



MTAA SMALL BUSINESS CHARTER OF FAIRNESS

1. The introduction of a right for small business to collectively negotiate, including a right of collective boycott.
2. The strengthening of section 51AC (unconscionable conduct) of the Trade Practices Act to proscribe unilateral variation of contracts and the termination of contracts at will without just cause.
3. The strengthening of section 46 (misuse of market power) of the Trade Practices Act to address concerns about the effectiveness of the current provision.
4. The imposition of criminal sanctions for breaches of the price fixing provisions of the Trade Practices Act.
5. An adequately resourced and empowered Australian Competition and Consumer Commission, dealing with:
 - cease and desist orders;
 - a divestiture penalty for misuse of market power; and
 - the creation of a 'small business as consumers division' of the ACCC.
6. The appointment of a Small Business Advocate to ensure that the interests of small business are better represented to the Australian Government.
7. The strengthening of the Franchising Code of Conduct.
8. The public interest should be the sole determining factor in any decision relating to national competition policy.
9. The extension of the jurisdiction of the Federal Magistrates Court to Parts IV and IVA of the Trade Practices Act and the application of the Trade Practices Act to government agencies in all its respects.
10. The Dawson recommendations in relation to third line forcing (that it should cease to be a per se prohibition and should be made subject to a 'substantial lessening of competition' test) should not be adopted.



Motor Trades Association of Australia



Australian Automobile Dealers Association



Service Station Association



The Motor Trades Association of the ACT



The Motor Traders' Association of NSW



The Motor Trades Association of the Northern Territory



The Motor Trades Association of Queensland



The Motor Trade Association of South Australia



The Tasmanian Automobile Chamber of Commerce



The Victorian Automobile Chamber of Commerce



The Motor Trade Association of Western Australia

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WHY A CHARTER?

The Motor Trades Association of Australia (MTAA) is one of the largest small business associations in the country, representing over 80,000 small and medium businesses in the retail motor trades, employing more than 250,000 people. MTAA believes that a viable small business sector is essential if Australia is to sustain a competitive market at home and abroad and avoid becoming the plaything of huge corporate cartels. This Small Business Charter of Fairness aims to address the unfair and anticompetitive behaviour undertaken by big business in its relations with small business.

The relentless pursuit of the National Competition Policy objectives has resulted in an ever increasing concentration of business in the hands of big corporations in key sectors of the Australian economy. This has resulted in a gross imbalance of market power in favour of big business at the expense of family-owned small businesses.

MTAA believes that the adoption of the following recommendations would be a positive step towards securing a fairer and more competitive trading environment for all businesses, both big and small.

1. The introduction of a right for small business to collectively negotiate, including a right of collective boycott.

To ensure fairness in dealings between small and big business, the Australian Government should immediately amend the Trade Practices Act to enable small businesses to collectively negotiate with their suppliers/acquirers and franchisors. Such a right would provide small businesses with some degree of countervailing power in their dealings with large and powerful suppliers/acquirers and franchisors.

2. The strengthening of section 51AC (unconscionable conduct) of the Trade Practices Act to proscribe unilateral variation of contracts and the termination of contracts at will without just cause.

Too many small businesses are subjected to unfair business practices, including the use of "non-negotiable" contracts, the unilateral variation of contracts and termination of contracts at will without just cause. Section 51AC should be amended to proscribe these practices.

3. The strengthening of section 46 (misuse of market power) of the Trade Practices Act to address concerns about the effectiveness of the current provision.

Section 46 needs to be amended to restore the original intentions of the Parliament when it amended the section in 1986; that is, that the section applies more broadly than just to a dominant firm. The section also needs to be amended to ensure that it deals effectively with certain types of anticompetitive behaviour, including predatory pricing and the misuse of financial power.

4. The imposition of criminal sanctions for breaches of the price fixing provisions of the Trade Practices Act.

The imposition of financial penalties does not sufficiently deter corporations from engaging in price fixing. Considering the negative impact that price fixing and other collusive behaviour has on small businesses and the Australian community, criminal sanctions must apply where corporations engage in such behaviour.

5. An adequately resourced and empowered Australian Competition and Consumer Commission, dealing with:

- cease and desist orders;
- a divestiture penalty for misuse of market power; and
- the creation of a 'small business as consumers division' of the ACCC.

The Australian Government should ensure that the ACCC is adequately resourced to fulfil its statutory functions. The Trade Practices Act should also be amended to enable the ACCC to issue "cease and desist" orders and to enable the courts to order divestiture of assets where a corporation is found to have breached the misuse of market power provisions or any new section introduced to regulate creeping acquisitions. A 'small business as consumers division' should be created in the ACCC and its role would be to act generally as a small business advocate within the ACCC.

6. The appointment of a Small Business Advocate to ensure that the interests of small business are better represented to the Australian Government.

The Small Business Advocate would ensure that the interests of small business are better represented to the Australian Government. An Advocate would be a champion for small business and must be adequately resourced by the Australian Government.

7. The strengthening of the Franchising Code of Conduct.

The Franchising Code of Conduct needs to be strengthened so that it adequately addresses issues such as minimum tenure and to proscribe the termination of contracts at will without due cause. The dispute resolution process under the Code should also be amended so that it allows 'class-type' actions.

8. The public interest should be the sole determining factor in any decision relating to national competition policy.

It was the original intention of the National Competition Policy that the public interest must be the sole determining factor in any decision relating to national competition policy. A return to this principle is absolutely essential.

9. The extension of the jurisdiction of the Federal Magistrates Court to Parts IV and IVA of the Trade Practices Act and the application of the Trade Practices Act to government agencies in all its respects.

To ensure that small businesses have affordable access to the protection and remedies available under the Trade Practices Act, the jurisdiction of the Federal Magistrates Court should be extended to deal with misuse of market power, contravention of industry codes and unconscionable conduct. In order to maximise fairness in the trading environment, it is important that all government agencies are subject to the provisions of the Trade Practices Act in the same way as private corporations.

10. The Dawson recommendations in relation to third line forcing (that it should cease to be a per se prohibition and should be made subject to a 'substantial lessening of competition' test) should not be adopted.

The per se prohibition on third line forcing provides protection for consumers and businesses alike against conduct which provides that a product is supplied on the condition that other goods and/or services are to be acquired from a third person. MTAA opposes the recommended changes and believes that such changes would mean that small businesses, particularly those in the franchising sector, would lose some of the protections they are currently afforded by the Trade Practices Act.