



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

TRANSCRIPT OF PROCEEDINGS

**BY VIDEOCONFERENCE TO DARWIN ON WEDNESDAY, 4 APRIL 2007,
AT 2.35 PM**

Continued from 29/3/07 in Canberra

MR FITZGERALD: I'm Robert Fitzgerald, for those that I haven't met previously, and I think some of you may have had Gary Potts, the other commissioner on this inquiry. The third commissioner, Philip Weickhardt is travelling around overseas at the moment so he's not with us. Also present are a couple of team members from the Canberra office, and we've also got a recordist for the purposes of recording and producing a transcript in relation to these matters. So, welcome. If I might just find out who's around the table before we formally start, that would be helpful.

MS RODRICKS: I'm Jean from the Department of the Chief Minister's Policy Coordination and Implementation Unit. Jean Rodricks.

MS MORRISON: I'm Caroline Morrison, also from Policy and Coordination in the Department of the Chief Minister.

MS STONE: I'm Erin Stone, Treasury. I'm from Economic Policy and Frameworks.

MR SUCKLING: Graeme Suckling. I'm here representing the Advisory Council on Ageing of the Territory government.

MR STEPHENSEN: I'm Patrick Stephensen from Consumer Affairs. I'm an indigenous liaison officer.

MR CLEMENTS: Gary Clements, I'm the Acting Commissioner of Consumer Affairs.

MS KEYS: I'm Traci Keys. I'm from legal policy, Department of Justice.

MR FITZGERALD: Good. Welcome, everybody. You can see us and hear us. They said to us that the picture might not be as good, but from our end it's quite good. If I just - there's a formal introduction I've just got to give very briefly in relation to the public hearing, if I can do that, and then it's over to you to give us the key points or thoughts that you might have in relation to the inquiry, and then we can have a general discussion. But formally, I'd like to convene the public hearing of the inquiry into Australia's consumer policy framework. The hearing is being held under the Productivity Commission Act. Whilst it's informal in nature and participants are not required to provide evidence under oath, they are required to be truthful in the material and the presentations they provide to us.

So for the record, we already have your names and positions. We may need to get those from you just by way of a full email after, for the purposes of the transcript. Other than that, I'm Robert Fitzgerald. I'm the presiding commissioner. Garry Potts is the other commissioner. As with all the public hearings it's over to you to lead us in the discussion and to make any key points you want to in relation to the inquiry

generally, and then as I've indicated we can have a general discussion. So who wants to lead off?

MS KEYS: I might start. My name is Traci Keys. I am actually preparing the base submission for the Northern Territory in response to the issues paper, and I thought that probably one of the important issues for us to discuss with you today is the unique aspect of consumer policy in the Northern Territory, which is indigenous consumers living in remote and rural areas. Probably one of the first comments I'd make is that the Northern Territory sees the presence of a local based office to implement consumer policy as being critical in the Northern Territory, because specialised knowledge is required to actually handle these issues.

We've had various examples I think where you really needed to understand the cultural views and behaviours of indigenous consumers to understand why there was even a problem in the first place with a particular transaction; and perhaps one of the best examples I can give of that is that an assumption is sometimes made in consumer policy that a consumer when they say "yes" to a question is saying that in the affirmative and because they understand what is being asked of them.

A common problem with implementing consumer policy in the Northern Territory is that quite often indigenous consumers say "yes", but they don't mean yes in the sense that we understand it. If somebody is pressuring them for an answer they might say yes. If they don't understand what they're being asked they might say yes just to be polite, and this creates a dilemma for implementing consumer policy in the Northern Territory, (1) because the trader themselves might come from interstate and may not understand those cultural differences, but (2) because the assumption that underlies consumer policy that consent can be obtained in a yes/no fashion becomes quite problematic.

MR FITZGERALD: Do you want us to discuss the issues as you go through them, or would you prefer to raise a whole range of issues and then we come back to them?

MS KEYS: I think it would be good if we could discuss the issues as we go through.

MR POTTS: Traci, the implication that you were saying then in relation to indigenous consumers I take it is that there's a clear need for specific regulation, if you like, in order to deal with the particular challenges that exist in that area. As you know - sorry, I was just going to say as you know there's sort of generic legislation and regulation and specific regulation, and to some extent perhaps there's a little bit of overlap in some areas, and I think the dependence on specific regulation varies from one jurisdiction to another.

But is the import of what you're saying there that we should approach in the

direction of - as far as this area is concerned at least - that there's a need for specific regulation and presumably also care in how it's applied and how consumers are helped, you know, within that framework?

MS KEYS: I think largely the issue probably needs to be handled through generic legislation rather than specific, because I think if there was an attempt to deal with the various different cultural issues of different indigenous groups in the Northern Territory that would be an absolute nightmare. I think that generally speaking the issue needs to be handled through generic legislation, and I think that probably requires a combination of people on the ground who understand the issues to be able to educate traders and consumers alike to understand the cultural environment within which they're operating, and also that enforcement bodies actually have an understanding of these cultural differences.

I guess I raise the concern more in the context that in the absence of people on the ground who understand the local terrain, those issues could be lost completely. An example I can give you is one where a mobile phone company from Victoria endeavoured to sell mobile phones to indigenous consumers in remote communities: (1) the mobile phone didn't work in the area because there was no reception, an issue that should have been known to the trader, but secondly, this issue of consent came up, that high-pressure sale tactics were used and that a lot of consumers it would appear just ended up saying yes to get the individuals off the phone.

Now, some of those issues it looks like we will be able to handle through generic legislation. The particular issue potentially raised telemarketing provisions, which was a bit of an issue for the Northern Territory at the time, which is why we weren't able to rely on them in considering prosecution. Strong telemarketing laws would be an example of how you could perhaps specifically regulate that particular issue. But I don't see that the specific regulation is about being directed to indigenous consumers.

It's about creating regulation that will consider indigenous consumers but will actually be relevant to all consumers. In that case, the way I seek that issue gets handled is by having a cooling-off period. If there's a cooling-off period when telemarketers ring you, then as far as consumer affairs in the Northern Territory is concerned, then as long as there's appropriate education and those consumers have access to that service, then there is remedy available for those consumers despite those issues and despite those cultural differences.

MR FITZGERALD: If you were to have cooling-off periods into certain types of contracts, for example those that are through telemarketing or some of the telecommunications contracts, do you think that would have made a difference, or would make a difference? Do you think that after seven days or whatever the period is, those people that have accepted the offer, even though they didn't understand fully

the implications of that offer, would still maintain a contract? Would that actually get us further, or is the real problem somewhere else?

MS KEYS: I believe that in many instances it would have assisted. In fact, in this particular instance there was a cooling-off period, not from legislation but from the contract itself. I don't think that it's a one fit all answer. I think that it did provide some resolution in some cases. Obviously cooling-off periods have a very short time frame, and if that consumer finds out three months down the track, too late, that they had that right, it's not going to assist them. I think though, that the issue is bigger than just providing direct regulation.

It has to be coupled with other things, which is better educating traders and consumers so that they don't get into that situation in the first place; and secondly, providing access to services for people who live in these areas. So one of the difficulties that can be faced by people in remote or rural Northern Territory is that the mere act of being able to get in contact with someone to ask the questions might be a major problem. They may have no landline in their area, they may not have access to the Web. So even accessing a government regulator may be a major difficulty, and in fact too hard to bother following up on, and the issue only gets discovered when somebody goes and visits that community or they tell someone in conversation what's happened.

MR FITZGERALD: Can I ask the question - it applies more than just to indigenous Australians, but more generally. Do you think you have the range of powers necessary, either under your own Territory legislation or under the Trade Practices Act, to be able to take action against what you might regard as either unfair or inappropriate conduct by traders; or do you feel that there are significant changes that are required? So that's the first part of it. The second part we'll come to in a little bit is about the enforcement. But do you actually think you have the right suite of legislative or regulatory tools to be able to take action against that conduct if you so chose?

MS KEYS: I think that the current range of tools is quite good. I think there's room for improvement. I wouldn't say that was significant improvement, though. I think that there is always going to be a level of tinkering that's needed, and I think that's inevitable as our commercial world changes, particularly with technological change. Generic legislation is perhaps better at keeping up with that than industry-specific legislation. I think the other battle you face is that whilst a high percentage of traders might operate their businesses in a way to do the right thing, it's that small percentage of traders that work so hard to find ways to get around the laws that I think that there's always going to be some gap there.

I guess the challenge for people like myself is to try and find a way to narrow that gap as best as possible. I do think the unfair contract legislation in Victoria has

some utility, and I think that it broadens the current generic provisions of the Fair Trading Acts and the Trade Practices Act, and have the double benefit of perhaps removing the need of some industry-specific legislation, because it tends to gather up a whole range of issues that continually come up from similar type industries, particularly smash repairers, hire car, issues that I think most jurisdictions have had.

MR CLEMENTS: From an operational point of view, I think our enforcement role is fairly good and our powers are reasonably strong. We have a close rapport locally with the ACCC, and of course agreement is in place to be able to work together on some of the issues such as this mobile phone issue, that appears to be broader than just the Territory. Our ability has been I guess from a local regulator, being able to get into the remote areas and start a process, whereas I think the larger ACCC stood back initially waiting to see how big this issue was.

But just in regard to our powers, it's interesting that consumers have in many cases a whole different perspective in relation to what they consider we should be able to do to what we can do, and to the extent that their expectation can often be that if they had been ripped off that we will fix the problem tomorrow and be able to walk in and direct the trader; and that's certainly not the case.

MS KEYS: I think part of that issue probably stems from the fact that a lot of the regulatory bodies that have been set up have been designed to deal with very specific consumer issues. The way consumers see consumer protection is generally much broader than how the public sector see it; and in fact, there's quite a lot of other legislation in the Northern Territory that is not regulated by the Commissioner of Consumer Affairs that has a consumer protection type effect.

I think sometimes consumers don't understand that, and I think it's partly an education issue, but I think it's an issue that's probably never going to go away completely. It's also, I guess, about inspiring a level of responsibility from consumers themselves rather than them becoming completely dependent on government to fix every wrong transaction they may undertake.

MR FITZGERALD: Sure. But can I ask, just in relation to your powers - again, if I could just keep it at that level - some jurisdictions have indicated that they need to extend the powers that they have, for example in relation to cease and desist trading orders. I think the ACCC itself may make a submission in relation to that issue. Again, going back to my question, are there particular powers such as cease and desist powers or enforceable undertaking powers or injunctive powers that would make a difference in terms of your ability to deal with traders that at least prima facie seem to be doing the wrong thing?

MR CLEMENTS: I think one of our main tools is naming provisions here; the fact that the Territory being fairly small, and if you're a trader that's been here for some

time, if you're named by the Commissioner as not doing the right thing, it can have a large detrimental effect on your business. If you're a trader that's come to town and passing through, and again you're named - the media here is - we really only have a couple of TV stations and one main tabloid newspaper. So it's fairly easy to get the word out; and we've used that on quite a number of occasions to warn consumers in relation to what we consider is a bit of a rogue or a risky trader.

So that provision probably has been used more than attempting to legally enforce someone to stop trading. In fact, I don't think we've ever sort of taken that step. In some ways yes, it would be a nice power to have. I think that the number of occasions that we would use it would be extremely low. We have on occasion attempted to seek the assistance, I guess, of ASIC in regard to director's activities, and unfortunately been disappointed in that response on the basis that, you know, they're a little fish in the big Australian marketplace, whereas we see them as - they can be quite a large player in the Territory. So I think those forms of use of regulation that's already in place would probably be better than attempting to introduce additional regulation.

MS KEYS: The other issue that comes up there is because the Commissioner has no powers in relation to restrictive trade practices, that sometimes a gap is created when those issues come up in the local community, that the ACCC would be unwilling to take it on because it's not a matter of national significance. We've had that issue a few times, but it's a bit of a difficult issue because I don't know that I would suggest that those powers should be picked up in the Northern Territory. I don't know that there would be the resources there to do that.

MR POTTS: You mentioned - just going back (indistinct) contracts would be a useful addition, and might actually help replace some existing specific regulation; and you mentioned some particular industries. Could you perhaps mention the issues that will be covered by unfair contracts, and you know, no longer then need to be picked up in specific regulation?

MS KEYS: I should just clarify that in the Northern Territory it actually wouldn't result in the repeal of any specific legislation. It would probably just preclude the need to consider specific legislation further down the track. I'm trying to think of a specific example and none is coming to mind as I speak. I think the bigger issue with the unfair contract legislation is that quite often Consumer Affairs in the Northern Territory has had issues presented to them where it's quite clear that the terms of the contract have been quite outrageous but it doesn't fit into any of the provisions within CAFTA; and I particularly note the unconscionability provisions which have been interpreted quite narrowly, tend to be interpreted in accordance with equitable principles rather than using the term "unconscionable" in a broader context.

It tends to have been more relevant to the process of the contract rather than the

substance of the contract, and often the issues that come up relate to the substance of the contract. I think in part that's because people have become more aware that, you know, it's not okay to get someone to sign a contract when they can't speak English, or - some things have become a lot more obvious in day-to-day trading, and so you don't see them as frequently as you perhaps used to in the past. The issues have become, I think, a little bit more complex.

The only example I can think of was one that we had - this was last year. A hire campervan, I think, business, and they asked for a \$5000 security bond before you took the campervan. What was actually critical was that they actually took that money out of your account prior to actually receiving the vehicle, and that the money - they had no requirement to have to provide the money back, and took 30 days after the return of the vehicle.

Now, the tourism industry is one of the principal industries in the Northern Territory. Quite often the people hiring these vans were backpackers. So \$5000 was a substantial amount of cash to come off someone's credit card. The information wasn't disclosed to the people at the time of signing the contract. They only discovered once they were driving down the road and tried to get petrol that there was no space on their credit card to do so.

We ended up using the naming provisions to try and get a response to that issue, but there really wasn't anything in CAFTA that assisted us to do anything legally with that issue. So in fact legally in the Territory they were allowed to do that; even though there were a whole range of other people in that same industry who agreed that it was an outrageous practice that this company was doing this. They had very little presence in the Northern Territory, they were in fact a Western Australian based organisation.

So the naming provision, you know, probably assisted consumers in the first two weeks of that actually being named. But the reality was that the people who were going to use that business were not going to read that advertisement in the newspaper in two or three weeks' time. Unfair contracts legislation probably would have assisted us there. It gives the potential to require either some level of disclosure of extreme provisions, and also provides an opportunity for I guess offices like Consumer Affairs to negotiate contracts that are actually realistic and fair; and I guess I see that's - - -

MR POTTS: But in that particular case, I guess what's fair and what's unfair, as you were explaining, it partly depends on the circumstances of the individual consumer.

MS KEYS: Yes, it does.

MR POTTS: I mean, we probably don't need to look at individual cases too closely, but I mean, as I understand the way you explained it, they weren't guilty in any way of misleading conduct, in other words, misleading the consumer or otherwise presumably we could pursue them under your existing legislation. So presumably if the consumers had read the information, then it wasn't misleading and they could have entered into the arrangement knowingly.

MS KEYS: I guess the difficulty was - and whilst I give it as a specific example, I saw it as an example that, you know, affected a group of consumers rather than one individual that the types of consumers who tend to use that service were consumers who probably had very little money; and that secondly, the reality is in this industry that nobody reads the contract. It becomes - disclosure has become a real problem, that the contract gets put in front of a person, they sign it, nothing gets explained to them. They only find out when the terms of the contract are actually being carried out; and we found that to be an issue across that industry.

It wasn't just that one example that people don't ask questions. And I guess part of our strategy, apart from the naming, was the idea of having some sort of education program around that for tourists, to say, "Ask questions, ask the right questions when you're signing these contracts." But at the end of the day, under fair contract legislation we've stopped that happening in the first instance. We wouldn't have had to come in afterwards.

MR FITZGERALD: One of the other issues that's come up in another state is in relation to scams and what have you that is particularly targeted at indigenous communities. In South Australia I had discussions with the Commissioner for Consumer Affairs; and I was wondering whether or not you have had experiences similar to that in recent times. You've mentioned about the way in which contracts were used in relation to mobile phones, but has there been an increase or evidence of inappropriate conduct particularly targeted at indigenous communities throughout the Northern Territory?

MR CLEMENTS: Yes, it's an ongoing issue, and for as long as I've been in consumer affairs, which is about six years now, it's been changing from photographic sellers to mobile phones to motor cars and everything in between. So whilst - scams I don't know is quite the right word. It's more associated with high-pressure sales, with pressuring in a manner of different ways. I think an example is a photographic service that sold portraits predominantly around the Centre, and these were costing several thousands of dollars, and they were pressuring the people - door to door sale - pressuring the people on the basis that it's good for their family, and the women were pressured into it.

So there was a contract that they would sign and there was direct debit arrangements and so on. The scam I guess was the fact that they were charging them

several thousands of dollars for a picture on the wall that didn't even have any glass in it. So you could probably claim that the bulk of educated consumers wouldn't have purchased that sort of product for that price. But yes, it is an ongoing issue for the Northern Territory, and the fact that our population is 30 per cent indigenous and a lot of them are very remote raises issues for us in relation to reaching those areas and educating those people.

MR FITZGERALD: Thanks. Just a related issue; in relation to financial lending, as you're aware we're looking at both generic and specific legislation. One of the areas we've indicated we want to have a deeper look at is financial lending right through the spectrum, from bank lending through to consumer credit and I suppose the issue that people raise of predatory lending. I was wondering whether you had any comments or views in relation to that particular issue as to whether or not the Consumer Credit Code is working effectively, whether there are significant changes in that area that you think are needed, whether or not you're seeing particular misuse by providers of credit or other loan funds in the Northern Territory.

MR CLEMENTS: Look, there's a whole range of areas, I guess, involved in credit again. I think there's certainly a company based in the Alice that's currently lending at 700 per cent interest per annum but cleverly moving around the Credit Code to do so by using promissory notes. That's one issue, I guess. Another that we've been looking at very closely is the sale of motor vehicles through dealerships and the lack of I guess control over finance brokers sitting in those dealerships by the financier. These guys are selling finance on the basis that they get a commission for doing so, and the uneducated indigenous person sitting in front of them, effectively we have had evidence that they would sign a blank form, and effectively that individual broker or finance manager would fill the form out themselves to make it fit the system.

The Credit Code has worked for us in those circumstances by the manner that the financier has actually written those debts off, but only upon our encouragement for them to do so under the basic premise that if we revisited that loan in the court they would be basically written off anyway. So the financiers we've been working with are positive when they are given the evidence that - positive in addressing the issues, but I think their processes aren't quite good enough at this stage. And I don't think changing the Credit Code will fix it. I think the Credit Code is quite fine in that regard, as providing protection. It's the ability to oversee it in terms - actually take the compliance side, I think, which is our difficulty because of our limited resources. That remains a big issue up here.

MS KEYS: Probably the other issue - and I'm sure other jurisdictions have probably spoken about it - is some of the inherent problems with disclosure. There's an underlying assumption that if you provide material to people explaining the nature of the document they're going to sign, that (1) they'll read it, and (2) they'll

understand it; whereas in fact I think the experience has been that if people don't read the information that's given to them they often don't ask the right questions, particularly in the context of finance, and particularly in the context of small-lending finance; people just want their money.

It's a particularly difficult issue, I think, in consumer policy to find solutions to that, because on one level your commonsense tells you that ethically that information should be disclosed, but what do you do when the large number of consumers don't pay any attention to it until after when they find themselves in trouble? It's particularly difficult, I think, in the context of finance, because the nature of transactions are often quite complicated, and often people don't understand the nature of the documents that they're signing.

I think for the Uniform Consumer Credit Management Committee, I think that's an ongoing issue, and I think at the last meeting we had, I think there was some reference to, you know, plugging the dark and the hole with the Consumer Credit Code, that you change one thing and then other credit providers find another way to get around it, so you just are continually amending the legislation to keep touch with what's actually happening in the community. I don't know that there's any obvious solution to that. I mean, it's not a matter that's going to be resolved I think by generic legislation because of the complex nature of the transactions. But I think there does have to be some creative thinking around how we're going to get information to consumers about what it is that they're agreeing to.

MR POTTS: So is the question there one of how the information is provided, that it's not being provided in a way that allows consumers to understand it at present; or is it perhaps going even further and saying it hardly matters in what way you provide the information, there's a certain section of consumers that probably won't take an interest in the issue until it's too late, after the event, if you like, and they've made a commitment.

MS KEYS: I think that the difficulty is that it's almost become standard commercial practice that people pay no attention to the contracts they sign. Whether that's obtaining credit, buying a house, buying a car, I think that it's actually quite difficult for a consumer to say, "Can I please go away and read this contract?" So I think we're actually dealing with some cultural issues in terms of how people expect a transaction to occur. I don't know that the problem is that the clear information is not there.

I think the problem is finding a way to motivate consumers to actually find out what it is that they're signing, and I don't know what the answer to that question is. Certainly I think there's always going to be a percentage of consumers who just won't care and will hope that someone will come in and fix the situation afterwards. But I also think there's a considerable number of consumers that are probably responsible

people the majority of their life, but when it comes to signing a contract they don't read that contract and they don't ask the right questions.

MR CLEMENTS: Yes, and I think it's been perpetuated through the Internet as well. I'm sure all of us have gone onto the Net and come up with some form of terms and conditions, and all we do is try and find the bottom of it so we can tick "I agree" and move on. Whilst you're forced to scroll all the way to the bottom, look, I know I don't read the detail because there's just so much volume. It really has changed, I think, from disclosure being a product or a tool for consumers to a protection for the trader, and really nothing more.

And a hire-car agreement is a classic example of that. A hire-car agreement will always have two pages. The front is quite complex, but the back is just complete verse and extremely difficult to read. I know I've signed them and said to the person on the counter, "I'll read the back of this whole form before I sign it," and they've laughed at me, because it just really is not an easy thing to stand there in front of a counter when you've got people behind you and read this whole form.

MS KEYS: And I've quite often found myself that when I've indicated that I actually want to read the contract, people respond in shock that you're actually going to do that, and then when you start asking questions often they can't answer them.

MR CLEMENTS: No. But also a difficulty too, we've also found with the fitness industry - now, it's certainly a national issue - is that the contract that you're provided - if you go through it with the individual supplier and determining you'd like to make a change, it's totally inflexible. You have no say in regard to varying that contract. It's take it or leave it. I think that's where disclosure I guess becomes interesting. Yes, you know your rights, but you have no bargaining power with that product at all.

MR POTTS: Yes, but I mean, I guess the market might respond to that. I mean, if consumers do become better informed because you provide the information in a more useful way, then the supplier might find that there's a number of consumers who aren't willing to sign up and they may therefore change their practice. I mean, at the moment they can get away with this and they don't have to worry about changing their contract because no-one really takes the trouble to assess the individual parts of it. But if consumers can act more meaningfully, if you like, they may influence the behaviour of particular players in the market. I mean, you do see it in some other industries, where some suppliers seem to be making an effort to provide information in a more user-friendly way than some other providers in the same market.

MR CLEMENTS: Yes.

MS KEYS: I was just going to add to your comment about consumers being able to

place pressure on the market to change. Whilst I agree with that comment, I think that's true, I think in reality there's a bit of a mentality out there by consumers that you can't change big business. So whilst you might get a few renegades like myself prepared to do that, I think trying to get mass support for that can sometimes be quite difficult.

MR FITZGERALD: Okay. One of the issues that obviously we're keen to hear about is the issue about enforcement and access to your rights. I mean, one of the issues for us that seems to be universally so, that irrespective of the regulatory framework, the resourcing of government agencies, the under resourcing of consumer advocacy bodies, and the disparate way in which consumers can access their rights, is a fundamental issue in this inquiry. So I was wondering if you could give your perspective on what is the suite or arrangements that are necessary to ensure that consumers, particularly those that are more disadvantaged, need to be able to access their rights in the Northern Territory and beyond.

MS KEYS: I think there's probably a difference between what is achievable and what is ideally needed. I think an ideal framework would provide an independent mechanism for consumers to seek advice, and that such a mechanism would be both educative as well as an advocacy body. The Northern Territory doesn't have such a mechanism at the moment due to the size of the population. That I think is in an ideal world.

In the real world, for the Northern Territory I think probably what is more achievable is focusing quite strongly on education; so generic simple information that's not going to overwhelm consumers, even if that's just information that's going to assist them to know where to go to ask more detailed questions; and I guess ensuring that you have an appropriately resourced regulator which I do think is appropriately placed in government rather than elsewhere, who is able to take appropriate action when needed.

I would just sort of briefly to one side raise the issue about regulation by business, and I think that in the Northern Territory, whilst that may be a useful mechanism in some of the other states, I think that it has some inherent problems for a small jurisdiction. I think there have been plenty of examples in the Northern Territory where things have been led by association bodies or it may even be industry bodies - I can't think of an example of one at the moment - that if the people who have the control over those organisations then misuse that power to actually dominate in the market, that's a problem in a small jurisdiction; and I've seen examples of that plenty of times in the Northern Territory. I think that in a larger jurisdiction it's easier to create an accountable structure than it is in the Northern Territory.

MR FITZGERALD: Whilst I appreciate the issue of size in the Northern

Territory, as we do in some of the other jurisdictions, one of the issues that does arise is whether or not the role of the government agency, the department, is in fact too broad. For example, in many areas it seems to be involved in dispute resolution, investigation, prosecution and so on and so forth, as well as often policy making.

Appreciating your size, is there an argument to say that we're expecting too much from government agencies in the breadth of functions that they're meant to perform and that part of the problem we've got is the resourcing, but over and above that maybe that we need to actually have a good solid look at what we're expecting from government agencies. I mean, we know, for example, that industry ombudsmen have become very popular, and broadly are highly supported by consumer groups and government agencies.

But in other jurisdictions in general consumer policy areas, that's all dealt with by the department. So I suppose mine is a broad question. In addition to the resourcing, which is a sort of significant issue, do we actually need to fundamentally look at who does what and in particular what's required of government agencies?

MR CLEMENTS: I guess we're a little different to a lot of the other states because of our size. We don't at this time have a specific policy group sitting within Consumer Affairs, but utilise the resources of the Department of Justice, which is where Consumer Affairs sits. So in the past we have had policy officers, but we've only had one. So you could say yes, we have very limited resources. I guess my role as Commissioner is very much operational. Whilst it certainly oversees and focuses on policy issues as well, much of that work is done by that policy group within the department. So there is some split there to give us a bit more impetus in that regard.

Certainly enforcementwise, we utilise - we have huge areas, as we indicated, and we try and I guess focus specifically on a range of different issues in those areas; indigenous being a strong one, and Paddy here is an indigenous officer who sits within a pretty small department. So that's our attempt I think to get out there and we use a lot of different resources to educate those forms of consumers in regard to their rights, and it's a slow process, but we've had some fairly good achievement in that regard.

MS KEYS: I was just going to add that my experience has been that I think that it actually works quite well in a small jurisdiction that the Commissioner has so many tools at his hand; and I think that the obvious conceptual conflict would be being advocate for consumer and also being enforcer on any action. I find that whilst that appears to be a conceptual conflict, in practice it seems to actually work quite well; because it actually means that there's some force behind what the Commissioner says, you know; and obviously, it's not the Commissioner who carries out most of these functions.

But it means that when the government is seeking to negotiate an outcome in a matter, the fact that the Commissioner may have power to pursue the matter further, whether that's legally or naming that person, these things actually hold some sway in finding a resolution and actually mean a lot of stuff doesn't end up in court or a lot of businesses don't end up being named, because the mere threat of those powers being used enables resolution to happen at the lower level.

MR FITZGERALD: But yet in the industry-specific schemes, the separation has taken place where an independent body is established to try to solve complaints and to some degree to make determinations, for example, in the Banking and Finance Ombudsman's role. But the actual regulator sits at arm's length from that process. I don't disagree with what you're saying, but it seems we've got a couple of models working at the moment which can give us some sort of, you know, experiential evidence, I suppose.

But I hear what you say that the regulator brings with the dispute resolution in particular a set of perceived powers over and above that which a normal dispute resolution arrangements would bring. But it is interesting the two models are at play in Australia at the moment. Just on that, have you got any comments on the way in which the industry ombudsman operate specifically in relation to consumers in the Northern Territory?

MR CLEMENTS: Certainly we direct consumers to the ombudsman, and I think we certainly look at them very positively. I think they're certainly the Banking Ombudsman, telecommunications and so on, from a consumer point of view locally work very well. I guess the difficulty - and I don't mean to be harping back on indigenous people all the time - but they don't complain. If we get a complaint in relation to activities in indigenous areas it's predominantly through a third party, which will be a health worker or a council clerk.

To complain to an ombudsman sitting on the east coast by an indigenous person with a difficulty in banking or telecommunication would be a huge effort. We find that they will come to us, and Paddy may in fact take on that leap to an ombudsman to try and overcome that issue or take on the issue for the consumer.

MS KEYS: And I think underlying what Gary is saying - and it comes back to your original question - is that I think one of the biggest issues faced by the Northern Territory is actually access issues for consumers, given that not only do we have a small population, but the dispersal of that population over a very large land mass, and some of those individuals live in quite remote areas. Obviously, it raises quite unique issues in terms of access, whether it's the NT government, industry ombudsmen or other Commonwealth regulators. Access is a very big issue, and one I guess with no obvious solution.

MR FITZGERALD: Okay.

MR POTTS: Another institutional issue is the one that relates to the fact that there are dual responsibilities for consumer policy between the Commonwealth government and the state and territory governments. I think it's a fair observation to say that there's quite a bit of negative comment about how effective the institutional arrangements are that try and coordinate activities at different government levels, particularly the Senior Officials Committee and also the Ministerial Committee. Could you give us your perspective on it, how you think it works from the Northern Territory's point of view, and perhaps what improvements could be made, if you think there is room to do that.

MS KEYS: I think it's actually - for the Northern Territory the arrangement actually works quite well; because there are a lot of issues that require local knowledge, the fact that there's a Northern Territory government body enables access to those issues and I guess some level of understanding that the Commonwealth agency may not have. Then vice versa, the Commonwealth body is able to take some of our local issues and elevate them to national issues, which I believe the Northern Territory government would have struggled to do in the absence of there being a Commonwealth body.

The relationship, particularly, if I narrow it down to the ACCC and Consumer Affairs, is one of Consumer Affairs will quite often do things like they may go out to the remote communities. Paddy will sometimes go out to collect statements from consumers because he has the relationships and knows who to access to get that information. The ACCC I think it's fair to say concede that they would have difficulty doing that without our assistance. But as I've already indicated, for us it would be quite difficult to try and make some of our issues national without the assistance of the ACCC, so. Again, I think it comes back to being a small jurisdiction. For us it works quite well to have that sort of two-tiered system.

MR CLEMENTS: Just talking about the MACA and SCOCA arrangements, we have equal vote with all the other states and territories; and being the smallest jurisdiction, we find that very useful to be able to have a say in regard to issues that are put forward of equal standing in that they may affect us significantly differently because of our diverse population and because of the remoteness here. So it is important from our point of view to be able to be a party to those groups.

I think having sat on virtually all of the working parties myself and SCOCA, I certainly found that because of our small size, we tend to be able to understand what's happening on the ground, whereas a lot of the other states, being larger, won't have the hands-on feel for what's occurring; and I think that's given us a bit of an edge in some ways to bring things to the national bodies as well. So I see it as a very positive thing that I certainly wouldn't like to see changed.

MR FITZGERALD: The arrangements do - sorry, please go ahead.

MS KEYS: That's okay. I was just going to say that probably the one negative that I would raise about the Ministerial Council and all of the other committees that sort of stem under it, and it's an issue that Gary and I have often talked about, is the underlying assumption that there's the resources within each of the jurisdictions to actually pursue the issues that are coming up. I think one of the problems that stemmed out of that is that some of the issues have been on the map or agenda for a very, very long time, so getting any progress through that process can be extremely slow.

And indeed, I've seen some of the issues - there's been complete changes of government and something you might have had semi agreement to - suddenly there's a shift in that agreement and you're back to the starting board arguing the issues out from the beginning again. So I think that there probably does need to be some consideration at that level about how some of those issues can be further expedited. I know that those discussions are already occurring both at the ministerial level and at the commissional level.

MR FITZGERALD: If you have any suggestions that might be helpful for this inquiry in relation to how to speed up the deliberations of the Ministerial Council, we would be very grateful for it; because as you indicated there is a problem with the Ministerial Council and SCOCA in the sense that whilst there can be agreement around a whole range of issues, it takes an extraordinarily long period of time for that to in fact evidence itself in practice. So I think there is an issue, and what we'd be keen to do by the end of the inquiry is to work out some means by which that could be practically improved. So I mean, everybody I think is aware of the problem. What we're not hearing at the moment is ways forward or ways to improve it. So if you've got any, that would be great.

We've covered a number of issues, and I'm just watching the clock. So I was wondering whether there are other issues you might wish to raise. I noticed, Graeme, you were from the Northern Territory Advisory Council of Ageing. Are there particular issues relating to the seniors population that we should take account of?

MR SUCKLING: I think the issues have probably largely been covered. A lot of seniors aren't very computer literate. That would be the same in other jurisdictions, so we actually know that the older people are the less their confidence and therefore their use of computers. So being educated through the Web, which seems to be a more common practice these days, is something that doesn't really assist older people. I guess we also have - as other jurisdictions do as well - a reasonably high proportion of people from cultural and linguistically diverse backgrounds. A lot of those seniors have other difficulties with language in accessing information. So I

guess what I'm seeing is most of the issues are concerning education and awareness about people's rights.

MR FITZGERALD: Can I ask this question. Are there particular issues in relation to the aged care sector, either retirement villages or other issues that we should be particularly aware of? At this stage, we haven't heard a great deal of evidence which would cause us to want to look too deeply into areas around, say, retirement villages or aged care more generally, as there's been a whole range of reviews done into those areas both at state and territory level, and also at the Commonwealth. But I'm just - this is an opportunity for you to tell us whether you think there's a need for us to explore any particular issue, or whether or not the previous and ongoing reviews are sufficient to pick up those issues.

MR SUCKLING: I believe that the point you've just made that the previous and ongoing reviews are sufficient to pick up issues with respect to aged care. Unfortunately, with respect to retirement villages we really only have two, and both of those are run by not-for-profits. So one is run by Masonic Homes up here in Darwin, and one is run by Frontier Services down in Alice Springs. The organisation I work for has just done a major survey and discovered what we believe is a significant need for retirement villages, but that's another issue. So we basically don't have them. But I think there possibly is an issue looming about things like reverse mortgage, equity release products, for seniors as something that I think more seniors may be wishing to avail themselves of. I think there's still a lot of ignorance in the community surrounding those products, and perhaps the information needs to be improved.

MR FITZGERALD: Okay, good.

MR CLEMENTS: Just in regard to the Retirement Villages Act, that's just another piece of legislation that I administer. We have had - and we have an ongoing strong rapport with the groups that do manage those organisations and have had occasion to assist consumers within those housing areas, and with quite some success. So we consider that the arrangements that are in place currently - and the success has been reported back from the consumer so that they're quite satisfied. It's been - I guess the issues that we found were a bit of a breakdown in some of their communication programs which have been improved. So it appears to work from I think a regulatory and a consumer point of view here in the Territory, even though it's very small, quite well. I tend to agree that I think some of the past few reviews have been quite good.

MR FITZGERALD: Good. Are there any other issues that we haven't canvassed that you'd like to put on the record? Are there any other questions, Gary? Look, we appreciate this. Thanks very much for agreeing to do it by videoconference. It made it significantly easier for us, and we're very grateful for the comments that you've made. As you know, this process has a while to go yet. We may have some

roundtables around specific issues. But we've still got one further public hearing which will be held in Sydney in a couple of weeks' time. The draft report will come out in August, and then we'll repeat the process. At that stage there will be further public hearings where people can actually respond to the findings or the recommendations that we may have made. But over and above that, if you've got any thoughts, comments, issues you want to convey to us, then please come back to the Commission staff, because we see this as sort of an ongoing process, and today has been helpful. But I'm sure following today you might have some additional thoughts; and if you do, we'd be very much keen to have them.

MR POTTS: They are making a submission, aren't they?

MR FITZGERALD: Gary just asked whether - you're making a submission, a formal written submission on behalf of the NT government?

MS KEYS: Yes, that's correct.

MR FITZGERALD: Good. We look forward to reading that with considerable interest. Okay, if there's nothing else, I'll adjourn the hearing.

AT 3.33 PM THE MATTER WAS ADJOURNED ACCORDINGLY

PARTICIPANTS

DEPARTMENT OF THE NORTHERN TERRITORY)	
CHIEF MINISTER)	
JEAN RODRICKS)	
CAROLINE MORRISON)	
)	
ACTING COMMISSIONER FOR CONSUMER AFFAIRS)	
GARY CLEMENTS)	
)	
DEPARTMENT OF JUSTICE)	
TRACI KEYS)	
PATRICK STEPHENSEN)	407 - 424
)	
NORTHERN TERRITORY TREASURY)	
ERIN STONE)	
)	
DEPARTMENT OF BUSINESS, ECONOMIC AND)	
REGIONAL DEVELOPMENT)	
ARCHANA MISHRA)	
)	
NORTHERN TERRITORY ADVISORY COUNCIL ON)	
AGEING)	
GRAEME SUCKLING)	