOOD (NRA): That's why we get back to this initial point - - -

MS SYLVAN: - - - that there's a major global restructure of an industry going on and the retail industry is at the cutting edge of that.

MR WOOD (NRA): But the only component that we dealt with, with the impact on the domestic economy, is just that price differential, nothing else.

MR WEICKHARDT: Yes, I know. That's why I'm saying it's incredibly naive and simplistic.

MR WOOD (NRA): No, but you either say it's zero or it's a number. If it's a number, you need to put it against the cost of collection.

MR WEICKHARDT: To do this analysis properly would be incredibly complicated because it involves making an assumption about the way the local retailers respond to the current environment. We had a number of submissions this morning that said the retail industry has always responded to different competitive threats and it will respond in some cases effectively and in some cases ineffectively to this latest competitive threat, part of which at the moment might be related to the GST and tax situation for the low value threshold, part of it might be related to that.

The other part is related to the industry's cost structure, its efficiency, its ability to purchase competitively, its ability to offer customer service to its customers, to provide service for people want to go into shops and shop for; all those things have to be taken into account if you're to have a realistic model of how the industry would cope in a situation where this went on forever. We're not suggesting it should go on forever but if it did go on forever, would we still have shops? My answer is yes. But how could you model exactly what the effect of this difference was? I would find that almost impossible, quite frankly. Putting it into a model, quite frankly, I suspect,

would be so full of holes that it won't be even worth the paper it's written on.

MR WOOD (NRA): So if I could respond just on two points on that. You're absolutely right, that the retail industry will respond. The issue with it now is - and that's why I got back to my original point - when the guys first put together the Amazon distribution centre in the US, I went and met the guy that started it and he spent a billion dollars on that facility. The billion dollars is set to set his cost structure in the future, not then, at a level he can compete. I'm going to put a domestic distribution centre somewhere in the world to be competitive globally and online retail and I look at a price, a cost differential caused by taxation in a domestic regime like Australia. There is no way I'd spend a billion dollars putting money into it.

So it's a catch-22 if you provide an industry with a cost disadvantage which to them is beyond anything that they would see domestically with competitors - Woolies and Coles are within one percentage point on cost, as most of the other competitors are. If you provide 10 to 23 per cent difference, there's no way anybody is going to invest in that model. Secondly, the people who will invest in the newer changing shape of retail online are not necessarily going to be the bricks and mortar retailers. So you're sitting here and you're saying it's a catch-22. We need to be competitive online retail. I'm saying the people who will be competitive are probably not going to be the current bricks and mortar retailers and those people who do want to invest in that business model will not invest here whilst the system sits the way it does. Not even taking into account yet the cost of labour which is the other major component for online retailing. That in itself will cause problems but just this impost alone will cause you not to invest.

So when there is a debate in the public arena about how online retail hasn't been invested in Australia, some of the bricks and mortar people have done that and I did that with our company. I spent tens, 50, 100 million dollars on different retail formats online and we lost money. So they have tried to do it and not done it very well, they acknowledge that. But in the future, if you're thinking that someone is going to invest in a domestic online retail business with this sort of disadvantage, irrespective of all the other components - I'm just taking this one piece and it will never happen.

MR WEICKHARDT: It's funny, lots of people are investing in domestic online retailing.

MR WOOD (NRA): Who?

MR WEICKHARDT: James Packer for one, has just put a heap of money into it and our estimate is that - - -

MR WOOD (NRA): James bought Catch of the Day.

MR WEICKHARDT: - - - online domestic is two-thirds of the total.

MR WOOD (NRA): The money that James invested in Catch of the Day wasn't investment in online retail. It went into the pockets of the guys who owned it and it's a dodgy online business.

MR WEICKHARDT: We aren't talking about individual businesses and analysing individual businesses but let me say that the online domestic business is, based on all the information we've got, growing well. It's being invested in and it's two-thirds the size of the total. So, you know, to say that it's non-existent I think is just an overstatement.

MR BLACK (NRA): Can I just make a quick observation, commissioners, on the cost to the community. This seems to be the difficulty we have in representing the sector here, when those observations are made it's made as though there is a cost to the community if we ask the community to pay GST. In the design of the GST, it was always intended that they pay GST. So you can't characterise the cost to the community the fact we ask they pay GST which they should be doing anyway.

MR WEICKHARDT: We agree.

MR BLACK (NRA): Similarly, 40 million low value items coming into the country each year, not one of them makes a contribution to our Customs or border protection infrastructure. Wouldn't it be reasonable to ask the community to pay, whether it's \$5 handling fee or \$8? So why is it a cost to the community if we say to you, "You're going to have to pay your 10 per cent GST and you're going to have to pay something towards the Customs and Border Protection infrastructure."

MS SYLVAN: We haven't put a number on it. Implied in the model that we are suggesting and comparing with overseas collection of handling fees is an implication that there will be a cost. So we're not suggesting this be done without a contribution from the consumers who are purchasing. That will happen if the system changes.

MR BLACK (NRA): Yes, we think it would be very good if it happened immediately.

MS SYLVAN: We just don't think that what you're proposing at the moment that it's worth doing this with some immediacy where the cost to collect that dollar of tax is about three times if we try to impose the current system. You're just saying we can go like that and these people will all respond and Australia Post - that system is one

of the biggest logistic systems in the country that we're asking to change. This is not a small, snap your fingers and it will happen.

MR BLACK (NRA): I'm not suggesting you can do this - - -

MR WOOD (NRA): But you can understand the frustration of retailers.

MS SYLVAN: I understand your frustration.

MR WOOD (NRA): Retailers have been told to collect GST for the government and we put that place into our POS systems. There was no "you might" or "you could" or "if it's too expensive, don't do it". It was, "The government's rule is to collect GST. You guys will collect GST," and the government's rule is to collect customs duty when you come into this country. Now, you have to stick it into big containers or you have to pay the customs fees to get into the country. That's the law of the country.

MS SYLVAN: Just remind me of the transition time period to implement.

MR WOOD (NRA): For the GST?

MS SYLVAN: Yes.

MR WOOD (NRA): It was very quick.

MS SYLVAN: It was reasonably quick.

MR WOOD (NRA): It was 18 months, I think, two years.

MS SYLVAN: That's right. So it would take it out - if the government made a recommendation next year, currently it would be about the time period we're suggesting.

MR WOOD (NRA): My point is not on the timing though, it's on who bears the cost. This is Gary's point. In the case of the retailers and GST collection policy, it was borne by the industry.

MR WEICKHARDT: Above a certain threshold. Again, there's a threshold there and a business below a certain size doesn't have to be registered and doesn't have to collect GST.

MR WOOD (NRA): I'm talking about retail generally.

MR WEICKHARDT: Yes, well, a small retailer doesn't have to collect it. I mean, there are thresholds everywhere in the tax system.

MR WOOD (NRA): Yes, but in this case we're talking about a large component, We're talking \$600 million. If there's a threshold that allows that sort of non-collection of GST domestically, then I'll go he.

MR WEICKHARDT: There is an even bigger number that you studiously involve and that's the billion dollars of intangibles. I don't know what you're proposing should be done about those.

MR WOOD (NRA): I'm sorry, what are intangibles?

MR WEICKHARDT: The billion dollars of tax that is uncollected on the imports of intangibles, downloaded music, DVDs, software, games.

MR WOOD (NRA): Sure, that's not an issue - - -

MR BLACK (NRA): We don't have the answer to that.

MR WOOD (NRA): We haven't dealt with that issue yet.

MR BLACK (NRA): We do have the answer for the non-intangibles. We don't have it for them. I don't know any jurisdiction that does have the answer.

MR WEICKHARDT: I don't know whether you do have an answer apart from wishing and hoping that you could simply make a very complex, logistical change which, in our view, almost certainly will involve a legislative change to allow Australia Post to participate in the process and Australia Post, as much as you might like them to be commanded by government, in this space this is a competitive business that they're in, it's an open-economy business for them and just expecting them to suddenly participate without being convinced that it's sensible for them to do so will take time.

MR BLACK (NRA): So notwithstanding the equity argument, notwithstanding the comparisons with our major trading partners, they just enjoy - - -

MS SYLVAN: If I understand the point you're making, in terms of the development of, for instance, the Canadian postal systems and the way customs is dealt with there and so on, those rules have been in place for whatever it was, 30 or 40 years and it's has had enormous evolutionary time to actually evolve a model with that lower threshold because that's where the threshold was. So the whole system evolved with that threshold. It wasn't imposed on it like this overnight. It has

evolved with a low threshold so it does it.

MR BLACK (NRA): Commissioner, for the record, what we're looking for is an expeditious solution, so we would like to see the passports process removed.

MS SYLVAN: That's what I'm saying, you're all about timing.

MR WOOD (NRA): Yes.

MR BLACK (NRA): I'm not talking about overnight literally but we are saying that we think it's important that it be dealt with expeditiously.

MS SYLVAN: Tell me what your expectations would have been. We have suggested - which is an enormously fast time line - that the task force look at this, and remember this is an independent task force, this is not a task force of CAPEC and Australia Post, this is independent people and they can be advised by those people, they will be advised by others, some of the retailers and so on that they will seek input from. We've suggested they report in 2012 and then implement. How much more quickly do you suggest this can be done effectively?

MR WOOD (NRA): I guess we're just suggesting a couple of other options that might be viewed as more efficient at getting the best outcome. One would be you say, "Look, by this time, two years, you need to be at \$20. Now, you guys go home and work out how you get there." It's quite different to say that as opposed to saying, "Have a look at it and see what you can do." Because in two years' time they'll still come back and say it's a thousand dollars. I'll guarantee it. I had a conversation with Australia Post and tried to get to this point of understanding their mechanics to try and change. Now, at the end of the day it's impossible because there will be that many barriers put in place of whoever this group and task force is that they won't have specific knowledge to debate it with the people who run CAPEC or Australia Post. They're just not equipped for that debate.

MS SYLVAN: How do you know that?

MR WOOD (NRA): Well, no-one is.

MS SYLVAN: How do you know who the independent experts are the government will appoint?

MR WOOD (NRA): It really doesn't matter who you pick. If you're going to a room with people who have lived in that industry their whole life, who drive all their profit from that one industry, whose incentives are driven toward keeping the status quo, then you're going to lose that debate over time. Everyone will lose it. It doesn't

matter who you are. So my question to you is that structure of that task force and the open-endedness of the outcome will only lead, in our view, to being in front of people like yourself in three years time arguing the same debate as opposed to saying, "Look, tax neutrality makes sense as policy, that's what we should be doing. That there should be no reason over time" - your point about transition time. If it's two years it's two years. Our worries will be it's two years and still nothing has changed.

So if at the end they say, "Well, you can do \$20 somewhere else, how long do you need to get there? Do you need five years? Do you need 20 years? Will it be 50 years? What's the number that you need to get there?" It's a totally different approach then because their incentive then has suddenly changed. Suddenly they say, "Look, I've got to get to \$20, let's do it real quick, because it's much better for my business to move quickly now and get in place systems and so just forget about all the reasons why we can't do it. We have to do it. Let's find the most efficient solution. Let's get on with it." As opposed, "I've got two years to try and convince someone that my systems are too complex."

MR WEICKHARDT: You seem to assume that in this central planning 101 model you've got that you can command independent entities to actually cooperate with the government to put in place their own capital and their own systems to help make this an efficient process. I know in your world you might actually be delighted if the whole system froze up and there were no imports of low value parcels. That protectionist sentiment comes through in terms of the words you use. But that's not to the benefit of the Australian community. The people who are charged with collecting the tax and the GST and the duty are Customs. To do that efficiently all our analysis of overseas models suggest they need the cooperation and the active involvement of some entities that they can't just snap their fingers at and say, "Just do it."

MR WOOD (NRA): So you just think that the government has no policy-setting ability on taxation?

MR WEICKHARDT: Of course it does but it can use some skill and some brainpower to get a good system rather than some brute strength and ignorance and get a bad one.

MR WOOD (NRA): I'm not suggesting ignorance or brute strength. What I'm suggesting is an approach that makes sense to get an outcome.

MS SYLVAN: It's very unusual for business to argue that there should be a tax imposed with no transitional period.

MR WOOD (NRA): It's not imposed, it's a tax everybody else has - - -

MS SYLVAN: With no transition period and - - -

MR WOOD (NRA): What I'm suggesting is a transition. I'm suggesting the way in which you get the best outcome - - -

MS SYLVAN: If the government mandates a \$20 threshold tomorrow, then the entities have to comply tomorrow. The parcels will stop.

MR WOOD (NRA): No, they don't. I mean, the government can easily say, "\$20 in three years' time." We'll give you a number, five years' time.

MS SYLVAN: Would you recommend that? How would you chose the number? Do you have any idea about the transition that's necessary?

MR WOOD (NRA): Sorry?

MS SYLVAN: Do you have any idea about the kind of transition that would be necessary?

MR WOOD (NRA): Yes, I have because I've spent many hours with these people talking.

MS SYLVAN: So what timing would you recommend under this model?

MR WOOD (NRA): I would say two years at - well, it would be a minimum because they would argue that it would be more than two. Whatever the argument was with them which might be three to five years to get there, you'd say, "Well, make it a bit smaller" - this is about managing people and managing companies. It's about saying, "Look, this is where we need to get to," as opposed to a totally different mentality if you go into an organisation and say, "Look, we'll begin this task, it's our best interest not to do anything. Let's find other reasons not to do it," versus, "Here's a realistic outcome, two to three years we've got to get \$20. How do we go about doing that?" That's all I'm suggesting to you is a process.

MS SYLVAN: Can I ask you a question because I'm curious how you respond to this. There are moves in other countries actually - and they have been variable throughout the world - but some of the moves in other countries are to raise the threshold for efficiency reasons. Do you have any view as to why they would be doing that?

MR WOOD (NRA): Why they would be raising thresholds?

MS SYLVAN: Raising thresholds, in other words, taking the tax off so that more product can come in competitively?

MR BLACK (NRA): We know the UK is reducing it so I don't know which in particular you refer to.

MS SYLVAN: Because if it's Channel Island - - -

MR WOOD (NRA): What I don't understand is this whole premise - - -

MS SYLVAN: No, I'm interested in - - -

MR WOOD (NRA): I'll explain it as I talk. The premise that there is a protectionist approach which was just said, that they are raising it to be more efficient, these are words that resound around not only inefficient but inappropriate tax policy between two competitors. You're starting with - getting back to my old point - one compares tax this way and this one gets taxed differently. Now, in countries - - -

MS SYLVAN: You've missed my point.

MR WOOD (NRA): Your point is why are they raised - - -

MS SYLVAN: My point is that you're arguing one direction. We have had arguments put to us in the other direction that in fact it is far more efficient - you know, it should be \$2000 that other countries are raising. If we're doing comparisons with countries, you don't compare selectively, you look at what other countries are doing.

MR BLACK (NRA): I don't know which country it is, commissioner, because we, the UK and the US - - -

MR WEICKHARDT: The USA have had two attempts to put their - two bills have gone to congress and multiple research papers have been written suggesting the threshold should go up.

MR BLACK (NRA): But their sales tax, for example, is imposed by the states so there's a different sort of tax rate.

MR WEICKHARDT: Sure but this would be on duty.

MR WOOD (NRA): But the efficiency argument on this one is saying that - and it

gets back to, again, you have the retail sector over here being acknowledged as not being efficient at what they do. That's generally the premise. On this hand you're saying that you have a distribution system that runs into the country through a taxation and duty process that's not efficient either and inefficiency has driven you to an outcome to say, "We won't tax them because they're not very efficient at doing this." That's what they're saying, they're saying, "For efficiency's sake, we can't really collect this tax efficiently, so therefore you should allow us not to pay it." That's basically the premise and that's - - -

MR WEICKHARDT: I'm afraid we are out of time.

MR BLACK (NRA): Yes, thanks, commissioner.

MR WEICKHARDT: Thank you very much indeed for coming in. We appreciate your time.

MR BLACK (NRA): Thank you for giving us the time.

MR WEICKHARDT: Our next participant is from Fair Imports Alliance and the Australian Sporting Goods Association.

MR KITSCHKE (ASGA): That's correct.

MR WEICKHARDT: Thank you. If you could just give your name and explain the capacity in which you're appearing for both organisations.

MR KITSCHKE (ASGA): Yes. Brad Kitschke, spokesperson for the Fair Imports Alliance and executive director of the Australian Sporting Goods Association, the one-member organisation of the Fair Imports Alliance.

MR WEICKHARDT: So are your remarks on behalf of both organisations?

MR KITSCHKE (ASGA): In relation to the GST threshold issue, yes.

MR WEICKHARDT: Yes, all right. Thank you. Again, assume we've read your submissions and if you want to make any introductory remarks.

MR KITSCHKE (ASGA): Thank you very much to the commission. I think it's fair to say that obviously the marketplace has clearly changed and I think there's been a lot of talk over the last few weeks since the release of the draft report from the Productivity Commission about the way in which it's best to proceed with those recommendations and I won't repeat what has been previously said. I understand that some of the information has already been covered by other representatives of retail organisations, but I will just briefly refer to the Fair Imports Alliance submission.

Obviously we support the recommendation in relation to the collection of data and I think the commission would understand our concerns that we had in relation to the way in which government has approached the tracking of some of the data, both from the ABS and the customs and border protection service and the lack of availability of information in terms of what was available to industry and to government to properly formulate a policy response in relation to this issue in previous years. So we fully support the recommendation there.

I think it is interesting that some of the commentary that has been made since the release of the draft report by government has been extremely critical of the retail sector's unwillingness or slowness to change. However, I think it is important to note that this movement, this change in consumer demand, has not just outstepped the retail sector, but as the commission has pointed out, has also outstepped the government. The government is not up to speed with the collection of data. It's not up to speed with the changing marketplace in terms of regulations. So it is probably

important to point out that it is probably a silly thing to do for government to be overly critical of the retail sector's lack of pace of change when the government itself has been extremely slow in engaging with that change.

We obviously support a zero tax on imports. We believe that any import, no matter its value, should be taxed in exactly the same way. That's a basic fundamental premise of the way in which the GST was introduced.

MR WEICKHARDT: Sorry, just clarify that, because I think the transcript will read that you're in favour of a zero tax on imports. I think you meant to say - - -

MR KITSCHKE (ASGA): Sorry, a zero threshold.

MR WEICKHARDT: - - - a zero threshold, yes.

MR KITSCHKE (ASGA): Thank you for assisting me there, commissioner. In terms of some of the commission's analysis of costs, I will reiterate and support some previous comments made in terms of costs. I think when we look at costs, the cost of collection or the cost of the imposition of a zero threshold is always looked at and always talked about in terms of what it would cost to collect and what it would generate in terms of revenue. I think we need to start looking at the cost of not actually changing this threshold in terms of the changing nature of the retail sector.

I would also like to make the point that I think that the retail sector is embracing the changing marketplace and it is moving forward, perhaps slower than we would have liked to see, but I think it is actually embracing a lot of that change. I think that in terms of the process of the efficiency of the customs and water protection service, we've been extremely critical of the customs and water protection service throughout the entire review. You made a comment earlier, commissioner, that you felt that the Customs and Border Protection Service was efficient. I would consider that an agency that provides advice to its minister in July of last year that it would cost \$38 million to reduce the threshold from a thousand dollars to 500, when your own report indicates that that is clearly not the case, is an extremely inefficient agency which is providing what I think is absolutely negligent advice to its minister. I think that our interactions with the Customs and Border Protection Service from the beginning of this process has shown us that they are a very inefficient agency, both in the way that they operate and the way that they provide advice and they're not transparent in any way that they operate.

We obviously believe that we've been raising some of these concerns about transparency and about the transparency of the policy advice that the Customs and Border Protection Service have been providing to government for some time and that has fallen on deaf ears. But we do strongly endorse the Productivity Commission's

finding for the need for tax neutrality.

I'll just talk briefly to draft recommendation 6.2 in relation to the issue of the task force. We do believe that obviously there needs to be a process for change and we don't think that the government can make a determination tomorrow that the commission has made a draft recommendation for a zero threshold, and therefore the agencies must proceed in a week's time, we think, obviously, but there needs to be a process. However, we would like to stress the need for a process that is quicker and as quick as possible. I think that the commission has recommended that the government report in 2012. The assistant treasurer has made it clear in public comments that it would be at least two years after that report which to me, in government terms, sounds like 2014, possibly 2015. In terms of the pace of change of the retail sector, we believe the marketplace is changing such that some of those changes probably need to occur sooner.

Obviously we've made some specific recommendations - and I would support some previous comments made by NRA earlier - that perhaps the framing of that recommendation may wish to be changed and to give a specific deadline for those agencies to work towards, rather than an open-ended commitment. I also think, to use a bit of a glib phrase, that asking organisations like customs and Australia Post to monitor their own efficiency is really like putting the fox in charge of the hen house and that some of those agencies are the agencies which have been providing advice to government since 2005, since the industry bodies have been campaigning to reduce this threshold, they are the agencies that have been providing advice to government not to and the reasons why, and I believe there needs to be obviously some scrutiny of that task force process to ensure that that advice doesn't just repeat the status quo that is being continually provided to government.

I will comment now in relation to tariffs on duties. Obviously we believe that being able to import goods cheaper into Australia and therefore provide them cheaper to consumers is a good thing and that bringing forward some of those tariff reductions that are specified for 2015 sooner obviously would assist in that process.

MR WEICKHARDT: Would assist your industry?

MR KITSCHKE (ASGA): Well, it would also assist the consumer and I think that that's obviously something that the commission is quite keen to look at, ensuring that the consumer gets the cheapest possible goods at the cheapest possible price and the best way to do that is actually to remove those tariffs and duties and ensure that Australian importers are able to import at a cheaper price.

MS SYLVAN: Can I just clarify. Are you referring to the section of our report where we look at all of the differential issues and harmonising?

MR KITSCHKE (ASGA): Yes.

MS SYLVAN: Okay.

MR KITSCHKE (ASGA): Obviously we've made some comments in relation to policy and funding. Again it's been interesting to note the current debate over the last few weeks where the government has been highly critical of the retail sector for not embracing, with the change. However, the government has withdrawn funding that was previously available to assist industry to engage in that change, and I refer specifically to the Small Business Online program which was an AusIndustry program of \$15 million, specifically funded to assist small businesses to engage in the digital economy. We have lobbied the government to retain that and even increase that funding pool and obviously to make some of that funding specifically available to retail. What has actually happened is that that \$15 million has been completely removed from the budget. So again we're concerned that the government on one hand is making the argument to retail that it needs to change, while on the other hand taking away some of these assistance mechanisms to help us do so.

MR WEICKHARDT: How long had that program been in place?

MR KITSCHKE (ASGA): Three years.

MR WEICKHARDT: Did you have any evidence that it was actually doing something useful?

MR KITSCHKE (ASGA): I contacted every single provider and there was no specialist retail providers who were funded. There were retail industry bodies and organisations who had applied for funding, but the government had provided no funding from that program to a retail body or for specific retail training. Many of the organisations that were funded did not understand or did not engage in the digital economy in retail and were focused on other areas of small business and so were unable to provide the skills and the advice to retail that was needed. We were lobbying for some specific funding for retail to assist to engage in digital economy, obviously not for that entire program to be removed, but perhaps for the retention of that program either with some specific funding from that program to retail, or an additional pool of funding specific to retail, but the entire program was cut.

MR WEICKHARDT: It doesn't sound like you got much benefit from the first few years.

MR KITSCHKE (ASGA): We didn't, but I think the argument really is that if the government is going to fund a program specific to industries that need to engage in

digital economy then it should take some steps to ensure that those industries are funded, and I think retail clearly is a sector at the moment which is under stress from coping with the pace of change. It would have been a perfect opportunity for that program to fund specific programs in the retail sector. I think that probably covers the key points in our submission and I'm happy to take questions.

MR WEICKHARDT: Okay.

MS SYLVAN: Can we just go to the key - the critical recommendation that you have which differs from where we ended up in the draft which is that you would like a reorientation of the recommendation in relation to the LVT. Can you shape that for us in terms of how you would have wanted to see it?

MR KITSCHKE (ASGA): In terms of?

MS SYLVAN: What it should look like, from your point of view.

MR KITSCHKE (ASGA): Which recommendation are you referring to?

MS SYLVAN: This is the recommendation regarding the low value threshold, the key recommendation in relation to - what were you proposing as an alternative that we nominate an amount and a time - - -

MR KITSCHKE (ASGA): Well, I think I'd support the commission's finding that the best case is tax neutrality.

MS SYLVAN: Yes.

MR KITSCHKE (ASGA): The mechanism by which we achieve that is, I think, where we have some concern. So I think we share the concern of perhaps previous presenters today about the process in which that task force is going to undertake and I think I share the concerns that if the commission were to set a date, and the government were to adopt that date and mandate that that is the date by which those agencies would need to change, that that would actually provide a greater force for that change, but I think an open-ended recommendation and, as I said, putting the foxes in charge of the henhouse when they are the agencies and they are the bodies.

Let's not beat around the bush, Australia Post and CAPEC and those bodies have been the key, I suppose, lobbyists in terms of no change since the threshold was raised in 2005 and industry bodies, such as mine, have been campaigning for it to be reduced. They have been the key lobbyists in opposition to any change. I think the government needs to be - and I take your point that everything needs to occur in a cooperative fashion but I think the government can be a little bit firmer, a little bit

stronger in asking for that change to occur.

MR WEICKHARDT: Okay. Just to clarify your submission, it said that the membership of the task force comprise groups of bodies who oppose the reduction of the low value threshold.

MR KITSCHKE (ASGA): Well, I would anticipate that the task force would have a representative of Australia Post.

MR WEICKHARDT: No, we said it would be advised by. We saw the task force as being an independent task force, so there were no actual or indeed implied internal sort of lobbying or distortion of the task force recommendations.

MR KITSCHKE (ASGA): Would you see the purpose of the task force as greater efficiencies or would you see the purpose of the task force as changing the nature or the mechanisms to ensure a tax neutral environment?

MR WEICKHARDT: We indicated in our report a set of principles that you'd guide the task force, and one was to implement the most efficient system that technology and best practice overseas could devise so that the threshold could be lowered as much as possible, to provide as much tax neutrality as possible but done efficiently. But we also suggested that the task force would need to be mindful of absolutely minimising delays. Delays have real costs to the businesses and the people who bought product, and some of them actually might be your members.

MR KITSCHKE (ASGA): I'm sure they are.

MR WEICKHARDT: There were a number of criteria and we're happy to consider other criteria that the task force should be governed by.

MR KITSCHKE (ASGA): I'd obviously like the endgame for the task force's consideration to be a zero threshold.

MR WEICKHARDT: Well, zero is a number that is only applicable in Switzerland, in theory. There's no other evidence of anyone using zero, and indeed even in Switzerland I'm told that anything that's less than 20 Swiss francs comes in as a gift anyway, so there is an effective implied threshold.

MR KITSCHKE (ASGA): If that's the goal and that's the endgame, then I think there's a much greater chance of a task force getting much closer to that amount than if there is an open-ended, "Let's just reduce it."

MR WEICKHARDT: Sure. I understand that, and it's one of the reasons why in

our report we drew attention to the fact that the Canadians and the British and a number of other countries had thresholds that are, by our standards, very low and they seem, over a period of time, to have found ways to operate there with costs that look as if they might be reasonably sensible. Now, of course, as we pointed out in the draft report you can look at costs in a number of ways. Somebody who has just imported a \$21 parcel who receives an invoice for \$2 of GST and then a \$10 processing charge probably looks at it a bit differently than somebody who has brought in a parcel that's \$999 and receives a \$10 processing charge. But nonetheless we were saying the task force's obligation should be to try and find best practice and efficiency that will serve the country well for the next number of years.

MR KITSCHKE (ASGA): I think the key issue really is willingness and that's where the retail sector doesn't have a level of confidence that there is a willingness. Aside from the recommendations of the Productivity Commission, more broadly, I think there is a concern amongst the retail sector that there is not a willingness in government to look at this issue seriously and obviously you can't require that the government take those recommendations on. But I think it's a good opportunity for the Productivity Commission to reiterate in its final report that the endgame needs to be a serious consideration of tax neutrality, because at the moment all of those other issues remain a convenient excuse for government not to look at it.

MS SYLVAN: Irrespective of what the government does - and it's in their hands entirely - even if we recommended a zero threshold nothing might happen. But I think we'd be at pains to point out that we did not put tax neutrality as the sole outcome of this process. There is a tax efficiency question as well which is very important.

MR WEICKHARDT: The best thing we can do to influence government is to make recommendations that are supportable and logical and seem reasonable - - -

MR KITSCHKE (ASGA): We're pleased with the recommendations - - -

MR WEICKHARDT: - - - and ramping up, if you like, the stridency doesn't necessarily persuade government - - -

MR KITSCHKE (ASGA): I understand that.

MR WEICKHARDT: - - - so we're looking for any help to try and make our recommendation more reasonable but not necessarily simply more strident.

MR KITSCHKE (ASGA): I think providing a recommendation where there are significant touch points along the way actually provides an opportunity for that, I think. An open-ended report in 2012 provides the government an opportunity to

have the task force to report on 31 December 2012, rather than a six-month process. Again if you look at budgetary cycles - and we've provided a recommendation in there about perhaps the task force providing government with an interim report to allow government to consider some interim changes or to get a brief in advance of the final report of the task force so that there can be some consideration for the budget time line and budget considerations would also be a sensible move as well.

MR WEICKHARDT: Brad, you have been critical in the past - and again today - of customs.

MR KITSCHKE (ASGA): Extremely.

MR WEICKHARDT: I'm not here to defend customs but I think some of your criticism is not necessarily warranted. In particular in the session up to the trial that customs carried out, you were of the view that there was widespread rorting of goods that were undervalued and also orders that were split. The evidence that we've seen from the customs trial doesn't support the fact that that is widespread. Did they find examples? The answer is yes. Just as the Tax Office finds examples of people who rort their income tax. But the evidence that we've seen doesn't suggest that this was a problem. Are you convinced by that or not?

MR KITSCHKE (ASGA): Not really. We provided the government, through the minister's office, with a report in November of our concerns. It clearly specified where we felt that those issues were addressed. The people formulating that three-month compliance and enforcement campaign weren't provided with a copy of our report, didn't see the report and didn't read that report until midway through the compliance and enforcement campaign. My position is that the concerns that we put to government in November about where we felt there were widespread rorts and the system was being abused were not taken into consideration in the formulation of that process.

MR WEICKHARDT: Was that customs fault though?

MR KITSCHKE (ASGA): Yes.

MR WEICKHARDT: Did they not get the report?

MR KITSCHKE (ASGA): Certain officers in customs got that report, they just didn't pass it on. There were obviously issues in terms of their own bureaucratic processes. It's not my fault. When obviously you write to a government minister and you hand a director of a customs agency a report, there's an expectation that (a) they will read it and (b) that when there's a government announcement about the Productivity Commission and the three-month - on the basis of the work that you've

been doing with government about that, that your concerns would form part of that process.

The second point was the entire way that Customs went about industry consultation over that process was extremely poor. We were advised two weeks after the start of the compliance and enforcement campaign. We weren't told how it was working, we weren't told what they were specifically looking at. We were invited to a forum in Canberra so they could explain what the low value threshold was to us and all those industry bodies were clearly aware of what the low value threshold was, given that collectively the nine industry bodies that we represent had been campaigning on this issue for five years.

What we really wanted to do was have a forum where we could outline our concerns to customs and say, "This is where we feel there are problems. This is where we feel there are concerns. This is where we feel that there is a lack of coordination between government agencies, such as customs and the Australian Taxation Office in terms of uncollected taxation or black market businesses operating, and those sorts of things. I felt that that process was completely unprofessional. They were unprepared, I think, with having to deal with industry bodies or with a sector and, indeed, they didn't actually feel in the first place that industry bodies, such as ours, should have even been invited to an industry consultation and instead just invited their own government agencies and Australia Post and other express carriers.

MR WEICKHARDT: I seem to recall being at a session in Melbourne which you were at where they seemed to be listening and seeking input.

MR KITSCHKE (ASGA): That session was organised three weeks after the original session was aborted, or was organised which we didn't attend because we were given three days' notice to attend in Canberra and told that this was what was happening and not given any opportunity to provide feedback. That session was only organised because essentially the industry bodies had complained. It's not really best practice industry consultation.

MR WEICKHARDT: Okay. But since then, in terms of the outcome of the work they've done - and I think your other submission with your Australian Sporting Goods Association had on - you were raising concerns about counterfeit rules and things of that sort. Have you seen anything or heard anything as a result of the trials that have been done that give you any comfort in either of these areas?

MR KITSCHKE (ASGA): No. I think there's a complete lack of will, both at a departmental and a ministerial level to actually compel that agency to change in any way, shape or form, and I think until such time as there is a clear direction from the

minister that the Customs and Border Protection Service needs to (a) consult with industry better and (b) change the way it operates, that you'll still have advice going to the minister saying to drop the threshold to 500-odd dollars would cost \$38 million. Now, I have to say that if that is the advice that the ministers received last July, I would, hand on heart, said, "Yes, drop the threshold tomorrow because clearly the cost impost isn't that high. I think it's obviously negligent advice and it's indicative of the fact that that agency doesn't have the skills and doesn't have the information available to it to actually provide that advice, which is why this task force is so key.

MR WEICKHARDT: I think the latter issue is critical that nobody had very much information prior to the sampling trial.

MR KITSCHKE (ASGA): I think there was a lack of willingness to get the information as well, because there was, as I said before, such a great lobby from express carriers from Australia Post that we didn't need to examine lowering the threshold in any way, shape or form, and there was obviously no willingness. I think this whole issue really is about will; that there needs to be a willingness to properly look at this issue, and if the Productivity Commission is saying that the best-case scenario is a tax neutral environment then there needs to be the will at all levels of government to ensure that we get as close as possible to that.

MS SYLVAN: In terms of the results of the campaign, however, which looked at a variety of industries, including ones that you would have recommended, the extent of noncompliance was not particularly high in the random survey. The noncompliance was in the targeted risk areas that customs normally looks at. Does that not give you some comfort given the extent of - - -

MR KITSCHKE (ASGA): No, because I think there is still widespread abuse. I think the reports that come back from customs brokers and come back through anecdotal reports from the industry are that there is still widespread abuse and, as I said, had we been given an opportunity to assist in the formulation of that enforcement campaign and had our research report that we had provided customs in November provided input into the formulation of that campaign, then I would have much greater confidence in what that campaign spat out at the end.

MS SYLVAN: I have to say, even if the rates doubled they would still be low. They weren't high at all.

MR WEICKHARDT: In terms of other industries aside from the LVT - and I'm not trying to ignore the issues or the concerns you've raised - in our report we pointed out that there were parts of the industry that were, by market penetration now, quite heavily exposed to the online threat. Indeed some of them seemed to be, in parts of

the industry where overseas large penetrations occurred, not driven necessarily by a tax differential but driven by the inherent, I guess, efficiency or lower cost nature of a centralised warehouse with multiple parts dispatching to all and sundry, when you need a specific part, or if there's a cog for your bike or something like that.

Now, we talked to a number of people in business pre the draft report who suggested to us that if you can't beat them, join them, sort of thing; that trying to compete in some of these areas was almost pointless. Indeed in discussions with a group of people last Thursday, somebody who was a bike enthusiast was saying that his local bike shop now said, "Go and buy the part online, bring it into my shop and I'll fit it for you and I'll service it for you and I'll provide what you need as a service, rather than supply you a component." Are any of your members looking at transitions of that sort to try to say, "Well, maybe in some cases the online alternative is the most efficient route to market, regardless of whether the GST is there or not."

MR KITSCHKE (ASGA): I suppose I should point out we don't represent the bike industry. That's a separate industry - Bicycle Industries Australia and the Retail Cycle Traders. Again it's a wealth of industry bodies - - -

MR WEICKHARDT: I assumed sporting goods might have included - - -

MR KITSCHKE (ASGA): - - - but, I suppose, the best example I can give is, yes, and that would be in the golf sector where you can buy a set of Callaway clubs online and if they are a proper set, they're not a counterfeit product, then there are arrangements with particular retailers or even a wholesaler to service them when the hand grips change and all those sorts of things. I think the point you made earlier in terms of - there are elements of the retail sector that do need a change and there elements of my industry that need a size 11 straight up the backside, and they have to change. As an industry body I think it's my role to actually play a role in that and we've done so in terms of providing information and training and actually leading the fight. I think that this argument isn't about bricks and mortar versus online, and I think that if retailers and the retail sector make it into an argument about bricks and mortar versus online, we've lost the argument and we've looked to the past. Our argument needs to be about really tax neutrality on imports, whether they're an online seller in Australia or a bricks and mortar seller in Australia, but I think that my argument to retailers is that the best way they can proceed is to consider that the marketplace is a multichannel marketplace and they have to be online themselves and they have to be competitive in an international market.

Yes, there are examples where even if you added the 23 per cent on to a sale, it's still going to be cheaper overseas because of a whole bunch of other factors. I accept that, but that doesn't mean that that 23 per cent should still be added. I think that if we actually go down the path of saying it doesn't matter, because even if you

add the 23 per cent in some cases, it's still going to be another 10 per cent cheaper overseas, I think that we actually need to get back to the original policy idea of why the GST was introduced and why imports should actually be attracting a GST. Now, I think we should deal with the issue of low value threshold over here and then I think we should look at some of those other structural issues that are the reason why it's another 10 per cent over here and deal with them as well.

Some of those structural issues are - and I represent the wholesalers and they will probably again give me a kicking for saying so - but some of those issues are because Australia has traditionally had a bit of a net around it and wholesale suppliers have thought that they could charge 5 to 10 per cent extra because it's Australia. Again, as an industry body, I have to say, representing the Australian Sporting Goods Association, that's not good enough any more and you have to change. But again that's still not a reason to go back and say we shouldn't change the threshold. I think we need to look at those issues separately.

MR WEICKHARDT: I'm heartened to hear you say that. What we're concerned about is that the industry feels that once the GST is fixed, the whole problem will go away.

MR KITSCHKE (ASGA): No, certainly not. I mean, this is obviously an issue that my industry and the association in particular has been dealing with since 2005 but that doesn't mean that there are a whole bunch of other issues that aren't causing structural issues. But I think that some of the public commentary gets mixed up together between the two and you end up with the argument that, "Well, if you take away the 23 per cent, it's still 10 or 15 per cent more, so let's not even bother about that." I'm saying let's bother about that and also let's turn and look at these other issues as well. But I think that as a sector, we also have to recognise that that particular ring that is around Australia where sometimes people charge more because it's Australia needs to stop and that we can't ask the regulators to recognise that our retailers are operating in a world market without actually changing the practices ourselves to recognise that we are operating in a world market. I think that that argument means that we go to government and government ignores us, and that's just stupid.

MR WEICKHARDT: I'm delighted to hear you say those words. Are there other sections of our report that you strongly agree with or strongly disagree with in terms of zoning and planning, opening hours, industrial relations?

MR KITSCHKE (ASGA): I wanted to obviously touch on a recommendation that we've made in the report in terms of the way in which policy advice for the retail sector is provided to government. I think we made a recommendation to the commission to consider whether or not it should recommend to government to have a

minister with specific industry responsibility for the retail sector. I think this inquiry has probably shown the disparate nature of the retail sector, the disparate nature of the retail sector representative bodies and that there is actually a need for government to actually start drawing on advice directly from the sector and there needs to be a mechanism by which government does that, whether it's through the recommendation that we've made or some other recommendation, but we would like to see some commentary from the commission about what happens post your report in terms of the way in which government receives its advice and its input from the retail sector.

I think that's important, that we don't just draw a line in the sand and say, "In November, the Productivity Commission provides its report. There's a task force looking at the low value threshold," and everything else will be shelved. I think there's a responsibility for the sector to play a role as well in being involved in the process of actually implementing or providing advice on the implementation of those other recommendations to government.

MS SYLVAN: I have to say I wasn't persuaded by that recommendation. Why would the government want to have a minister in particular for retail as opposed to other things?

MR KITSCHKE (ASGA): I think you have a minister responsible for other industry sectors. I think it's a recognition of the sector's place in the economy and I think it's a recognition of what the sector is going through at the moment and I think it's an essential point of contact and advice. I, for example, don't think that if we actually had a minister who had particular responsibility for retail, we wouldn't have seen some of the issues that we've been dealing with over the last few years in terms of the disparate nature of information about this particular issue.

MR WEICKHARDT: There are industries I can think of that have a minister responsible for them who are deeply unhappy with the government. I'm not sure that having a minister responsible for the happiness of - - -

MR KITSCHKE (ASGA): I'm not saying that we are going to then be able to choose which minister it's going to be and what the policies are going to be but I think that when you actually create that funnel for information, it becomes much easier for industry to start inputting information. As an industry body, and I think the organisations representing the broader retail sector would probably back me up on this, where do they go? Quite often that retail gets shoved in the basket of small business. I don't represent just small businesses. So where do I go in terms of government? Quite often you get pushed from pillar to post and it means that your voice isn't heard and the issues aren't heard and that's one of the reasons why we're having a Productivity Commission, because there actually is an essential point of

contact and focus for our sector.

MR WEICKHARDT: Yes, it's an interesting point. Like Louise, I was a bit unpersuaded by it, particularly when you look at our recommendations. You can regard this almost as being a policy-light sector because what we've said is, as the ACTU are pointing out, opening hours are the prerogative of the state governments; planning and zoning is in their patch too. The low value threshold to a degree is within the Commonwealth government's area, although interestingly, one of the issues in this whole thing may be that the beneficiaries of the extra tax collected are the states and the territories, so you're asking a government to get highly energised to change all sorts of systems to collect \$600 million of tax that goes directly through their hands to somebody else.

MR KITSCHKE (ASGA): I think that's what happens with the GST now, doesn't it?

MR WEICKHARDT: It is.

MR KITSCHKE (ASGA): And they were quite highly energised about introducing it.

MR WEICKHARDT: They were. On the other hand, they got rid of a lot of other things at the same time, but let's not traverse that ground. The main sort of import of our recommendations to government and elsewhere is: don't get in the way. This is an industry that is undergoing significant change, probably undergoing significant change in the past too, but you shouldn't be trying to pick winners. You shouldn't be trying to decide what's a better formula and what's not a better formula. The industry, if it's given the ability to adapt and to compete fairly, will basically find a formula that gives customers what they want because customers won't shop where they don't get what they want.

MR KITSCHKE (ASGA): I think the fundamental premise for the sector in terms of the way we change has to be that retailers have to recognise they need to go where the consumer is, whether that is online or instore. Some people will shop online because they're time poor, some people will go instore because they like the shopping experience, and I think we'll always have those two particular channels to market, plus mobile phones and a whole range of other things. I think the ground on that will settle but I think that the argument still remains that retailers need to be able to compete fairly on this particular tax issue.

I just did want to comment on the Australian Sporting Goods Association submission in relation to those issues around counterfeit that we mentioned. Obviously intellectual property in the sporting goods industry is quite an important

thing, particularly with golf clubs, and we have seen the proliferation of widespread counterfeit importation. I have to say that the on-the-ground Customs officers in this particular case are very good in detecting counterfeit products, but the aim of an enforcement regime and the aim of a legislative regime should be that counterfeit should be prevented from being imported at all. We should deal with counterfeit where it is imported or where it is manufactured. There is obviously an intellectual property bill before the parliament at the moment which is dealing with this and we'll obviously take our case to government in a separate space, but we did think it needed to be mentioned that there are millions of dollars being lost to legitimately Australian retailers because of the importation of counterfeit products, and that the legislative and regulatory structure at the moment and the way that it operates is actually cost prohibitive for brand owners to take action and that there needs to be some change to ensure that we actually stop the counterfeit product at the point of import or manufacture.

MR WEICKHARDT: I assume that's an international problem of some significance. Most of these international brand owners are US or European based - - -

MR KITSCHKE (ASGA): It's an offence for - we deal with it I think in a little bit of a backward way. For example, in France, it's actually an offence to actually knowingly possess or import a counterfeit product. There's no ability for our customs enforcement agencies here to actually fine, for example, somebody. The onus is on the brand owner to take court action. Quite often the importers know what the threshold is for when the brand owner will take action, so that if they know that it's going to be cost prohibitive for the brand owners to take Federal Court action for anything, say, less than \$20,000 worth of product, they will import lots of \$10,000 product. It will go through the first few steps of that process and then obviously the product will end up being released to the importer anyway and it will find its way down to the markets or on to an online auction site and will be sold and will make its way into the marketplace.

Quite often obviously these businesses as well aren't legitimate businesses, they are not paying tax, they're paying their workers under the table and all of those other arrangements and they feed into the black market economy, so we think that there needs to be changes to the enforcement processes at the border to stop the counterfeit product coming in and to have a much more European style of a regulative and legislative structure.

MR WEICKHARDT: Your original submission made a sort of headline-grabbing comment about your concern of the connection between illicit trade and serious organised transnational crime and even terrorism.

Reports indicate those involved in organised counterfeit activities often are also linked with serious and organised crimes such as people smuggling, drug trafficking and even terrorist activity.

I know you've quoted an Interpol reference which I haven't followed up but are you suggesting this is an issue for Australia?

MR KITSCHKE (ASGA): Yes, I am. I think that Australians need to be aware that when they're purchasing a counterfeited product, they need to be aware of quite often what it's funding. There's international evidence around the world to show that quite often illicit trade of those products is actually linked back to funding criminal organisations. I think that is an issue for Australia and we should look at that seriously. If we tighten our borders to ensure that that product doesn't make its way or that the onus is not so much on the brand owner to take action and to spend millions of dollars to do so, it means that we'll actually provide a bit of a stranglehold around funding some of those serious organised crime syndicates from overseas.

MR WEICKHARDT: Okay. Thank you very much indeed for appearing and thanks for your submissions.

MR KITSCHKE (ASGA): Thank you.

MR WEICKHARDT: Our next participant is Lindys Goodies and if for the transcript you can give your names and the capacity in which you're appearing today, please.

MR LAKER (LG): My name is Mike Laker. I'm one of the co-owners of www.lindysgoodies.com. It's an official business name registered under a web site name, which is a little unusual, and I reside at 1170 Highlands Road, Seymour, 3660.

MR WEICKHARDT: Thank you.

MS LAKER (LG): I'm the other half of Lindys Goodies. I'm Lindy Laker and I'm also a co-owner of Lindys Goodies.

MR WEICKHARDT: Okay. Thank you for appearing and thank you for your submission. If you would like to give us a highlight of where you're coming from.

MR LAKER (LG): Yes, that would be nice. Firstly, thank you very much for letting us appear. We do consider it very important. We're going to do a bit of a tag team today and keep it as brief as possible. I'm going to give you a little bit of background between the two of us, what we've done in our life, and then Lindy will talk to you about your issues that we believe need to be brought up, and then I'll round off with some other comments if that's okay.

Just so as you're aware we've had three businesses in our life. Two of them have bricks and mortar total retail shops. One was a florist, one was a party goods supply, and now we're online where we don't have any bricks and mortar as such, we're just an online business. We've been operating since 2002 online. We've got a little bit of business background in the retail side of things. On all three of our businesses we consider ourselves a small, small business. Unfortunately government tends to ignore the two-person operation, or the three-person operation. It's something we've always found very hard, because when government comes out says, "Let us do business education," or something, they talk about small business and they suddenly talk about writing of tenders and - - -

MS LAKER (LG): And 20 to 50 sort of employees.

MR LAKER (LG): Yes, 50 employees. We're quite at the opposite end of the scale. Our current business is split in two. One is we've got a direct web site which as the name implies, www.lindysgoodies.com. We're also very much a part of a lot of auction sites, such as eBay and there's a couple of other ones we've been a part of called bang4bucks which is an Australian entity set-up, Ocean, Trading Post and Zuby. There's a whole lot more like that. When we talk about online auction sites

we're referring to a whole lot, not just any single one along the way.

We do work in the body jewellery market. It's a bit abstract, I think, for most people but tongue bars, eyebrow bars and everything else that goes south after that, that's us. Having been in the industry since 2002 we've had our fair share of education in the market as well. Many of our consumers are obviously younger in age and that's a really important point for us because they're very ignorant on both business and opportunities that either exist or scams or what can be promised and not delivered.

MR WEICKHARDT: Forgive my appalling ignorance about this industry but are most of your customers people who want to have these things put into their body?

MR LAKER (LG): They've already got them.

MS LAKER (LG): Or they're buying it with the intention of having the piercing done by a professional piercer.

MR WEICKHARDT: It's not the professional piercer that buys them?

MS LAKER (LG): We also sell wholesale to the professional piercers.

MR LAKER (LG): The web site is predominantly to tattoo shops and piercing places along the way. The online auction site is much more of a traditional retail environment to the one-on-one consumer.

MR WEICKHARDT: Okay.

MS LAKER (LG): The one thing I would add, if I can just interrupt for a moment, is that we don't promote nor sell piercing kits as such. That's another whole issue altogether.

MR WEICKHARDT: These are, what, do-it-yourself sort of things?

MS LAKER (LG): Yes. There's a proliferation of that online. You can buy the needle, you can buy the item to actually insert, the swab, and instructions of course on how to pierce yourself. But the emergency wards of any hospital will tell you how many people they've seen with dropped eyebrows because the nerve has been damaged, and all sorts of terrible things. That's another issue altogether. If we could see those totally eliminated online, these piercing kits, we would be 100 per cent behind it. We really need to say we don't sell those, nor do we promote them in any shape or form.

MR WEICKHARDT: Yes.

MR LAKER (LG): Just so you're aware from the commission's point of view, we've actually put in submissions to the Victorian government last year or the year before. They had an inquiry into the whole market. We put a submission in. They took up a lot of our recommendations and unfortunately they missed a few along the way. We've also provided that same information to other governments across Australia. I've got to say some of them have taken up the points very nicely and we really appreciate that from governments' point of view that they're acknowledging that there are issues. When Lindy talks about self-piercing kits, it's that whole self-harm that we're very conscious of along the way.

MS LAKER (LG): Also the fact that a lot of our items are attractive to the younger population; not always but very much.

MR LAKER (LG): I'm going to pass over to Lindy who wants to talk about two things, both Australian consumer protection which follows on from what we were just saying, and the Australian business environment as we see it. I should point out that a lot of this is our own perceptions or through research that we actually pay for and had to do ourselves along the way.

MS LAKER (LG): Okay. Let's start with consumer protection. As I've already said I'm very conscious of the fact that a lot of our customers, other than the professional piercers, are young people. One problem we find time and time again and which is very concerning for us is that 316L which is the type of surgical steel which can be used for body jewellery must include nickel. In order to have surgical steel you must have a nickel component. Michael, I believe, has got the sheet here which is straight off the Web, but it also is recognised as being the components which make up surgical steel. There must be a 10 to 14 per cent nickel component in surgical steel.

Now, what we're seeing online is an abundance of - and I'm going to call them foreign traders because they're not Australian based, who are saying things like, "nickel-free surgical steel". That's like saying a hamburger without the beef patty and the bread roll; you can't have it. It has to have nickel in it. People who are allergic to nickel will be buying these off these traders who I believe are unscrupulous, trying to make a sale and beat the market by saying "nickel-free surgical steel".

The Australian public who are buying these items have no recourse for suing for any damage from these people because they're overseas and they really don't care. We've actually made one major online auction site knowledgeable of this issue. We have our own stock. Even though it's manufactured overseas, we've had it tested by

an independent laboratory. It's a destruction test which means they have to damage the goods - we don't get them back - in order to find out the components of what is involved in that surgical steel, and our items are exactly how they should be, they're fine. So we don't care if a professional piercer needs to have some sort of indemnity from us that they are buying okay stock.

However, the consumer that goes to the hospital and has this unbelievable infection from the nickel component can't then go back to these people who have it very clearly written "surgical steel, nickel-free". Who are they meant to go back to? As a consumer they have no protection; a very important issue.

MR LAKER (LG): Just on that, we actually made the complaint to the online auction site pointing out very clearly that they were carrying false advertising.

MS LAKER (LG): They don't allow counterfeit goods, as was said earlier, but in this case they told us they don't care, and we've told them that they are basically promoting an illegal product where people could be very seriously injured. They don't care.

MR WEICKHARDT: Is this a major international - - -

MS LAKER (LG): A major.

MR LAKER (LG): We're happy to provide that to you.

MS LAKER (LG): We've actually given them lots of advice over the last 10 years that we've been involved with them.

MS SYLVAN: Is surgical steel undefined law? I assume it is.

MS LAKER (LG): Yes, well, I'm pretty sure - - -

MR LAKER (LG): Surgical steel - 316L, there's an international material data sheet which I provide as part of our submission.

MR WEICKHARDT: 316L is a grade of stainless steel, actually.

MR LAKER (LG): It is, exactly. 316 is the lesser value of it. But 316L as a product must have nickel. What we said to the group - and again we're happy to provide the email to you - is that this is a problem and they basically said it's not against the law, as far as they're concerned, in Australia, so therefore they're not going to do anything about it. That was printed last night and - - -

MS LAKER (LG): That gives us unbelievable frustration because we have people saying to us, "I'm not going to buy your item because it's got nickel," and we're saying, "But so do theirs." Australian business is not just Lindys Goodies. We are here to protect Australian business and Australian consumers.

MR WEICKHARDT: Where is the vendor of this product - - -

MS LAKER (LG): Which country? Hong Kong, Thailand and China.

MR WEICKHARDT: Is there a solution for people who are allergic to nickel?

MS LAKER (LG): They can use pure titanium. They can also use PTFE which is a flexible product.

MR LAKER (LG): Europe actually brought in a law about five years ago that when you first get pierced - and I didn't actually want to talk about piercing so much as the industry, but when you first get pierced you can't use 316L, you've got to use a grade 23 titanium product. They don't allow that until the piercing is healed up.

MS LAKER (LG): There are options for those people that do have allergies. There's also pure gold.

MS SYLVAN: Just to be clear so I understand it, this is not some kind of surgical stainless steel which is actually nickel-free, what you're saying is it's the deliberately misleading conduct.

MS LAKER (LG): Yes.

MR WEICKHARDT: It's 316L stainless steel or surgical steel that has nickel in it.

MS LAKER (LG): Well, here's one that says "nickel-free steel tongue bar". It's not nickel-free because otherwise it can't be what it is. Therefore, yes, it's a blatant misleading.

MR LAKER (LG): One of the things I was going to point out that I forgot to mention is that this year, through the online auction site, the major one that we all know about, we've had around about seven and a half thousand positive feedbacks; in our negatives we've had about 50 or 60. Now, the reason for that is that we're very honest and straightforward with people, and when people contact us and say, "I have a nickel allergy. What product do you have?" we can actually point them in the right direction. We're very honest, we say to people, "You cannot buy this because this has nickel," and they say, "But overseas I can get it without nickel."

MS LAKER (LG): Again it comes back to the age of the consumer. Very often we've got kids arguing with us. They go, "Negative," because that's their way of having a little bit of a power play with us. So we accept the negatives. Most of them are basically under 18 and they're just having a bit of a power struggle.

MR LAKER (LG): One thing that concerns us more about it though - and we pointed this out to a couple of auction sites along the way, not just the big one - is that where there are issues such as this that we're highlighting to them about an industry issue and it's very clear and blatant, most of them are saying, "We're only the carrier of the information, we're not the seller. So if you have an issue, you go to the seller." The trouble there is the seller is then overseas in an Asian country and there's not that responsibility.

MS SYLVAN: Can I ask two specific questions because we do address some of these consumer protection issues in the draft as you see.

MR LAKER (LG): I saw that.

MS SYLVAN: Both the international consumer protection regulators, which is the ACCC here in this area, go after misleading conduct, even if it's overseas, in one way or another, in particular, eBay. So you've complained to both those bodies and - - -

MR LAKER (LG): I'm quite happy to provide that email which was to eBay, which is the one that we complained about, the nickel-free, and they've decided not to do anything about it, which is very disappointing from our point of view.

MR WEICKHARDT: Are the ACCC also aware?

MR LAKER (LG): I've never complained to the ACCC, to be honest.

MR WEICKHARDT: But you have to the Victorian consumer protection people, have you?

MR LAKER (LG): We've talked to Consumer Affairs in Victoria.

MS LAKER (LG): I think also when you see that the item is \$1.95, whereas you could have golf clubs which are counterfeit and worth hundreds of dollars, there's an issue. I mean, it's \$1.95, who cares, but at the end of the day the person that's got the allergy or the self-piercing kit and is never going to have an eyebrow that sits where it's meant to any more, you know, it might have only been \$1.95 but in the big picture it's not a big deal.

MR WEICKHARDT: What percentage of the population is allergic to nickel?

MS LAKER (LG): A very high percentage of the population.

MR LAKER (LG): A nickel allergy? It's very low.

MS LAKER (LG): No.

MR LAKER (LG): The nickel allergy is low.

MS LAKER (LG): The actual severe reaction - but a lot of girls are allergic to belly dangles and things because of the nickel that rubs.

MR WEICKHARDT: Yes. In that circumstance if it's reasonably common for people to experience problems, is the body piercing industry sensitive to this issue? Are they saying, "Don't under any circumstance touch that"?

MR LAKER (LG): I would say that the people who are piercing, who we talk to - we've got shops all around Australia and New Zealand - - -

MS LAKER (LG): Not our shops, who we supply to.

MR LAKER (LG): Yes, who we supply - they're very clear with, if there's any reaction at all, what measures to take straightaway, immediately. There is no code of conduct or anything as such, but we've asked for that as part of our submission to government that we believe there should be some self-regulation happening in that area. But our concern is - and just taking it back one step - if this is happening in a very small industry in Australia - - -

MS LAKER (LG): Our population, compared to the US, for example, we fit into New York.

MR LAKER (LG): I mean, once you take it to the next step of beauty products or anything else, who's to say the face cream that women are buying doesn't have a carcinogenic product included in it, which is illegal in Australia, and at the end of the day where do we go back to? We've got very good consumer laws, and I think you actually pointed that out in one part of the report, that we've built up a whole range of consumer laws and we're almost throwing a lot of those out with this overseas trading because there's not the level of responsibility.

MS LAKER (LG): Yes. Now, referring to the overseas traders, which is where the majority of the problems lie that we see, I took a copy this morning straight off a web site. I actually went for the stores that have body piercing products and I just copied three pages. Originally, I thought I'd highlight the international traders.

When I say "international" I'm going to leave the US ones out of this because there's a good reason which will come up in a moment. But I thought I would just highlight the international traders because again, other than consumer protection, Aussie businesses need to be protected as well.

It's all well and good that we're all internationally connected via the Internet and what have you, but we're Australian and it doesn't matter what nationality we originally were, we're all Aussies here, we all came from somewhere else. However, it's Aussie businesses that I feel very strongly about. I'm here to protect the Aussies. I'm not here to promote somebody else's business elsewhere. So instead of highlighting what was the international traders, I thought I'll just mark the Aussies, and I've got to tell you, in three pages there was one. That's one Aussie trader. That one in particular is actually Asian. He's based in Australia so he may well be naturalised, that's all well and good. He's an Asian Aussie. Out of three pages all of those people are overseas traders. So what chance does Australian business have?

We started 10 years ago, we were at the top of our category. We were there for something like seven or eight years. We have dwindled, not through any fault of our own but because maybe as a result of the fact that these guys don't pay GST. They pay 20 cents postage to Australia where we can't even send within Australia for under \$1.20. Our Australian businesses are being diminished as a result of the influx of foreign traders. I have a big problem with that. This is the listing of eBay stores. Now, there are a lot of other traders who don't pay for a store. We pay for it. It costs I think \$500 a month or something, from memory, just to be there. Then there's the listing fees on top. But not all of them choose to open a store, they just do their listings. So of these ones where we used to be at the very top of the category - Thailand, Thailand, Australia, Australia, then us. So we're about sixth or seventh down in the category now, followed by some more Thailand.

The Aussies are not even getting a look-see at the moment. The problem is because they're paying cheap, cheap postage in comparison to what us Aussies have to pay to get things around our own country. We're paying GST, we're paying our income tax, company tax, every other tax. If we wanted to have staff, which we don't want to - our accountant says, "Why don't you grow? "You've got to be kidding." We can't afford - forget competing against price - workers comp, all the overheads of having a bigger location, superannuation, payroll, the whole bit. We can't afford it.

So when you're paying your staff - and we've been to some of these guys overseas and they've got 30 people sitting in a room all with computers and being paid how many dollars per hour, what chance do Aussie businesses have? Very little.

MR LAKER (LG): One of the last ones I went to was in mainland China and we actually asked the gentlemen how much they're paying and it's \$30 a week for a person to sit there and work on the computer. That's just crazy. We can't even start to think that way.

MS LAKER (LG): I think it's great that everyone is so computer savvy and Internet connected throughout the world but we also talk about - and Michael will mention this - educating other businesses to get online. We used to be able to put our hand on our heart and say, "Look, you can do it, you can succeed. Yes, we've been bricks and mortar in the past and yes, we've now had 10 years' online experience, but really it's getting to the point where I don't have the answers for you any more." Bricks and mortar isn't it, and it used to be Internet, but if we allow - again with Customs, everybody bringing their stock in under the thousand dollars and what have you - I mean, I've got figures here to show you how our own business has suffered as a result directly of these imported products.

MR WEICKHARDT: You mentioned the \$1.80. What would the typical value of one of these products be?

MS LAKER (LG): Okay. I can give you an example. This is a research site which basically extracts the information from the major online auction site and I've got three examples here, our own, one of the other Aussies and I've also got all the overseas - the three major ones there as well. Just to give you an example, our average price for - - -

MR LAKER (LG): \$6.43.

MS LAKER (LG): No, for the three months, how many items was that? Yes, that's the average price, \$6 per item.

MR LAKER (LG): We did around 1400 sales.

MS LAKER (LG): If you compare that, say, to the number 1 from Thailand - - -

MR LAKER (LG): \$7.92 average price and they're doing - - -

MS LAKER (LG): It says how many sales, successful, two and a half thousand.

MR LAKER (LG): - - - two and a half thousand. The market itself hasn't shrunk and hasn't grown.

MS SYLVAN: The market is growing, I take it?

MS LAKER (LG): Not much.

MR LAKER (LG): If you actually look at the total market - I mean, there's a figure in here somewhere which - - -

MS LAKER (LG): We've got lots of stats.

MR LAKER (LG): Yes. The market itself hasn't grown much and hasn't shrunk much. There's just a lot more competitors into it and those competitors, come the beginning of this year, one of the major online auction sites said that they were encouraging overseas competition into Australia on their web site. Now, that's actually increased that, whereas they haven't actually offered the Australian traders the outward-bound one as well, to say, "Why don't we get free listing in Canada, in America?"

MS SYLVAN: It's a good question.

MR LAKER (LG): So there's a real issue there from our point of view that they're dumping more into here and using here as a pilot program, yet the Australian side of the market has gone down. Where is our balance over there?

MS SYLVAN: Given the kind of competition you're facing - and as you know, we welcome competition into the market - leaving aside the misleading conduct issue which I think is a different and serious problem, how will you position yourselves? I don't think anybody is going to say online traders shouldn't come into Australia from elsewhere, and you've got providers of auction houses encouraging people in particular ways, so you've got a competitive challenge. How will you respond?

MR LAKER (LG): We compete very strongly. Both Lindy and myself came from a marketing background beforehand, advertising and marketing. I've got to say our products themselves have gone down in price quite considerably. Our wholesale competitors are also very aware of that.

MS LAKER (LG): We buy higher bulk.

MR LAKER (LG): We buy a much higher bulk than - - -

MS LAKER (LG): Direct from the manufacturer.

MS SYLVAN: So changing your model in response.

MR LAKER (LG): We actually every one to two years do a tour around the Asian countries which is where it's all made and literally go to the factories where it's made.

MS SYLVAN: So your product is imported from the point of view of wholesale supply.

MR LAKER (LG): Yes. I've got to say the quality control side of it is very strong on our behalf and that's our selling point, that we're in Australia, and if you're going to hit somebody around the ears, you want to hit somebody around the ears in Australia, because as we've found out - and I'll talk about this in a moment which actually reinforces Brad's point of view a second ago - when people actually do have a problem, they don't have anywhere to go back to and that's a real issue for us. I'm just going to give you these as well.

MS SYLVAN: These are the goods.

MS LAKER (LG): No, you don't want these really.

MR LAKER (LG): No. These are part of a tongue bar that one of our shops provided us. The battery itself fits under the bottom of the tongue, the bar goes through, everything else. That battery is totally corroded and we have a real issue with the fact that - - -

MS LAKER (LG): With this particular product as well.

MR LAKER (LG): - - - this particular product, selling it - people are putting that in their mouth.

MS LAKER (LG): It's just terrible.

MR LAKER (LG): I'm sorry, I wouldn't do that.

MR WEICKHARDT: I'd be tempted to say it's a shocking experience.

MR LAKER (LG): You can keep those because we've got a whole pile of them.

MS LAKER (LG): It's really dangerous. I mean, we don't sell those.

MR WEICKHARDT: It would be terrible.

MS LAKER (LG): But the same people that we're having this issue with - - -

MR WEICKHARDT: Lithium and all sorts of things.

MR LAKER (LG): Everything.

MS LAKER (LG): It's revolting.

MR LAKER (LG): It may be longer-term problems that people face, not immediate ones. We actually have real issues about this. This is why I say it's not just suddenly our industry, but when you start looking at the greater industries of beauty products and the areas that are being promoted, it's actually a bit frightening.

MS LAKER (LG): And then people say, "Why are your vibrating tongue bars so much more expensive than these other ones?" "Well, because have a look what you've got." Ours are actually encapsulated so they - - -

MR LAKER (LG): I'm conscious of time. If we can just move on one step and talk about the GST side of things because it has been a topic that's part of this and obviously in the media. All of these overseas companies don't pay the GST revenue. Now, when we hit \$50,000 a year back in 2002 or 30,000 back then, as it was, we had to start paying GST. These companies, we know what they're turning over each month.

MS LAKER (LG): And so does this particular research site who is extracting the information directly from there.

MR LAKER (LG): It's pulling out the information off the online sales. When you actually look at how much revenue a small market is making and turning over - and we're happy to leave all this with you, by the way, so you can have a look at it all - when you look at how small that part of the market is, and yet they're not paying any GST at all, we think that there's something really wrong. In our submission we actually said that if we go to Grays Auctions or Fowles Auctions, there are two components; one is that if we put anything there - and we have done, cars et cetera - we have to pay them a GST figure.

MS LAKER (LG): They collect it.

MR LAKER (LG): And they collect it. When they sell the car, they also put on GST. Online auction sites with an "au" reference that I've mentioned along the way don't charge any GST on their listing fees and they don't charge any GST on the goods sold.

MS LAKER (LG): Which again puts the Aussie businesses at a huge disadvantage.

MR LAKER (LG): So we actually believe that there's a very simple mechanism and a very quick one - - -

MS LAKER (LG): We have the solution.

MR LAKER (LG): - - - which is shove all of that, and GST is paid by those auction sites, and then we as a business can see where the GST is that we've actually effectively paid and we just use it in our BAS statement as per we would any other business. It's very simple and very straightforward.

MS SYLVAN: There hasn't been a great deal of appetite by the auction sites to - - -

MR LAKER (LG): Of course not.

MS LAKER (LG): No, because they like the fact that they're so easy; they just want to collect their listing revenue.

MR LAKER (LG): There is an issue there that we're missing out and I've got to say - - -

MS LAKER (LG): And the Australian government is too. It's a huge amount of money. If, out of three pages, there's only one Aussie, look how much money you're missing out on, seriously.

MR WEICKHARDT: But for the offshore guys, the component prices you're talking about are 6 and 7 dollars, I'm not sure that anything we've seen internationally would trap those sort of shipments. Presumably they can come in in small envelopes and letters and - - -

MS LAKER (LG): But if the GST was collected by the auction site, then obviously they don't have a BAS statement in order to have it refunded to them - tough. Sorry, I mean, it's money that's being made out of Australia, so therefore the Australian government should be entitled to collect it, so therefore let eBay or whoever collect it for them.

MR WEICKHARDT: If they weren't registered, they would collect the GST and keep it which probably wouldn't make the Australian government too happy. But anyway, I take your point, you're suggesting that, in your model, it's the auction - - -

MS LAKER (LG): It's the auction site that can do the collection.

MR LAKER (LG): The auction site - and again using our small part of the market, which we are a very small component of these along the way - - -

MS LAKER (LG): Yes, we're only one category within a category, a subcategory.

MR LAKER (LG): But, I mean, if we're turning over the kind of money we're talking about - - -

MS LAKER (LG): I've got the figures here for their three months' turnover anyway, so - - -

MR LAKER (LG): - - - and their three months' turnover is quite considerably more, I mean, you start going, "Okay, how much money is actually lost in the GST revenue?" Australian consumers are paying that money.

MS LAKER (LG): We already are, so we don't have an issue with it. If they collected it at the same time they collect their fees from us, it's no different. We pay it anyway, and we have been for how many years.

MR LAKER (LG): They've actually got ".au" at the end of the web sites. To have ".au" they've got to have an ACN or ABN number. Therefore they are an Australian entity, so why aren't they collecting, the same as a traditional bricks and mortar Fowles or Grays Auction.

MS LAKER (LG): I think you're already speaking to the converted.

MR LAKER (LG): No, just it's part of our model, we believe, if they collected the whole lot, when we got our bill from them every month we would know exactly how much we've paid or not paid and we can just put that into our BAS statement as an adjustment.

MS LAKER (LG): The Aussies wouldn't have a problem, I don't believe.

MR LAKER (LG): The three big Australian sellers that we've got here in this category, we've actually spoken to all of them. Even though we're fierce competitors we do speak to each other probably once a year to kind of have a bitch and moan.

MS LAKER (LG): "How come you're still around?"

MR LAKER (LG): Yes. But we've said, "We all have to pay our taxes. We all pay this, we all pay that." There is a very good acknowledgment there between all of us.

MR WEICKHARDT: Okay. I'm just conscious of the time.

MR LAKER (LG): Yes, okay. The postage rates are a big thing to us. I'm going to talk very briefly about it because I did some quick research on the Internet this morning. Just to give you an idea, China to Australia is \$1.54; Thailand to

Australia - - -

MR WEICKHARDT: This is for what?

MS LAKER (LG): Under 100 gram postage.

MR LAKER (LG): This is a large letter under 100 gram. Again it's straight off a web site, so I can't verify it as totally accurate but it's \$1.54 China to Australia; Thailand to Australia is 92 cents, and Australia to Australia is \$1.20. Now, for us to return a good to China or to Thailand is \$3. It's least double or 200 per cent higher for us to return the same goods back.

MS LAKER (LG): Or in this case this box has arrived, a totally incorrect product, and it's going to cost us \$25 to return. It cost \$15 to get it here. So we're going to be out by \$25 just to get the goods back to them.

MR LAKER (LG): Unfortunately I can't leave this with you, but these were totally incorrect goods that we got - - -

MS LAKER (LG): They were meant to be digital callipers.

MR LAKER (LG): But we got vacuum pumps for computer keyboards.

MS LAKER (LG): \$1.30 worth of them.

MR LAKER (LG): Just reinforcing what Brad was saying - because I did hear him and you were asking about what validation. If you have a look at the customs slip on here, it's pre-printed and it's got \$10 customs. We paid \$93. We were expecting to pay GST on this item when it's coming to Australia. They have no scruples about putting whatever price they want on that customs slip and sending it to us.

MR WEICKHARDT: Neither under the current scheme it would have made any difference, mind you.

MR LAKER (LG): It's just a really interesting thing that what they're actually sending over doesn't relate to anywhere near the 10, the 100, the 1000 or whatever. They just put whatever and the customs slip that they put in - - -

MS LAKER (LG): But again there's no protection for the consumer. It's still going to cost me \$25 out of my pocket to return an item that is not slightly faulty, not slightly wrong but by God, it's not at all what I wanted. So for me to go through PayPal and get the money back and yada yada yada, I'm still out of pocket. It's not right.

MR LAKER (LG): The second part of the postage I just want to touch on very briefly, we actually use the Australia Post padded bag. We just put everything in like that and that's how we send it out. That's actually considered a large letter when we send it. It's just that size. As soon as we get anything slightly bigger it goes into a small parcel. A lot of the overseas sales that we see fall within a small parcel rate which actually are quite significantly more. Now, Thailand don't have a small parcel rate until you get to one kilo. Their first postage after 92 cents is \$16, and that's Australian dollars.

MS LAKER (LG): But because the products are all small, again, the competition is not level because of the fact it's costing them next to nothing to get it in.

MS SYLVAN: The definition internationally varies considerably as to what constitutes the price of a letter.

MR LAKER (LG): Just on our own business we send out around about 30 to 50 of these items a day in varying sizes or whatever. Again they're all Australian made and everything, so we believe we're actually supporting our local post office. There are three major sellers in Seymour which is a town of 5000 people - - -

MS LAKER (LG): They have actually put on one staff member. Now, if we go down the tubes or go backwards, we're just a little town and we're just one seller, so again does this affect the Australian economy.

MR LAKER (LG): The actual rate of what we're doing is quite significant. We're purchasing lots of 1000 envelopes and everything else. It does provide income back into the local town in an indirect measure. The last point I want to talk about - and I started off by saying "small, small business", and it's a real bugbear of mine within the online area - is education. Government, I believe, have a really strong need to understand what a small, small business is. In a town like Seymour, we have a population of 5000 people. I use as an example - because the person knows me - we had a lingerie shop. Effectively, there's two and a half thousand out of the population who would want to buy lingerie. Out of the two and a half thousand population, if you're getting 10 per cent of your market you're looking at about 250 people, that's only one sale a day. That's not enough to sustain that bricks and mortar shop.

What we believe is that online provides a catalyst where you start thinking away from a shop being a shop. It's a warehouse which is how we've seen China and Thailand evolving where all of their little market shops all have a computer and they call them warehouses. They don't call them shops any more. Take it away from that - now, we've gone through the bad mistakes ourselves. We spent two and a half thousand dollars with a group up in Sydney to set up our web site - did nothing. We

then went to a different package where we bought a shelf version of a web site, thousands of dollars later, still nowhere. We then came across a free web site called Zen Cart and we've since evolved into another one called osCommerce. There's about four or five out there now in the market. They're free web sites.

To give you an idea, that costs us \$109 a year to house our web site now. That's it. So we've gone from having bricks and mortar, with rates and everything under the sun, you know, lighting and the whole lot, down to \$109 - plus the computers and everything else. It certainly changes the way - - -

MS LAKER (LG): So educating our retail sector.

MR LAKER (LG): Looking at small, small business, the lingerie shop in Seymour, or the work boots place in Yea, whatever they are, government needs to be able to go in and educate those people that for a hundred-odd dollars or a couple of hundred bucks you can get yourself online and you can't start selling to the world, and that's a really big thing that we believe should be happening at the moment, because in Thailand they've got it, in China they've got it. There's sites like Alibaba, MadeinChina, B2B. There are all these sites coming out and they're all promoting their local businesses. We're not doing it. We need to be in that market.

MR WEICKHARDT: You honestly believe government could do this effectively and efficiently?

MR LAKER (LG): I've been to small business forums every year - - -

MS LAKER (LG): We've tried to offer a whole lot of ideas - - -

MR LAKER (LG): - - - in Seymour. I've been to small business forums once a year that they hold and they keep talking about the 30 to 50 people small business and everything, and the poor lingerie shop goes broke, and the work boots place goes broke. They've got great products at cheap prices and they don't know how to market it out there. I've actually gone and spoken to them personally, just kind of sat down with people and show them how it works, and it's surprising how many of them - motorcycle boots in Seymour, the guy works out of his backyard barn, and he's quite happy, and every day he sells 50 pairs of boots or 30 pairs of boots.

MS LAKER (LG): We've been asked by the TAFE to go in and hold some sort of seminar for small businesses, and I'm saying small businesses with one or two employees, not small businesses with up to 50 employees because they've got the resources to be able to go about it. They really want it, they want to learn how.

MR LAKER (LG): We believe there's a role for government, and governments

across Australia, whether it's local, state or federal government.

MS LAKER (LG): Absolutely.

MR LAKER (LG): We're about to put in this big broadband network, that's all great, fantastic. I love it. I don't have a problem with it, but the one thing is that if we can get the content by local producers to get out there in the marketplace, it's fantastic. We are such a geographically diverse country that a lot of our sales that we've actually learnt are places where you cannot buy the goods normally. Our market is not central Melbourne, it's very low.

MR WEICKHARDT: I have to say what you're describing to me is absolutely classic entrepreneurial behaviour and it's fantastic and I celebrate it. I'm not sure that anybody in Canberra can help you, quite frankly.

MR LAKER (LG): As I say, there is the MadeinChina and Alibaba which are the Asian sites that promote small businesses, there is a role there that government can play in promoting or offering, I guess, a gateway into the world of Australian traders. They charge very little, those companies.

MS LAKER (LG): Alibaba charges their people quite a bit to get on the site.

MR LAKER (LG): To be on MadeinChina you can have a shop that's smaller than the area behind me and you can run an effective business. Yes, it's entrepreneurial but there is - - -

MS LAKER (LG): Why can't government do it? Why can't we?

MR WEICKHARDT: There's some things that government do well, and there's some things that they don't. But anyway thank you very much indeed for coming along and telling us your story. Thank you for your business endeavour. The points you make about the consumer protection side, I'm sure Louise will be very empathetic with, given her background.

MS SYLVAN: In fact we will probably bring your examples to the ACCC. They do - with their collegial consumer protection regulators every year - a sweep of the Internet and they specify products that they can choose and so on, so we'll bring these things to their attention, in particular the battery thing.

MS LAKER (LG): And again the self-harm test.

MS SYLVAN: One of the interesting things about the Net is that consumers have to understand that the consumer protection regulator isn't with them when they're

shopping overseas.

MR WEICKHARDT: As little as I understand social networking, it strikes me as a classic example where social networking ought to be spreading the story about the damage you can do to yourself in this sort of area.

MR LAKER (LG): Self-harm is one thing but this is actually out of your own normal self-harm.

MR WEICKHARDT: Sure. I don't think anybody who put those battery components in their mouth had any idea of what they were doing.

MR LAKER (LG): Can I just touch on one other thing you've got in here as well which is 4.12 of your report, online transaction security. If anything ever does happen with the sellers, this is all talking about buyers when you're talking about online transaction security. As a seller, we have just as many problems. Luckily we're on very low cost, it's easy for us just to dump the money quite often and say, "We got ripped off." We've been ripped off through various scams which we're happy to spend another two hours talking to you about but it's not necessary. The issue is that as a seller we can get hitched as easily around by the best of them, and it's something you didn't actually bring out in the report.

MR WEICKHARDT: Thank you for drawing our attention to that. That concludes our formal hearings today. For the record, is there anyone else who wants to appear before the commission today? No. In that case I adjourn today's session and we start again tomorrow morning at 9 am. Thank you.

AT 4.44 PM THE INQUIRY WAS ADJOURNED UNTIL
TUESDAY, 6 SEPTEMBER 2011