



SPARK AND CANNON

Telephone:

**TRANSCRIPT
OF PROCEEDINGS**

Adelaide	(08) 8110 8999
Hobart	(03) 6220 3000
Melbourne	(03) 9248 5678
Perth	(08) 6210 9999
Sydney	(02) 9217 0999

PRODUCTIVITY COMMISSION

INQUIRY INTO AUSTRALIA'S CONSUMER POLICY FRAMEWORK

**MR R. FITZGERALD, Presiding Commissioner
MR G. POTTS, Commissioner
MR P. WEICKHARDT, Commissioner**

TRANSCRIPT OF PROCEEDINGS

AT CANBERRA ON THURSDAY, 29 MARCH 2007, AT 12 NOON

Continued from 26/3/07 in Brisbane

MR FITZGERALD: Are we set? We're set. Peter Brady.

MR BRADY: Yes.

MR FITZGERALD: Peter, do you want to grab a seat over there behind one of those microphones; that would terrific.

MR BRADY: I've brought my colleague along, Jonathan Kennedy.

MR FITZGERALD: That's great. Good on you. Okay, just grab a thing and then - I'll just formally open the proceedings. Ladies and gentlemen, good afternoon. I'd like to formally reconvene the public hearings for the Inquiry into Consumer Policy Framework in Australia. Hearings have been held in most other states and territories, and today represents the hearing for Canberra and next week Darwin by video-link, and finally Sydney, I think, the week after.

As you would be aware, the proceedings are informal by nature but are held under the Productivity Commission Act, and as there is a requirement that whilst participants don't have to provide their submission or evidence under oath they are required to be truthful. I'm Robert Fitzgerald. I'm the presiding commissioner, and the two fellow commissioners are Gary Potts and Philip Weickhardt. The way we would like to do it is if you want to present for, you know, 15 minutes or so the key points, and then we will have a bit of a discussion for about the equivalent time or a little bit longer.

MR BRADY: Sounds good.

MR FITZGERALD: If you could start by introducing your full name and the organisation you represent.

MR BRADY: Terrific. Thank you very much. It's Peter Brady, Peter Graham Brady, and I am the national policy manager with the National Seniors Association.

MR KENNEDY: Jonathan Kennedy. I'm the policy officer with the National Seniors Association.

MR BRADY: Thank you very much for giving us the opportunity, Mr Chairman, to provide some advice here to the commission; we feel very pleased about that. I understand we'll be able to follow this up with a formal submission at a later stage. I guess what I would like to do initially is just to give the commission a very quick plotted overview of the National Seniors Association to give you an understanding of the perspective of where we're coming from.

National Seniors is a not-for-profit organisation, it's membership based; we have 283,000 members across Australia. We have 173 branches across Australia that support the sort of day-to-day activities of particularly retirees. We have offices in most of the mainland cities. We've got five, I guess, divisions within the organisation, which is the policy research division, which I head up. There is a productive ageing centre in Brisbane that undertakes research for the organisation. We have a membership division that looks after sort of membership activities. We have a travel area, and we have a research area, and we have a foundation where our members may bequeath money to the foundation and we provide that in community grants to the community. We're Australia's largest seniors' organisation representing the interests of people who are 50 plus that join the organisation.

Also by way of background, we have recently been travelling around Australia to our newly established state policy groups - we have policy groups in every state and territory - and we've been doing some work with them about setting policy priorities. Each of the states have set something like maybe five or six policy priorities that they want to pursue over the next year or 18 months. So some of the things we're going to cover here have been picked up in one way or another through that work.

So if I can I'll move on just to some of the aspects that we would like the commission to give some consideration to as part of the work that you're undertaking. I guess keeping in mind we've been looking at the terms of reference that have place there - and essentially, as I'm understanding it it's about looking at getting improved policy frameworks, looking at the way that legislation, particularly government legislation, may inhibit good effective policy. So the issues that we pick here aren't exhaustive, but I say they are some of the prime ones that are coming up for us at the moment with our membership.

The first one I'd like to touch on is the issue around IT, information technology. Some work that has been done in the United States by a gentleman by the name of Robert Litton, an economist, a Harvard University economist, did some work in the United States that showed that by getting seniors engaged in broadbanding and also management of records and things of that nature have got enormous savings to the economy, the US economy. Litton suggests that the savings are equivalent to half of what the US spends annually on medical care and what it is likely to spend on homeland security over the next 25 years.

The sort of examples that he believes where economic benefits and cost savings can be achieved by digitising health records and processing claims through the Internet, by breaking down barriers created by fragmentation of the health care industry. Now I acknowledge that the National e-Health and Transition Association is doing some work in that area, but I think it's looking at that whole broader area of

records, transferring of information, et cetera. He also talks about integrating monitoring and intervention systems for patients with chronic illness. He talks about implementing remote home health care and assisting seniors to join the workforce through telecommuting.

The reason I raise this is because at the moment we see, and our members raise with us, issues around the legislation in that a lot of these areas tend to be about protecting, you know, professional's interests or the provider's interest, as opposed to the legislation being there to protect the consumer; and I think a lot of the things we will raise here or the things that we raise here is, I guess coming from that perspective. So we're saying that in respect of this IT issue there are great opportunities to be gained from getting older people and seniors involved in that, but at the same stage there are issues, I guess, around policies and processes that we think could be improved.

The second area I would like to talk to - which is a I guess a bit of a diversion - but it's around the area of aged accommodation. You know the commission is probably aware that - particularly in high-care nursing homes - the Commonwealth Government provides bed places and provides funding to support those people that go into that sort of care. However, the actual sort of location of where the facilities are going to be provided, how they're built, how they're designed, and how they're constructed is done by the provider; and that's a reasonable thing to do.

The problem is that across Australia there are no real state government policies that provide a framework within which appropriate location and appropriate design can happen. So when you get to the point of trying to locate them so that they're close to services and existing services that might be there - whether they be medical or shops and whatever - because God hasn't created any new land, the tendency would be, or the preference would be to locate these facilities close to those sort of major facilities.

But it's very difficult because of planning regulations, processes at both the state and local government. In effect, I think it would be fair to say that the planning regimes across Australia are probably still governed by models of the 1970s, so they don't recognise the nature of the aged accommodation; these things, as I say, about locational issues, the necessity to go through and do rezonings, and then all of the traps that providers get hooked up in there.

We think that if the states worked closer with the Commonwealth government in that regard, in looking at - not just saying that, "Here are 500 beds in New South Wales next year," but there is a more proactive process taken in regard to the location of those along the lines that I've just outlined, but also to free up those polices at the local level so that the design that we end up isn't a typical three-storey walkup, which

really doesn't meet the needs, or what's occurring - that the industry and the residents would prefer.

The next two issues I wanted to cover were around financial issues, both of which have been gaining some notoriety in the media. The first one is around the reverse mortgage issue. I guess initially what we would say is we think that this is, in principle, a good product on the market, but unfortunately as the massive growth in the product that has been occurring over recent years there hasn't been the same sort of growth in the legislation, if I can put it that way. So I'm now moving from an area of, say, freeing up the legislation, to one of saying I think we need to look at the way in which legislation is around, or the lack of it in respect of the reverse mortgage packages.

The other aspect of the financial is the recent thing around the collapse or the concerns about organisations like Fincorp and the sort of protections that are offered for seniors in those particular markets, or the lack of information, and legislation that requires the providers in those cases to provide adequate information that in some areas there is conflicts of interest in what the information providers might be giving in that regard.

So with both those sorts of products we have some concerns - or at least our members are expressing concerns - about the lack of appropriate legislation in there, the lack of comprehensive information for somebody who is retired or about to retire to be able to really have a good understanding of what these products may or may not be. So we think there is a lack of information in those areas in respect of those two products. I guess they are kind of four issues across. As I say, they're not completely covering all the things, but we think from the point of view of the terms of reference of the commission, they're some really big picture issues that we've got that we'd like to get on the agenda and talk with you about.

MR FITZGERALD: Thanks very much, Peter. We might open it up now just for questions. Does Gary or Philip want to lead off?

MR WEICKHARDT: Clearly I don't know the detailed circumstances of Fincorp, and probably none of us will until more investigation into that is done. But I guess in the case of financial instruments generally, a lot of people have put to us that the problem is not insufficient disclosure - in fact, that people are being swamped with too much disclosure which is not comprehensible.

But I guess you are alluding to the fact that perhaps some aged people are vulnerable or are disadvantaged in terms of what they understand about all this, and yet there are lots of warnings by government continually, "If it sounds too good to be true, it probably is too good to be true." At the end of the day, I guess the question is

to what degree should governments be smothering these areas with regulations that might inhibit some consumers being able to take advantage of a financial instrument that suits their need where they fully understand the risk/reward balance, and yet protect people that you may represent who perhaps think that this is terrific and that it is risk-free.

MR BRADY: Yes, point taken. I guess in regard - and you're talking about generally the provision of information. We get a lot of our members who will come along, for example, to us, and talk about the fact that - for example, if you were about to retire. This is our understanding. If you were about to retire and you want to sit down and put some effective investment package together, to simply feel that I'm going to go to a financial adviser and get a breadth of information about what might be best for me, they suggest that they can't get that. What they will do is they think they'll think they're going to a financial adviser, and that financial adviser is selling a product.

It might be some form of share packages, for example, but he or she is only on the legislation able to give advice on that information. They can't talk about, "Should I put it in a super fund?" or, "Should I get really get property? Is that the best thing for me?" or whatever. So in effect, you've got to go to a whole bunch of advisers and then somehow or other work through that information. We've had a lot of people raise that issue, so it's not so much about putting a whole of raft of new legalisation in place. It's sort of saying to the government how can that information sharing be done so as an individual that may come forward as a prospective retiree can gather that information in a way that from their perspective as a consumer is they clearly understand the risks and the benefits of each of the products; that they clearly understand - as you say, they're grown-up people putting their money on the line, but in fact that sort of information is clear.

So I guess I'm not saying so much in respect like the reverse mortgage thing - I'm conscious that the New South Wales government in collaboration with other state governments is looking at putting in legislation to address some of the issues that I've outlined in respect of reverse mortgages. This sort of financial information area is a bit of a quagmire for not just disadvantaged older people. These are some of our younger members that are in their early 50s who are contemplating, "I might retire in 10 years time," or whatever. I guess that's what I'm alluding to, Philip.

MR KENNEDY: Philip, can I just ask - the point you made, it's essentially not a lack of information; as you point out, it's too much information. It's the PDSs, it's the IMs, they're too big, they're not comprehensive to seniors; and ASIC has recently expressed a desire to cut down the size of PDSs and IMs. The industry's response is obvious. They're kind of guided by the regulation. So I think ASIC needs to take more of - kind of a bigger role in cutting back the regulation to allow the industry to

cut down on the PDSs, which makes seniors more easily - make them more easily readable to seniors, essentially. So ASIC needs to not shift the emphasis on the industry, and the industry and ASIC need to work together to cut down the volume of information and make it more concise.

MR WEICKHARDT: It will be interesting to see what happens as an outcome of the Fincorp investigation; and the track record has been that outrage is expressed by the community that this has happened, politicians react to that, and in the interest of wanting to be seen to do something they then try and cater to that by providing more information. So it gets worse rather than better.

MR POTTS: In a way there's another dimension to it, too. It's wrong to think that providing extra information doesn't come without cost. For the suppliers of the product, if they have to provide more information then there is a cost in doing that, and of course they will then recover it in the market. So for those people who aren't caught by the sorts of schemes you're talking about, they can in fact be paying more for the products that they're buying than would otherwise be the case. So it's wrong to think that it's not a situation where there will be offsetting effects in the market from introducing more regulation that might protect a small part of the market - which might be some element of the seniors market, for instance.

But the rest of the seniors market, or the market more generally, might be bearing a higher cost as a result of that extra regulation. So even from the perspective of your own organisation, you might find that some of your members - although they probably wouldn't perceive it - may in fact be worse off because they'll be paying more for the product in one way or the other.

MR BRADY: No, I'm not - what we're kind of saying at the moment is there is a lot of information but it's disaggregated. You can't, as a - I don't believe - I've spoken to quite a number of our members, and I'm not talking about really frail age. I'm talking about young men and women that are in their 50s that are trying to make - try to find their way through this maze, and that because of the way it's constructed, that a financial adviser can only give advice about the product they're selling. So therefore they can't give advice about different products and whatever; so there is this plethora of information. They're certainly complying with the rules and regulations.

We're not suggesting or asking, particularly when there's financial advice in that area around more regulation, it's about the way in which the information is conveyed and transmitted to seniors. But we believe that government does have a role in there. Government, for example, could establish a mechanism with which they could provide that overarching information. For example, if you're a member of, say, a Commonwealth government superannuation scheme, you can go to your scheme and they'll give you that kind of general information about the different

products. But that's not available to other people. For example, AGEST. If you were a member of AGEST, you can go to them and they will provide you broad information across that - what the risks are about the different elements of whether it be property or shares or super or whatever it may be. But out in the marketplace they can't do that unless they're licensed to provide all of that information.

MR POTTS: But there are licensed financial advisers who can provide advice across a range of financial products, and not just - - -

MR BRADY: Products, but they can't provide you advice on your super package - if you've got a particular super package, unless it's - they're not licensed to give you that information. They're not licensed to give you information about the property market. That might be the best area for somebody to invest in. They might be more comfortable to do that. So what I'm saying is you have got to go to maybe half a dozen different financial advisers, and even within there they're flogging you, or they're selling you or advising you about the product that they have.

MR POTTS: Yes, but independent financial advisers - and there are some of those - who are not tied to particular products, can be recommending a range of products that you, an individual, can look at. They're not confined to a particular set of products in the advice that they give.

MR BRADY: I would be delighted if you could share with us who those advisers are, so we could provide it to - - -

MR POTTS: I can do that afterwards, yes. But I know this is an issue. This has been an issue in public policy about how independent financial advisers should be; and the bulk of them it is true are on commission, essentially - but not completely - not all of them.

MR FITZGERALD: It raises an issue that comes up - two issues. One is some people would say that our response to that circumstance in one sense is to have disclosure of a conflict, or disclosure of the omission, so that a person that visits a particular financial adviser needs to be made aware that they are on commission for these things. Some people have said that's inadequate, it's a case where you actually need to change the way in which financial advice is provided - which is a bit like what you're saying, including, for example some would go so far as to say the prohibition on commission fees or commissions and make it simply a fee for service.

So you've got two approaches. One says disclosure of the interest - the vested interest or the conflict of interest, depending on how you want to express it - is one approach. Others say no, actually change the way in which financial advice is provided. That's one issue. The second issue is some of the areas you've mentioned,

of course, are regulated by different authorities. So if you're talking about mortgage investment advice or mortgage brokers, it's regulated by one group; if it's real estate investment advice, it's another; if it's financial products, it's another. We're looking at that as to whether or not the current regime works well or needs to be reformed. But just on those two issues, your comments or thoughts generally?

MR BRADY: I agree. I think the points that you're making is where we're coming from as well.

MR FITZGERALD: But in terms of the financial advice, does your association have a view as to whether or not the actual nature of financial advice needs to be changed - and I suspect in some senses you are - or whether or not the disclosure of the linkages is the - - -

MR BRADY: I think it's both. I think both are relevant to the things that get raised with us, yes.

MR FITZGERALD: Can I ask a question on the reverse mortgage. We're all familiar that this product is emerging in the marketplace. You have indicated that New South Wales has got separate regulation pending, or - - -

MR BRADY: Pending, yes.

MR FITZGERALD: Pending. I'm not aware of what that is, but what are the key elements that you want in the regulatory environment that doesn't already exist? Because some of us would say reverse mortgages are not really that much different from any other normal mortgage. It has been packaged differently, but in some senses the key elements are the same. But I also do appreciate there are some elements about the reducing equity and those sorts of issues. Have you got a view as to what are the two or three key aspects that concern you in relation to reverse mortgages where new regulation would benefit the consumer?

MR BRADY: Yes. Do you want to just mention those ones, Jon, for now?

MR KENNEDY: Actually, whereas before we were talking about investment products being a problem with too much information, reverse mortgages is very much a problem of too little information. They are such a new initiative, market initiative, that seniors don't generally don't have a good understanding of them. That's one of the problems. Another problem is that reverse mortgage providers are not required to limit the amount that they can loan. So in terms of - you may go for a loan for X amount and they may recommend X plus another X amount, and there is no limit on that currently, tied into the fact that commission is actually made in some cases. That's a conflict of interest.

MR BRADY: That's the commission issue you mentioned a little bit earlier; yes?

MR KENNEDY: Yes. There's a lapse of information in terms of alternatives to reverse mortgages. Currently consumers aren't made aware of alternatives, such as downsizing of homes and things like that. One of the really crucial things is essentially the providers aren't currently informing consumers of negative equity risks. So I know that some contracts actually have no negative equity included into the contract, but not all of them do. People aren't aware of the fact that they can get no negative equity guarantees. Essentially they're the main pitfalls - - -

MR BRADY: They're the key ones.

MR KENNEDY: - - -in our experience we have had from members.

MR FITZGERALD: To what extent does the New South Wales regulation cover those issues, do you know?

MR KENNEDY: Yes - - -

MR FITZGERALD: I mean, I don't want to go into great detail.

MR KENNEDY: Okay. Essentially the New South Wales legislation is actually draft mortgage broker legislation, so it kind of includes that there is disclosure at the time when the amount to be repaid would be greater than the consumer's equity in the home. So that's the negative equity that we talked about. Should the consumer be anticipating future expenses such as retirement village accommodation, the broker would estimate the time of which the equity in the home would be insufficient to meet those purposes. The effect of the product on pensions and taxes as well as the possible term of the contract, given the client's age and life expectancy - which isn't the case currently. The client's plans for their estates must also be taken into consideration, obviously. Now, other states and territories have actually indicated support for these proposals; as of yet they've not implemented them. So that's something we'll be lobbying for at some period.

MR FITZGERALD: Thanks for that. Your association's view just on that is that sort of regulatory approach is appropriate. Taking Gary's point, of course, is there a risk that you actually reduce the attractiveness of the product to the point where people that would otherwise not be able to access tradition credit - - -

MR KENNEDY: Yes.

MR FITZGERALD: - - - are excluded. Or as Gary has indicated, the cost of that

credit or the cost of that becomes exhaustive. In your looking at the protective side, have you also looked at the consequential side in terms of either cost of product or access to credit?

MR KENNEDY: We've certainly touched on the fact that we must emphasise strongly that the actual product itself is a great product, you know. A lot of our members have reverse mortgages. It gives people an option - that wealth is tied up in assets and it gives them readily available income. It's not for everyone, it's for some people. Any regulation that's enforced must make sure that the industry can continue to grow; I think it's estimated to grow to about 11 billion by 2010. That should be encouraged. As I say, the product itself should be encouraged. But there needs to be bottom line consumer protection in place as a - you know, that shouldn't impinge on the development of the product - but there should always be a safety net there for consumers which is in terms of the equity release products and things like that, in terms of no negative equity. So that's pretty much what we're saying.

MR FITZGERALD: Sorry. On the no negative equity side you're saying that there should be a prohibition - - -

MR KENNEDY: Yes - - -

MR FITZGERALD: - - - not only a disclosure if it exists, but an actual prohibition against that?

MR KENNEDY: We're certainly saying that it needs to be disclosed in talks, you know, before anything is signed. I'd also say we'd encourage that it gets written into the contracts whereby there is no negative equity and that becomes a standard. I think that provides a suitable safety net without impinging on the long-term viability of the industry.

MR POTTS: Do you feel confident about the capacity of your members to understand a new product like this without seeking financial advice, if the financial advice is properly structured and regulated?

MR BRADY: Yes, I think - - -

MR POTTS: I think behind the question is, is there a better way of doing this in terms of getting the right outcome?

MR BRADY: Rather than the legislative approach - - -

MR POTTS: You can have a lot of regulation and legislation, but if the consumer doesn't actually understand what's required - don't understand the information that

comes forward as a result of the regulation, then in terms of the outcomes you're seeking, you haven't made very much progress. Somehow you've got to get your consumers, your members, into a position where they can actually understand the product.

MR WEICKHARDT: For example, you could have a no negative equity provision, but if somebody gets down to 5 cents of equity and then they've still got 10 years of their life in a nursing home ahead of them, they're in big problems. So somebody really needs to understand and take a - it comes back to your previous comment about getting sort of overall financial advice and might that be a better way of going, that wrapping, you know, sort of one particular product in a whole series of regulations.

MR BRADY: I guess it's a balance, isn't it, at the end of the day. I don't think it's just completely saying, we resolve it all by, you know, providing effective information and then the buyer beware. I think we would believe that some of the - probably most of what is foreshadowed in the New South Wales legislation will go a long way to resolving that. But I do take, you know, Gary, your point about just simply having, you know, the total legislative response and, you know, improved information and that. So I think it's kind of a balance. You know, we're not financial experts or - I was going to say not economists, John is an economist. So to judge the impact on the industry we would need to see how that went as well, so.

MR WEICKHARDT: If there is a gap in the market - maybe there is, maybe there isn't - Gary might give you a list of a thousand financial advisers to give the sort of advice you're looking for.

MR BRADY: I'd be delighted, yes; that would be good.

MR WEICKHARDT: But if there were such a gap, why don't you set up a service that would serve the need of your members?

MR BRADY: Yes, we're actually looking at doing that. We're looking at doing that. We're looking at developing a database along those lines, and, you know, looking at the provision. But again, there's 5 million people out there that are 60 and over that, you know, we're going to be looking at that. I'm saying that - - -

MR WEICKHARDT: Big opportunity.

MR BRADY: Yes.

MR FITZGERALD: Obviously we're very keen to get your views and your submission in relation to the whole of the financial lending and financial investment

area, and we've highlighted a number of the sorts of the issues we're looking at, as you have done. Are there any questions on that; otherwise we might just move to another part of the - one of the areas you haven't talked about, and I just want your advice if you might.

This inquiry is looking at generic as well as specific industry regulation, broadly in terms of, you know, when you should use one and the other. But specifically an area of that is within most of the state's jurisdictions in relation to their Office of Fair Trading or Consumer Affairs, is everything to do with retirement villages and other aged care products, and at the Commonwealth level you've mentioned nursing homes and so on.

At this stage our view would be that there has been very significant work done in reviewing a lot of that legislation over time, and there has been a high level of interest in the aged care sector generally. So could you give me some advice, or give us advice as to whether or not you think there are specific issues to which we should have regard in that area; or is it an area that we could look at by way of a sort of a case study but that there is not a need to look into it in greater detail because of all the activity around that?

MR BRADY: Look, I think you're completely right there about the sort of reviews that are being done. We've had Hogan do all of the kind of work that he did in regard to, you know, bed allocations and, you know, funding provisions and whatever for nursing homes, high and low care et cetera, ways to try and improve how the market might operate in there. There has been all of that kind of work. There has also been the work at the coal face, as you quite rightly point out, in respect of the registration and, you know, getting mandatory reporting around elder abuse, the whole range of things that have been done there.

What I'm talking about is the bit in between, and there's no work that's been done. No work has come out of the location, you know, where is the most appropriate places. If we've got these new hospital beds - the Commonwealth government is going to invest, you know millions of dollars and we've got providers there ready to build them, where is the best and most effective place from the community's point of view? I'm talking about from an economic point of view. So we don't end up building them because it's easier to go out in the boonies because we don't have to rezone and whatever - it's easier to find some old clapped out bit of land there. But from the consumer's perspective, and the investment by government in transport and hospitals and surgeries and doctors and whatever, they're dislocated.

So there is that locational issue. There has been some work done by people like Bernard Salt and Access Economics have done some of that - implications of where people might be going to in the regions, et cetera. But the next component of

that, as I say, is that not only is there that difficulty - because the state government is not taking the leadership in doing that strategic planning work, you know, not sitting down and saying, "Over the next 10 years - we're in New South Wales, we're going to have so many high-care hospital beds," blah de blah de blah. "Where is the best location?" Then what is the implication from our planning legislation? What does that mean?

And so that's that locational issue. The second one is around design. As I say, it's looking at building form of 30 years ago, and it will have a set of planning controls there that will say, "You can come and build a building here if it's X and it's like this and it's like something else." So I guess what I'm saying is that there needs, I think, an absolute shaking up across the country with state government, but it's got to be done in partnership with the Commonwealth in that regard.

MR FITZGERALD: We're going to run out of time, but Gary or Philip, any other questions?

MR WEICKHARDT: I just want to check, in your four items, the issue of consumers, aged consumers dealing with retirement homes, of understanding what they're being offered, bonds and things of that sort and the contracts they sign which may end up with them or their estates with big liabilities. Those weren't in your list of four orders. Does that mean that's not a big issue so far as you're concerned?

MR BRADY: They are, but we did all of that as part of the Hogan review, and essentially the Commonwealth has delivered on most of the Hogan recommendations. What it hasn't delivered on is bonds, and that issue is still sitting out there, particularly in respect of high-care arrangements. So I don't think either party will be looking at that until after September possibly this year, in respect.

MR FITZGERALD: So effectively from that answer what we should do is have a look, or revisit the Hogan's recommendations and just have a reflection on that, rather than a detailed investigation. Does that still apply, going back to my earlier question about retirement villages, which are part of the state jurisdiction?

MR BRADY: It does. That's probably what gets down into the low care or the independent living units area. But I guess in a way that's probably almost more up-front in the sense that people are tending to buy as you would do an apartment or whatever. So it doesn't quite get into the bonds issue unless you get into that low-care arrangement. But certainly that's a big-ticket item for us, but it's probably - we've had that discussion in another forum, but I would welcome another cursory look - - -

MR FITZGERALD: No, we're trying to limit what we're doing, not extend it.

MR BRADY: As I say, I don't think it's going to be - that issue will probably get debated next year, you know.

MR POTTS: Just quickly, Peter, the very first issue you raised, which was engagement of seniors with IT - which I think is a very important issue for the economy. I think you said that there are various policy issues that need to be addressed but you didn't elaborate. I'm not suggesting you elaborate now, but I think we would find it useful if in your submission you did that.

MR BRADY: Put it in there? Yes, I'd be delighted to do that, yes, because I really think from our economy it's got enormous opportunities. If the sort of numbers - even if they're only 50 per cent right that Litton suggests in the work that he's done in the United States, for the productivity of our community it's enormous, the opportunities that IT offers for us right across the medical industry through the employment areas and whatever in particular with seniors. But I would be delighted to put that in detail.

MR FITZGERALD: Thanks very much, Peter and Jon. That's terrific.

MR BRADY: Thank you very much for your time.

MR FITZGERALD: Welcome. If you could give your full names and the organisation that you represent, that would be terrific, and in the same way as we have just done, 15 or 20 minutes of the key points you want to raise and then we can have a dialogue around those issues.

MR WOOD: John Thompson Dalrymple Wood. I am here representing the Foundation for Effective Markets and Governance, which is located within the Regulatory Institutions Network at ANU. I should also say that whilst both Robin and I are also on the council of the Australian Consumers Association, we're not here representing those views. We wear lots of hats at different times, so we're kind of - speak with a FEMAG voice today.

MR BROWN: Robin Michael Gwyn Brown. I am here also on behalf of FEMAG, but I am also wearing the hat today of president of ACTCOSS, the ACT Council of Social Services. The Council of Social Services will certainly plan to provide you with a written submission in due course based on some of that kind of thinking.

MR FITZGERALD: Okay, fine. Over to you.

MR WOOD: Thanks again very much for the opportunity. I apologise that we didn't make a written submission to you. That's just largely because of calls for other things. I guess I particularly wanted to come and talk today because for 10 years I was head of the federal government body responsible for consumer policy advice for the government of the day. That was in 1984 to 1994, and it seemed to me in the context of your terms of reference there are some quite important issues that I guess can become lost - corporate memory can become lost over time. So I thought it might be useful to reflect on some of that experience.

When I was first appointed to that job as head of what was then the Consumer Affairs Division, which was located in the Department of Home Affairs and Environment then, most of the departments and authorities I worked in in the federal government got abolished at one stage or another. I was basically given the job of trying to modernise that division's focus and to reflect the fact that we were operating on a national marketplace within an international market, and the consumer policy had effectively been a creature of the states and territories up until that stage, with very minimal input from the federal government, most of which came through the activities of the then Trade Practices Commission. But the consumer police function was a pretty weak one overall.

So in looking at that we're kind of focused very much on developing, if you like, a role of questioning and becoming involved in looking at consumer policy issues as they affected a whole variety of portfolios within the federal government. Some people probably described it as stickybeaks, because we stuck our nose into

other agencies and portfolios affairs, but that was part of the charter of what we were given. That subsequently developed into the Federal Bureau of Consumer Affairs, which continued until the change of government.

One of the things I wanted to comment on in particular was that location of the function. For the first 18 months, as I mentioned, we were in a department called Home Affairs and Environment. For the next eight and a half years we were located within the Attorney-General's Department, and herein I think is a relatively important issue. I certainly don't want to take on Gary's former role in the Treasury, but the function went from Attorney-General's on the change of government to the Department of Industry Science and Tourism; then after about three years it then went into the Treasury.

The comment that was made around - I certainly didn't make the comment myself initially, but, "There it goes, there goes the consumer policy function, it's been swallowed up in Treasury and it will never be seen again." I think that is kind of a fairly harsh statement on account of the circumstances, but I think it does say something about where that function should be located. It's certainly my view - and there was some work that was done on this and some of the Treasury people are trying to track it down - and this is another thing that happens. Important documents get lost over time.

The then National Consumer Affairs Advisory Council did a research project on looking at where is the best location for a consumer policy function. They came to the conclusion that it was in an agency portfolio like Attorney-General's or Justice. One of the reasons they came to that conclusion was that it was in a sense a policy-neutral function; that is, it wasn't an industry function where issues of industry are going to predominate in the culture of the organisation, or in the case of the Treasury where other economic policy issues are going to be a dominant driver of policy advice within the organisation.

I can say that in the 10 years I was involved we certainly had an awful lot of battles with Treasury about a number of things, starting with looking at the external dispute resolution schemes for financial industry organisations, where essentially the then Treasury view was these are matters that the market will determine and that's the best way for it to happen and people can make choices about changing their financial service provider if they don't give proper consideration to complaints. Through to issues like looking at the uniform credit legislation.

Uniform credit legislation is one of those great stories about uniformity in the country. The first consideration was in 1956 and it was finally kind of determined in 1991, although we are now again in a situation where credit legislation is no longer uniform because at least one jurisdiction went a different way in looking at its credit

legislation. And that's an area where I think, you know, specifically it's going to be important for the Commonwealth government to look at taking an overall responsibility.

I here kind of refer back to another bit of work that was done by the Economic Advisory Committee to the Constitutional Committee back in 1988, where they recommended that the states and territories should essentially transfer those consumer policy functions to the Commonwealth because of the nature of the marketplace, and an issue which was subsequently taken up by other organisations. I think the most recent manifestation of that is one that you'd be aware of, Robert and Philip, with David Cousins's comment at the National Consumer Congress two weeks ago when he kind of said that essentially the Commonwealth should establish a National Consumer Commission that should take over the functions from - not only from the ACCC that relate to consumer affairs and consumer protection, but also that the states and territories should be much more involved in handing over responsibilities in a number of areas to the Commonwealth as well.

So that's kind of the first part of that context, and it's my own view that actually there should be a national consumer organisation - or FEMAG's view. There's a bit of the kind of background - I'm sorry, I didn't bring three copies. This is a book called *In the Consumer Interest* which is published by the Society of Consumer Affairs Professionals of which I was president at one stage. It's got I think a useful kind of history of the involvement of government in consumer protection over time. The reasons that I believe there should be a national consumer authority are essentially spelt out in the sections I did in there. So I won't take up any more of your time on that.

Another component of that that we believe is really important would be the establishment of a national consumer council, and I'll leave that to Robin to speak to you a bit more about. But essentially, we've had it going since 1975. We've had a - 1976. We've had a series of advisory councils to ministers responsible for consumer affairs who had varying degrees of exposure and public reporting. I'd have to say that the current kind of system is not one which I find is very engaging with the community at large, and that not much of their work is either undertaken or published. I think the model that we've kind of seen emerge in the United Kingdom, the National Consumer Council's roles and responsibilities, has been a particularly useful one to consider very closely. I'll kind of cut myself off there, because there is obviously some other issues - come up in discussion.

MR FITZGERALD: They may come up in discussion with Robin.

MR BROWN: I'm a bit worried that I've got rather more to say than time is going to allow. I do plan to write you a - I think it will be a personal submission, but it will

probably still suffer from being too long. It won't be the brick that Philip referred to at the conference. But I think, as Pascal said, "I'm sorry to have written you such a long letter, I didn't have time to write a short one." I think I might be in that situation.

Fundamentally, I think you can approach consumer policy from either a rights perspective or a markets perspective, and I'm a strong advocate for approaching the policy area from a rights perspective. I'm sure you've got a list of the consumer rights that were first enunciated by John F. Kennedy, so I won't go through those. I guess my view is that if we do have policies that assure those rights then we're going to actually have efficient markets anyway, at least markets that are efficient in terms of meeting society's goals. I think that's an important qualification.

The second key issue is that if we're going to have markets regulated, are we going to try to regulate them for all who participate in them, or for most? I don't think there is a straight answer to that. Obviously, efficiency has to be the question in terms of whether you're going to regulate for all or for most; and if you're going to regulate for most and leave some out of the regulatory net, then you're obviously going to look at alternative means of correcting problems that markets result in for those smaller groups. I think though, that often the transaction costs involved in non-regulatory interventions to solve problems for those smaller groups are underestimated.

But of major concern is the kind of externality issue of essentially politically disempowering that smaller group that isn't able to participate in the market and putting them in the situation of asking for assistance rather than being part of the larger group, that is - or the rest of the community that is coping with the market. I think a principle was raised in the previous presentations of whether it's reasonable to ask all consumers in a market to pay something to prevent catastrophic consequences for a few, and I would argue that that is a sound principle, it's just a matter of weighing up the costs. I think Gary really pointed to that. There are plenty of instances where we do impose costs on all to prevent catastrophic consequences for a few industry ombudsman schemes, so - like that.

I want to just briefly note that there are really four elements to achieving a good consumer policy framework, consumer regulatory framework and they are (1) research, education and information, (2) advocacy, (3) policy and rule-making and (4) compliance action and consumer support. I'll elaborate those more in the written submission, and I have a little diagram that shows how those need to be interrelated. It's not the case that different entities do those four different things but they're all done in part by a range of entities. In the research education and information area there's opportunity for academia, for bodies like RegNet. There's certainly opportunities for community sector organisations, and perhaps under utilised in that

they have a vast amount of information on the consumer experiences in markets that isn't collected because they just don't have the capacity to collect it.

But there's also an opportunity for a body like the UK National Consumer Council that John mentioned to play a big role in research, education and information, and particularly to research the area of problems of disadvantaged consumers, underprivileged consumers, which the UK National Consumer Council has a specific charter to do. In terms of advocacy, the key point here is that regulatory arrangements policy has to be adaptable really to changing technology, changing economic, changing social circumstances and so on.

I think a big concern there is that the weakest voices in those processes won't get heard unless we assist them to be heard. I don't need to tell you that consumer advocacy suffers from the free rider problem, and so we do have to do something more than leave it to consumers to organise themselves to ensure that there is adequate advocacy of the consumer viewpoint. I am talking about consumer advocacy, but of course I fully recognise and support the role of industry to advocate its viewpoint.

I am largely concerned with what I call extra-state advocacy, so consumer organisations, industry organisations, academics, professionals and so on - as far as consumer organisations are concerned, a lack over the last decade has been the capacity of the umbrella body of the consumer movement, the Consumers Federation of Australia - a lack of resources for it to be a really effective voice in consumer policy advocacy, and the fact that it doesn't exist means that there is really a very limited Canberra presence in terms of consumer advocacy. It was funded, it's no longer funded. It does need to be funded.

In terms of intrastate advocacy, again a national consumer council type body would play an important role there, as of course do other agencies within the bureaucracy in an obviously low-key kind of way. On policy and rule-making I would just support what John has said about a better location for that being the AG's portfolio. I'm not suggesting that it could never be done adequately within the Treasury portfolio, but I think it's more likely to be done satisfactorily in that other less market interested portfolio. I think you're more likely to get a rights approach to the issue rather than a markets approach. Both things have to be in the mix, but I think the mix is better balanced outside the Treasury portfolio as it is currently constructed.

The fourth area of compliance, action and consumer support; I grapple with this question of whether to fuse or to split consumer regulation and competition regulation. I think probably both ways of doing it can work, so I'm not going to go into great detail at the moment about that. If the functions are to remain fused,

maybe something to consider is giving a commissioner of a fused body, ACCC, particular statutory responsibilities in terms of consumer protection to ensure that they're adequately prosecuted. Relationships between consumer protection agencies are obviously critical. I was a critic of removing the ACCC's responsibility for certain areas of regulation that ASIC has. I argued at the time that a better solution would have been to leave that function with the ACCC, give it to ASIC as well, and achieve the allocation of responsibilities by means of a memorandum of understanding. I'll go into a bit more detail in that in the written submission.

On your question of general regulation or sector regulation, it's going to be a horses for courses issue, really. We need general - I would certainly like to see a fairness principle in the general regulation, but general regulation often means you have to go through some slow court process to determine precise application of that general regulation to particular market issue. I think in many instances sector regulations can be more efficient and responsive. I think it's often done by getting together a group of informed industry and consumer advocates to draft codes to govern a particular area of the market. That can be done much more rapidly and responsibly than changes to legislation. Having said that, I recognise potential barriers to entry problems and they have got to be guarded against.

MR FITZGERALD: Robin, if you can just conclude a couple of comments, then I would like to open up for at least a quarter of an hour or 20 minutes discussion if we could.

MR BROWN: I'll leave the rest for the written. I would like to - I will talk about international issues in the written submission. Just very briefly, the kinds of problems the former submitters alluded to in terms of the complexity of markets that consumers face now, I think there is - there has to be a greater role for agency and intermediaries. I think the problems in the financial industry are partly due to the fact that that profession is still a relatively young profession, unlike lawyers and doctors and architects and so on.

Having said that, there are clearly still problems with those professions, and there are problems with commission-type payments that I don't think will ever be eliminated, even with doctors and drug companies, and so on. But I think we need to look at and develop a much more sophisticated approach for ensuring that we do have the satisfactory intermediaries and agents in a lot of markets; and I think not-for-profit organisations do have a role there and they are playing that role already in some other countries. So I'll leave it at that. Thanks.

MR FITZGERALD: Thanks very much for that, John and Robin, and you've obviously raised a whole range of very broad issues which affect the framework itself. So again perhaps, Gary, do you want to lead off, and then - - -

MR POTTS: Sure, why don't I start. You have covered a whole range of issues, and we could engage in very interesting discussions for some time, I think. But let me just focus on a few, if I could, and perhaps I might resist the temptation to specifically address the question of where responsibilities for consumer policies should reside in Commonwealth government. Others may do that. But I guess I'd just like to broach the general question with you in terms of the presentation you have given of how wide do you think consumer policy is, when you think about consumer policy. Where are the boundaries in terms of the way you think about it?

Perhaps I can give a few examples just to tease out the idea a little bit. For instance, to what extent is competition policy, do you think, an instrument of consumer policy, or do you see that as something entirely separate? To what extent do you think consumer policy should be an instrument of social policy, for instance? Should consumer policy be used to achieve social policy goals, or do you think that the goals you might have in mind would be better addressed through social policy rather than consumer policy? So that was one question I had.

I might just mention a second question, if I could, and then I will leave it to others; but just on this question of responsibility within government, you have addressed the question at the Commonwealth level, where we know that there is a separation of policy and administration. When you look at the states, as far we can tell, there is not the same separation of policy and administration. It tends to be done within the one body, and it's in within the body responsible for administration. So it would be interesting to get your perspective on the situation in the states and whether you think that's appropriate or whether it's giving rise to problems.

MR WOOD: Okay, I'll kick it off, and maybe Robin can talk about the social policy aspect of what you were speaking to. I don't have any great disagreement that - at the National Consumer Congress two weeks ago, Graeme Samuels said that competition laws are an aspect of consumer policy. I don't have any basic disagreement with it. But they are only an aspect of consumer policy. Competition laws are there in the first place to provide a competition which is going to advantage consumers in the marketplace, and to prohibit the kind of behaviour which makes the playing field, the marketplace uneven in transactions between consumers and corporations in this instance. So I don't have any problem with that at all, that notion at all.

But there are a lot of other areas that relate - and in a sense it does go onto the social policy issue that you're talking about. But in my experience it's been the way in which you look at the market and the way in which you look at what are the impact of technologies, new technologies, business, government activity et cetera on consumers at large - is the way which starts determining the way in which you

survey the consumer market. I think that's a very different one from looking at it purely from competition can deliver all the right outcomes. It certainly can in very many areas, as we know. But there are other things that then get overlooked, because there are players in the marketplace that get overlooked, and that takes you into the social policy aspects, I guess.

I also give you a copy of this. This is some of the kind of things that we looked at during that 10 years that I referred to in the Bureau of Consumer Affairs. I think it does give you a kind of wide appreciation of the types of issues that we looked at, and you can think, why did we, because there were certain impacts that were occurring. We kind of raised the issue - I'm just going to give a couple of examples. We raised the issue of where consumers kind of fit in relation to the provision of health information, for example. That's not an issue that relates to competition first and foremost.

We raised in relation to the effects of agriculture and veterinary chemicals on the population at large; there was a very expert group of people who were looking after it, but they were looking at it from a particular perspective, the health of animals, the effects on crops and so on and so forth. There was little kind of interests in the effects down the chain, the food production chain of what the effects were. You can say that should be the Health Department's responsibility. The point was they weren't looking at it from that kind of perspective as well.

If you kind of go to the functions. In 1989, I think it was, or 1990 - I just can't remember which year specifically - we put forward a proposal for the establishment of a competition or Australian consumer authority which would put both policy and compliance and enforcement together in the one organisation. So it would have a direct responsibility to the minister responsible for providing policy advice, and have a kind of independent kind of role in relation to undertaking the functions of the Trade Practices Act as they related to consumer protection.

In a sense that was kind of modelling if you like, the functions the Commissions of Consumer Affairs have had in the states and territories, but it also reflected the frustration at those times. This is part of the difficulty and part of why Robin made a suggestion about if you continue to have a fused authority, why perhaps one of the commissioners should have a statutory responsibility in relation to consumer protection, because it tends to be a kind of - become a pet idea of the chair of the ACCC at the time.

I could tell you that, for example, Chairs McComas and Baxt had very little interest in the CP part of the act, so much so that one of them had to be told by the Attorney-General that he better get his act in order because there hadn't been a single prosecution in four years of proceedings initiated under the consumer protection

provisions, and it was for no want of complaints and matters brought to them. But it happened that that particular chair of the commission had no interest in the CP provisions.

Alan Fels as chair and Ron Bannerman as the first chair of the TPC had very great interest on both sides of the equation and kind of took on the functions very well. But it shouldn't be left to the kind of individual perceptions of the head of the authority about where they're going to go in relation to their particular interest. So I think the notion of kind of bonding the policy advisory role as well as the enforcement compliance role would be no bad thing; because they also both inform each other extremely well too in that respect. On social policy issues I might turn over to Robin.

MR BROWN: But first of all, on the question of definition of consumer policy, I actually during that conference wrote out, "Any element of public policy that establishes state institutions and/or requires state actions that affect the interests of citizens as consumers of goods and services however supplied," but that's much too big; you'd be on this inquiry for 10 years. So somewhere I did actually write a more limited definition, which I will give to you in writing. On the issue of - which refers more to market transactions and so on. But on the question of social policy and consumer policy and so on, I suppose I'm not too fussed about that kind of issue in the same way that I'm not too fussed about neat disciplinary divisions in academia. They still exist, but more and more interdisciplinary work is coming to the fore. The RegNet organisation at ANU is a good example.

Maybe it's good to think of it in terms of a Venn diagram. You know, here is social policy and here is consumer policy and they've got a big overlap in the middle, and there are probably - you know, health policy that's overlaps and so on. I think just putting things into - I think it's impossible to draw neat lines. So I do think that at times consumer policy should be used to pursue social policy objectives and vice versa. I certainly agree that competition policy is part of consumer policy. You must know Adam Smith's observation on production and being - the end purpose of production being consumption and it's the consumer that is king. So competition policy only exists to ensure that consumers get the best deal.

MR FITZGERALD: We'll leave it just there if we can. Phil?

MR WEICKHARDT: Okay. Just interested in the comments you made about advocacy and problems of free riders, and you highlighted the UK model as one that you quite like. Would you like to comment on the - I mean, the US is a very different environment in many different ways, but I understand there that there are advocacy groups - I guess a high profile one, Ralph Nader type advocacy groups - that have grown up supported by philanthropy or other mechanisms. Why don't

those exist in Australia, and why doesn't that model potentially offer a solution that compliments anything the government does?

MR WOOD: That's a really interesting question, and a pretty long one to kind of answer. I've looked at it and I've spoken to people like Nader and others who have come out of that system; Joan Claybrook, who is the president of the Public Citizen in the USA, another very powerful organisation. There are a whole series of reasons. A key one behind it is philanthropy in terms of funding sources. Another one is the success of the market; almost all of Nader's activities are funded by sales of books and speaking engagements. He is highly in demand from kind of corporate interests to speak to them as much as he is to kind of speak to consumer organisations. So it generates a huge fund of money which is then available for research.

There is another component which people in the US have told me, and that is that because the notion of kind of seeking enforcement of your rights tends to be one that's based on litigation or a notion of litigation that it's the consumer's kind of role to take those matters to the court, because they don't look on, to the same extent, to governments to kind of provide that source of relief or redress for them. That's a long historical and cultural aspect in the consumer field in the United States. Not that there aren't some very strong and effective in US jurisdictions relating to consumer protection.

That's been much more a tradition of seeking one's day in court to enforce one's rights when one is duded either by government or by the corporate world in terms of transactions. I mean, that's - I'm sorry, that's an extremely plotted version of it, but I think that is a considerable degree, and if you - you would know better than I would, but if you look at the kind of degree of philanthropy in Australia it is so much less than it is in the United States.

MR BROWN: I don't know the answer to this, but maybe there is a legal difference - tax deductibility for charitable giving in Australia is restricted and maybe it's not quite so restricted in the US, I don't know. You may be able to get tax deductions for funding or providing money to bodies like Public Citizen. I think John is right about the more litigious character of the situation in the US. I don't think that that's the most efficient way of getting consumers' rights ensured. I think government can do some things more efficiently than using thought processes.

MR FITZGERALD: I think that whole issue about the enforcement of rights and the accessibility of the rights is an interesting issue which we want to look at. We have a suite of arrangements, but they are variously across the consumer policy area and vary from state to state, from ombudsman schemes through to supported consumer advocacy to legal services to tribunals and so on and so forth. But they don't replicate each other in every jurisdiction, and it's one of the things we want to

look at. Of course we would be keen to get your advice about what is the right suite.

But just on the litigation, I was at a legal seminar yesterday and the advent in Australia of litigation funding firms - and there are a couple of publicly-listed firms that now fund third-party actions and class actions, representative actions, which is a new phenomenon in Australia but not new in America. So I am interested in your comments about to what extent litigation, say, in America has driven some of the consumer policy events, compared to here and in the UK which we are in fact much less litigious, despite what people think. So it is an interesting issue.

One of the avenues is in fact for governments to support model litigation. One of the models is for governments to actually encourage litigation rather than the process of introducing more and more regulation. We see that when people have introduced a specific industry law when in fact there is a perfectly good general law there. People, as you have indicated, say to us, "It's much more cost-effective to actually have a regulation for real estate agents," for example, "than it is to go through the process of litigating model cases in the generic." So again, that is of interest to us in terms of the difference between here and America.

MR WOOD: One of the things I would say is that in looking at consumer law I think there are two fairly key things. One is to try and have what I would describe as a generic set of practices that can apply. For example, that would be something along the lines of the EC directive on unfair commercial practices. I mean, looking at that kind of generic legislation which can cover all industries and sectors, to which it may be required - you may require to kind of add at some time some specific codes for particular activities that are specific to a particular type of industry; and then whether one makes those mandatory or not becomes another issue within that.

There are some industries - there has been some voluntary codes over the time which have basically been useless, either because of lack of enforcement by the industry body involved, or because they weren't uniform and they didn't cover the whole industry so the rogues tended to be out. They weren't the members of the industry association, and I guess direct marketing is a classic example of that. I speak with some authority because I chair the Independent Code Authority for the Direct Marketing Association, and Robin is a consumer member of it.

The industry itself has done a pretty damn good job of dealing with errant - with complaints and so forth, but the outside - the 17 per cent outside their membership coverage is where most of the problems would have occurred; and hence we've had things like the Do Not Call Register come up as an issue, which the Commonwealth has legislated on, to cover exactly that kind of sector. The other side is looking at those issues. Another one would be - I said that you didn't pick up the kind that I had the opportunity for a general duty of safety in the products and safety

reference, because I think that is something which is particularly useful; and I think that's the kind of thing which works well for industry because it gives them, if you like, a generic kind of guideline on what they should do.

Just as we also work towards making standards, horizontal standards rather than vertical standards, the same thing applies in looking at that area - and then it leaves only a few areas where one might have to intervene directly or specifically in relation to the good, or to an industry to cover some particular aspects of it, that can have a detrimental effect on consumers.

MR FITZGERALD: We are just going to run out of time shortly, so Gary or Phil, final questions? Can I just raise the last one, then. I want to go back not to the issue of the separation of competition and consumer issues - because I'm sure you'll canvass that well in the submission - but the issue between the Commonwealth and the states, do you have a clear view as to what aspects of consumer policy should in fact move to the Australian government and what should stay within either a multi-jurisdictional framework; or are you advocating that in fact the entire consumer policy framework should move up to the Commonwealth? One of the things, as you know we've already recommended that consumer product safety move up. The governments have agreed the trade measurements will move to the national scene, but there are a number of other aspects that we're looking at where that's an issue for consideration.

MR WOOD: My feeling is that it has to be addressed the Commonwealth level. There are different ways in which you can do it. One is that you can enter into memorandums of understanding, or states and territories to use the provisions of the Trade Practices Act. That becomes a uniform law in that field, and that's kind of one way of doing it. Because you will always have the kind of the nuisance sole trader acting within state or territory boundaries which the Commonwealth doesn't cover, or certainly isn't going to want to cover. Therein lies part of the problem. I think it's more effective that way.

This is just one very quick example. The post-sale consumer protection provisions of the Trade Practices Act, the ones dealing with warranties et cetera, is essentially a useless piece of legislation whilst it's not uniform around Australia. It's been on the ministerial council book since 1990, so that's 17 years and nothing has happened there. Because essentially the kinds of goods that we're talking about are relatively small value goods, you know, a hundred-dollar watch or so forth. They're not the kinds of things that somebody is going to kind of get involved in civil litigation against the manufacturer to kind of get the warranty or guarantee honoured.

It's not the kind of thing that a government agency is going to pick up, but it is the kind of area where a state agency could do some active work in the field; or

indeed where you could grant third-party rights to somebody to take action on behalf of the class of people. Those kind of - become sensible ways of dealing with enforcement.

MR BROWN: I don't think whilst we continue to have a federal system of government we can shift it all to the Commonwealth, because the state governments will still have resources that we will need to use. For example, hygiene inspectors, local government officials and so on, that do actually do quite a lot of consumer protection regulatory work, state bodies that check that travel agents are licensed and have their licences displayed and things like that. If we just move that holus bolus to the Commonwealth, I can't see how we would be able to call on those resources. So I think it's going to have to be some sort of cooperative arrangement. But I think we ought to use the sort of processes that Jon talked about to achieve a much more national approach for nearly all of this stuff.

MR FITZGERALD: Thank you very much.

MR FITZGERALD: And we have Matthew Munro or the Real Estate Institute? Bryan Stevens. Okay, that's fine. If you could give your full name and the organisation that you represent and your position within it, that would be terrific, and then open up for 10 or 15 minutes or so for your key points, and then we'll have an equal amount of discussion, if that's all right with you.

MR STEVENS: Bryan Stevens. I'm the CEO with the Real Estate Institute of Australia.

MR FITZGERALD: Good. Okay, Bryan, over to you.

MR STEVENS: Firstly, let me say that we welcome the opportunity to address the commission today on this important subject. I just make a few opening remarks if I could. Purchasing a property represents a large infrequent transaction for most consumers, which can be particularly daunting of course for the first time around. For many buying a first home will be the most important purchase of their lives, and certainly the most expensive. According to the 2001 census 67 per cent of Australians own their own home, and REIA figures indicate that about 17.7 per cent of home buyers are purchasing for the first time in December 2006. About 28 per cent of the population rent property, residential property. Businesses too require premises from which to operate and will therefore purchase or lease property.

Due the risk and complexity associated with purchasing or even renting a property, most property transactions involve a quality real estate agent acting for one of the parties, usually the property owner. While real estate agencies are in fact businesses, they are also consumers in their own right; purchasing everything from office stationery, vehicles, phones, computers, clothing and advertising. There are 8,184 real estate agencies around Australia and about 10,001 real estate businesses. So what is the importance of consumer protection? The REIA recognises that well-targeted consumer protection regulation works to the benefit of consumers, businesses and the national economy. In fact, competition and consumer policy and protection are inextricably linked, in our view.

Improvements in the regulation of domestic markets have led to greater competition between businesses within Australia, in turn leading to a greater range of goods and services being offered to consumers, usually at lower prices. Regulation may also benefit businesses in that they create boundaries within which businesses may operate with a level of certainty. When consumers are informed and empowered they are more likely to participate in these markets, leading to increased demand for the goods and services being operated by the Australian businesses. However, there is a balance to be achieved. Consumers must ultimately accept some degree of responsibility for making their own decisions, and it must be recognised that unnecessary regulation of markets adds costs to doing business, leading to

economic inefficiencies that can result in potentially fewer businesses willing to operate, higher prices and less choice for consumers.

Clearly an appropriate balance must be struck between empowering and protecting consumers while maintaining a competitive business environment. So the current regulatory environment: in Australia consumer protection is the shared responsibility of the Australian Government and the state and territory governments. The Commonwealth Trade Practices Act forms a basis for consumer protection in Australia, the provisions of which are also reflected in state and territory fair trading legislation. Other important Commonwealth legislation includes the Financial Services Reform Act, Privacy Act, and the Corporations Act, which also apply nationally. In addition to overarching legislation, the sale of real estate is also subject to specific legislation of the state and territory and even local government level in areas such as property titling and transfer of title, tenancy laws, including tribunals, building compliance, planning, zoning, professional real estate qualifications and also standards of practice.

In all there are nine jurisdictions, not including local governments, regulating within the property sector, and given our closer alignment under the CEO of New Zealand you would make that 10; and we're certainly heading that way, and I think New Zealand should be included in our consideration of this. At the state level real estate practice is highly regulated. There is also a role of industry co-regulation and self-regulation in a property sector. Businesses have a clear interest in ensuring that consumers remain confident and have acting participants in domestic markets. Self-regulation allows industries to address specific issues before and as they arise, ensuring that consumers are protected without imposing prohibitively high costs on business that may arise from rigid legislation.

Examples of self-regulation in the real estate industry include the ACCC authorised Articles of Association and Code of Practice applicable to members of the Real Estate Institute of Western Australia, and that was reviewed just recently by the ACCC. That said, there is a cost to self-regulation which governments should not presume is the sole responsibility of industry because government will reduce their funding needs. That's a very important point as far as we're concerned. Australia's domestic markets for goods, services and labour now operate on a national or international context and there is a case for change.

As the Internet boundaries on the Australian business map are eroded through improvements in communications and transport technology, both businesses and consumers are increasingly operating across multiple jurisdictional regulations. For example, the advent of Internet sites offering property for sale has enabled consumers from across Australia and overseas to more fully consider purchasing property outside their own regulatory restrictions. According to the ABS 358, 800

persons migrated interstate during 04/05. The vast majority of these persons will have required to either purchase or rent a property within their destination state or territory, for which they are unlikely to be entirely familiar with the local consumer protection framework.

Despite the erosion of boundaries on the business map, boundaries within the consumer protection framework persist, and there are now numerous specific examples of consumer protection regulation that is inadequate, as is the case of property seminar spruikers - I will cover that later; or are inconsistent, as is the case with education and licensing and the operation of residential tenancy databases; or overlapping, as is the case with the Trade Practices Act and the state and territory Fair Trading Acts. In essence, the current consumer protection framework has become unnecessarily complicated and does not in our view reflect the reality of the Australian business and consumer environment. The REIA believes that Australia's consumer protection framework could and should be improved for the benefit of consumers and businesses alike.

There is a case for less is better. Co-regulation is important. For example, REIA has worked with the ACCC over the last couple of years very closely and amongst other things produced guidelines for agents on the Trade Practices Act which have been very successful. For example, complaints to the ACCC on real estate practice dropped 16 per cent in 2005 and 6 after the guidelines were issued; and we're working with a number of other areas also. In this way, the generalities of the Trade Practices Act have been interpreted specifically to help educate business. There is a case for generic regulation with co-regulatory and enforceable guidelines for specific industries.

As a general rule, federal government has used the approach of educating business on regulation before policing; for example, the introduction of the GST. We think that's a very laudable approach. This approach is useful particularly where there is broader regulation such as the Trade Practices Act or to an extent the Privacy Act. Moreover, there is a case for change and also educating the consumer, rather than shackling simply the businesses. To some extent the whole notion of consumer protection should be recast and considered more usefully as the consumer and business policy framework.

In other words, the protection of consumers is currently provided through the regulation of business, but there is little account of the responsibility of the consumers. Perhaps there should be three tiers to the framework. For example, a bill of consumer rights and responsibilities, a broad regulatory framework for business, and the third tier being an industry-specific guidelines for business and consumers - and ACCC do put out consumer fact sheets.

There is also the global context for business and consumers. The REIA is a founding member of the International Consortium of Real Estate Association, which is comprised of 26 countries around the world. We, that is, that conglomerate of associations, have established arrangements and protocols between ourselves of education and selling properties internationally which have not been sanctioned by governments. Business will always lead the way, therefore prescriptive, detailed regulation will always need to catch up; which puts inappropriate pressure on the need for a political response when there is market failure.

So how can the consumer policy be improved? The Australian consumer protection framework must be urgently reviewed, in our view, in order to remove regulatory gaps, improve consistency, reduce duplication and reduce red tape; and of course, red tape is being addressed separately. The REIA generally favours the establishment of national laws and strong national regulators, in conjunction with the harmonisation of regulation across jurisdiction where a truly national approach is not practicable.

While the harmonisation of existing regulation is laudable, this process inevitably results in lengthy negotiations without any guarantee that national consistency will actually result may also lead to the lowest common denominator outcome. Unfortunately, the response can often be that, "Harmonisation is advocated across Australia provided it's done my way." Over time regulatory regimes again move apart as individual jurisdictions make changes, usually based on expedient political response to market failure requiring constant regulatory review.

The establishment of truly national laws and national regulations would enable consumers and business to operate freely around Australia without the costs, barriers or uncertainties that currently are associated with operating in different jurisdictions. Governments too would benefit in that the consistency of regulatory effort is certain to be more efficient than the current piecemeal approach. Liberated government resources could then be more appropriately utilised in other areas.

There is also an issue of the process and timeliness for policy development in consumer protection. The Ministerial Council of Consumer Affairs, acronym being MCCA, and the Standing Committee of Officials on Consumer Affairs, the acronym being SCOCA, are key parts of the policy development process. I cite two important examples to illustrate a systemic problem. Firstly, in August of 2003 as a result of the Henry Kay activities, MCCA, quite rightly in our view at the time and now, decided to review licensing of property investment advisers. There was subsequently also a joint parliamentary committee separate review on the same issue; and now, in March 2007 we are still waiting on the report from MCCA, nearly four years after the event. This is simply not good enough, and the reasons for this inactivity should be addressed.

Secondly, COAG is committed to effective mutual recognition. A key to this is consistent education, if not licensing. Real estate now has a national education package, but the regulation across Australia is premised on fundamental differences, including, for example, the definition of a real estate agent. SCOCA is reviewing harmonisation, albeit very slowly in its third year of review, at the prompting of the REIA. But this issue was taken off the MCCA agenda last year. COAG might rightly consider that the policy development process is not supportive of their vision for the socio-economic development of Australia. Overall, we need a supportive, cogent and timely consumer and business policy development process.

So what are the barriers to improving consumer policy? Unfortunately in the case of the property sector, state and territory budgets are heavily dependent on income derived from property taxes, and hence all governments at this level have a vested interest in maintaining full and exclusive control over all land assets within their jurisdiction, including any associated consumer issues. As far as they're concerned, one goes with the other. In fact, it is at the time of sale that the bulk of property taxes are levied.

Another important barrier to achieving a truly national consumer framework stems from the constitutional roles of the various Australian governments. The clearest example of this problem is evident in the Commonwealth Trade Practices Act and the various state and territory Fair Trading Acts. Although the Trade Practices Act forms the basis of Australian consumer protection policy, it is limited in its applications to corporations, sole traders and partnerships, as a result of the constitutional limitations placed on the federal government necessitating duplicate legislation at different levels. It may be a case for rationalisation of the roles of the various Australian governments will be required if a truly national consumer and business policy framework is to be achieved.

So in conclusion, let me say that the REIA supports the review of Australia's protection framework and believes there is a case for change, that we submit it's overwhelming. There are many instances of regulatory gaps, inconsistency and overlap that must be urgently addressed to ensure that consumers are empowered and protected, while maintaining a competitive business environment. Similarly, a balance is needed to ensure that consumers assume their responsibilities for their actions. We look forward to making a detailed submission in due course, and again reiterate we welcome the opportunity to speak with the commission.

MR FITZGERALD: Good, thanks very much, Bryan. We'll now open it up for discussion for the next 20 minutes or so, till about - or a little bit shorter than that. So, Philip?

MR WEICKHARDT: You raised the issue about, you know, national laws and national harmonisation or uniformity. In pushing for that, would you like to comment about the issue of national versus state by state or territory by territory enforcement. I mean, there have been people who have put to us previously that it would be good to have uniform laws, but expecting a central agency to enforce these at the level of individual consumer detriment is probably unrealistic; and yet, obviously your dream of having complete uniformity is affected by variations in enforcement activity at a state or territory level. So in terms of your model, are you suggesting you would like to see national uniformity in both the regulations and the enforcement regime?

MR STEVENS: I think it has to be - whatever the regulations are, they have to be uniformly enforced. You can't have one enforcement in New South Wales and different one in Queensland; that simply wouldn't be appropriate. I think you're not starting with a clean sheet of paper. We are a federation. Unless that changes - not about to change any time soon - we have to work within that framework. So that said, I think we're looking for harmonisation, truly national, where you can do it; and that's the way it would have to be. But that relies on the eight states and territories all agreeing to harmonise appropriately.

MR WEICKHARDT: I guess it would seem less of a jump to harmonise nationally but to retain enforcement locally, which is what's happened, I think, in consumer credit - at least, there's a model for that. But to harmonise and relinquish all power to the Commonwealth would be a big jump.

MR STEVENS: We're not suggesting that. I think it's impractical, I think it's unachievable. We're simply not suggesting that. What we're saying is, it should be a national approach where you can practically do that. We believe there should be one privacy law, there should be one Trade Practices Act. But when you get down to actually drilling into specific industries on which form you can use and all the rest of it, the facts of life are more complex than that. So for example, trust accounts and the financial sector intertwine with real estate practice to the extent that other rules will govern how people conduct their business or consumers are protected.

MR FITZGERALD: Can I ask a follow-up question. Why do you think the harmonisation in your area has been so difficult? Taking Philip's point, it's almost a given that in relation to real estate property assets the states will continue to be involved in the regulatory arrangements for that particular asset. But again, the nature of risk is unlikely to be varied from state to state, so therefore the fundamental premise of having difference probably does all fall apart. So in your assessment, given you are close to it, why do you think harmonisation in this area, the real estate area, has been so difficult to achieve?

MR STEVENS: I think there's two broad reasons for that. One is the philosophical, and we deal with that on a daily basis in Australia because we are a federated arrangement. So a New South Welshman will think he's got a better idea than a Victorian, and that permeates through many areas of our business and consumer areas. So that's the philosophical sort of side of it. The practical side of it is that they're not starting with a clean sheet of paper. So for example, as I cited, the definition of what constitutes a real estate agent, or even what he's called, is different around Australia. So until you can actually get those fundamentals agreed, trying to go from there towards firstly harmonising practice, and secondly having truly effective mutual recognition, is a very difficult task.

MR FITZGERALD: We might come back to that. Gary?

MR POTTS: If I can just try and bring it down to a practical level a little bit. I mean, understandably in the time available you kept your comments at a general level, and I imagine in the submission there will be a lot more detail. But I'd be interested in getting some feel for some practical examples that fall within the sort of areas that you've mentioned; gaps, inconsistencies, over-regulation, duplication, and how significant they are in terms of being able to operate firstly within state boundaries and across state boundaries. You've talked about these problems, but you've given no specific examples where you think issues need to be addressed quickly and are having a significant detrimental effect.

MR STEVENS: Let me start with your second question first; the effect. The effect is if you want to sell property here in the ACT you need a licence to operate to do that. If you want to sell property across the street into Jerrabomberra, you need a New South Wales licence to do that. So what that means is you then need to go to New South Wales, either get a licence or apply for mutual recognitions, which inevitably is not fully effective mutual recognition; in other words, there would be recognition of prior learning to an extent, but then they might say, "There are several competencies that we require you to do here in this particular state, so we'll credit you with this but you have to go and do a course to do these." Having done that, there are then CPD points that you have to do annually, or whatever is required in each of the states, and they're all different.

So you've got to pay for the cost of two licences and the training that goes with that, and the ongoing training, and you have to wait the time that it takes to do all of that; so you're not productive in terms of your business while you're doing all that. So the effect is it's actually holding business back. So we talk about globalisation, and yet here we are to practice across an imaginary line between two towns you need two licences. I mean, you'd have to say, in 2007 why don't we have a national driver's licence? I mean, this is a no-brainer, isn't it? Why do you have to have a driver's licence in each of the eight states and territories? I can't imagine for the life

of me why that should happen.

In terms of the inconsistencies, just little things, if you boil it right down, you'd have to say little things like registering for an auction. Some require registration, some don't. Some require that you use a paddle, some don't. Some have a cooling-off period, some don't. Now, that's through every bit of real estate practice. It's largely the same, but there are sufficient differences that would confuse the consumer, and certainly difficult for anyone to get a licence to practise across different jurisdictions.

MR POTTS: I think we'd certainly be interested in the detail in your submission - - -

MR STEVENS: We could certainly list some of it, yes.

MR POTTS: Without doing it here.

MR STEVENS: Yes.

MR FITZGERALD: Yes, and one of the terms of reference is to look at unnecessary regulation. To date, not too many people have given us examples of that, but I'm sure in submissions they will. But just one of the issues for us - and real estate comes up quite a lot - in relation to where generic and specific regulation should be used, it strikes us that a lot of the regulation that's been introduced into the real estate area - and I'm not talking about the forms and that, but I'm talking about the general regulation - is to try to prohibit practices which would generally be covered by the Trade Practices Act or the Fair Trading Act, for example misleading and deceptive conduct or misleading and deceptive advertising or representations.

But what's been put to us is explicitly in relation to real estate, that it's actually more cost-effective to have a particular piece of regulation around real estate that covers these issues. Real estate agents know what the game is. The consumers can readily find it and regulators can easily regulate it. And one of those issues, for example, just a minor issue - not a minor issue, but a specific - is for example dummy bidding. The states have variously regulated that. Whereas on a general reading you might say, the Trade Practices Act and/or the Fair Trading Acts would cover that. But some have said to us also the industry itself desires specific industry regulation, that it actually wants certainty and therefore it is one of the drivers for prescriptive regulation rather than relying on the more generic provisions. So I was just wondering if you have a thought about that.

MR STEVENS: I haven't seen the argument for more prescriptive regulation, I have to be frank, Robert. I don't know where that came from. You could enlighten

me.

MR FITZGERALD: It's about certainty, trying to say what is misleading and deceptive conduct; so in relation to real estate there is this desire for certainty. As you know, small businesses often like the tick-a-box approach. They can tick off the 10, they're happy; whereas larger businesses are quite happy to deal with the more general aspects.

MR STEVENS: Look, I think I go back to my opening statement. We would advocate that less is better. So in other words with the Trade Practices Act, which is a general application across many industries; in order to get some certainty we worked with the ACCC and produced a reasonably comprehensive document on what the Trade Practices Act means for real estate agents in detail, particularly with respect to misleading and deceptive conduct. We actually cited examples of things you can or can't do. And that went down very well with agents. It's the most downloaded document from our web site constantly, and real estate practice complaints went down 16 per cent in 05/06 as a result, we think, of that sort of approach.

MR WEICKHARDT: So did that occur before the legislation on dummy bidding, for example, or afterwards?

MR STEVENS: Probably about the same time, but bearing in mind that different states around Australia took it up with a different verve. Some did, some didn't. We certainly took the view four or five years ago that it shouldn't be, and we were advocating to get rid of it.

MR FITZGERALD: The practice?

MR STEVENS: Yes.

MR FITZGERALD: But you're favouring - just if I can understand your position - you would still favour certainty, that is, a capacity for real estate agents and consumers to understand precisely what misleading and deceptive conduct might cover. But your approach would be to do it by way of a co-regulatory approach, which would involve an industry based code of practice, for example; that approach?

MR STEVENS: Not necessarily an industry based code of practice, but certainly some sort of guidelines in a co-regulatory sense. In so doing, you axiomatically remove the temptation for prescriptive legislation across the eight states and territories. So it has a twofold effect. The first effect is you inform business of what they can and can't do. The second thing is that you are dissuading the eight states and territories to take their own individual action to do something.

I mean, look, there is a political factor here, let's be frank, and that is this: where there is market failure in a state or territory, that government in power or the opposition at the time want to be seen to be doing something on behalf of the electorate. So there will be a very quick reaction to that which usually results in more prescriptive regulation, just so that they can say, "We've fixed that." We don't know if that's really true, but it's a good look from their point of view. But it does then take us further down the track of disharmony in legislation.

MR WEICKHARDT: Can I just follow up that briefly, because I've heard two sides of this argument about, specifically, say the dummy bidding side of it. One was that, okay, the Trade Practices Act always sat there and misleading and deceptive conduct was always there, and yet here was an industry where dummy bidding was rife. It was just accepted practice. Anyone who went to an auction for decades knew that it happened. So there was no enforcement by either the ACCC or by the industry. That's what led to states introducing specific legislation. But the other side of that is that I think Graeme Samuel is on the record saying the states have now introduced specific legislation about dummy bidding, but they've done no enforcement of it either. Would you like to comment on how you see both sides of that coin?

MR STEVENS: I guess there's a couple of things in there. The first thing is that dummy bidding in auctions wasn't restricted to real estate. It's in art auctions, it's in motor vehicle auctions, it's been in any number of auctions for decades, if not hundreds of years. I think it just became a standard practice in the way of doing business until suddenly it was described as being misleading and deceptive. I think as soon as the red card was handed up, then people took to it very quickly, generally speaking; certainly we did. As I say, about four or five years ago at the national level said it's got to stop, and the institute in Sydney has got to stop.

MR WEICKHARDT: Who flashed the red card?

MR STEVENS: I don't know that you could attribute it to any body or organisation in particular at the time. I think it just became a growing concern at the time in a hot property market. I think that was probably one of the symptoms of a hot property market.

MR POTTS: If I could just follow up here, it wasn't possible to address the problem through self-regulation? Was that because your membership wasn't comprehensive of the real estate industry?

MR STEVENS: No, I wouldn't agree with that remark. I would say that we did undertake to do that, and, for example, the Trade Practices Act, IMs with the ACCC

does say dummy bidding is outlawed. As I say, I think that's been a very successful way to do business. It was just simply at the same time, and the point I made to you earlier that the political aspect of it is that governments wanted to be seen to be doing the right thing and so they also acted very quickly when restrictive legislation was introduced variously around Australia at the same time. So I don't think that's a rightful conclusion.

MR POTTS: Are you suggesting that legislation wasn't necessary?

MR STEVENS: All I'm suggesting is what was. So what I'm saying is that at the time that the states introduced it, we also took to it with verve to stamp it out. That's all I'm saying. I'm also saying is by having prescriptive regulation you will inevitably have different legislation around Australia, and if part of your remit is to make sure that you remove those inconsistencies, I think it's a point you should note.

MR FITZGERALD: We're going to run out of time today, and we've probably got five minutes at most, but I'm going to move to the investment side of this equation. We've heard, and you've mentioned it yourself, that there still seems to be a substantial unfinished business in relation to real estate investment advice and mortgage brokers more generally about taking the advice.

Can you tell me what the institute's view might be as to what is the effect of regulation, and where should it be in national, state and so on in relation to investment advice concerning real estate. You mentioned a comment which you might want to clarify that you're impacted by some of the financial services or your financial services regulation in your real estate activity, but one of the issues we're looking at is the whole issue of financial product, particularly financial lending. The real estate one is one of interest to us.

MR STEVENS: Currently under the Financial Services Reform Act, as you may know, real estate agents are carved out - that's the word they use - from that legislation. We clarified this with ASIC a few years ago, formally, I might add, to make sure that our people were operating in compliance with the legislation. Essentially it boils down to this, you need a real estate agent licence in the state or territory in which you practice in order to be able to sell property. Providing you stick to the sale of property and don't compare it with other investment assets, like shares, gold, oil or whatever, then all you need is a real estate licence. The boundary, generally speaking, is that once you compare property with other assets as an investment, you've overstepped the mark and you therefore need a financial services licence. We see that as being the fundamental point, I guess.

It currently is part of the FSR and we'd like to keep it that way, and we've been advocating that for some time in submissions that we made to those two inquiries

and subsequently in our lobbying activities, at both state and federal level. I think the impasse appears to us to be that on the one hand a state, territory government see it as a financial services issue, not a property issue, and I think the federal government sees it as a property issue which rightly belongs with the states because they collect state property taxes and all the rest of the things that go with that, and therefore they're not prepared to consider it as a Commonwealth financial services issue.

From our point of view, we see it as a financial services issue very clearly. It's not a property issue. In other words, it's advice. If you have a look at how Henry Kay operated, he wasn't actually acting as a real estate agent would. He would invariably - and there's still websites around which ASIC closes down occasionally where, "We will make you a millionaire by next Tuesday. All you need to do is come into a free seminar for an hour," and then dupe you into charging thousands of dollars to do a course. Having done the course, they will then say to you, "Well, we've got some property that you might like to buy. It's at a discounted price and if you haven't got any finance, we also have the ability to be able to finance your purchase at a discounted price," which, of course, means higher interest rates. So there are a number of different arms to how they operate, none of which relate to the normal High Street real estate agent selling property.

MR FITZGERALD: Can you explain to me, given that you're right, there is a division of opinion between the states and the Commonwealth in relation to this issue, and you've, I think, articulated why that is, if you were to say that real estate investment advice however you define that is in fact transferred to the Commonwealth's responsibility and therefore probably administered through ASIC, does that pose problems for the Commonwealth or not? Are you able to neatly separate the transaction relating to the property and the advice that goes around that, from the investment advice which would sit within the Commonwealth? So you've now got one part of state and one part of Commonwealth, are there problems in that separation?

MR STEVENS: We don't think so, and we have a definition of that, and I'll be happy to share that with you if you actually want it, if it would help.

MR FITZGERALD: It would very much help in the submission.

MR STEVENS: All right. We'll certainly do the definition of that for you. I don't see that it is difficult to separate, and I don't think it's difficult to enforce insofar as the Commonwealth already enforces financial services issues through ASIC and through a lesser extent the ACCC. So I don't see that that's a problem.

MR WEICKHARDT: Another option that's been suggested to us is that the ACCC

had carved out of the ASIC, sort of, jurisdiction, but it's been put to us that if the Trade Practices Act and the ACCC had jurisdiction across the entire territory, they could have a memorandum of understanding with ASIC about what they did and what they didn't do, so in a day to day functioning sense there would be some sort of order in that. But when issues like the Henry Kay issue arose, if it was clear that the ACCC had jurisdiction over the entire area, then they could take action on a Henry Kay type of issue.

MR STEVENS: Look, my understanding is that one of the systemic problems with Henry Kay was that there wasn't a clear demarcation line between ASIC and ACCC prior to the event.

MR WEICKHARDT: Correct.

MR STEVENS: As a result of that event, there has been, as I say, these inquiries; and regardless of no report having come out I think that ASIC and ACCC have been talking together and they have now got clearer demarcation lines and responsibilities between the two, and they're enforcing that at the moment, and I'm aware that they're looking at these web sites and what have you in a more proactive way than they did before that event happened. Now, whether or not it's about right at the moment, that's a question for Jeff Lucy and Graeme Samuel, not me.

MR WEICKHARDT: I guess the question I'm putting to you is accept that specific action or understanding might solve a retrospective problem; solving it generically for all time might be done through the action I talked about of allowing the ACCC to effectively have jurisdiction throughout, which would mean any new boundary issue would be removed. From your point of view, would that work?

MR STEVENS: Look, we can work with any government agency. We currently have a very good working relationship with the ACCC, and we work well with the ASIC. So I mean, I don't propose to give you a yes or no on that question, simply because I don't think it's my purview to do that, and I think it's more complex an issue than you would paint insofar as there are financial services issues for which the ACCC is not responsible per se, but they are generally responsible in the sense of misleading and deceptive conduct. I think that requires a very sophisticated approach to make sure that you have the two working together in harmony.

MR FITZGERALD: We're running out of time. I just have one final question - I don't know about my colleagues. That's in relation to mortgage brokers and mortgages generally. Do you have any particular views at all that would be of interest to our inquiry around that area, the finance sector itself as it impacts on real estate or not?

MR STEVENS: Did you have something particular in mind?

MR FITZGERALD: Yes, it's the same issue about real estate investment. There's an issue about where should mortgage brokers be regulated and so on and so forth. So it's just whether you had a comment on that. Well, you might take that on notice.

MR STEVENS: Let me take that on notice. The quick answer is we haven't given that a lot of thought, I'd have to say, because they haven't impacted on us to date.

MR FITZGERALD: No, that's fine. Any final questions? Good, thanks very much, Bryan. That's terrific - - -

MR STEVENS: Okay, thank you for the opportunity.

MR FITZGERALD: We look forward to your submission.

MR FITZGERALD: Okay. I think David is here, and others, so if you want to come forward. Thanks, David and Jan. if you could give your full name, the organisation you're representing and your position within it. Then if we've got 15 or 20 minutes of the key points you want to raise, and then we'll have a discussion in the same manner that we've had previously.

MR TENNANT: Sure. David Tennant. I'm the chairperson of the Australian Financial Counselling and Credit Reform Association, and the director of Care Financial Counselling Service here in Canberra.

MS PENTLAND: Jan Pentland. I'm the secretary of AFCCRA.

MR TENNANT: Thanks, Robert. I don't think we'll take the full 15 or 20 minutes on the opening statements. They are just some brief and general observations. The Commission I think is aware that AFCCRA is the national peak body for financial counsellors. Apart from some project based resources, AFCCRA does not receive recurrent funding for its activities, so it largely relies on the enthusiasm that waxes and wanes, I have to say, of its volunteer counsel, which includes a representative from each of the states and Territories.

AFCCRA acknowledges and thanks the Commission for the manner in which it's approaching this important review. When the review was first mooted, there was a sense amongst consumer advocates working directly with vulnerable and disadvantaged consumers that the outcomes were in many ways predetermined and that the focus was entirely on reducing regulation. So we've been extremely pleased to see that the Commission is engaging with the issues in a very thoughtful way. We also appreciate the effort that the review team and commissioners have made in meeting with a number of consumer representatives in advance of these hearings and written submissions; because for us, in a disparate and under-funded sector dealing with issues daily of market unfairness and exclusion, those meetings have provided consumer advocates like financial counsellors with a sense that their views and their work is appreciated. It's not always the case that we get that message clearly, or even sometimes at all.

We have provided the Commission with an indication of the broad issues that our written submission is likely to cover, and it will be constructed around three key themes, but focusing in on some of the questions you've raised in the issues paper in doing that. Those themes are, firstly, where competition does not deliver advantages evenly or at all, (2) effective versus ineffective consumer regulation, and (3) the lack of investment in consumer capacity in Australia. As appropriate, that submission will draw from current experiences in the provision of services to vulnerable and disadvantaged consumers, because we are very heavily focused on that service delivery end.

One item that will feature prominently in AFCCRA's written submission and that I would like to just refer to briefly today, is the exponential growth in the level of personal debt being carried by Australian consumers. The term "exponential" isn't used in this context because it is a motive, but because that's the geometric progression of the growth. The level of consumer debt in Australia is in excess of 150 per cent of GDP, and the annual rate of that growth of debt since 1963 has been almost 4 per cent. The boom areas seem to be in credit and charge cards, and mortgage debt. The fallout from both where those debts become unaffordable hits financial counselling agencies, given the role in front line response to personal financial crises.

The mortgage debt explosion is particularly concerning, and whilst the subprime home lending market in Australia is not as large as that in the United States, the growth in that segment of the market has been both rapid and dramatic. It has forced unhealthy changes in the mainstream market, and according to the evidence of foreclosure activity around the country is closely linked with significant increases in the incidence of people losing their houses and facing personal financial ruin. We may not have a US-type subprime crisis in Australia, but many of the ingredients for just such a calamity to unfold here appear to us to be present.

Why are debt levels in the home lending market relevant to this review? AFFCR would suggest that there are several possible reasons. The protections and policies we have now have not prevented or inhibited the growth of the substantial potential problem. At a national level we have very few, if any, easily identifiable facilities to interpret, monitor and advise on the risks that such problems produce, particularly for the demand side, who after all are the ones who face the immediate and most dramatic consequences. Our current protections and policies seem ill-equipped and poorly connected to be able to deal with the possible results of a large-scale consumer credit shake-out.

AFCCRA doesn't draw attention to the debt balloon because it's urging a protectionist response or approach, but as what we would describe as a service delivery equivalent of the canary in the coalmine, we pass on our observations, ask why the situation has become as apparently serious as it is, and urge that attention be paid; and I have to say, at a Commonwealth level those urgings don't appear to us to have been taken up or particularly taken seriously. We look forward to our contact with the Commission as the review unfolds. We'd be happy to answer any preliminary questions today, but some of them, because of the nature of our sector, we may need to take on notice and try and address in our written submission.

MR FITZGERALD: Good, thanks, David, and we've appreciated having the opportunity to meet with you prior to these hearings and do have some views. Your

organisation and your submissions and comments so far touch on a number of key areas that are part of this inquiry. So I'm open to - Gary might start.

MR POTTS: Sure. Just, David, on this question of the increase in household debt that you emphasised, I guess the question is, you know, what's bringing it about? In economic theory you'd be looking to see what sort of market failure is occurring that is leading to people borrowing more than they think that they can sustain in the longer term. I mean, one argument on the other side of the coin, if you like, it may be that the liabilities of consumers' households are increasing through household debt, but equally on the other side of the balance sheet the assets of households are increasing very rapidly with the property market change.

So I guess if you could address for me the question of what do you think the particular market failure is that's occurring that ought to be addressed through consumer policy; because that's what consumer policy is about, trying to address consumer detriment that arises for various reasons, including market failure.

MR TENNANT: Sure. I mean, you're absolutely correct in saying that at the same time that the levels of consumer debt have risen dramatically there have also been dramatic increases in the assets that either secure or stand behind the consumers who are borrowing. As the debt levels and expectations that follow those have grown, so too has capacity to meet the obligations of people that are taking them on. For the lion's share of the community that would be correct. Evidence over a fairly elongated period of time is that most people are meeting their increased obligations relatively easily. But in the last perhaps 12 to 18 months, that evidence has started to turn in the opposite direction, not with dramatic numbers but in ways that suggest a growing problem, and particularly as the property market comes off the boil.

It's interesting whenever there is public discussion of that issue that the hot nature of the property market is always the term used to describe it. I don't have - because I don't have either an economics background or sufficient historical knowledge myself to be able to call up whether there are other markets that have behaved similarly to the property market in Australia over the last few years.

But those rises have been of such a spectacular nature that I don't think it took a brave predictor of what might happen next to say "this is unsustainable", that those sort of increases delivered in a single market in the manner and the rate of increase that was happening would be able to continue unabated. So there had to be some sort of levelling, and when that levelling occurred what would it mean for people who were relying on the increasing value of those assets to remain the same.

In a lot of ways the similarities drawn between what's happened in the commercial market and what happened when governments were involved in house

lending some time ago are I think instructive; because those were built on flawed presumptions that people's incomes would always go in one direction, which was up, and that the value of their properties would always go in one direction, and that was also up.

Those presumptions were proven to be flawed, and what we had was a series of failed government based home lending projects that variously led to things like home fund litigation in New South Wales and some other quite calamitous outcomes around the country. We had a similar though much smaller fallout here in the ACT, and in fact Housing ACT, which is the provider of public housing, property and finance in the Territory, was often mortgagee in possession - not just of two or three properties in the one suburb at the same time, but potentially of two or three properties they were trying to sell in the same street at the same time.

So you saw equally dramatic movements in the value of property prices overnight and they weren't spread evenly across the board. I think that we're starting to see the beginnings of that in the fallout from the property market now. It's not going to be consistently delivered across all income streams and all demographic groups, but I suspect if we could get some data that started to compare property prices not just between the capital cities but between regional areas within the capital cities, outer suburbs versus inner city versus, you know, blue ribbon parts of cities, we would see some disturbing outcomes.

Your question was how do we flag that or understand that as some instance of regulatory failure. Perhaps more important is the middle section of the issues that I raised before of failing. We don't have anywhere that is consistently or reliably gathering that information, interpreting it and passing on signals for policy makers; so that by the time we deal with that type of fallout it's a crisis. We don't have I think very many tools in Australia to be able to gather the information as it's unfolding and do something in advance of it being a crisis.

MR FITZGERALD: Can I just follow up on that - just on the mortgage side, and we'll get to the credit in a moment. At the moment we have a number of instruments in place that regulate variously financial lending, but they are various as we understand. But in relation to the mortgage market, the property market, most of that is regulated by the Commonwealth government as I understand it, and all of those that are providers of mortgage funding are subject to some form of regulation. Would that be correct? There seems to be an issue around mortgage brokers and where that sits into the picture.

Is your approach - again, I suppose the sorts of range of options that you're looking at, is it to restrict the availability of that mortgage finance to particular groups or categories of individuals? Or is it at the other end of the scale, simply to

ensure that they have a greater understanding of the commitment and the risk that they're entering into?

In that we've got all the variations on those themes, and when we look at it people are saying, well, what you've got to do is restrict the product; some of them have got to say you've got to change the terms and conditions of the product; some are saying you've got to change the fact that they must have intermediaries, financial advisers; some are saying you've actually got to have compulsory assessment, what have you. So just on the mortgage side where we're talking about big-ticket items secured against property - - -

MR TENNANT: Yes.

MR FITZGERALD: What are the range of instruments that we need to be looking at, or what is the approach, I suppose, more simply, in that spectrum. Some would say that we've actually not got a bad balance now, it's just that there are - you know, there are really just risks that are - normal risks that are being played out at the present time.

MR TENNANT: There was an odd situation when the senate was inquiring into the possible links between household debt and the current account deficit. There was a submission made by the Australian Bankers Association that the consumer movement found itself in the odd position of agreeing with most of it wholeheartedly - and that's not always or even often the case when the bankers say something at that policy level.

They made the observation that although the deregulation of the mortgage market appears to have presented more options to consumers and included more consumers and produced a degree of extra competition within that market that did both of those things, the competitors don't start from the same footing and those that are deposit taking institutions are required to live up to a set of prudential standards that are overseen by APRA. In doing that they must show that their approach to lending meets certain standards that are the new entrants into that market against which they were most directly competing did not have to meet.

Now it's beyond us to work out whether the prudential standards are the right lever to have pulled in relation to that non-conforming or subprime lending market that's grown in Australia, but that growth has been meteoric. If you see a shift in the share of the housing market from about 2 per cent for non-traditional non-mainstream lenders and 98 to the banks, and mainstream providers to 10 per cent for the non-traditional and 90 per cent to the banks in about two years with expectations that it may go to a full quarter of the market within the next five years, then that's a very significant change in a very short period of time and it

requires some extra attention than it is being given.

Within that you've also got the growth in the use of intermediaries. I think in our conversation before this hearing we suggested that even though this is a problem that has drawn this lack of regulation of intermediaries into sharper focus, the problems of not regulating intermediaries properly are not new, they've been around for a long time, it's just that this particular issue has made it more important that we do something really quickly.

MR FITZGERALD: Can I just push the issue just a little bit further. There's two parts of that: one is the regulation of intermediaries, which we are interested in, because, as I say, it's variable as to how that happens. But the second part is in relation to the actual lenders themselves. Are you suggesting that there's a need for the same level of governance arrangements, and to some degree prudential arrangements, need to be applied to the subprime lenders as applies to, as you say, the deposit takers or the banks? Is that your fundamental approach; that the regulation of those lenders is in fact inadequate? Then the second part, which goes really to the consumer, is the advice they receive and all of those sorts of things. Or is that going too far in what you're proposing?

MR TENNANT: The inadequacies that we would point to are less around the vehicle for solving the problem than it is about making sure that those who provide those services and products actually connect with the needs and capacity of the people to whom they're selling. So the problem is that they don't make that connection, they're not required to make that connection, and there's a desperate need for a vehicle that requires them to do just that.

MR WEICKHARDT: It sort of bears on - my question bears on that topic. I've been interested in this community of financial counsellors that you represent, and I understand that they're a disparate group. Some of them are employed by charity, some of them are employed by - well, they're volunteers. I guess the comment that I've received from talking to people that represent these groups is in many cases you're seeing people after the event, you know, the person, the consumer is already in some absolutely dire strait.

I guess that brings me to the theme of my question, that is, the degree to which the financial counselling fraternity could be a more proactive source of advice for people in this area, and then the degree to which that might suggest training, dare I say even licensing, accreditation of that group of people; and I understand that the current training - or we were talking to Marion Meyer, who was in the Financial Counselling Association in Perth, last week, and she was saying that some of the organisations who employ financial counsellors are very good about releasing them for training, others are completely - so short of funds and the people are so busy they

can't get any training and sort of professional development.

I guess I'm interested where the sort of break out of the situation of simply trying to attend to a catastrophe after it's occurred, into a situation where we're helping people who might be likely or prone to get themselves into financial disadvantage or spotting the problem early. Would better funding, would better training of financial counsellors help in a more proactive way, and maybe in this intermediary way that Robert was talking about?

MR TENNANT: Yes. There's no doubt - Jan will have some views here as well - the work that we've been trying to do as an association to encourage discussion around accreditation issues, around training issues, has been a priority amongst competing priorities, but all being attempted with no new resources to actually support those activities. We do it because we know we have to do it. We do it because also the people who seek assistance from financial counsellors have a right to expect that there will be some quality and some consistency attached to the information that they're receiving; and we also have funding arrangements such as they are that will see the resources that exist now disappear if they don't continue to meet the rising expectations of understanding changes in the market and keeping pace with training.

But the nature of those funding problems is very complex. We have been approached by more industry bodies in the last two years for some sort of corporate social responsibility input funding directly for the sector than ever I have seen before; and we're encouraging discussion of staying true to the values of financial counselling while working through those options; the establishment, for example, of independent foundations that might suitably resource activities where governments are either unable or unwilling to add to the resources we currently receive.

But what we would desperately like to see is some joined-up communication between those bodies within governments and across jurisdictional boundaries that do currently fund financial counselling, so that they could usefully share information with each other and actually be part of a cooperative solution. There is a great tendency within those bureaucracies - and I'm sure it's not malevolent on the part of the people who oversee the programs individually - but governments are not good at sharing information in Australia, and that's to the great disadvantage of consumer advocacy.

MR POTTS: David, if more effort was put into this area of ex ante access to financial counsellors before people take on the liabilities, for it to be effective people actually have to use the system, take up the opportunity. Do you think that would happen in practice on a voluntary basis, or do you think it would be necessary to mandate it in some way?

MR TENNANT: For it to work in a financial counselling sense, it would have to be on a voluntary basis. You will not have an effective connection with your client group unless it's actually something they're seeking and willing to engage with. You're talking, in a sense, about generational change, where the capacity of the sector to meet the need is matching the increase in that need itself. At the moment, we don't meet the need effectively that's already put upon us, so what we end up doing is the equivalent of ambulance chasing within our - - -

MR POTTS: But as I understand the service you provide, it's after someone has taken out a loan and got into financial difficulty. I think the issue that Phil was raising was whether something more couldn't be done at an earlier stage, that is, before people take on the liabilities and potentially get themselves into a problem situation. But of course, for that to happen the individuals have to be willing to actually have the benefit of the financial counselling. Do you think that would actually happen in practice; someone who's looking to take out a loan for instance would actually seek out financial counselling?

MS PENTLAND: Look, I think that's a broader area, if you like; and we have done some work with the Financial Literacy Foundation, particularly about prevention. At the moment we are caught in crisis work and we are not able to meet - we are not able in any sort of sense to meet the demand for that. I think what we can add to the current work that's happening around financial literacy - and that's going to take a long time - in particular we can add what we know from our work in regard to disadvantaged and vulnerable people.

Now, the Financial Literacy Foundation itself would acknowledge that their efforts so far have been in the mainstream really, and they would also say that's a large piece of work that they have just engaged in. With our target group, the people we work with, it's more complex. I guess, Gary, to answer your question would people engage before they take on liabilities, probably not, on an individual basis. I mean, we're really looking here to increase people's financial literacy across the board, if you like. My view about that is that that also needs to be based on giving people, particularly our target group, skills and confidence, because the markets they're going to operate in will change all the time; so giving specific information is not useful. We're working with people who have very little capacity to have confidence in themselves, if you like, to operate in the market.

Just to comment on - but we have a lot to offer, I guess that's what I'm saying, to the Financial Literacy Foundation, and in that broader discourse, if you like, about prevention; because it's very important. But however, we are caught in crisis work and we can't meet that demand, anything like it. Some of the things that David mentioned in relation to the sort of crises that we are seeing - and I'll just go back to

subprime lenders and mortgage broking, if you like.

When people in particular - and this is growing into being not our traditional clients, more middle-class clients - but certainly when people get into financial difficulty, because of the rising levels of debt they will look to solve that, and what they will find when they're looking for a solution - and this probably relates particularly to our client group - where they will go is to advertisements; and whether they're on the television or whether they're in the local newspaper where there are groups advertising their services, if you like, that are certainly, at the end of the day, hardly to be beneficial.

Just to give you the sort of example that we see fairly constantly, someone may get into difficulty with paying their mortgage and paying their credit cards. Their response to that will be to perhaps ring some number that's in the local newspaper, saying, "Are you in debt? We can help you. Ring us." They then go into a series, sometimes, of refinancing their mortgage, so what we see - to cut a long story short - is that people who were in financial difficulty at the start but maybe had a \$100,000 worth of equity in their home, by the time they perhaps get to us they've got 10,000 because it's been eaten up by unscrupulous operators in the market, if you like. So we'd certainly like to see better regulation of those activities.

In terms of prevention, I guess there's been a reliance for a long time in terms of consumer protection on disclosure, on information giving. What we know that it doesn't work for our target group, and I would question whether it works for a lot of people. When you get a home loan document that's 40 to 50 pages, people probably don't read it and they don't understand it if they do. When credit card contracts - you know, we all know what the fine print is like in the 20-page booklet that you get. If you sign up for a mobile phone you don't even get that; you've probably done it over the phone, and then when you get into difficulty you may or may not get the 50 to 100-page document that sits behind that. So while it's important for part of consumer protection to be information, it needs to be concise, it needs to be understandable, it needs to be engaging; and currently what we've got just doesn't work.

MR FITZGERALD: Can I ask this specifically then. In relation to that questionable group of lenders to whom people go when they're already in trouble - and you've indicated that you think there should be some greater regulation. Can you give me some flavour as to what that regulation might be over and above what exists? I want to get to consumer credit specifically in a second and Uniform Credit Code, but when you say that I'm still not sure what's the nature of that extra regulatory intervention that you think for that particular market group.

MR TENNANT: Robert, some of it might be answered by effective enforcement of what already exists. The discussion before we commenced giving our evidence was

around the need for varying levels across jurisdictional boundaries of regulators who focus, the ACCC and ASIC, at a big picture national level, and to do the enforcement in a local jurisdiction. That is a terrific theory, I think. It breaks down in reality, and where you have laws that head off in slightly tangential directions at local level, you also get confusion about how and when those laws will be enforced.

I have already expressed our preference for the development of principle based rules like the unfair contract terms legislation in Victoria to be taken up and replicated nationally. There's no reason though in the state in which that does currently exist that credit has been carved out. Many of the problems that we're talking about when you're looking at the users' end of the credit market are simply about trading fairly or not. If one sets up one's business exclusively to provide services to people who are vulnerable, and you in your marketing and contracting aim to exploit the vulnerability that people present with, then it's pretty easy to tackle that under legislation that deals with unfairness and unconscionability, whether it's in the terms of the contract itself or in the conduct.

MR FITZGERALD: You might just explain to me why, when the unfair contract term of legislation was introduced in Victoria, why was consumer credit carved out; because there was already a consumer credit code; or for some other fundamental reason?

MR TENNANT: The answer, I think, is the uniformity agreement that sits behind that - and we're not advocating that uniformity be tossed out, it's extremely beneficial. But the processes that ensure that uniformity is maintained and those that are overseen by the ministerial council and SCOCA, and the particular working group in this area simply don't work or don't work with sufficient speed that they tackle the problems as and when they need to be tackled.

A very good example of that is the time delay between the recommendation that that floating hardship threshold that deals with people who need to ask for variations on their credit contracts because they are experiencing hardship can access that mechanism. When the credit code was first delivered in 1996, that threshold was set at \$125,000, and very quickly, in fact even before the legislation started, that level was too low and everybody knew it was too low.

The post-implementation review a year later recognised that it was too low and recommended that it be changed, and it took a full five or six years before we actually delivered the mechanism where it was increased. When it was increased, it went up by almost \$200,000 overnight. That type of process that slows us down in the bureaucracy that maintains uniformity has to be fixed; and can be. It's just a matter of the jurisdictions that were involved taking the job of delivering the pointy end more seriously than they currently do.

MR FITZGERALD: A question just following on from that is, is your association recommending - and you may not have come to a position - that consumer credit in fact moves to the Commonwealth, or are you recommending that the current arrangements where it sits at the state level simply be improved? Or do you have a sequence of best options and second-best options? Again, you may not want to commit at this stage, but one of the issues we're looking at is everything to do with financial lending, and part of that is what it covers but where it should sit in terms of both the actual regulation and then the enforcement of it.

MR TENNANT: It is one that we should take on notice and talk more with our membership about, but it isn't committing too early to say that there have already been recognitions within the consumer movement that carving credit out of the financial services reform process feels artificial.

MR FITZGERALD: So you'll take that on note and give us a - - -

MR POTTS: I'll just change the subject a bit and pick up an issue you raised in the cover note here, which is about lack of investment and consumer capacity in Australia. You mentioned, as you put it, the wholesale defunding of consumer bodies in Australia. That's something we've picked up in moving around the capital cities, and it's something that's happened it seems not just at the Commonwealth level, but also state level, where governments are of different political complexions, of course. It's sort of a bipartisan issue, if you like. I mean, as a body that operates, you know, in a consumer policy area for disadvantaged and vulnerable groups in particular, could you give us your perspective on why you think that has happened; Why there's been, if you like, growing government disinterest in funding such bodies and consumer associations.

MR TENNANT: I don't think it's unique to the defunding of the consumer sector that voices that present the array of views in the community have gradually been diminished or have had resources that might have assisted those voices to speak out removed in recent history in Australia. Governments seem to have become more timid about assisting the community to promulgate a variety of views. That's perhaps a bigger question than we are able to answer. But in terms of how it's impacted on our sector, it has meant that not simply the policy development, but also those more fundamental characteristics of assisting a sector to get better within itself over time have been taken away from us. I have moved from being predominantly a provider of services directly to consumers personally, to someone who manages the delivery of those services.

It is incredibly difficult to provide to staff adequate working conditions, opportunities for training and professional development, any sense that there is a

career path within their sector, when the funding of the activities that they undertake is so tenuous and reducing in real terms every year. In fact, many of the funding programs that we source our money from are dealt with on an annual basis only; and even though the agency in which I work has been the predominant provider of these services in the Canberra community since 1983 - so it's, in a Canberra sense a long-lived community service provider - there are still some activities in which we need to engage in a fully competitive tender process every single year. To me, that's crazy in such a small agency. So it's not just about the resourcing of the broader activities and the broader voices, but just in the fundamentals of delivering the activities themselves.

MS PENTLAND: Maybe if I can add something that goes back perhaps to Philip's initial question. Perhaps it would be useful in our written submission to the review for us to include some information about our sector more generally. I think there has been - probably five years ago if we'd said financial counselling, the recognition we would have got across the board would have been minimal. Because of the work that the peak body has been doing, pretty much totally under-resourced, that has changed. There is now quite a bit of recognition about not only our existence, but what we do, and that we're a valuable service. But it is very diverse. The state funding is extremely dissimilar.

We are working very hard, even though we are seriously under-resourced to the tune that our just project based funding this year from government that we get is \$15,000. But we are working hard on those issues of training, of accreditation, of sharing of information, of professional development. Those are issues that are very much on our radar, and we are working on them. Perhaps it would be useful for us to include some of that more specific information.

MR FITZGERALD: From the questions you would have already heard, and from conversations we've had, we are genuinely interested in how you empower consumers to be able to access whatever rights they have and to seek redress or remedies; and clearly both systemic and individual advocacy together with whole issues around access to legal support and services is of interest. So any information you can provide to us is critically important. We're almost out of time, but are there any final questions, Philip, or - - -

MR WEICKHARDT: Can I just tease out a little bit more about this issue about whether or not the resources being devoted in your sector at the moment might be better used by or better deployed by trying to head off problems, rather than, you know, sort of getting to crisis mode. I mean, my suspicion is that if you were all-knowledgeable about every single credit card bill, electrical services bill, or other liability that individuals have, there would be early warning signs that people were getting themselves into problems. Now, you pick up a packet of cigarettes or a bottle

of alcohol, that sort of says "smoking can damage your health", you know, and gives you some information.

You talked about organisations in a CSR sense wanting to provide some resource. The question is, do the banks or any of these institutions - I'm talking about the bigger end of town now - actually provide some resource to give some financial counselling to people who look like they're getting themselves into trouble? If they don't, is that an area that might be of value?

MR TENNANT: The corporate social responsibility resourcing or offers of resourcing to the financial counselling sector directly are problematic because of the need to separate industry resources from the provision of direct client services. We are leading a conversation on how we manage those conflicts at the moment, and we would be happy to provide a copy of that discussion paper to the Commission. But it is a conversation that the sector needs to have within itself. The separate issue, though, about where perhaps greater energy from industry would be welcomed is in the development of alternative but safer and fairer forms of products for lower income consumers generally.

In delivering a preventative role, one of the great challenges that we would face is that most low income people who would present with the credit products that are available to them in their circumstances would result in us perhaps suggesting to them that there is no way that you can make that particular product safe or fair; and that's because of the great difficulty of the poor paying more for the services they can get access to. Some of the really encouraging activities in the corporate social responsibility sense have been the development of products that enable lower income people to access what you and I take for granted in the market.

MR FITZGERALD: Can I just explore - I just want to touch on that - and I was in Brisbane at public hearings and it came up there. It was put to us that in this product group you have to look at it in the same way as an unsafe product; that there are intrinsically some financial products that are unsafe and cannot be made safe, and therefore should be banned; in the same way, there are some products that are intrinsically unsafe and we do ban them. Is that a good analogy though? Is it a correct analogy? Because one view is you therefore deny people access to that product, the same as you do with an unsafe product; and is that the right intervention?

I was just - your comments - when that comment was made to me in Brisbane at face value there is something to be said about that. A product doesn't have to be a tangible product to be unsafe; it can have other characteristics. But I just wanted your view as to whether or not it is a sound approach when looking at financial products to treat it in that way. You've just mentioned those words again.

MR TENNANT: A few years ago, I would have said, yes, ban them and that there are products that are clearly so reprehensible or the delivery of them is so outrageous or so overtly unfair that the only way you can deal with it is to shut that form of business down. With perhaps the wisdom of a few more years under my belt and listening to some of the arguments around it, I think a more effective mechanism is to put up suitable guardrails; things like effective interest rate caps that are monitored in an active and useful way. You encourage the development of alternative types of products and service provisions that do meet people's needs and means, and an excellent example of some of the partnerships that you can produce in that area has been the development of no interest loan schemes and low interest loan schemes.

Again, they present some challenges to the community sector that does not want, and should not become a kind of an outstation of industry for the low income end of the market. We have a particular role that is about and for the community, and we shouldn't be giving that away lightly or at all. But there are real benefits in exploring ways that you can develop different types of products and sell them and oversee their delivery in different types of ways; and community agencies have shown themselves to be better places to deliver things like no interest loans.

In fact, the return rates when those loans are delivered with proper policies and proper oversight would make some industry groups feel pretty envious. The evidence suggests that those scheme are returning upwards of 95 per cent on the money loaned. That's pretty impressive from people who are told by the commercial lending industry, "We won't lend to you because you're too bad a risk and you'll never pay it back."

MR FITZGERALD: It's also true to say that - and I'm familiar with those schemes, and the figure you've indicated is a commonly quoted figure. It takes place within the context of advice, and to some degree budget counselling or financial counselling as well, doesn't it; so that in the low interest schemes and the no interest schemes that I'm familiar with, yes, that's right, but there's also a support mechanism or an advice mechanism that surrounds that loan. Would that be your common experience?

MR TENNANT: It is. We operate just one of those schemes in the office in which I work here in Canberra, and we've been careful to separate the no interest loan scheme from the day-to-day service provision of financial counselling, because they obviously conflict. But that is not to say that the learnings of both of those types of service delivery don't interact and that we don't provide the clients of both with extra support mechanisms than they would get from the commercial market. And it's right that it should be that way.

MR FITZGERALD: Any other final points? Any other final points from yourself?

MS PENTLAND: Yes, if I can just make a couple of points. In terms of our sector working in partnership with industry, the fundamental point that we would make is that there should be no direct funding of case work from industry, and there's very strong evidence for why we shouldn't allow that. The overseas models of financial counselling have been shown to be flawed in the last four or five years, and it's directly because of their funding from industry. So even if they start off being okay they become flawed by the basis of how they're funded. However, we are at the - - -

MR WEICKHARDT: Can you just explain what happens, what the problem is.

MS PENTLAND: Okay. Most of the overseas models, rather than being government funded, are funded through some sort of collection mechanism. So people go to a financial counsellor, there's a repayment plan set up, the financial counselling agency gets a percentage of the debt that's collected. So there are a whole lot of things in that model that Australian financial counsellors do that they don't do. For instance, they wouldn't look at whether the debt is legally owed, they wouldn't pick up systemic issues and so on. I was at an international ombudsman conference last August and the people who were there from overseas were very envious of our financial counselling model here, because they acknowledge they don't have anything like it overseas. So in order to protect that model we need to be absolutely clear that direct funding of service delivery can't happen.

However, the partnerships we're working in at the moment are looking at where we can, working in partnerships where we're not compromised to provide some funds for other activities like training, like project work, some research and so on. So there is that capacity there. We're also working with industry to - I mean, some of the activities that David has spoken about, the development of step-up lines for instance. Some of the policies that have come out of the financial services industry of hardship policies, lending policies - we've been giving some information and advice to one of the banks around early identification if you like, of people who are getting into trouble. So that's where we can work in partnership; we just need to be clear of what the boundaries of that are.

In terms of going back to the prevention area again, I think any prevention that is going to work properly is a long term - has got to be a long-term strategy. While we work in crisis work at the moment, the value of that crisis work, particularly if it's under our model, is that we are like the canary in the coalmine that David talked about: we can identify real problem areas and raise them as advocates. I think people in government and industry now acknowledge that if we see 10 of these cases then there is probably 10,000 out there. So we really are - I mean, that's a real

benefit that I think we deliver from the crisis end, if you like, and we could be very usefully and actively involved in prevention, but that's a long-term strategy and we simply don't have the resources at the moment. We'd be wrong I think to put those resources in when there is such a demand for crisis work.

MR FITZGERALD: Thank you very much for that and we look forward to your submission. That's been very helpful. Thanks very much. And I know, Brian, you're here, so that's good. Okay. We'll just break for two minutes or so.

MR FITZGERALD: Thanks, Brian. If you could give your full name and the organisation you represent, and then 10 to 15 minutes or so of key points and then we'll have a discussion about those issues. So over to you.

MR DOUGLAS: Sure. My name is Brian Douglas. I'm from the Australian Electrical and Electronic Manufacturers Association, deputy chief executive of that organisation. I would like to confine my opening comments to electrical product safety issues. AEEMA does represent a wide range of electronic and ICT industries, but today I'd like to focus on the consumer product issue, the consumer issues associated with our suppliers of white goods, electrical accessories, consumer electronics and lighting. Electricity is an inherently dangerous product and it comes as no surprise that it is regulated. However, AEEMA's concerns lie with the non-uniformity of such regulation, which of course is at the state and territory level; it results in delays and other problems.

I would like to briefly cite one recent example of this as a case study, just a very recent example where an unsafe work light was discovered or was purchased in Victoria. The product had been registered in Queensland. It was provided to the New South Wales regulator who, after a four-week delay, said, "It's not our issue, it's Queensland's problem," and they sent it on to Queensland. But that four-week delay I suggest is unacceptable for what was patently an unsafe product and should be of concern to consumers.

What do we do about it? AEEMA's preference is to abolish the state and territory regulators and replace them with a single national electrical safety regulator. However, realising that states are unlikely to relinquish their power in this area, even though they seem to have little appetite for it, we suggest that electrical safety regulation should be brought under the jurisdiction of a ministerial council; mirror legislation should be enacted in each state and territory that is complimentary to part 5A of the Trade Practices Act. So that concludes my brief introductory remarks, many of which you've probably heard before.

MR FITZGERALD: That's fine. Thanks very much, Brian. There are a number of issues, some of which you haven't raised today but I would be keen to explore. Can you just explain to me, as I understand it, there is a national regime for electrical goods. So can you just explain that for the benefit of Philip and Gary, because I was familiar with them when we did the consumer product safety, but if you just explain the existing regime.

MR DOUGLAS: In terms of regulation, you mean? Yes. No, the products are regulated at state and territory level, but there is a body that purports - a single body that purports to coordinate the activity among the states and territories, and that is called the Electrical Regulatory Authorities Council, or ERAC. That organisation

has no power, it has no legislative recognition. It is a loosely formed body of state and territory bureaucrats at a relatively low level. I would suggest there is open contempt for the body from one jurisdiction in particular; that is, New South Wales. There is disharmony in the organisation.

One example of that is the fact that this particular body is currently undertaking a review, and in fact AEEMA was invited to submit a representative to sit on a panel, a review panel today. However, it has transpired that New South Wales doesn't want to have anything to do with it. We have a letter from the New South Wales minister to this effect, believing that New South Wales legislation is adequate and there is no real reason for that jurisdiction to join the review. So that I think is symptomatic of the problems confronting that particular organisation.

MR POTTS: Can I ask you, though, whether in relation to the issue of coordination and harmonisation, whether there are issues of substance in terms of the regulatory effect of the current regulations, or whether the unwillingness on the part of the states to do it is just a matter of pride or bureaucratic inertia or what. In other words, is it a substantive issue in terms of economic impact, or is it something different?

MR DOUGLAS: It's our position that the system isn't entirely broken. I mean, historically the system of electrical product regulation has served us reasonably well. But there is a combination of factors. I mean, globalisation, which means much more imported product coming in to Australia, the lack of maturity of some of the regimes from which those countries come, the technical infrastructure of those regimes, together with the fact, I think, that there is no political will in this area, there's no votes in it and so it is a low priority for state governments, conspire to make it a bit ragged around the edges. We're not suggesting that it is entirely broken or that we should throw everything out.

I should perhaps have touched on this before; there is a system of what is called declared articles - electrical declared articles which are considered to be inherently unsafe. They consider such products as power saws - the power saws we buy in hardware stores - irons, toasters, things like that, things which consumers use quite a bit or may use quite a bit but which are intrinsically unsafe; and it is these particular products that are regulated in this declared article system. There are around about 60 such products. That system, we think, has worked reasonably well. We don't think that there is an argument for throwing that system out. We're yet to be convinced that replacing it with a general safety system would result in a better outcome. These products really are quite intrinsically unsafe, and we feel that the regulatory hoops that supply manufacturers do have to go through to put them on to the market are justified.

MR FITZGERALD: Who declares the articles?

MR DOUGLAS: The handful of the states do it. Really, in effect, it's Queensland, New South Wales and Victoria.

MR FITZGERALD: But each state has to declare the product under this declared article system, or can only one jurisdiction or - - -

MR DOUGLAS: No, one jurisdiction can declare it under the Trans-Tasman Mutual Recognition Agreement. It can be sold in all jurisdictions, including New Zealand.

MR WEICKHARDT: Once it has been declared, what are the provisions that apply to those items over and above the provisions that apply to selling another electrical item that's not declared?

MR DOUGLAS: They have to go through a tight testing regime and they have to be certified by the regulator - by the relevant regulator. So they see a test - there is certain evidence that you have to produce to get it certified, like a valid test certificate from a recognised laboratory, for example.

MR WEICKHARDT: Do I as a consumer know that I'm buying a declared item?

MR DOUGLAS: No, you wouldn't. It would be largely - largely consumers are ignorant of this. The only identification is a marking on the products which is not - it is not like an EU mark, for example, or a UL mark in the US. Typically it is the first letter of the state, of the jurisdiction in which the product was certified. For example, New South Wales, if it was done in New South Wales it would commence with the letter N followed by a number. So that would be meaningless, obviously, to most consumers.

MR POTTS: Most of these items would be imported goods. That would be right, wouldn't it?

MR DOUGLAS: Yes. Most of them now certainly would be imported goods.

MR POTTS: So presumably there would be regulatory shopping, so the importer would select the easiest - - -

MR DOUGLAS: That is correct. That is known practice. Queensland has typically been considered to be the easiest jurisdiction for importers to have their product identified.

MR POTTS: So in a sense, don't you, in this area at least, have a harmonised system?

MR DOUGLAS: Certainly it is; it is harmonised to that extent. You're quite correct. But there are anomalies. There is not mirror legislation in each state and territory and you do get different outcomes. I don't want to overstate those differences. To a casual observer there is a harmonised system, but the fact that we do have eight states and territories involved, I suppose it shouldn't come as any surprise that there are some perverse outcomes. I mean, the case I think I cited a little earlier should be evidence of that.

MR POTTS: I'm just trying to get a feel for the significance of the issue now. I guess what I'm taking from what you're saying now is that the system could be improved in a theoretical sense if you like, and also in a practical sense, but in practical terms the system at the moment, although less than desirable, is still not too far from operating fairly well.

MR DOUGLAS: Yes. Look, we haven't encountered a better system. We wouldn't like to necessarily throw out the system that we have of declared articles; and I know, Robert, this is a subject we did discuss when you came to visit us. Having said that, we don't have much experience with any other system of course, but we do believe that the declared article system has served consumers and our members, if you like. Pretty well it's given a level of certainty and the outcomes have been reasonable.

But another thing that I would like to touch on - and we can't separate this issue - is the lack of resources in the states and territories. I mentioned the lack of political will; there is no interest. I mean, originally all of these products were regulated until about 15 years ago by the state-owned utilities, and of course when they were broken up and when some of them became privatised that had to change. The system that evolved is still less than satisfactory from our perspective. I mean, there is not the resources. The state governments do not put the resources into enforcement of the regulatory regimes.

MR FITZGERALD: Can I just get a clarification. Who was the enforcement agency at the state level? Is it the Office of Fair Trading or is it still some form of energy?

MR DOUGLAS: They vary, and that is also a problem, because you have very different cultures in between Offices of Fair Trading and Ministries of Energy.

MR WEICKHARDT: Just to gain a bit of clarification from my point of view, for an item to be declared is it because it's electrically intrinsically unsafe? To use an

example, is an electric chainsaw potentially declared because it's intrinsically unsafe, but a power chainsaw not?

MR DOUGLAS: It is because it is an electrical article that it is declared. Now, that electrical article may have potential to cause physical injury from a blade, for example, and hence the power saw. So it's not just the electric shock factor, it is the injury resulting from mechanical action of the device.

MR WEICKHARDT: But a petrol-driven chainsaw - - -

MR DOUGLAS: Is not regulated under this system. No, it's not.

MR FITZGERALD: I mean, there is an issue as to whether or not some of the items currently covered by this separate regime should in fact be covered by a separate regime, and rather it could be covered by the general consumer product safety regime?

MR DOUGLAS: Yes.

MR FITZGERALD: In the inquiry that we did, we were excluded from looking at the industry specific area such as this, but it is an area in which some products have really not very significantly different characteristics from any other consumer product other than their electrical, which can be covered by mandatory standards or other forms. So it's an area where some products may require certain different treatment, but many of them seem to be able to fit within the normal regime. Can I ask this question of why have you got confidence of putting it under a ministry of council other than ERAC would get you a better outcome, given the high level of criticism that ministry of councils attract?

MR DOUGLAS: I guess for want of a better model. I have to say that our experience with ministerial councils in this context is quite limited, but we feel that or the argument is that if it were under the jurisdiction of ministry of council there would at least be some Commonwealth intervention or oversight, where currently there is not. The Commonwealth to date has had very little input or no appetite for involvement. I think it is mostly because of that Commonwealth, that potential Commonwealth government involvement that attracts us to that model, and what we see as quite a dysfunctional ERAC.

MR FITZGERALD: Can I broaden it out just a little bit. Given that you were the peak body for manufacturers, and I suspect importers as well of a lot of this product, obviously consumer policy is front and centre in relation to the Sale of Goods Act, the various trading provisions of the Trade Practices and the Fair Trading Acts and so on and so forth. I was wondering whether you have any comments in relation to

the general consumer framework that affects your members. We talked about it a little bit at the meetings previously, but I was just wondering whether you have any further thoughts as to the areas of the Sale of Goods Act or the Fair Trading Act or the Trade Practices Act that are of significant concern to your association other than the product safety issues.

MR DOUGLAS: Look, no, it's not an issue that our members have brought to our attention certainly. I would have to say the answer is no, Robert; it's not something that's forefront in our minds. What is forefront in our minds is the - what we see the problems with the ERAC and the current system.

MR FITZGERALD: Can I ask you another question - again it may be the same answer. In our discussions we were talking about the changing nature of the products themselves, particularly in relation to the electronic side of it and the whole area around telecommunication products and so on, and the bundling of those products and what have you - - -

MR DOUGLAS: Converging of those technologies, yes.

MR FITZGERALD: Converging is the word that I should use. Do they present particular issues from your viewpoint in relation to consumers and consumer policy over and above the current stock of products that your members trade in?

MR DOUGLAS: Look, certainly they do, and that is something that I would like to address in our submission to the inquiry. It's an area I personally am responsible for, our electrical division, and it's an area that I'm not particularly well qualified to comment on today. But I would certainly - would suggest that we will address those issues in our submission.

MR FITZGERALD: Just a last comment. Labelling of products is an issue that comes up in the context of this consumer product area. It's also come up in relation to other inquiries the commission has done. I was wondering whether you have any views about the increasing pressure for increased information in terms of labelling and what have you. Again, it may not be an issue for your members, but in some other industry sectors people have raised concerns that we've moved from an era of the right of consumers to know information that affects their health or their safety or their well being or the energy content of their product, to simply a right to know - that is, I have a right to know - and as a consequence of that the pressure is to continue to increase the level of labelling on products and what have you. This is particularly true in food products and pharmaceutical products and other things. But I was wondering whether your industry is suffering from or being affected by an increasing pressure for labelling and if so, what's the response to that?

MR DOUGLAS: Certainly labelling is a major issue for our members in the sense - particularly in the whitegoods area for energy consumption, the work we're doing with the Australian Greenhouse Office and electrical safety. Our attitude would be that if the label is appropriately designed and if the product lends itself to a label, in other words if it is sufficiently large to accommodate the appropriate label, it's not such an issue. I think we understand that consumers do have a right to know. Some regulators from time to time may go overboard and we do get involved quite a bit in issues affecting labelling, but it's not a - we don't have substantial problems with labelling. Our members don't have substantial problems with labelling in this country.

MR FITZGERALD: Are there any other questions, Phil, or - - -

MR POTTS: Brian, just one. The interface between regulation as it directly affects your area - and you have been talking about, and regulation in other areas which can either directly or indirectly impact as well, and how that interfaces operates in practice in terms of the setting of regulations. Is there sufficient coordination between the different areas that are responsible for different - regulation in different areas which impact on your membership - - -

MR DOUGLAS: Yes, it's a very good question. The two areas in our electrical division that we're most preoccupied with are safety and energy efficiency. I have to say that we have a far better view of the way that energy efficiency is handled. Hence our predilection I guess for the Commonwealth to be involved because energy - for energy efficiency it is essentially the Commonwealth. Even although they do it certainly in concert with the states, with the state regulators, it is driven by the Commonwealth, namely the Australian Greenhouse Office. And we find that that is a far better system than electrical safety. Partly because of the level of resources the Commonwealth brings to bear there, but I think partly because of a more political will and consequently I think a better - dare I say it, a better quality of regulator.

MR POTTS: And building regulations, are they an area of interest?

MR DOUGLAS: Yes, they are. And certainly we have issues that we have raised in previously Productivity Commission inquiries. The way that some local jurisdictions impose their own energy efficiency requirements which may exceed the nationally agreed levels; that is, agreed between the Commonwealth and the states, for example. This certainly does apply and causes us grief. We believe that once a national level is set, a minimum performance standards are set, that should be able to be applied anywhere in the Commonwealth.

MR POTTS: It would be helpful if you could address that issue during your submission - - -

MR DOUGLAS: Certainly. I mean it applies, for example, to whitegoods, where there is a minimum energy performance standard for a number of whitegood products, but local jurisdictions will demand a higher level. We believe that's inappropriate.

MR FITZGERALD: Okay. Any other comments, questions? Thanks very much, Brian. That's terrific.

MR DOUGLAS: Thank you very much.

MR FITZGERALD: And we look forward to receiving your submission. That concludes the public hearing for this afternoon, and as I've indicated earlier there will be further public hearings for Northern Territory via video-link and Sydney in one or two weeks' time.

AT 3.40 PM THE INQUIRY WAS ADJOURNED ACCORDINGLY

INDEX

	<u>Page</u>
NATIONAL SENIORS ASSOCIATION PETER BRADY JONATHAN KENNEDY	254-267
FOUNDATION FOR EFFECTIVE MARKETS AND GOVERNANCE JOHN THOMSON DALRYMPLE WOOD ROBIN MICHAEL GWYN BROWN	268-280
REAL ESTATE INSTITUTE OF AUSTRALIA BRYAN STEVENS	281-294
AUSTRALIAN FINANCIAL COUNSELLING AND CREDIT REFORM ASSOCIATION DAVID TENNANT JAN PENTLAND	295-310
AUSTRALIAN ELECTRICAL AND ELECTRONIC MANUFACTURERS ASSOCIATION BRIAN DOUGLAS	311-318