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PRODUCTIVITY COMMISSION

INQUIRY INTO AUSTRALIA'S CONSUMER POLICY FRAMEWORK

MR P. WEICKHARDT, Commissioner

TRANSCRIPT OF PROCEEDINGS

AT ADELAIDE ON THURSDAY, 22 MARCH 2007, AT 10.04 AM

Continued from 21/3/07 in Melbourne

MR WEICKHARDT: Good morning. Welcome to the public hearings of the Productivity Commission national inquiry into consumer policy. My name is Philip Weickhardt and I am one of the commissioners on this inquiry. My fellow commissioners are Mr Robert Fitzgerald who is the presiding commissioner on this inquiry, and Mr Gary Potts, both of whom are unable to be with us here today.

The inquiry started with a reference from the Treasurer in December last year and covers a review of Australia's consumer policy framework, including its administration. We have already talked to a range of organisations and individuals with an interest in the issues, and submissions have been coming into the inquiry following the release of an issues paper in January 2007. We are grateful for the significant contributions that many individuals and organisations have already made to the commission on this inquiry.

The purpose of these hearings is to provide an opportunity for interested parties to discuss their submissions and their views on the public record. Following these hearings in Adelaide, hearings will also be held in Perth. Hearings have already been held in Melbourne and we are anticipating holding hearings in all states and territories, providing there are people who wish to appear. We will then be working towards completing a draft report for public comment in August, and will invite participation at another round of hearings after interested parties have had time to read this draft report.

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 day's proceedings I will provide an opportunity for anyone who wishes to do so to make a brief presentation. Participants are not required to take an oath but are required under the Productivity Commission Act to 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 on the commission's web site following the hearings. Copies may also be purchased using an order form available from staff here today, and submissions are also available on the web site.

To comply with the requirements of the Commonwealth occupational health and safety legislation, I would like to advise you that, in the unlikely event of an emergency requiring evacuation of this building, the exits are located immediately out of this door to the left-hand side and there will be an alarm signal given by the hotel in case we need to evacuate. If you require assistance, please speak to our inquiry team member Mr Crook, who is here today. The assembly point is immediately outside here in Bligh Street.

I would now like to welcome our first participant Mr John Furbank. Thank

you for coming along. If you could, for the record, give your name and the capacity in which you're appearing here today, please.

MR FURBANK: Thank you. My name is John Furbank. My capacity really is as an individual, although I run a small consultancy, advising government and businesses on how to comply with technical standards.

MR WEICKHARDT: Thank you. John, you've been good enough to send us some notes, which you should assume I've read. But if you'd like to make some introductory comments, I have a number of questions, and we can have a dialogue from there.

MR FURBANK: Fine. One of my reasons for being here is that I've had a career in consumer affairs, fair trading. I've held a number of senior positions during that career. I've worked in two states in Australia - South Australia and New South Wales. I have worked in the UK and I had a position in Fiji, as well as Australia. My current work, relevant to this inquiry - one of the significant ones - is auditing independent supermarkets, where I look at pricing, product safety, weights and measures, food labelling: a lot of the consumer issues that face the supermarkets. I have also written a couple of guides, one of which was *Buying and Selling Organic Food*. I have a particular interest in organic food.

When I read the paper, I tried to in my approach to this question look at some of the issues that have been raised in the paper. The first one is the rationale for a consumer policy. A lot of the consumer policy in Australia came in in the 70s. There was a big surge of consumer policy. In this state they had a big surge of immigrants and the government at that time decided to introduce quite a number of policies. I still feel that, at this time, a lot of that legislation is still relevant. The issues facing consumers and small businesses are still as relevant today as what they were then. The issues are perhaps more complex, people are better educated I would say, but the sophistication of trade has increased with people's education.

One of the other points that was raised in the paper was the power of consumers to make rational choices. People do make their own choices, and there's no question in my mind that that's the proper way to go. But I think in terms of the sorts of choices that people make, they need to be assured when they make these choices that what they are being told is true. For example, when people look at a stall of fruit - organic fruit is probably one of my babies - people see that display; they might go to the next stall and the display is not as good. But if that food display is enhanced by the words "produce of Australia" or "organic", then they might go to one stall rather than the other one. So that statement has to be true, and this is where the intervention comes in on top of people's choice. Please interrupt if you feel that I'm getting away from where you want to go.

I think people are better informed today than probably what they were in the past, but they still need that extra support from government. One of the statements in the paper said that "businesses have strong commercial incentives to ensure customers are not adversely affected". That is true. The competition is very tight; competition is very real. But some companies do have some advantages, and in my outline I have cited Telstra. Telstra is what I would call a "mums and dads company". People of my era have a lot of trust in Telstra, but Telstra has changed and there are a number of companies similar to Telstra that have changed.

They are no longer the company that people grew up with, and therefore they need to be looked at just as hard as other companies. I have personal experience of some, what I would call, not dubious but perhaps not as clear sales practices as what they could have had in terms of being told a particular service was available but not being told that I would have to cancel the other service, otherwise I would continue paying for the other service. That is just one example.

The other example is that, the number of megabytes that you get from Telstra is far more expensive than from a number of other companies. They have some inbuilt advances. I cite that not to have a go at Telstra but as an indication that people have to be more wary and perhaps companies could be more forthcoming - or perhaps governments could be more forthcoming - in the information that they give.

The other area is superannuation providers. With an ageing population - a lot of my information on this, because I am no longer in the field, is anecdotal. It seems that some of the larger organisations are very good at selling but not so good when consumer complaints or consumer queries come in, especially in South Australia. A number of companies have moved to Melbourne and Sydney, and phone calls can be expensive, especially for elderly people when they are on a limited income, and most people who are worrying about superannuation at that stage are on limited incomes. The information coming back takes time. There seems to be not as many people willing to answer queries or follow queries up as what there are to come on and want to get you involved in more schemes.

Intervention has a high cost, there's no doubt about it - businesses having to set up compliance programs and look at where they are buying their goods - but the downside is, if there's not this intervention, it affects consumers and it also affects those businesses that are trying to act in an ethical way. Regarding market trends, I am probably not the best person to know what the new market trends are in relation to consumers, because although I am a consumer, an analysis of any annual report from consumer affairs agencies would tell you what their problem areas are.

Now, e-commerce was mentioned in the paper. That is an area that I think

does cause difficulties, particularly with Australia; although we trade across our own borders, a lot of goods obviously with e-commerce would come from America and other places. Europe seems to have tackled it, and I know with the European Union they have got powers across cross-borders, but they do make credit companies responsible. We do this here. They also seem to be able to get some sort of agreement across national borders. One of the things here is that some of the companies that facilitate the advertising don't seem to take responsibility. One company has a rating system for the people that go onto the system but perhaps, if they got information from enforcement agencies that people weren't getting their goods back, they could take a bigger responsibility, I believe.

The other area that I really think is going to be troublesome is imported goods coming into Australia. We're moving quickly from being a manufacturing nation to an importing nation. One of my particular areas is electrical and product safety. Now, any one of us in this room could set ourselves up as an importer and go to China and order just what we want. There are categories of goods that have to comply with certain regulations. There is a move at the moment for a general safety requirement, which I would support. But I could go to China and bring back goods in a suitcase and start selling them at a market, and the chance of being caught, I would suggest, is quite remote. The chance of someone being injured by that product is quite high, if I don't know what I'm buying, if I don't know what the rules are. That's an area that I think possibly needs looking at.

The other one that I was reading about the other day is the television. I don't know how far stretched this is in Australia at the moment, because I don't watch those sorts of shows: shows where you ring in and support a particular act or shows where you try and get into a contest. They have found in Britain - and they have had to introduce regulations - that companies' computers keep breaking down but people are still making their dollar phone calls, or pounds as they are in the UK. The prize has already been won; someone has already won the competition, but people are still being encouraged to ring in. So some new regulations have come out in Britain. That was another one that I thought needed highlighting.

The area under market trends and developments talks about contracts as well. I think there's room for both sorts of contracts. Contracts that are prescribed can be a bit overbearing and need to move pretty quickly when the situation or trades alter. But the main thing about contracts is that they should be unambiguous and they should be clear, in my mind. I think that's the importance of contracts. Perhaps that is a bigger thing than actually having the prescribed contract, although for things like motor vehicles and house purchases I think prescribed contracts - because of the uniqueness; there probably are a number of areas of uniqueness - could be necessary.

Disadvantaged and vulnerable consumers: I think the advice that is offered by

states - and it does vary, depending on the state - is a valuable asset to all consumers, whether they are disadvantaged and vulnerable or whether they are just normal consumers. It is very difficult to say who is disadvantaged and who is vulnerable. I did some work in a call centre in the UK in 2004 - the call centre was one person which was me at different times. They had a policy there of not only assisting; the policy was that they would give advice to any person, business and consumers. They had a very comprehensive computer system where you could look up all sorts of things - legislation, policy, organisations that would assist consumers; it was a very sophisticated system - but when it came to ringing up the trade and asking for assistance or, "Look, we've got this problem. Can you help?" it was focused purely on disadvantaged consumers.

I asked for a definition of what a disadvantaged consumer was, and my understanding after a little while was - I couldn't get one - that they played it by ear, and it was very difficult sometimes on the telephone. But sometimes a skilled operator can sort of assess, but unfortunately with advice centres the most articulate people in my experience are the ones that are likely to get the best service because they can be persistent. They know what the rules are and they can push that idea. But I still think, having said all of that, that the advice side provided by states is extremely valuable.

I'll just mention electrical goods. Most of our standards dealing with electrical products have a clause saying that it doesn't relate to disabled persons or children. This is so that goods can be designed for the normal person in the street. There's a move in Europe at the moment to amend this because they feel that disadvantaged people and children should be protected from electrical products - from dangerous not from unsafe electrical products. I suspect this will be hotly disputed here, but it will be interesting to see how this trend actually goes.

Generic versus specific industry regulation: I think there's a need for a mix, to be perfectly frank. I think the Trade Practices Act and the Fair Trading Act with their generic provisions work very well. These need to be added to from time to time, as trade changes, but I think they work pretty well. The rules, for example, for second-hand motor vehicle sales tend to be more specific, and I think they work, whereas product safety tends to be at the moment pretty specific, but I think if we go down the track as has been suggested in some quarters - that we look at a general safety rule - then I believe that that will be a good way to go, but experience in Europe is that they still need to have specific regulations in some areas. So it's not a catch-all situation.

Enforcement and redress issues: I haven't mentioned redress. I think there is room for limited assistance in the redress area. One of the difficulties is that it detracts from the advice. It detracts from people acting on their own initiative, I

suppose, and trying to help themselves, and it is quite a costly exercise, there's no doubt about it: once you start involving a public servant in trying to get redress for people, then it can be very expensive. I think the advice to go to a small claims court, the facilities at small claims courts are very good. Some people - which I don't think happens now but has happened in the past - do need their hand held at small claims courts or they need pointing. Some people do not have the capacity to actually take their own matter to court.

Most reputable stores are very good at redress, and I think the public can recognise stores to get redress. Most people do rectify goods that they're legally bound to rectify and also will sometimes go further than that and exchange goods, which does confuse the issue a little bit. One of the things that I am concerned about is the number of enforcement staff available in Australia, the number of actual people involved, and what their targets are. The ACCC has fairly small numbers. If you consider the scope of the Trade Practices Act and you go to a state ACCC office, the actual numbers are very small; the actual number of bodies is quite small. The cases taken are often quite complex and need lengthy investigation.

The state enforcement teams vary tremendously throughout Australia. New South Wales, being a large state, has a fairly substantial enforcement team. Western Australia, which is a fairly wealthy state, has a fairly small enforcement team. I am talking state now; I'm not talking ACCC. The resources that are available for enforcement, I believe, are insufficient. It's not only the numbers of staff; it's also the type of cases that are taken up. Challenges that could be taken on behalf of consumers or on behalf of small businesses are perhaps not taken because of other cases and because of the risk involved in losing the prosecution. Nobody likes losing a prosecution, but I think sometimes, in order to get a court decision on an issue - the word "organic", for example, which I've been looking at during the last couple of years to try and (a) write my guide but also to ensure that people are not misled by "organic", there's one case I believe, although I couldn't give you any information now, in Victoria that they're investigating. But I'm not sure at this stage whether it will head for court or not.

Health authorities will act where they can go down and tell a person, "Look, we have information that the goods you're selling are not organic. Please do not sell them as organic." There's no real definition of "organic", although there is a standard for export in Australia that could be used, I think, in the event. But I sometimes feel that one of the reasons that nobody takes up the challenge on "organic" is that if a discussion took place or a dispute took place in court, it could be quite lengthy, it could be quite costly, whereas if someone did take the matter to court, then you could get a decision at some stage. This could depend on a lot of cases.

When I worked in New South Wales, we took on a large company for

supplying unsafe products. The company fought all the way along the line, and I remember the pressure being applied, not on me but on my boss, as to, "How much is this going to cost in the long run?" and we had to do some quick estimates. We had challenges in the Supreme Court, we had challenges all the way along the line, but eventually we succeeded. This prosecution involved injunctions. We had to employ barristers, and it became a very expensive exercise. Fortunately, New South Wales is a fairly wealthy state; they were at that time, and I think they still are, keen on fair trading issues, and they followed it through.

I did wonder what would happen if this was in a state with less resources - whether the plug would have been pulled and negotiations would have taken place earlier, to the detriment of consumers. I must say that the ACCC - and this was on some of my trips to the UK in the consumer area - it has been noted that it doesn't always have to be prosecution. There are other enforcement methods, and I know when I've been to the UK and mentioned some of the things that the ACCC use - such as getting people to sign undertakings, getting compliance programs written and that sort of thing - this innovative approach is something worth pursuing through all the enforcement issues; that it doesn't have to be a prosecution. It can be other methods of ensuring that the law is complied with.

My experience in dealing with small supermarkets, if you like, and independent supermarkets, is that there seems to be a lack of monitoring, dealing with things like price, product safety, credit - that's outside my scope a little bit. But there seems to be not a lot of monitoring that's going on in the field, so therefore I'm not sure that consumers are as well protected as they could be. Most states have a licensing regime and the level of enforcement does vary tremendously on those licensing schemes. There's little point in having a licensing scheme if it's not vigorously enforce.

The other one I've mentioned on the end of that is that testing of weighing instruments, to my mind, has always been a consumer protection method. It's in the interests of business but it's also in the interests of consumers that each petrol pump or each scale is correct. A few years ago - it must be 10 years ago now, at least, I suppose - South Australia didn't charge for testing weighing instruments but all the rest of the Australian states did. Now all states do, including South Australia, and I do get the feeling sometimes that this is what drives that particular department - I don't know; I haven't any evidence of this. The only thing I do feel is that scales get tested; sometimes a short weight doesn't get found. My experience is that there is still short weight out there.

Self-regulatory and non-regulatory approaches: I think self-regulation has a very limited effect. The good guys, if you like, are going to do the right thing; the other traders are not. If they don't want to do the right thing, then they're not going to

bother with self-regulation. The other problem with self-regulation is that if it's administered by an association, then the association needs almost 100 per cent membership. Some organisations have this; a number of financial institutions, I am told, have nearly 100 per cent membership, so they can actually work to do it.

The Motor Trade Association in South Australia only has 40 per cent membership, so people say, "What's the point of being a member of that association?" Therefore, they wouldn't be in a position, I would suggest, to self-regulate.

MR WEICKHARDT: Maybe have another five minutes or so, John, and then I'll have some questions.

MR FURBANK: Yes, okay. Another area that concerns me is the consumer associations and the like. I think it is necessary to have consumer associations, to have a body separate from government that actually speaks for consumers, that can lobby government to encourage government to do certain things - to do research, to get on issues that perhaps are unsavoury politically, as an outside body. In recent years, the funding for consumer bodies has fallen dramatically. I'm not a member of the Consumers Association of South Australia, but I'm told that it's had its government grant withdrawn, so therefore it is no longer funded. That means it's got to close its office.

The Consumer Federation of Australia, which I represent on some standards bodies, also gets very little funding. They work out of the Consumer Law office in Victoria. The only people that seem to get funding are consumer advocacy groups but nobody is there to lobby any more. Standards Australia also suffers from lack of government funding, I believe. They provide the basis of a lot of legislation, particularly in the technical area, and although they supply representatives there doesn't seem to be the funds coming from government that would ensure that the best possible service is there from the standards.

Cooperation between agencies: I think there is a judicial responsibility. When I'm talking about the enforcement groups, I'm really talking about resources. I think there is a dedication within enforcement groups to actually get the job done and to uphold the law, so if some of the things I say appear a bit negative, I'm really talking about the amount of resources that they have. It has got better in recent years - the actual cooperation between different states and between the ACCC - but I think there is still room for improvement in that area.

New Zealand is different. I have dealt with New Zealand on electrical and gas issues, and their culture of enforcement is quite different, and it does need a lot of work to try and line up legislation between New Zealand and Australia. New

Zealand - commerce doesn't seem to have that problem, industry doesn't seem to have that problem, but certainly as an ex-bureaucrat - it does seem to be a problem on the government side, to actually marry up bits of different legislation.

The other thing I'll just mention is the skill of enforcement officers to regulate. I think skill was mentioned in the paper. There is a need, I think, to look at similar powers between states. I know in the electrical area in New South Wales we had different powers between some of the Fair Trading enforcement officers - my officers had different powers and also different powers between officers in other states, which can cause problems when you're dealing with national companies. I think the skill of enforcement officers is something that should be looked at. I understand that the ACCC people have a law degree. In states, some people employ ex-police, some people do training; some states do their own training.

In the UK, they have a degree-level qualification that ensures that you get a certain level of enforcement by each officer. You get a certain knowledgeable enforcement level, but it also assists uniformity across the country. Each local authority in the UK runs a trade and standards department, but their action is fairly uniform. I know you're dealing with national legislation, which is different to ours, but it means that people start from a base where they have knowledge of roughly how the other is going to operate and to what level they should operate. I think we could improve our cooperation between states here, even though I understand that the states do talk to each other quite regularly on that. I have taken a bit of time, but I've gone through the bits and pieces that I wanted to say. Thank you.

MR WEICKHARDT: Thank you very much indeed, John. There are a number of interesting and important points you raise. You made a few points about consumer safety issues. You may be aware that the commission actually held an inquiry into product safety about 12 months or so ago. Were you involved in that?

MR FURBANK: Unfortunately, no. For some reason I was tied up on something else and missed the opportunity. I would have liked to have been, but something else cropped up so I didn't involve myself, no.

MR WEICKHARDT: In your written notes you made a point that "consumers need to be confident that goods and services will be supplied as described". I don't think there's any debate about that - safe to use. You add then "and are value for money". How do you really feel governments can prescribe some form of regulation that ensures things are value for money? Surely the consumer has a whole range of different needs, and some people will want something that will last forever and other people will want something that they're going to use once. For governments to set regulation around value for money seems to be extraordinarily tough.

MR FURBANK: I don't think I was suggesting regulation in that case. That was in my opening, wasn't it?

MR WEICKHARDT: Yes.

MR FURBANK: In rationale for consumer policy. I think there is an expectation in consumers that they will get value for money. I think that value for money is tied up, not in quality, if you like, but in things like if you go to a supermarket and you buy goods: if you're buying a piece of meat, for example, then you want that meat to be fresh, you want it to be edible, you want it to be the right weight.

So when I'm talking about value for money, if someone has \$20 to spend, then I think they want \$20 worth of goods. Now, \$20 worth of goods may mean something to me; it may mean something different to other people. I don't think you can regulate for quality and you can't regulate for value, but what you can do is to set the criteria so that when people have a \$20 note and they want to go into a shop, then they are going to get that value for that \$20; they're not going to be disadvantaged by other things that happen along the way, such as poor description.

MR WEICKHARDT: I don't think there's any dispute that things should be accurately described - people should not be misled or deceived - but the consumer then has an important role in terms of making a decision about what represents value for money. Somebody might be quite happy to buy five kilograms of meat for \$20 because they're going to feed it to their dogs, even if it is five days' old. Anyway, maybe we won't labour that point.

You raise a point about standard form contracts and say it's important to have "clear and unambiguous contracts as standard form contracts". I understand the point you make there. However, you do not raise the issue about unfair terms in contracts, which is of course a debate that's going on around the country at the moment. Victoria have introduced the unfair contracts legislation, which other states are looking at. Do you have a view on this issue?

MR FURBANK: I don't think I can really comment on that one. The only thing I would add on that is that I do think that, with the introduction of contracts - like ordering stuff through computer, if you like, and contracts, probably to some people it's less easy to understand what is going on because of the amount of words. And I suppose that would come into the unfair contract issue. The words "read the small print" is the old maxim and is very difficult these days sometimes because there's so much small print.

MR WEICKHARDT: There is indeed. Turning to your points about disadvantaged and vulnerable consumers, which is an important issue and part of our

terms of reference is to consider disadvantaged and vulnerable consumers, you made the point that when you were working in a call centre you asked for a definition of "disadvantage" and I guess you came up against the eternal dilemma that many people have raised, and that is that it's hard to give a universal definition of "disadvantage" and, indeed, all consumers probably at some point in time can be vulnerable. You then go on to sort of say, "Well, because it's hard to discriminate or identify, then perhaps you ought to provide assistance to everyone, on the basis that they might be disadvantaged or vulnerable."

Surely, that's going to increase costs that eventually all consumers bear, and would appear to be a difficult hurdle to get across. At the one hand, if you do that, you don't provide a special assistance to those people who are most in need of it, and you burden everyone else with the cost of providing general assistance to people who may be quite capable of helping themselves but just too lazy to do so.

MR FURBANK: Yes, it's a difficult call. Some organisations - I don't know whether they still do - used to have a rule that they would make one or two phone calls on behalf of a consumer. I think a well-trained operative, if you like, from a government agency could pick up whether or not that person still can't assist themselves. There are signs that a person needs more assistance. It's very hard to say, "Well, I've had two attempts to get your money back. I'm not going to do any more." At the same time, one call often relieves the situation. It doesn't always, but it can move things along. If a trader is spoken to, you get some sort of response, and you can make a decision as to where we're going to go from here.

One of the other things with assessing whether they're disadvantaged or whether they're normal people is, in the first instance providing the information - that is the important thing - to say, "Well, if you go here or go there, then this is where the assistance will be found," or, "If you go back to the shop or wherever you bought the goods from and do X, Y and Z, and then come back if you don't succeed." It's important from that angle not to take the burden on straightaway.

Targeting elderly people, for example, is a difficult area, because even if you go along and arrange to talk to a group of elderly people, it's a particular audience and you don't know how much is absorbed because that problem is not there at that moment, if you see what I mean - "Oh, that's a good idea" - but until a person has that particular problem, then they're not going to absorb how to deal with it. I haven't got any real answers for that - disadvantaged people - and that's probably why I go for the broad sweep. Once you've set up an agency to give advice then, within limits, to give that extra kick or that extra push might alter the situation. But you also need to record that information that you've got, so that you can identify traders that are going to cause problems, and then perhaps another arm of the organisation can deal with the particular trade or industry.

MR WEICKHARDT: On the issue of targeting and whether or not you try and address the specific issue rather than a more general provision, you talk about this proposal in Europe for electrical standards that might mean that products that were unsafe for children or for disabled people could not be sold more generally. I have to say my mind boggles at that concept. I wouldn't have let my children, when they were young, use a chainsaw, and yet to say, "Well, chainsaws are forbidden and can't be sold because if they were used by children they'd be unsafe," would surely rob consumers of a huge range of tools and equipment and other things that they might be able to use safely when they were adults or properly trained.

MR FURBANK: I think chainsaws is probably an extreme. I've got mixed feelings on that, to be honest. At the moment, you can sell a toaster that probably has a label on it saying, "Should not be left unattended." Now, the number of people that leave toasters unattended are probably quite a large proportion of the population. Under the present legislation with electrical products, in Australia if the product looks attractive to children, it's got to have special requirements. What they're trying to do in Europe, it appears to me, is to say that if you are disabled - blind, for example - then the product should still be safe.

I have some sympathy with that view. I'm not sure how one will overcome the difficulties that you pointed out with a chainsaw, for example; how you learn to make that safe so that a child could use it, or a person with a disability could use it. But I think there is room for movement towards that; to dismiss it altogether I don't think is a good policy, which the standards do at the moment, and to have no consideration for disabled people or children, knowing that children do play with electrical products. There are a lot of electrical toys - which is a slightly different area because I think that the regulations are different for toys. Children nowadays are used to electrical products, they're familiar with electrical products; they may not always see the danger.

One of the things that's happened recently is the introduction of coated pins on plugs. You're probably aware of that. This really is a thing that assists children, because it's the children who put their hands around the back of the plugs and pull them out. So if you move away from chainsaws, I think there are areas where, if you didn't have that clause in the standards, you could start looking at where can we assist children and disadvantaged people, which is not the same as with your chainsaw example.

MR WEICKHARDT: Yes. If the point is, can you assist children or disadvantaged people without adding huge costs or restricting choice to people who are properly using, then I think that's a bit of a no-brainer. It's where you have the trade-off that it becomes more difficult.

MR FURBANK: Yes. I must admit, from a safety point of view, pop-up toasters that are attractive to children, corn-making machines that are attractive to children, they are also attractive to adults; people like a nice doll-shaped or toy-shaped thing - young adults or any adults. That is attractive. Some of these have been banned, if you like, because they are also attractive to children. But I think if we look at toasters, for example, then perhaps we could design toasters so that they can be left. If a partially-sighted person operates a toaster, then they are very vulnerable to putting the toaster under curtains, for example. Should that be looked at in terms of specific types of toasters for disabled people? In the scale of things, you're not going to be able to make that, but if all toasters were safer, then perhaps you could.

MR WEICKHARDT: Okay. Can I turn to enforcement. You made a number of important points about enforcement. You did say in recent years there has been a reduction in the number of persons employed across Australia who enforce consumer legislation. Do you have some statistics on that?

MR FURBANK: No. I'm really going on anecdotal and my knowledge when I worked in the area. I don't have any statistics. I probably should have obtained them from the annual reports. When I'm discussing matters with different agencies and also when I worked for the last agency in New South Wales, the actual people involved - not in New South Wales particularly - in some states is very small, to my mind, to the task in hand. When I first joined South Australia in the trade measurement area, I think there were 40 people doing product safety and trade measurement. That is too many, obviously; even then I thought it was too many. But now it's greatly reduced in that area.

MR WEICKHARDT: It's an interesting point that you raise. If we leave the ACCC to one side for the moment - because I think it is understood that, in terms of consumer enforcement, they by agreement with the states tend to take on large or systemic cases and leave the states to take action in individual cases of consumer detriment - your point about enforcement and the amount of resource that goes into that from different states, and also your point about consumer advocacy, suggests that governments are not devoting as much resource in those two areas as you feel is appropriate. I guess my question is, why is this so? Governments tend to respond to the voice of the people. Does this suggest that consumers generally are complacent, happy; the number of consumers suffering detriment is so low that politicians aren't getting signals that suggest there should be more enforcement or more consumer advocacy? Would you like to comment about this general issue?

MR FURBANK: Yes. It's obviously a low priority in government. When you look at water and terrorism and all the things that are going on, then it is a low priority. I think there is a certain amount of complacency. The politicians may not

be getting the information from consumers and that is probably where I'm going to: consumer organisations are without funds and probably not in a position to lobby for extra rights. It's a difficult one. Because of the laws that we have, there is a bit of an acceptance that things are going to be right - that people are protected.

I know when I started on this organic area, people said, "Well, it must be organic, because that's what they say." When people go to a petrol pump, it churns out 40 litres - "Oh, good, I've got 40 litres" - but unless those pumps were checked people would have no idea. Prices in supermarkets: it says such-and-such on the shelf. Some supermarkets have a policy of refunding if a customer sees that a price is incorrect - they have two for the price of one, or something like that - but most people accept what they see and they accept that there's a body of people out there that are protecting them.

The ACCC hit the headlines, if you like, on certain of their cases, which I think sort of shakes industry and alerts consumers to what's going on. But I think because consumers have been protected over the years, there's an ongoing feeling that they are still protected, whereas my feeling is that there are certain areas where they're not being protected. This leads to a bit of anarchy if one is not careful, because in my work with some of the independent supermarkets they say, "Well, what are Coles and Woolworths doing? Do they have to do this?" and if I say, "Well, that's the law. I don't know what Coles and Woolworths are doing." Then you start thinking, "Well, there's a cost in me saying that you've got to tear these mushroom bags off," or something like that. They're small things: mushroom bags are only probably 10 grams, but if they've got to put an extra 5 per cent on their price, then their price has gone up to each consumer 5 cents and then the competition with the supermarket down the road comes in. There are all sorts of little issues like that. That is where I'm basing my feeling that, by reducing the number of enforcement people, we're not really serving consumers or small business.

I haven't spoken to government, but I get the feeling that consumer affairs tends to be a fairly junior ministry and tacked onto something else, and therefore the money is not going into that area as perhaps it should be, in my view.

MR WEICKHARDT: Yes. You raise a point about the fact that you think it would be beneficial to consumers to establish a national consumer advocacy scheme independent of government. Is it your view that this should be funded by government?

MR FURBANK: It is, yes.

MR WEICKHARDT: But independent of government?

MR FURBANK: When I say "independent", yes, I think it should be independent of government. As an ex-bureaucrat, if you like, there is always the influence of government on how far you go with cases and where you stop and where you start; which cases you take up, in some cases. Each minister has their own priority on which matters get the nod and which matters don't get the nod. Sometimes matters get attention that perhaps the bureaucrat doesn't think needs attention really, because it's a political decision. I'm not opposed to political decisions; when you're a minister, that's what you have the right to do and that's what people elect you for. That's why I'm thinking that if an advocacy group has a budget, they know what cases they can take up. They can professionally select which ones they go for, and go for cases that are going to assist consumers generally rather than specifically.

MR WEICKHARDT: Right. Thank you very much indeed for your submission, and thank you for appearing before the hearing.

MR FURBANK: No problems.

MR WEICKHARDT: Thank you. We'll adjourn briefly now, and start again shortly.

MR WEICKHARDT: We'll recommence the hearing, and our next participant is Consumers South Australia. If you could, please, for the transcript give your names and the capacity in which you're appearing before the hearing.

MR MOORE: My name is Anthony Moore. I'm the secretary of the Consumers Association of South Australia and one of the two representatives here today.

MR WEICKHARDT: Thank you.

MR BUTTERWORTH: And Ian Butterworth, the immediate past president.

MR WEICKHARDT: Thank you very much indeed for coming along.

MR MOORE: Can I just, for the record, say that the president of the association, Graham Pratt, would have liked to have attended but he had timing commitments, and similarly Elaine Attwood who is a member of the Consumers Association of South Australia, particularly food issues; she has been our representative on the various public boards of the Food Standards Authority for Australia and New Zealand.

MR WEICKHARDT: Thank you. You've provided some point form notes which you should assume that I've read, and I have a number of questions. But if you'd like to make some brief introductory comments, we can then have a series of questions and a bit of a dialogue.

MR MOORE: There are a range of areas that are there. In terms of looking at consumer measures, there's a very common response of, "Provide education, provide information," and that solves the problems. It's really suggesting that a lot of the information that we provide isn't effective and does involve a range of costs. We believe if it was done more effectively, you could (a) get across the information more thoroughly and (b) reduce a lot of the costs.

The second general area is that of small jurisdictions like South Australia, and the fact that over the past 10 years, at least, the resources for consumer protection have been reduced quite considerably. The Consumers Association used to receive a small grant to maintain its administrative back-up. That's now lost and South Australia does suffer in terms of the lack of alternatives for enforcement and some of the problems, such as the consumer credit legal service, we just have nothing like that in this state and the feeling is that perhaps national bodies such as ASIC could be helpful there.

Small loans happen to be ones in which the firms - a lot of these store-front operations - are in fact companies that have their headquarters interstate and that

adds to the problem of trying to pursue any sort of failures with an individual contract. In terms of this jurisdiction, the way in which one can provide for consumer law enforcement is something that we feel does require attention. The type of example is with the Trade Practices Act penalties where the court has a discretion to provide for equivalents to probation - that funds are set up for particular purposes. In Western Australia our understanding is that this has been part of what has led to the setting up of a consumer centre there, in conjunction with the law school of the University of Western Australia. South Australia's problems compound themselves. Because you're not involved in enforcement, you don't get part of the remedies, so there's not the funds that can go to inquiring into ongoing matters.

The third area is that of small loans. The situation here is that there's been a lot of attention to payday lending; again, dealing with these problems on a state-by-state basis, where you've got common lending practices across the states. It's not something that we feel is an efficient outcome. At the same time, we're concerned that, if you enter into prohibitions, you're simply pushing people from a payday loan to a full-on broking deal, where the interest rates at 25 per cent a month seem to have been true for a long historical period and do seem to reflect the costs that are involved in that transaction.

A further problem that the Consumers Association of South Australia has been involved in is in terms of disconnection policies, and working towards a memorandum of understanding with the electricity suppliers and the Department of Transport, Energy and Infrastructure. We had a public meeting on that in October-November 2005. It's taken a long time to get towards that and it's something that we think would be more appropriately dealt with as a code of practice.

The general problem that came from the credit code of 1995 is the fees and charges, and leaving charges pretty much unregulated, and thus the ability to really push the costs into the description of "charges" has certainly been used in the payday lending. Our conclusion is that the problem really isn't so much the initial transaction as what happens when there's default, and those default provisions come in. Another example of the fees-charges dichotomy is the very common practice at the moment of advertising interest-free payment, which in a real sense is not interest-free at all, in that they capitalise the interest and will actually tell you a cash price as opposed to an interest-free price.

Energy problems are ones where we have had effective consumer consultation. I think it's been an example that has been significant in South Australia through the Energy Consumers Council. Some of the problems have been in terms of building standards; double-glazing is the type of thing that that council has looked at as a way of reducing energy costs and, of course, it has its greenhouse impact..

The energy area is one where the expenditure is largely non-discretionary. The recent increases in charges do hit the disadvantaged most, and really would have been one of extreme difficulty but for the fact that the South Australian government has made \$100 a year payment to disadvantaged energy consumers. Part of the problem there in terms of energy consumption is that tenants - non-owner occupants - don't have control over appliances like airconditioners. They're really unable to go to a fixed installation so their costs are increased. I would point out that we still have no rules relating to protection for solar access.

Two personal little shots I'd like to have: I've never understood why a pharmacy business has to have a shop; I've not seen anything in the pharmacy course that makes a pharmacist an expert on cuddly teddy bears. One wonders today whether the whole hotel industry isn't one - there isn't an artificial monopoly that we now have almost total freedom in terms of selling alcohol in sealed containers so it's simply the role of hotels and drink for consumption. Certainly we have done some studies which show that the price of alcohol for consumption, even allowing for excise and GST, has risen massively above the CPI.

MR WEICKHARDT: Thank you. Did you want to make any comments, Ian, or not?

MR BUTTERWORTH: Perhaps I'll just add a few comments when you have the questions.

MR WEICKHARDT: All right, thank you. One of the issues that perhaps I'll start with is this issue that I was discussing with the previous participant at the hearing. Your association has been defunded; the national association has been defunded.

MR BUTTERWORTH: Some years ago, yes.

MR WEICKHARDT: Politicians seem to respond to noise from their electorate and there are lots of examples of politicians responding rapidly to political pressure, in some cases not particularly sensibly one would think. But, nonetheless, they do react. Why is it that consumers are silent and not making noises and sending signals to their political electorates to say, "This is important to us", or are they saying, "No, we're not prepared to pay for this. We don't want our taxes to be used in this area because we're relatively happy and comfortable"?

MR BUTTERWORTH: I suppose some consumers - perhaps a fair majority - would feel, "Why bother? We're not going to get anywhere," until somebody actually pulls a group of people together and starts agitating, and then others will get on board. That's probably very much an Australian feeling - "Why bother dancing

up and down?" - unless there's a real bad issue. Also, by stopping funding, you're effectively stopping the consumer voice also. We've done a fair bit of dancing up and down in the previous year, and that could be one of the reasons why government ceased our funding this year, because of the noises we were making. One instance might be because I was on TV as the then president, agitating about the big delay in opening the Adelaide Airport terminal, which had been sitting there for six months not being used, with various excuses being given for the delay, until we got onto TV, an ABC interview, and all of a sudden things started to happen. Of course, perhaps the government took that to heart - that they weren't doing enough stirring before we did.

We've danced up and down a few other times on consumer issues and one way of stopping that voice is to stop the funding, when you don't have an office and where you don't have a full-time employee. We have been offered funding, or assistance in kind. It took six months to find out what the "in kind" assistance was. We've been offered a pigeonhole within the Office of Consumer and Business Affairs, but they've been doing some rearranging internally and we're still waiting for that to happen. That's been six months, and therefore we're still having to pay rent so we may be sending them a bill for that because the delays have been their fault and not ours.

It gets very frustrating when you just don't have the ear and the support of government.

MR MOORE: I suppose, in terms of looking at why there isn't a greater voice, one is conscious that, for example, the 6.30 programs must run a consumer story at least once a fortnight. It's always something that they are guaranteed for there to be an interest in, and just from the research that they rely on for that allocation means that there is an interest in consumer problems. To some extent, I think there's a freeloader issue there that, if someone does it for you, you will benefit. So for any individual we have to really be making an effort. I think consumer remedies generally suffer from this problem of every individual's loss is small compared to the overall loss. I remember starting off in this area and I was sitting down counting boxes and matches that went from 50 to 49, and what could be done.

If you look at consumer bodies around Australia, South Australia at least has survived and fought on and in that way it's perhaps done better than some of the similar organisations. If you look at the persons who are involved in the organisations - my background is in terms of university teaching - a lot of the persons are involved because of their interest in debt assistance, financial counselling work, so that they've got some involvement beyond the normal one of just being a consumer. That's sitting down and analysing the persons who are executives of these organisations.

The funding for the South Australian body goes back to a report by Judge White on the consumer laws back in the 1970s, and he was making the point that an organisation that's separate from government can put forward ideas that government can't put forward. One of the things that we used our funding for was running the phone-ins to get people to respond on particular issues. That in turn was dependent on the media to give publicity. If you look at the Advertiser which runs a poll on an issue a day, it gets 30 to 50 callers, and I think that reflects the fact that people no longer really use the phone-in type of response. If we'd had funding, we were thinking of other ways of getting consumer feedback.

MR WEICKHARDT: In terms of models of consumer advocacy, a lot of people point to the UK and the institution that's been established there, funded by government but independent of government. Have you looked at that, and do you think it's a good model?

MR MOORE: We haven't looked at that in detail. As I say, the thing that we've been really interested in following through is the West Australian model where they've been working towards setting up a consumer law centre by combining with penalties, and the university input, and through membership fees as a sort of amalgam of things.

MR BUTTERWORTH: The UK model is interesting. I know a little bit about it but not fully, and it is championed as a good model to follow. But you've got to get the ear of the people with the money to take that on board in Australia.

MR WEICKHARDT: Okay. I guess that does raise the issue of the degree to which we have harmonisation of legislation across the states. If you have a national body representing consumers, in some ways it's problematic when you've got very different regulations in different states. How do you feel about the whole idea of a more harmonised regulatory environment across the nation that protects consumers, as opposed to a patchwork - different laws and regimes and different enforcement regimes in each of the states and territories?

MR MOORE: I think we would probably more and more lean towards the advantages of national organisation. From the point of view of the consumer groups themselves, we've always belonged to a federation. Going way back to when we first started, Consumers SA was part of the Australian Federation of Consumer Organisations. We were involved in the original smoking litigation where the consumer organisations took on the tobacco industry's claim that there was no evidence of harm from passive smoking. That was one of the instances. Just in terms of contributions, I mentioned Elaine Attwood whose work in the food standards is such that, as a volunteer, the amount of information that she has been

able to produce relative to \$28,000, it strikes me that the benefits for society are huge.

But in terms of the enforcement agencies, what we're saying really in respect of loans, trying in every state to work out how to deal with payday lending, just that expertise and details of the regulations under the credit laws does mean that really it's unenforced in South Australia in a substantial sense. The question of the substantive law aside, just dealing with agencies, we've found that ASIC has been able to better help us and Ian's group - the Consumer Credit Working Group - has certainly ended up relying on ASIC for its support. There are a lot of differences. I just know that with strata titles, the boundary between two things can be the outer wall, the middle; it does seem that differences for the sake of differences exist. The Trade Practices Act has had enormous impact on previous state practices.

MR BUTTERWORTH: I think Consumer Affairs here are looking towards national legislation in consumer credit issues. The minister initiated a survey late last year, which went to the Office of Consumer and Business Affairs, and we've been pushing them for the results of that. We still haven't received any response from them. It's been a long time coming. I think it probably has to go through the minister to prune before it goes to public comment, but I think that is one move that the local enforcement agency is looking at.

When I was president of this organisation, I formed a subgroup called the Consumer Credit Consultation Group, which was made up of federal, state government bodies, SACOSS, financial counsellors, the community legal centres, and UnitingCare Wesley here. We've met a number of times over 12 months; we've got a working group and we're looking predominantly at consumer credit issues and the way to try and get uniform legislation on that, perhaps a bit in the line of New South Wales where they've got a maximum rate, including fees.

MR WEICKHARDT: There is a harmonised uniform credit code, but there are, as you say, differences state by state, aren't there?

MR BUTTERWORTH: That's right.

MR MOORE: And a lack of enforcement.

MR WEICKHARDT: That's right.

MR MOORE: The real differences are enforcement issues.

MR BUTTERWORTH: We did ask OCBA how much money they received from a court case involving the ANZ Bank, and that was distributed nationally - quite a

few million dollars - and, because South Australia was not part of that because of our size South Australia didn't get any. But there has been a sum sitting in their set-aside funds of about 28,000-odd, waiting for someone to apply to use it for consumer credit issues and investigations in that area. So my particular group are looking at making a submission to get some of those funds.

On another side, because Consumers SA have representatives on all sorts of consumer bodies which we draw information from - and we're expected to find people to sit on those when government ask us - government also ask us to make submissions on various papers that are out. We find that currently very difficult without a full-time office person because we rely on ourselves and volunteers to do everything now.

One of the other groups that I run is the Telecommunications Consumer Group SA, which has been going since 2001, which was formed after the demise of the Telstra regional groups, and that's the only truly independent telecommunications group in all of Australia. We run consumer seminars, usually in conjunction with Consumers SA, on various consumer issues to do with predominantly telecommunications. Recently we got some funding from DCITA and ran one in Mount Gambier because they wanted to get country people, a bit more feedback from them. I've just recently sent in my report from that.

MR WEICKHARDT: Thank you. You raised in your introductory comments this big issue about information disclosure, and I guess in terms of trying to address and rebalance and empower consumers, greater disclosure has often been utilised, and yet the question is whether or not it's been useful for consumers. Being deluged with great fat documentation that you can't read or don't have the time to read or don't understand, isn't particularly helpful. You refer to a number of ways, I guess, of sort coalescing information - the National Heart Foundation tick or energy rating stars - and you talked about key information being required in advertising material.

Of course, the concern that many people raise about that is that bundled up in those sorts of rating schemes are all sorts of assumptions and averages, and consumers may be just as misled by some of those ticks, endorsements, star ratings or comparative mortgage rates. How do you feel we should move forward here so that we actually give consumers information that does empower them, rather than simply protect the supplier or the regulator and make everyone feel comfortable that they've done the right job but the consumer is no better off?

MR BUTTERWORTH: That's a difficult one.

MR MOORE: The basic point we were trying to make is that, once you reach a conclusion that this information is compulsory - and the star information is

compulsory, apart from the fact that the largest supplier has put wrong starts on them - from the consumer's point of view you're leaving it rather late in the transaction stage. You go through all the advertising and it's only when you get to the actual goods being in front of you that the stars are there.

The point we would make is that, if you're going to require that information, then have it at a stage when it is effective. You're saying, "Is the information a totally balanced representation of the fact?" and a starting point there would be, well, that's the conclusion that lies behind saying that, "The star rating shall be compulsory," and certainly the research indicates that there's at least an awareness of what that star rating system is and some idea of its meaning, which is a far better take-up than you get at a lot of the information stages.

Part of the suggestion I'm making - and this is one that is in terms of separating off key information from the detail that you get on packages on goods where it seems, I think, impossible to suggest that that information can be absorbed at the point-of-sale time, and that we really should be trying to embrace technology. Certainly in terms of information, the ability of persons to take in massive information is limited, and one of the current examples of that is the smart meters that are being contemplated in relation to energy supply - electricity, in particular. That smart metering is based on being able to vary the charges on a half-hourly basis. We've only done some anecdotal type of investigation, but that suggests, for instance, that people can make a choice that there's a day rate and a night rate, and you may think there's an acceptance that there are days of extreme energy pressure.

But contemplate the fact that people would be making a choice as to their energy rates on a half-hourly basis. So far as we can see, there's a total rejection of that as a demand; it is going beyond a choice that people feel comfortable in making. Yet there is controversy on that because the Victorian government suggests that it should be compulsory and really you can only justify the costs - and they're around \$500 a household to install, at least - if you say that people are going to act on that information. Our position would be quite strongly that, no, that cost isn't justified, because it's providing far greater information than people are going to be able to use in their decisions.

Yes, I think our basic thrust would be that there's a lot of assumptions - "We'll provide people with the information and problem solved." We reject that, I think. It really is a question of the costs. The booklets that are produced by banks - and I've taught credit laws for four years and I still don't find it a comprehensible document - I would suggest that 99 per cent of the people who are sent those booklets throw them away, and that is a horrible waste. I think that's an enormous cost that's adding to the charges, as opposed to the fact - just by contrast - that when you put your card in a machine, it will tell you, "Well, there may be a charge for this service," whereas

the whole computer set-up is one where they could tell you what that charge is. Barclays Bank in England does that. That does seem to us a case where you can provide that information cheaply and readily and in a form that people can understand.

We've checked, for example, the standard charge that the post office makes of about \$3.50 for processing a cash payment. That's not understood at all, and yet again that's something that can be provided fairly easily and in a stark form. It can just say, "There's a charge of \$3.50," or whatever it might be.

MR BUTTERWORTH: Getting back to your star rating and your ticks, a lot of consumers do rely on those, but they still need to be informed that they still need to read all the material, because while it is a good guide there are still some things often hidden in the fine print, so to speak.

MR MOORE: Surprisingly, one of the other things is that there's an assertion made that the Cheap As Chips type of sales have less efficient equipment, when in fact a lot of it turns out to be more efficient than the more expensive stuff that's sold up-market.

MR WEICKHARDT: I think we've all experienced that: spending more money doesn't guarantee satisfaction. I'm very conscious of your time constraint. Do you have any final remarks that you wanted to make or bring to the attention of the commission.

MR MOORE: I think we've covered everything. If there are any follow-up questions, that's one of the areas where we can use technology.

MR WEICKHARDT: Thank you very much indeed for appearing. Thank you for your earlier consultation and we look forward to you being involved after we publish our draft report.

MR MOORE: Thank you for the opportunity.

MR BUTTERWORTH: Thanks very much.

MR WEICKHARDT: Thank you. We're going to adjourn these hearings. For the record, is there anyone else who wants to appear today before the commission? No, I think not. I adjourn these proceedings and the commission will resume hearings in Perth tomorrow. Thank you.

AT 11.48 AM THE INQUIRY WAS ADJOURNED UNTIL
FRIDAY, 23 MARCH 2007

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