ACHURCH, MR PHILIP,
Executive Director, The West Australian Small Business and Enterprise Association Inc.
80 Colin Street,
West Perth, examined:

NAGY, MR GLENN,
16 Chale Street,
Gosnells, examined:

CHAIR—You have signed a document entitled 'Information for Witnesses'. Have you read and understood that document?

Mr Achurch—Yes. I am here this morning representing the interests of seven former milk distributors.

Mr Nagy—Yes. I am here to represent myself and also on behalf of the approximately seven former milk distributors.

CHAIR—These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. It will normally be a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings you should request that the evidence be taken in a closed session. However, even if the evidence is given in closed session, the committee can still report your closed evidence to the Legislative Council if it considers it necessary to do so. In that case, your closed evidence will become public.

Mr Achurch—We are obviously here not to represent dairy farmers. We are here to represent seven former milk distributors. We put in a submission on 15 May. With your consent I would like to read into the record and table a further four-page document which will make proceedings simpler and answer some of your questions. I would also like to table a further document, part of which I will read into the record.

The West Australian Small Business and Enterprise Association's submission dated 15 May 2000 comprised the attempts by the seven metropolitan wholesale shop milk distributors and vendors to have their outstanding claims for the full value of their former milk distribution businesses registered as a current liability of the Dairy Industry Authority and included in the description of the Dairy Industry Authority's liabilities in accordance with clauses 15(1)(b) and (2)(b) of the Dairy Industry and Herd Improvement Legislation Repeal Bill 2000. The former distributors' claim is based on: their belief that the capital value of their former rounds is worth approximately three years gross profit margin of their former total annual sales and is not limited to "white milk licensed" sales; recommendations 2.1.1, 2.1.2, 3.2 and 3.3 of the sixth report of the Legislative
Recommendations 2.1.1 and 2.1.2 of the sixth report state –

2.1.1 An assessment to be made of the vendor's initial loss by assessing the capital value of the vendor's business prior to deregulation.

2.1.2 The capital value is to be calculated by multiplying the annual gross margin of the vendor's business prior to deregulation by:

(a) in the case of metropolitan businesses, a multiple of no less than two and no more than four to obtain a base figure; and

(b) in the case of country businesses, a multiple at the discretion of the independent arbitrator to obtain a base figure.

The seven former shop distributors that are the subject of my original submission were all metropolitan wholesale shop milk distributors. Recommendations 3.2 and 3.3 state –

3.2 The Committee previously heard evidence from the former vendors that the value of a licensed business was generally the equivalent to the sum of two years "gross return" of the business. However, the Committee does not necessarily accept this figure of two years and a report prepared by the consultant, ACIL Australia Ltd, for the Dairy Industry Authority ("DIA") in 1991 put the market value of licences for the shop trade nearer to the sum of four years "gross return".

3.3 More recently the Committee received a submission from a number of milk vendors alleging that they should be compensated, amongst other things, for three years "gross profit".

Paragraph 3.1 of the 10th report states –

The following table summarises the main differences between the Committee's recommendations in its Third and Sixth Reports and the offer of additional assistance . . .

I will table the document rather than read it out. The left-hand column is headed "The committee's recommendations"; that is, what the third and sixth reports recommended, and the right-hand column is headed, "The offer of additional assistance"; that is, the amount of financial assistance that had been received at the time. One of the committee's recommendations outlined in the table states –

The Committee has noted that the capital value of a business was necessarily influenced by the value of non licensed trade. Whilst the Committee has noted that non licensed trade did not fall within the scope of DAAS, the Committee did not intend that the comment be taken as a restriction on further assistance. The Committee has repeatedly recommended compensation in the context of the capital value of the business ("business" meaning licensed and non licensed product).

We are here today because of the discrepancy between assessing the capital value of the business
on its whole value rather than only on the value of the "whole milk licensed" product part of the business.

Recommendations 5.1 and 5.2 (part) state –

5.1 That the principles of the Committee's recommendations in the Third and Sixth Reports be endorsed.

5.2 In the absence of an appropriate response to the Committee's previous recommendations, the Committee repeats its recommendation that compensation should be paid to the former milk vendors to reflect the capital value of the business prior to deregulation.

The use of the term "vendor" in the above references is interchangeable with the term "distributor".

The main reason for insisting on the outstanding claims of the seven former metropolitan wholesale shop milk distributors to have the full value of their former milk distribution businesses registered as a current liability of the Dairy Industry Authority in accordance with clauses 15(1)(b) and (2)(b) of the bill is because these distributors were placed in a disadvantaged position compared with other milk distributors when the State Government abolished the milk distribution licensing system in February 1995. The extracts from the 10th report clearly show that additional assistance does not constitute full compensation. The former distributors – who have been referred to as "DAAS B" former distributors – were not offered milk delivery contracts by dairy processing companies and, as a result, their businesses were literally taken from them. State government action placed them in a grossly inequitable position compared with other milk distributors. This position has not yet been rectified, despite many years of persistent lobbying, correspondence and representations to state government politicians, ministers and authorities. The former distributors' outstanding claims, which represent the difference between the capital value of their former businesses and the amount of financial assistance they have so far received – as shown in the schedule of our submission of 15 May 2000 – should be registered as a current liability of the Dairy Industry Authority and included in the description of the Dairy Industry Authority's liabilities in accordance with clauses 15(1)(b) and (2)(b) of the bill.

I made reference to the lobbying of state government representatives in the penultimate paragraph of my supplementary evidence. The left-hand side of the schedule of our submission to the committee - which I have already tabled – is four pages long and details 16 items of the various correspondence, representations and lobbying that have occurred over the past two years. It is only a potted version of what has occurred in attempting to get full compensation for the former milk distributors, because it details correspondence only over a two-year period. We could trace such correspondence back at least five years, or even for six years; that is, prior to the deregulation of the milk distribution sector.

If I might add, it is very sad that this type of lobbying has had to continue for such an inordinate length of time. Item 1 is our submission to the Federal Standing Committee on Public Administration, which went into its initial report. Item 2 seeks verification of the method of calculation used for assistance payments that were being considered. The calculations also appear
to be back to front when it comes to providing what we call the full value of the former businesses in respect of retail vendors and wholesale distributors. Item 3 points out the inequity of the method of calculation and asks for a meeting with the Premier of Western Australia. Item 4 tabulates how the assistance payments received so far are not full compensation and are not in accordance with the recommendations of the committee's various preceding reports. Item 5 again outlines the process and financial provisions that have not been fair and reasonable following the tabling of the Minister for Primary Industry's ministerial statement in the Legislative Assembly on 30 June 1999. It also points out that his interpretation of fair and reasonable is not so and is not in accordance with the Legislative Council committee report.

Item 6 outlines the matter of full compensation and the fact that payments to former DAAS B distributors do not represent capital value. It also makes reference to the fact that in the Legislative Council on 12 May 1999 the entire council and not merely a standing committee of the council passed a motion saying that the former vendors should receive compensation in accordance with the previous reports of this standing committee. Item 7 points out that payments received are not full compensation and not capital value and confirms the view of the previous statements. Perhaps at this stage I will skip a few of the items, because I am sure you can understand that we are getting a picture of the substance of some of the lobbying.

I will refer to item 11, which is a letter dated 22 November 1999 from D. and R. Lewis to the Minister for Primary Industry. R. Lewis was president of the Amalgamated Milk Vendors Association for 25 years and was on the Dairy Industry Authority for six years. D. and R. Lewis is one of the former milk distributors. The letter points out the discrepancy regarding the method of calculation and the inaccuracy of information tabled by the minister on 30 June 1999 from a Mr Colin Constantine and from the arbitrator, and the lack of choice offered to DAAS B former distributors, their advancing age and discrimination.

CHAIR—You have given us a lot of information. I wonder if I might short-circuit this a bit by asking if you agree with the standing committee's most recent report?

Mr Achurch—That was report No 10, the tabulated version of which we have just tabled. Yes, we agree with that. We accept that the report states that full compensation should be paid to the former milk distributors and not some form of financial assistance.

CHAIR—I understand, Mr Nagy, that as a professional advocate you have seven clients affected by this. I also understand that there could be other people who are not your clients who may be affected. I have had some difficulty finding out whether the number is eight or nine. Would you like to take a guess?

Mr Nagy—There are seven, plus Robin Hinricks, which makes eight. Apparently there was another guy who has disappeared.

Mr Achurch—He is Bert Dolling, so there are at least nine.

CHAIR—Is there anything more you would like to add?

Mr Achurch—That was more or less the information I wanted to deliver to the committee, so
that an idea could be given of why the claim is being made on the DIA in relation to clauses 15(1)(b) and 15(2)(b) of the bill. Obviously it is important, because if the bill becomes law it will be providing by way of a net asset value approximately $10.6 million. That amount will be transferred to the new authority, which is Dairy Western Australia Limited. We are obviously saying that if the former milk vendors and distributors' claims are registered as a liability on that $10.6 million, it will not be a net asset of $10.6 million but somewhere in the region of $8.5 million.

CHAIR—Mr Harris mentioned earlier that there was a levy on sales which started at 2.5c and is now 1.8c. I think it is probably the same amount that was used in the DAAS fund. Is that correct?

Mr Nagy—It was a 1c levy for DAAS.

CHAIR—Who paid it, the consumer?

Mr Nagy—The day after it was announced in Parliament the dairy companies put their prices up by 2c.

CHAIR—In other words, the consumer well and truly paid?

Mr Nagy—Yes, and more.

CHAIR—Did the producer also pay?

Mr Nagy—No.

Hon KIM CHANCE—Have the former vendors and distributors, whether severally or jointly, lodged a claim against the assets of the Dairy Industry Authority in any formal sense?

Mr Achurch—What has been delivered to the Dairy Industry Authority is along the lines of what has been outlined previously to you. Yes, it is literally saying that we have attached a schedule of the seven former distributors and calculated what three times annual gross profit is, representing what the value of their businesses would be, and subtracted the financial assistance received so far. We have added 5 per cent compounding interest over the five completed years that this matter has been outstanding. We have also added $50,000 for pain and suffering for these seven former milk distributors. We have come up with a schedule that has been sent to the Dairy Industry Authority.

Hon KIM CHANCE—If we were to look at the contingent liabilities of the Dairy Industry Authority at this stage, we should be able to find lodgement of claim?

Mr Achurch—Yes, we could also provide you with a copy of the schedule if you would like one.

Hon KIM CHANCE—That would be appreciated.
Hon HELEN HODGSON—You are here representing the producers and vendors and protecting any claim they may have. Given that you have been subject to deregulation where a property right was involved and that you have heard from the evidence this morning that one of the critical issues is the dairy farmers' quota and property rights, do you have any advice on how this should be handled?

Mr Achurch—That is a bit of a contentious question. To give some background, I listened to the proceedings this morning prior to my giving evidence, and I could not help but think that this situation is similar to the situation that I heard about this morning, which would turn out to disadvantage farmers, as I saw it disadvantage milk distributors. I saw exactly the same type of process happen, with exactly the same types of assurances being given, and I shook my head, because I know the tremendous hurt and hardship that this process has caused to many milk distributors. I cannot say much more than, for goodness sake, if there are any, or many, dairy farmers who are concerned about what is happening or will happen to the dairy industry, they should coordinate their activities very strongly and represent themselves as a united force, because it is the same old statement that united they may be able to get somewhere, but divided they will end up being the losers. There are some very strong similarities, and I hope they organise themselves if they feel that they are being disadvantaged.

Mr Nagy—The process that we went through was ridiculous. When anyone looks at it from square one, all the advice was given to the Government in the first place about how it should be done, the report was given to the Government, and all the figures for three years' gross were given to the Government. We even did a restructure package and deregulation plan that went over four years, which was far superior to anything the minister had thought about putting together. As Philip said, if I were a farmer now, I would be organising big time, because there is no doubt that what happened to us will happen to many of them. There were certain people in positions of power when we were becoming deregulated, and those people tended to get big money out of it. There is no doubt about that; it can be seen.

CHAIR—I think we have got the message. We have worked that out.

Hon KIM CHANCE—Did the consumers win out of your deregulation?

Mr Nagy—No. The price of milk went up at such a rate it was unbelievable.

Hon KEN TRAVERS—Just the compensation cost them an extra cent!

Mr Nagy—Milk prices from the dairy companies went hell for leather compared with the previous year, and prices shot through the roof. There was never anything like it prior to deregulation.

Mr Achurch—Can I add that we have members who are in the retail trade, and we have supermarket operators, and I am obviously not here this morning representing them, but you could say that generally we may represent their interests. Well, with that in mind, I also need to say that supermarkets have benefitted from deregulation and processors have benefitted from
deregulation, but the person in the street has not benefitted from deregulation, and many milk distributors were not given a choice and they have, therefore, suffered from deregulation.