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PRODUCTIVITY COMMISSION

INQUIRY INTO AUSTRALIA'S CONSUMER POLICY FRAMEWORK

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

TRANSCRIPT OF PROCEEDINGS

**AT HOBART ON MONDAY, 2 APRIL 2007, AT 9.03 AM
Continued from 29/3/07 in Canberra**

MR FITZGERALD: Good morning. Welcome to the public hearings in Hobart into the inquiry for the review of Australia's consumer policy framework. This is one of a series of public hearings that we're holding. In fact, we've done most of the states and territories and this is the third-last one that we're conducting. As you'll be aware, this is conducted under the Productivity Commission Act and, whilst it's informal in nature and participants are not required to present under oath, they are required to be truthful in the material that they present. Tony, if you can give your name and the organisation you represent, and then what we might do is have 10 or 15 minutes of your key points and then a discussion around those issues.

MR STEVEN: Thank you, Mr Fitzgerald - Tony Steven, CEO of the Council of Small Business Organisations of Australia Ltd. I am based in Hobart but my office is in Mitchell in Canberra, and I am presenting some points today that have been gathered together from our 30 or 40 different members from around the country. I've gathered these through both staff talking to those different members, and also by email. Some of these comments will be professionally written; others may well be just individuals that may have missed the mark slightly, so I'll try to bring some of them into context.

The first point I have here is that small business should be considered as a special group in consumer policy. Small business is both a consumer and a business. Small business is operated by individuals; there is no board of management, no person who is a specialist on consumer issues. Issues that affect small business - red tape, the regularity of changes to regulations, rumour, misinterpretation, aggressive customers, confusing regulations, alarming news articles - can all add to the difficulties of running a business.

A small business operator is expected to be an expert on, and be legally responsible for, a range of complicated issues, including taxation, workplace relations, OH and S, pricing, marketing, import and export legislation, and other issues, whereas big business has the resources and the people in place to do this. I would like to add that what my members are trying to say here is that the atmosphere within which they operate is different from a large business, and therefore the laws that impact upon them and guide them should take that element into account.

A number of areas where small business and consumer policy should be considered is leasing and the power of purchasing, marketing, and of course pricing and discounting. Small business competes with big business for a shrinking pool of labour. Business-to-business leasing should be dealt with under consumer policy. Business-to-business leasing can impact upon competitive behaviour, pricing, competition, business viability and, of course, in the end result the consumer. Small business operators should be given the same protection offered under residential rental markets for leases as well as protection for business purposes.

The ACCC provides protection for small business through its enforcement of legislation. The personnel at the ACCC are very supportive and well trained, and deal with small business as well, but there is a lack of ability to generate complaints from small business to the ACCC under their Trade Practices Act. Greater support for small business would benefit consumers, as there would be a greater choice for the average non-business consumer. There will be greater capacity for small business operators to spend time on business issues, consumer servicing and development of more efficient practices, allowing savings to be passed on to the consumer for increased profit. That comes under COSBOA's very strong message at the moment about the importance of business education.

Just my own note before I go on and look through some of the other bits and pieces I have here: I believe that a number of companies, which include Microsoft and Westpac, are in the process at the moment of developing a new association called the Society for Knowledge Economics. This society should be explored by this hearing in order to find out whether any of its objectives match what is being considered here. Basically the society will be looking to investigate ways of benchmarking and developing the other two areas within the triple bottom line concept for big businesses to consider, being social parameters and environmental parameters.

Under the social parameters, I believe that small business protection and consumer protection should be considered very strongly and, if these areas can be benchmarked in the way that big business deals with small business, it would assist the community generally into the future.

When it comes to red tape, which obviously my members have mentioned a number of times, I'd like to point out that direct red tape from government, as I call it, is a burden that is obviously top of mind in the government at the moment, and there are a number of measures being put in place, like the regulation reduction incentive fund. The policy cost calculator, which has been developed by the Office of Small Business, and other measures are all being implemented, and we congratulate the government on that. But the message I'm having to put forward nowadays is that it's not just direct red tape that's impacting upon small business but also indirect red tape. A set of procedures that may have been put in place by big business to organise its affairs and comply itself impacts upon small business. Examples of that are when a small business has to queue and go through all the procedures that it needs to when dealing with a bank, the amount of paperwork involved in insurance. Those types of things are impacting upon small business greatly. I've mentioned the complaints to the ACCC and the complaints generation.

In the Trade Practices Act, I believe that there needs to be a rethinking about the gap between what is currently unconscionable conduct and what is judged by the

community as being unfair. At the moment it's been admitted by the chairman of the ACCC, Mr Graeme Samuels, that there is a difference and that that's the way the law is and he can't do anything about it. Being a person in a statutory body, I agree with him, but most definitely this organisation should consider that there is a difference in the law at the moment between "unconscionable" and "unfair", and this should be addressed in terms of not only the small business operator but also the consumer.

It's important that the laws around the country, especially as more and more small businesses operate in different jurisdictions, become more harmonised, and my own little comment here at the end is that a marketplace should be judged upon the criteria of being efficient and fair, not just free, which is a propensity, if you like, of the government that's in power at the moment. I invite questions.

MR FITZGERALD: That's very much, Tony. Obviously Gary and I have had the opportunity to meet with you previously. So we'll just open up to some discussion. Gary, do you want to lead off?

MR POTTS: Thanks very much, Tony, for your comments. Most of them, as I understood them, really related to small business as a consumer, if you like, rather than interacting with consumers themselves.

MR STEVEN: Correct.

MR POTTS: Are there any issues that you'd like to draw to our attention that relate to the second aspect that I mention, that is, the relationship between small business as a supplier and consumers themselves? Are there any aspects of the framework as it currently applies that cause problems for your members that we ought to be aware of in relation to that particular relationship, that is, the relationship between your members and consumers of their products and services?

MR STEVEN: I haven't, unfortunately, asked that of the members specifically, so their responses didn't reflect that. The terms of reference were sent out to members, but unfortunately that second area of your inquiry hasn't been addressed. To do that - and I'm quite willing to do this in a submission - I can get information out to members asking about state and federal legislation and how they feel it impacts upon their operation. To my knowledge there is not an issue with regard to the number of consumers that may be taking any legislative action against small businesses except where it is justified. Sometimes it's justified, but the concern coming through to me that's overwhelming is regarding the legislative restraints on small business when dealing with other businesses.

MR POTTS: Sure. I think we'd find it helpful if in your submission you could at least cover off the issue. I'm not trying to sort of stimulate a list of issues if you don't

have a list of issues, but I think it would be helpful for us to know from your members' point of view, as far as that particular issue is concerned, that there's nothing of major significance that we ought to know about.

MR STEVEN: Okay. I'll make sure of that.

MR POTTS: In other words, we can take silence as indicative of general satisfaction with the way it works from their point of view as providers of products and services to consumers. That's really the other equation that's of more interest to members as far as this inquiry is concerned.

Could I also ask: if you look at the consumer policy framework, you have matrixes of different kinds, I suppose, in the sense that you have Commonwealth responsibilities, you have state responsibilities, you have generic legislation, you have specific legislation, and these things have to be all brought together. Listening to your comments, Tony, I was left with the impression that in that very general sense you think the framework works reasonably well for your members and that most of the issues you were raising were ones that fitted within that by and large, although some harmonisation probably across jurisdictions would be helpful in reducing red tape and standardising regulation and the like. Would that be a fair observation to make?

MR STEVEN: There are emphases within what you're talking about that probably need adjusting, such as the protection of small business, but generally the framework, as I understand it, would be working to a good degree. If you look at the economy and the way that small businesses are flourishing at the moment, it's obvious, but the understanding of the system that we operate in is definitely lacking in the majority of small and definitely the micro end of the business world. I don't think the government does enough to educate business and business people on running a business, how to negotiate with other businesses or how to communicate, operate and negotiate with consumers. There are a lot of pitfalls that they could be subjected to that they're not necessarily aware of.

Let me give you an example to bring it right down to the basic level, the grass roots level: a young man finishes his apprenticeship and opens up a small business as a plumber. He's done his certificate 3, where all the training modules are concerned with plumbing. Very few plumbers go back and do any education in the business modules that are included in the certificate 4 and above. So he's running a business and dealing with consumers and running the risk of all of the laws that are in place around the country, state and federal, without even knowing anything about them.

MR POTTS: That's a sort of business education issue that you're raising there, isn't

it? I guess there's the question of to what extent that falls within the rubric of consumer policy. Can I ask you a question too - I probably should know the answer to this: the trade practices legislation, of course, was amended not too long ago to treat small business as consumers in their relationships with bigger business, but when we look at the state legislation that mirrors the federal legislation, the fair trading legislation, does the same provision apply there?

MR STEVEN: I think some states have drawn down - I think that's the expression - from different parts of the Trade Practices Act and put it into their own state legislation. I understand that section 51AC, which talks about unconscionable conduct, actually has been mirrored or reflected in the New South Wales legislation. In other states I'm not as sure. The concerns that small businesses have at present relate to the interpretation by the courts of these different sections. I mentioned in my comments before leasing, for example. When a small business is leasing from a major business in, say, a shopping centre or something like that, we have issues regarding the ability of that small business to negotiate fairly when the big business is able to demand that they see their books beforehand. We see that as unconscionable - that a lessor should be able to see your books before you start negotiations - but the law sees it as not unconscionable, but the community sees it as unfair.

It's that type of differential and philosophical way of looking at how small businesses are treated, as consumers or not, that we object to. We're constantly negotiating with the government at the moment on these issues, and I'm even talking to the ACCC at the moment about drawing up an issues paper on that issue.

MR POTTS: Do you have a suggestion as to how that should be specifically addressed and dealt with?

MR STEVEN: The ACCC is currently, as I said, putting together an issues paper. When that's done, I'll be asking the small business community to put forward a complaint, of which there are many, but getting a small business to complain is very difficult. We will then ask for that to be run through to its full course by the ACCC. If it is unsuccessful, we'll need to go back to the government and ask for a change in legislation.

MR FITZGERALD: Just on that point, in your discussions with the ACCC are you requesting specific legislation that deals with retail leasing or are you - - -

MR STEVEN: No, we can't do that on a jurisdiction basis, but we can certainly do it on the basis of unconscionable conduct and our opinion, or what I suggest is the country's opinion, about what is unfair. We need bring the two closer together.

MR FITZGERALD: So can I just clarify: COSBOA is formally requesting an amendment to the Trade Practices Act to have an unfair contracts review provision inserted into the Trade Practices Act, or a provision that allows you to look at unfairness rather than just unconscionability. Is that right?

MR STEVEN: That's an interesting way of putting it. I was originally saying that I thought that the two concepts should be brought together rather than actually differentiated in the legislation and then treated differently.

MR FITZGERALD: So you're basically saying that the concept of unconscionability should be extended to include unfairness?

MR STEVEN: Unfairness.

MR FITZGERALD: I see. There are different ways of approaching that, but I note from our notes of our previous meeting that you were supportive of that. Can I just ask this question, and you may not have given full consideration to it: in unfairness legislation there's a couple of ways you can go. One can go the way that the UK has gone, which means you only look at contracts that are what's called standard form. They're non-negotiable contracts. They apply across a range of customers rather than individually negotiated contracts; or you can go the route of Victoria, which includes all contracts.

In the second case, the Victorian route, it would certainly cover contracts between shopping centres and retailers, but your retailers would also be subject to that law itself. So the individual contracts they enter with customers are caught within the Fair Trading Act in Victoria. Again, you may not have given consideration to those approaches, but they're similar but quite different in terms of their extent. Have you been able to think through what the model would look like?

MR STEVEN: No, I haven't because I'm waiting for the issues paper from the ACCC. But listening to your comments now, it immediately sounds like the Victorian way would be preferable, but I would also caution against the fact that the small businesses need to know their resolution under such an act. Not only have we become very legalistic in our community over the last many years, but we're also getting more and more litigious. So if there is a responsibility for a small business to undertake, they need to be aware of it. It comes back to the business education issue that I mentioned before.

MR FITZGERALD: In relation to the red tape issue, you didn't canvass it in your discussion but we have canvassed it with your organisation previously. Again, on the record I'd be keen to have your views. One of the aspects in looking at red tape generally is the use of occupational licensing. One of the things we are specifically

looking at as part of this inquiry is what should be the principles that guide regulators and decision-makers as to when they use the generic law and when they should have specific industry regulation, of which licensing in part.

We've now had many consultations and a number of hearings, but I'm still lacking guidance, particularly from the business community, as to their view as to when one becomes appropriate versus when you can rely on the generic law. In your own area there is quite a lot of licensing around small businesses, some of which applies in only one or two states, some of which applies more broadly. I'm keen to get your view as to how we should approach the issue of occupational or trade licensing.

MR STEVEN: Under the competition round of inquiries that you organised it seemed to me that the public benefits test that had been applied by the different organisations around the country had a propensity to be applied with the easiest of the three triple bottom line issues, being to economically measure it. I feel that it was hard for a lot of state governments to apply, say, social or environmental type measurements to whether they should be keeping licensing in place or something.

The example that I'd like to give is one that I think I've talked to you before about, that is, the hairdressing industry. My impression from the people that conducted the review was that it would cost, say, \$100,000 to run the registration board for the hairdressing industry per year in Tasmania. In any given year, injuries and impacts upon consumers would have been \$20,000 as an average, and so it was economically more sensible to get rid of the registration board, because it cost more. But I ask: how much social importance was put upon that decision. My suggestion is that it was purely economic because that was an easier way to justify their decision and therefore get rid of the registration board and qualify for some funding from the federal government.

If you look at the whole issue again through the consumer framework and the protection of small businesses and consumers, you would look at it from a socially-orientated position and ask, "Is a person's injury worth measuring up against dollars?" I think any normal person that has any empathy for other people would not measure it so critically as just through economic means.

That's the type of criterion I would put on judging whether licensing regimes should be maintained or reintroduced. As I said, with the Society of Knowledge Economics doing a lot of work at the moment, if you have a look at their reports and discuss issues with them, I think you might find that they may be going some way down the avenue of measuring or benchmarking social and environment aspects of triple bottom line reporting as well as the economic side of it. Maybe they have some hints about how we can implement the licensing regimes that are required

against what is the best thing for the community. I don't know if I was completely clear there.

MR POTTS: One thing that seems to be the case is that there is significant variation in licensing across jurisdiction in Australia, across the states, and I imagine hairdressing is - - -

MR STEVEN: I think the only state in Australia that has any strong licensing regime in the hairdressing industry is Western Australia. I think there's some kind of register in New South Wales to that end.

MR POTTS: So obviously different jurisdictions see it in different ways in terms of the need for such licensing and registration, and even though you said that you need to think about the social impact, if you like, of particular occupations on consumers, I guess in doing that you have to make some attempt to measure the economic impact in a social policy sense. Otherwise it becomes difficult to know whether a particular occupation should be registered or not, because you have to draw the line somewhere, whether it's at hairdressing - - -

MR STEVEN: It's where the line is drawn, Mr Potts, exactly right. Our emphasis is that, when it comes to occupational health and safety, consumer safety, consumer protection, that line should be drawn much more towards the end that reflects the people rather than the dollar.

MR POTTS: Yes, but I guess my point is that, if you're thinking about how it affects people, you still need to make some effort to assess the impact of how it affects people in some objective way. That would apply to hairdressing, for instance, wouldn't it?

MR STEVEN: The word "objective" meaning measurable? Do you mean measurable?

MR POTTS: Measurable, yes.

MR STEVEN: Immediately that means you'd fall back to an economic point of view, which is where we've missed the point, I believe, in the past.

MR POTTS: Could I just go back to that issue of unfairness and unconscionability and link it into a question I was asking before, which is the way in which you view small business - whether it's a consumer or whether it's a provider of services.

MR STEVEN: We believe it is.

MR POTTS: Clearly, in addressing that issue of unfairness and unconscionability and the input you're going to make into that exercise, you're doing so from the point of view of small business as a consumer. I'd be interested in knowing whether there would be a difference of perspective from the point of view of small business as a supplier of the services in relation to that issue - whether they would have a different perspective or whether they'd have the same perspective as consumers in dealing with big business, for instance. In other words, they're looking for more protection, if you like, I think, in terms of whether something is unconscionable or whether it's unfair, as consumers in their relationships with big business, but would they have the same view in relation to their relationship with consumers and the providers of goods and services?

I'm not looking for an answer now, but small business is, as far as this inquiry is concerned, in quite an unusual position in that you're on both sides of the equation, and it would be interesting for us to get a perspective on that particular issue from your membership. In other words, if the law is changed in some way so there's greater consumer protection in this area which is going to be helpful for small businesses as consumers, are they ambivalent about what impact it might have in their relationships with consumers, because equally it will provide more protection for consumers in their relationships with small business as a supplier of goods and services.

MR STEVEN: I will undertake to circulate that question. It's not one that they've come back to me on, but I guess if small businesses are going to want the protection, they have to afford it to others. That's just a general concept. But there are 1.88 million small businesses in Australia as per the Australian Bureau of Statistics report a couple of weeks ago, and my predecessor a number of years ago said that organising small business into one force is like trying to herd cats. They are an enormous, diverse group of people, and there are some that will say, "We want to be able to operate as harshly and as roughly as we want to," whereas others treat their customers as part of the family. So you'll have a range of views within the answer that you will get, but I believe that, as a matter of concept for the moment, you should treat people as you would have them treat you.

MR FITZGERALD: Related to that, I suppose, is the definition of "small business". I don't, to be honest, know what the definition is that's used in the Trade Practices Act for small business, but can I just get your sense as to whether or not those definitions are adequate? Are they the same as the ABS definitions, are they different from those definitions? We'll have a look at that, obviously, but I'm just reflecting on Gary's comments: where is the cut-off between small business and the rest? Obviously, there is a definition, which we'll have to have a look at, but my comment was - and you may reflect on it also in your small submission - as to whether it's adequate. You've mentioned a figure - and I was going to ask you this

separately - of 1.88 million according to the ABS figures.

The second question - and again you may be able to direct us to it - concerns research that shows the failure or the closure rate of small business. People always bandy around figures. Is there any contemporary research that you're aware of or that you can find that gives us some robust understanding of what's happening in the small business area at the moment? Everyone seems to have a figure but nobody quite knows where they came from, but you might have some - - -

MR STEVEN: I have some comments there, Mr Fitzgerald. The definition of "small business" is wide and varied, and our own organisation stays away from it. Each individual piece of legislation seems to have a definition for its own purposes. Tax is revenue based; industrial relations is employee based; the ABS has a convoluted system, which was included in its report a couple of weeks ago; we as an organisation stay away from it. But generally speaking I think conceptually - it's not hard and fast - a micro-business would be any business up to five employees and small business would be up to 20 employees, although, as noted in Work Choices, it's now up to 100 employees.

So the definitions within the Trade Practices Act, like you, I'll need to reiterate for myself as well, and find out whether it's a generic measurement or whether it's specific to different sections in the act.

MR FITZGERALD: It has a particular regard in two ways. Firstly, if you are going to make changes to the unconscionability provisions or introduce an unfair contract provision, clearly I think the view would be that the consumer would need to be defined in some appropriate way. The second thing is, irrespective of that, if we are going to recommend harmonisation, many jurisdictions don't have a definition of "small business"; they use another construct. So again what we'd be keen to hear from your association is whether or not there is a definition that can be used in the harmonisation of laws across Australia if one were to go down that route. But at the moment many use different ways. They use the amount of the transaction rather than defining the consumer; others have quite clear definitions. Anyway, we'd like a view on that.

MR STEVEN: The issue you raised regarding the number of business failures: there has been a cultural myth out there that 80 per cent of small businesses that start disappear within five years. I've never seen that actually written down anywhere, but I do have access to a report from a gentleman called Prof Allan Williams, who I think is from the Newcastle University, who wrote a report on small business, and the Mentor Resources Tasmania Group have a copy of that report with a failure rate included, and the estimated cost of each of those failures. You can source that or you can ask me to do that.

MR FITZGERALD: If you could source that, that would be excellent, Tony. Just in the last couple of minutes I've come up with a couple of questions in relation to your access to either dispute resolution or complaint handling processes. You made a comment during your presentation that small business is unable to access the ACCC, and I wasn't terribly sure whether it was in relation to complaints or whether they just don't complain to the ACCC.

MR STEVEN: They're not aware.

MR FITZGERALD: They're not aware, okay. So they can in fact access that. The other part of that is, there's a very large number of industry based ombudsman schemes that have been established - telecommunications, bank and finance, insurance and so on. Do you have any views about how accessible those schemes are and how effective they are in dealing with the complaints of your members as consumers? They seem to play an increasingly important role of trying to have matters resolved early, and I understand that most of those, if not all of them, are available to small businesses as consumers, but I may be wrong on that.

MR STEVEN: No, I believe you're right. I know the telecommunications industry ombudsman is. Once again I highlight the awareness factor of these facilities to small business, but, secondly, they have a rigid interpretation of the law that they have to implement as per the guidelines they were given. The post office one is another one - the postal industry. I find that they do generate a number of complaints to be handed and dealt with, but on occasion I think some of our small business members have once again this conceptual problem of, "Well, that was unfair. Why was he allowed to get away with it?" "It may have been unfair, sir, but it's not unconscionable and it's not against the law." This is the cultural position that we're in at the moment under the different law frameworks that we work under.

MR POTTS: On this question, though, of inadequate capacity to generate complaints - and I can understand that for a small business's point of view; it's something that would be difficult for them administratively to handle - do you see any capacity for associations like your own, for instance, to have a role in relation to that?

MR STEVEN: In fact I do. I'm also working with the ACCC on trying to involve the ACCC and its mechanisms with COSBOA and our members. I think there's a lot more work that can be done in promoting small business associations as a place to go when you have a problem. If we can develop a feeling within the small business community that you should ring the Queensland retailers, the civil contractors or the lotto agents association when you have a problem and they'll put you in the right direction, that would be a very good thing. But at the moment there's a propensity

for industrial relations to be the prime issue to be addressed when you go to your association, and on all other issues you're left to the wolves. That's a conceptual, a marketing or a promotion problem that we have, and it's something that I believe we should address. I'm looking to do that, especially with the ACCC, in the future.

Small business is not well organised. Business generally, especially at the top end, is highly organised as a sector. We don't represent as well as we should, we don't advocate and protect as well as we should, because of the concept I mentioned before about herding cats. Small business people are by nature individualistic, and getting them together to agree or to work in an environment where there's enough money to operate and provide these services is extremely difficult. The abolition of registration boards and mandatory registration has undermined our position over the years, because many of our associations have fallen below a membership critical mass where they could have provided a lot of these services and protections. Nowadays I think most businesses are being run in a just in time/crisis management basis, where if something goes wrong, then you try to fix it.

MR FITZGERALD: Any other concluding comments, Tony, before we wrap up?

MR STEVEN: No. I look forward to writing a short but succinct submission.

MR FITZGERALD: We look forward to receiving it. Thanks very much for that.

MR STEVEN: Thank you.

MR FITZGERALD: If you can give your full name and, if you represent an organisation, the name of that organisation. Then we'll just open it for 10 to 15 minutes of key points and then some discussion around those points.

MR BROHIER: Thank you, Mr Commissioner. My full name is Peter Neville Brohier, and I'm a lawyer based in Melbourne. I don't represent any particular organisation, but I do say in this context that I used to be the chairman of two important committees in this state. One was the Committee for Bass Strait Transport Equality, and the other was the National Sea Highway Committee, probably the largest commercial committee in the state of Tasmania, and also having substantial Victorian interests. It's in this context that I'd like to raise the issue of impact on business and consumers, and it's in the context of access between Victoria and Tasmania that I raise these matters.

John Howard at one stage said that Bass Strait was the single greatest impediment to the growth of population, investment and jobs in Tasmania, and I would go on to say this was the most important issue facing consumers and business in this state. So it's in that context I raise it. Also I raise it in the consumer context in that I believe that where substantial Commonwealth schemes are introduced by the government via ministerial directive, those schemes need to fall within the important aspects of free trade and freedom of movement between our states. Where those directives do not deliver freedom of movement and free access for goods and services between states, I believe the relevant minister introducing those directives should need to report to parliament, and this commission should recommend that: that that minister report to parliament as to why those ministerial directives do not deliver substantial freedoms to the people of Australia and why those directives ought to remain as ministerial directives. I believe in that context that I'll raise this issue within a consumer framework.

I'd like to acknowledge first of all the role of my committees and supporters of those committees, which incidentally included Tony Steven. They were perhaps the most instrumental committees in giving this state the ferries that it has connecting the mainland to Tasmania, the cars going free or at dramatically reduced levels, and probably the tourist boom that this state has enjoyed over the last 10 years. There wouldn't be that without the role of the two committees that I represented.

The Howard promises in 1996 were important ones. They promised a Tasmanian sea highway. The Bass Strait Passenger Vehicle Equalisation Scheme was introduced, and that scheme was to base the cost of crossing Bass Strait in an all-year fare based upon the cost of a driver and car. Bass Strait was to be part of the national highway. The cost was to be equalised to the cost of road travel by competition entering Bass Strait and driving passenger fares down, and in this context a massive amount of funding has gone into the Bass Strait connection.

But it's not as significant as what's gone into the AusLink national connection. There's a national transport system known as AusLink. That system covers all surface travel and transport in this country save for the link across Bass Strait, the link between Victoria and Tasmania. That presumably is covered by the Tasmanian Freight Equalisation Scheme and the Bass Strait Passenger Vehicle Equalisation Scheme. These are important initiatives by the coalition government, but they do not deliver the equivalent of an AusLink connection between Victoria and Tasmania. They are ministerial schemes developed under ministerial directive only. These schemes are actually skewing access. They're acting against free trade, they're against fair trade and they're acting against equalised access between the states of Victoria and Tasmania.

I've put some submissions to other inquiries of the Productivity Commission, but I'll just cover about three significant quotes. There's been a quote from some in the tourism industry that what they're seeking is those who can afford to come. Another comment was that a volume service would lose money, particularly in relation to the Bass Strait passenger scheme. Another one was by a minister of the crown in Tasmania, a tourism minister, who said when questioned about the cost of passenger fare access that the fares were all right; they were acceptable enough "because that's the type of people the four and five-star hotels want".

In 2001 it was an officer's recommendation for the three governments - Victoria, Tasmania and the Commonwealth - that recommended against the national highway and against effectively all-year equalisation. They wanted a trade-off of the equalisation scheme to fill ferries in winter. The consequences were horrendous. I'm going to announce on the public record that the Prime Minister of Australia came to me one day and shook my hand, went away and came back again within five minutes and said, "I'm sorry, the Senators voted." In that context I'd like to read to you from page 300 of a book entitled Cheeky by Bob Cheek, the Liberal leader of the opposition at the time when Howard did that. This was the context, I believe, in which Howard did it:

Howard said he had some good news for me, and produced the thick document on Bass Strait ferry subsidies as part of a Tasmania package which he intended to announce in Launceston. I had spoken to the PM at the state council in August about extending the existing Bass Strait equalisation scheme subsidy, making cars cheaper to ship across Bass Strait to passengers. This would allow foot traffic to board the ferries for as low as \$50.

At that stage the subsidy was for vehicles only, so you had to take a car to get the benefit. Again, it was geared to the all-powerful tourism

industry, who wanted mobile passengers. I wanted a fare to benefit all Tasmanian business so it was like getting on a bus to cross the strait. Howard had given me a good hearing, and my advisers in constant contact with the PM's office were convinced he was going to come good.

The news was passed on to the National Sea Highway Committee, a business lobby group led by Melbourne lawyer Peter Brohier, who had been pushing this principle for 10 years. They were ecstatic. I excitedly gripped the Prime Minister's offering. "You've got everything you want there," the Prime Minister said, smiling, confident he'd met all my expectations. Sorry, PM: to the contrary, there was nothing in the proposal about passengers, just a further sweetening of the existing vehicle subsidy as a sop to the tourism industry. I was totally confused.

"Thank you, PM, anything is welcome, but this is not what we asked for. We wanted a subsidy on passengers as well as cars." Howard seemed genuinely shocked. "That's what it is, isn't it?" He called over his chief of staff, "Arthur Sinodinos. "Is this the right one?" he asked. Arthur assured him it was, and a perplexed Howard muttered, "I was sure we did what you asked."

This was a far different Howard from last night's self-assured statesman holding an audience spellbound with a riveting noteless address about his vision for the country. He looked dithery, almost bumbling, as he scratched his head about our Bass Strait policy. In a way it was good to see his frailties. I genuinely believe the PM thought he'd delivered what I sought, or he put on a very good act. I later discovered that a group of Tasmanian Senators acting on behalf of the Tourism Council, who wanted the subsidy kept to vehicles, had stymied the passenger proposal. Howard wasn't aware of it.

After that the equalisation scheme had its guts ripped out of it. Effectively it was in name only, and all the ministerial directives dealing with equalisation and the enormous potential of increasing that equalisation in line with road travel, highway travel - because that's what equalisation is about - was taken out of the ministerial directives.

I'm not against tourism. Tourism is exactly justified in targeting its business. It's not tourism's job to do Canberra's job. But I would say that I believe that tourism targeting is not in the direct interests of business, certainty of access, about jobs population in this state, about family reunions, about building churches and schools and all those wonderful consumer issues that we focus on: the cost of fuel prices, turnover, the cost of living in Tasmania. There's a world of difference between a

tourism-focused industry and an industry that is based upon the consistent all-year highway access that the Hume Highway might bring between New South Wales and Victoria.

What has been going on in Canberra is very, very serious. The reports to the relevant minister have focused on a one-sided tourism focus. By "one-sided" I mean a Tasmanian-centric tourism focus on a route of national importance. This is a route between two states, not for one and not for the other: for both, for the nation. When these reports go to the minister and say certain numbers came by air, certain numbers came by sea, it gives the appearance that Tasmania is a holiday island, not a fully-fledged state of this Commonwealth. Its consumers are entitled to free mobility or fair mobility across Bass Strait, this vital artery. This link should be about unimpeded movement between states of freight, people and goods.

Let me turn to the Tasmanian Freight Equalisation Scheme. This scheme tries to equalise the cost of moving freight across Bass Strait to the cost of moving it on part of the national highway, say the Hume Highway, Melbourne to Albury. But that scheme is equalisation in name only too, because it excludes every southbound consumable that comes into this state. There's a massive gap. There's another massive gap: Tasmania has state-of-the-art factories in northern Tasmania that can supply goods to the world. They need to get those goods to Melbourne because there's not enough direct shipping coming into Tasmania. But, you know, they have to pay the full cost. There's no equalisation northbound to Melbourne for those goods, whereas if they were in Albury, they would send their goods down the Hume corridor, paid for fully by the Commonwealth taxpayer.

So the reality is these equalisation schemes are skewing development in Tasmania. They're keeping the costs of groceries high, and the Bass Strait Passenger Vehicle Equalisation Scheme, by not providing highway equivalence, is not allowing Tasmania to have enough critical mass in population to spread overheads to make this state a viable and rich state of the east coast of Australia.

Now, tonight there are three people that could impact upon the massive opening up and historic opening up of this nation's transport network, connecting the AusLink network and making AusLink part of an integrated national transport system. One is the premier of the state, one is the head of TT-Line, and the other is the minister for local government, Jim Lloyd, who could actually act tonight to put a community service obligation on the Commonwealth funding to deliver these sorts of links that are necessary in the nation's interest.

The first two people that I mentioned have no obligation to act, but it's my submission that the minister, Jim Lloyd, has an obligation to act. He should not leave schemes like these, acting against the fair movement of people and goods and

acting as an impediment to the development of two states. This is just as much a Victorian issue as it's a national issue, as it's a Tasmanian issue. The amenity of living in Victoria could be enormous, and enormously would be increased by having a third interstate link. Sydney under AusLink is entitled to two links, one to Sydney and one to Melbourne, and perhaps a little bypass link to Canberra, but Melbourne is so well placed - it's better placed geographically than Sydney - it's entitled to three major interstate links. By recognition of this third link from Melbourne to Hobart - you'd have Melbourne to Adelaide, Melbourne to Sydney, Melbourne to Hobart - if you had that third link, the amenity of living in Melbourne would increase, the volume of passengers and people going through Victoria would increase, and Victoria would develop as well.

The Bass Strait funding needs to be industry-neutral, it needs to be state-neutral. This is not Tasmania asking for a grab for more money. There's money there. We've got money, we've got policy, and there's enormous capacity, and a \$400,000 study indicated that it was price and capacity that were the major determinants of crossing Bass Strait. So if they're the major determinants and John Howard said the single most serious impediment to the growth of population, investment and jobs in Tasmania is Bass Strait, the idea is to accept the Howard offers of \$50 fares; to accept that the Bass Strait Passenger Vehicle Equalisation Scheme can be used, and could have been used in a multitude of ways since 1996, to deliver highway equivalence between these two states, affordably and efficiently; and to ask the question, "Why doesn't the federal minister responsible for these schemes act to deliver that outcome?"

I'm here as an individual, but I want to tender, off the record if I may and only on that basis, a letter written recently by some of the largest corporations in this land, asking for what I've just asked for. If I could tender that to you for your perusal, but on a confidential basis.

MR FITZGERALD: Can I just ask the status of the letter?

MR BROHIER: This is a private letter that's been written that I have a copy of that relates to the scheme that I've proposed and the importance of the scheme to some of the largest corporations in this country.

MR FITZGERALD: The letter has an original signature on it. Can I just ask, is this just a copy of that?

MR BROHIER: This is a copy.

MR FITZGERALD: A copy, and you're authorised to provide it to us?

MR BROHIER: No, I'm not authorised to provide it to you. I'm not precluded, to my knowledge, from providing it to you, but I'm just taking the safer position

MR FITZGERALD: We'll just note that you've asked for it to be maintained confidential and we'll just check whether we can receive the document or not. I'm just not quite sure as to its status. We can certainly receive documents on a confidential basis, but we'll just have to - - -

MR BROHIER: Yes. I'm putting it forward just for your information, but I would say this: publicly VECCI, the Victorian Chamber of Commerce and Industry, and also Premier Bracks of the government in Victoria, in a submission to the Productivity Commission's Tasmanian freight inquiry, have already asked for an AusLink link between these states. I have not seen any similar request from their counterparts in Tasmania or the Tasmanian government.

My committees have given Tasmania three chances at full equalisation from 1996. The money has been there, the capacity has been there. As to the third chance, Mr Howard gave the chance in 1996. He offered the chance in 2001, and Paul Keating, as Prime Minister of this country, also offered low passenger and vehicle fares in 1996. Although this commission may be focusing on trade practices or fair trade issues, I think what I've raised here goes to the fundamental critical route than can support all the fair trade and trade practice issues here. But, without it, Canberra is not demonstrating the fair trade, that it advocates internationally, across its borders between Victoria and Tasmania. It's not doing what the Prime Minister only a few months ago talked about: equal linkages between states and how his policies were aimed at that. These policies are not being aimed at that, and they need to be aimed at that.

If Productivity Commissions are going to stand for productivity, and "productivity" means an integrated national network for people - the mobility of people, vehicles and freight - then you can do no more than deliver that outcome for the people of Tasmania and Australia.

MR FITZGERALD: Thanks, Peter. Thanks for those comments. You're quite right that our focus is slightly different from some of the issues you've raised. Nevertheless, you've raised some interesting issues. As you've also indicated, the Productivity Commission has already prepared a report in relation to the Tasmanian Freight Equalisation Scheme.

Can I just clarify something with you, if I might. If you were to extend the AusLink scheme to Tasmania, to include Tasmania, what are you saying the benefits of that would be for passengers and for freight? You mentioned this \$50 figure. I'm not quite understanding. By bringing Tasmania into the AusLink scheme, what do

you think will be the ultimate benefits?

MR BROHIER: These will be the benefits, Mr Fitzgerald: first of all, the passenger fares. There will be an option for all Australians of a passenger fare based on something close to 47 cents a kilometre, which the Commonwealth expected to be the cost of travelling on a highway. It might be a little bit more; it might be around that figure. That would translate, on the 47-cent level, into a car with its passengers, paying \$200 in each direction to come to Tasmania. So, so there were four people, it would be \$50 each, including the car. A foot passenger would get the advantage of a bus fare of about \$50 across Bass Strait, or the Melbourne-Albury bus fare.

The advantages to freight would be that southbound consumables would attract equalisation payments, and those equalisation payments would presumably drop the direct cost of some freight coming into this state, and it would also keep competition very viable within Tasmania, because Tasmanian suppliers would compete. But, of course, Tasmanian suppliers would also take the advantage of many more passengers coming into Tasmania, increasing the population, removing Tasmania's remoteness.

Tasmania can protect its natural strengths by all sorts of internal methods of administration, but it would also mean larger population bases and lower costs of living for the people in this state, and it would offer massive mobility for the people in two states.

MR FITZGERALD: Can you aid me by telling me - you're saying for a passenger it's \$50 one way without car.

MR BROHIER: Yes.

MR FITZGERALD: How does that compare to the cost of a passenger without car travelling, say, on the ferry at present or the discount fares that apply into Tasmania? In terms of relativities what are we talking about?

MR BROHIER: I think we're looking at a halving to a quarter of the cost. Bear in mind that there's an \$85 or \$89 fare now, but it's available only on weekend sailings and only until April, and that option won't be available during the peak period. There's a passenger fare. I think it approaches something like \$180 or so one way across Bass Strait. So you're really looking at a \$50 all-year fare versus a series of promotional and other fare opportunities that could extend, I think, to a fare level of about \$180. So it's a substantial saving.

MR FITZGERALD: It's substantial in terms of percentages, but in terms of the difference between \$50 and \$100 for a fare, do you actually believe it would make a significant difference to the number of people that would avail themselves of that?

In relation to passengers without vehicles, which you've made a number of references to, how can you be confident that it would make such a significant difference to that particular group, the freight issue aside? I think there are some significant issues. But, in terms of passenger trade, I fail to see how that would make a huge difference to the number of people travelling.

MR BROHIER: I only need, Mr Fitzgerald, to go back to a trial that was conducted by a premier of this state, Tony Rundle. He paid a sum of \$350,000 to the shipping line, and the passenger numbers went sky high when the fares approximately highway-level fares. That was some years ago, but certainly it worked. We've got a \$400,000 study that says it's price and capacity that would drive this.

But let me put this another way. There's no economic modelling to my knowledge in this country that can model this, but this is changing the parameters. This is like building a Hume Highway between Melbourne and Mansfield, a four-lane highway to the snowfields. What this is, is it's changing the whole parameters of where that demand curve is. It will move the demand curve outwards. It changes the whole cost of living in Tasmania. It changes the whole parameters under which we can access Australia's shortest intercapital route. In that way, this proposal here would be like building a bitumen highway between the two states, and I think that's the answer. That will increase demand across the board and I think if you see that letter that I tendered, it certainly supports that concept, and that originally the Howard concept. Howard expected competition to come into Bass Strait and drive those passenger fares down. The impact on air has been considerable; with lower fares more people travel. There's no reason why it shouldn't occur on the shortest route.

MR POTTS: Do you see the same principle applying to other regions in Australia that mightn't be quite so well served?

MR BROHIER: No, and I don't see this as a regional Australian argument, and I don't think any Tasmanian should ever entertain any concept of being part of regional Australia. This is a fully fledged state. In Australia's history the great sea lanes of the world connected and gave us an integrated transport system. It's time the government in Canberra restored that and I think John Howard has done everything possible to do so. Now I think we can have an integrated system.

MR POTTS: So if you take Perth, for instance, which on many counts is the most isolated city in the world in terms of its distance from other major capital cities, if the residents of Perth mount a similar argument that they're disadvantaged in terms of the cost of moving from Perth to other major capital cities in Australia, would you see the same principle applying in their case, or do you think Tasmania in some way

is different?

MR BROHIER: Yes, I don't mount an argument for the difference of Tasmania to Perth. I mount the argument on the basis that Tasmania's geographical location and the discrimination that Tasmania faces because someone thinks water can't be treated the same way as a land based highway. You see, Perth gets the advantage or the disadvantage of its geographical location; it's miles across this country. But Tasmania is a very, very short distance from the mainland of Australia and water transport is cheap. It's pure discrimination. We have put ribbons of bitumen across deserts and mountain ranges across this country. We've built Australia on bitumen at the cost sometimes of \$4 million a kilometre, and we've discriminated because Tasmania is connected by water. This is not an argument for subsidy for Tasmania. This is just as much a Victorian connectivity issue as a Tasmanian one, but it's not an issue of remoteness. It's an issue of how you deal with the terrain. John Howard has set that example.

It's time the bureaucracy - and I might say these commissions and everybody else - understood that you replace the sea lanes of this world with adequate ferry connections. It's done across the world. It should be done here, and it should be done between both states. Victoria is just as much entitled to have access to Tasmania as Tasmania is entitled to have access to a national network. Its people are; its consumers are; and its businesses are. This is not an issue about remoteness. We're not remote. This is not a remote region. It's part of the rich east coast of Australia. It's here, it's now. You make it remote if you discriminate, if you say, "We don't want these equalisation schemes to be equalisation schemes." We talk about proper product description, don't call them "equalisation" unless they're equalisation. Deliver the equalisation schemes, make them connected. It's not an argument of regional Australia. This is not regional Australia. They're a point on our national flag, they're a state.

The corridor Melbourne through northern Tasmania to Hobart is a national interstate corridor, just as important as the Hume Highway is. Connect the Hume Highway through ring roads around Melbourne. Connect it to the road, the rail, ferries, the most efficient route to Tasmania, and you'll build a nation. But throw arguments and put Tasmania into a regional Australian argument when it's a state and not a region, you do a disservice. But I would say this: if these equalisation schemes are tendered schemes that are regional tourism based schemes aimed for tourism, well, aim for something else, then they shouldn't be there at all. These schemes should offer true equalisation because each state is entitled to compete with equal air and sea links. Air is entitled to compete with a sea link; it's equal, a national highway or AusLink connection across every border of this country. But when you skew it and you move away from that equation, and why do you offer equalisation schemes to a state? Then you're being unfair. Then you're saying, "Oh, look,

because you're separated by water we'll give you a handful, a bucket of schemes. We'll bucket them altogether. We'll throw them at you." Then you've got a problem that when the bucket gets a leak you have to plug it again, and again, and again, and again. Howard understood this. Keating understood this.

MR FITZGERALD: Just taking your point, you've mentioned before that Prime Minister Keating and Prime Minister Howard understood it and it was a bureaucratic issue. Nevertheless, most of these schemes are not bureaucratic; they're in fact political and politicians decide on their priority. So whilst you continue to say that, I'm not understanding that if in fact there is a national agreement - and you mention in your paper here the Victorian government agrees with that - then why do you think it hasn't occurred, because in essence the bureaucracy will only do the bidding of the masters. Irrespective of what we may view about the different schemes - and you'd be aware of the commission's view about some of these schemes - at the end of the day why do you think the political will has not achieved what you've indicated?

MR BROHIER: I think what's happened is that the reports to the political master in this situation have taken Tasmanian tourism as the central focus. I think because those reports have gone to that minister - and of course the success of the Bass Strait Equalisation Scheme - that there hasn't been a move on that. But there needs to be and I think that's why it's happened. I don't have to pluck things out of the air. All you need to do is go to the annexures of the Productivity Commission hearing into the Tasmanian Freight Equalisation Scheme, particularly the ones, I think, in relation to my first or second submission, and there are some 30 pages of documented material that make it entirely clear as to what the political masters wanted. You only have to go back to a media release by Prime Minister John Howard only a few months ago, when he rejected the initial findings, I think, of the Productivity Commission in relation to Tasmania Freight Equalisation. He referred the nation to the importance of schemes that equalise access between states. So I put it on that basis. I don't think the bureaucracy has fully understood the enormity of this and the enormity of what can be created, but I understand that the political masters of this country have clearly understood it.

MR FITZGERALD: Yet not delivered the outcome you are seeking.

MR BROHIER: No.

MR FITZGERALD: Just another thing, one of the issues that you've raised is one of principle, and that is that it's really just about the distance, whether it's the distance over land or whatever have you, it's just the distance. Whereas some of the arguments that have been put for these schemes have really led you to a view that it's about something else, that it's in fact about ensuring an equal competitive advantage

for businesses and so on and so forth, which can be achieved in different ways. So do you reject clearly that there are different ways to achieve that same end because your principle is the starting point for this, which is that it's distance, it's not remoteness, and that it shouldn't matter whether it's, as you say, bitumen, or air, or water, the same principle should apply.

MR BROHIER: I'm just Peter Brohier. I mean, the reality is that John Howard has enunciated that principle. The very fact of equalisation reflects that principle, otherwise you wouldn't use the word, and they're equalisation schemes and in particular transport issues, not general equalisation of trying to equalise the interests of regions across a country.

MR FITZGERALD: Sure. No, that's fine. You've also sent us, Peter, a DVD which our team has.

MR BROHIER: Yes, I have.

MR FITZGERALD: That's fine. We haven't had an opportunity to look at that yet, but that is with our people so we'll have a look at that as well. Are there any final comments you want to make, Peter?

MR BROHIER: Yes, I want to make this comment: that I think Productivity Commissions over the years have seen a great importance in cutting things and looking at the most efficient ways of doing things. But productivity is a very hard thing, and anybody establishing a business in any country in this world knows how important and how difficulty productivity is, and it's not about cutting. It's about looking at the opportunities of existing resources and making them work effectively. You have the most amazing opportunity here of taking this very narrow position and taking all the available resources including policy, including capacity, enormous capacity, and enormous funding, and baking the cake, and giving Australia an integrated transport network from the northernmost part of Australia to the southernmost part of Australia. That's your historic opportunity. I hope you seize on it.

MR FITZGERALD: Thanks, Peter. We'll now adjourn until a quarter to.

MR FITZGERALD: Jane, if you could give your name, the organisation you represent for the record, and then if you want to give us your key points for 15 or 20 minutes or so, and then we'll have a discussion about some of those and other issues.

MS HUTCHISON: Thank you, Jane Hutchison, I'm from the Hobart Community Legal Service. We're the main generalist community legal service for the 0362 area of Tasmania, however, we do provide some services state-wide, including a consumer credit hotline, which I will point out is completely unfunded. We're completely federally funded. There is no community legal service program in Tasmania funded by the state.

I just wanted to first of all start by raising the fact that I believe over time with the way legislation has gone with consumer regulation in Australia, it has become quite complex. There are many different arms to it and I think it can be very, very confusing to the average consumer, particularly when I'm working with it all the time and even I can get confused about exactly where you go or what you do. An example of this is when ASIC took over financial services from the ACCC, it took quite some time and I think people still get very, very confused as to which organisation they go to for whichever reason. Then of course, you bring into that the state offices of fair trading and all the different ADR schemes; it's massive.

I can remember when I first started out doing consumer matters, there used to be a little thin booklet that used to be a little handbook about where to go for different problems. The booklet the last time I got it was about two inches thick and the last I heard, they weren't even going to both reprinting it because it had become so big and it was just going to go on the Internet. I think for consumers to be able to voice their concerns and also use the legislation to their advantage, it needs to be more user-friendly. I've been trying to think about how this could be. I think maybe a good start would be in the area of one telephone number where consumers can call and then they get streamlined whether to the ACCC, to ASIC, to wherever they need to go, or even back to the state offices of fair trading. I think that would be much easier. I note that this is now being done by some of the ADR schemes, banking industry, insurance commissions and so on. The feedback I have had is that people are very happy with that. It makes life a lot easier for them. They know they've got a problem. All they have to do is pick up the telephone and they can be directed to somebody who might be able to help them with that problem.

The other area that I'd also like to point out in the complexity of consumer regulation is that I think that we do have very good laws, both the Trade Practices Act, the various regulations that ASIC use, and also the consumer credit codes in each state, I believe do provide reasonable protection to consumers. However, I often feel that consumers do not actually have the ability to actually utilise that protection. I would be very surprised if there has ever been any major cases using

the consumer credit code in Tasmania. There might have been a couple of very small ones, but I have never heard of one.

This might make it seem that there are no problems with consumer credit in Tasmania. I think that is definitely not the case. I'm regularly getting calls from people who are having problems, just even the basics of the consumer credit code, the basic disclosures are not even being adhered to. However, consumers do not have the resources to take this on themselves, and with not specialised services and very limited funding to organisations such as ours, these are not being tested, this legislation, it's just going through. I must admit, it's much to my frustration every so often when we do pick something up and sort of send a letter, often that's enough and people will roll over and it will improve for that individual consumer. But that's just a bandaid for that particular person; it's not helping the majority of consumers out there.

I suppose I am very, very, very disappointed to find out that the proposed unfair contracts legislation seems to have fallen into a big black hole somewhere. I'll be so bold as to say that I am very disappointed to think that the federal government and the states can't at least agree to how it's going to work. I believe that this is a very necessary piece of legislation that needs to be introduced, particularly these days people are entering into contracts all the time. 20 or 30 years ago we entered into maybe one or two contracts maybe in our whole lives. These days we're entering into contracts constantly, whether it be for our mobile phone, or even to join the local gym. In fact some of the worst contracts I've seen recently have been from gym contracts and have really worked against very vulnerable and disadvantaged people. With these particular contracts people are signing up sometimes for two to three years for a considerable amount of their income - up to 20 per cent of their income, maybe even more - they're watertight, these contracts, they can't get out of them. They're being forced to sign them on the spot. They're not being explained properly and the fine print is very, very confusing. That's just one example and I'll be so bold as to say there are many, many more.

The other thing that I'd like to point out is that particularly for Tasmanians is that we do not have a strong office of fair trading in this state. In fact my opinion is that we have a completely under-resourced department that really is unable to do very much at all. This is a great frustration to me. I don't quite know what can be done about it. I find it very annoying when I refer somebody to them, that they just refer that person straight back to us, when they know that we also haven't got the resources and probably less. I think it's very, very sad because when you see what is being done by offices of fair trading in other states where you have some very dynamic people and some very innovative things happening, that Tasmanian consumers' rights are really not being looked after properly.

I do believe in uniform legislation for consumers these days. I've been around long enough to remember prior to the consumer credit code when each state had varying laws for consumer credit and that was very, very confusing. With consumers travelling, we're a very mobile population these days, it's not unusual for people to travel from state to state on a regular basis, moving their homes, therefore I think it is important that as much of this legislation be uniform as possible, so that at least then consumers do have a hope of being educated and understanding what their rights and responsibilities are.

While I'm on the office of fair trading, I'd also like to give an example of this. The legislation has gone through but we're yet to get a bond board for tenants in Tasmania. This was supposed to have happened by July last year, and then it was postponed until later in the year, and there is still nothing. I haven't heard of anything happening yet. This is completely unsatisfactory. Tenants are some of most vulnerable consumers. The bond is a considerable amount of money and yet there is nothing really there for people. There is a residential tenancy commissioner within the office of fair trading but once again, I don't believe consumers utilise that properly and I don't believe that it is user-friendly for them.

Any other form of consumer matter in Tasmania has to go before the courts, including anything over \$5000 straight into the Magistrates Court; anything over \$20,000 straight into the Supreme Court. Therefore that means the majority of people's mortgages, even a car loan or anything like that can be over \$20,000, and you'll find if you wanted to take action for something that's happened, you would be in the Supreme Court which is a very complex and very difficult jurisdiction for the average person. Not many people would be able to afford to avail themselves of legal representation. There is very little, I could really say no legal aid for civil matters in Tasmania. They've just introduced a tiny little bit but it's very, very insignificant and it is only under very special circumstances. So I would very much like to say maybe some sort of tribunal, or some sort of user-friendly consumer forum set up in Tasmania as they do have in other states.

Because of this I'm very happy with the way some of the alternative dispute resolution schemes work, particularly like the banking industry ombudsman - which I think they've just changed their name, but you know which one I mean. I think that's a particularly good alternate dispute resolution scheme, I believe some of the insurance schemes. They have over a time taken a bit of time to work out how they're doing things, but I think these are much friendlier places for consumers to go, even though they are industry based. I believe the telecommunications one - which is probably one of the most important ones - is getting there. It's still not there. It still needs to be a little bit more user-friendly. I do believe that they are now taking complaints by telephone, but this is a very new thing to happen. Once it had to all be in writing. I think particularly working in the areas that we work, we're dealing with

people a lot of the time who have very low literacy skills, or an inability to actually put things in writing, and also do not have the tenacity and the staying power to be able to get something resolved. A number of times I've heard from people, "They just wore me out so I just gave up." I've actually heard that just recently to do with buying on the Internet, which is a whole new area for consumers and a whole new minefield for consumers.

The other thing I'd also say about the Internet as well is that a lot of places now - that consumer handbook I mentioned before which is now only available on the Internet - a lot of people do not have access to the Internet. I know that we think because we're on it all the time and have access to it that it's an automatic thing; people don't. In Tasmania we actually have areas where people don't even have access to broadband; the Tamar Valley being one just north of Launceston, with a large population. They still only have dial-up and in some areas, even that is not very satisfactory.

I believe that the basic legislation that's there is good; that it does protect consumers; that, if utilised properly, is effective. However, a lot of the people we see do not have the ability to utilise that legislation. I think that's the basic line of what I'm saying.

MR FITZGERALD: Thanks very much, Jane, that's terrific. We'd just like to raise some questions. Can I just start by the one about the Internet access. In another capacity I was visiting a range of services that provide community services for disadvantaged families. They were saying that the vast majority of their clients don't have access to Internet, and that all of the assumptions by policymakers is that everyone has access to it, and they said their clients simply don't.

MS HUTCHISON: That's definitely our experience, and it is very frustrating.

MR FITZGERALD: How do we get a handle on that, because it's clear now when we're dealing with the information issues, there is an assumption that people can access Internet, can find out about products, services, comparative shop, but also find out about their rights and others. We're using the Internet more and more as a way of delivering both product information, but also rights information. But how do we get a handle on the extent of the absence of access to that particular form of information? Do we know how many people don't have access to Internet? Do we have sufficient anecdotal evidence to say that this is a significant problem? Are there alternative ways by which they can gain access to those services? Have you got a view about the extent of the problem and how we would deal with it?

MS HUTCHISON: I don't know how you would actually come up with definite numbers. I think mostly it would be anecdotal and it would be from service

providers like ourselves and others who work with people who are vulnerable and disadvantaged. But it's not only vulnerable and disadvantaged people these days. We're an ageing population and people not that much older than us who haven't been in the workforce would have no idea about the Internet. It's also the cost. A lot of people just cannot afford basic computers and the whole system of setting them up. To me - and I hate to say this - one of the best ways of getting consumer messages out is on commercial television.

MR POTTS: You support television.

MS HUTCHISON: I do unfortunately.

MR FITZGERALD: They'll have television but not Internet.

MS HUTCHISON: Yes, they'll have television but they won't have the Internet.

MR FITZGERALD: That's true.

MS HUTCHISON: Definitely, you know, those horrific programs like Today Tonight and A Current Affair are the Bible as far as some people are concerned. I know colleagues of mine in Victoria and New South Wales, while they shudder, do run with those programs because they know that that's the way that they're going to reach people. It's just unfortunate. One night they do the tenant from hell, and the next night they do the landlord from hell. But at least it's educating.

MR FITZGERALD: That might be the new notion of balance, or something like that.

MS HUTCHISON: That's right.

MR POTTS: Jane, thanks very much. I found your presentation very interesting, partly because not only did you identify some problems, but you tried to come up with some solutions too which always helps, I think. But I have a few questions and could I begin by just addressing this issue of accessibility which, I think, was sort of an emphasis of your presentation.

MS HUTCHISON: Yes.

MR POTTS: The framework as we have it at the moment is not too bad. It may be a little bit of tinkering is required but the major issue as you see it is consumer accessibility to it and being able to use it and utilise it. You're saying that in some industries, like banking and insurance and telcos, it's improving with ADRs and the like, that consumers are finding it easier to access. I guess the questions in my mind

there were what sort of proportion of the complaints that consumers face are accounted for by what happens in those particular industries. I'm not looking for an exact percentage but at those industries where things are getting better and where you can see - because they tend to be fairly large industries with a few players in them - that perhaps it's easier for those industries to set up schemes for dealing with consumers directly than in some other industries might be a lot more diverse. It's more difficult to draw boundaries, there's a whole lot of players in the market and it's difficult to get them all participating in a scheme, and you've got the sort of free rider problem that often exists.

Have you got any feel for what proportion of consumer complaints, for instance, those ones account for? Would it be 30 per cent, 50 per cent, 70 or 80 per cent? In other words, if those areas were operating fairly well, then you could say that a fairly large part of what consumers are concerned with in terms of the issues that have to be dealt with are working better now than they used to, and it looks as though we're on a track to getting that right, or do you think that's still a fairly small part of the problem for consumers overall in terms of accessibility?

MS HUTCHISON: I think they have improved out of sight, I really do. The banking industry one has been around now since very early 90s, is it? Yes, around that time, late 80s, early 90s that started. It had a number of hiccups but I do think they have worked very hard at it. I think they've also realised the fact that they weren't very popular, or they're still not very popular. It might have helped because of it being an opt-in - a lot of these are opt-in schemes. However, I think to improve the general popularity out there, the majority of the banks did opt in. In fact I think all of them have opted in. They have taken it very seriously, although of course it's not legislative and a lot of the time only recommendations can be made. These recommendations are followed up on. On the whole, my experience of dealing with some of these schemes has been a positive one, and a very positive outcome for the consumer.

On a Tasmanian basis I would say that by far the majority of consumer complaints go through those schemes, because that's the only avenue that you've really got in Tasmania. So I would be plucking a figure, but I would be saying over 90 per cent of official consumer complaints made are made to those schemes from Tasmania.

MR POTTS: The remaining 10 per cent, is that - - -

MS HUTCHISON: Well, these sort of go nowhere - - -

MR POTTS: But is there another section of complaints that just aren't dealt with at all because there's no mechanism for doing it over and above the 10 per cent?

MS HUTCHISON: Huge numbers are not dealt with. As I said, you know, with our consumer credit hotline, all I can do is provide advice to people and information on how to go about doing things. We can't act for them; we just do not have those resources. I would get probably on average - and this is a completely un-advertised line; it's known by the Legal Aid Commission, the Office of Fair Trading and our ad in the White Pages - at least six to seven phone calls a week on that, and if I can't refer somebody to an alternative dispute resolution scheme, they really have very little hope of resolving their problem.

MR POTTS: Yes.

MR FITZGERALD: Can I ask a related question to that - and this is just free thought at the moment. For consumers that don't have problems in relation to these specific industries that have an ombudsman function, the message that you've indicated to us and we've heard in other jurisdictions is that it is very unlikely that they will have their matters dealt with by any other body. If we look at the Department of Fair Trading, or whatever they are in various states, they're required to be investigators, regulators, policy-makers and so on and so forth. A thought is whether or not we actually need to unpack that so that perhaps you could establish a general consumer ombudsman that would deal with these non-industry specific areas, leaving the department to do purely investigative work and matters of regulation and so on, rather than also being a dispute resolution body, which it appears to me they're not well suited to and not established to do.

So I'm just trying to unpack as to what is the role of the government department and what mechanisms could we put in place to deal with dispute resolution in relation to the broader range of consumer issues, in the same way that we deal with consumer complaints in relation to industry issues. You might or might not have any thoughts about that, but it just strikes me that there seems to be a high level of unhappiness with the way in which various fair trading offices are handling their portfolio. But it may be that we're asking too much of it, that in fact the dispute resolution side, for example, is not a function that they should be seeking to perform. Perhaps that should sit somewhere else, and rather their function should be more narrow as regulators. But I would just throw that in. There are resourcing issues with all of that but, putting that aside, it's just a conceptual issue.

MS HUTCHISON: Yes, well, I'll put aside the fact that Tasmania's Office of Fair Trading basically does nothing. Yes, it could also be that the whole prospect of what they have to do is exhausting even just looking at it. I agree that having the regulation and everything else as well can make it very complex. I like your idea of a separate ombudsman or, as I said before, even separate tribunals, something that is separate. But you do need to have these - if we didn't have the ACCC and ASIC

looking after their sides, you know, we would be in a horrific mess nationally.

MR FITZGERALD: Sure.

MS HUTCHISON: I suppose that my comment for Tasmanians is that I think consumers do get in messes down here and nothing is resolved.

MR FITZGERALD: Can I ask you a more challenging aspect, just assuming for a moment this notion were to occur: where should we be putting the resources? Do we put it more into dispute resolution or do we put it more into trying to actually redress for your legal rights? In other words, do we put it into trying to have more access to the legal process, be it through tribunal or courts, to get outcomes? In other words, do you fund more of this generic dispute resolution activity or do you fund more of the hard-core ability to access your specific rights within the legal framework? Now, again, this is always difficult and we'd like to have everything - - -

MS HUTCHISON: At best, yes.

MR FITZGERALD: - - - but it's just in a sense trying to get a handle on where one can achieve the greatest value for the resources that you contribute in this area.

MS HUTCHISON: Okay. I suppose if you were put it into alternative dispute resolution schemes then they would need to have some grunt to them. Rather than just make recommendations, they would actually need to be able to make very definite comments and have penalties et cetera attached to them. I do like the idea of tribunals. We work in some tribunals, like the Social Security Appeals Tribunal and things like that. I must admit I think that with tribunals there is an ability for them to get out of hand, and I think that's what we've seen with things like the SSAT. Where it was once a very consumer-friendly jurisdiction, it's now an area of quite strong legal argument. If you're going to have tribunals et cetera, they need to be user-friendly. They need to be, for the average person, that you can have a self-represented litigant there, because the cost of legal representation is forbidding, and if you're having a consumer problem, a lot of the time you're not going to have access to large amounts of money to actually get that redress that you might need.

MR FITZGERALD: Do most tribunals now have a compulsory dispute resolution process or mediation process that has to take place prior to the actual tribunal hearing - for example, the SSAT - or not?

MS HUTCHISON: Yes, there is always a set you have to go back through. Even with a minor civil division and Magistrates Court, there's a basic dispute resolution. They try to sit the parties down and work it out.

MR POTTS: I guess the success of these ADRs in areas like banking and insurance, which are arrangements that are outside of the legal process really, it's a matter of bringing parties together and, just by bringing them together with the assistance of a third party, often a dispute can be resolved. Doesn't that suggest that, if you're thinking about other areas, you should be thinking of something that at least to begin with doesn't involve a legal process?

MS HUTCHISON: Most definitely, as I keep saying, I think they're a great way of going. In my opinion, in Tasmania they're the main avenue for consumers to get any form of redress. The only thing that worries me is that it really is dependent on how that particular industry looks towards that scheme. As I said, with the TIO up until recently it was a bit of a dog's breakfast because the telcos weren't that keen about it, whereas maybe the banking industry one has worked a lot better because they have taken it more seriously and acted upon it. I suppose the thing is that it's not under a legislative framework, therefore they can change it however they want to change it. That's the thing that worries me, I think.

MR FITZGERALD: You're correct, it's not legislative but, as I understand it, ASIC now has some sort of arrangement with the banking and finance ombudsman whereby there has to be some reporting back to ASIC in relation to systemic issues and matters that may require investigation. So there does seem to be a more formal link back now, and I think in the telecommunications ombudsman, ACMA, the national regulator also has some connection back into the ombudsman as well - but you're right.

MS HUTCHISON: It's also how strong that regulator is, yes.

MR POTTS: But I guess the other feature of those schemes is they're operating in industries where there aren't very many companies providing the services, if you like, or in banking and insurance and telcos.

MS HUTCHISON: There's a few telcos these days.

MR POTTS: Yes, you're right. There are, that's true. But if you compare it with other industries, for instance, you'd probably have far more players and it might be more difficult to get comprehensive membership of a scheme.

MS HUTCHISON: That is the difficulty with the opt-in type of scheme. If something could be set up to make it a bit more formalised and compulsory, I think that would be a far better outcome for consumers.

MR POTTS: Could I just go back to this question of areas outside of the large ones

like banking, insurance and telcos, where there tend to be a lot of consumer complaints. You mentioned consumer credit as one of them, but could you mention a few others, just to give me a feel for the extent of the problem outside of those areas and the sorts of industries that tend to be characteristic of those problems.

MS HUTCHISON: Any of them can be, but of the other areas I can think of, one that immediately springs to mind down here is motor vehicle trading. There is really very little redress except under common law for consumers buying either new or second-hand cars. There are no cooling-off periods, there is nothing. Once you sign on that dotted line, you're stuck with it basically, unless you can prove unconscionable conduct or something like that. Building is another one I've been seeing a little bit more of, particularly people with renovations and so on and so forth. There's very little redress against builders. Basically you're back in the courts there. In just about every aspect of what we do, there's a problem for people. Motor mechanics, car repairs - we have a few people getting ripped off something shocking with that, and then again warranties and things like that also can be problems.

MR POTTS: Thank you.

MR FITZGERALD: You've mentioned the unfair contracts legislation and we're aware of your views on that. There are a couple of models around. One is the UK model which only applies to standard form of contracts, and then there's the Victorian model which applies to all contracts. Of course, you have the option of trying to pack unconscionability and make it broader in scope, but assume for a moment you were to move to an unfair contracts review process or provisions: do you have a view as to which model? You mention that there's disagreement between the Commonwealth and the states and so on and so forth. But from our point of view do you have a particular model that you would use if you were looking at this?

MS HUTCHISON: Obviously I'd prefer the Victorian model, just because it's far more far-ranging and I believe it protects consumers. But at this stage I'd be happy to go with anything.

MR FITZGERALD: Can I ask a related question: just assume for a moment that you were to have a uniform unfair contract review term in the nine jurisdictions, ignoring New Zealand for one moment, the 10th. That opens up a possibility that various jurisdictions could therefore enter into, say, telecommunications contracts and have different views about unfairness and so on and so forth. Has there been any consideration in your mind as to how to prevent that occurring? At the moment, with Victoria being the only state that has that jurisdiction, whatever it says seems to have an impact on those contracts nationally. But that's a very different environment than if you suddenly had nine jurisdictions with the same power.

MS HUTCHISON: This is why I think uniform legislation is very, very important. This is why, since the introduction of a uniform consumer credit code, life has been a lot easier. It was a nightmare prior to that and it still is a nightmare with basic contracts because of the difference.

MR FITZGERALD: But the other issue is, if you had uniform legislation, how would you deal with the jurisdiction, or would you contemplate a situation where, for example, the ACCC, by way of memorandum of understanding or agreement with the states, would look at certain types of contracts and state jurisdictions would be precluded from doing so? Just take telecommunications for a moment. We've met with telecommunications companies and they've accepted that in their area the notion of unfairness is relevant and they've got it in their codes of conduct. Victoria has negotiated with one or other of those to change their contracts, but the prospect of having seven or eight jurisdictions being able to tell them that there are different aspects of their contracts could well send an alarm. So it might be the same law, but who has the right to actually enforce it, I suppose is the issue.

MS HUTCHISON: For me, I would be saying I would like to see it go federally really, because of having something like the ACCC or ASIC overseeing it, purely because if it's left to the states then you have the difficulty where some states will be very vigilant and put resources and do something about it, and then you'll have other states, like we have in Tasmania at the moment, where nothing would happen. It's all very well having legislation and everything, but if it's utilised there's no point.

MR FITZGERALD: You mentioned the uniform consumer credit code and indicated that it has improved circumstances. One of the things we've seen as we've been travelling around is that a number of the states are now starting to add new elements to that without the concurrence of everybody else. This is particularly in relation to what people would call suboptimal lending, or predatory lending practices.

MS HUTCHISON: Yes, the payday lenders and the like.

MR FITZGERALD: Yes, payday lenders and so on, which I should indicate are not necessarily predatory in their conduct but could be. What's your view about the approach to this particular part of financial lending which we're looking at specifically? What's the right approach in terms of trying to deal with issues of concern amongst vulnerable or disadvantaged consumers and access to this particular form of credit? Exploring that a bit further, is it, as one state has done, to introduce provisions now which require compulsory assessment by the provider of the finance?

MS HUTCHISON: The ACT, yes.

MR FITZGERALD: A number have introduced caps on interest rates.

MS HUTCHISON: I quite like the idea that there's an onus on the lender as well because they're making money et cetera, they're selling an item, to make sure that the person at the other end can actually afford what they're getting, what they're purchasing. I do quite like that onus. The other area, which you've just reminded me I haven't mentioned, where I find a lot of people get into trouble is the practice by banks of increasing credit limits on credit cards, people just being basically sent an offer, "Double your credit card limit," or you phone up to activate your credit card, "Let's double your limit while we're at it." I think it's incredibly dangerous that you're getting credit cards now with substantial amounts of money on them and the lending institution might have absolutely no idea. I have seen people who have been unemployed given credit cards of \$20,000-odd. It's just ridiculous stuff.

Yes, there needs to be an onus on the consumer. The consumer has a responsibility to not over-commit themselves; however, it is very, very difficult. At Christmas time your credit card is up to the maximum and suddenly through the post you get something, "Just sign here and let us double it so you can have a good Christmas." This goes on every year around late November, early December. I do not think that that's a healthy practice.

MR FITZGERALD: So you would regard that as unfair, for instance? Would that fall within what you think the ambit of unfair contracts should cover? I guess that was a general question I had. Where would you draw the line in terms of what you would regard as unfair?

MS HUTCHISON: I do believe that is unfair. It's an unfair practice, it's putting unfair pressure on people. I don't know whether I've actually thought about it as far as unfair contracts. I suppose with unfair contracts I've seen them go on for pages and pages of gobbledegook that is completely unreadable to anyone really. You need a magnifying glass and then you need a team of lawyers to actually deconstruct what's written there for you. That's the sort of contract that I've been seeing and that has caused me a great deal of concern.

MR FITZGERALD: The problem there is that the information is provided but there's so much information provided the consumer can't absorb it and understand it.

MS HUTCHISON: Definitely, also with some very unfair terms within it as well.

MR FITZGERALD: I was going to ask you that question. If you had a short contract, a page or a page and a half, for instance - - -

MS HUTCHISON: I've seen a less than a page contract that was just so unfair you

just wouldn't believe it.

MR FITZGERALD: I guess that's my question though. Let's say it's a one-page contract and it's got something in there about the provider of this service being able to unilaterally change the terms of the contract. You still believe that the law should not allow such a provision to be in a contract, even though, if it's a one-page contract it would be within the capacity of the consumer to be able to read and understand that particular provision in the contract and, therefore, they have the choice of whether they should sign the contract or not. But what you're saying is you believe that by law we should say that such a practice is unfair and therefore it shouldn't be included in a contract, regardless of how short the contract is.

MS HUTCHISON: No, I don't think I was quite meaning that.

MR FITZGERALD: Can I just put the question to you, how you would react to that?

MS HUTCHISON: If it was clear - at the moment some of the, "We can change the terms of this contract," or increase penalty rates or something like that often is clause 59 of 70 clauses of something like in point 8 font. That, to me, is not satisfactory. Whereas if it's quite clearly there in large font, clearly written that, "In certain circumstances we can change the terms of this contract." It has to be made clear what terms they're going to change. As long as it's clear, I think.

MR FITZGERALD: So it's the clarity that's the issue from your point of view rather than the substance of what's in the contract and the capacity to understand what's in the contract.

MS HUTCHISON: There is definitely the capacity to understand what's in the contract is a big starting point. But then I also don't believe that it is also fair that they can just make blanket changes to things. I think that's a minefield, I really do and I've seen problems there.

MR FITZGERALD: As I understand it, it's not necessarily the ability to make the change, it's the ability to make the change where the detriment is to the consumer only, so you've got a second tier to that element. It does raise these sorts of boundary issues as to how far you go with some of these.

MS HUTCHISON: My concern, just looking it at the moment from the Tasmanian perspective, is that if you do sign and they do change something and even if it's unconscionable what they do, your redress is basically negligible down here unless you have the ability to run an unconscionable case in the courts and not many consumers have that ability.

MR FITZGERALD: When Gary asked you about some of the areas, you mentioned building. We will have some people presenting later who I think will be talking about home warranty and building arrangements. In one or two of the other public hearings we've had people presenting in relation specifically to home warranty insurance and I don't know what the circumstances are down here in Tasmania. I was just wondering if you're able to enunciate a little bit further the issues in building.

MS HUTCHISON: We provide free legal advice sessions a couple of evenings a week and through that people can front up with any type of problem and we do see, not huge numbers, but enough to be of concern to people who have some sort of building work done, the building work has been unsatisfactory and how do they get redress on that. It can be very difficult.

MR FITZGERALD: Again, you may or may not have a comment, but do you have a view as to how that can be best dealt with? At the moment participants have presented quite distressing stories about how they've had to access the legal processes ultimately to effectively run out of resources to be able to continue those litigations.

MS HUTCHISON: Which invariably happens.

MR FITZGERALD: Some have therefore said, "What we need are statutory schemes similar to what we've had in some states previously as a means of ensuring that there is in fact a capacity to deal with the issues." Others have said it's about improving the quality of the insurance products that are available, so on and so forth. So in relation to building contracts, particularly where we're talking about very substantial damages or damage to consumers. Do you have a particular view as to what the right way forward is? Is it simply to enhance the person's ability to access their legal rights or are there more fundamental issues at stake here? Again, if you haven't given that thought, then that's fine.

MS HUTCHISON: I haven't given it a huge amount of thought. I tend to sort of veer away from as much as possible going down the legal pathway just purely because of the expense and difficulty that can bring up. I suppose I am becoming quite a big fan of the ADR, maybe some sort of dispute resolution, at least for a start to try and get things happening or tribunals or something like that where people can get redress in those areas without having to spend their life savings doing it. That is the problem is people's lack of resources being able to access what are their rights.

MR FITZGERALD: Anything else?

MR POTTS: Just one final question. You mentioned a couple of times the under-resourcing of the Office of Fair Trading in Tasmania and also in our travels around Australia we've heard a number of times about the relatively low priority that's given to government funding of consumer bodies. Do you have any perspective on that from a Tasmanian situation as to why you believe that OFT is under-resourced? Is it just a lack of priority on government's part? Given the dimension of the problems you've been mentioning - - -

MS HUTCHISON: Yes.

MR POTTS: - - - affecting consumers, and presumably the voice they have with government, it seems odd that the results should be that the Office of Fair Trading which is charged with helping consumers in this area is so severely under-resourced as you see it.

MS HUTCHISON: I believe it has gone on the backburner. I don't believe that it's a priority at all with our state governments for at least the last 15 to 20 years. In that time I don't think - I haven't got the facts in front of me, but I believe our Consumer Affairs Department's funding has basically gone backwards in that time, at a time when consumers - the area for consumers has become far more complex. I don't believe that they consider it to be a vote-catching area and it's just a complete lack of interest. Also Offices of Fair Trading have not been very vocal or have not had an ability to voice this very well either.

MR FITZGERALD: Could I put a more provocative view to you that - not necessarily a view that I share - they might say that the reason for this issue to have reduced in importance within government - well, they probably wouldn't have said that anyway but if they did, would be in response to the fact that consumers seem to be reasonably satisfied with the current consumer arrangements. In other words, because you mentioned that it was not a vote-getter but perhaps the public profile associated with consumer issues has diminished. One might say that's because in a sense consumers are not doing too badly out of the current arrangements, that there has been an improvement in the way in which businesses deal with consumers by and large. So the relative reduction in importance is directly related to an improvement in consumer wellbeing, if I can use that expression, because we've seen in most states - in most states, not all - a relative decline in the level of resourcing compared to the growth in consumer transactions. They certainly haven't gone in the same direction. How would you respond to that?

MS HUTCHISON: I suppose on the whole for consumers, until you have a problem it's not an issue. The majority - let's face it, as you said, the growth in consumer contracts et cetera is humungous these days, and the majority of the time people don't have a problem with them. It's not huge numbers but then when they do

it's being able to get the redress that's necessary. I would also go so far as to say I think a lot of people don't actually even realise what is available to them if they were to utilise it, just because it's not - you're not really taught about these things in school, there's not a lot of publicity put them around unless something comes out and then, as I said before, if it appears on A Current Affair then maybe people might question something.

I think there's definitely a huge lack of education out there for people and I think people just in the end give up, shrug their shoulders and walk off and think, "Oh, well, can't do anything," and there's a certain amount of frustration. I suppose the other thing is, you know, in some areas we're talking about smaller things, we're not talking about earth-shattering things for people, so it is that sort of shrug the shoulders and "Oh, well". In some ways I think maybe, yes, providers are a little bit more aware, but not all the time.

MR FITZGERALD: No, that's fine. Well, thanks very much, Jane, that's terrific. We look forward to getting a submission at some stage.

MR POTTS: Thank you very much, Jane.

MS HUTCHISON: Thank you.

MR FITZGERALD: If you could just give your full name and the organisation you represent and then, as previously, if you want to spend 15 or 20 minutes making key points, then we'll have a discussion about those.

MR MULLER: Tom Muller, social policy and research manager at TasCOSS, the Tasmanian Council of Social Service. Unfortunately, Matt Rowell is sick and can't be here today.

MR FITZGERALD: Good, thanks, that's okay.

MS McLEAN: Kath McLean, policy officer from the Tasmanian Council of Social Service.

MR FITZGERALD: Good, over to you.

MR MULLER: Okay. I'm just going to make our statement which unfortunately I'll read mostly and then Kath will engage in the discussion and answer any questions and flesh out the detail as well. Just by way of introduction of TasCOSS, TasCOSS is the Tasmanian Council of Social Service. It's the peak body for the community services industry in Tasmania. Our membership comprises of organisations and individuals engaged in provision of services to low-income and disadvantaged Tasmanians.

We welcome this opportunity to present to the Productivity Commission and hope that it contributes to a more accessible and effective consumer protection framework. We also appreciate the presence of the Productivity Commission here in Hobart for this hearing. Our comments today focus largely on several matters raised in your issues paper and I will elaborate on these from the perspective of our Tasmanian experience. I will also make some comments on consumer policy in relation to consumers and community services at the end.

We plan to provide the commission with a written submission that will provide further detail on these and other matters. So in terms of the overall framework and approach, TasCOSS supports increased national consistency and consumer policy and protection with clear lines of responsibility between jurisdictions. Current inconsistencies can cause consumer detriment and result in some Australian consumers being better protected than others. Unfair contract terms regulation is a case in point. Although the need for such regulation has been recognised by the Ministerial Council on Consumer Affairs, only Victoria has so far introduced amendments to its Fair Trading Act to specifically address this issue.

Despite repeated requests from TasCOSS, the Tasmanian Office of Consumer Affairs and Fair Trading, there has yet to be any progress on this issue in Tasmania.

So we think that's a clear example of where there does need to be an overall national framework, bringing uniformity and consistency. Another example of lack of national consistency is the continued absence of a rental deposit authority in Tasmania. Although the enabling legislation was passed by the Tasmanian parliament in late 2005, the responsible agency, Consumer Affairs and Fair Trading, has not yet managed to get a rental deposit authority in operation. For TasCOSS, an organisation that does represent organisations providing services to low income and disadvantaged Tasmanians, this is a real example of where there is a failing in consumer protection, particularly given the ongoing housing affordability crisis. So we think that's an important example where there does need to be more national consistency.

The Tasmanian Office of Consumer Affairs and Fair Trading is in our view chronically under-resourced. In recent years the offices rarely received budget increases higher than CPI, it's characterised by staff and funding shortages and regularly claims not to have the adequate resources to carry out its mandate. It now has only one office in the state located in Hobart, having closed its last remaining regional office in Devonport several years ago. There used to be a shopfront as well which no longer exists, and as good as electronic mediums are for engaging with the Office of Consumer Affairs and Fair Trading, not having that presence on the ground is a real barrier for consumers who want to access the Consumer Affairs and Fair Trading. That's an example of where the lack of resources impacts on the ability of consumers to access information and to pursue their own rights.

In terms of the policy tools, our view on policy tools is that they must be appropriate to the situation and must be accessible, particularly to those most in need. This raises the issue of disadvantage and vulnerable consumers, and the need to ensure that such consumers are protected. Our members work daily with people on low incomes and those otherwise disadvantaged. While most people living on low incomes are very careful and astute consumers through necessity, they become vulnerable when things go wrong, since they have little or no financial buffer to protect them. Low income consumers are particularly vulnerable in situations in which long-term and non-negotiable standard form contracts are required, or potentially large savings are offered, such as those for telecommunications companies and services.

A poor decision can set in train ongoing financial stress and can have long-term consequences. Penalties for withdrawal or contract alteration are usually high and impose an additional burden. In such situations it is essential that these consumers have access to assistance to enable them to negotiate their rights under whatever policy tools apply. This highlights the need not only for clear and transparent protection, but also for more widespread and effective consumer advocacy services, and again this is one of the critical points that we'll be making in

our submission and that we want to make today, and that is that there really is a lack of consumer advocacy services in Tasmania.

Not only is the community legal services under-resourced and under-funded, and not only is there not adequate funding for consumer affairs and fair trading, there really isn't an advocacy body that people can go to who can take up their case. We think that's another area where there really does need to be more investment at a national level. Appropriate policy tools must be in place to protect vulnerable consumers. Features such as mandatory cooling-off periods, the prohibition of unfair contract terms, requirements for simplified product or service information, can all assist vulnerable consumers, as can accessible advocacy assistance.

Turning to the generic versus specific regulation, TasCOSS believes there are strong arguments for industry-specific regulation in many areas, and particularly in essential services such as energy and housing. I'm just going to go into a little bit of detail around the energy situation in Hobart and Tasmania and focus on the prepayment meters, given that this is where TasCOSS has recently done some research. Just by way of introduction, looking at energy overall in Tasmania, there is specific regulation and in our view this is essential to ensure a safe, reliable, and affordable energy supply. Currently household electricity in Tasmania is supplied by monopoly state-owned companies in a non-contestable retail environment. Supply on the standard tariff is robustly regulated by the Tasmanian energy regulator through a number of regulatory tools. These industry-specific regulations function well to protect standard tariff consumers and to maximise their access to uninterrupted electricity supply.

Specifically, regulatory features such as standard requirements for billing and account statements, and the offer of payment plans to consumers having difficulty paying, standard procedures for disconnection warnings, and limitations on the time allowable for disconnections, all contribute to ensuring that as few consumers as possible are disconnected due to their inability to pay. However, in terms of prepayment meters, they are widely used in Tasmania. There are 40,000 households in Tasmania use prepayment meters; that's 20 per cent of all Tasmanian households. But electricity delivered through the Aurora pay-as-you-go prepayment meter system, is not subject to the same specific regulation that supply through standard tariffs is. The prepayment meters used by Aurora in the vast majority of households do not have the capacity to recognise and record periods of disconnection. This concerns TasCOSS because we believe that this could mask problems with so-called self-disconnection, remove the extent of the problem from the public gaze, and therefore prevent appropriate policy and other responses.

It is a regulatory requirement that disconnections from standard tariff meters are reported to the regulator, and we have seen the disconnection rate of standard

meters fall dramatically in recent years. This is largely due to the combined efforts of the energy regulator and Aurora Energy, but the falling disconnection rate must also be affected by the removal from the statistics of the many consumers who have moved to prepayment meters; again, 20 per cent of all Tasmanian households. As a result of an investigation held into APAYG in 2005, the Tasmanian energy regulator decided that given the widespread use of the system and the inequities in consumer protection measures, APAYG needed to be regulated, and recommended that the specific prepayment meter code be introduced. The development of the code is still under way. TasCOSS looks forward to the introduction of the new code and believes that this Tasmanian experience is a clear example of the necessity for industry-specific regulation to protect consumers and particularly vulnerable consumers.

Regarding enforcement and redress, we agree that a consumer policy framework that works well for all, depends on effective monitoring, enforcement, and access to redress. However, again, I stress that adequate resources and the will to effectively monitor and enforce are critical in this. Again, I cite the financial circumstances of the Tasmanian Office of Consumer Affairs and Fair Trading as a serious impediment to monitoring, enforcement, and redress for consumers in Tasmania. Much consumer advocacy work in Tasmania, including assistance with enforcement and redress, is carried out by the under-funded community legal services. Tasmanian community legal services are funded almost exclusively by the federal government, with only the Tenants Union of Tasmania receiving contribution to its funding from the state government.

The legal services play a vital role in Tasmania's consumer framework and, we believe, often receive referrals from the state Office of Consumer Affairs and Fair Trading. We have advocated unsuccessfully for state government funding for community legal services and we will continue to work with the legal services to secure a commitment from the state government to support their very important work. We see a clear role for the non-government sector to provide appropriate and accessible services to consumers, and particularly to vulnerable and disadvantaged consumers. Not only are community legal services and CAFT under-resourced in Tasmania, but Tasmanian consumers also do not have access to the specialist legal and consumer services available in other major cities. TasCOSS believes there is a serious gap in certain consumer services in this state, and that this gap affects Tasmania's consumers' access to enforcement and redress.

In terms of self-regulation and non-regulatory approaches, in the issues paper you introduce a notion of a formalised government support for consumer advocacy as a non-regulatory option. This is an option that we would support, providing that consumer advocacy is provided independently and at arm's length from government. We believe there is a critical role for a well-resourced, independent, national, as well

as state based consumer research, information, and advocacy organisation. A major source of consumer detriment is the result of the asymmetry of information in consumer transactions. An active and well-resourced consumer research, information, and advocacy body could go some way to addressing the issues highlighted here.

I think I've probably said enough about all of these issues and we can discuss them further in the questions that follow. However, I just want to touch on one last point, and that's really in relation to consumers of community and disability services provided by the non-government and private service providers. In Tasmania we believe there is a gap in the consumer protection framework, and although it is not strictly within the terms of reference or your inquiry, we believe it is both relevant and important. Consumers of government services and health services have access to the state ombudsman and health complaints commissioner respectively. However, consumers of community services delivered by non-government and private providers have no such avenues for complaint. As you know, governments are increasingly withdrawing from the direct provision of services and choosing instead to contract services out to the non-government sector; that's private providers.

Services treated in this way include community care services; supported accommodation; the provision of emergency relief; sexual assault and domestic violence counselling services; employment refugee resettlement support services; disability and so on. We're not talking about a small sector. In Tasmania the community services industry's budget is estimated between 500 and 800 million dollars and it employs 5000 people, and there are over 10,000 volunteers, and it's providing services to a significant proportion of Tasmanians, and we're talking about a state that has high costs and low income. It has a whole range of statistics which are far lower than the rest of the country, which compound the experience of disadvantage and poverty in Tasmania. So from our perspective, if this inquiry can also look at the changes that are going on within the non-government sector, the fact that there are increasing services being provided by the non-government sector and look at what are appropriate mechanisms, what are appropriate tools for consumer protection within the community services industry, then this would be a very good thing. We don't know what the right answer is but we know there have been other models tried in other states and we think there would be advantages in looking at the learning from other states and seeing how they can be applied for national consistency again. Those issues around national consistency and uniformity apply just as much to the community services sector as they apply to other services.

I mean, on that point the one thing we should also say is that organisations that provide services are also affected by the absence of independent feedback and assessment of their services. We believe that community sector organisations can benefit from being open to independent and constructive outside scrutiny from a

properly constituted and established consumer complaints mechanism.

Finally, and just to sum up, we really want to just refer back to the critical need for adequate resources for all agencies involved in consumer protection and policy in Tasmania. Additionally, and equally important, there must be the political and administrative will to effectively develop and review consumer policy to monitor and enforce regulation and to provide accessible and effective avenues for consumer redress. Thank you.

MR FITZGERALD: Good, thanks very much, Tom. Do you want to add anything, Kath, at this stage?

MS McLEAN: Not at this stage, no.

MR FITZGERALD: Okay, fine.

MR POTTS: Can I begin with this question of under-resourcing of state agencies which you emphasised at the end and also during the presentation, and I guess also put it in the context of your support for public funding of a consumer advocacy body of some kind which would represent an extension of government funding in an environment where you're saying that there's not very much support for government funding for agencies. So if I could just get your perspective on why you think government funding in Tasmania of consumer agencies, particularly the Office of Fair Trading, is under-resourced, what the reasons are behind that and, I guess, for the same sorts of points that we were making to the previous witness - and I think you were present during that discussion, so there's no need to go over the same points again. But if we could get your perspective on this same question it would be very helpful, I think.

MR MULLER: Well, I guess, one of the comments at the start is that it would be very interesting to also hear from CAFT in Tasmania and to hear their perspective on why they don't think they have been able to successfully negotiate for increases in funding through budgetary processes. TasCOSS has been calling for additional funding to the Office of Consumer Affairs and Fair Trading for at least the last three or four budget submissions. I think we would agree with the point that was made by the last presenter around the lack of priority being given to the role of the office to protect consumers. Do you want to add anything?

MS McLEAN: Yes, just a case of political will, absence thereof. Also administrative will perhaps within the Office of Consumer Affairs and Fair Trading. They don't seem to put a lot of pressure on government for increased funding, from our point of view, from what we can see.

MR POTTS: I guess the question is why the government gives it low priority. Now, Robert mentioned before, possibly it's because there's a view that consumers overall feel better served by the system now than they have in the past. I'm not saying I support that argument but that could be an argument. Another argument may be that it's sort of cost-shifting, if you like, between the Commonwealth and the state. The community legal service is funded by the Commonwealth, so the state government sees this as something which the Commonwealth is doing, so they don't need to perhaps apply as many resources as otherwise. I think you yourselves mentioned, for instance, that the Internet now provides a new access point for consumers, so there's not the same need for shopfronts that used to be available previously. They're a few issues just to try and get below the surface and sort of understand why the government may be thinking in the way that it is.

MS McLEAN: Yes, I mean, I can't explain the lack of interest in it. I think while the Internet has increased access for some people to Consumer Affairs and Fair Trading and other avenues for information and so on, I don't think that applies universally. I think a lot of people on low incomes and a lot of other disadvantaged people don't have access to the Internet - at least not in their homes - and therefore don't have access to those avenues for information.

MR POTTS: I guess if the situation is that there is relatively low priority for government funding in Tasmania, the question then becomes if the idea of consumer advocacy body is floated, whether it would indeed get the sort of government support that would be needed to make it effective.

MS McLEAN: Certainly TasCOSS has applied several times to the relevant minister for funding for a consumer advocacy information research body in recent years and we've been unsuccessful, and the minister cited the existence of Consumer Affairs and Fair Trading as an adequate resource for consumers in Tasmania which we didn't really agree with. So when we say we support government support for a non-government consumer advocacy and information and research organisation, we'd be looking more at probably a federal funding for it and a national body that could be made up of a federation of jurisdictional bodies or could have branches in a number of states; perhaps not all but some maybe.

MR MULLER: Just to pick up on your point about "what's the reason for it", the state government should be credited for the economic good times that there have been in Tasmania and nationally over the last 10 years and there is certainly a sentiment that the way in which they are tackling disadvantages by growing the economy and they will argue, you know, they've created 28,000 jobs, all of which is true but the reality is that from TasCOSS's perspective there's a concentration of disadvantage which is perhaps not given the priority by the state government that it should, and consumer protection is just an example of a lack of prioritising the needs

of those who are vulnerable more generally. Perhaps it has also got to do with the fact that you are seeing a whole range increasing from complexity of consumer protection issues, because you have difficulty with people who have had a negative experience to pursue their case because of the cost, because they can't take it through other avenues, then it actually doesn't become an issue.

It's not an issue within the public domain because people can't take the issue forward. So there's an issue of actually accessing justice and an issue of actually advocating in the first place; unless you have people who are advocating to government who actually have the resources. So you've got a bit of a catch-22 going on. It's not well funded so you're not having people advocating so therefore it's not receiving the funding it deserves to meet those people's needs. So I think it's a whole range of different reasons that would probably explain why there isn't the funding that we think there needs to be for Consumer Affairs and Fair Trading.

MR FITZGERALD: It touches on this whole issue about enforcement and redress. I suppose in trying to get a handle on it, particularly in the smaller jurisdictions, what's the right suite of instruments that you need to in fact enhance the enforcement and redress for consumers? So if we look at Tasmania specifically for a moment, given there is always a resource constraint, where does one put the energy? Is it in increasing systemic consumer advocacy; is it in increasing the legal support; is it in increasing the range of dispute resolution bodies, such as - you would have heard my conversation about a generic ombudsman or whatever it might be; is it in tribunals? Now, that's a very hard question to answer but in terms of really improving the circumstances for people that have in fact suffered detriment, we'll come to some of the other issues. In Tasmania what do you think are the essential ingredients or suite of arrangements that you would see as being necessary to improve the circumstances of those that have suffered detriment?

MS McLEAN: I'd say all of those things.

MR FITZGERALD: I knew you were going to say that.

MS McLEAN: But the most important thing is that they're accessible, so maybe a little bit of all of that. I think that consumer advocacy would assist to make those other elements of an enforcement regime and redress more accessible to consumers.

MR FITZGERALD: Can I just push you a little bit, if I can, on that. On that range of - those suite of instruments - and I agree that in the end it's a little bit of each, but do you think that in Tasmania there a particularly significant gap, that one of those elements or others that I haven't mentioned is really, from your point of view, a fundamental gap, because you certainly don't have quite the suite of arrangements that other states have.

MS McLEAN: Yes.

MR FITZGERALD: All states are different as to how much they resources those component parts. But is there a particular stand out from your point of view? You've mentioned a particular one in relation to the Rental Bond Board and those things, but more generically than that? You don't have to, you can just simply say, "No, they're all the same."

MS McLEAN: I think they're pretty much all the same, but the previous witness pointed out some particular gaps. We also mentioned the gap about consumers of community services and disability and so on to have some avenue of redress of some sort, a commission or an ombudsman or whatever.

MR FITZGERALD: Can I take that point and then come back to some of the broader issues. You know my background in relation to that particular area. There are models, as you've indicated, certainly in New South Wales where we've had both the commission and then the merged model into the ombudsman and on all accounts that's made a significant difference to consumers of community and disability services being able to access an independent body. Have you specifically put that to the government here and, if so, what's been the response?

MR MULLER: We've specifically asked them to investigate the possibility of establishing a commissioner within the ombudsman's office and their response has been noncommittal. It was a recommendation in the last budget submission and the response was non-committal.

MR FITZGERALD: Do you get a sense that there is a recognition of the need for access for these clients to an independent body or is that really the stumbling block or, is it simply a resourcing issue?

MR MULLER: I think it's probably a mix of all that again. I think there's a recognition that the community services industry in Tasmania, as elsewhere, is getting more complicated and there are a range of different agents who are being involved and the industry is changing. So the government has funded TasCOSS to develop an industry plan through a process of consultation and engagement with all the community services sector members. So I think government recognises that the industry is changing and the way in which it provides services and interacts with government will change and there needs to be a process to address issues around workforce, quality of service and I would see this and TasCOSS would see the need for an independent complaints body, again fitting in with that whole development. As the industry is changing actually then the need for consumer protection and for that independent body becomes increasingly important.

So I think there is a need for TasCOSS and its members to continue to educate government of the importance of such a body. So I think at the moment it's probably partly a lack of awareness of the need for the independent body.

MR FITZGERALD: At the Australian government level, of course, there is a mechanism in relation to aged care services for a complaint-handling process which has just been under review at the moment. Can I just add as my final comment on that area, but slightly differently, we have had very little input so far in relation to the special needs of people with disabilities. I'm sure by the end of the inquiry that will come through. But are there any particular issues relating to people with disabilities that we should be cognisant of? I mean, we're familiar with a range of issues, but any that stand out?

MS McLEAN: I guess the major one would be their vulnerability in a consumer environment, depending, of course on the disability. There are mobility issues obviously that constrain people from shopping around, for instance, or being able to access specials and so on. From that kind of issue through to people with, say, judgment difficulties, people with intellectual disabilities, for instance, may be vulnerable to hard sell and may enter into contracts that with some guidance or assistance would otherwise may have seen that it might have been a problem for them. Long-term commitments, for instance, in telecommunications or television rentals and that sort of thing.

MR POTTS: I'm not quite sure how to put this question, but you're interest understandably is in disadvantaged and vulnerable groups in the community so in a sense, as you'd view consumer policy it's really an instrument of social policy, if you like. Yet, of course, if things change in relation to consumer policy they can affect consumers generally across the whole community. I'm just thinking about this question of why it can be difficult to get traction with state governments, for instance, in relation to support for different types of consumer activities. I wonder whether it might not be better to be portraying some of the things that you're interested in as social policy rather than consumer policy, because to the extent that you do portray them as consumer policy, of course, they affect all consumers and it may be that when governments look at it in a broader context, then perhaps take a different view to it than they would if they looked at it in a more narrow way.

I guess I'm thinking off the top of my head here, but I was just listening to the way you've presented it and there just seems to be this gap between your perspective on it and the way the government perceives it and I'm just trying to understand that.

MS McLEAN: To some extent with consumer policy there are aspects of it that one could consider social policy, I suppose. But it's also consumers who are

confident. If you've got consumer confidence it does contribute then - it's an economic issue as well, they are more likely participate confidently and actively in markets and it's consumers who drive competition too. So I don't think it's just a social policy issue, although in some ways it is and for some consumers it may be. But I think it's probably a broader issue than that.

MR FITZGERALD: Where this becomes significant, I suppose, and you've mentioned it, is the electricity or the energy area, but we are looking at utilities, electricity, gas, water and telecommunications in a little more detail. I'm curious as to a couple of things: one is you have this 20 per cent of the Tasmanian households have pre-payment metering. I'm not sure whether that exists in any other state. That's an extraordinary figure. What has driven that particular phenomenon, which I do think in is unique to Tasmania, but I stand to be corrected.

MS McLEAN: It is. They're being introduced into other states, South Australia at the moment, and I think WA. They exist also in some remote Aboriginal communities in the Northern Territory and in WA. But Tasmania is the only jurisdiction where they're in such widespread use. They were introduced in 1996 as a trial by the Hydro-Electric Commission then.

MR FITZGERALD: So it's quite current, quite recent really.

MS McLEAN: Yes, they've only been around for 10 years. They have been very heavily promoted by Aurora Energy with advertisements headed, "No more surprises, no more bills." Electricity bills have always been a source of stress, financial stress, they come quarterly, particularly for Tasmanian households who will use more electricity than in any other jurisdictions. Our bills are higher, not because the cost is higher, but because we use more, particularly in the winter time. It's only in recent years that natural gas has been introduced. It's only in a few thousand households at the moment, although business has taken it up, I think, a bit more.

So we rely on electricity and its been a product that Aurora Energy has promoted quite actively and in shopping centres they have displays and so on and a lot of households have chosen to take it up.

MR FITZGERALD: The profile of the consumers that have taken that up, are they generally lower income or - - -

MS McLEAN: We did some research and we've got a copy of it here we can leave with you.

MR FITZGERALD: Okay.

MS McLEAN: Across the board really, although a lot of pensioners, I think, use it as a budget management tool.

MR POTTS: Is there any discount provided for up-front payment or pre-payment?

MS McLEAN: No.

MR POTTS: So you're paying the same for the electricity?

MS McLEAN: It's very difficult to compare because the prepayment meters use a time of day, time of use system and they're winter, summer, different periods in the day, so it's like an interval meter and the standard tariff is a declining block tariff, the more you use, the cheaper it is, unfortunately. So it's really almost impossible to compare. The Tasmanian Energy Regulator just at the end of last year put a comparator on his web site so that people can gauge. It's a very close thing for comparison.

MR FITZGERALD: At one level it seems a perfect tool to allow consumers to control both their budget but also in terms of the amount of electricity they use. But you've indicated in your comments then and previously that there's a potential hidden problem and that is that the disconnection rate which is being recorded, you were saying.

MS McLEAN: Is being recorded for standard tariff customers, yes, but not on pre-payment meters.

MR FITZGERALD: This is clearly a policy which in one level gives consumers ultimate control, but it has the down side that once hardship is reached then the only solution is temporary disconnection from the service. So on balance 10 years on now, what is your general view of its merits and disadvantages vis-a-vis your client group?

MS McLEAN: We personally think that the meters that are used here - and this is probably the major issue - don't record disconnections so it's a completely hidden problem. There are meters with capacity to do that but the meters they've chosen to install here, which I believe they're going to have to replace when the code comes in, the Pre-Payment Meter Code, at the moment can't record disconnections. So that's really the biggest problem we see with them. There are plenty of other options, I might say, through the retailer here, including bill smoothing over the year, which means estimates are made and people can pay weekly or monthly or almost daily, I think, a certain amount and the bill is smoothed out over the year so you don't have a peak in the winter and so on, which something we'd recommend for low income people rather than the pre-payment meter which there's nothing to stop you having to

pay more in the wintertime obviously when your use is higher.

MR FITZGERALD: As you move to a national energy scheme all of these issues around the contractual terms and conditions and consumer implications of those terms are under negotiation at the moment, and we've obviously met with consumer groups and some of the electricity providers or energy providers and we'd be looking at that area, as I said, in a little bit more detail, do you have concerns at the present time around any specific aspects of that new regime as it's current been negotiated that we should take account of?

MS McLEAN: We are participating in that process. The Retail Policy Working Group has issued some papers and we've made some recommendations. What we'd like to see is best practice consumer protection at a national level, given that most of its been removed from the jurisdictions, so that's what we're looking for.

MR FITZGERALD: Can you define that just a little bit further for us. I don't mean in every detail, but what are the key elements of that from your point of view? I'll put that in context, there is a concern by the energy providers that what that means is you take the most draconian measures and then you apply it nationally whereas what they would like is the most effective measures which may be a smaller subset of those proposals.

MS McLEAN: We say the most progressive measures. I think mostly it would be a recognition that electricity is an essential service and to avoid people being disconnected for inability to pay. I think that's probably the bottom line of electricity regulation or consumer protection which would mean mandatory offering of payment plans and so on by retailers. Some regulation around disconnection times and around reasons for disconnection and so on and warnings and that kind of thing. Also price regulation, of course, which is going to stay with the jurisdictions for the time being at least.

MR FITZGERALD: Can I ask this question: why should price regulation be retained, and I ask that as obviously a point of contention and clearly we've had people in one of the recent public hearings saying that this is a curse on everybody and doesn't advantage consumers really over time. At what point do you believe that you could in fact get rid of price regulation and rely on other measures to deal with the adverse consequences of higher prices?

MS McLEAN: It's difficult for us because there's not competition in this state so we haven't been able to see what would happen. But even under competition we would still support a standard contract with a regulated price, given the essentiality of electricity. I can't see a time where you wouldn't have price regulation, where we wouldn't want it.

MR POTTS: For a default product or a standard?

MS McLEAN: Yes, at least. But given that we're not experienced with competition in this area, we can't really comment.

MR FITZGERALD: Without taking Gary's thunder, can I just ask then what's the comparison with water then here? You've got the electricity regime which is an essential service and you have water which is an essential service which is being progressively priced closer to its true cost, although there's a way to go. How are the arrangements in place for people that face problems in paying for water here? Are there parallel schemes between electricity and water?

MS McLEAN: No.

MR FITZGERALD: You don't have a pre-payment meter system clearly, but what's happening there as we start to see, and will inevitably see very substantial increases in the price of water in some jurisdictions. Tasmania may be a bit different because your - - -

MS McLEAN: It's not actually metered in Tasmania.

MR FITZGERALD: At all?

MS McLEAN: No, except, I think, one municipality meters water.

MR POTTS: Just a fixed charge, is it?

MS McLEAN: Yes, through the rates. It will come; metering of water will come here.

MR POTTS: What about gas?

MS McLEAN: Gas is not as highly regulated here. Natural gas has only come online here in the last two years. Very few households have got it. They've opted for what they call a light-handed regulatory touch. So it hasn't come to our attention. There's a long wait time to literally get hooked up to gas given the shortage of tradesmen and so on. It's not an issue just yet, but it could be. Very few households are dual fuel here.

MR FITZGERALD: Just a couple of concluding comments then. You've mentioned the unfair contract terms and you will no doubt give us comments on that in relation to the submission. A standard question I've asked, there are different

models for that, as you'd appreciate, there's the UK model which is standard form contracts only and then there's the Victorian model which is any contract at all entered into. I was wondering whether you have a particular view or have you given any consideration to the actual nature and design of such a proposal if you were to go down that path?

MS McLEAN: Yes, I think we'd probably go for the Victorian model given that it's got wider coverage of contracts.

MR FITZGERALD: Is there a concern that that reach is too far, that it creates too much uncertainty in the minds of business?

MS McLEAN: I think if you're clear about what an unfair contract term is, it shouldn't be confusing if they were fairly clearly defined. I think the Victorian legislation allows particular terms to be prohibited. I'm not sure if they have made a schedule of those or not but that could be an option to avoid uncertainty.

MR FITZGERALD: Yes, I'm not sure about that either. We'll have a look. The second issue is - in fact I've just lost it. It will come back to me in a sec. The rental deposit authority which we've heard about in our last discussions which exists in most other states and territories, as I understand it, why do you think that was, given that there is a problem and it's a problem that's universally felt throughout Australia? Just going back to trying to understand what's happening in terms of the thinking around this issue, why has that taken so long to be introduced, given that it's a fairly stock standard approach in other states, or most other states?

MS McLEAN: I have no idea, no idea.

MR FITZGERALD: Was it opposed significantly by the industry itself? Were there particular reasons why this would be detrimental either to competition or to business?

MS McLEAN: Not that I know of. We haven't been involved in the discussions. When the Residential Tenancy Act was brought in, it wasn't very long ago, and the other act had been in for something like 60 years. So I think those working for reform in this area were fairly satisfied with that, although they did try to advocate for a rental bond board, and I'm not sure why it hasn't got up. I think I can explain why it hasn't got up since it's been legislated and that's I think the lack of resources within Consumer Affairs and Fair Trading. But the lack of political will to introduce it I can't explain; I don't know if you can.

MR FITZGERALD: All right.

MS McLEAN: There might be a bit of congruence maybe between law-makers and landlords, I'm not sure.

MR FITZGERALD: Yes. Well, you might be right. Although the scheme itself at the end of the day shouldn't be a detriment - - -

MS McLEAN: No.

MR FITZGERALD: - - - to landlords, I wouldn't have thought.

MR MULLER: No, but there was a culture that existed - and indeed still exists and will exist until the rental deposit authorities introduce - that the landlord sees that money as legitimately theirs, and tenants behave accordingly. Often they leave and forgo paying the last month's rent or something like that. It's not a good situation for anyone.

MR FITZGERALD: All right. Thank you very much. Thanks, Kath and Tom. That's been terrific.

MR FITZGERALD: If you can give your full name for the record and then if you want to give us a bit of an outline of the key points that you would like to raise with us for the next 15 minutes or so and then we can have a discussion about the issues that you raise, so just your full name for the record.

MS BRANSDEN: My name is Janine Bransden and I'm an affected consumer who had a residence constructed in 1999 by a builder was the president of the Master Builders Association Tasmania. It's very difficult to try and compact the last eight years of my life into 15 minutes. I speak today also on behalf of my partner Chris Carlson who could not be here due to health issues. He has, however, asked me to table his statement and documents on his behalf for the record. If I can table those.

MR FITZGERALD: Yes.

MS BRANSDEN: We advised the MBA both verbally and in writing of a number of building defects that became apparent during the construction and their advice was to let the builder complete the project before commenting which in hindsight was very bad advice. We notified the Department of Consumer Affairs of our problems with the builder and the house during the construction period. The builder at the end of the building process insisted on full payment as per standard MBA contract, no retention clause. A dispute arose; builder and the MBA were notified. We lodged a claim with the HIH Insurance for warranty under housing indemnity. A HIH assessor inspected and documented over 40 defects in May 2000. I'd like to table a spot schedule released by Phillips Fox acting for FAI Insurance to Consumer Affairs.

The builder denied responsibility for the faults. We employed a building expert to document the defects in a MOL report November 2000. I table a budget estimate for the MOL report, \$63,599. HIH collapsed, insurance no longer available to process claim. Arbitration commenced in March 2001. In February 2002 we went to the premier Jim Bacon to discuss the HIH collapse insurance issue where other states had set up a rescue package. However, such a package was not implemented in Tasmania. The premier wrote to the MBA and to us stating our case had shown up some serious flaws. The premier asked the director for Consumer Affairs and a representative from the Attorney-General's Department to inspect our house, and all agreed it was defective.

We wrote again to the premier in July 2002 advising him that the arbitration had basically reached a stalemate. Mr Bacon wrote back to us and acknowledged serious flaws in the current system and stated he was requesting the attorney-general to progress the matter and, further, that we would be invited to provide input into this important reform. I'll table the letter from the premier Jim Bacon confirming that.

We advised Consumer Affairs we could no longer afford legal representation.

Our legal arbitrator and expert report cost in excess of \$25,000. We employed the service of a building consultant to represent us in arbitration as the cost of a barrister was beyond us. Consumer Affairs agreed to give us some legal assistance at arm's length via our building consultant who agreed to follow their advice and be directed by them. Without warning the arbitrator suddenly declared a possible conflict of interest in June 2002. By August of 2002 the builder had not rectified any of the defects at each fortnightly arbitration meeting costing us between 15 and 18 hundred dollars in legal costs. At each event the builder would provide the arbitrator with excuses why he had not rectified the defects. The arbitrator accepted excuses and postponed until the following meeting. This happened at every meeting.

The builder would not continue and our consultant was given a draft letter prepared by Consumer Affairs legal adviser to mutually agree to stand down the arbitrator. The arbitrator had at that stage awarded us 85 per cent of claims to us. Arbitration was abandoned due to the conflict of interest in August 2002. The second arbitration commenced with new arbitrator in September 2002. The brief was to complete arbitration after written documentation only in two days. The arbitrator heard all matters again. The second arbitration completed February 2004. Arbitration awards, other than a few minor items, to the builder. The defects awarded to us by the first arbitrator were miraculously found by the second arbitrator in favour of the builder, clearing builder of any faults, defects, and wrongdoing. I table a comparison of defects for your information.

Final award was that we pay 65 per cent of the builder's costs on a party-party basis to be agreed, or failing that to be taxed, and that we pay 65 per cent of the arbitrator's fees which cost \$26,100, the builder to pay 35 per cent of our costs on a party-party basis to be agreed or failing that to be taxed, and the builder pay 35 per cent of the arbitrator's fees. Consumer Affairs and their legal adviser had full knowledge of the proceedings and continued advising us at arm's length all the way through the second arbitration.

The builder began pursuing us for their portion of his costs, being 32,697.10. We notified Consumer Affairs of our inability to pay costs. The builder began action in the Supreme Court in December 2005 for costs to be taxed. We contacted the court with intention of claiming their portion of costs from the builder. Our consultant's bill was \$55,316.69. Court advised us that we cannot claim costs for a non-legal representative. Our representative notified Consumer Affairs that we were unable to claim costs for his representation, plus questioned if the arbitration award was in fact flawed as his costs cannot be taxed. Department of Consumers Affairs legal adviser responding, stating matter of costs was arguable. Cover letter from the Department of Justice, Consumers Affairs and Fair Trading with the above letter, and advice closed in stating:

As to costs of the arbitration are the exclusive concern of the parties to it, it is not appropriate in these circumstances for Consumer Affairs and Fair Trading to comment further in relation to this matter.

The key point here is, we had followed the advice of Consumer Affairs and they abandon us now. We stand to lose the very house we had fought for eight years to have fixed. We sought second legal opinion which stated:

Awards which are validly made by an arbitrator have effect as if they were judgments in the Supreme Court and can be enforced in a similar way.

Senior counsel advice is that the ruling by a court is likely wrong, however, we have no money left to even challenge the decision. The second opinion has now alerted us to the fact that we were probably ill advised by the Department of Justice, Consumers Affairs and Fair Trading. Other interested parties have agreed the second arbitrator had no jurisdiction to go over ground that had already been heard. An arbitration decision is no different to that of a magistrate. The only avenue or possible solution available to us now is that we redress the issue. To do this we need assistance, or else we will lose our home to the builder that has so clearly abrogated his contract with us. This has cost us in excess of \$150,000 in legal costs, aside from the emotional pain and suffering having to endure eight years living in a defective house. We followed a due process to end up with nothing fixed and huge debts. The original estimate of cost to fix the defects as I tabled, \$63,599.

My partner has suffered a stroke and is now faced with heart surgery. I have suffered a breakdown and more recently have been through treatment for another illness. The ripple from this goes through the entire family and I am not sure how much more of this I can endure. There is no such thing as consumer protection or indemnity insurance in our eyes. Insurance is inaccessible and as a result real consumer protection is an illusion. The Housing Indemnity Act was designed to give us protection. It doesn't work. Conditions on contract forced us down a dead-end road. The Fair Trading Act has let us down. The building industry regulators, Tasmanian Compliance Corporation, has seriously failed, ending up with criminal charges being laid against the former deputy premier. Nothing has evolved to any stage where it protects consumers. We have been living in a defective house for eight years, without adequate or appropriate legislation in place to protect consumers.

I am here before you so this can be used as a case study which highlights how the consumer can be utterly ruined by following the legal fraternity down the road called due process. From the info provided today, you might have insight into how things can go terribly, terribly wrong and how powerless consumers are to defend themselves from abuses of due process. Our lives have been ruined and we will

never live long enough to recoup the losses we have suffered. The worst part is we can never get back our health or the last years wasted going through due process. Our aim is to ensure that any subsequent legislation protects homeowners from lengthy and costly proceedings and ensure that recalcitrant builders are made accountable for their poor workmanship and unethical, unprofessional behaviour.

Whether there is a first or last resort insurance, a consumer should expect insurance that would fix any problems and be accessible. If you have a car accident: you report it to your insurance company; have your car repaired or replaced; and then assess who is to blame. If it is the other party, they claim back losses for them and their insurance company. You don't have to wait for eight years for parties to arbitrate on right or wrong before you get it fixed. This is what one should expect from an insurance policy. The insurance company should fix the problem, then assess who is at fault and seek compensation from the party, for very little dollar risk for them. Thank you.

MR FITZGERALD: Thanks very much. That's a very comprehensive history but in a very short time. We might raise some questions. Just in relation to the documents you've tabled, if Chris can grab those. You indicated before that some of them may be confidential.

MS BRANSDEN: I have an envelope and I've marked each with confidential documents in it, and I've marked each of those documents as confidential and I'd like to submit that to you.

MR FITZGERALD: Yes, that's fine, thank you very much. I'm not sure if Gary wants to start off, but can I just ask you one question if I might. When HIH collapsed, you had insurance in place.

MS BRANSDEN: That's right.

MR FITZGERALD: At the time that HIH had actually collapsed, the arbitration hadn't commenced, had it?

MS BRANSDEN: No, not at that exact time, no.

MR FITZGERALD: So what did you actually do when the defects were noticed and you sought to exercise your claim under the insurance policy and then HIH collapsed? Then who did you contact at that point? Who actually initiated the arbitration?

MS BRANSDEN: The builder initiated the arbitration.

MR FITZGERALD: With whom, which authority?

MS BRANSDEN: With the Master Builders Association of Tasmania.

MR FITZGERALD: So it was their arbitration system that you used, the MBA system.

MS BRANSDEN: Yes, that's correct. We did, however, try and claim on our insurance. We tried to bypass that, but we were unable to do it, and that's when Phillips Fox barristers and solicitors came in and intervened on behalf of the insurance company, so we could not claim on our insurance; it was inaccessible. We went through months of trying to do that. There was no way we could claim. The clauses in the contract prevent us from doing that.

MR FITZGERALD: If you could just clarify for me please, Janine, you couldn't claim the insurance because HIH had collapsed, or for some other reason?

MS BRANSDEN: We couldn't claim on the insurance because there was a clause in the contract that called for arbitration.

MR FITZGERALD: First.

MS BRANSDEN: Yes, first, and we did try and bypass that. We even tried to terminate the contract with the builder, which he wouldn't agree to. He said he stood ready, willing and able to fix the defects. But when it came then he called for arbitration after the assessor had been through for HIH.

MR FITZGERALD: So you've got to go through arbitration first through the MBA scheme before you can access the insurance.

MS BRANSDEN: Yes.

MR FITZGERALD: But anyway, HIH disappeared in that process.

MS BRANSDEN: That's correct, yes.

MR POTTS: There was a Commonwealth scheme that was put in place following the collapse of HIH which provided some financial compensation to insurance holders with HIH. Did you examine whether you'd be eligible for making a claim under that scheme at the time?

MS BRANSDEN: I went both to Consumer Affairs and I went as far as going to Phillip Ruddock's office and asking if I had any rights, was there such a thing as

natural justice? We hadn't had anything put in place in Tasmania. I met with the premier and a letter that we put forward will explain that we tried everything to get a system up and running and find out how we could make a claim. At the end of the day, unbeknownst to us, we were told that we could not claim on the insurance policy, we could only claim what we won, the things that we won in arbitration. After going through years of trying to access some sort of insurance, we were told via Phillip Ruddock's office that we could perhaps put in a claim for what we won and we would get 5 cents in the dollar at that stage.

MR POTTS: But this was a separate arrangement that, I think, was run by the Treasury actually which was for people who had insurance policies with HIH which couldn't be honoured because of the collapse of HIH and the individuals were just provided with money under this particular program. So it wasn't one where you were just a creditor for HIH and you waited until the full financial settlement of HIH was made. Maybe you weren't told about this particular scheme.

MS BRANSDEN: Yes. We were in touch with Consumer Affairs throughout the building process when the builder started running amuck. It's on record in Consumer Affairs. I was reading everything that was happening with HIH. I think it was 15 March 2001 they became insolvent and I contacted Consumer Affairs, they were fully aware of it and I asked if there was anything going to be set up in Tasmania. Nothing was set up and that's when we had a meeting with the premier and he then started things rolling and sent Roy Ormerod, the director, through our house and so on, but no-one ever, ever supported us. No-one ever came back. I didn't know where to go.

MR POTTS: This was a federal Treasury scheme.

MS BRANSDEN: Yes.

MR POTTS: I was just wondering whether you'd been advised of its existence or not.

MS BRANSDEN: I contacted every government department. I have got a list that I can give you.

MR POTTS: No, that's fine.

MR FITZGERALD: When you finally went to arbitration, you indicated that the first arbitration ultimately found in your favour to the extent of 85 per cent of the claims.

MS BRANSDEN: That's correct.

MR FITZGERALD: Then you said that that was found, but then you said the arbitrator stood down because of a conflict of interest after he'd already made a determination.

MS BRANSDEN: That's correct.

MR FITZGERALD: Why would you need a second arbitrator if the first arbitrator had made that determination? Why did he have to stand down because he'd already done his job?

MS BRANSDEN: He hadn't completed the arbitration. We had, I think, basically four items to go and the builder wasn't willing to move on, we got a letter from him.

MR FITZGERALD: So the 85 per cent was in respect of the claims that he had in fact got to at that time?

MS BRANSDEN: Yes, and they were major items.

MR FITZGERALD: Just from our point of view we try and look at the system and we come to what you think would have worked better. One of the key elements of all of these systems is to try to get people to arbitration early.

MS BRANSDEN: Yes.

MR FITZGERALD: In your case you actually got to arbitration but then because of that conflict you went to a second arbitration that effectively almost reversed the findings. What do you think happened at that point because normally if somebody goes to arbitration and goes through the arbitration process that's about as good as you'll get in that sense, that somebody looked at it objectively and weighed it, come to a view and then, as you say, either the insurance policy would have been activated had HIH not disappeared. It's unusual to have two completed reversals in the arbitration.

MS BRANSDEN: Especially against the thrust of - the HIH assessor had assessed over 40 defects in the house and all of a sudden we find one arbitrator - we have an HIH insurance assessor assess those defects, then we have an arbitrator award 85 per cent of those defects in our favour and then we have a arbitrator that says, "No, the builder is not responsible". I didn't build the house, I can assure you.

MR FITZGERALD: You obviously went back to the Master Builders Association after the second arbitration, did you, and find out whether there was any capacity to appeal that decision? You sort of indicated that you couldn't appeal from that.

MS BRANSDEN: No we went both to the MBA and to Consumer Affairs and there had to be an error in law and they couldn't find an error in law, although the actual award, when read with our evidence was flawed with factual information and the awards - most of them, the majority of them - were made on facts from the builder's submissions and not on - hearsay evidence, I should have said, I'll correct myself there. The awards were made on hearsay evidence over actual facts.

MR FITZGERALD: If you had the Queensland-type scheme which is a government-run scheme, the first hurdle in that still is somebody arbitrating on whether or not there are defects, isn't there? So there's an assessment process even in the Queensland scheme.

MS BRANSDEN: Yes. My understanding of the Queensland scheme is that you have a panel that assesses - there are individuals that do an assessment. It's not left up to one person. I would like to see arbitration taken completely out of the domestic building situation, a tribunal that can make a decision with, say, three independent people that can assess the situation and move from there.

MR FITZGERALD: Until you got the decision which was adverse to you, until that second decision came and said that the arbitrator found in favour of the builder up to 65 per cent, were you satisfied that the processes were okay? Until that moment when the decision went the other way, did you find the MBA's processes reasonably fair?

MS BRANSDEN: In my opinion, no. I found that the whole system was horrendous. For any member of the community that's building a house to go through such a horrendous process, no. I think that it's unfair. The builders, no matter which association they belong to, they have the backing of the association and you end up basically having to keep one step ahead of the builder, the association, they will not talk to you. I couldn't get them to answer to anything and so on. It wasn't until everything was competed that I had some communication with them and this just went terribly, terribly wrong. The house speaks for itself and the arbitration process is just a farce.

MR POTTS: From your experience in your own case, do you know whether a number of other people have suffered a similar experience with faulty workmanship in their houses?

MS BRANSDEN: Absolutely. I submitted to the legislative council people from over a decade that had gone through an ordeal and they didn't know which way to turn. They could not face going through what we'd been through. You put the first dollar into going into arbitration and the fight begins, and then you're trying to

recoup all the time. You hope that you have a positive outcome. Most people can't face it and it's too overwhelming, and I must say it does become overwhelming. I try my very best to go through due process, but I feel like I'm serving a sentence for a crime I didn't commit.

MR POTTS: Are you able to put some numbers on that, on how many other people are affected? I'm I suppose just trying to distinguish between the particular circumstances of your case, which seem a bit odd, where you have two different arbitrators reaching completely different conclusions, and the system itself and how it may have affected other people.

MS BRANSDEN: Other people haven't gone through the system as far as we did. I know another couple, a doctor and his wife, tried to make a claim. They contacted the Master Builders and they were told what they had to go through. They sought legal advice, and the legal advice they got was, "This is going to cost you more than the defects in your house, to go through this." They chose to fix what they could, the basic problems. They have since sold and moved on. I know of three people that had the same builder that we did who have sold their houses and moved on. I know two couples that have left the state because of building problems, but not because of that particular builder.

MR FITZGERALD: Is the builder still in business to your knowledge?

MS BRANSDEN: Yes, he is.

MR FITZGERALD: Just going back a little bit from that point, in the MBA arbitration process that you entered into, that process allows for parties to be represented by lawyers.

MS BRANSDEN: That's correct.

MR FITZGERALD: But you chose to use, at least in one of the arbitrations, a building consultant instead of a lawyer because of the costs associated with that?

MS BRANSDEN: Yes.

MR FITZGERALD: So it's an expensive arbitration process. It's not just about the facts where you could each put your views; you actually felt that you needed to be represented to be able to operate within that arbitration system?

MS BRANSDEN: Absolutely. I feel that once you get legal representation and you have barristers involved, there comes the money and it's just a never-ending circle.

MR FITZGERALD: I understand that. Do you know whether in the Brisbane scheme - and we'll have a look at this because, as I indicated, it has been raised for us in other public hearings as well - whether the arbitration is based on assessment done by an independent assessor appointed by the statutory scheme, or do you have to go off and pay for that yourself? Do you know that or not?

MS BRANSDEN: No. I rang every association in Australia when we were going through this, but it was so horrendous during the first arbitration, even though we'd won many, many things, it thought, "This is ridiculous, having to go through this process, proving what has already been documented by the insurance company," and the Queensland system to my understanding is that they have a tribunal that comes in and looks at the problems and makes a decision. If they find the builder at fault, that tribunal then gives the builder something like 28 days to take action to rectify. If he doesn't rectify or make some move to fix it, then under the Queensland system the tribunal steps in, fixes the defects, and the owners are left to get on with their lives, not fighting eight years later to survive. I haven't gone over to Queensland and sat down; it's just basic research.

MR POTTS: I'm not familiar with the arrangements in Tasmania, but in New South Wales, for instance, as a building progresses it is necessary to give council inspector approvals. For instance, before the concrete is laid for a slab the inspector has to come along and inspect to make sure it's been set up properly before the builder is allowed to pour the concrete, and equally there are other inspections that take place during the course of construction.

MS BRANSDEN: That's right.

MR POTTS: I presume some sort of arrangement like that exists in Tasmania. Did that happen as far as your own building was concerned?

MS BRANSDEN: Yes, at each stage of building the council came in and did an inspection; so did the engineer. Yes, it was inspected throughout each stage.

MR POTTS: It was given a tick at each stage and a completion certificate was - - -

MS BRANSDEN: Yes, we got a completion certificate signed off on, I believe, 8 December 1999, and we were given a notice of practical completion about a month before or, I'm not sure, perhaps 14 days before. I think it was 26 November. Don't quote me on that; it could have been the 28th. But they were satisfied that the building had reached a completion stage even though I had notified them that the roof was out of whack then. We have a tiled roof, and my words to them were, "The roof is out of whack."

MR POTTS: Did you ever obtain any legal advice about whether the council itself had some responsibility in relation to these defects?

MS BRANSDEN: We did brush over that with a barrister, and he said taking the council on would be like, "Have you got plenty of money and are you prepared to lose the house you're fighting for?" That was basically it. You find that you're up against a wall each step of the way. I couldn't believe that they'd signed off on the house. Consumer Affairs were notified, and at that stage, during the building process, they didn't send anyone in to have a look at what was going on. I think it would have been prudent of them to send someone in. I felt quite helpless. I had never been through anything like this before in my life, and I hope I never ever have to go through anything like this ever again.

MR FITZGERALD: I noticed in the correspondence you've tabled that the then premier, Jim Bacon, indicated that the government would be looking at, "A more equitable dispute resolution process developed to avoid incidents like this recurring." This letter from the then premier was dated 23 August 2002. To your knowledge have any dispute resolution procedures been put in place in the state of Tasmania?

MS BRANSDEN: I believe they have made some amendments to the contracts with the MBA. I haven't read them. I honestly can't answer that. I'd have to take that on notice, if I could.

MR FITZGERALD: No, that's fine. It was just a commitment by, as I say, the then premier, and I'd be interested to know whether or not there has been a change in the system. We can also find that out, but if you wanted to let us know, that would be fine. But we can do so.

MS BRANSDEN: Right, I'll do that.

MR FITZGERALD: The story you tell is obviously very distressing, and you are now left with a very substantial set of costs, on this calculation almost three times as much as the cost of rectifying the faults.

MS BRANSDEN: That's right.

MR FITZGERALD: Given the set of circumstances - and there are a number of aspects in your personal case that are unusual, not the least of which is the collapse of HIH and the second arbitration being so different from the first arbitration - do you think, looking back, was there any point in the advice that you received that in hindsight you should have taken or you would have responded to differently? One of the participants in the Melbourne hearing - it's fairly clear that at a very early stage to try and settle the matter with the builder, for what he would then regard as an

inadequate sum, may have been a more prudent course. But only with hindsight would he have known that. When you look back on that, is there any point early in the process that could have significantly mitigated the damages and the distress that you've suffered?

MS BRANSDEN: When we first reported to the MBA, we met with the MBA in September of 1999, in hindsight we would have called a stop-work immediately and had the builder taken off the job. We should have stopped then. That would have been the most prudent, wisest thing we could have done. I think that's probably the stage where - the best way I can answer that is call a stop-work, and we were scared of the interest rate that he would charge us and we got threatened with all sorts of things, but we should have done that. In hindsight, yes, that's the best answer I can give.

MR FITZGERALD: No, that's fine, and that was obviously contrary to the advice of the MBA, because it would have placed you in breach of your contract.

MS BRANSDEN: They kept saying, "You can't comment now. He hasn't finished. He's got exclusive rights to the site. Wait until he finishes".

MR POTTS: But they were conflicted because he was president of the MBA at the time.

MS BRANSDEN: That's correct, yes. We were fighting the association, then we did get an independent report done at that stage because of all the things that were going on. I did a daily diary. I did video footage which I'm happy for you to look at. I have videoed each stage of the building as defects became apparent, and walls without mortar between bricks and so on, and gutters put in too low. There were changes. I have those things on video footage. They were submitted to the arbitrator and even the HIH assessor had a look at them, he later became president of the MBA.

MR POTTS: In choosing this particular builder, did you do any background research on him, seek references from other people for whom he had built houses, anything like that?

MS BRANSDEN: I went to the MBA who recommended our designer. I asked if they could recommend an architect. I knew the Launceston manager, had known him for over 30 years, and he recommended what I later found out was a designer, not an architect. He and the designer recommended our builder highly. He came highly recommended. We got other tenders. The designer was an associate of the MBA. She put our plans out to tender, and our builder came back with the best and most comprehensive quote. We took their recommendation, because they advertise

if you get an MBA builder, you have got a quality builder. We thought at the time, they have standards in the associations and expected those standards to be met.

MR POTTS: I think from what you were saying before, this particular builder has a record of less than top quality workmanship, if you like, so your case is not an altogether unusual one. Was that the case, to your knowledge, now before your home was constructed, or was that more to do with what you've heard of the work that he's done since your problems started?

MS BRANSDEN: Since our problem started I then, after the fact, began asking questions and I came across a number of homeowners that had been waiting, some of them, two years for him to go back and repair things that he was supposed to repair in the defects liability period, and they hadn't been repaired two years later. It was over a decade of people that this builder had left waiting for things to be done.

MR POTTS: This was before construction commenced on your house?

MS BRANSDEN: No, it was after.

MR POTTS: Do you have any evidence of whether there were problems with his workmanship before?

MS BRANSDEN: No, I didn't. No, I'm sorry I didn't do more research. I would say to anyone, go and ask the last six clients.

MR POTTS: I'm just wondering whether the people who did the assessment for you gave you a good service or not in recommending this particular builder.

MS BRANSDEN: When you say gave us a good service, they recommended him highly, because he was the president of the MBA, but it was the northern manager of the MBA and it was the designer who was an associate member of the MBA. It was later that we learnt when I began to ask questions of other clients and contractor of the builders, they were starting to tell me things and I learnt a great lot. But when it came to arbitration, they were all closed mouth because they - and one contractor came to us and asked us not to claim on a certain item, because he was told by the builder that he would be paying for that if we won it. So they were put under a great deal of pressure too. They were a builder contractor, they relied on the builder for their work, and it's like the food chain.

MR FITZGERALD: Are there any final comments you'd like to leave us with? You've covered the major issues that touch on our considerations, but are there any final comments you'd like to make?

MS BRANSDEN: I would hope that from this that something similar to the Queensland system, a tribunal be set up, that Consumer Affairs would send people in if there are complaints, that they had something in place - even though I went to the Building Standards and complained throughout the building process. I have an A4 page and a half of all the government departments that I contacted during the building process with my complaints, my concerns. I felt totally helpless. There should be something in place. The first place, the people you rely on, is Consumer Affairs. I even went to the ombudsman and I didn't even have to introduce myself on the phone. He was helpless. Everybody was helpless. Our attorney-general was helpless. I wrote and asked, who can police these builders? Who can police these associations? The Tasmanian Compliance Corporation was set up to police builders and it has now ended up with the deputy premier having criminal charges laid. So where does that leave an insignificant person like myself?

MR FITZGERALD: Thank you for that. Can I just ask one question I should have raised earlier. You made a number of comments during your presentation that the Department of Consumer Affairs provided advice to you through this process, which you now believe to be inappropriate. Most departments would in fact be very clear that they're not providing legal advice to you. Can you just comment on that aspect, just the department's role in this.

MS BRANSDEN: Consumer Affairs did try to help us at arm's length. It was something that they couldn't directly help us with. Our consultant agreed in good faith to take the advice that they were able to get for him to use in our case. That advice, we've got conflicting evidence, and as I have put in my submission, a second arbitrator cannot go over ground that has already been gone over. So we are left with, a judgment was made and that judgment is equal to a Supreme Court judgment. Even though the legal advice came out that we stand down, the arbitrator agreed to stand him down because the builder wouldn't move on, and all previous awards be written off, you can't agree to do that. There was no appeal lodged in the court. The only way you can change an award is to lodge an appeal. No appeal was lodged. This is a legal matter. It's a matter of law.

MR FITZGERALD: No, that's fine.

MS BRANSDEN: And we are left with that, and I hope we can turn that around and I hope we can get some help.

MR FITZGERALD: Thanks. Well, I'm not quite sure about the help, Janine, but I'm sure that we'll take on board the issues you've raised and the example that you've provided to us in this inquiry.

MS BRANSDEN: If this is left to stand, our case will set a precedent for any future

arbitration. It flies in the face of the Arbitration Act of 1986, it contradicts that act, and if this is not tested then it can be used as a precedent so that any future arbitrations, if there's a conflict of interest or they choose that they can write off the arbitration awards - I don't want that to happen.

MR FITZGERALD: Good. Well, thank you very much for that.

MR POTTS: Thank you.

MS BRANSDEN: Thank you.

MR FITZGERALD: John, if you can give your full name and, if you're representing an organisation, the organisation you're representing. Then what we would like to do is to have 15 minutes or so of you making whatever key points you'd like to make, and then we'd have a discussion for about the same amount of time, if that suits you. So just your full name for the record?

MR FULTON: My name is John Fulton and I'm self-employed. The main reason why I'm here is, as I point out on here, is the insurance and licensing charges have increased dramatically over the last 10 years and it has got to a point now where I no longer can afford to purchase my right to work. So that's my main thrust. I could hear what was going on there. I have had one meeting with the minister and probably eight or nine with advisers. The issue is just so simple to resolve, but the government is just not listening. That's just what is happening.

First of all, about our right to work, right on the back page of this document I just gave you - I sent a letter to the attorney-general, I asked if the state licensing taxes would invalidate under the Commonwealth law Social Security Act, section 109 of the constitution or vice versa, and the reply I got back from the attorney-general was that we have no established right to work, which is a very interesting statement. So I have had to go from there. What do you do when Social Security rejects you a payment and you're denied the right to work under state legislation. So we're left without an income.

So over the last nine months I went and got this book here, and it's called the Annotated Constitution of the Australian Commonwealth. I've had to study that. So far I'm sort of going to put through a few proposals to you that may be a little bit abstract, but we'll go from that. First of all I'll go into what I was saying before, in the last productivity report, about the insurance. That last lady was very concerned about the insurance and it wasn't providing any protection to the consumer. I've got the Hansard of the debate in parliament and it's quite clear that that legislation was there to provide consumer protection to ensure that the structural building was completed, it was not there for consumer protection, for defects.

In that document I gave you there's a copy there of part of Hansard clearly stating that it's there for structural completion; and further on, which I haven't included, Michael Hodgman has stated that, "Normal commercial remedies are available as will be available to any litigant in relation to a breach of contract." I've written this document here in the sense that the law is ultra vires, the licensing laws are ultra vires, on several issues.

The Housing Indemnity Act - as you know, with any law literally what the wording is what the law means - now, the Housing Indemnity Act, or as you purchase insurance it's homeowners warranty. If you look at the dictionary meaning

of that it means that the consumer has protection, but it's not, it's only for construction completion and it's only there if the builder dies, disappears or becomes insolvent. The Grellman report - I don't know if you've heard of it or read of it - it was put out by New South Wales on 30 September 2003 and it makes some quite interesting statements in there.

The insurers - there's a section in here that has got all of the insurance parts in it, just on the front it has got Insurance, it's a yellow page with Insurance, and inside the page it has got Homeowners Warranty - actually I've got your copy and you've got mine.

MR FITZGERALD: Would you like mine back? Chris will do the swap. He is very good at exchanging documents.

MR FULTON: I should have left it open. Thanks. In it it states that any builder - on the first page of there - that the builder is to pay \$130 eligibility application to have the right to have their application processed. That's what it costs us to get an approval to be eligible - now, the question is why do we have to pay for our right to comply with the law. Going back - sorry, I'm jumping around a little bit here, but it says here:

Brian Green has said in Hansard, "Insurance companies are private entities. Governments are unable to influence the policy risk management strategies of insurance companies.

That was on page 2, the second page, halfway down. That's straight out of Hansard. Parliament is constrained by the constitution, the High Court, natural law and creation of rights. The constitution says that any law that's in excess of those powers that are granted to parliament is no law at all. Yet we have got a private insurance company here demanding \$130 to have our application processed. That is beyond power of parliament or the insurance company - hang on, I'll start again:

Insurance companies as private commercial entities do not have greater power than parliament. Therefore, any insurance company that provides insurance under an act has a legal requirement to assess the requirements of the constitution, the high court rulings, natural law and common law rights and decide whether it is practicable and viable to provide a supply under those constraints.

We have one entity dictating to another entity that's outside the powers of the parliament and the constitution and putting all these constraints on the building industry and this \$130 is one of those constraints. Further, if you flick over another couple of pages, the builders have to put up 20 per cent of the cost of the guarantee

for their work and if you go further over there's a legal document there that would guarantee 20 per cent of the building costs if they should go broke and the insurance company can claim it back. Then if you go back to Hansard it says the insurance company is only liable to 20 per cent of the contract price. The builder has to put up 20 per cent of the contract price to the insurance company as a guarantee. So the insurance company has actually got no liability whatsoever and they only have to pay out if a person disappears, dies or becomes insolvent. So it's a really great insurance where the builder actually is providing the whole indemnity to the whole issue.

In the Grellman report at page 23 and 24 in New South Wales there was 39,000 houses built, in 2002 I think it was referring to, and there was 35 bankruptcies. So the pay out was for 35 bankruptcies out of 39,000 homes and that gives about a half a per cent of all homes built were actually even eligible to make a claim against the insurance - half a per cent. So while we've got a compulsory insurance, 99.9 per cent of all policies cannot be claimed upon. It's an interesting fact that and in the process 60 per cent of all of the builders have lost the right to work for themselves, that's in the report as well, 60 per cent could not get insurance. We have the same situation here in Tasmania where 40 per cent of the builders working are working for owner builders because we can't get insurance, can't get the criteria. Does the government want people to work or don't they want them to work?

Going back to what I first said at the start about our right to work; one point I really want to make here is, had I been able to get social security benefits I would have been on it and going up to Queensland now to sit on the beach. I couldn't get it, so it caused me to go through this constitution and be here today. But the cost to the Commonwealth government - I really want to bring this point out. The cost to the Commonwealth government in providing an income when state licensing laws and insurance stop people working it must be addressed. I should imagine it's getting up to well in the millions of dollars now in social security payments and as the population starts to age and we all go into part-time work - and that's why I've lost my right to work, because I've dropped my hours back and I'll come to that later - then if we don't work we get social security benefits and that's going to put a massive toll on the Commonwealth social security.

So this issue of licensing charges and insurance has got to be resolved. The state is not interested in what it's going to cost the Commonwealth government. If I couldn't afford to pay the licensing charges, then I should go on social security benefits. So that's an issue that needs to really be brought out because I've got to that stage where I can't work full-time any more because my body is starting to wear out and so forth. The average age in the industry is 54 and most of them will be in my state and they're just not going to be able to afford the licensing charges and so as they withdraw it goes on to the Commonwealth budget where we could actually still be in the work being a productive member, but no, the government doesn't want that.

This document here, I haven't actually sent it off to the minister yet, you're the first one to see it. But I've set out what our licensing costs are and you can work out very accurately to an hour how they're all calculated. It's just a straight out pure mathematical calculation and as the multiple registrations start going up, so does the hourly rate go up and as our hours come down, the cost goes up. I've been tendering and while I was full time I had multiple registrations and those multiple registrations are actually pricing me out of the job in trying to recover the cost.

I've cut my hours back and I'm only working probably three or 400 hours a year now and the costs are - now I've got to put a surcharge of somewhere between \$15 and \$19 an hour on top of the normal charge-out rate just be able to recover the statutory licensing charges. Now, that's \$600 to \$800 a week on a normal contract and the consumer is not prepared to pay an extra \$600 to \$800 because someone is starting to age or has got a physical disability or they're injured themselves or sickness. If you have a bad sickness for six months, then all of your statutory charges have got to skyrocket. So this is another issue that's really got to be resolved.

I wrote to Treasury nine months ago and that letter from treasury is in that document and they did not answer my questions because I asked them questions and I quoted a High Court ruling - to provide a solution because our right to work can't be extinguished. It's a natural law right, it's a common law right and our biological function of a human being is that we require food and hunting and gathering was our creation right, that's how we've been created. All animals, whether it's a worm or a horse or a giraffe or whatever, we all work hunting and gathering, that was our basic society. Some societies like the Aborigines still hunt and gather rather than work, but hunting and gathering is work, it's just our society has become sophisticated and so we've gone into the way it is now.

But if we don't work there's an unconditional liability on the government to provide an income, it's also a constitutional right. When I got that letter back from the solicitor general I went and started reading through some High Court rulings. One High Court ruling, the solicitor-general - one thing I've had problems with right through the whole bureaucracy organ, they've basically stated that parliament has unlimited power and can do whatever it likes and a bill of rights has not been included in the constitution. So that gives them the power to do anything they like and we've got no say in the matter.

In *Koowarta v Bjelke-Petersen* the solicitor-general of Victoria said it was meaningless to talk about human rights or fundamental freedoms since our law does not classify rights and freedoms in any way, that's on page 13. The High Court judge soon put him in his place and said - this is the High Court judge saying, "However, I would get it clear that any human right referred to in section 9 includes

rights and freedoms of the kind specified in article 5 of the convention." Article 5 says, "The right to work and choice of employment in just and favourable conditions." In another High Court ruling the judge again turned around and put the solicitor general in his place and basically said, "The regulating of the way in which a right may be exercised presupposes that that right exists."

In other words, the constitution in granting parliament the power to impose taxes presupposes that the constitutional right to work, which provides the financial capacity to comply with the law, already exists. So our right to work is basically already in existence through those High Court rulings and this abrogation and extinction of our right to work through licensing charges and insurance is unconstitutional and therefore ultra vires.

MR FITZGERALD: John, it might be helpful if we could wrap up and then have some discussion about some of the issues you've raised, if that's all right with you.

MR FULTON: The last thing is basically - just going through that list that I sent on Friday - - -

MR FITZGERALD: Yes.

MR FULTON: - - - basically all these issues that I've raised are coming out of the insurance. You've got highly competent skilled builders with few assets. Of course if we don't have the assets we're denied the right to work. Assets have got nothing to do with your skills or competency. There's many people working around here who have got family and all their money is going into the families, but they've got no money as a back-up to provide guarantee to the builders so they've been knocked out of it. 40 per cent of the building going on here is on the black market, homeowner builders employing builders that can't get registration. It's the only way they can get their houses built. The consumer is up in arms, they know that they've got to take out a policy that they can't claim upon. So basically, like the last lady said, they've got no protection. This insurance is just a useless piece of legislation.

MR FITZGERALD: Okay. Thanks for that. Can I just go back a couple of steps. There's two aspects that you've raised - you've raised several but two in particular - one is around the licensing regime to actually be a builder; the second is the capacity to access the insurance. Okay?

MR FULTON: Yes.

MR FITZGERALD: I'll clarify that. In your own circumstances, but for your inability to get the insurance - and I'll come to that in a second - you would be able to obtain - if you paid the fees - licensing under the building regime without any

problem at all?

MR FULTON: Yes, if it was viable, yes.

MR FITZGERALD: So in relation to that aspect your point is that your inability to work is in fact because of the charging regimes that - - -

MR FULTON: Yes.

MR FITZGERALD: You've given us a list of those.

MR FULTON: Yes.

MR FITZGERALD: You're saying that as you're starting to work part-time, those costs become prohibitive.

MR FULTON: Exactly.

MR FITZGERALD: So the actual building-licensing scheme, your concern is really around the multiple levels of requirements and therefore fees that are causing that difficulty.

MR FULTON: Exactly. My other claim was that actually they can't put a charge against our right to work because it is a constitutional right.

MR FITZGERALD: But a number of those elements, for example, the registration charges on vehicles and the Workplace Health and Safety Act and all those sorts of things, they apply to everybody, irrespective of their profession or occupation. So in one sense the only two that specifically apply to you are the Occupational Licensing Act and the Building Act. Is that right?

MR FULTON: Those that I've got less - the one I didn't put on there was the homeowners warranty.

MR FITZGERALD: I'll come to homeowners. So they're the ones - - -

MR FULTON: Basically it's just the pricing. It's pricing us out of a job and if we can't recover the costs - because our income is coming down to below what social security benefits are because we cut our times down because we've probably got superannuation or something like that supporting us, but the licensing charges are still maintained at that higher level. We've got no flexibility, there's no extra to throw at licensing charges. So if you're on, say, 12,000 a year and you've got 6 and a half, 7 thousand of licensing charges, try and take your overhead costs out you've

got nothing left.

MR FITZGERALD: Just for clarification - and then we can ask some questions - the second part is the home warranty insurance and you've made a number of comments about that which we'll explore in a sec, but your inability to access that is because of what?

MR FULTON: Not me, I'm telling it from others - you see, I've got two trade certificates and I've got a tertiary education in civil engineering. I've got caught with professional indemnity insurance, if you have a look. I'm not so much in the building side of it as far as - sorry, I never explained myself - - -

MR FITZGERALD: No, but I just wanted to clarify - - -

MR FULTON: - - - I'm in the design of it and I've had to have professional indemnity which is \$2000, but you just can't recover the insurance - - -

MR FITZGERALD: But can I just clarify, in relation to homeowners warranty insurance, you're not saying that you've been denied access to that, you just simply choose not to take out private - - -

MR FULTON: You have to surrender the \$200,000 worth of assets to the insurance company, and if you don't do it, you don't get it.

MR FITZGERALD: You're not able or willing to do that?

MR FULTON: Not my private assets, no, and I'm talking on behalf of other people that I work with in the industry.

MR FITZGERALD: No. I just wanted to clarify, John, because I just wasn't quite sure why you were not able to access it, and you've clarified that.

MR FULTON: Well, some people don't have - - -

MR POTTS: Just going back to the licensing part, John, your point is, I understand it, is the current system disadvantages part-time builders - - -

MR FULTON: Definitely.

MR POTTS: - - - if you like because they're going to pay the same annual fee as a full-time builder.

MR FITZGERALD: Yes.

MR POTTS: What happens in the situation where a number of builders, for instance, work for one company - they might call it John Smith Building Co, for instance, and there may be half a dozen builders within that company. How is the licensing fee set in that situation? Is it a single licensing fee for the company or is each builder licensed?

MR FULTON: If you're working as a sole partner or partnership in your own right, each person has to have registration and insurance. Now, we tried this with the ski village at Ben Lomond to try to get the insurance down and we tried to get a group insurance for the whole village. The insurance company - - -

MR POTTS: I'm talking about licensing here though.

MR FULTON: Yes, the same thing applies. This is insurance, we've still got to have insurance. Each licence to have - there's an act that requires insurance. So the insurance can only be given under each entity's name. I don't know if you're talking about whether you've got one business entity and then everyone is working subcontract or do you mean there's a separate entity - - -

MR POTTS: I'm trying to compare different situations. You're saying that a sole builder who works part-time is disadvantaged against a sole builder who works full-time - and I can understand that.

MR FULTON: Yes.

MR POTTS: But I'm wondering what happens in the situation where three or four builders get together and form a company called Building Constructions Pty Ltd. Does each of those builders need to have a licence and pay the charges here, or does Building Constructions Pty Ltd pay a single licence?

MR FULTON: Well, if they all come in and work for that company, then there would be just the one loss for the company insurance for the company.

MR POTTS: How much does that company pay?

MR FULTON: The same as they would as an individual.

MR POTTS: So doesn't that mean that the full-time builder, as far as the cost of these licences are concerned, is disadvantaged against a company?

MR FULTON: Yes. I'll set that out in there. If you've got 10 employees - and the way the licence charges work is, calculating costs, if you've got \$1500 worth of

licensing charges, you've got 10 employees, you've got 16,500 hours to recover that \$1500 and it comes out about 99 cents or something like that, whereas an individual it could be up to \$5.

MR POTTS: Right. What would change? Wouldn't the insurance costs increase, the larger the scale of the operation?

MR FULTON: Not proportionally. I've sort of looked into that and for a sole trader it was about \$500 up to 50, 60 thousand. If you traded up to 100,000 it would only jump \$100, and if you're trading up to a quarter of a million it would only jump to another 50.

MR POTTS: Okay.

MR FULTON: So it's not all proportional. You get this totally disadvantaged situation arising where - because the actual commissions on insurance policies, they don't vary.

MR POTTS: But the one option that part-time builders would have, for instance, would be to get together and form a company or an enterprise of some kind in order to reduce the unit costs of - - -

MR FULTON: They could but then they all pick up the liabilities of each other and that's where it becomes a problem. It becomes a problem with tax, it becomes a problem with liabilities. So each builder would be putting a return in and paying a return via a company rather than as an individual.

MR POTTS: So your specific suggestion as far as licensing is concerned, the cost of the licence should relate in some way to the amount of a building work that is done by each person who is covered by the licence. Is that the principle that you're suggesting?

MR FULTON: It either has to be rated on an hourly rate or it has to be very cheap. I've had a plumbing licence for 35 years, and that's been set at approximately what it costs to hire a man for one hour. At the moment it's \$50 an hour for a man. That's what the licensing charge is. That's quite reasonable, because it doesn't matter if you work or don't work; you can still afford it. When you start getting licence charges - I'm carrying it now - up around \$6000, it's a totally different issue.

MR FITZGERALD: The homeowners warranty scheme is, you're saying, creating what you've described as a black market operation or a homeowner-builder's market. You're saying that 40 per cent of all new approvals are homeowner-builders, and you attribute that in large part to the unwillingness or the inability of builders to get

homeowners warranty. Is that right, or is there another thing that's forcing up this homeowner builder sort of - - -

MR FULTON: No, I think basically it's firstly a licensing issue and the other is the insurance. I don't like to run people down, but I think the HIA and MBA are creating a lot of hassles because they're actually making money out of it. When the insurance was changed in 2002-03 under act of parliament, the only way you could get insurance was to join the HIA or MBA because it wasn't available. They actually made money out of the membership, some \$800 a year, and everyone had to go and join them. People don't want to join the HIA or the MBA, and if you don't join you don't get insurance. There's a big circle going round there. So if you want to work for yourself, you have to join: there's another \$800 in costs that you've got to recover back from the consumer. Those who don't want to do it have massive problems trying to get insurance.

MR FITZGERALD: Can I just be very clear about that. You're saying you can't access homeowners warranty in Tasmania unless you a member of either of those two associations?

MR FULTON: I'll say it's very difficult. Yes, you can, but it's very difficult.

MR FITZGERALD: But it's difficult. All right, that's clear. Just explain to me: if I'm a homeowner-builder and I employ you to do work on my house, what am I employing you as? Wouldn't I be employing you as a licensed builder?

MR FULTON: No.

MR FITZGERALD: What am I employing you as?

MR FULTON: You're employing me just as a subcontractor. You're the principal contractor.

MR FITZGERALD: In that case you don't need a licence even though you're doing building work?

MR FULTON: I don't need a licence, and you carry all the liabilities. As a homeowner you carry all the workers comp and liabilities or defects in any structure.

MR FITZGERALD: As a homeowner I can employ anybody I like to do the work on my place, other than certain specified trades?

MR FULTON: Electrical and plumbing. We're already registered, but you can employ anyone. You don't even have to have a registered builder or a qualified one

who's done a trade. You can have anyone you like, or you can do it yourself.

MR FITZGERALD: John, is there any evidence, are there any reports, any research, that show that this trend to homeowner building is having an adverse affect on the quality of the homes being built, or is too early to tell this?

MR FULTON: I think, yes, it's coming through because a lot of people who are trying to do it themselves have no knowledge, and - it's been on the 7.30 Report and so forth - people have bad workmanship, the black markets, because you're going to have your fly-by-nighters within it and they'll just do shoddy work to get the quick buck. It's really bad news. Then they sell it off, and then the person who buys it is buying a bad product, because it's not done by a registered person. So to have homeowner-builders is not a good way of regulating an industry or an escape route for touch regulation.

MR FITZGERALD: Yes, it's deregulating the industry in a sense. Is it possible for a homeowner to subcontract to a builder to oversee the building of the project as a whole, in other words, have a de facto arrangement that would be similar to what you would get with a regulated builder but avoid the regulation?

MR FULTON: I don't think so. You've either got a registered builder or you haven't. I've had meetings with the government, and my proposal was to have everyone in the industry - electrical plumbing at \$45 a year was cheap, and there's no excuse for not having it - all the painters, plasterers, everyone, actually registered at just a nominal fee, and anyone who came on the site would have to produce this card to show they were registered with the government. In that way we'd make sure that anyone coming on the site was actually registered. But the government doesn't want to go that way. They just don't want to get involved with that for some reason.

This is how it happens in Queensland: if you're a plasterer or a painter or anyone, you have to be registered, and if you don't have a card you don't start. As far as I'm concerned that's the first step. That gets rid of all your unskilled people who just say, "I'm a plasterer, I'm a painter," because how many people can pick up a roller and paint? Those that have trade papers get the card, and if you don't have a card you don't start. That's the first thing in consumer protection: to make sure everyone who's actually qualified is registered. But it has to be cheap, because you have such a vast array of people - you've got young, you've got old - - -

MR FITZGERALD: Would the amount of money paid for registration in some way also depend on what the registering body - the government in this case - does? You're saying you have an electrical licence or a plumbing licence, sorry?

MR FULTON: I have a plumbing one, but electrical would be equal.

MR FITZGERALD: No, we'll just take plumbing. You pay 46 bucks for that licence and in building you pay 5 or 6 hundred dollars for the licence. Is the government doing a great deal more in relation to the building area which would warrant a higher fee vis-a-vis the amount that they're doing for electrical licensing? When we talk about licensing schemes around Australia, one of the problems we see is that many licensing schemes explode. They start off very basic. It's a bit like that. "Have you got the right qualifications? "Yes." Tick, "You're in," and if you do the wrong thing you're out, and that's about it. But over time they grow and they have lots of different elements to them.

My question is: for the building licence, which costs a lot more, are there things that the government does that justifies that additional cost vis-a-vis a plumbing licence or an electrical licence?

MR FULTON: At the moment, as you probably heard on the news, Brian Green has been indicted and two directors took off with \$3 million. The extra costs went to the directors, to their pocket fund, rather than into the industry, if that answers your question.

MR FITZGERALD: Well, it's an answer. I'm not quite sure if it answered my question. But, again, I want to press the point just a little bit if I can. It's out of ignorance. I would have thought that if you're charging builders 500 or 600 bucks a year vis-a-vis a plumber, which is \$46, there would be things that are happening in respect of builders which are different from electricians.

MR FULTON: No.

MR FITZGERALD: Either insurance or dispute resolution schemes or something.

MR FULTON: Not at the moment. For the last three years since this has been in it hasn't. They were supposed to have inspectors going around there and doing spot checks. In fact, I have one man in the bureaucracy who's actually starting to listen to what I've been saying. They have got an inspector going around and doing just an audit at the moment. But with the plumbing and electrical - the plumbing still has - every time you've got to have the water inspected, you have to have the drains inspected and you have to have a completion certificate. That's the same as the building industry. You still have the same conditions, and they go on the building permit. The consumer pays for those inspections on the building permit.

We have things like training levies - I think it's half a per cent on the cost of a plan - that the government is putting money in. We're talking about licensing here. It's been the same for the last 20 years, and there's quite a few million dollars'

difference between half a per cent 20 years ago on a house and half a per cent now on a house, and that in itself is enough to raise money for the regulation of the industry. Now, if you read this document, you'll see people have committed suicide - I suppose you've heard it - under the Housing Indemnity Act. I've got it in Hansard. It was written in Hansard and it's enclosed in this document. We've had eight people commit suicide because the insurance has been restricted by the insurance company. My question is, how can a private entity of insurance dictate to another entity of supply and demand when they're not compiling without the constitution being in between the insurance company and the other private entity. Actually we've got this book in between us and the insurance company and an insurance company has to comply with this book because we're working under an act of parliament. But at the moment there is nothing in between. They're just dictating the rules and the people are suffering from it, both the consumer and the builders are suffering.

MR FITZGERALD: The actual homeowners warranty insurance we've heard already in these public hearings is a misnomer in terms of its name and you've put it in the points here that most people believe it covers faulty workmanship, but it doesn't, it only applies if the builder has ceased to exist and can only be activated at that point.

MR FULTON: I was just going to say, just the sheer name of actually raises the issue of ultra vires in its name.

MR FITZGERALD: Without going into the rights or wrongs of that, is there a better way by which that homeowners warranty insurance could have been developed or are you in favour of the scheme in Brisbane which is a statutory scheme?

MR FULTON: I think if you want a statutory scheme the way Queensland does - it's got dispute resolutions in place and we've been telling the minister for three years, "Inspections, inspections and inspections in dispute resolution." It's the only way to keep the whole issue above board and good quality workmanship. I've seen it. I've been there for 35 years in this industry. As soon as you stop inspections it deteriorates.

MR POTTS: I raised that same question with the last witness who was talking about her particular case, what role the local council inspector had in improving construction as it went through its various stages. You're saying that that has been relaxed over the years.

MR FULTON: Basically council can't get anyone to work for them any more and a lot of it has gone out to private contractors now.

MR POTTS: But has it been done properly?

MR FULTON: I don't think there's enough of it and I think the quality of it needs to be broader.

MR FITZGERALD: Could I could just take a point that Gary raised before. Aren't the inspections set down in by-laws? In other words, whoever does the inspections, whether it's a contractor or a council official, don't they have to take place at certain points during the actual building job?

MR FULTON: They do, there's about three stages.

MR FITZGERALD: That's by by-law or regulation?

MR FULTON: There's about three stages.

MR FITZGERALD: So when you say there's no enough of it, can I just test you on that a bit. I would still assume that those compulsory inspection points are in fact being met. Would that be correct?

MR FULTON: I don't know if there's that many failures these days because everything goes through engineering drawings. They used to have people put the steel and then have the inspection and then they'd whip the steel out.

MR FITZGERALD: That's encouraging.

MR POTTS: Just again on the same point that Robert was raising about builders warranty insurance being a misnomer. You were saying in your case that you got professional indemnity insurance and I presume that is because that you're in a professional - - -

MR FULTON: I'm design drafting.

MR POTTS: Builders, I take it, can't get that sort of insurance because if you're talking - we're talking about faulty workmanship and builders being sued for faulty workmanship and then starts moving into the category of professional indemnity insurance and it's not the sort of homeowners warrant insurance that we've been talking about, it's something rather different.

MR FULTON: I think most of it, if there was a dispute resolution - because the consumer is totally ignorant of how a house goes together and what the standard quality - because they've got some idea out of a Vogue book of what something looks like and it's all set up for lighting and all the rest and suddenly when it appears it's not what they think it's going to be so they start getting upset. But that's the

difference in the finished product. If there's a dispute resolution - and I've read enough from the Queensland model - that it's very cheap, 2 or 3 hundred dollars, for the dispute resolution and it resolves 80 to 90 per cent of all the disputes. So if you can knock out 80 to 90 per cent of all the disputes in resolution, let's have it.

I have been on sites where the actual engineer's drawings have stated 300-millimetres wide the footings, so the builder has dug the foundations with a 300 bucket but the bricks are 200 millimetres thick, 50 cavity, and they've left nothing for the outside skin to sit on because the foundation wasn't set up for the widths of all the bricks and it needed to be actually 400 thick. I was there and he laid the bricks on the dirt.

MR FITZGERALD: I presume the governments, other than Queensland, would say they moved away from the statutory schemes because they were proving to be too expensive for government to run. I have no idea. But would that be your understanding and, if so, is it a balanced statement? We've heard that the Queensland scheme is cost neutral - I don't know if that's so or not - but obviously governments would be loathe to jump back into schemes if they felt that there was going to be very substantial costs to government which they couldn't recover. Do you have a view about that?

MR FULTON: I think the main issue governments have been jumping out all over everywhere is they don't want to take the risk, the liability and I think it's the liability and insurance requirement is the reason why they will shift it and no other reason, apart from Graham Hunt who on the top of that letter, insurance is a vital component to the whole holistic approach to the building regulations but it's everything. They're trying to disassociate themselves from any liabilities, whether by regulations or by inspections or anything else. The government is trying to disassociate themselves from it and I think that's where the main problem is.

MR FITZGERALD: Okay.

MR FULTON: But you can't get away from regulations. As soon as the inspections stop self-certification, the regulation calls up a 100-metre seal drain, I've seen them drop in a 90-millimetre drain just because they know that there is not an inspection coming.

MR FITZGERALD: There are two things there: you need the regulation and then you need it to be enforced which is the second component, because I wouldn't have thought that there is any lack of regulation in building. The question you're really raising is whether there's enforcement of it.

MR FULTON: It's the enforcement of it, how it's being enforced is the problem.

MR FITZGERALD: Thanks very much for that, John, that's been very helpful. Thanks for providing the summary and the compilation, that's most helpful. We will see where it all goes to from here.

MR FULTON: Is this coming out much in the - is it a major section of the - - -

MR FITZGERALD: The draft report will come out in August but we have yet to determine how much work we will do in relation to this particular area. As you know, consumer policy is huge, it covers not only the generic law but it covers a vast array of industry-specific areas. What we're trying to do is using the consultations we've had and the public hearings to try to ascertain where are the key issues, where are the areas we should focus attention and frankly, where we can add value. So all of that we'll be thinking through. I can say we've now had at least five presentations so far in or around building and specifically relating to homeowners warranty. You've taken a slightly different approach in relation to coming from the building industry itself. So it's on the radar, and now we have to just simply discern how far we go with all of this.

But you've raised, as have the other participants, a whole range of very interesting issues, which do warrant some attention. So the long and short of it is, we'll see. I should formally say that we now adjourn the hearings.

AT 3.28 PM THE INQUIRY WAS ADJOURNED UNTIL
MONDAY, 16 APRIL 2007

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