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TRANSCRIPT
OF PROCEEDINGS

PRODUCTIVITY COMMISSION

INQUIRY INTO AUSTRALIA'S CONSUMER POLICY FRAMEWORK

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

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY ON MONDAY, 16 APRIL 2007, AT 9 AM

Continued from 4/3/07 in Canberra

MR FITZGERALD: Firstly, I'd just like to formally welcome you to the public hearing of the review of Australia's Consumer Policy framework. This is the final round of public hearings prior to the draft report. We have so far held hearings in every state and territory capital city, and this is the final one, in Sydney. The inquiry is being conducted under the provisions of the Productivity Commission Act and, whilst the proceedings are informal in nature and participants are not required to provide evidence under oath, they are required to be truthful in what they present.

I am Robert Fitzgerald. I am the presiding commissioner on the inquiry. Philip Weickhardt is one of my fellow commissioners, and in a few minutes our third commissioner will arrive from the airport, I hope, Gary Potts. So, as I say, welcome. Our first participants are ready, from Choice, and if you can give both your full names and the positions you hold, and the organisation you represent.

MR KELL: Good morning. Peter Kell, chief executive.

MR RENOUF: Gordon Renouf, general manager of policy and campaigns.

MR FITZGERALD: And the organisations?

MR KELL: Choice.

MR RENOUF: Choice.

MR FITZGERALD: Peter and Gordon, if you just want to proceed, to give us some key points and thoughts, and then in about 20 minutes' time, we can ask questions and have some discussions, so over to you, Peter.

MR KELL: Thank you. I hope it won't take 20 minutes. We're keen to engage the discussion.

Thank you for the opportunity to appear before the commission today. We think this is a very important inquiry. That's not surprising given the nature of Choice. Perhaps I could make just one or two very quick remarks about Choice initially. Choice is Australia's largest consumer organisation. We have around 220,000 subscribers. We don't have accept advertising or government support for our activities, and we've had a role in providing information to consumers and advocating on their behalf for about 48 years now. So that's just a little background there, on Choice.

On the consumer policy framework, the first point we'd make there is that the development of Australia's consumer policy framework over the last few decades has

delivered many benefits to Australian consumers, and I think it's important to start off from that point. It's through various means allowed consumers greater access to products and services. Over time we've seen the improvements in safety of many products; we've seen greater competition introduced into a variety of markets; we've seen the emergence of regulators with a consumer focus and, in particular, a focus on consumer protection enforcement; we've seen the growth of ombudsmen schemes in a wide variety of markets. So I think it's important to keep that in mind while we're looking at ways to improve and reform Australia's consumer policy framework because, having said that, we do believe that it's a very appropriate time to look at modernising the consumer policy framework in Australia.

Despite the benefits that it has brought over many years, it has reached a stage where a variety of structural and performance-related issues mean that in too many areas we're running into impediments to good consumer policy and in too many areas we're running into impediments to effective consumer participation in markets.

So it's, in Choice's view, time to refresh the consumer policy framework, to refresh the focus on the key market issues that consumers are facing today, to refresh our understanding of consumer behaviour and consumer responses to new technologies and new services, and to improve our research capacity to look at those sorts of issues and to improve our research capacity to underpin more effective policy making.

Part of the modernising of the policy has to involve the recognition that we are clearly a national market and we need to have our policy framework operating at a national level with leadership on policy development at the national level - at the Commonwealth level, primarily, and obviously that's something that we're happy to discuss further.

But at that Commonwealth level, and indeed pretty much at all levels, we also need greater coordination of the agencies that have a consumer protection or consumer policy role across different sectors, and we see this as one of the key challenges in this area, that many agencies have grown up over the last few decades that, in one way or another, have some sort of consumer policy or consumer protection function; but this is often poorly thought out, that they have different powers, different capacities, different cultures, and this is leading to inconsistencies, gaps, and problems in a range of markets that could benefit from much greater coordination and a much more coherent approach.

We also need to refresh the policy tool-kit. It has been a source of frustration to Choice for some time now, that there seems to be a relatively limited approach to the sorts of policies that policy-making agencies are prepared to consider, that there are limited powers that regulators have to address current market problems, that there

are restrictions, for example, on their ability to take on systemic issues, and that this is leading to, in the worst cases, to situations where new policies are being developed which impose costs on industry, but actually don't fix market problems for consumers.

So I think it's - it's overdue for us to have a look at what's happening in other jurisdictions, what's coming out of more contemporary economic research and policy based research, and to take a fresh look at the policy tool-kit. We also need, I think as a matter of urgency, to look at how we ensure better consumer input into policy design and policy making. At one level that's research, and there's certainly a need for some independent research in this area.

We also need to see, I think, much better funded consumer organisations. Those organisations that, for example, have a case work function and, therefore, have some particularly valuable types of insights into market problems are poorly funded in Australia at present. We think that the Consumers' Federation of Australia could play a much more productive role if it received better funding in this area. So there's certainly an important discussion to be had around better funding in this space.

And, finally, there are several, if you like, sort of industry-specific areas that we think would be worth looking at as part of the review and, certainly, we'll be commenting on them in our submission. Areas such as credit, property investment - which is, frankly, a dog's breakfast at the moment - telecommunications. There are a range of specific areas. We know it's impossible for the Productivity Commission to look at everything, but there are several specific industry sectors where the perennial problems that consumers face, and the perennial problems in policy design, really do need a fresh look.

Just conclude by saying that our initial submission here will, obviously, be followed by a more substantial piece, which will provide some more case studies on some of these sorts of issues. So you can expect that a little way down the track, and we look forward to having the discussion.

MR FITZGERALD: Good.

MR KELL: Can I just add two things. One is that one of the reasons that this inquiry is very important, I think, is that it's not often recorded in public debate that consumer confidence is a key precursor to focussing markets to economic activity, in fact, and consumer confidence obviously depends on a number of things. One of those things is a trust that the market works fairly, and that they've got access to redress if something goes wrong.

So I think it's important to emphasise the importance of improving the

consumer policy framework, even if by doing so we can increase consumer confidence by a small X per cent, may have very big benefits for economic activity in Australia and, conversely, to the extent that markets fail because consumer protection is inadequate, and we allow market practises that do not produce confidence or economic efficiency to continue on the demand side, then we're undermining our economic activity.

Yes, we didn't clearly state that we have provided to the commission a short submission in advance of this hearing, and we'll provide a longer submission by the due date.

MR FITZGERALD: Good. Thanks very much. Well, obviously, we want to go through a few of the key issues - and for those that are not aware, the submission date is due in the middle of May. So we're still in a stage where we're holding the public hearings in advance of the submissions being received. But we are grateful for the brief comments that you've made already. I might just ask Philip if he's got some opening questions, and then we'll see.

MR WEICKHARDT: Yes, if I could start with a sort of - and I recognise this will be a sort of a tonal comment, qualitative rather than quantitative. But you talk about the changes that have occurred in market places and consumer behaviour and the sort of increase in the level of services, and talk about the need for review of the framework. I guess I'm interested in your general impression as to whether or not the foundations of the framework are fundamentally sound. Are we talking about completely ripping the house down and starting with new foundations, or are we talking about renovating and improving a fundamentally sound framework and foundation for consumer policy in Australia?

MR KELL: That's a good question. I suppose we would start by saying, if by that analogy you're referring in some ways to the Trade Practices Act, and the - - -

MR WEICKHARDT: Well, I'm talking about the framework in its broadest sense.

MR KELL: Yes. Okay.

MR WEICKHARDT: So federal and state legislation.

MR KELL: Right. Okay. Well, I think we'd say that some parts of the framework do need bashing down and remodelling. As to whether you'd tear the whole house down, I'm not sure that we'd go that far with the analogy. So, perhaps to start on some of the areas that we think may require reform but are basically sound, well, the elements of the Trade Practices Act and its link to competition law, I think, are a very important part of the overall framework that you wouldn't dismantle and start to

build that again from scratch. There are other parts of the framework, however, that we think do need substantial rethinking. The split between the federal and the state - federal and state responsibilities in a range of areas does need some, I think, very significant reconsideration.

The particular ways in which some aspects of consumer policy have been taken up by agencies that don't really seem to have appropriate powers or appropriate cultures in certain areas. In the food regulation, perhaps therapeutic goods regulation, are examples there. I mean, that does really need some fundamental reconsideration as to how that can be made to work better.

MR WEICKHARDT: Sorry, could you just clarify that. There's food and therapeutic goods?

MR KELL: I said therapeutic goods. We're happy to expand on that in our submission in those areas.

MR WEICKHARDT: Yes.

MR KELL: Yes.

MR WEICKHARDT: I think, in general, if you can provide as many examples and for instances in the submission, because I have a number of areas where you've titillated my curiosity by your comments, and I'd like you to flesh that out if you can.

MR KELL: Yes. And the other issue - well, again, I'm not sure whether it's tearing the house down or just renovating. But there are some areas at the moment where, perhaps, we'd say the house has been very badly neglected, and areas such as consumer representation and funding for research in this area is one, and refreshing the consumer policy tool-kit. I think, if - again flogging the metaphor for all it's worth here at the moment. But at the moment there seems to be a hammer in there, and pretty much nothing else, and that's going to make it difficult to rebuild if that's the only tool we have.

MR RENOUF: Another way of saying the last thing is - to stretch the metaphor - whether it's the - maybe it's not the house but the way we live in it - that their way of thinking is somewhat blinkered in terms of the way in which we respond to some kinds of problems and the way we analyse or fail to analyse what's really going on in the market. I guess that's not so much - that may not be the fault of the, necessarily, the people responsible for consumer policy, but their masters. It may be that we're too scared to intervene in the market in what seems to be a heavily interventionist way, but in a way which would in fact produce less cost for industry than some alternative ways of intervening, which appear to be soft, but as Peter said before

impose costs but don't produce results.

MR FITZGERALD: Okay. Can we just - just to try and break that down a little bit. A couple of issues. One is the generic law itself, and you're right, the Trade Practices Act and Fair Trading Acts generally. You've indicated there that what requires, I think, is really the policy tool-kit in respect of those elements need to be refreshed, and I'd be keen to explore what are the central ways by which that policy tool-kit can in fact or should be refreshed. Then there's a second issue which you've also raised, which is the roles and responsibility is between the Commonwealth and the states which I want to explore. But perhaps we could just talk about, in terms of the generic law, what would be your priorities for action in terms of refreshing that particular policy tool-kit.

MR KELL: Okay. The generic law is primarily what you might call after-the-event law at present, so prohibitions against misleading conduct. It's activated, in a sense, after an allegation has been made that misleading conduct has occurred, and that's vital to have those sorts of provisions in place. But ultimately, at the moment, that law is very much focused on the processes of market transactions and pays, ultimately, very little attention to, if you like, substantive matters or outcomes, and we think a focus on the processes is obviously critical so that consumers are given appropriate information and they're not misled, they're not subject to unconscionable conduct in undertaking dealings, that sort of thing. But I think, in a range of markets, we've seen that that law has its limitations when it comes to dealing with systemic problems of a more substantive matter, especially with the growth of contracts as a key basis for purchasing goods and services in our economy.

So we would have made the argument quite strongly, that we think introducing some balance into that generic legislation that would prohibit unfair contracts and enable regulators to step in when they see inherently unfair transactions taking place, in effect, would allow a far more effective regulation of contemporary consumer markets, and we've been strong supporters of the Victorian legislation around unfair contracts, and we've supported its introduction nationally.

So that's one area. We also think, when you're looking at the generic legislation that there are a range of, I suppose, specific provisions which we're happy to detail in our submission but which relate to areas such as the difficulties that regulators currently face in dealing with more systemic issues, matters involving multiple consumers. A simple example is that it, say, the ACCC or ASIC want to take a company to court that has sold a product or service that's affected thousands of consumers who have lost money, then it has to - on behalf of those consumers - get each one of them to individually sign and give their permission to take the matter to court.

Now, that is inefficient, that obviously influences the decision-making of those regulators as to whether they take on those sorts of cases, and take them to court, or whether they might just stick with a section or, in the Trade Practices Act case, a section 87B undertaking. But some of those areas are ones that we've been talking to the government now for a while and haven't been getting a lot of progress, and it seems to us that's unfortunate because it would increase, in effect, the efficiency of those sorts of processes.

MR RENOUF: Can I add, just expanding on the point about the remedies that are available under the generic legislation - I mean, there was a number of discussions of particular remedies that have gone, including an inquiry into civil penalties, and we did, at the time, and would continue to urge that agencies be given that flexibility to pursue matters through, particularly first instance, breaches of the law through civil penalties and obtain appropriate penalties; but on the criminal side, there's clearly a case for stronger penalties for those matters which do warrant a criminal prosecution.

I think we need better remedies that enable the enforcement agencies to require disgorgement of funds that have been obtained in breach of the law and to either return them to consumers or, where the amount per consumer is too small, to put them into some sort of trust for some worthwhile consumer-focused purpose. That's the first thing.

The second thing would be, in relation to the generic law and indeed other areas of regulatory responsibility, we believe there should be some further attention to promoting a culture of good practice and enforcement; that it's often said, but it's true, that if you effectively enforce the current law, you can sometimes avoid calls for further changes to the law. You know, there has been some progress in enforcement. I think over the last 15 years ACCC and ASIC have made some important moves forward, but we would say that there are ways in which we could develop a good practice-enforcement culture, and we could require all our agencies to work together on developing that, and implementing it.

Another one which is a little bit speculative is that we know of cases where regulators have a sense well in advance that something is going wrong and something bad is going to happen, but they seem reluctant or disempowered to act, and I think the Fincorp case is one where we know that people were worried that kind of market was going to have bad outcomes sooner or later.

MR WEICKHARDT: Which case was that?

MR RENOUF: Fincorp.

MR WEICKHARDT: Fincorp. Thank you.

MR RENOUF: Peter is probably in a better position to talk about its details if you want but we have a sense that the relevant regulator knew for some time that this market was likely to throw up a case where consumers were going to - or in this case investors were going to lose substantial sums, but, whether through lack of capacity or a cultural unwillingness or bureaucratic red tape, or whether, nothing was done. I'm certainly not pointing the finger at the regulator for the lack of action; I'm just saying that, whether it's the regulator, whether it's the lack of - whether it's cultural issues in the regulator or whether it's a lack of power or broader cultural issues discouraging intervention, this is a question that needs to be looked at.

Do you want to say any more about that?

MR WEICKHARDT: Just going back to the comments Peter was making about the unfair contracts area, and your comment that you support these, I don't know whether you've had a chance to look at the transcripts of the hearings in Perth where Chris Field appeared, but I'd be interested in your comments, having read that, because Chris Field made a comment that, having originally been on the record as supporting the unfair contracts legislation, he'd come to the view that actually the net costs of unfair contracts legislation might exceed the benefits, and - I won't do justice to the more eloquent way he expressed this, but I think his point was every legal intervention has some economic cost, and in the example, for example, that are often quoted are phone contracts.

He was saying if you strike out the ability of a phone company to bind a consumer to a contract for maybe two years, and avoid the consumer switching, then the phone company can, with some confidence, enter into a contract that provides a certain rate to the consumer. If you strike out that ability because you say it's unfair, then inevitably the consumer will receive a different rate and, in his view, a higher rate, and therefore net the consumer may not be better off.

He made this point in a general way but I think the essence of his comment was around the fact that - recognise - every legal intervention has some economic cost - ultimately the consumer pays - and he had gone from a point of view that supported unfair contracts legislation to a point where he no longer does so.

Would you like to make a comment about that?

MR KELL: Briefly. The first point would be that some of that could obviously be tested. I'm not sure whether Chris Field has had the opportunity to do that by looking at the UK market and by looking at what's happened in Victoria. I am unaware to date of any evidence that suggests cost increases of any significance in

the face of the introduction of that legislation in those markets, but obviously that would be one way of looking at it.

The second issue there is that there are upsides and downsides to some of these sorts of things. I have heard it argued in relation to unfair contracts legislation by lawyers who are working for companies operating in the e-commerce and m-commerce space, that they've been waiting for this sort of legislation to come into place, because it means that, instead of having to expect the consumer to read a 17-page contract over their mobile phone for a transaction that they may want to enter into, they can be confident that the key elements are covered off in unfair contracts legislation and therefore the contract doesn't have to be as long or as unwieldy or as - to cover all the little ins and outs that otherwise might have been in those sorts of contracts. So that may help reduce costs in a range of circumstances, especially as we move into a market environment where more people are transacting in that sort of electronic space. So I suppose that would be a second point.

A third point is that I think one of the objectives of unfair contracts legislation is to rule out some of those provisions which are manifestly unfair, that are not going to in the first instance be some sort of fundamental element of how business is undertaken in those sorts of markets, but that the sort of provisions that really do heavily penalise consumers in ways that are quite disproportionate to the costs that are borne by business.

MR WEICKHARDT: Just on that score, I know the Victorians quote examples where they have, through discussions with companies, got some of those clauses removed. I guess what I'm interested in is the degree to which there is any measure of the detriment that consumers were suffering as a result of those clauses. You talked about these clauses heavily penalising - and I guess in theory they do heavily penalise. The issue I'm interested in is, in practice, how many of these clauses are actually invoked by the companies concerned? I recognise their lawyers may have gone to town and tried to protect their clients in a heavy-handed way but, in practice, are consumers actually suffering detriment from these clauses?

MR KELL: I suppose - I might ask Gordon to respond to that in a second, but two points there. Obviously there are a range of case studies in a variety of markets that demonstrate the sort of regular problems that consumers encounter in - whether it's car rentals or bank penalty fees or in the telecommunications industry that we can refer to. In terms of more systematic research, there's less of that around but there has been some interesting material overseas; so, for example, the Office of Fair Trading in the UK has undertaken some quite substantial research on the impact and, if you like, allocation of penalty fees in the banking industry over there, which I think would be very useful to look at.

MR RENOUF: I've got a few things to say. Just on that point, it's obviously not the primary cost but there's obviously - you know, it's the extent that people are out there drafting excessively long contracts - there's some deadweight losses in terms of the payment of the lawyers and the cost of time of reading of those contracts, the managing the different version of the contract and checking which one applies. I wouldn't want to make a big thing about that.

But my responses to the way you've presented that argument would be as follows: the first thing is, I think, that unfair contracts aren't necessarily directed at that particular case. I think there can be some problems with binding contracts but I don't know that they're of an unfair nature, more of the fact that they reduce the ability of consumers to switch and therefore reduce the ability of competition to sort out the best supplier.

The second thing is that - yes, I mean, sticking with the example. A better example might be the sorts of clauses that we talked about in the Victorian cases, which is clauses which say we can change the contract whenever we like. Of course, it won't, but what's it doing there if they're not going to do it?

Another example is of a contract that seems to be unfair - is that there's a recent case on the web of a person who has a number of relationships with the Internet portal Yahoo! They have an email account with eight years' worth of emails stored on Yahoo!'s server. They have a web site through Yahoo! which is important for their small business, I think it was in that particular case - it might have just been a personal one, and they were involved in some other Yahoo! activity, something called Yahoo! Answers, which was obviously some sort of forum or discussion; and, because they were alleged by Yahoo! to have breached the terms and conditions of that particular activity, Yahoo! closed their entire account down; so they no longer had access to eight years' worth of email, they no longer had access to their web page, they no longer had access to the passwords and whatever they stored there.

It seems to me that that's an illustration of a term in a contract which says, "We can suspend you if you write rude words in our activity over here from all your activities dealing with us," and the disproportionate harm that that consumer has suffered is not taken into account.

I think we do need to be - and "we" includes us as well as government and others - clear about what we're trying to achieve with unfair contracts legislation and what it's trying to do and who's going to be able to do what. One part of it surely is an examination of the role in which negotiated fair contracts can play, whether it's on the Dutch model where government and consumers and industry work out what a fair standard contract might be in a particular segment of a particular market, enabling - I'm not sure because this is the Dutch case, but, in my view, you would then enable

sellers to vary those contracts with clear messages to consumers. Whether it's about saying particular kinds of terms, such as unilateral variation rights are just not allowed, so everybody is clear and we can just move forward, or whether it's something else; so that needs to be sorted out.

But I just want to put on record that there is quite a lot to be said for standard fair contracts as a benchmark for a marketplace because they can reduce the information search costs that consumers have, they can trust that everybody is offering the same back-end parts of the product, and they can focus on the things that there's really competition in, which is price and service quality.

Then we need to bring into this discussion our increasing knowledge of the way consumers behave and the way they evaluate different products in the marketplace, and my suggestion, amongst other things, is that consumers pay attention to the things that are important now and less attention to things that are going to happen to them later, or things that may happen or may not happen. So we do have a competitive market in relation to the upfront costs of goods and services, at least where you can compare them. It's another question.

But it's ridiculous to suggest that competition is going to solve problems to do with conditional costs later on, such as penalty fees. You do not buy a bank account on the basis of the fact that it's got a fee for something you don't expect to happen, that it's got a better fee than another bank. So that's an area where you could explore whether unfair contracts may have some role.

Finally, the point that every legal intervention has a cost: the point I'd like to make is that many legal interventions can have economic benefits as well as costs. The trite example is the rule that says you've got to ride on the left-hand side of the road. That has clear economic benefits. So it's wrong, I think, to say that every legal intervention only has costs. It may well do - often will have, but it may also have benefits, and my suggestion is that negotiated fair contracts in certain sectors where competition isn't working very well on the demand side would have economic benefits and not costs.

MR WEICKHARDT: I think, in fairness, he said it has an economic consequence.

MR RENOUF: Okay.

MR KELL: No, we're not aiming it at Chris, and I understand your - - -

MR RENOUF: Yes.

MR POTTS: On this side, can I just ask a question in relation to the unfair

contracts issue, and I think you've touched on it, the issue I wanted to explore, and that is whether the issue is about a market failure existing in this area, which, if you're looking at it in economic terms, and if you can identify a market failure, then there's a basis for a regulatory intervention of one kind or another, or are we dealing here with an issue which is to do with consumer information overload so that the consumers aren't able to absorb the information and make rational decisions, and therefore by prescription - by regulation - you deem certain areas as ones where the consumer is not given a choice, basically, because, by legislation, you say that's not allowed, that's not permitted, for instance. I think you were touching on that in the comments that you were making, so I guess the question I'm asking is, what do you think is the market failure in this area that needs to be addressed, or is it really a question - there's just too much information for consumers to be able to make a rational decision and someone else needs to decide what information they should be making their decision on?

MR RENOUF: I'm sure Peter will have a few - I just want to clarify. I mean, my suggestion, I think, is that there may well be some terms which you simply don't want out there in the marketplace, and I think unilateral variation is one of them. But my suggestion was that we are in fact reducing - we're doing two things; we're reducing transaction costs, information search costs, and we're increasing the ability of consumers to compare products. In fact three things; we're reducing search costs, we're increasing the ability of consumers to compare and, therefore, increasing the likelihood that competition will be effective and, thirdly, we're taking some account of behavioural knowledge by developing a system where in my view there would be an intermediate point, which is that you have negotiated fair contracts, but you can - which would reduce an on-line contract from 17 pages to the key terms, maybe one page.

But you're not preventing an insurer or whoever in saying, "Well, actually, we're different. We're moving from the standard fair contract, but we're telling you in what way. We're telling you that, even though the standard fair contract says that the late fee can be no more than 1 per cent of the payment, this particular one has a 10 per cent late fee, see, and so pay attention." So we're not saying - we're not removing choice in that way, we're trying to reduce transaction costs, have some regard to behavioural biases and so forth, as well as increasing competition. But on the broader questions, Peter?

MR KELL: Look, I think those are important questions that go to that issue that Gordon mentioned, about what are we trying to achieve here, and I think from Choice's perspective the unfair contracts legislation addresses a number of market problems, if you like. One is the sort of failures that do arise from information overload and the simple inability of consumers to absorb and make decisions on the full range of information that's there. So it's sort of a constrained decision making.

So when you're going along to a hire car place, yes, and you're presented with a long contract, and you've got several other things that you're looking for at the same time; there may be an insurance contract that's attached to it and what not. Your ability to read through that and absorb it and what not is, for most people, very limited. So there is an overload issue.

But I'd say there's also a behavioural bias there that comes into play that unfair contracts helps to address by in effect imposing some sort of minimum standard, almost a default, and the behavioural bias is that when you go into, say, a car rental place, you don't start from a negotiation position where everything is open. A contract is put on the table in front of you, and that becomes the basis for the discussion. That becomes, if you like, the status quo bias, that people will work from what they've got, and if that has elements in it that are inherently unfair that's nonetheless how things are basically structured and started from, and all the studies of consumer decision making show that once you have that anchor point, once you have that starting point in place, that pretty much everything gets built upon that.

So if you can make sure that your default has some elements to it, that your starting point has some elements of fairness to it, then you can build on top of that. So I don't think the choice is completely limited, because one car hire company might say, "Well, we meet the minimum standard, but we also offer you air conditioning, and we also throw in a travel rug or whatever," I don't know, "for the price." So it's not completely prescriptive in that sense, but it does set, if you like, a minimum standard rather than a maximum standard in the market place in a lot of areas.

MR POTTS: And as I understand it, unfair contract only applies where there is demonstrated consumer detriment. I mean, one of the concerns is when we talk about this is that if I can avoid any term it could become unfair. But, as I understand the UK model and Victoria model, you actually have to demonstrate that there's consumer detriment from that unfair contract term. And, again, the second element is it's not dissimilar to the misleading and deceptive conduct, where we have a very broad notion but it's applied quite narrowly; either statutorily or regulatory. So you can have a broad notion, but in its actual interpretation is quite narrow in how it's applied.

MR KELL: In our view, it's also a recognition that disclosure as a policy tool is not going to solve every market problem. So on page 11, clause 72B, there might be something there which sets out particular elements that may cause the consumer detriment. But what we know is that, for a variety of reasons to do with information overload, but also the way in which people make decisions, is that relying on disclosure to rectify all those sorts of situations is placing a very heavy burden on one particular policy tool that in some markets I think is now - it's almost counter

productive, because you're getting longer and longer disclosure documents that are not actually addressing some of those underlying market problems.

MR RENOUF: Another thing is, a lot of the industry-specific law - not a lot, but a certain percentage of the industry-specific law, which has been brought in fact over the last hundred and something years - has been to prohibit particular unfair practises. So prohibiting the rule 78 in hire purchase contracts, prohibiting the "you default on this and repossess your car" kind of - with no discussion, those sorts of laws are effectively applications of unfair contracts law to a particular industry. So in a way this is bringing those back out to - in a very rapidly changing world where policy responses perhaps can't be that fast, it's bringing the capability of a responsible regulator to make those calls at the lower level of policy debate.

MR FITZGERALD: Just moving on then. A couple of other issues, but the ones relating to that. You've mentioned again this difficult question of disclosure and it's related. As you know, we're looking at a number of areas; financial lending, and telecommunications and utilities generally, and so on. I suspect right at this moment we're still perplexed by how to address this seeming problem in relation to excessive disclosure, but without actually achieving its objectives, and both in terms of specific areas such as financial lending, and more generally we're interested to know a way forward. I was just wondering whether you can explore - and I don't expect you to have an answer - but have you got some guidance that you can provide to us as to how we address this issue of financial disclosure - sorry, yes, disclosure generally - either generally or in specific terms say to the lending area?

MR KELL: Lending and, I think, financial services more generally, yes. We haven't got the magic answer right now, unfortunately, Robert. But it is an area that we want to explore in our submission. Can I start by saying, we think that disclosure is a policy tool that's absolutely vital, it's central to consumer protection in markets. But our concern has been that it's in financial services in particular has taken on a role that's disproportionate to its actual ability to improve market outcomes.

In terms of the way forward, I think - look, this is not sort of in some ways a prepared response, but I think one of the concerns that has arisen in recent years from the consumer side is there's been a recognition that disclosure has limitations, it's not achieving all the things that we wanted to achieve. So, for example, it is a particularly poor device - and the economic research tells us this - it's a particularly poor device for dealing with conflicts of interest when you're confronting a mortgage broker or financial adviser or what not in these sorts of markets.

The concern has been that if we were to suggest, "Well, therefore, we should be able to get rid of that disclosure, reduce the amount of material that's provided to people, what tools are going to be put there in its place to answer or to fix the market

problem?" And too much of the debate to date has revolved around the issue of, "We have a market problem, disclosure is not working, let's continue to tinker with disclosure." So you endlessly tinker with disclosure rather - and I think where we need to change the debate in ways that is not occurring out there in the market at the moment, is we have a market problem, disclosure is not working, maybe we need to look at some other tools to fix that problem, and if we do so then we can wind back the level of disclosure, then we should be able to drop back the level of disclosure, because it is the second best or 10th best option.

So if we were to go down that road I think we'd be in a better situation. So we might say that, for example, when it comes to conflicts of interest, that following the lead that some of the industry associations have taken in the financial services sector, like the Financial Planning Association and the Investment Financial Services Association. They have actually ruled out some conflicts from the ambit of what their members can undertake, certain sorts of volume-related deals or buyer-of-last-resort arrangements; things that consumers are never going to understand in the first place. So they've stepped in and said those things should be ruled out. The problem is those associations don't have full industry coverage in their sectors.

So maybe for some types of market problem we need to rule a line in the sand and therefore say, as a trade-off, we can substantially reduce the amount of disclosure that's out there.

Let me give one very simple example of how you might argue that's applied in practice, in the financial services industry. When it came to designing the new financial services reforms, one of the issues that came up was should financial products be allowed to be sold door-to-door. This is not actually credit; this is all the other ones. Should they be allowed to be sold door-to-door? I suppose there were two options. One is that you would say "yes" and, in doing so, there are all these disclosure requirements that have to be introduced for people who are being sold products door-to-door, and special additional information that's given to them, and oral disclosures, and all this sort of thing - and introduce this massive regulatory regime around that; or the alternative was to say, "No. Financial products cannot be sold door-to-door," because, ultimately, who was being targeted? More vulnerable consumers, indigenous communities; that sort of thing.

What was the decision taken by the government there? No door-to-door sales. Very simple. One line - - -

MR RENOUF: A short piece of legislation.

MR KELL: - - - and I would argue that, for certain types of activity, that's more

appropriate than trying to design some very elaborate disclosure-based regime around an activity that has been perennially problematic. Does it really restrict the choices that those people might have, who might otherwise have been cold-called door-to-door? Perhaps we could argue "yes", but if we look at the history of problems in those areas, in misselling, you wouldn't have to work very hard to come up with the case that the cost benefit was clearly on the benefit side.

MR FITZGERALD: Just taking that example, what's your approach there for telemarketing of these range of products and so on, especially given now that contracts are in fact committed to by simply the statement, "Yes, I agree," on the phone, and that's recorded? In one sense, it's a more sophisticated version of door-to-door selling.

MR KELL: In fairness to the financial services regime, I think that the requirement there is a little more onerous than that, and it's worth looking at that in terms of some of the steps that have to be gone through in that industry. So the response from people who subscribe to Choice is that they find cold-calling, like telemarketing, deeply annoying and frustrating; however, where they have an existing relationship with the provider, being able to simply and easily, say, renew their insurance over the phone or whatnot - as long as that issue is dealt with, then I think you're on safe ground.

MR RENOUF: I think we would have some concerns with the proposition that it's routinely a good way to do business, to cold-call people and have them sign up in the course of that one call. It may not be qualified for services but that's recently been permitted in energy, and even your existing provider could do it to you in telecommunications, and we're actually currently commencing investigations on that particular issue.

But, just to summarise the broader issues, I think Peter said first of all about disclosure, one of the things we mustn't do is not ask disclosure to do things it can't do, and it's just clear they can't deal with conflicts of interest. They just made that case.

Secondly, I think I would like to see us challenge the notion that any form of - no matter how complex a product offering it is, it adds to our choice. I just don't think - there are some product offerings which are so complex, they can't be adequately communicated to consumers. I think the AMP 80/20 investment product turned out to be an example of that, but there other marketing strategies which seem to focus on making things so complicated that consumers can't compare with rival, better offers. I haven't done - have a magic solution for this but I think, at the very least, we should not live in a world which says that sellers are free to make things as complex as they like, even where their products are clearly inferior to their

competitors' products.

Thirdly, in financial services, the ASIC legislation - the Corporations Act part, whatever - is supposed - you know, the great irony, of course, is that it clearly states that disclosure "has to be concise, clear, and effective," and it isn't, so it seems to me that that piece of legislation wasn't, in itself, effective and that, somehow or other, it - I guess, to cut to the chase, I would say, is it possible to give real meaning to that? Is it possible to give real meaning to the requirement that disclosers must make their disclosure concise, clear, and effective?

MR POTTS: Can I just ask the question there: in that case, where there is a piece of legislation under the jurisdiction of ASIC that, on its surface, seems reasonable, and it hasn't worked, is that because the legislation itself has turned out to be not an effective piece of legislation or is it that ASIC has failed to effectively take action or enforce that particular piece of legislation, or have they done so but the courts have, in fact, overturned the intent of that?

MR RENOUF: There's a prior question, which is why isn't disclosure concise, clear and effective, and I think the most common answer that you get talking to the financial services industry is that it's a combination of directors' duties and lawyers; that directors are too concerned about risk and lawyers are too concerned about risk as well. Why - and obviously the act plus enforcement hasn't countervailed that pressure and in the end there's no - basically, there's no teeth to that provision, that disclosure must be concise, clear and effective.

MR KELL: I would also just go back to Gordon's point a minute ago. I think one of the challenges there is the question, what are you asking disclosure as a policy tool to achieve? Is it the best tool to deal with the range of issues that you're asking it to confront? I think that's one of the problems here. It's all well and good to say, "Disclosure should be concise, clear and effective," but if you have complex products with multi-layered conflicts of interest between the product manufacturer and the distributor, as you get in credit, for example, where you have a very complex range of fees and charges, and some of them upfront, some of them down the track - products that are long term, products which are not purchased very frequently by consumers, then I think saying, "Okay, in that circumstance, let's make disclosure concise, clear and effective," come on, let's get serious. Who are you trying to kid?

MR POTTS: Is there a presumption here that all consumers are the same, and that's perhaps part of the problem? If you accept the proposition that all consumers aren't the same, so that some consumers will want more information than others, does that point you in the direction of trying to think of a more layered approach in terms of how information is disclosed to consumers? For instance, one layer could be the essential information on something, and then you can work your way down so that, if

there is a consumer who really wants to know all the ins and outs - because in the financial sector we're living in a world, because of financial deregulation, where there's a lot more complexity in the products - if you go back 30 years, it was very straightforward. If you wanted to raise money, you went into the bank and got a straightforward loan, so information disclosure was dead simple. We're in a new world now where the product complexity is much greater and that's a good thing for consumers, by and large, but if you've got to think of the way in which that information is given to consumers to help them make rational decisions - and I wonder whether a more layered approach might not help in this regard, and so, for those who really are interested in complex products, like your 80/20 AMP product, for instance, and there probably are consumers out there who want to take advantage of that, they shouldn't be prevented from doing so by some regulator saying, "No, you can't sell that product because it's too complex."

MR KELL: I'd respond to that with a sort of two-part response. One is that having different levels in a disclosure regime is something that Choice has favoured in many industries. So the discussion at the moment in financial services about incorporating information by reference, so if people do want to go and look up the more detailed material they can do so, it doesn't have to be all in the one document, and we've done a lot of work in various industries over many years with key feature statements and things like that.

I think, though, the limitation - and that approach is an important one, one which we continue to be involved in in a range of areas, looking at how you can provide that sort of concise up-front information. The limitation, though, is that if you still have in some of those sectors problematic practises that can't be captured in that up-front material, but are still going to have a significant, potentially significant impact on consumers, such as certain types of conflict of interest, then maybe you need to say, "Those need to be dealt with via other mechanisms other than a layered disclosure regime."

So I'd say we - in effect, we want both. We'd like a layered disclosure regime. We can see a lot of advantages in having limited disclosure up front for most consumers, because most of them won't go beyond it. It would be cheaper, hopefully. But some other areas do require taking a step beyond disclosure.

MR POTTS: Can I just ask in relation to the second question. What are the principles you see which could be used as a basis for deciding there should be a different approach in those areas? You mentioned conflict of interest as one, and I think there was another one you mentioned before, too. But if you're going to go down this route, which is sort of an ex-ante route, I suppose, of deciding in advance that certain things will be either prohibited or constrained in some way, then you need a framework within which you can decide what falls within and what falls

without, rather than doing it on an ad hoc basis, because that tends to get you into problems of one kind or another.

MR KELL: It's a good question, and I don't think we have a neat answer. But I don't think we'd be - I'm not sure that we'd entirely agree that - and a case-by-case approach is always going to be detrimental. So you could, for example, give a regulator the capacity to prohibit certain types of conflicts of interest in situations that they can see are going to be clearly detrimental to a consumer, and set some principles around that. So you wouldn't necessarily ban everything outright or put it into black-letter law, which makes it very inflexible. But a simple example, again, from financial services, which I have to confess is more my background, so you're getting more examples in that area, but buyer of last resort arrangements in financial services.

I mean, I would argue that no-one can credibly argue that the impact of that potential conflict of interest is something that your average retail consumer can understand. So it might have been one where ASIC could step in and say, "Buyer of last resort arrangements are inappropriate when it comes to retail financial advice," and the same thing could probably apply in the credit industry with mortgage brokers. And in that way you in effect with, obviously, constraints and what not give the regulators to operate some degree of discretion under clear guidelines in that area. Otherwise, I think you'd end up in the situation that I think you're eluding to there, which is, you'd set something out in black-letter law which would be superseded two months down the track.

MR RENOUF: But I think we're doing that kind of task - the kind of task being designing what kinds of things are left to disclosure and what kinds of things aren't going to happen - all the time, and we would do it in legislative development. But we do it in a number of other places. Often we do it in the way in which codes are developed in particular industries. So the banking code of practice effectively says there are certain things that banks won't do, and that's negotiated in the particular case between government, industry and consumer representatives, and in a relatively informal way, but actually ends up having the force of law, because it becomes something you can complain about to the ombudsman as a matter of contract between the bank and the ombudsman.

Similarly, but to some less effect, both in terms of development and outcome, in the telecommunications area there's a whole bunch of codes that are effectively negotiated, perhaps between unequal parties, between the what's now the communications alliance on behalf of Telcos and other stakeholders, including consumer people. So, for example, the premium mobile services code has certain things that says that, you know, basically, the regulation hasn't caught up with the new industry, there's a code in place, and it says certain things that premium mobile

service people won't do, and if they do then the Telcos will no longer contract with those particular supplies of premium mobile services.

MR FITZGERALD: Sorry, just taking that point. Is that the path forward? I mean, we've spoken to some telecommunications organisations and utility providers. Is the way forward that you provide to the regulator fairly broad based regulatory powers, be it unfair contract or whatever they are, but using the coregulatory model what that actually means is embedded in industry codes? I mean, and you just described that. For example, just taking unfair we know, for example, that in the telecommunications contracts unfairness is built into the new code; how and why is another issue. So is this way to deal with an ever changing market place, and an ever changing nature of product and complexity, a model whereby you provide to the regulator fairly broad powers, but the actual detail of what that means is left to, for example, industry codes which have to be approved by the regulator? Is that the model that's emerging, rather than going black-letter law as to the details?

MR RENOUF: I think it's got a lot of promise, but there is a couple of caveats. The two main ones are, you need to have a clear - often you need to have a clear coregulatory framework. If there was a really transparent market, and reputation was everything, then maybe you wouldn't. But in most industries the market isn't sufficiently transparent and/or there's a long tail, and the reputation doesn't matter. So I think the first thing is, you need a coregulatory framework before you can rely on codes and, secondly, there's to be an effectively coregulatory framework. It's clear that the development and implementation of complaint schemes in financial services have been far more effective than the development of complaint schemes or codes in telecommunications.

The second thing you need is adequately resourced consumer voices - whether they're through organised consumer organisations or some other way - to give some other way to give some real on the ground experience of the other, the different points of view that need to be taken into account.

MR KELL: It's an accountability mechanism.

MR RENOUF: Accountability mechanism. But the third thing is, you need a regulator who's on the game, and I think that's possibly part of the problem with telecommunications is that pre-ACMA it was a culture of, "Well, yes, if we have to have consumer voices in the code development we will." But there was many codes, and it was a very bureaucratic structure. If you look at the list of codes listed with communications licensing, or just one code on one little thing that three out of six Telcos have signed up, and there would be a different code with this Telco, it's a complete mess.

But, in general, with those sorts of three caveats I think that there is quite a lot of scope in that. I mean, I guess what I'm thinking out, the premium mobile services code. The problem with the premium mobile services code - well, there's two. One is that it took about - you know, that the industry had been well and truly under way for at least 20 months before any kind of code was developed. There was a lot of foot dragging by - I mean, in that case there was two different industry sectors with competing interests which didn't help. But that needs to be dealt with, and the second thing is that, basically, the mobile operators took the ball and ran away with it and said, "Well, actually, this is the code you're going to have with" - and there was no countervailing sort of pressure to ensure that it was a better code, and it was the case of take something rather than nothing.

MR WEICKHARDT: Can I go back to the introductory comments you made about Choice, and you said Choice is a body that's not funded by government or by advertising, and I assume that you see some strong principle merit behind that. You then talked about, in your submission and you just eluded to then, the need for greater funding of consumer voices and consumer advocacy. Greater funding always seems to be code for government funding. Would you like to talk about the sort of success and failures in that area, and the reason why if government funding is not good for Choice and it is good for some other consumer advocacy groups - you might like to talk about how you see the UK consumer advocacy body, but also it's been put to us by some people - one of the major regulators was saying, "You can have consumer groups sitting around the table; however, the difficulty is they never agree with each other.

They've always got their own particular line that they wish to push," and it appears that, I guess, the government in recent times has been disillusioned with consumer advocacy groups because they've taken on a partisan - perhaps a political partisan type of shade to their activities. What are the ways forward here to avoid these beartraps?

MR KELL: There's a lot in that question, Philip. I'll try and deal with some of it. I think the first point to make is that there are a range of functions that are important for consumers and that are important in making markets work better that would be close to impossible for one single group to undertaken, so Choice has played a very significant role in, for example, product testing and providing information to consumers over many years and also, more recently, as services have become more important, testing services such as financial planning or the advice you get from chemists; and that in itself is a very large role.

But there is also, I think, a very important role that clearly consumer organisations can undertake in, say, casework, taking on individual matters or taking on the role of assisting groups of consumers in particular markets, and you're talking

later today, I believe, to the Consumer Credit Legal Centre, and they will no doubt explain that in far more articulate terms than I could; and you also get very, I think, important insights into the way that markets work or, in some instances, to the way that markets aren't working, from those sorts of organisations.

But, typically, they are the sorts of organisations which are not run on a strictly commercial basis because it's not the nature of the work that they do, and so the argument for funding there - there's no code about it; it is government funding. But they play an invaluable role, the financial counselling services, so there's a mix of organisations, I think, in the market that can help those markets work more efficiently and can assist consumers and can improve the demand side, and can also assist vulnerable consumers; and I think we get better policy outcomes if all of those organisations have the capacity to make an input into the policy process because they bring different perspectives and that is something that we think is not there in a strong enough form at the moment.

There's also, I think, a clear need for some research capacity, some independent research capacity, in this area to help provide a better empirical basis for policy interventions. Some of that should be done, I think, by a central policy agency but I think there's also scope for more independent research, if you like, and whether that's undertaken by some of the consumer organisations, if they're properly funded, or a sort of a national consumer council-type of model, which is the UK model, I think there are some options there that are definitely worth exploring. But there's no doubt in our minds that we would have some more effective policy, some more efficient market outcomes, if we had some better research to underpin our policy-making at the moment.

So I hope that - in terms of the - I'm not sure that we'd want to buy into the issue around the partisan - in my experience, those agencies that are operating in the casework area, if you like, are doing amazing work on a day-to-day basis, and buying into the partisan area is not really, I think, as big a problem as some of the critics have suggested.

MR WEICKHARDT: If politicians are influenced by electors, as supposedly they are, and there's evidence sometimes of politicians, in your words, I think, racing in to take action to say, "We've taken action," why is it the politicians have defunded consumer groups of this sort if consumers think that's important?

MR KELL: I think - just stepping back for one moment - one of the basic starting points of debates around the consumer role in markets is that the interests of consumers are very widely dispersed and it's more difficult to bring them together in a collective voice on a range of issues, as distinct from industry, who may have a far more focused role. That's not for a moment to suggest that that industry voice is

inappropriate or not important; it's just that that's the nature of how interest-group politics plays out.

Yes, I think it would be unrealistic to expect that consumers, through the ballot box, are going to work or express a very strong view about particular consumer organisations. It's just not how that interest-group politics plays out in democracies. That's the reality, and that's one of the reasons why you need, I think, some sort of funded voice in that arena as you get in other parts of the economy as well.

MR RENOUF: Just on the question of agreement from the regulators, frankly, my answer would be, firstly, so what; secondly, wouldn't that be a good thing rather than a bad thing; and thirdly, isn't that also what happens when regulators consult with industry sections, that you'll get disagreement about the right way forward. I just don't think that - I would hope that an organisation which was focusing on interests of low-income consumers would occasionally say something different to an organisation which was focusing on the issues of consumers more broadly.

Similarly, in health, where a consumer organisation focuses on the needs of people with chronic illness, it's very likely to say different things on certain health policy issues to the one that focuses on the broader needs of Australian consumers or the broader needs of low-income consumers.

MR FITZGERALD: We've just got about seven or eight minutes left. If I can just go back to one question, if I can. It's the Commonwealth-state split of responsibilities. We tend to get obsessed with this in Australia and we for ever will - well, this inquiry is obsessed with it, because we're trying to work out what is the way forward for the next 10 or 20 years.

I was wondering whether you have any - at this stage or we'll wait to see your submission - clarity about what component parts of the consumer policy framework could be best handled just at the Commonwealth level or can be better handled at the two levels. It strikes us, I suppose, at the moment that when we look at consumer policy, because it has so many different component parts, it is possible to deal with certain sectors of it differently; such as consumer product safety, trade measurement, financial - whatever it might be - rather than to say, well, the whole lot goes one way or the whole lot goes the other. I'd be just keen to hear your views, if you have any at this stage about the roles and responsibility issue.

MR KELL: We're waiting to see the magic answer that you'll come up with here, Robert, but - - -

MR FITZGERALD: That's generous of you.

MR KELL: I suppose the first point we'd make is that the policy development role needs to be primarily taking place at the national level. That's our strong preference. There are some elements then of the administration where it becomes more difficult to make a simple decision as to whether that might be nationally run or whether there's scope for more regionally-based or locally-based administration to be done by the states, but certainly, in our experience, those policy areas that at present have a split between the Commonwealth and the states are inevitably areas where developing sensible policy in a timely manner, responding to emerging market trends in a timely manner with well-designed policies, is far less likely to emerge because of the interplay between the Commonwealth and the states, and stepping back from individual personalities who might be at the Commonwealth or state level at the moment, and I think it's important to do that, we'd say that the leadership has to be at the Commonwealth level.

One point we'd make though in saying that is one observation about the way that the consumer policy framework is played out at the Commonwealth level over the last 10 or 15 years is that, because of the rise of regulators like the ACCC and ASIC, in particular, and they key role that they've taken, I think the actual policy agency role itself has weakened at the Commonwealth level. We would therefore be arguing that that needs to be significantly strengthened as well in the overall framework; that, as well as having strong regulators, you need a policy-making agency with research capacity and analytical capacity to help drive that national debate, and it's sufficiently well-resourced.

MR WEICKHARDT: But you don't think we have that?

MR KELL: I don't think we have that in the way that we need it at the moment, and I think that's in part an interesting outcome of what has been a success in this area, if you like. The success has been the development of regulators with a consumer-policy protection focus, such as the ACCC and ASIC, and, in an interesting way, a by-product of that has been less oomph, if you like, at the actual policy-making agency level, and I know Treasury have more recently begun to look at that but I think there's a lot more work that needs to be done in that area.

That's, again, not a criticism of any particular individual in that area. It's just something that I think has been left a little bit to the side in recent years and really does need to be addressed.

MR RENOUF: Can I say three additional things which I think needs to be taken into account in analysing this problem, and - help us find a solution. The first is we have been, and others have also been, very critical of some delays in producing national uniform legislation through the current ministerial council process, and we've given and will give the example of the - already four years are likely to be

more like six by the time any legislation is introduced in relation to far less mortgage brokers; and we'll point out that that's in a relatively uncontroversial area as to what needs to happen, and that's complete unacceptable. I mean, an emerging industry that everybody says has some problems that could be relatively easily fixed, and everybody agrees what the fix is, that we are likely to take at least six years to get the legislation in place.

But let's not say that the Commonwealth process would be necessarily quicker. If we think of the issue of compensation for loss in financial services, where there was a commitment to doing something about it some four or five years ago, and again we're yet to see a proposal - sorry, we have seen a proposal, last December, but we are yet to see a proposal that's going to get widespread support to deal with that particular problem. So, yes, we've been critical of the delays in getting states to agree about particular action, let alone the interaction in that process to have with the Commonwealth which probably bears some of the responsibility, but let's not pretend that the Commonwealth necessarily produces policy outcomes as rapidly as it should either.

Secondly, I think it's very important not just to focus on the core generalist consumer-protection area. We've got to keep our attention here on the other key areas of consumer life that are subject to regulation which, to our mind, include food, energy, telecommunications, and therapeutic goods, and media too.

So all those areas have different kinds of state-federal problems. Food has a problem in terms of enforcement, and also a problem in terms of too much proper emphasis on safety but not enough emphasis on consumer protection and labelling and those sort of things.

The third point is that - the third point is completely opaque from my notes.

MR KELL: That will do.

MR RENOUF: That will do.

MR FITZGERALD: We'll have to conclude in a moment but any final questions from Gary or Philip?

MR WEICKHARDT: Just a request in your submission, if you would, please - there are two issues that you raised that I'd be interested in seeing a bit more elaboration on. You raised one point on page 3. You say, "The current framework has significant drawbacks in several areas." The first dot point is, "The objectives of the policy framework are not clear." That seems to me pretty fundamental, and if you could outline what you think the objectives should be, that would be helpful.

The second is you reference and IMF study on The Impact of Global Financial Developments on the Risks that Householders Bear, and you say that this is an area that has merit. Again, if you could draw our attention to what aspects of that you think have particular merit, that would be useful too.

MR KELL: We could do that.

MR FITZGERALD: Thank you very much.

MR FITZGERALD: Resume, if we can. Now we've got the Consumer Credit Legal Centre. So if you could give your name and your position, and the organisation you represent, for the record.

MS COX: Karen Cox, coordinator of the Consumer Credit Legal Centre, New South Wales.

MS LANE: Katherine Lane, I'm the principal solicitor of the Consumer Credit Legal Centre of New South Wales.

MR FITZGERALD: If you want to give us some key points, about 15 or 20 minutes.

MS COX: Yes, certainly. We didn't forward our statement or our key points because they only finalised them this morning, but we're here and we have them.

Consumer Credit Legal Centre is a community-based consumer organisation, giving advice, advocacy, and education services to the public in credit, debt, and banking law and practice. We focus on personal, not business, matters. We get 70 per cent of our recurrent funding from the New South Wales Office of Fair Trading. We also get the balance of our recurrent funding from the Community Legal Services program, which comes from both federal and state attorney-generals' departments. We employ both solicitors and financial counsellors.

We operate the credit and debt hotline, which is the first port of call for New South Wales consumers experiencing financial difficulty. We give legal advice, financial counselling information, negotiation strategies, referrals to face-to-face financial counsellor services, and limited direct financial counselling. In 2006, the calendar year, we took 9955 calls from people in difficulty in New South Wales. That's the largest number in the history of the service, and 2007 has so far been busier, with each month exceeding the same number of calls for the corresponding period last year.

We're also about the commence a pilot insurance law service with funding from the Legal Aid Commission of New South Wales, and both the Victoria and New South Wales Law and Justice Foundations.

We act for clients in courts and tribunals, and we provide assistance and advocacy for people in external dispute resolution schemes, such as the Banking and Financial Services Ombudsman and the Credit Ombudsman. We usually act for between 120 and 160 clients per year in courts, tribunals, and alternative dispute resolution schemes. We also provide extensive web-site resources, education kits, workshops - usually for financial counsellors and other community workers, and

media comment.

We also do a lot of work advocating for improvements, to advance the interests of consumers, particularly disadvantaged consumers. In this way, we seek to influence law, industry practice, dispute resolution, and government enforcement action, and access to advice and assistance. We also seek and obtain funding to do special education projects and to do special policy research-type projects.

The main points we want to make today is we - as you realise, our focus will be largely on credit and debt because that's our area of expertise, so we want to talk about the pace of legislative change in our area being far too slow - something that was already alluded to by the previous speakers; the fact that frontline consumer-assistance agencies like ours are overworked and, to an extent, under-utilised in that our extensive consumer contacts are not effectively incorporated into the consumer policy development framework, or so we think; and that widespread avoidance of the law in our area makes it often ineffective; and, finally, that access to advice both in terms of preventing problems and also in managing those problems when they occur is an absolutely essential part of an effective consumer protection framework.

Going back to those points, starting with the pace of legislative change, I can't but help to refer to the finance broker legislation also. It's something we had a very keen involvement in. In around about 1999, 2000, CCLC staff had become very concerned at what we saw as ineffective laws as a result of the increasing involvement of third-party intermediaries in credit transactions.

In 2003, about March, ASIC released a report that we had prepared with funding from them in response to our concerns. In about June 2003 I attended **a** meeting of the consumer - state consumer affairs officials to discuss the issue, and also a round-table discussion later that year, where there was very much bipartisan agreement from industry, government and consumer representatives present about what needed to be done and about the way forward. Since that time we have given both informal and formal input on numerous occasions to the National Working Party and to the state governments working on the development of that regime, and we still haven't seen the draft legislation, and we don't know how long it will be when the legislation is finalised until it actually gets through all the state parliaments.

It's not the only example where broad agreement amongst stakeholders that change should occur has happened, and yet the change takes years to implement. There was agreement that the hardship variation threshold under the Consumer Credit Code, for instance, should be reviewed probably some four or five years before that change was actually implemented. Similarly, the same consumer affairs officials meeting that considered finance brokers also discussed deficiencies in the

business purposes declaration provisions under the UCCC, and agreed that something should be done about that. Again, although there's been some correspondence on the issue, there's been no draft response for the legislation.

We have to say, as a result of that, that we have to question whether the process isn't just too cumbersome. We know there are people in individual agencies working extremely hard on these issues, it's not meant to be a criticism of any particular organisation, and certainly of no particular person. It does raise serious questions, though, over the effectiveness of the process, and it certainly gives us little hope that anything will ever happen on issues that are much more controversial in terms of what the response should be.

We think there are serious risks for us in New South Wales. Suggesting, for instances, that the Commonwealth should take over credit. We think we've got some very effective measures in New South Wales that don't exist in any or many other states. We are very fond of our 48 percentage risk cap here, the interest rate cap, that actually covers fees and other things, which is not the case in other states. Some of them don't have an interest rate cap at all. We were very concerned about losing that, but we're also very concerned for the process of legislative reform to be responsive and workable.

We also think that ASIC has a good track record within the limits of its jurisdiction on credit, and there are some obvious advantages of placing credit in with the rest of the financial services in terms of having a comprehensive and consistent approach.

The second point about front-line consumer assistance organisations having extensive consumer contact which is not necessarily translated into policy action. I think there's two reasons for this. There's probably more, but there's two that spring to mind. One is that there's an unrealistically high burden of proof required before market intervention is considered justified.

Now, to use that - to use here as an example, consumer assistance agencies have been sounding the alarm about credit card lending since probably the late 90s. Financial counsellors and legal services around Australia have continuously produced examples of credit card lending from diverse lenders which share some common features. Credit limit increases are offered without any regard to current income or liabilities. Minimum repayments are very low, and many people retain debts for lengthy periods. Credit limits are high in relation to income, presumably because the ability to make minimum repayments only is the criteria for setting limits, and customers who are already paying interest on their accounts due to a revolving balance are offered higher and higher limits to address their cash-flow problems.

Extreme examples include pensioners who owe tens of thousands of dollars, and can't even pay the minimum repayment on their account. Less extreme examples occur more regularly, with debtors who are unable to pay off their debt, even though they can meet their contractual commitments and, therefore, suffer long-term financial stress. The response from industry to our concerns has been to pour resources into demonstrating that our cases are indeed in the minority. At least until recently there have been some positive moves by industry, but only in very recent times.

The response from government has been, with some notable exceptions, to seek more and more proof that there is a problem. In the meantime, household debts continue to grow at alarming rates, and the examples seen by agencies like ours have increased in seriousness. We recently saw a retiree, he was over a hundred thousand dollars in credit card debt, with only a pensioner income.

The point here is not to labour particularly what should be done about that problem in particular, it's to demonstrate that we are often aware of a problem very early. We're often aware that it's systemic very early, because of its persistence across a range of lenders in a range of regions. Sometimes one letter can be sufficient, if it's a form letter, to demonstrate that a problem is across the board.

While the need for evidence based consumer regulation is supported in principal, one interpretation of that principal sets an impossible standard, and wastes valuable intelligence about disturbing developments in the market place. The consumer protection framework needs to be more responsive to the consumer assistance agencies, and to take a more proactive role in seeking further information and, if necessary, requiring further information from those who are actually in a position to provide it, usually industry.

Further, while legislative response may not always be the best one, the real threat of intervention is often necessary to induce meaningful responses rather than elaborate public relations exercises. We may not always be right. The problem may not always be exactly as we see them, and the solution may not be exactly as we see it. But we will never be able to produce the type of statistical proof that would sometimes seem to be required to justify intervention. We think there should be a far more proactive position taken by governments to actually say, "Well, it does look like, on a prima facie basis, there is something happening here", and we're going to take that to industry, and we're going to seek some form of information, data, substantiation from them.

A related issue is that of waiting for a problem to manifest itself before taking action. In some cases the logic behind a particular business model itself should be

sufficient to perhaps warrant further examination. Concerns about pay day lending and other high cost small amount lending, part 9 debt agreement, administrators et cetera, concerns about these were raised by consumer advocates when these industries were in their infancy.

We have current concerns about subprime lending in the home loan market, and predatory lending in the debt consolidation business. But we feel that on our past experience we're unlikely to see any effective action in relation to these industries any time soon. Delays in taking an interest, an active interest in what's going on in some of these industries by regulators, often means that the industries are able to develop and vested interests grow.

Obviously, it's always problematic to legislate in a way that's going to waste resources that have already been invested for industry or, worse, effect the livelihood of those involved in that industry. But when you have businesses that appear to be designed to make money from the plight of consumers whose main problem is that they don't have enough money to meet their commitments already, then it seems that that entire approach is essentially flawed. The fact that some of these business thrive appears to us to be in itself a failure of the consumer protection framework.

Another reason the experience of consumer agencies is sometimes squandered at the policy making level is that there is a lack of investment by government in the policy making, in the policy capacity of consumer advocacy. Our organisation in the financial year 2005-2006 made something like 16 submissions to government inquiries, 14 letters and information submissions to government on other issues that weren't actually the subject of inquiries, 10 complaints to regulators regarding advertising not systemic issues, we had nine meetings with industry, three letters to industry, four other meetings - such as, liaison meetings with government and other industry schemes - and various other sundry comments, feedbacks and feedback given on documents.

For all this we get very little money, and the resources that we are given are largely taken up with attending to the demand - attending to the consumer demand. The level of people in financial difficulty at the moment in New South Wales is so high that we can do little but struggle to just answer the phones, so that we don't have so many unanswered calls. And in fact last year there was something - there was some months where probably twice as many people didn't get through to us as actually did if they were trying to get through.

The result of this is that a lot of the work that we just outlined is done on a volunteer basis by staff working after hours. Governments, and to an extent industry, encourage our participation in consultation processes, committees and inquiries, so that they can meet best practice benchmarks of consultation, and yet no significant

resources are committed to these activities. At the same time frontline consumer agencies struggle in isolation to interpret the experiences of their clients, and present possible solutions in a form that makes sense in a broad economic and regulatory framework.

As a general rule, frontline agencies struggle to even compare notes with each other, let alone form a unified position. Even appearing before a hearing like this is somewhat of a challenge for us to try and translate the daily problems that we're dealing with, and the responses that we're used to asking for, into the broader consumer framework.

If there's going to be a generally effective consumer protection framework then we think the only way to do that is to have some form of probably national organisation, possibly not, resourced to collate the experience of frontline agencies, compare that experience nationally and internationally, undertake proactive independent research and provide meaningful informed consumer input into development and operation of the broader consumer protection network.

The second-last point that I want to make is about avoidance of legislation. When the Honourable Faye Lo Po' introduced the consumer credit card into the New South Wales Parliament in 1955, she said this:

> It was clear that many borrowers were being offered credit that they could not possibly repay, simply because the credit provider did not make adequate inquiries about a potential borrower's financial commitments, income, and expenditure.

It's still one of the major problems we're seeing today.

One of the reasons for that is that perhaps the current provisions that deal with that are not as clear as they could be, and the remedies or penalties aren't as clear as they should be, but another major problem, particularly in home lending, is that the code is being avoided widely and systemically. There is little enforcement of system avoidance, there's not anti-avoidance provisions to make it easy for regulators to actually mount a case for avoidance, and one of the big problems in our area in particular is created by what now seems an artificial distinction between business and consumer lending.

At the time that the code was introduced, it was a big step to extend the code to all consumer lending when it had previously been for $20,000 and under, but in this day and age it's now fallen behind. Most of the rest of the regulation in financial services recognises the vulnerabilities of individual investors and also of small business, and one of the key ways that the code is avoided is by getting people to

sign false business-purposes declaration. If their code - or the credit legislation itself was more comprehensive, then the ability and the motivation to avoid it simply wouldn't be there.

That's not to say that there aren't aspects of the code that perhaps should be confined to consumer borrowers, such as hardship, and perhaps some of the unjust contracts and lending provisions stuff could be dealt with differently for consumer borrowers to business borrowers, but that could be done as a factual distinction, and that the overall code in terms of disclosure and in terms of notices and all the other protections that are in there could apply equally to all.

Our last point is access to advice. A lot of the problems we see could be prevented by access to timely advice, and yet there is no guarantee that any such advice is available. Even organisations like ours spent a lot of time giving advice to people who are already in trouble, not to people who are facing decisions about contracts they might enter tomorrow; and a lot of our law contains things like cooling-off provisions. The Code of Banking Practice has a whole lot of stuff in there about the information that should be given to guarantors. If people can't afford to go and pay someone to actually advise them about that stuff, a lot of those provisions are actually useless; not entirely, but there is a real need for people to get access to timely advice. I think a lot of the resources that have recently been poured into financial literacy could, in many ways, be better used if people were given one-off advice - one-on-one advice.

The campaigns, pamphlets, brochures, all that type of stuff, it tends to be far too detailed for anyone who's not really facing a decision at that particular point in time and therefore does not capture their interest, and nowhere near detailed enough for anyone who's actually facing an actual real-life decision.

The other important role in advice is the type of advice that we give right now which is the problem-management advice. We were recently approached by a lender wanting to even fund that type of problem-management advice because even lenders recognise that often the resolution is far more easily attained if the consumer gets access to realistic and timely advice.

Obviously we are not in a position to accept money directly from lenders - that would give us a serious conflict of interest in our line of business, but we can't see any reason why government couldn't accept money from lenders in the form of some sign of trust and then direct those funds towards assisting with effective consumer advice services.

I guess, finally, the most effective consumer protection regime we'd like to see in the credit area would be a comprehensive regulator who actually had total

responsibility for the entire area. We'd like to see personal investment and small business included. We'd like to see compulsory access to alternative external dispute resolution schemes. We'd like to see adequate and proactive enforcement. We'd like to see responsiveness to the consumer voice without impossible burdens of proof imposed upon organisations like ours. We'd like to see comprehensive prevention, including advice before decisions are made, and advice to deal with problems when they arise. I think that's everything for now.

MR FITZGERALD: That's terrific. You've raised a whole host of questions or issues and I would like to explore them. Can I just take one aspect of it, and it's related in part to two areas.

We've seen the rise of the use of the ombudsman schemes and you've mentioned too the Financial Services and the Credit Ombudsman scheme. How effective are they and - it links to your other bit about the voice of consumers - to what extent do you think the ombudsmen themselves have a role to play in more proactively promoting the concerns that they see in the cases, because, in addition to your 9000 calls, we've got - I don't know what numbers would be going to both the Financial Services and the Credit Ombudsman. Collectively, across Australia, that's a very large volume of input. So there's two questions. How effective are those schemes? Can they be improved, and to what extent do they have a role in being a voice in terms of trying to bring about change?

MS COX: Do you want to take that first?

MS LANE: It's a difficult question because they see their roles as a dispute resolution scheme and we want to put push them to do systemic work; and they do a bit of that but it's ad hoc and it's not very transparent, and some of the schemes don't do it at all. So I think, even though we'd like them to expand their role - I'll give you the example of one that we've just a discussion with the Banking Ombudsman about, was penalty fees. It drives us completely berserk - penalty fees, because these large fees they put on your credit cards or whatever that, under the law - the common law built up, and says, "Well, if it's a penalty, then you're entitled to the amount above what the actual cost was back." You're not allowed to be charged, and yet you can't make a profit on it. In fact, we believe that the banks are making massive profits on penalty fee, and yet there is no access to justice on that issue, absolutely none. We'd love it if the ombudsman schemes could hear it but they say, "No, we can't do it. It's the regulator," and the regulator says, "We can't do it either." We've got a big black hole where nobody will do anything.

So we want to push them to do more but they're pushing back. They just see themselves as a dispute resolution scheme.

MS COX: Could I add to that. I think we have found them extremely effective at the individual case level - - -

MS LANE: Yes.

MS COX: - - - with very, very good results for clients that way, and many of our clients who go through those schemes would not have realistically been able to go to court. It just wouldn't have happened: the risks were too high, they didn't have the resources, or we didn't have the resources to assist them. I just think it's partly a cultural thing, but I think there are also limits to the extent that someone in a position like an ombudsman can play both roles. I think there's always going to be, when the emphasis is placed on dispute resolution, there's always going to be a limit to which someone charged with that role who has to deal with and manage a whole lot of industry participants who finally support the scheme - I think there's always going to be a limit to the extent that they are prepared to push the envelope of the law in terms of developing new directions in the law, and I think there's a limit to how far they will be able to deal with systemic issues in the way that we would think was necessary.

There are certain types of systemic issues that they're very, very good at - ones where there is a clear breach of law, where it's inarguable and where they can go in and actually say across a whole bank's systems, "This has got to be fixed." That works really well, but for other things where the problem and the legal response are not as clear, they're not as useful as perhaps a proactive regulator could be.

MR FITZGERALD: Do you think that that's able to be fixed, or do you think that's just simply the nature of industry-based ombudsmen schemes, that the function of dispute resolution, in some sense, inherently means that the function of either systemic review or systemic advocacy is problematic, or do you think it's simply a matter of trying to redesign the ombudsman arrangements?

MS LANE: I don't think - see, the ombudsmen are so critical in terms of consumer protection because, if you have access to everybody, that's an access to justice issue. I don't think they can - I think that's a role for the regulator to do some of this stuff. It's not the role of the ombudsman, because otherwise you'd be - I think they'd be highly resistant, and I'm not sure it would work very well, because, as consumers point out to me over and over and over again, these people are funded by the members - like the banks, in the case of the Banking Ombudsman, and consumers see that as a potential conflict of interest, even though I assure them all the time that they're independent and all of that; but they aren't the regulator and there's a separate role and a very important role that I want expanded quite considerably so that every single consumer in Australia has access to dispute resolution, but I don't think that they can do the role of the regulator, no, even expanding it.

MR FITZGERALD: My third question and then I'm going to open it up to Gary and Philip is in relation to that, the ombudsman. You've indicated, as I understand it, that you believe that in relation to the whole range of financial lending, that it should be one regulator, I think one national regulator, you've indicated. We'll come back to that a little later but if that were to be the case, what would you do with the current ombudsman's schemes? Would you continue to have a range or would you bring them together?

MS LANE: No - right, I've got it. Yes - no, the consumer point of view is we want them all together. I mean, that's got to happen. In fact, that's happening now. There's been discussions and talks about a Financial Ombudsman's service and the track is being made to put them all together and that's what we hope is going to happen. It's happening already in parts and it's just going to happen over time. Yes, so the answer is we would want them all together.

MR FITZGERALD: Irrespective of what happens to a national regulator otherwise?

MS LANE: Absolutely.

MR FITZGERALD: You want them all combined into one?

MS LANE: A one-stop shop for consumers so there's one number, one place to go, where it's highly publicised, that everybody knows where you go, yes.

MS COX: Yes, I think the detail of how you get there and how it looks is probably secondary. The main thing is that there's no confusion, that it's an easy path, that people can find their way to the right place very easily and importantly, that there can't be jurisdiction shopping by members either.

MR FITZGERALD: Which currently happens.

MS LANE: It does.

MR POTTS: Just on this question of access to timely advice which I think was among the list of points you had; how does the ombudsman's role fit into that? I mean, listening to what you're saying then, in that they're reasonably effective in dealing with disputes that consumers have. Are they partly fulfilling the function, do you think?

MS COX: I would say not at all. I mean, they would say themselves that they cannot give advice.

MS LANE: They can't give advice.

MS COX: And they have to tread a very fine line sometimes to even make sure they ensure access to consumers without actually giving them advice because they are meant to resolve the dispute independently and to not come down on either side. So we actually get referrals from ombudsman to our service because they have complainants they are concerned are in need of advice and they're unable to give it.

MR POTTS: So what you're talking about here is the next stage beyond the ombudsman's function, I presume. If a consumer has a dispute, all right, their first step is to go to the ombudsman, and I'm not sure what percentage is satisfactorily resolved in the banking area but I think we've heard in the telecommunications area that something like 90 per cent are resolved in the first two weeks, I think it is.

MS COX: I'd question whether that was resolved or fell out.

MR POTTS: Whatever, anyway, so if they can be resolved at that level then that's fine but what you're talking about is the next step, is it not?

MS LANE: No, we're not.

MS COX: No, we're talking about two different levels. What we're talking about is, before you even get to the point of having disputes, so that's advice about entering contracts.

MR POTTS: I see, before you enter into a contract.

MS COX: And then the next level advice is about problem management, which comes in around about the same time as the ombudsman, and we speak to consumers every day who are perfectly capable of running their own complaint to the ombudsman, but we still provide them with some advice and assistance as to how to do that. I mean, often they need to be told the ombudsman exists in the first place, and what sort of head of law they can bring their complaint under, but then we send them off on their way to make their complaint, but there is a huge variety in both the ability of consumers; some of them can't even write the first letter, whereas others can articulately argue an entire complaint. And there's also a huge variety in the level of complexity of the law being argued.

MR POTTS: So what you're talking about here is a service for disadvantaged or low income financial consumers?

MS COX: I guess what we're talking about is trying to fill the gap between those

people who can afford to and pay for their own financial advice, often financial and also legal, and those who are making decisions like this every day without any advice at all.

MS LANE: And that includes the middle group as well. I mean, we talk to a lot of people; we talk to many, many low income and disadvantaged people but I talk to a huge amount of people who are just in the struggling - have some sort of income, you know, a few kids and just struggling along with a mortgage and things like that. Those people need advice, they can't afford advice. They absolutely definitely need advice to even begin the dispute, to work out whether they have a dispute, to work out how to go to the ombudsman - sometimes the ombudsman is not applicable, and how to resolve their matter, and many of them ring us back several times. So they go through the whole process getting advice.

MS COX: Can I just add too to this that we're not talking about necessarily having, you know, an endless pot of money with which to fund all this. What we're talking about is thinking carefully about the resources that are already poured into various forms of financial literacy and about using some of those resources to look at individual advice as opposed to generic campaigns and publications, and also about perhaps galvanising industry resources to assist with the provision of some of that advice on an independent basis.

MR FITZGERALD: You've got - at the moment the Australian government has placed a fair amount of resources in relation to improving financial literacy generally.

MS COX: Yes.

MR FITZGERALD: Some states and overseas have gone further, and you've mentioned that one is where one state - or I think it's the ACT, has introduced a requirement on behalf of the lender that they have to do an assessment of the ability of the consumer to in fact repay or meet the obligations. In others, there is a push and we've just seen in America, following the format in relation to the subprime lending market for a - that you have to seek advice prior to entry into the contract. In your view, where do you think is the right mix here?

One, do you continue to put a great deal of emphasis on financial literacy, do you actually start to put the onus back on the lender to in fact do the assessments, do you move to compulsory advice, and if so, what would be the threshold, taking Gary's point, that there are consumers that are more than capable of making those decisions? So how do you actually target any of those interventions to the group that are most at risk, given your point that you see more and more people in what you regard as the middle sort of category? What is the right way forward in this?

MS LANE: Well, I think it's a novel approach.

MS COX: That's an awful lot of questions.

MR FITZGERALD: I know, and they're related.

MS COX: They are, yes.

MR FITZGERALD: There's a continuum of action you can take.

MS LANE: You need a multi-pronged approach, in my view. You do need financial literacy in schools so people understand basic stuff, but you do need - but look, this is the thing with the financial literacy thing that's driving me mad over, is you need point of time advice. That's the most - if you're a rich person; if I had money, I'd go and get my legal person - even though I'm a lawyer, I'd get another legal person who knows the area and I'd have my financial adviser and they'd all be sitting there telling me what - giving me advice on what to do. The rest of us people who in Australia can't afford that, we need to have some sort of help at the point of time advice in relation to making good decisions.

Now, the people I speak to, they just never had a hope of making a good decision because of - or information asymmetry or whatever it was or they were pressured, or they had no idea that, you know, there were certain different types of lenders. They just have none of this information. Now, they're not going to teach it at schools - they're not. So the answer is, is if people have to access to information at the - and I'm not saying it should be compulsory, but I think that you perhaps have a publicised place where you can go and ring and say, "Look, this is what I want to make a decision on. What are the sorts of things I should take into account and what should I think about?"

If we had that, I'd like to put myself out of business with something like that, because that's what I want; I want the endless people who just get predatory loans and part 9 debt agreements and all that because they were - I want them to be able to have advice before it happens. Prevention is very key.

MS COX: Can I add to that, though. I don't think advice, however, can replace responsible lending.

MS LANE: Well, that's - yes.

MS COX: I do think you have to look at both. I think that if you're going to actually get to the problem you need to look at it from both sides.

MR FITZGERALD: Can you speak up a little so that people at the back can hear.

MS COX: Sorry. I don't think that advice can ever replace responsible lending. I think there does have to be an onus on lenders to assess people. Whether you take the ACT model for achieving that or whether you look at some other form of achieving that, I think you do very clearly have to put the onus on the lender. People make bad decisions in all sorts of situations; that's not the only one, but I think that consumers are never well placed to make their own assessments and that can be for a variety of reasons. Sorry, I shouldn't say never, but I think expecting them across the board to be well placed to make that decision is just unrealistic.

MS LANE: We're just optimistic, but the other thing is that I'd argue that the onus is on the lender; they've tried to shift it over the last couple of years. It used to be, 10 years ago you'd go in an beg for a loan. No, you would, you'd have to convince them of like everything and now, you just walk past and they give you a loan. I mean, you're asking to get the time, and you end up with a loan. I mean, like, they have shifted the onus. Their job is to assess and in terms of our economy, I don't think there's any doubt about this - in terms of our economy, it is against the public interest and economic stability to have irresponsible lending just go rife.

That's what's happened in America. We don't want that and we have to have something in place to make it absolutely clear to industry that it is their job to adequately and prudently assess people's ability to pay. You can't just send them a limit increase that says, "Oh, can you afford a thousand dollars a month," and people are just supposed to work that out if they can. People aren't doing budgets every minute, and not only that, how can you when you're sitting there whether you have to pay car rego. You say, "Oh, yes, I'll take the limit increase," and then of course it gets out of control.

MS COX: I think there are four - probably four, maybe more, reasons why people are unable to make that decision. One is that some people are simply incapable of doing the maths involved. Others, that people tend to be overly optimistic about both their future ability to earn and the likelihood of intervening events which will affect their ability to pay. Three, I think there are often times when people are simply too close to the issue in terms of how much they want something to actually be able to realistically and dispassionately assess whether they're really going to be able to meet those requirements, and finally, I think we see more and more people who are already in so deep that they know they're not going to be able to get out, but they're accepting anything that looks like a lifeline. So someone comes along saying, "Here, borrow more. This will fix the problem," and in fact it doesn't, it just buys them another six months or another year, and in the end it all comes crashing down, and the amounts owed are bigger and bigger.

MS LANE: And thus the increase in the bankruptcy rate, I might add. We're saying - which has, like, gone up 20 per cent in the last quarter.

MR WEICKHARDT: This afternoon we have got some people called the Financial - the National Financial Services Federation coming along to present to us. We've just received this morning a copy of their submission. I don't know what their membership base is, but it looks as if their membership base is a lot of the lenders in this sort of area that you're talking about. And you won't be surprised that a number of their comments in their submission, which I've only just scanned, are somewhat divergent from - - -

MS COX: Ours?

MR WEICKHARDT: - - - your own comments. I guess a central point that they make - and this might be in the Mandy Rice-Davies category, they would say that, wouldn't they, but their point is that there are 198,000 loans. I think that's claimed to be in one particular year in this category. There's a demand for these things, and if you use prohibition - these aren't exactly their words, they're mine - if you use prohibition then you will drive a lot of this activity into the criminal area.

MS COX: That's just - - -

MR WEICKHARDT: Into the unofficial market. So you might be interested, when you get a chance to read the transcript of that section, and when you make a submission - - -

MS COX: To respond.

MR WEICKHARDT: - - - to make any comments about that or about their submission generally. But, I guess, the point that there's a demand out here for this sort of stuff does raise the issue as to - if you introduce legislation that totally tries to prohibit this, prohibition hasn't worked in many fields of human endeavour - the question is how do you move to a situation that provides appropriate counsel to consumers, but also accepts that some people perhaps do use these instruments when they need them in a manner that doesn't cause terrible detriment.

MS COX: Look, I think it is a complex issue, but I think there's a couple of points I'd like to make in response. One is if we're talking about small amount lending - and I assume that's who these people are - then we don't see the cap as necessarily prohibition. We've had people in New South Wales who appear to continue to operate under the cap. It's just a way of saying, "Same law applies for all. If you can lend at that rate and make money, then good luck to you." But we don't see that there

should be people who have to pay significantly more than the rest of the population. In terms of - - -

MR WEICKHARDT: You won't be surprised that one of their first comments is "Case Study. The 48 per cent cap nonsense."

MS COX: Yes.

MS LANE: Yes, that's who they are.

MS COX: Yes, and I'm sure it says it's driving them all out of business, yes. I guess my other point is that - - -

MS LANE: Let's put - - -

MS COX: - - - in terms of the existence of demand doesn't necessarily mean that something is good or is going to work out well. I think there was clearly demand for subprime lending in the US, and that's not really going to save either the borrowers or necessarily their economy at this point in time. So I think you can't say the existence of demand per se is enough to justify that something should continue. In the subprime home lending sector one of the arguments made is that they enable choice, they allow people who otherwise wouldn't be able to take out a loan to get a loan, and in terms of their rhetoric there is some point, that if someone has had a family breakdown or a failed business, and is now well and truly back on their feet and earning well, and is willing to pay 12 per cent for their home loan knowingly and comfortably, then there probably should be no reason why they shouldn't do that.

Our concern is that all the clients we see are not in that position at all, they're people who actually couldn't afford even mainstream rates and, therefore, just get themselves into worse and worse hot water, and I guess that's my point about saying, we can raise the alarm. We can't go in there and say, "Well, we want to see your books. How many of your people are actually in this category and how many are in this category, and how many of your loans have actually successfully paid out, and how many are just refinanced down the food chain to worse and worse lenders, and disappear off into the Supreme Court statistics.

MS LANE: Can I - - -

MR WEICKHARDT: You mentioned that one of the things that you find egregious is that these organisations are highly profitable. If there were sort of huge numbers of defaults, even with these high interest rates, surely they wouldn't be profitable.

MS LANE: Well, I don't know the answer to their profit issue, because we don't have that information. But can I make a point about these people who are going on the fringe of the market who is the - it's the fringe lenders in relation to that National Financial Services. But we have a two-tier market, right? We've got banks, credit unions and building societies regulated by APRA, and they're under the - they have to have a dispute resolution, because they're in - they fall under the financial services regulation, and as a result they have EDR, they have market conduct, they have regulations, and then we've got the rest of the market who has no regulation. They have to be in dispute resolutions, they don't have any oversight from APRA, they don't - they're just running around.

So having a two-tier market is undesirable straightaway. So when these people talk about profit and all that, that's got to be taken in the context of not having a two-tier market any more. It makes no sense, and the banks complain about this all the time with good reason. It makes - and the consumers don't know that we have a two-tier market, they all fall of their chair when I tell them that we really - you know, what lot is regulated and the other lot has no oversight whatsoever. We don't know what their default is. Nobody walks in and looks at their defaults, nobody looks at their - there's no reporting mechanism in relation to those people. The banks and the credit unions and building societies all have to report, and they don't. We don't know what's going on with that group.

While we have a two-tier, we've just got a huge consumer protection problem, and the fringe lenders for the National Financial Services people, let's at least get it up to a one-tier market where we have effective regulatory oversight, and consumers can expect to get the same thing. Also, that's - having a two-tier market is a terrible idea in terms of competitiveness. I mean, that's what the - that group is complaining already; why do they have to have all this regulatory oversight? They do have a banking licence, I mean, that's true. But it's no - that's just an absolute failure for you to have that, and we have to sort that out as a - and then we can talk about whether there's profits and defaults and so forth. But, until we have a market where consumers have confidence in that market I can't see how we can move forward.

MS COX: Can I clarify something, too? When I spoke in the opening statement about certain businesses being profitable, when their basic premise is that they're making money from people who are already in trouble, I had two particular examples in mind when I said that, and neither of which are particularly relevant to default statistics.

MR FITZGERALD: Could you speak up a bit, please.

MS COX: Sorry. Two examples I had in mind; one was debt consolidation specialists. We see daily ads and we get daily calls from people who have gone to

debt consolidation specialists. Often those people are taking enormous up-front fees. So they will get their cut in the first instance, they will walk away, and whether or not that loan ever makes it through or whether that person defaults or there's repossession is absolutely irrelevant to them. We've got a number of recent examples where we're talking about up-front fees of 19,000, 20,000, 30,000 dollars. So that's on one transaction. The other example that I had in mind was the private sale of part 9 debt agreements. A consumer called the other day and said, "Oh, this person says he thinks he can get me a deal for 85 cents in the dollar, interest frozen, but his cut is $9000.

Now, apart from a whole range of issues about whether people really understand that they're actually entering a bankruptcy arrangement and the implications of that as opposed to a debt consolidation, even all that aside, if there's $9000 surely that should be going to the creditor, not to some middle party.

MR FITZGERALD: We're going to run out of time shortly, so just some final questions, Gary?

MR POTTS: Are there any areas where you think there's too much regulation?

MS COX: In our area it's hard to say. I think it's more that there's a whole lot of complex stuff that would be - could perhaps be streamlined, so that you don't have too many layers upon layers. But I have no doubt that there probably are areas where there is too much legislation, but I can't cite an example, no.

MS LANE: No.

MR FITZGERALD: Can I just finish on a suggestion you made to us in the consultations, and you've mentioned it again. It's in relation to the anti-avoidance area. I understand you've made a proposal or will make a proposal that there should be anti-avoidance provisions. At this stage - with the consumer credit card I presume we're talking about at this stage. Can you just elaborate on why that's necessary and how it would work.

MS LANE: From our perspective they just come up with different ways to find loopholes. We've got the business purpose separation. We've got promissory notes. We've got bills of exchange. I mean it's quite incredible how many things they come up with so I worry that if every time we plug a loophole that they'll just find another. They're very creative. But what I might say though is that we might not need the anti-avoidance legislation if we make the whole thing comprehensive. It's only in the current situation - I mean from my perspective the consumer credit card doesn't work very well, full stop. It just doesn't work very well. It can be avoided. It doesn't protect the people who need the most protection.

It's not nearly strong enough on predatory loans, for example, or responsible lending and it's - you know, the disclosure requirements I'm not sure that - you know, we do need disclosure but it isn't preventing bad behaviour either the other way. So if we had to keep the consumer credit card we definitely need something to stop the endless avoidance of it and that might be something, a generic piece of something put in the code to say, well, you can't avoid it, and I'm not a draftsperson so I'm not going to say what that would look like, but I was thinking of the Tax Act and things like that where they just - the Taxation Office got very, very sick of bottom of the harbour schemes and said, well, you know, you want to avoid, you're in trouble.

MR FITZGERALD: Can I just ask a final question on that. Do you think that when the credit code was designed people had not fully appreciated what would occur in the market if you did this or do you think it was fundamentally flawed at the beginning?

MS LANE: If you ask consumer representatives who were around when it was done, I was one of them as well, it was at least fundamentally flawed from the beginning because the consumer representatives turned up and said promissory notes, bills of exchange, business purpose declaration are all going to be exploited so in that sense it was a bit fundamentally flawed at least in loopholes. The disclosure is fine. I just think that it failed on responsible lending.

If the responsible lending thing had been absolutely clear in legislation in the consumer credit code 10 years ago - over 11 years ago now, then I would have hoped that that would have shaped lending in Australia so that we had a responsible lending regime and we wouldn't be just going down the US path currently, which is what we're doing in spades, and I don't think that's in the interests of our economy or our public at all, so in that sense it's failed and I think it was fundamentally flawed from the beginning.

It just didn't have enough foresight into the future even though people did say things at the time. So, yes, I'd like to fix that. I'd like to put a piece of legislation in that's comprehensive, that has access to justice, that drives behaviour in the economy so that we have proper market conduct and we don't go down the American way where we're trying to plug holes.

MR FITZGERALD: Any other final questions or comments? Thank you very much for that. We'll resume at 11.30. We'll take a break now.

MR FITZGERALD: If you could lead off with some key points and then we can have a discussion.

MS PETRE: Thank you. We had a look at the key considerations for the commission's review, and I just wanted to make a few opening comments. A number of them will be self-evident but it's probably worth making them anyway.

Your first key consideration is to look at the need to ensure that consumers and businesses are not burdened by unnecessary regulation. We agree, and believe that regulation should have a clear purpose and a need. It should be accessible, understandable, to both businesses and customers. But, as well, I think the costs of not having regulation should also be recognised because when regulation is not there to protect consumers and they get into trouble there are a lot of costs associated with that.

The New Zealand Energy Complaints Commissioner tells some harrowing tales of - the New Zealand energy market deregulated almost overnight with no regulation whatsoever, no dispute resolution, and her stories are legend about the problems faced by consumers by not having a regulatory framework of any sort.

Your second key consideration is that consumer policy needs to be based on evidence from the operation of markets, and the behaviour of market participants. That's where we're coming from. We're not talking about theoretical concepts. The Energy and Water Ombudsman, EWON, has been operating for almost nine years of dealing with customer complaints about the key consumer issue areas of electricity, gas, and water, particularly since the New South Wales energy market was deregulated in 2001, and open to full competition.

We have now seen upwards - almost 60,000 customer issues over that period, and particularly over the last two years we've seen a huge increase in complaints about energy marketing, contracts, termination charges, transfers, and in particular we've been concerned about marketing to vulnerable consumers, particularly the frail aged but also people with an intellectual disability, people with physical and mental health issues, people whose first language is not English. So we're talking from experience today of consumer issues.

Your third key consideration was the impact of your recommendations on consumers' businesses and governments in the light of avoiding unnecessary increases in regulation. As I said earlier, we believe that regulation should not exist for the sake of it. There should be a purpose, but I think it's worth noting that one of the best performing utilities in New South Wales has a company mantra where they talk about "good customer service is good business," and I think companies who do

operate under that sort of mantra don't get hung up by regulation because they're doing the right thing anyway, and it's usually not so much of a burden to them.

Your fourth and fifth key considerations were about the importance of promoting certainty and consistency for businesses and consumers across Australia and the shared responsibility of governments. We believe that it makes complete, absolute good sense to have consistent consumer protection laws throughout Australia, and it makes very little sense to have lots of different laws, particularly in utilities as we move to a national energy market with national retailers and national regulation; it's really important there.

From the business side, we acknowledge that, and we understand that it's a huge impost on retailers - energy retailers trading across states, to have to manage a whole series of different jurisdictional variations and consumer frameworks and rules. But it's also unfair for energy consumers if in one state they have a 10-day cooling-off period and in another state they have a five-day cooling-off period, or if there are markedly different rules about telemarketing or door-to-door selling. It just doesn't make any sense.

So, that said, just in terms of is there a need for consumer protection, and I guess this is where it is a bit - I suppose it goes under the heading of the obvious, but there is clearly an unequal power relationship between business and consumers which we believe can't be left completely to the market. There are requirements for clear and comprehensive information to consumers about products and services. There is a need for full disclosure of contract provisions, what the consumer is getting, for how long, how much, possible variations in the contract, a cooling-off period for contracts, limits on marketing - both telemarketing and door-to-door marketing, steps before services are removed or restricted, and the need for dispute resolution provisions for consumers. So, if it's accepted that there is a need for clear, understandable, focussed consumer protection, should it be generic of industry-specific?

In theory, we like the idea of generic consumer protection. It makes it simple for consumers. It makes it easy for education and information campaigns so that consumers and businesses understand their rights, and, as I indicated before, it makes little sense to have different cooling-off periods, for example; that's a good example of where that could be a generic provision. However, our concern is that, if generic means lowest common denominator, that's not enough protection, particularly in relation to essential services, like electricity.

If generic consumer protection isn't strong enough, we would argue for industry-specific protection where appropriate, but, that said, it would be necessary for such areas to demonstrate why they need special attention or provisions, and I

think they would have to argue that a service or a product is essential and non-discretionary, and - or argue about the impact of the loss or variation, or restriction of that service or product on the consumer, the impact on their finances, their health, their lifestyle; things like that. So it's not a matter of an industry putting up their hand. I think they have to argue from those points of view.

We think there's a spectrum of consumer protection which can move from measures common to all products and services through to more specific protections which might only apply to some products and services. The common consumer protection measures that we think would run across most services and products, full product disclosure, so consumers understand the nature of the product or the service that they're getting, including what it covers as well as what it doesn't cover. Marketing hours. We don't think it matters whether the marketer is selling white goods, insurance or electricity. There should be clear designated limits on when they can ring or doorknock consumers.

A no-contact register. We think consumers should be able to opt out of being marketed to in their homes regardless of the product. There is a no-contact register developed by the federal government for telemarketing, but it's interesting that there's no equivalent for door-to-door marketing which in fact from our experience can be a lot more intimidating and confronting for consumers. It's even been raised with us that there needs to be a difference in relation to times for doorknocking between daylight saving hours and non-daylight saving hours because many of the older people and advocates of older people have said that in the winter months, in the dark months, a lot of people retire early and it's quite confronting to have a knock on the door within the allowable marketing limits up to 8 o'clock at night.

Another common consumer protection measure is full disclosure of contract provisions and we think that would apply regardless of the type of contract or product or service. Is it a fixed-term contract? Any termination charge? Whether the contract applies to the one address only or whether it's transportable to another address. What are the dispute resolution provisions if the consumer has any sort of issues? Cooling off periods. As I said, we think there should be a common, reasonable period of time for consumers to consider a contract and opt out if they change their mind, and that common period would assist in consumer education and information.

Because we think consumers might need to discuss contracts with families or seek advice, cooling off should be longer than shorter, and in any contract consumers need information about where to go for redress if they do have problems that they're not able to resolve with the provider of the service or product.

So they're the common ones that we think are important to all services and

products, but there is a significant impact on consumers of the loss of some products or services so we think there are some specific consumer protection measures that are needed particularly before a product or service is removed or restricted, for example, in electricity or finance or credit areas. The first is there needs to be a requirement for communication to consumers about a lack of payment or other conditions that the consumer has not met, particularly when there's a risk of loss or reduction of that service or product.

For example, in New South Wales there are regulations which require electricity companies and gas and water companies to send reminder notices and make contact with consumers who are in arrears and who might face disconnection or restriction of that service. There's also a need for designated reasonable steps that the business must take before the product or service can be withdrawn or restricted. For example, again in New South Wales there are regulations that require specific steps to be taken before disconnection of electricity can occur, including notices, personal contact with the customer, a hold on disconnection if the customer has an appointment with a community agency to seek financial assistance.

Regulations provide that there cannot be disconnection when a consumer can't get help. For example, no disconnection can occur on weekends, on a Friday or any day after 3 o'clock, 3 pm, or on public holidays. And there needs to be information about forms of help available for consumers who cannot meet their commitments and are facing withdrawal or restriction of the product or service. Example in regulation in New South Wales says that information about financial assistance for electricity and gas customers must be actually included on all overdue and disconnection notices and that information about my office about dispute resolution by regulation must also be included on those notices so that if consumers are facing disconnection of an essential service there's somewhere they can go.

There is other energy-specific regulation. In Victoria there are guidelines for compensation for customers if they have a voltage variation which causes damage to appliances, I wish we had it in New South Wales, and in New South Wales there are guaranteed customer service payments if a consumer has a number of outages of electricity and so suffer significant inconvenience. So those are very specific to industries and it would be obviously impossible to carry those across to other areas but they're really essential to the electricity area.

Just talking briefly about vulnerable and disadvantaged customers, energy particularly is not a discretionary product. Consumers can't walk away from it and they will always need a lifetime relationship with a provider even if they change that provider from time to time. Electricity in particular is not a product that consumers can produce themselves or find an alternative brand or product. We all need to buy electricity, gas and water to meet our daily living needs of ourselves and our

families, but there are some consumers who will from time to time face financial hardship in the short, medium or long tem for reasons of unemployment, health, a number of reasons, and who will therefore not be able to meet their obligations, in particular to pay their bills in full or part.

Our experience in the areas of affordability, marketing and disconnection is that the development of policies to deal with that could be an industry self-regulatory process, but this is always aided by the active interest and intervention of regulatory authorities and a willingness to regulate if the self-regulatory provisions aren't there. The energy markets are still quite young, but we think even in a mature market there will always be a need for protection for vulnerable consumers. The example in most states now in Australia, particularly in New South Wales, is in the area of hardship programs for consumers.

These were developed as self-regulation by utility companies and they have adopted them as an industry standard and have been very willing to share ideas about how to assist their customers who are in short, medium or long-term financial need and cannot pay all or part of their bills. There have been costs associated with developing these programs, but in the nine years that I've been ombudsman I am just really stunned by the difference between the old days of the old consumer credit management approach where I'll send you a bill. If you don't pay, I'll send you a notice. If you don't pay, I'll cut you off. I'll disconnect you, and then I'll reconnect you, and then we might go through the whole cycle again.

That's changed dramatically and there are now designated hardship programs in each of the retailers where customers are identified either earlier or later to be in need and if they go onto these programs, they are protected from disconnection, they're quarantined in those programs, and the programs look to offer reasonable payment plans for the customers, even if it means that their arrears will be collected over one or two years even. They work out, first of all, how much do you use and how much do you pay, and again that's very different from the old days when the credit managers would say, "Well, you owe $500. Your next bill is due in three months so we've worked it out, you need to pay $100 a week off your arrears."

We would have many examples of pensioners who would be in that situation. They had a payment plan of $100 a week. It's patently ludicrous. They are set up to fail. They then fail and then they're written down as a bad credit risk, so it's a vicious circle. That has changed to a great extent and we have seen a great drop in our cases of customers coming to us in that situation. That said, the industry has - and I give full credit, it hasn't been without a little bit of pushing I have to say, but they have embraced it because I think they've realised that it's actually good business, it costs money to disconnect and send out notices, and it's much better to collect a little bit of money over a longer period than nothing over a short period.

But that said, there is a recommendation for regulation to complement those initiatives where no retailer can disconnect a customer without offering a reasonable payment plan, and there are also regulations about utilities providing information about the numbers of disconnections, the types of disconnections, how often people are disconnected, are they a pensioner, and that sort of public transparency is very important I think, so there is a complementary relationship between the regulation and the industry where the government, I think, has been happy to leave it to the industry if they're prepared to run with it but to complement it where necessary.

I think it's fair to acknowledge that New South Wales utilities perform pretty well and most energy consumers don't experience problems. In fact, it's a strange product in that the best consumer relationship in energy is no relationship because you get your bills on time, they're reasonable, your power stays on, and you never have to think about it. It's a very odd consumer product, and the only time you ever think about your utilities is when something goes wrong so it's a sort of negative response. So that's the good news. The bad news is still that in New South Wales disconnection of electricity and gas are still way too high and may worsen with price increases that have been recently announced in utilities but also rises in perhaps interest rates, other commodities.

The New South Wales housing market is very tight and so rents are increasing and we think there are many consumers who are already struggling. There are many others who are managing but have very little or no financial flexibility and may be tipped over into financial hardship if they're squeezed from a number of points of view. There are thousands of consumers in New South Wales and elsewhere who have switched to negotiated contracts and to different retailers and presumably are benefiting in terms of price, green energy, consumer service or other bundled products that caused them to move to a different retailer or a different contract, and so that part of the market is sound.

But we've been quite distressed by the number of complaints about retail competition problems, particularly the marketing to vulnerable groups, non-account holders, signing contracts and cancelling the accounts of the standing customer, inadvertent switching, misleading information by marketers, and there's no doubt that specific regulation is needed to deal with this. It's too important an issue not to.

And the last thing I wanted to talk about was just briefly dispute resolution. In fact, there is a generic dispute resolution, I think, for consumers across Australia in the state fair trading offices. They provide a very broad range of dispute resolution services. However, we would argue strongly for specific dispute resolution in certain areas. Before EWON was established the New South Wales Ombudsman had the jurisdiction for electricity providers in this state because they were all state-owned

corporations. We checked with the New South Wales Ombudsman and in the four years before we were established they had less than 50 complaints about electricity each year. We had 2,000 in our first year, and it's increased ever since, and it's because we have gone out and told people that we exist.

Because we recognise the essential nature of the area that we're dealing with and the consequences for customers we believe - and I think our experience has borne out - that you need specific dispute resolution. A customer facing disconnection of electricity or faced with a huge bill that they can't pay needs dispute resolution that's accessible, quick to respond, fair and reasonable. The vast majority of consumers ring EWON on our free call number, tell us the problem. We contact the provider and work between the two parties to resolve the problem as quickly as possible although I have to say we try and refer customers back to the companies themselves to try and resolve things in the first instance.

Our emphasis has been on community information and outreach, particularly to disadvantaged groups, as a way of trying to reduce complaints. We've had a strong emphasis on non-English-speaking background people, on Aboriginal and Torres Strait Island consumers and communities, on young people, and we've even been doing some work in prisons to make sure that people when they come out of prison and try and set up an account don't find themselves denied that account because of previous debts that they haven't sorted out. I brought a range of information that we've prepared, facts sheets for consumers, a special poster for indigenous customers, and a whole range of special information because it really almost has to be street by street where consumers are educated in this area because it's not something that people automatically think about.

Our core business is dispute resolution but we also look to identify systemic issues and trends in complaints, again with the aim of reducing further complaints, and we work closely with government regulators, utilities, community groups, fair trading, even with public housing because we find there are a lot of public housing tenants having problems with their utilities because of poor infrastructure. So we think in such an important area generic dispute resolution isn't appropriate and as in New South Wales, where there is a regulated approved ombudsman scheme for utilities, that that needs to be continued. That's me. Brendan was just going to say a couple of things about unfair contracts.

DR FRENCH: As I know the commission is aware, the energy market, that's gas and electricity, in New South Wales is - and across all state jurisdictions that are part of the national grid are experiencing significant upheaval and changes. It's arguable that the changes over the next two or three years will be the most significant that have occurred since the industry began. To move, for instance, to national regulation and in the context of this discussion one of the signal areas is what kind of

instrumentation is going to be in place to govern the relationship between the consumer and the provider.

Is the consumer protection that is going to exist going to be provided through regulatory means or through regulated contract terms? So is there going to be some statutory protection or is it simply going to be contract based? I've been at EWON five years and I've seen a growing emphasis on enshrining the relationship between the provider and the consumer through contract terms, and while this may provide a certain degree of clarity for the provider and also for some classes of consumer, there are some challenges in that kind of approach, and it would seem to me that more and more the emphasis will be on ensuring that the contract is the governing instrument.

If that's going to be the case, then I think there needs to be some very clear thought at a national level placed around the need to protect customers from unfair terms and contract, and also for ensuring that the contracts of adhesion to which energy customers are party are very carefully overseen by regulatory authorities because we see terms already in the deemed contracts which it could be argued are highly problematic for customers. So to give you just a couple of very quick examples. Clare mentioned a moment ago what we call non-account holder signing. We've taken a large number of complaints from consumers who have found that their own contracts have been cancelled without their knowledge.

So to give you an example, if two people living together - for instance the contract is in my name. I have a negotiated contract with a supplier. It's a time-limited contract with a termination fee in place for early cancellation. Somebody knocks on my front door or calls my phone and the other person living with me or indeed someone staying with me or someone who just happens to be in the house answers that call or answers the knock on the front door and signs a new contract, the effect of signing that contract is to cancel my contract. I have no agency in that decision-making. I won't even be informed of it until maybe a month or two down the track when I get a final bill from my current supplier telling me thank you for your business, we're sorry that you're leaving us.

We've had a number of complaints where I have then gone to my supplier and said, "What's happened? I didn't sign anything. I've not cancelled this contract," and they say, "Well, someone has, but we don't know who it is, and we don't know where they've gone." So I then have to call around all the electricity or gas suppliers I can find to see who it is who has now got the contract for my premises. The contract that another person in my home may have signed will very likely have a single line liability clause, some kind of warranty down the bottom saying "By signing this I agree that I'm authorised to sign this," or something similar, and the companies that we see suggest to us that that is sufficient protection for them. I don't think that it's necessarily a significant protection for the consumer because it may well be for

instance that I have to cop a termination fee for the cancellation of a contract that I never wanted cancelled in the first place.

So we've received a number of complaints about this and similar issues, and it's quite clear then that if this element is in an unregulated contract and this is not an area of contract that most consumers are able to have queried through a court system, then it's going to lead to an unfair impact on customers at an individual and user level. And there are other examples of this too. We see for instance that there are some provisions in contract that penalise the consumer but not the provider. So for instance, if I don't pay my bills, there are very specific allowances made for a supplier, a retailer, to come along and disconnect my supply after a set number of notices and that kind of thing, but there is no equivalent in New South Wales for instance, in a contract - onus on a retailer to not disconnect supply. Now, clearly, they don't wish to disconnect supply unknowingly or incorrectly but it sometimes does happen.

Equivalently, when we think about contract termination fees, it may well be that I have to pay a termination fee if I want to exit that contract early, but the retailer can leave that contract at any time with no set penalty, and we do see this, particularly where it's the case that one retailer signs me up to a contract and later finds out that they can't get my meter data in a way that it useable to them from the local network supplier, so they simply write to me saying, "Sorry, the contract isn't now in place." So these kinds of things, we think put an undue burden on the consumer without having an equivalent burden on the supplier.

Another, and for us quite problematic area, is in the current - in statutory contract in relation to the connection arrangements between a consumer and the network provider. At present, there's a requirement to put a few elements in a contract to govern the provision of supply to a consumer. And it's clear that all New South Wales network companies have those elements in their contract but it doesn't stop there. They then can add any other elements that they deem to be appropriate or necessary and we see, for instance, that the liability wavers for say, voltage variation, differ dramatically from one supplier to another, and indeed some of the wording of these is quite remarkable.

One, for instance, that I've got here in front of me says that a certain retailer is not liable for any loss the customer may suffer, including without limitation, where caused by any negligent or wilful act or omission. It later goes on to say that, of course, there may be consumer redress to the courts but says for instance, if there is any liability proven, then the net liability is restricted to one year's network costs to that particular customer regardless of what damage, for instance, the customer may have had to sustain at their premises - sometimes tens of thousands of dollars worth of appliances.

So there clearly is a significant problem. Now, in Victoria, there is a specific guideline that exists to govern this kind of issue; if somebody's TV blows up because there's an event on the network. In New South Wales there is no such thing and there's no case law really, to assist in the resolution of these matters. So what it means, of course, is that the customers have to rely upon the good will of the provider, and that is in our view too arbitrary because it makes a differentiation across borders of providers.

So one provider may have a very benevolent approach to these kinds of matters and assist customers who are perhaps not insured or whatever; another provider may say, "We pay nothing." So in these kinds of contexts, we see that there is significant reason to ensure that that unfair contract terms, and a review of the contracts that are in place and careful regulation of those contracts, is necessary within the context of the provision of essential services such as energy and water.

MR FITZGERALD: Thanks very much for that. As you know, we're looking at utilities particularly as a special category within the industry-specific regulation area. We've met with energy providers already and I'm sure - we're yet to receive their submissions but can I just raise one question early on a very broad issue. There seems to - now, that we're going to go to a national market, you made the comment rightfully that we'll have common regulation and that will deal with many of the consistency issues. How it's going to be enforced and that, we'll put to the side.

As you will have seen in the press, some of the providers, their peak bodies, have said, "Well, what are we come to an agreement around - we've got," and they quote that Victoria has - I don't know how many pages, but let's assume 800 pages and Queensland has got 200 pages and New South Wales is somewhere in the middle, and at the end of the day, the delivery of the product is exactly the same in all of the states and territories, and the worst thing we would want is, you know, the Victorian approach.

So at the moment, whilst there is obviously going to be a common regulatory framework, what is the right approach in actually ascertaining the right level of regulation for consumers? Now, I notice you had a bit of a check list and it will be great to see that in the submission, but just assume that that is correct, that there is 800 pages in Victoria and 200 pages in Queensland, in terms of relativity, what is the way forward, as you move forward to a national regulatory environment?

MS PETRE: Look, I think it is a matter of following even the commission's guidelines of, it has to be justified; it isn't regulation for regulation's sake, and each and every one of them, painstakingly, I think, has to be justified that it is necessary; it was necessary and still is necessary for this reason, and I frankly don't think it assists

businesses or consumers to have 800 pages of anything. It would be for everyone's benefit to really go through and fine tune and look at the principles of what that regulation is trying to achieve, both in the interests of business in the delivery of their service to consumers and discard that that doesn't measure up to that series of checklists.

I think that's the way it has to be done, that it has to be - those who want to get rid of it have to argue their case and those who want to keep it have to argue their case as well, and it has to be on those principles of need, accessibility, information for consumers, because I think in the end I think good regulation is of benefit to both sides.

MR FITZGERALD: Can I ask this question; can you identify now the areas of likely greatest contention in the negotiations in the national market? You may not be able to, but what would interest me, given that that is the discourse that will take place, is it now clear where the five or six key areas of contention will be between the industry and consumer advocates and the ombudsman's office, or is that yet still in play? Because you made a list of what's happening in New South Wales and so on and so forth - I presume that the industry has to live with those, whatever they are, but what are the key contentious areas?

MS PETRE: I suspect that industry - they may argue for less regulation in the area of marketing, for example. I don't think they would argue for less regulation in the area of disconnection, but it's the degree. We will cop some regulation but there's too much of it and certainly across states it's far too inconsistent, and I've got some sympathy for that. I think the energy providers, once I think they did a count of all the regulatory and other bodies that they had to deal with over - across a national market and I think it was 64, or something of that nature, and it's not in anyone's sense - it costs money and consumers have to pay for it.

So I think it goes from, maybe there shouldn't be any regulation because the market will take care of it to, yes, we will have some but we want a lot less and a lot more streamlined, but I think we're happy to look at where we think the contention will be. Can you think of any?

DR FRENCH: I would suggest that one area that there's a lot of discussion about is whether in fact there should be regulated retail tariffs, for instance. This is something that the Australian Energy Market Commission is looking at, of course. And the question is whether, as Clare said, it should all be kind of simply left to the market. At the moment we're seeing significant rises and will do over the next few years and most jurisdictions in Australia are facing equivalent things. So in this context, it is hard probably to see, in the absence of carefully tailored programs to assist vulnerable consumers, how the loss of a regulated tariff could be in the best

interest of those vulnerable consumers.

Clare spoke about hardship programs that have been put in place over the last few years. I think the regulation of these programs will be a discussion that the retailers will want to have, but that being said, even though they have been very successful, and I think they've still got a long way to go in New South Wales, it has to be recognised that in 2004, 2005, there was still just under 27,000 homes in New South Wales disconnected for non-payment. That was a rise of 25 per cent in a year. That's a not insignificant number. Clearly, the retailers are working hard to reduce that and were expecting that there would be a reduction over the next year or two, and it must be said that that's just electricity. I understand that the numbers for gas are similar.

So I think that the degree to which retailers should be left to their own devices, if you like, to establish prices, to establish contract terms, is going to be the signal question because, frankly, we're seeing people contact us who believe that a competitive market means that they're going to get new poles and wires, or who believe that green energy means that there's going to be some kind of power caught from the wind turbine to their house. So people are not accustomed to dealing with the complexities of this really now sophisticated market; and so you have contacts with people who before had thought of contract only in terms of cars and houses, are now getting door-stopper energy contracts offered to them with an alarming regularity at their front door and on their phone and they simply do not have the consumer education, I think, to be able always to fall back on a classical economic perspective that they'll make the rational decisions.

So I think the degree to which the retailers and the network companies in terms of claims should be left simply to write their contracts themselves and write their prices themselves. That's going to be the fundamental question, I would think.

MR WEICKHARDT: Something I've read in the last 24 hours, and I'm sorry I can't immediately quote the source of it, but it bemoaned the fact that there are reports from ombudsmen each year that repeatedly nominate particular failures, systemic problems that occur, and yet action fails to be taken. Do you feel that's an issue in your area and, if it is the case, why is this? If you're repeatedly seeing problems and reporting them, why is it that the people who are in charge of policy are not taking action?

MS PETRE: The short answer is that changes in industries as big as energy and water, they take time. That's the short answer. The longer one is that in the area of affordability, for example, we identified hardship and disconnection very early on in our first year. It has actually taken six or seven years to turn that around and that's been a lot of work, a lot of contact by us with regulators, government, the utilities,

communities groups, so it is quite a - some of the companies, for example, strongly resisted even making Centrepay available to their customers, and that's a process where you can pay small amounts regularly out of your Centrelink pension, if you choose to do that - and some companies just resisted that so strongly. Of course, when they were pushed and pushed to do that, they now think it's the best thing that ever happened. So it takes time.

So, in our case, that was a big issue for us and we pushed and pushed, and I think we've seen results, so there has been a change, and we've seen a reduction in complaints in that area. We're now seeing - our new issue is retail competition, and the marketing to vulnerable groups particularly. So that's our new campaign, I suppose, because it's in no-one's interest, both the businesses, because they have to cancel the contracts where their marketers have behaved inappropriately, and it's certainly not in the interests of consumers who often find themselves lost in the system and facing all sorts of dramas when they never intended to change retailers. So we're now talking to everyone about that.

I actually don't think it's - it may - I can't speak for other industries but, to be honest, we find the utility businesses very responsive, because all this is not good business for them. Good customer service is good business, and it's costly - dispute resolutions is costly, customer dissatisfaction is costly, wrong - switches are costly, where they have to restore the customer to their previous retailer; so we've actually found them quite receptive to reasonable suggestions for improvements. We've sponsored forums to discuss affordability issues. We recently sponsored a forum to discussed marketing issues, and the retailers, I think, have realised that, if they don't take it up themselves and do the running, then regulation will come in on top of them. So we do find them receptive, but it's a big industry where changes don't happen overnight. I think that's probably the short answer.

MR WEICKHARDT: Can I just clarify, in the cases where there have been responses to you nominating the fact that these are repeat and system problems, has it been industry who have changed as a result, and has that change been stimulated by the threat of regulation, or has it simply been business recognising that this is not good business?

MS PETRE: I think it's a bit of both. I think the power of the raised eyebrow does actually have quite a good impact. So it's a bit of both, to be fair. That said, we have not won the battle on non-account holders signing contracts. Our utilities tell us that they have legal advice that says that's okay. We just can't even think how it can be okay, but that's a battle we're fighting at the moment. So it is, I think, industry self-regulation, because it's good business, complemented by reasonable and sensible regulation to fill any gaps.

MR WEICKHARDT: Are there examples in your sector where the industry has failed to come to heel, so to speak, and where regulation has been put in place?

MS PETRE: I think the affordability one where they have done a lot of work but the government set up a working group where they felt that it was such a key area it couldn't be left entirely to the industry. So the industry would not be keen, for example, to publish lots of information about the number and types of disconnection; the government has stepped in and said, "You will now go further than you do at the moment and we will require you to provide a whole lot of information." So it's, in a way, name-and-shame sort of approach which I think is quite effective.

MR FITZGERALD: But you listed also a whole lot of stuff in terms of regulations around the retail marketing, and you've identified that as a key area, and the providers have indicated this is an area where they think there is over-intervention on the marketing side. So it strikes me here, what's driving what now? You would say that many of the practices were at least inappropriate if not worse than that and therefore needed to be regulated. So, in that area, why hasn't the market shifted if it is, in fact, in industry's best interest?

MS PETRE: I suspect it's probably - and certainly in New South Wales it's still a very immature market, and everyone is feeling their way a bit.

DR FRENCH: Yes. I'd say that it is exactly as it sounds. It is a competitive market. It's an early, maturing, competitive market and while it is the case that, even when you look at our numbers, given the amount of door-knocking and cold-calling that's actually occurred, clearly it's operating effectively at the macro level, but we see sufficient numbers of highly problematic marketing complaints to recognise that there is also a lot of activity out there that is very concerning.

And when we talk to the retailers, many of them will say, "We're concerned, and we will seek to fix this in individual circumstances, but, by the same token, we have to lift our customer share. We have to actually go out there and get new customers". And one thing that might make the energy market different perhaps from telecommunications and others against which it's commonly compared is that you're not going to make new customers. A deregulated market in energy is not going to create a larger market in energy. You're not going to have new accounts. People think, "Oh, I haven't used electricity before. Hang it. I might now sign one because the chap at the front door is very friendly."

It is a matter of taking someone else's customer and I think, in that context, it's arguable that it will always be the case that people will seek to sail fairly close to the wind, and that's where there may need to be some kind of regulatory oversight, I think.

MR POTTS: When you're discussing generic - specific regulation, I took your comments on generic regulation to be across the board and not just energy and water. And so you seem to be proposing a second layer of generic regulation for (indistinct). When we refer to generic regulation we're normally really talking about the Trade Practices Act and Fair Trading regulation in the states. But I took your comments to suggest that you think there's a need for another layer of generic regulation covering such things as full product disclosure, marketing hours and cooling off periods, were the ones that you mentioned.

So I just wanted to get confirmation about it because I don't think we've heard that suggestion before but before you answer that also, in relation to the aspect of cooling off periods, I mean I presume you're not talking about that applying to each and every product that was sold in the marketplace. You're talking about any product that is above $10,000 or service that's above a certain minimum threshold. I mean, for instance, if you go into a restaurant and buy a meal you're not going to have a cooling off period. Maybe you are. That was one question I had. The second question - well, once you've responded to that one (indistinct).

MS PETRE: No. Obviously there are - I was really talking about a more formal contractual relationship where you get a contract and you need to - it's a longer-term thing than getting into a taxi or having a meal at a restaurant where there is a sort of instant transaction. What I was arguing for was for many products and services regardless of, and way beyond electricity, there are those elements, those generic elements, that we would have thought whether it's full product disclosure as to what's in the can of food that you're buying, consumers still need full disclosure. It may be in a different form because it's a smaller item and it's not as complicated as buying, entering into a finance arrangement or an electricity contract, but it's still there. So I was using generic in that sense. That where it's appropriate and applicable, it's easier for consumers if it's the same, regardless of what they're buying. So if it's an instantaneous transaction, then obviously what I was talking about doesn't apply. But if it is a similar transaction to entering into an electricity contract or finance contract then all things should apply generically.

MR POTTS: So the criterion would be where there's an ongoing plan of some kind?

MS PETRE: Yes.

MR POTTS: When you've got a contract for provision of a service over a period of time for instance. Whether it's telecommunications or electricity or it could be a range of things. Right. Okay. The second question I was going to ask is just on this issue of essential services, which is what you're obviously concerned with and

disadvantaged groups, in a way there are other essential things for disadvantaged groups as well of course, which are not covered by very much regulation at all. You know, purchase of food is an obvious example. And I guess when you're thinking of it conceptually. I mean what's the distinction? I mean one of the distinctions is that you buy food, you pay for it in advance so you don't run into the problems of credit and the like. And I understand that one off the things that is developing in the markets that you're involved in is that payment in advance (indistinct), the introduction of metering for electricity or gas so you actually pay for it as you use the service.

Listening to your comments, I don't think that is actually introduced in New South Wales yet but I think it's coming in in some other jurisdictions. But I mean that sort of approach where - I'm trying to think of this in a helpful way, not a negative way - but you know, in terms of dealing with disadvantaged groups and addressing the issue for them of actually getting something they don't have their hands on, if you like, then having to pay in arrears for it and not really knowing how much it's costing them until they get the bill. I mean would that sort of arrangement would help in addressing a lot of the issues that you obviously have to deal with in the ombudsman's area.

MS PETRE: It would help some customers but not all. And, in fact, thank you for reminding me, in our submission we will attach information that we've written about in Tasmania upwards of 10 to 20 per cent of their customers have pay as you go meters. And we're actually very much in favour of them for customers as long as it's by choice, not compulsory and not necessarily linked to disadvantage. That's the problem with the English market where they overnight, they cut disconnections of electricity from thousands and thousands to almost zero. And the way they did that was to simply regulate that you will not disconnect customers but that's led to a terrible situation where rather than be disconnected, the companies can force a pre-payment meter on customers and in fact enter their homes, as we understand it, to put one in. That's not the way we would like it.

In Tasmania they have been embraced by customers because they see it as a good idea of the way of managing their ongoing costs. So they really understand how much electricity costs and they can just say, "I need $5 a day. When I fill up my car, I fill up my card for my electricity." For many customers, that's brilliant. And it really works. No arrears. No bills and it's manageable. So, yes, I think there are - and that's the good thing about the utilities, that they have come up with a whole range of assistance for customers from pre-payment meters in some cases to no interest loan schemes to help people buy a new fridge because their old one is always making their power bills high because the seals leak and all the rest of it, to energy efficiency advice. How to reduce your bill in the first place. So it's an area that needs a whole range of solutions to help. Not every solution fits every customer but

if there's a whole range of them.

Just very quickly, there's a new list of energy contracts which is meant to show what are the most active markets in the world in terms of energy, and the UK has always been the most active. But Victoria is now number one and New South Wales is six or eight, I think. And what they do is measure the churn rate of customers. That's the criteria for a healthy market. It was put to the makers of this list the other day that that may be competing with the need for example customers - that may be a bad thing that people switch a lot because if you're going to learn to conserve energy and all the environmental issues, maybe you need a longer-term relationship with a utility and maybe that's a bad thing if you keep switching. So there are lots of competing interests here and it's not necessarily just about the market is very active and lively because everybody's switching. Maybe that's a bad thing as well as a good thing.

DR FRENCH: If I can just add briefly a quick story. In the first week in which I was with the ombudsman, we took a phone call - and it's one that stayed with me - phone call from a woman. She was a single parent of seven children and she'd had no electricity for eight months. She had no gas either. She had been subject to a contract and as a student, I think, three or four them living in a house, they all had their names down on the contract, they all moved out of the franchise area without paying the final bill. They thought they had, we were told. Anyway, she was the lucky one who moved back in and had $800 transferred to her account and she said they couldn't pay.

And the reason that this particular case stays with me is that when I was in her age and similar circumstances as a student living in student accommodation, plenty of times with no money, but there was always someone I could go to and say, "Look, can I borrow $200 to pay the electricity?" And she had no-one. No-one at all like that. So she'd lived for eight months and she hadn't been able to boil the bottles for her baby and she'd been surviving on kero and candles and one of the kids had kicked over a candle and one of the curtains had ignited. She was able to put the fire out. She'd got together two or three hundred dollars on various occasions to pay towards this account but was told you had to pay it all to get the power back on.

Now things have changed significantly from that time. I think it's important to say that. But nevertheless, it's when you look at a situation such as hers and consider there are hundreds of people every day facing these kinds of decisions, then I suspect the essential nature of the service comes to the fore because there are so many contingent factors in the way that it can impact on your life, at a health level, at a safety level, (indistinct) life. And people lose their food. Their premises can be made unsafe. They lose their alarms. All of that kind of thing occurs with the lack of electricity. So that's why I think it has specific qualities as an industry that make it

I think very salient to a discussion on consumer protection.

MR FITZGERALD: Okay, we've just run out of time. Thanks very much for that. We'll look forward to the submission when it finally comes, but if you could in fact highlight, as you said, where those sort of controversies are most likely to be evidenced, we would be grateful for that. Can I just ask one final question; it's about default contracts. Is it the case under the national energy regime that there will always be a default - you called them a regulator contract; ignoring the price, but there'll be always be a default contract? Is that going to remain or not?

DR FRENCH: This is a discussion that's still occurring so there's no decision but my understanding is that the look-in price, for instance, we have now a price determination to run through to 2010. The Australian Energy Market Commission in Sydney is reviewing each of the jurisdictions to see how healthy the market is on certain indices and we'll make an assessment then as to whether at the jurisdictional level the markets are sufficiently robust that price regulation can be removed, but looking at supply contracts our understanding is that the discussion is whether there will be a statutory contract per se or whether there will be minimal terms that providers will be required to include in contracts and they can write their own contracts so long as they are consistent with these minimal terms, or, you know, ideas.

In New South Wales at the moment they're required to have - there is a deemed contract in place to govern the relationship between an end user and a network company. There are minimal terms that are required to be in that, but they all, as I mentioned a moment ago, a number of them have further terms of the contract and the contract itself is unregulated, and these kinds of issues that we see are not going to testable by the court or haven't been and I think it's not feasible to expect that consumers will actually to seek redress for loss through the courts.

MS PETRE: There will also need to be, I think, continuing regulation for retailer of last resort, that if you have a retailer and they fall over, go bankrupt, go out of business, someone has to supply you; so who is that? And I think there's already regulation in New South Wales that has to continue, and that was the problem in New Zealand, that there was no retailer of last resort to people literally weren't supplied by anybody, and that's not sustainable.

MR FITZGERALD: Good, thank you very much. We'll resume at 1.30, I think it is.

(Luncheon adjournment)

MR FITZGERALD: Thanks very much. If you could give your name and the organisation that you represent that would be terrific, for the record.

MS JENKINS: Okay. I'm Beverly Jenkins from the - I'm the chief executive officer of the Australian Toy Association. Would you me to give you some background - - -

MR FITZGERALD: Yes, if you could do that that would be great.

MS JENKINS: The ATA, the Toy Association is a trade association with 260 plus members from both sides of the industry, from both the supply and the retail side. However, our retail side is more the head offices, so we don't have lots of small shops as members but we do have - the head office is a lot of the independent toy - independent buying groups. And my members range from very small, one person companies to very large - many thousand companies. So I have a diversity of membership. We claim to represent about 90 per cent of the mainstream toy sales in Australia. I use "mainstream" deliberately because we don't take any responsibility for the opportunists and those who operate out of less regulate retails - that's as far as I'll say.

The ATA is also a member of the International Council of Toy Industries and I mention that particularly because the toy industry, as many other industries, is quite a global industry. Basically, probably 80 to 90 per cent of the toys in the world are produced out of the one market in China. And therefore we have a global approach to issues relative to toy standards and toy safety and as such, I actually - I, from Australia chair and coordinate the global issues task force for the International Council of Toy Industries. I think my reason for making that particular comment will become clearer later. I also serve on the Standards Australia CS/18 Safety of Children's Toys Committee which is the main arbiter or main - yes, the main arbiter of toy safety issues in Australia, and I'm also member of the Council of Small Business Organisations of Australia and I mention that because of the small business focus of a lot of my members.

I don't have a prepared submission with me today and we haven't put in a draft one as yet, because I wanted to wait until after today's understanding of the hearing before I did a submission. Because looking at the breadth of the commission's review at this stage, we would only have a focus on certain areas of it and smaller areas. So I didn't want to complicate issues up front and in some ways I suppose I'm more interested in your questions and that will help me form my submission. I found this morning a very interesting set of submissions, that definitely makes you think about a broader issue and the complexity of the task in front of this review to come up with some sort of recommendation.

So in terms of what this consumer policy review is about, my interests are in consumer product safety and therefore as a result of that, probably the split between the Commonwealth and state regulatory issues. Associated with that is minimally looking at the over-burdensome regulation issues that come from my smaller members, and my larger members too if I could be bold. And also the fact that we believe it's extraordinarily important that there's evidence-based signs used in terms of safety and developments of safety standards. I know that that was not specifically what the evidence-based part of your terms of reference was about but I think it's still a very important to mention here.

Okay. Having said all of that, hopefully the council of Australian Government's statement from Friday, making the statement that "the states and territories agree to develop a uniform approach to product safety within 12 months", addresses some of my concerns still because the overburdensome of standards and compliance requirements to do with toys and associated products is quite high. I have here a document that we prepare for my members, two pages, and it's not meant to be advice because I'm not a national approved lab testing authority so I can't give advice on standards generally. But what this document does is try to provide my members with an idea of all the compliance requirements they have, and in doing - and who the authority is to deal with and whether it's mandatory or non-mandatory.

And things like for all toys it's the Australian - the AS/NZS ISO 8124, part 1, 2, 3 - notice the ISO in there because our standard in Australia - we were the first to take up the international standard as our standard and part of that is mandated. And this is a very important move that we have made in Australia and we did that back in 2002. And while not all other countries have adopted ISO as their base standard, all other standards in the world are starting to move and converge towards a harmonisation of that standard. And as I said at the very beginning of my presentation the global nature of the toy industry means that we do have to think globally - we may act locally but we do have to think globally.

And there are other things in here like - things like cosmetics, electrical and electronic toys, expanding water novelties, experimental toys, finger paints, lots of issues that we have - my members have to think of in terms of compliance with their products and who are the authorities. Is it Standards Australia, ACCC, and Customs? Federal regulation through the consumer product information sheet for cosmetics, for instance. Some state legislation. State food authorities. Standards Australia. So there's a multiplicity of authorities who govern compliance requirements for the toy industry in its broader sense, and of those not all of them are mandatory, and I think that's one of the confusing issues for some consumers in that, "Gosh, it's got a standard, and that must be mandatory, mustn't it?" But realise that it's impossible to make all standards mandatory because many of them are more advisory than design-oriented, as such.

I also have a lot of members who deal in nursery product and furniture, and other non-toy products, and that's when we get into another group of products where the compliance requirements vary.

So we took the step of doing this for my members to help them understand their compliance requirements, and that was a very important step, and it's something that - we've met with ACCC at both a national or federal standard - and also at local levels, and also the state fair trading bodies, and while they're not able to actually input to it as such, they're able to oversee it and come up with issues of, "That doesn't quite work for us, Beverly." So it's been a very useful document over the last three years.

But, nevertheless, as the Productivity Commission Review said in February 2006, "There's a considerable scope to make the regulation of consumer products' safety more efficient, effective, and responsive, and a strong case exists for national uniformity." So therefore I was very interested in the Australian Consumer Association's comment this morning about policy setting. I think that's a very important part, that policy should be done at a federal level, so that you get consistency across all of the jurisdictions.

In a small country like Australia - large in size but small in population, it does seem a little bit unnecessary to have every jurisdiction making regulation relative to product, and regulation should not be as a case of a knee-jerk reaction to satisfy the state minister's need for press releases before Christmas; it should be based on sound evidence and hazard identification, backed up by a risk assessment analysis which should be done as well. So this whole capacity for states, perhaps, to put in regulation in a knee-jerk reaction to sad events - please don't misunderstand me - to sad events, but not based on any appropriate understanding of what has caused the event, whether it's the product itself or whether in its reality it's a use of the product in a very unusual way.

So I think that that's where policy and regulation setting at national, federal, level would be much more appropriate. However, there's no doubt that delivery and perhaps enforcement would have to be at a state level, just because of pure practicalities. In some ways, that's already what's done, through the ACCC and their new arrangements - probably in the last 18 months - with the state fair trading bodies. So if that could be formalised, that would be excellent, in our opinion, and I think it would help not just the business side of things, but I also think it would help consumers in the long run because they would not be getting confusing information.

Having said that, an issue about mandatory standards that is perhaps not so well understood, in that, once the federal consumer product safety announcement is made and therefore the mandatory standard is mandated at that federal level with a

gazetted notice, there are several aspects of that which are not satisfactory for many other reasons. Firstly, a standard in any time is not a finalised document. Any standard, I think you'll find - or most standards you'd find are living documents and work in progress, only insofar as they should be reactive, or be able to take into account developments along the way. So, therefore, the moment it's mandated, it is already out of date, to a certain extent, and those many of you - hopefully most of you in this room would understand how long it takes to get to a standard, the finalisation of standard - it can take five, six years - and even right now the ISO Standard which was developed back in 2000 and which we adopted around 2001, or whenever it was, has already moved along quite considerably from that time; and therefore it would be - while you don't want to just change federal legislation willy-nilly and just because some standard has changed, there should be a capacity for that to change more easily than having to go through the whole full process mandating a standard from square one.

So I just wanted to make that comment that - because it does put at - I was going to say it - because I don't mean it like that - it's not a satisfactory process in our opinion that we have to go through a time constraint which is much larger than it needs to be. We've even got a particularly good example of that which is the flotation standard - flotation and swimming aids and flotation toys. It's still unfortunately based on a superseded standard; and I think that's largely to do with the fact that, having just now said that it would be good to have the federal consistency of having policy made at the federal level, they need to be resourced to do so, and the only reason I'm sure - and in fact, I'm positive - that the only reason the flotation standard hasn't been properly updated to current day is a resource issue. They have to spread the resources around. So it's all very well to say, "Let's do this," but if it's not properly resourced, it's pointless.

I think that was really all I wanted to say on all of those things. Yes, because I think that basically a lot of the people this morning made very important comments. The consumers' Choice Association with their comment about the Commonwealth-state split; I thought that their comments were well stated, and the concept that administration may well have to be regionally focussed. I thought that, when the New South Wales Energy Ombudsman spoke, to have any regulation - to have a clear purpose and need - is very, very important. Let's not just do it for the sake of it.

But the other point of that, which they did make, was it should be accessible, which brings me to the other point about mandatory standards that I meant to mention. When the Trade Practices Act and when the Consumer Product Safety Standard is gazetted and it references the standard and particular part of the standard, it doesn't actually tell you what's in that, so you have to go to get the standard itself, in order to understand what it's referring to, and I don't think that makes it accessible

at all. I would have thought that, when the standard is made at that level, the regulation should include the part of the standard to which it is referring. That makes it accessible to both industry on the one hand but to consumers on the other; and we think that that would possibly be a useful negotiation between government and Standards Australia to be able to take that section from a copyright perspective and put it into the legislation.

Luckily, when it was made mandatory, we actually got permission from Standards Australia to copy that into one of our member bulletins so that my members were well advised. Not everyone has a copy of the standard; let's not pretend otherwise. Even in industry, they don't all have a copy because these rely on their test houses. But ignorance is not an excuse, so therefore I thought it was very important my members had an access to the specifics of the mandatory standard; so I got permission from Standards Australia to reproduce that in my member bulletin. So that's that accessible part of things; and I think that was about all. The consistency - yes. That's all I had to say.

MR FITZGERALD: Thanks very much, Beverly. As you are aware - I mean, the commission's previous two reports on Consumer Product Safety and on Standards and Accreditation will feed into this inquiry. It's not our intention to deal with the majority of the issues that are covered, but we will use some of that material.

So, in your submission, I'd be very keen to if you could highlight the recommendations in those two reports, that you think are particularly pertinent for this particular inquiry.

Can I just ask a tangential matter. In a number of the specific industries, we've seen the emergence of ombudsmen's offices, you know, in the utilities, telecommunication, so on and so forth, and I'm not suggesting for one moment we need a toy ombudsman. But what I am asking is this; to what extent do you believe that the current arrangements with the Departments of Fair Trading and Consumer Affairs around Australia are - how well are they performing in being able to resolve disputes between your members and consumers? I understand about, you know, their ability to require banning of products and all those; but just in terms of the dispute resolution where problems emerge, have you got any views about their performance in relation to those aspects, and is there a better system for dealing with disputes between consumers and your members?

MS JENKINS: I really couldn't comment with any confidence in terms of full knowledge, so therefore the comments that I make are supposition at this stage. My office gets calls from dissatisfied consumers from time to time, and I give them two pieces of advice - or no, I don't give advice. I give them two courses of action. One is to contact the retailer from which they bought the product or the supplier if that is

not satisfactory, because sometimes that happens when it's not one of the major retailers, it's an issue for - the retailer doesn't take the responsibility, and there we're not talking necessarily about members at this stage. The other contact is your local government Department of Fair Trading.

So I do that with confidence, because I believe that the Departments of Fair Trading are responsive in the main, but I have no more comment than that. I couldn't do any quantitative statements relative to that. I haven't seen an upswell of issues relative to complaints from consumers though, so it's difficult to comment any further than that.

MR FITZGERALD: Thank you, I'll come back to (indistinct). Gary?

MR POTTS: Outside of the product safety area, which understandably is the focus of your concerns as far as this inquiry is concerned too, but outside of that area any regulations that you think are unnecessary or excessive in your view, or could work more effectively?

MS JENKINS: Anecdotally, the review that was done relative to business regulation and trying to benchmark that, it was done last year, my members were not vocal into our association about that, because even although we said we would do a submission if you wish us to, they were more vocal into their own, what they saw as their business associations. Of course, I've done feedback in that area. I think the government frankly has done some good work over the last few years with things like the business.gov.au, a one-stop shop for lots of regulation. But it is still a difficult situation when you've got so much information with which to comply and not really sure where to look for it; and a lot of small businesses, particularly when they're starting up, have great difficulties in working out what they're supposed to do. And it's rather sad, and ignorance is not bliss for some people, and we do what we can to assist. That's why I think that the business.gov.au initiative is very worthwhile.

Having said that, I think one of - the good old three-lettered word GST was horrifying for many small businesses when it was introduced as a concept, and for many large businesses too. But the government took a very open stance at that time of making sure so much information was available through the Internet and it was free, accessible, and they put on lots of workshops. So from a business point of view, the more information that's made available easily and in sort of layman's terms, the better. So that's - it's a general comment about business regulation and trying to minimise it rather than maximise it, which goes back to a lot of what we said earlier today about disclosure and stuff.

MR WEICKHARDT: Outside the area of product safety, what are the other major

areas of consumer detriment or complaint around your industry? I mean, are people complaining because a product doesn't work as advertised, or because they were misled or deceived about what it would do, or - are there any systemic areas where, if you like, the industry that you represent has a multitude of complaints from consumers, apart from safety?

MS JENKINS: Safety is what we hear most about, but then toy regulation is so regulated, if - that's a bit of tautology there, isn't it? But there's so much around producing product for children because there's no point in us trying to harm children in what we produce. Safety is the big major concern. In terms of non-workability I think you'll find it - when you're talking mainstream toys, the toys through the regular retailers, et cetera, their reputation is on the line too. So in many ways, when it comes to product safety and therefore the production of product and the presentation to the consumer in the long run, they're hypersensitive to make sure it's operational, and go to great lengths outside that - often the standards to which they produce toys are even higher than they're required to do so.

There is an issue of, external to the mainstream as I'm talking about, into - through markets and through - I've got to say $2 shops. I don't mean to actually taint the $2 shop franchise, but that style of operation where the care and attention to the legitimate or the regular market isn't quite as high; and I would imagine that's where there is a fair amount of dissatisfaction with product. But I would be very surprised if people take it back, like they wouldn't take it back to a market, and take it back when it's cheap pricing to start with, you may feel, "Well, I got what I bought." Which brings into the issue in terms of markets et cetera the possibility for product which is recalled in another jurisdiction external to Australia managing to appear in an Australian market.

So we're very - I'm very particularly conscious of keeping my members updated with recalls in other countries, and through the member bulletin they get it - one just actually went out on Friday which talked about what happened in the US recently, a couple of products that were recalled there. More often than not, not from - it's not so much to not dealing with the standard, but because of unintended consequences of use, even although in the toy standard - all the toy standards talks about testing to foreseeable use and abuse, because that's an important part.

If you give a kid a product like this and you test it like that and have it be treated very gently, that's very sensible, but kids have a very bad habit of doing things like this with it. So you've got to test it to see how robust it is, and therefore that's what I meant by foreseeable abuse, that sort of stuff, so. Again, that's anecdotal evidence, though, in terms of product coming into Australia; and often that's when we work very closely with the Departments of Fair Trading, they come to talk to us about that sort of stuff.

MR FITZGERALD: One of the things we looked at in the consumer product safety report, as you're well aware, is the general product safety provision. Whether or not we examine that again is yet to be determined. But as I understand your association at the time wasn't opposed to that notion of a general safety provision, largely because the ISO standard already contains that. Is that correct?

MS JENKINS: We'd actually said there was no need for a general safety provision, because the Trade Practices Act in itself has it. Under Trade Practices Act, you will produce no, what is it, no product - somewhere in here, I haven't got the full one here. Australia's Trade Practices Act, actually there's a comment that it has to be fit for use.

MR FITZGERALD: Fit for use, yes.

MS JENKINS: So if it's not fit for use - - -

MR FITZGERALD: And your interpretation is that the fit for use would cover safety? That's the point of contention, of course.

MS JENKINS: Yes. I think that the hopeful catch-all of the general safety provision was not shown to be so in the EU. In the European Union, where there is a general safety provision, it has been fraught with problems. I think I put this in our submission to you at the time, that interpretation has spawned up a whole new industry with the lawyers. They've had to bring other legislation into play to assist - the thing that I really hope that we don't get into is any new style of organisational set-up. We don't want another Brussels, thank you.

MR FITZGERALD: So just in relation to the way it's operating at the moment, you're not getting a sense from your members that the consumer policy framework, broadly defined, is in fact in need of significant and dramatic overhaul, other than national consistency in relation to the standards and the orders that can be made in relation to product.

MS JENKINS: Well, not standard - there's consistency on all levels of government, basically. Clearly the focus is more on the product safety in general, but there is an issue about all the different levels of legislation relative to running a business, that the red tape sort of issues can be problematic for people, but that's - I'm not repeating anything that hasn't already been said.

MR FITZGERALD: That's fine. Anything else? All right, thanks very much, Beverly. That's terrific and we look forward to your submission, but as I say, if you can refer back to those other reports and just the key elements. It's not our intention

to do a repeat of either or both of those, but the key issues we look forward to.

MS JENKINS: That's what I thought.

MR FITZGERALD: Thank you very much.

MS JENKINS: Thank you for the opportunity.

MR FITZGERALD: If we could have Consumers Telecommunication Network - you're here, that's terrific. All right. If you can give your full name and organisation and position within that organisation.

MS CORBIN: Okay. My name is Teresa Corbin. I am the CEO of the Consumers' Telecommunications Network.

MS WILSON: I'm Sarah Wilson. I'm policy adviser at Consumers' Telecommunications Network.

MR FITZGERALD: Good, thanks.

MS CORBIN: Okay, so CTN has provided you with some brief points, I note, but we haven't done our full submission yet. We have done a bit more fulsome comments than the ones we've provided to you. We've just outlined the comments that we've provided to you in a bit more detail, which we'll present as our initial statement and we just want to cover things about what's good about the telecommunications regulation. Obviously, our comments will be focused very much on telecommunications regulation rather than the broader consumer protection policy framework, and we think that telecommunications does provide a good case as an industry-specific area.

So we'll make some comments about generic regulation and then also about the ongoing need, we think, for some telecom specific regulation. We've done a lot of work in self regulation representing consumers, so we want to make some comments about the effectiveness of self regulation and also about how to cost consumer protection and the need to get a bit more balance as far as costing out the benefits for industry versus the benefits for the demand side. We've got some points to make about the policy tools and transparency in relation to policy decisions and we also have some points to make about enforcement and particularly we want to make some points about what sort of things we can do in relation to vulnerable consumers.

That's particularly in the area of information for consumers but also in relation to some practices that we feel warrant stronger regulation, so in the area of misleading claims and also we've got a number of examples of areas where regulation doesn't seem to be working as well. We also want to talk about funding and resourcing for consumer involvement and participation, okay. So that's the general overview. So who is CTN? We're a national coalition of consumer and community organisations and we represent community interests in the national policy arena on telecommunications issues.

Our focus is on better access, better quality of service and affordability of telecommunications services for residential consumers, so we don't represent small

business or big business, although obviously, some of our members operate small businesses from home. The area becomes particularly murky when you're talking about farmers, for example, people obviously whose residential use mixes with their small business use. We don't differentiate in that case, we still represent those consumers.

Our members include national and state-based organisations. They focus on representing consumers from non-English speaking backgrounds, deaf consumers, indigenous people, low income consumers, a large number of people with disabilities, pensioners and superannuants, rural and remote consumers, women and consumers in general. Our last membership survey revealed that our direct constituency is approximately one million Australians, many of whom are those identified as the most vulnerable to social, cultural and economic disadvantage. So that gives you a general idea of where we're coming from.

Now, just to start off about talking about some of the good things about telecommunications regulation. As you're aware, we have some very specific acts that go above and beyond the Trade Practices Act as far as consumer protection, and that is one of the very positive things about telecommunications regulation, that consumer protection is actually embedded into a specific act called the Consumer Protection Standards Services Act, and in that issues of safety in relation to product, issues of redress in relation to having a specific ombudsman scheme, so a Telecommunications Industry Ombudsman, the universal service obligation, so a notion of wherever you live in Australia, you should be able to get a telephone service.

The matter of customer service guarantees is also outlined in that legislation and also there is place made for codes of practice, so for consumer protection and there's a specific section and that section actually underlines that consumers must be a part of code development and must also sign effectively a certificate of mandatory consultation at the end of any development of a code. So you can see consumer consultation is embedded in the regulatory process and we see that as a very positive thing. And also in the ACMA, the Australian Communications Media Authority, and the act that created that regulatory body; it is mandatory that they have a consultative structure.

So you can see that consultation is fairly well embedded. One of the things that comes back time and time again is a highlight of the telecommunications regulation from our members is that the TIO, the Telecommunications Industry Ombudsman functions very well. Whilst there is a lot of support for a one-stop shop, we would prefer there to be one communications ombudsman, rather than having to go to various different bodies, the TIO or the Telephone Information Services Standards Council, is another example of a body that deals with 1-900 complaints, or

ACMA, in relation to radio and communications complaints and there are mobile tower complaints, as another example.

Rather than having to do that, we'd really still prefer to have a one-stop shop. We recognise that that's quite difficult but with the ongoing convergence of more and more products and services there is a greater need than ever to make it very transparent and easy to see how consumers can complain. So moving on to the issue of generic regulation. We do think there's an ongoing need for strong generic regulation and this is particularly relevant to the telecommunications industry because of the fact that we have so many new services and products being developed all the time, which test jurisdictions constantly.

So most recently we have had the example of mobile content services or information services on your mobile phone, falling between the cracks of the Broadcasting Act and the Telecommunications Act, and ultimately, before codes of practice guidelines, before any regulation was made specifically in that area, the only thing that existed was the Trade Practices Act, and you know, where you could apply various other codes of practice and whatnot, but it wasn't across all areas of that particular type of product and service.

So we think that there's still a great need, obviously, where we can draw similarities across other industries, there's a lot of strength in having generic legislation. We do think there's a couple of area that the TPA could be strengthened in but we've already put submissions in on several penalties earlier this year or last year. Yes, so we've thought a bit more about that, which we'll put into our submission. As you know, a couple of areas that could be strengthened, but we still believe there's a need for telecom-specific regulation and our members are very strong, particularly about the issue of the essentialness of telecommunications services, and we think that's probably the biggest argument, the strongest argument for having generic regulation.

We have a lot of members that feel that the universal service obligation doesn't fully address the need to ensure that telecommunications is actually an essential service. The universal service obligation is open to a lot of interpretation in some areas, and it doesn't cover, obviously, somebody who's choosing not to use a service from Telstra, who is the universal service provider.

So we had a consultation a couple of years ago across the whole of Australia, and the one thing that came out strongly that consumers really wanted was that they actually wanted essential service legislation for telecommunications. They want it treated like the other utilities, which is very interesting and, in particular, people are concerned because they don't want their telephone service disconnected so they can't connect to emergency services. So, you know, it becomes - telephone is a lifeline in

many instances.

The other thing about specific regulation is that the other necessary protections that are there at the moment, like universal service obligation, the customer service guarantee, Telstra's licence conditions that are very specific, with low income measures, with measures for priority assistance for people with disabilities or people with medical conditions. Those sorts of regulations wouldn't exist if you didn't have the Telecom-specific. And we think that there's also, obviously, no room to do some improvement in those areas. However, you know, there's a clear argument to having those, because the services we're talking about are quite substantially different to the types of services that we're talking about in other industries.

Another thing about our specific regulation is that we have codes of practice, of course, and that specific telecoms regulation allows for those codes of practice, and most of our consumer protection, apart from the overarching universal service and customer service guarantee and the TIO, is actually covered by codes of practice in our industry.

Generic legislation doesn't also cover the issue of quality service adequately. Consumers have been very critical about how quickly industry will address issues of quality of service, and in many instances that's regardless of whether it's in their best interest or the consumer's best interest. A good example of this is - and this is also a good example of a new kind of service that's not regulated very strongly at all at the moment - is the new Voice Over IP services. I don't know if you're aware of these services, but they basically use a data line on which to provide a telephone service. So they're significantly different to the telephone, the plain old telephone service we're used to.

At the moment the general belief is that we should let innovation drive this particularly new market, and initially we were quite strong about basically having a specific code of practice that dealt with consumer protection just on Voice Over IP services, and we actually conducted a survey of membership, and we came out with the fact that half our membership thought that it should be stronger regulation, and the other half thought - thought that there shouldn't be any regulation at all, which is quite an interesting outcome.

But the thing that has come from that and has developed as, you know, our understanding of this particular service has developed, is that there is a really big problem with fault rectification, and at the moment this is unresolved. You've got small players who are quite - who are reliant on large players, so Voice Over IP providers being reliant on ISPs, Internet service providers, to provide a certain quality of service or to provide part of the service but not all of the service. And so there are often arguments about whose fault something actually is, who needs to fix

what. So we actually think there's quite a strong argument for an industry code of practice, not just to protect consumers, but also to ensure there's no anti-competitive behaviour. So it's about, you know, levelling the playing field, and I think that's a very good example of where it's about balancing.

Talking about the effectiveness of self-regulation, that's a key question for us. CTN gets a significant amount of its funding specifically to participate in the communications alliance, which is the body, the industry body that develops codes of practice in the telecommunications area, and it's quite clear that a lot of our members do believe we've had some significant benefits from self-regulation. But I think where it actually comes down to whether or not self-regulations works is when we look at the accountability, you know?

The words are all very fine and good on the paper, but then how does that flow through, you know, how was that enforced, how do we check whether there's a problem, where do the complaints come through, do they just come through to the TIO, are they the people that are actually able to complain, what about the vulnerable consumers that don't complain? So there's a problem when it comes to actually talking about the accountability related to self-regulation, because self-regulation in itself is not a problem, it's actually how you then use the tools that are produced or the policy tools that are produced from self-regulation.

The other difficulty that we find with self-regulation is that it's often difficult, once again, because of the emphasis on evidence based, the need to have evidence based regulation. It's often difficult to prove that there's actually a problem or that there's a need, and this is because we're very stretched as far as our resources go to - we don't collect complaints, we don't - even if we get a call from a consumer we refer it on. You know, you might assist that consumer in how to make that complaint or something. But, generally speaking, we're not a complaint-handling body, so we don't collect case studies, and we don't have the resources to do research, and nor in some respects should we, because possibly we need to have a more independent body to do that.

So there is a lot of question about, you know, where are the problems, how big they are, what we see as anecdotal, is it - you know, is that evidence of a systemic problem or not? And then, even after it's quite clear that there is a big problem - one good example is when we knew we had a big problem with contracts and unfair terms in the industry - even then it's quite difficult to actually get our views heard as far as, you know, ensuring that the strategic direction of the communications line is actually, you know, has said in it, "Right. Okay. We're going to have a code on contracts, we're going to address this problem."

You know, it's quite difficult for us to be heard in that regard, because we

haven't got the full evidence base, and the contracts example is a good one, because it was only after we had support from the minister's office, Victorian Consumer Affairs, all the consumer groups were on the same page, and you had pressure from all different directions, and from the regulator as well, to produce a code of practice that we actually got a code of practice. So, you know, you shouldn't have to go to that length when it was clear, through the statistics and complaints, statistics from the TIO, that there was a problem.

Okay. So the other thing about self-regulation that's in issue, as far as accountability, we think is that it can lead to real inconsistencies. At the moment we've got six - well, there's actually a huge number of code of practices - but we're trying to bring six of those consumer codes into one document, and the amount of overlap, the amount of definitions that contradict each other, it's actually ended up being a huge task, it's cost an awful lot of money in legal drafting, and it's taken an awful lot of time from consumer and industry representatives to ensure that you have one document. But the reality is that it was self-regulation that created all of these documents in the first place. So, you know, perhaps if it had of been government led then you might have had more overarching perspective, I don't know, it's just one view.

Okay. So talking about the cost of consumer protection. We think there needs to be more attention paid to the cost of poor, ineffective consumer protection. You know, there's a lot of talk about the cost to industry, and rightly so, but we'd just like to see more balance, and we'd like there to be more about the benefits of consumer protection both to industry and consumers. At the moment the only real measure of that in the telecommunications industry is done by our regulator, and they produce something called the Communications Report on an annual basis, and they talk about the benefits to consumers, they talk about price savings and fast Internet, and improvements to quality of service. Yet there are - there's only dollar estimates for small business, GDP and employment. But we don't really have a dollar value for the consumer protection or for the consumer benefits, and I think that, you know, it would be good to focus a little bit more on that, and it's definitely an area that perhaps some of the - some funding dollars, some research funding dollars could go towards.

Okay. And the other thing, too, is that we think that this consumer policy framework with you actually is a really good opportunity to get some more balance in that equation. Okay. And talking about policy tools. We think the policy tools utilised by the government need to be better considered, and there's a huge problem for us in Telecoms because we are down to - we have to try self-regulation before we try anything else, and as we all know, self-regulation works really well in some instances but not in all instances. We've recently had an example of something that was going to be a code of practice. This was a code of practice that was going to

deal with personal information.

So it was in relation to the governance of something called the Integrated Public Number Database, or we call it the IPND in the industry, and that's where all our phone numbers are stored. There has to be one database so that we can change providers readily and easily. This database, the code of practice that was to govern this database, was being reviewed and agreement wasn't being met particularly in relation to public number directory providers and how they use the data. So, in the end, the regulator moved to create a standard because it was felt that there had been industry and market failure to deliver a code and that was two and a half years ago. Now, since then, at the end of last year, legislation was actually introduced in parliament to deal with this so we actually skipped the standard phase and went straight to legislation.

There wasn't any consultation about that, we just actually suddenly heard that the legislation was being read in parliament which was quite an unusual step and I understand it was quite special in many regards. But the thing about that is that it wasn't really transparent how the policy decision was reached or, you know, whilst, you know, much of what was in the legislation we supported, we felt there was some clear areas that we could have added value if we had been consulted.

So, there's a bit of a mismatch of understanding between how do you determine when the market has actually failed and when can you actually say before you even start down a long, lengthy, costly, resource-intensive process of self-regulation, when do you actually decide before you start that actually the thing you're trying to regulate is not conducive to self-regulation and we've had some very good examples of self-regulation working wonderfully; mobile number portability; and local number portability. When they were introduced, there was a lot of support from all the industry participants and it was a very effective introduction and the codes worked very well. That's because there was a lot of market incentive for it to happen. There wasn't a lot of - everybody needed mobile number portability. Everybody saw there was profit to be made and everybody saw there was going to be a benefit from the consumers right through to the industry.

But when you've got something which is actually going to put what might be seen as a regulatory burden on industry, then it's like pulling teeth or, if you have, and the contracts code was an example. Another one that is very difficult and not conducive to self-regulation is in relation to a new service that might be very competitively charged. So, some of these new data services, ADSL, some of the codes that have related to access to the wires or the copper wire, the network, have taken a long time - there's been a lot of blood on the floor and they haven't necessarily produced a great outcome.

So I think that there is actually some - we could actually dig down - we've got enough examples in our industry now to see whether something is actually conducive to self-regulation before we start and I think you could actually do quite a good analysis of that now. Okay, so, we talked about transparency - and enforcement. Enforcement clearly is a key issue for us. We've got a lot of difficulty taking a step from, right we've got clear TIO data that says there's a big problem in a complaint area, there's a lot of code breaches or whatever. Taking that to the next step, which is the regulator undertaking an investigation and from there, moving towards some kind of enforcement action. In actual fact, since ACMA has been created, we have not had one direction in relation to telecommunications and we're talking nearly two years since they've been in existence.

On the contrary, as far as broadcasting goes, every couple of weeks we see a list of media releases that come out saying, you know, breach of the broadcasting code here, breach of, you know, every, you know, all the different lists of breaches that occur and this is not happening in the telecommunications industry and there are clear examples of areas that are not working, that there could be investigations going on and we'd just like to see a little bit more of that happening. A classic example of a problem was a thing called the missed call marketing scam last year where consumers would receive a phone call on their mobile and, as a lot of us will do if we receive a phone call especially consumers who choose not to have a message bank, they'll just ring the number back to find out who it is and, as it turned out, the service was not, it was not a legitimate service and, basically, as you were calling it, you were generating revenue for them and only to hear a marketing message and you paid to hear that.

Now, we made complaints to a number of bodies, the ACCC, ACMA. None of them was prepared to take up the matter because they've, it was felt it was out of jurisdiction. We then contacted the Minister and, eventually, ACMA took some action, which shouldn't have gone that far, which should have been acted upon immediately. There were, you know, I don't know how much revenue was made by that particular scam but there was obviously money made that was never recompensed to consumers and these sorts of new type services that are challenging and make a lot of money very quickly are happening all the time. So, there's a big problem with jurisdictional gaps and overlaps because of convergence and that probably leads into the whole issue of information for consumers.

I note that the issues paper that you've put out, the discussion paper, covers information and talks about behavioural economics in quite a bit of detail. I guess our biggest message with information is that, ultimately, you know, it's great if the consumer can get it in time and it's preventative. That's wonderful, but we note that there's a lot of consumers that don't take notice of the information until they actually need it and that also the information needs to be skills-based and building skills

rather than just providing information. So, you're actually empowering the consumer to do something about it.

There's a classic example at the moment, I think, that doesn't, it doesn't just require the safety nets, it doesn't just require information, it doesn't just require legislation and that's in relation to fraud and I note that example was given in the discussion paper as well. There's a very good example of an education campaign that's being ongoing through March called Scam Watch. I don't know if you're aware of it but the one good thing about that campaign is it's involved all the different parties. It's involved industry, government and consumer and community organisations and I think it's been very effective.

Another one that we're starting to support in the telecommunications space is done by the Communications Law Centre. They've developed a portal called Fair Tell and the idea being that, you know, you have one reliable trusted source of credible information and that people know, you know, become aware and know that brand and they go to that place to find it. Previously, our regulator used to provide this kind of service but, I mean, obviously, there's a role for industry because there's a role for information to be at point of sale and there's also a role for community groups because they have distribution networks. They don't have the money to produce the glossies but they can get it out to people.

So, just finally, some comments about vulnerable consumers. We really think there's a need to clamp down on misleading claims. There's a big issue in telecommunications at the moment about advertising services that are capped or unlimited. I'm sure you would have seen these ads yourself. The problem with these campaigns is that, quite often, the services aren't unlimited. It's only in the fine print that you find out they're not and there's exceptions and disclaimers and usually, because of this doublespeak, the consumer gets quite bamboozled and they end up with an unexpected high bill. And the thing that's difficult about this particular matter is that it doesn't matter how savvy a consumer you are, just about everybody we know knows somebody who's been caught out with an unexpected high bill of some sort.

So, basically, in this regard, because these are new kinds of services that we're signing up for, they're new ways of describing services, they're using language that most of us don't understand, then, you know, the exceptions are written in acceptable users policies or even on documents that are downloadable only on the Web that you actually find that everybody ends up being a vulnerable consumer. It's not just, you know, somebody who's not speaking English well or maybe an older consumer or a person with disabilities who's blind and has to have the information read to them. Actually, everybody ends up being in the vulnerable category. And so that, once again, comes back to the need to strengthen the regulation to protect consumers.

And then the final point I want to make is just that we do need some better funding for research and representation. At the moment, CTN is funded on an annual basis via a grants scheme that's administered by the Department of Communications IT & the Arts. Our funding has gone down on an annual basis over every year for the last nine years because, basically, the fund that we get funded from remains the same amount but more and more organisations apply for the funding, of course. So, there's an enormous need, considering that we respond to more and more requests for opinions and views, to resource this consumer participation properly and, at the moment, there's huge shortfall.

We've actually written up a list of points which we'll put in our submission proper which summarises the issues that we've gone through, but, probably, just to talk specifically about the vulnerable consumers issue again, we think there needs to be some more work done on informed consent and selling practices. That's a definite gap as far as regulation or even - it's a definite need, as far as some improvement goes in the industry, whether you do it through licensing or through legislation, or through a code of practice. There are a lot of different views.

We also think that there's still some room for the telco providers to come underneath the uniform credit code, because at the moment they're not considered to be credit providers and this causes problems as far as unexpected higher bills, and it also causes difficulty when it comes to things like default listing.

We still, even though we've got a model - even though we've got a contracts code, we still think it would be really useful for consumers to have a model contract in telecommunications. We know that there's lots of different products. We know that it's difficult. But if you had a standard like you have in the real estate industry, the motor industry - a standard contract that people knew what they were signing in plain language. Then okay, you can still have attachments like you do in real estate - no dogs allowed, or whatever. But, you know, you can have the attachment which - the schedule that goes through the specifics of your kind of service, but a model contract would go a long way to ensuring there was more consumer confidence in the telecommunications industry.

We also think there's still room - on a state-by-state basis, we have different types of cooling-off periods for different types of services. There is a definite opportunity for some consistency there. But yes, that's pretty much what we've got to say for the moment. We welcome any questions.

MR FITZGERALD: Thanks, Teresa. Yes, that's fine. Thanks very much. I mean, there are obviously some similarities to those who have made submissions in relation to energy, you know, about electricity and gas, but there is also some

divergence - largely because of the complexity of the products and the convergence issues you raised. So yes, I'm sure we've got quite a number of questions, so I don't know - Philip, do you want to start off?

MR WEICKHARDT: You actually made a quote I was looking for this morning, about the fact that TIO highlights the same code breaches year after year, and yet nothing seems to happen. Why is this, and what do you think should be done about it?

MS CORBIN: I think part of it has got to do with the fact that we've had change on a regulation level, you know. We've gone from the Australian Communications Authority to the Australian Communications and Media Authority, and so to be fair I think there has been a certain amount of changeover time and, you know, settle-in period. But even outside that, you - I mean, there's a lot of pushback, obviously, from industry and a lot of pushback saying that, you know, there are different reasons why there are breaches at different times. And there's a lot of questions from the industry about how reflective the TIO statistics really are of problems, and so I think that's probably why the TIO has moved towards developing policies on systemic complaints and things like that, so they have tried to approach it from a different perspective.

But in a lot of ways, the TIO has actually ended up functioning like a quasi-regulator, even though they actually aren't. They've been forced into the position of putting out policy statements in order to try and influence and control industry behaviour. So, you know, I think that's a shame. I think there's a reluctance from the regulator take action that may be perceived as premature. The Australian Communications Authority, so the predecessor in the telecommunications base to ACMA, actually did put out a direction once on Telstra in relation to an advertisement that they felt was a bit misleading - so the use of an asterisk and then in an incorrect manner, or something - and whilst Telstra disagreed with the direction, they actually did remove the advertisement and change the subsequent advertising. So obviously, it's proven to be an effective mechanism.

So I don't fully understand the reluctance. We've actually recently written to ACMA and requested that they take action in relation to unfair contract terms and breaches that were publicised in the TIO talks, so it's a public document or publication that's come out, that said that there were unfair terms in many Internet service provider's contracts, and these related to the limits - unlimited, and all that sort of thing, and that there had been a change in the acceptable usage policies that had related to how much download people had, and some consumers had not been fully informed as to how this might affect them.

So we've actually contacted ACMA, and we understand that they're starting to

do an investigation now about that, although they haven't made any public statement about that. But you know, like I said, there's a long process to go through and I don't feel that a consumer organisation that's very poorly resourced should be the organisation that's actually asking for that enforcement. We should actually just see that it's happening.

MR WEICKHARDT: The ombudsman from electricity and gas this morning were making the point that it does take time, but they made the point that over time - perhaps within the background, a threat of regulation - the industry generally they had found responded, because it was in their interests to respond. Now, have you seen, you know, trends of that occurring in telecommunications - - -

MS CORBIN: Yes.

MR WEICKHARDT: - - - and perhaps if I could just add to that, you said it's a pity that the TIO has been, if you like, forced into suggesting regulatory solutions or guidelines, but why is that a pity - if it works, if it produces a good result, or why is it a pity?

MS CORBIN: I guess I'd just like to see the industry be more proactive from the start, I suppose. But just in answer to the first part of that question, which was that is there examples of the industry actually stepping up to the mark before there is regulation. We did see some improvements with the contracts issue with some providers, although they didn't necessarily go all the way, or perhaps it was just it was taking a long time, and I think you might be aware that Consumer Affairs Victoria actually took AAPT to court, in relation to contracts.

Eventually, whilst it was found that they did have unfair terms, the outcome of that hearing basically accepted that AAPT was going through a process of improvement already, and so that was taken into consideration. So yes - I think, you know, there is the time delay, there is all of that sort of thing.

One thing that worries me, though, in relation to leaving it up to the standard commercial incentive for, you know, basically practices to improve because the market demands it, the one thing that worries me about that in the telecommunications space is that you have more and more new services that come on board, and some of them are real fly-by-night type services; particularly in the mobile information space. They will offer a new kind of service, maybe a new sidekick, something like that. They'll make their money, they'll make their dough within the existing regulatory framework, and they'll close down and go before any problem can actually be identified.

That is a real concern, because whilst any individual consumer may only have

a $20 to $50 detriment - maybe a few hundred dollars - by the time you add that up on a couple of thousand customers, then that's just appalling, you know. That's shocking that people can actually do those kinds of scams, and basically walk away, you know, with a free ticket. So that's what concerns me, is that we're actually talking about different time frames in the telecommunications area, and you know with your standard telephone service probably that does work to a certain extent. But with the newer services that are coming on board every day - you know, all sorts of different games that kids can download, and they're even more vulnerable than older consumers because they're not aware of what their basic consumer rights should be.

So yes, it's a difficulty. It's a difficult question, because it sort of basically says that yes, innovation is great - we all want new services and we want to try new things, but we want to be able to do that within a safety net. That is a difficult challenge, and how do you do that when you're actually trying to regulate for services that don't exist at the moment? It's a problem.

MR WEICKHARDT: I agree.

MR FITZGERALD: Sorry - can I, just following up on that. You made a comment before, I think, that the ombudsman needs to be expanded in jurisdiction to cover all of the issues.

MS CORBIN: Yes.

MR FITZGERALD: And I presume the same applies for the regulator. Just explain to me - as we get this greater convergence between telecommunications and mobile information - all of these other things that we've heard about through this inquiry so far - is it possible to actually create a single regulator, a single ombudsman, a single regulatory framework that effectively cover this now very wide and complex range of products and services? Have you been able to identify how wide this jurisdiction would need to be? At the boundaries there'll be always gaps or - but is it possible to actually design that?

MS CORBIN: Okay. Well, first of all, ACMA actually does cover the breadth of it now because they've got charge of the Broadcasting Acts, the Telecommunications Act and the Radio Communications Acts. So the fact that we have a converged regulator, and obviously only new, not even two years old yet, is a huge step forward. The next thing that we're all looking into the future at is a review of the legislation, and the view is that all the different legislation will converge into one act, which will be very interesting because you could end up with something - an animal that's even worse than the animals that you have.

So there's a lot of concern from consumers about how will consumer protection

actually, you know, basically make that shift, you know. Will it dilute? How will we actually deal with the whole issue of convergence given that we still actually want to have some form of a universal service obligation, and how do you fund that going into the future when the profits are really diversified across so many different areas now compared to what used to be a fixed telephone service and you could subsidise in less profitable areas. It's not that simple any more. Also, of course, we've got an awful lot more providers than we used to have, just Telecom.

So there is that issue. In relation to - the Department of IT and Communications and the Arts basically is already taking care of all of those spaces. So as far as the policy view goes, we've got the overarching. So it's really only in the area of redress that we have the problem; and at the moment what happens is - and I've actually spoken to ACMA because they did a small survey recently where they went around to the different consumer affairs bodies in the different states, and they had a set of 10 questions that several of us put into, to test if a consumer asked on this particular issue who would they be referred to.

It turned out that there were actually gaps. There were some that didn't get referred to anybody. There were some concerns that the consumer affairs officials didn't know who to refer to. So there was huge problems, and I've actually spoken to ACMA and they've said that we can include that in our submission, so we'll provide that information, because it's very interesting. The key problem area has turned out to be in relation to bundled services, which is another thing you've identified in your discussion paper. The TIO has arrangements with some of the other alternative dispute resolution schemes, so banking, and I think they have it with - I'm not sure who else - Privacy Commission.

So if there is overlapping concern - and also they have one with TISC. If there is overlapping concerns or if it's an issue that is more related to their dispute resolution scheme than the TIO, then they'll do a referral. If it's an issue that the consumer goes to the TIO, is unhappy with the result and then goes to the Privacy Commission, the Privacy Commission will stick to the TIO's decision on that matter. So you don't get the forum shopping. So there are some things starting to happen in that regard.

But as far as just talking about specific telecommunications services that are not being looked after properly, we had a big problem with mobile premium services. The TIO has now decided to hear complaints under the new scheme that's been set up in relation to mobile premium services, so these mobile content services, if it's a billing complaint. If it relates to the content and it's, you know, about classification or something like that, then it will get referred to ACMA, who deal with Internet content problems and things like that, and also obviously television broadcasting content problems; so trying to bring all the content issues together in one space.

If it's a radio communications problem it goes to ACMA. If it's a pay television complaint we have a problem, because basically you can go to Consumer Affairs, generally speaking they'll only take so much of the complaint. So we've actually made several representations over a number of years to ask for pay television to be incorporated in the TIO's jurisdiction.

MR FITZGERALD: So there's work being done to try and bring it together?

MS CORBIN: There is, but there's this - - -

MR FITZGERALD: And you're going to try and highlight that for us in our submission. But - - -

MR WEICKHARDT: Handsets is still, I understand, sort of in a completely different - - -

MS CORBIN: Handsets is Consumer Affairs, yes.

MR FITZGERALD: But from your point of view going back, you think you can in fact have a regulatory framework, a regulator and a dispute resolution that broadly brings all of that together in a workable fashion?

MS CORBIN: Yes, I think you could. I mean, even if you did it by having - I mean, I realise that - - -

MR FITZGERALD: No, that's fine, you've answered my question. We'll leave it for a second, otherwise we're going to run out of time.

MS CORBIN: No worries.

MR FITZGERALD: Gary?

MR POTTS: My impression in listening to your presentation is that even though you said that there's scope to improve the generic regulation, the industry depends very much on specific regulation. I'd be interested in your observations on whether you see that continuing in the future. The nature of the industry is such, the complexity of it, for instance, perhaps like the financial industry, for instance, if it's inevitable it will continue in that way, and to what extent do you think that the situation has emerged because of perhaps some weakness in the enforcement of generic legislation, for instance, as a way of dealing with some of these issues. In other words, has the way the system evolved in some way reflected perceived inadequacies in the generic legislation framework we have, particularly in relation to

enforcement, for instance?

MS CORBIN: Yes, I don't think that's the reason it's evolved. I think the reason that we've had specific industry regulation evolve in the telecommunications space is because of the technology, because of the use of the technology, and the fact that, you know, we want to preserve that as being, you know, something important and valued, and no matter what we want a lifeline, all those sorts of things. Those things are quite outside the jurisdictional ambit of the Trade Practices Act that deals with, you know - I don't think fit for purpose really covers it, which would be the closest thing in the Trade Practices Act to it.

Obviously, you know, there's some - probably the areas of overlap closest are in relation to misleading conduct and selling practices. In many respects, I think if you analyse that closely, possibly it could be because of the fact that the Trade Practices Act in its generic nature can't deal with the specific types of selling practices or services that you're going to - the complexity that's going to be conveyed and communicated in those sorts of transactions. So you know, I think that's probably why you've ended up with some very specific stuff.

In contracts, certainly it was because of the fact that the industry had grown up practices that were very, very complex as far as the types of contracts they were developing; and I believe Telstra's contract, if you print it off the Web, is actually - weighs 3 kilos. So you know, and their argument for that is that they need to have some very specific things in there. I think, you know, that goes both for consumers and for industry. So you know, that goes both ways, you know, we'd all like the contract to be smaller.

But I think the point there is that ultimately there is going to be some very specific things about telecommunications services from a consumer protection level and also from an industry perspective that are going to be, you know, very different to what actually can be covered by the Trade Practices Act. So I do think that you're always going to have to have some specific legislation. Whether or not that will need another analysis if they bring all the acts together, I don't know; it probably will.

MR POTTS: Do you see any risk that if this industry continues to evolve in terms of its technology, becomes even more sophisticated and complicated in some people's eyes, that specific regulation will have to keep pace with that, and you'll just get on this sort of escalator, if you like, and it will just be more and more regulation because you can't deal with it in a generic way?

MS CORBIN: I think there is a risk to that, and that is already happening to a certain extent, and you see that the policy tools that have been used have expanded.

We used to just have legislation, codes of practice. Now we have all sorts of types of guidelines. We have mandatory codes and voluntary codes, and we also have schemes which are neither codes or guidelines, but in many respects mandatory and in other respects voluntary. So yes, we're already on that escalator, which I think is very, very difficult.

So you know, that's why I don't think we should remove - you know, you shouldn't have a Trade Practices Act and then have telecommunications industry completely exempt to it. You can't have that, because like I said you're always - you are going to have new services that don't - that fall between the cracks that are going to rely on that general - and even the specific regulation is built up on the basis of that generic legislation existing.

MR FITZGERALD: Could I ask a question. It strikes me that in this area there is a point where you reach a catastrophic failure; and that is when you've got - we already know, one of the providers told us that a mobile contract is already 500 pages long, you've used your 3 kilo level. As Gary said, the desire being driven by various forces to continuously respond by regulation, whatever it is, practices, there must be a point where you say there's got to be a different way.

MS CORBIN: Yes.

MR FITZGERALD: I noticed you made the comment that the seven codes of practice, or whatever they are, are going to be merged into one; and I would have thought that's sensible, if it's doable. But are we - is it a point where we're actually using instruments to achieve objectives when you should be using another suite of instruments? In other words - let me be clearer. If the regulator had strengthened but more generic powers across this jurisdiction and was prepared to be proactive in the actual prosecuting of those generic powers, would you need this extraordinarily proscriptive regime - whether it be by industry codes or by regulation, just putting that aside.

MS CORBIN: Yes.

MR FITZGERALD: Because this is an industry that seems at some point has to collapse under it's own burden.

MS CORBIN: Well, yes. And I mean - but the example of information has been given as a good one. And even I can't deny that it's completely out of control as far as, you know, where your regulatory burdens are because basically in every second determination or code or whatever there's something that says, "And you must inform consumers", blah blah blah. But ultimately the point is that you must inform consumers, and shouldn't that actually be there as a tenet over the whole lot of it,

rather than having to have it at every single level. And I guess we as consumers wouldn't feel so precious about that if we actually saw that there was some compliance with that. You know, so there was that real commercial interests actually delivering, commercial incentives to deliver that information properly.

I guess the one thing I wanted to say about the proliferation of regulation is that it seems to be that what happens is that there's a problem either from the industry or the consumer's perspective, then you get some regulation to deal with it. But then what happens is you get some pushback from industry saying, "Well, no, you can't regulate us in this regard because of these reasons", so you end up having exceptions. And then the consumers come in and we argue for, "Well, if you're going to have those exceptions then we need these things", which just adds to the problem. So to a certain extent I think what you're saying about a stronger regulator having more jurisdiction over - and willingly enforcing that, certainly seems in theory that it would work a lot better.

Whether or not this review of legislation in 2009 that they're talking about, the communications review, will actually deliver some more consistency across the board or not - I certainly hope so. It's happened again. But, yes, it is a real difficulty because at the moment we have a real - we have huge gaps, a lot of regulation and a lot of inconsistency and very little if any enforcement.

MR FITZGERALD: Can I just push the point. Why do you think - apart from - maybe not apart. I acknowledge the technological changes and the rabidity with which that's occurring is a driving factor. But here you do have a high reliance on self-regulation, some version of it at least. I would have thought in a self-regulatory environment the pressures would have been to reduce the level of complexity of things that industry has to deal with, but in this industry it seems that everybody is quite happy to continue to go down this highly proscriptive, this extraordinarily proscriptive approach. Is that a fair assessment - - -

MS CORBIN: Yes.

MR FITZGERALD: - - - or am I missing something in this?

MS CORBIN: I don't know if people are happy to do it because it's actually very difficult to get a code of practice to happen.

MR FITZGERALD: Right.

MS CORBIN: So initially there was a big flurry of activity to produce all sorts of codes of practice: technical, consumer, operational. Now it's a case of the only time a consumer code of practice will occur is if there is some form of direction because

of market failure. But the reality is, you know, we already went - we already started down this train of having multiple codes of practice so each time they're reviewed they become more complex. So the framework was already set up like that from the outset. We've actually talked about having some sort of charter of communications rights which might sit over the top, and we've got a conference of our members in a months' time to actually look at that concept and see whether there would be some kind of overarching thing that could talk about consumer protection in that regard.

MR FITZGERALD: If you were to do that would you be able to get rid of any of the current?

MS CORBIN: Potentially, yes. Potentially, yes.

MR WEICKHARDT: As you say, this is a complex area but it's also for consumers made more complex by this process of providers employing confusopoly with the bundle sort of offerings they have. I've given up trying to understand the system and I'm sure as hell, when I've talked to representatives from the telephone company I happen to be contracted to, I don't think they understand either. Is there any evidence that the industry is going to try and tackle this area? It strikes me, and this is a not a researched answer but just a sort of intuitive feeling, that it's not serving consumers and it's not serving the industry particularly well. It's been devised by somebody in a dark room with a towel wrapped around their head and I'm not sure that it's actually achieved very much.

MS CORBIN: No, I don't think there's any evidence that it's going to be addressed. I mean we had - I had some hope when the predecessor to ACMA, ACA, put out these things called - there was a mobile tool-kit, an Internet tool-kit and a telephone tool-kit, and they were very popular to the people that got them, and they were very costly to produce. But the information was also on the Internet so there wasn't a need for everybody to get a hard copy. But basically it was an independent, user-friendly, consumers were involved in the development of it, produced by government so perceived as independent, and also produced with industry expertise. So to me that's the ideal, and then at the moment there is no indication that we're going to have that in the future. Those kits are no longer being produced, they're no longer on the ACMA web site, even - they were initially when ACMA was first created.

And there's been a push for more - for the issue to take more responsibility with informing consumers, and I agree with that to a point. But ultimately if you're trying to make an assessment between providers then one provider is not going to tell you somebody is better than the other. They're not necessarily set up to teach you the skills on how to make a decision, they're going to inform you of, you know, the specifications of their type of service, they're not going to tell you about all the

different options you have. So we need to basically find a mechanism that actually - and we've been talking about a consumer education strategy not just informing consumers but actually have across industry consumer information or consumer education strategy. So.

MR FITZGERALD: We've just got a couple of minutes left. But just on that am I right in saying that given the complexity of the contracts and of the information, is the consumer by necessity going to have to rely more and more on the regulator ensuring that the contracts that they enter into are not - to use an expression that we heard early - manifestly unfair, rather than to simply rely on the information that's provided. I mean obviously in relation to information about the price and the terms and conditions so that you can compare products and so on, but is the inevitability of this increasing complexity going to be a greater reliance on the consumer on the role of the regulator than you would find in many other industries.

MS CORBIN: I think there is going to be a greater reliance on a regulator and also an independent option for redress, so the TIO, to arbitrate but I do think that we could actually get some big gains out of having some kind of model contract. And obviously then the complexity will end up being the schedule that's attached but at least then you're know what you're going to ask advice on. You know, you're not shifting through lots of stuff or looking through the Internet to try and work out what you're questions might be about because you know that your basic rights as a consumer are taken care of - on the front as far as you know the actually provision of the service. The thing that you're going to be asking questions about is how that service actually works and you're going to be able to target your questions in that transaction while you're at the selling point, you know.

Of course the other difficulty too we have in this industry is that people like to contract over the phone. And that is a really big big difficulty because ultimately a lot of people still don't realise that if they agree to a service via the phone that that in effect is the same as signing a piece of paper. And most people don't understand that. And I think there needs to be some, you know, across the board - and this probably is not industry specific because it would relate to electricity and other utilities as well - information campaign about exactly how you enter into a contract and what is binding on you as a consumer.

MR POTTS: Yes, but this is a complex industry obviously but that doesn't mean that it's not possible for the industry to be providing straightforward products. The financial sector is similar.

MS CORBIN: Yes.

MR POTTS: You can have awfully complicated, complex financial products but

equally you have a very straightforward financial product.

MS CORBIN: Yes.

MR POTTS: So if you take mobile phones, for instance, you're going to have all the bells and whistles and whatever - and it's very hard for the average person to understand that. But equally there can be a simple phone were you just go and top it up at the newsagent when you want to use it.

MS CORBIN: Yes.

MR POTTS: So the consumer has the choice. I mean if someone doesn't want the complexity they can get a very straightforward product. And as long as that's available - - -

MS CORBIN: Yes, that's right.

MR POTTS: - - - you can say, well, for the consumer who is not interested in the complexity, can't understand it, they do have a choice: they can avoid all these problems.

MS WILSON: The problem is becoming more and more that there aren't any simple products on the market place - - -

MR POTTS: They aren't?

MS WILSON: So your option is just to take nothing. You know, even with prepaid services - - -

MR POTTS: Right.

MS WILSON: - - - which a lot of people found to be really useful because you could control your expenditure. You know, the time you have to recharge, you know, the time your credit is available has been halved by a lot of providers. S**o** people got a prepaid phone service thinking, yep, I'll just top it up $10 a, you know, every 3 months and people would be able to call me for 3 months. This will be great. I won't even use the $10 of credit, only to find that that credit period has been halved. So, you know, people are getting trapped more and more into products that aren't suitable for them.

MR POTTS: But is that a way of addressing some of the problems to make sure that that No Frills product is properly available.

MS CORBIN : It has to yes, yes. That option has to be available.

MS WILSON: But how you - but how do you mandate that. Is a problem that we come up with - - -

MR POTTS: We mandate all sorts of things in regulation.

MS WILSON: I don't know how - - -

MS CORBIN : You can mandate through some licence condition that you have to have a prepaid product or something, a vanilla product.

MR POTTS: Yes.

MR FITZGERALD : Well in fact, it will just a - it might reflect in the submission. One of the - in a number of these areas both in terms of utilities and others, some advocates are putting forward that exact proposition, that because of the complexity in the particular industries, whatever it might, and - you're at the top end of that scale but others are also difficult - that another policy approach is - is to acknowledge the complexity. Because Gary says to leave that and aside - but in these industries you have to have a default product or a standard product. I mean, even I understand in New South Wales they're contemplating a standard funeral package which must be available. The industry of course, would say but 95 per cent of people don't want the standard, so is it a standard? But what I suppose is, it's another way of saying, look, we can't actually deal with all this complexity but Gary wants to take it - - -

MS CORBIN : But it's your lowest common denominator.

MR FITZGERALD : - - - but there are default products or standard products or minimum products. But I don't know if that's an appropriate response or not but do you mind just giving some consideration - - -

MS CORBIN : Sure, yes.

MR FITZGERALD : - - - to that. It may not deal with the problem adequately but it may deal with part of the problem. I don't know. Everyone just have think. Have you got any final questions Philip. Okay. Well, thanks very much for that - - -

MS CORBIN : You're welcome.

MR FITZGERALD : Very expansive - - -

MS CORBIN : Yes, you've certainly got us thinking too.

MR FITZGERALD : That's good. We look forward to seeing your submission. We'll just break for about 10 minutes and then we'll resume.

MR FITZGERALD : Okay. Are we set? Set to roll? Good. Okay. Are we set Philip.

MR FITZGERALD : Okay, no. That's fine. All right. If you could give your full name and the organisation and positions that you're representing and then give us an overview of the key points and then we'll have some discussion in the time available.

MR GRANTHAM: Okay, great. Thank you. I'm Peter Grantham. I'm the president of the National Financial Services Federation, the New South Wales division. Each state has its own separate division. Currently I'm the chair of the national council, who's coordinating the submission. We're presenting our comments and our submission on national basis but as I said, we're coordinating the effort. I'll get Philip to - Philip Smiles. who's our national coordinator and adviser to give you an overview. Philip.

MR SMILES: Philip Smiles. National convenor and coordinator for the National Financial Services Federation.

MR FITZGERALD: Good. Over to you.

MR SMILES: Thank you, commissioner. Our pleasure in being here today is focused very much on the procedural and process matters adopted and not adopted by so many government and semi-government inquiries.

MR WEICKHARDT: Philip, sorry to interrupt but it would really be helpful for me if you could just preface your remarks by saying who your federation covers, give us a sense about the organisation and who your members are, because I'm afraid I'm ignorant.

MR SMILES: I understand that. Indeed. The National Financial Services Federation now represents about 468 micro and pay day lenders across Australia and that essential means lenders who lend - with limited exception - under $15,000, with a heavy focus on the under $5000 lending segment of the finance industry. The lenders tend to be either sole operators, companies with several up to - over 100 outlets and folk who have purchased and got involved in a franchise system. And that essential means that somewhere about 70 per cent of the industry is very much a mums and dads industry and 30 per cent has - is conducted in the nature of mainstream corporation style.

The lending market in Australia for that segment of the finance industry has enjoyed a considerable expansion in recent times and if I use the word "enjoyed" I talk purely from past economist point of view and the past business person's point of view, I don't necessarily employ - imply enjoyment in other ways. The segment of

the market has largely, but not entirely been created by two fundamental things. The first is the retreat by the mainstream lenders, particularly the banks and certainly in significant extent, the building societies and the credit unions away from small, short-term loans, and the second element is probably an economic one in terms of a growing number of people being put in a situation financially where short-term loans are of need or necessity.

And although I said two reasons, in fact there is a third reason. I'd almost omitted it when I came to talk about this issue. The issue of pawnbrokers, where we have situation where the tradition pawnbroker cannot enjoy the profitability of yesteryear, and that's fundamentally because the obsolescence factor associated with small and medium size and portable consumer goods is so dramatic now that the opportunity to take reasonable security by way of a pawned item is growing less and less. So you have a situation where there is a significant diminution in a number of pawn brokers and where there isn't a significant diminution in outlets, there certainly is a significant diminution in their turnover.

The federation is in fact an amalgamation of several organisations, both big and small, which is why the term federation. The federation came in to being March, April last year and we have divisions in each state, albeit, there's one or two that have yet to formalise and I'll touch on why they haven't formalised a little later in the presentation. But fundamentally, we have interim boards in those two states that don't have a form of federation. We have - and, of course, sitting to my right is the chair. We have a national council and, as Peter has indicated, we have state divisions with state boards. We have that federal structure because we're dealing with both state and federal governments, and when I say "state", I obviously include territory within that ambit.

MR WEICKHARDT: Thank you.

MR SMILES: Peter, is there anything you want to say?

MR GRANTHAM: No, I think you've covered that for me.

MR SMILES: The reason, commissioners, we sit before you is, frankly, our growing frustration with the processes and the manner in which government inquiries at all levels are being undertaken, and the manner in which - when I say "government at all levels", I mean from commissions, although of course I spare any criticism of this commission yet. I do mean Australia law reform commissions through to state government through to office of fair trade, or similarly called in the other states - if we can pick one, the Office for Consumer and Business Affairs in South Australia of those names - and the way ministers for consumer affairs - variously called ministers for fair trading, but of that ilk - are approaching their various inquiries.

I say that because, as an organisation, as I said, that is dominated by mums and dads, we are essentially a small business organisation and we really feel the stress and strain of an inquiry. I might say that stress is particularly relevant at the moment because, since November, there's been seven significant inquiries called at state and federal level - as I say, since November, each of them requiring significant research and, we like to think, a substantial submission, and, as the person who has to coordinate that process, I can tell you my eyes are hanging out and the exhaustion level is as painful as I've ever endured. In fact, to give you an example, it is as painful as if I was in full political campaign mode as I once used to be. It's extremely demanding and, of course, the federation and its members recognise that each area of government that's involve in an inquiry has a very important role to play, and each area of government that is involved in an inquiry wants the best in terms of the quality, the depth, the honesty, and the usefulness of the submissions from those who choose to present.

I start with that comment as the introduction to our concerns: the sheer volume of work associated at the moment; and the overlooking - to put it politely, the overlooking by so many associated with those government bodies as to what they demand, by implication if not by direct instruction or statement - what they demand of those organisations and individuals that wish to or, in many ways, like the federation, have to submit.

I know it is not easy to coordinate when you've got various state governments and various federal agencies but I do stress that it is a most demanding time at the moment, with so many inquiries being called in such a short time; and each one of them, for the federation and its members, having the potential to make a magnificent difference or an incredibly depressing and destructive difference to the way the federation members conduct their business.

The second comment we'd like to make this afternoon is a comment with regard to the quality of submissions and the blind acceptance by so many government inquiries as to the content, honesty, integrity, and the like of those submissions. We're very mindful that some submissions attract the prestige of the institution from which they come, and I suppose, being as brutal as I care to be this afternoon, I say that I hope the Productivity Commission will consider the foolishness of assuming that, because a supposedly or purportedly prestigious organisation has its name on the front of that submission, it should be assumed to be a submission of honesty, that it should be assumed to be a submission of integrity, that it should be assumed to be a submission where research is claimed, that in fact that research has been undertaken and that that research has been undertaken according to the general acceptable protocols as to what constitutes quality or reasonable research.

We are particularly critical of some university organisations and particularly a legal and a credit centre associated with the Law School at Griffith University, because, quite frankly, we are tired of reading submission after submission that includes from that relatively prestige organisation - it is, after all, a university or a centre associated with the university - we are tired of seeing highly emotive statements presented as if they were the outcome of objective research, we are tired of seeing research quoted in glowing terms that has less than anywhere near a sufficient number of people drawn from the general population on which to predicate the results that they pretend can be read into the research, and we are tired of seeing research that's nothing more than one academic taking several academic papers in the past, regurgitating them, and pretending that the assumptions and, more particularly, the conclusions reached in the later academic papers is in fact fresh evidence, is in fact fresh and contemporary consideration for the government inquiry that's being undertaken. It is a profound problem in the consumer policy area.

The third thing we're concerned about is the reluctance of government authorities to move away from the ratchet effect, and that is the assumption that, once you put legislation or regulation in place, you cannot go backwards; you must only go forward, by increasing the amount of regulation, by increasing the amount of legislation.

Commissioners, it's not an argument as to whether we agree with the end results, and in fact while Mr Grantham may make some comments about whether we agree or not with end results my comments today are not predicated on whether or not we as a federation, or I personally, or Mr Grantham personally, agree or disagree with the results of the various inquiries or indeed the results of the various organisations and people that provide submissions.

Our concern is with regard to the processes, and this ratchet effect is one of great concern to us because, not only within the state or federal government organisation that has been responsible for the original regulation or legislation is there reluctance to turn back, but we find repeatedly that other state governments and other organisations take off in their perspective of where they should go with consumer policy decision-making from the perspective of the activities of the other organisation. There is an incredible reluctance to look behind what has already occurred in this country. There is an incredible reluctance to even suspect that a decision made by a state government in 2001 or a decision that has come from a known-name, incidental, inconsequential English politician in 1927 talking in the English parliament, that you cannot go behind that. Once it is there it's like the Ten Commandments, it's not to be investigated or looked at; it is a God-like tome that must be treated with reverence, never to be changed. That - I call it the ratchet effect - is a profound problem for organisations that are presenting circumstances

that are dramatically changing - circumstances that are dramatically changing.

I was first engaged to undertake some communications, as it's politely called - in reality lobbying, work for micro-lenders in 2001. Commissioners, I've got to tell you, the industry now, as opposed to 2001 is profoundly different. It is profoundly different because the nature of our society has changed. I don't always say for the better, let me quickly say. But the brutal reality is in those last six years there's been a massive increase in the demand for short-term small loans. There's many reasons which I won't delay this afternoon's proceedings to go into, but there's many economic and social reasons for that, and many of those social and economic reasons distress me greatly, and I know they distress the members and the executive of the federation; but they are a reality, and they're a very different reality now to what they were in 2001. In short, less and less opportunity from anywhere else to borrow short-term small loans.

The quality of the management associated with micro-lenders in Australia is massively different to that in general, as it was in 2001. Quite frankly, there's very few - still a few, unfortunately, but there's very few white-shoe brigade involved with micro-lending now as opposed to 2001. In fact, the micro-lending industry is more and more at a management level becoming populated with previously successful business persons - and Mr Grantham on my right is an example of this; people with tertiary qualifications; indeed people that would have little trouble finding employment in mainstream finance sector. So this ratchet effect has a profound impact. Not only in terms of the frustration of a mistake that may have been a bad one and totally impractical and totally incapable of being implemented at any time, but we have a ratchet effect where you have previous decisions as to legislation and regulation that may have been appropriate X years ago but they are certainly not appropriate now in the current environment.

We have a challenge, and it is a result of the several states' jurisdictions, I appreciate, but it has to be recognised with all inquiries. A challenge with regard to different jurisdictions taking different approaches from time to time and in summation, having different philosophies, understandably, different governments, different parties, different attitudes, different environments, but nevertheless, we have a situation at its most prevalent and significant with micro-lending, where we have essentially four broad structures of legislation and regulation across Australia. So that one of my tasks outside of advising the federation, is assisting clients with their documentation to comply with the acts of parliament and the regulations.

We have an insanity in this country when it comes to micro-lending, of having basically four different jurisdictions, four different approaches to regulating micro-lending. That means, for the increasing number of companies who are trading in more than one state, for the increasing number of companies who are trading

across the nation, they have to be very careful that they play the game according to one of the four pieces or sets of legislation from jurisdiction to jurisdiction. You have challenges there. Certainly you have the challenge of enforcing legal obligation. But you also have the challenge of a basic reality. And the basic reality is that if you're going to continue to offer employment to folk of average training, of average education, at the phones or at the front desk of lending organisations - and this applies to us in micro-lending as well as to mainstream - then you're going to impose an incredible difficulty on that 18 or 19-year old, barely school leaver, to understand as someone approaches him or her at the front counter, that there is fundamental significance and requiring entirely different documentation as to where that person lives. It will be an increasing problem. It is already a problem for us.

MR FITZGERALD: We're keen to obviously explore some of the issues with you. So I was wondering if you could just give us a couple of final points and then open it up for discussion. Otherwise we're going to run out of time. And we've also had the benefit of reading the summary, so that would be helpful for us.

MR SMILES: Thank you. Be it merely to highlight two other challenges with regard to the way inquiries are approached at the moment, is the lip service payed by so many government organisations to the opportunity to conduct comprehensive, fair and reasonable inquiries. You'll be aware that we included two pages where we analysed the different strategies available to consumer decision makers with regard to their approach to getting the best information, the most comprehensive information, and let me stress, not necessarily information that will favour the federation, but just in all honesty, comprehensive information, we've listed the various ways one can collect that. And you'll see there are 33 different ways we've identified from the traditional submission through to the seminar through to contact with ministerial backbench committees being facilitated, through to lending outlets visits by the minister, through to lending outlet visits by senior department officers. And you will see from our summary there, that very few inquiries or reviews employ more than one or two, perhaps three, methods of reaching out to get their information.

One of the great concerns I've had as a sub-example of that is the expectation that the submission is good enough. Well that's rubbish. In any business environment, when you pitch for business, you always get the chance to personally present - as in a sense we're doing this afternoon - the key elements of your argument justifying why you should get that business. But in government we have a repeated expectation that the written submission will be enough. No opportunity to cross-examine, as it were, the writer of the submission. No opportunity to ask further questions. The submission just disappears into some mystical, public service department or office and is never heard of again until the legislation is proposed.

Or, as my second point, the issue of the opportunities for forums and public meetings. Again, lip service, if it occurs at all, lip service is the norm. I am tired of going to forums and meetings with the magnificent exception of the Victorian Credit Review, where the chair is far more concerned to get one question only or a statement only, unanswered largely, from a member of the audience, and to finish the public occasion as soon as possible or absolutely to the second of the advertised time. The brutal reality is the Australian Law Reform Commission cannot get, as it should, a comprehensive response from audiences it invites to its meetings or forums, by limiting it, as other inquiries do too, to one and a half hours and expecting one and a half hours to satisfy 60 or 70 people who have come and who are sitting in the room ready to provide substantial input of concern to them personally or to their organisation.

In short, gentlemen, we come because we take seriously the term productivity in your corporate name or organisational name. And we believe at the moment the level of productiveness associated with government inquiries with rare exception in Australia, is far less than it should be. And because it's far less than it should be, the breadth, the depth and the honesty of the information being presented to the consumer policy decision makers is damaged or limited and because it's damaged or limited, you get poor and ineffective and impractical consumer policy legislation.

MR FITZGERALD: Thank you very much, Philip. If we could just have some time now for some discussion. If I could just start by making a couple of assumptions. Let's assume for a moment that this particular micro-lending has a role to play in the Australian economy, and you've made the case that it does. And you would also - the second point would be the assumption is that there needs to be regulation in place in relation to this particular type of lending. What's not clear for me from the summary or the presentation yet is, what is your proposal in terms of the appropriate regulatory framework for this particular area? When you put that in context, we're looking at all of consumer policy and we're specifically, as a subset of that, looking at financial lending, including micro-lending right through to bank lending.

What we were trying to do is to work out what is the most effective regulatory framework for that stream of consumer policy activity. So, you're right, we've heard a number of submissions as we've gone around from public hearings about this particular end. But have you got a view now as to the key elements of the regulatory framework that you believe would work for micro-lending? Addressing the concern of consumer groups and addressing the concerns of regulators, to avoid what you've regarded as the ratcheting up approach or the ad hoc or piecemeal approach, which we would agree with. I think it would be self-evident that we don't support a situation where there nine different approaches to lending. What I'm not clear from the submission is what is your key elements of a framework going forward.

MR SMILES: Mr Chair, I'll answer that in two ways. The first is - and it's predicated on your continuing concern for process - the framework must truly embrace the consumer. Although there are some extremely well-meaning people that are involved with organisations that are commonly referred to as the stakeholders, the brutal reality is most of those people do not have much contact with the actual consumers they purport to represent. Most of those people, in our circumstances, have never visited a lending outlet. Some of them, despite repeated invitations to do so. And many of them are philosophically driven, which I'm sure is a wonderful thing, but philosophy has got to meet reality and practicality.

Now we come to the going forward. The going forward framework that we advocate - and obviously there will be far more detail in our submission - is a framework that recognises that some sort of micro-lending industry is not going to go away. And basically you've got choices. You can be realistic with your framework and recognise that the demand out there is so monstrous now; in excess of $228 million a year turnover, because that's what federation members lent last year. In excess of 168,000 individuals or couples borrowing because that's the number of customers Federation members had last year.

MR FITZGERALD: Sorry, can you just repeat the number?

MR SMILES: Okay. That's 168,000 customers, sometimes - - -

MR FITZGERALD: Yes, that's fine.

MR SMILES: And no attempt so far to encourage the development of low interest loans and no interest loans, or to encourage the banks back to the microlending sector is going to either work or work in sufficient proportion to accommodate that market. So in terms of your framework into the future, the brutal reality is whether those who are philosophically driven to disapprove of microlenders, like it or not, it's got to continue because no welfare, no charity and no government organisation can step into the breach and lend the money that the commercial lenders are lending.

When they try, like the wonderful - and I'm not being cynical or supercilious when I say this, I really mean it, like the wonderful Brotherhood of St Laurence, with their great efforts and to their huge credit they've been absolutely transparent with their report on how well they've done, and I really admire that organisation and I want to pay credit to it publicly today. That organisation has managed a scheme of less than 200 loans, and freely admitted that at the end of the year or 18 months involved it was $100,000 in the red and had to go for subsidy. And that organisation freely admitted - not my words, their words and again, a huge credit to them for their honesty, so rare from that sector, admitted that part of their problem was having the

people with the experience, training and ability to handle being a money lender.

So going forward, the other brutal reality is if you do not have a commercial sector that's reasonably regulated, if you do not have a commercial sector that is regulated in a way that allows them to survive, and I'm sorry, 48 per cent per annum, and Mr Grantham will comment in greater detail on this, is an absolute nonsense. It sounds wonderful, but from an economic and business point of view, it is sheer stupidity of the highest order, courtesy of that 1927 member of parliament who distinguished himself in no other way back in England.

If you are not prepared to recognise those things and you are prepared to somehow legislate and regulate the commercial microlender out of existence, then just as the Office of Fair Trading taskforce in Queensland found in 2000, you will open it up to the criminal element. If you think I'm exaggerating, have a look at the Lebanese and Vietnamese Australian gangs that control cheque cashing in the casinos and larger licensed clubs in New South Wales. It was a wonderful idea to inhibit the cashing of cheques; totally agree. The thought of a gambler getting paid a cheque to stop them putting their money back into the poker machine; totally agree.

Then there was legislation inhibiting money lenders and mainstream and non-mainstream lenders from cashing those cheques, and quite significant legislation. Again, a great idea, but it doesn't work because the crims have moved in and I don't have to; when I win something at Sydney casino I don't have to look for an outsider to cash my cheque, I've got an Australian Vietnamese by my side, within 90 seconds offering the service. This challenge is a massive one, which the welfare sector has rarely recognised as having some reality.

MR FITZGERALD: Perhaps we could ask some specific questions, and I'll come back to that, but I want to make a comment. We're working at the moment on the assumption that there is a role for microlending, we're not working on the assumption that microlending disappears. So just for the purpose of this discussion, if we can take that assumption. Philip?

MR WEICKHARDT: Can you quickly give me some facts about this industry because a number of people have said to us this is an area that gives rise to large quantities of consumer detriment, and, you know, we've heard stories of consumer hardship being raised here. On the other hand, I assume that if this is an area that's growing, the microlenders themselves are actually managing to get most of their capital repaid and therefore most of the loans must be successfully redeemed, albeit with very high interest rates. Can you give us some sort of sense of the amount of default that is occurring among the borrowers in this area, and also the sort of profitability of this sector?

MR SMILES: Mr Grantham, would you like to answer that first?

MR GRANTHAM: Well, with regard to defaults, I think for my business - I have three stores in Sydney here - I would say on an ongoing basis most customers make repayments by direct debit. I would say that the direct debit default rate would be somewhere between 8 and 10 per cent on any given month. Of the debits that I intend to take out of people's accounts, 8 to 10 per cent of them would default, to give you an idea there. With regard to the overall default rate of loans, I think it's somewhere around 15 to 20 per cent rate, depending on which particular store.

MR WEICKHARDT: And despite that default rate, is the industry overall profitable?

MR GRANTHAM: Yes, my businesses are still currently profitable. They are getting less profitable, I would say, as time is going by because of the amount of competition that's coming into the market. I started my stores in 2000 and 2003 and 2004, and I would say there is probably twice the number of lenders out there now that there was when I started, if not more. Compared to 2000, there is probably - I think it's probably tripled in the time.

MR SMILES: If I might add a comment to the profitability. In the Federation's submission to the Queensland Office of Fair Trading in December, we looked at profitability from return on investment as a fairly standard measure, and as you would be aware, commissioners, it's generally accepted that if you're going to buy a business, you want a return on investment gross of some 30 per cent per annum.

No microlending business in Queensland that we investigated, and that was over 67 companies and that was 140 outlets, no microlending business in Queensland achieved that 30 per cent. In fact, the average was somewhere around 19 per cent. That meant that they were six to eight points behind all but for of the six major banks. What that means in terms of relative terms is that the banks still make more money on their capital than microlenders, with one noticeable exception, but it involved, I think, the NAB, that had a substantial write-off on assets or income or something special for the 2006 financial year.

In terms of defaults, Mr Grantham has indicated his business. there is a challenge in terms of defining a default. A default occurs at the moment, if you like, if someone refrains from - is not able to pay an amount owing. Then you get a consideration of what of those defaults ultimately become bad debts, and in our submission to you we will put considerable detail as to the difference between the two because obviously lenders in Mr Grantham's position, under the Consumer Credit Code, have rights and opportunities to remind the borrower that they're owing some money.

Can I just say one thing about the borrower? There is an assumption by groups that choose to criticise the Federation and the microlending industry that all borrowers are honest people who have no intention of ever defrauding the industry. That is a nonsense. Secondly, there is an assumption by those who criticise the Federation and the microlending industry that if a borrower gets into trouble and finds it hard to repay the loan, then first and foremost it must be the lender's mistake.

Could I remind the commission that the industry, and certainly members of the Federation, do not lend to people under 18 years of age, and you will recall they're the people that are allowed to vote, allowed to make life changing decisions with regard to who they marry, and life changing decisions as to what education they might try to get and what employment they might try to get. With rare exception, and I understand there are some tragic exceptions of folk that are not easily seen to be under some personal disability that a trained psychiatrist would have picked up, that do get caught in the net. I'd like to think they're rare, but they do happen. But with those exceptions, the people that borrow off Mr Grantham and his colleagues are people who are adult, who are very capable - whether they choose to or not - of making informed adult decisions. If they're not capable, they are certainly provided with every opportunity to make the decisions.

The Uniform Consumer Credit Code is draconian in its expectations on the lenders to provide full disclosure. In 2000 the amount of documentation that a lender had to give the average borrower could be done in three pages. In 2007, 14 to 20 pages is the amount of documentation. There are things the lender's employees have to do to satisfy the Uniform Credit Code. What's significant, our research with consumers - and I'll come to the numbers in a moment. Our research with consumers show that somewhere around 98.8 per cent on average of the consumer samples we survey - 2020 in New South Wales, 535 in South Australia, 465 in Queensland, to name three of our surveys. That proportion of consumers say they had the terms, conditions and costs of their loan satisfactorily explained to them.

MR FITZGERALD: Okay, I'll just hold it there. Gary?

MR POTTS: I'd like to hear Mr Grantham's views as chair on the very first question that was asked about what framework of regulation you would like to have. We've heard a lot about the processes not being satisfactory, and I can understand that. But in the end we're interested in what the framework should be going forward, and I'd just like to get your personal views on what you think would be - making the assumption that there will be a regulatory framework of some kind, what would be an acceptable framework from the point of view of your members, having regard to your competitive position in the market, so that you're treated fairly compared with other lenders who face different regulatory arrangements. So could you give me a

feel for what your own views are on this?

MR GRANTHAM: Certainly. The problem under the New South Wales legislation we have is that it doesn't recognise - the 48 per cent cap doesn't recognise that there's certain costs involved in doing a loan. As Philip mentioned before, a 48 per cent cap would seem quite adequate. I think we even heard the chief of staff of the previous minister say, "Well if you can't make a quid out of 48 per cent, you know, you shouldn't be in business." But the relative 48 per cent cap, if I give you an example, if a borrower was to come into my store and they wanted to borrow $100 and may wish to repay it in a three or four-week period from drawing down the funds, a 48 per cent cap would mean that I could charge them somewhere up to $2 for that loan.

Now, I mean, it's obviously quite ridiculous to think that one of my staff members could spend somewhere up to half an hour processing and handling the loan through to its completion in addition to lending the hundred dollars to them and taking the risk that they don't pay it back, because in my particular situation we don't take any security; it's all unsecured finance that we offer. To take the $2 and try and make a profit out of it, it wouldn't even cover the cost of the paper and the photocopying. So the legislation doesn't recognise that - currently in New South Wales it doesn't recognise that there's a certain cost in providing the service over and above the actual cost of the money itself.

So when the legislation was changed to include all fees and charges under the 48 per cent cap, that effectively stopped my particular businesses from being able to operate under the UCCC. So I think whatever legislation was introduced would need to recognise the fact that there is a certain cost in providing the service, so fees and charges, as was previously in place, and then, yes, certainly a cap on the amount of interest that can be charged on a particular loan; I don't have a problem with that at all.

MR POTTS: Bearing in mind that not all states have the 48 per cent cap as I understand it.

MR GRANTHAM: Correct, that's right, yes.

MR POTTS: Does that mean that when you look at the regulatory arrangements that apply in other jurisdictions, that your members are broadly happy with them?

MR GRANTHAM: Yes, I would say so, yes. New South Wales would be the most draconian - - -

MR POTTS: So your essential grievance, leaving aside the processes - and I'm

very understanding of that, for small organisations - but your essential grievance in terms of your operational neutrality, if you like, compared with competitors in the market, is the imposition of an interest rate cap which covers expenses as well.

MR GRANTHAM: Correct, which covers fees and charges as well; that's right.

MR WEICKHARDT: So is there any one state that you think has got this, you know, the balance right in terms of protecting consumers and yet being fair to your members?

MR GRANTHAM: I don't have a good understanding of how it's operating in the other states, but to my knowledge I would have thought Victoria seemed to have a good balance.

MR FITZGERALD: Can I ask one specific - there's proposals - and it may be in here as well - for lenders to be required compulsorily to do an assessment of the financial capacity of the borrower. One of the states is proposing that, I'm not sure if it's in or not - I think that's the ACT. Whilst I can probably predict your answer, but could you tell me what your view about that is. It's only proposed in one state at this stage, as I understand it, or it may have already been implemented.

MR GRANTHAM: Sure. I think it's - I mean, it depends on the degree of depth that one needs to go into, because again it takes a certain amount of time. But as it stands today, every customer who borrows from our organisations, we take great consideration of how we believe they can handle the repayments, because as I said before, it's unsecured and they make their promise, they say, "Yes, we're going to pay you this money back," but if the reality is they can't afford to, you know, I'm kissing my capital goodbye as they walk out the door. So you know, we do give due consideration to their ability to repay right now.

MR SMILES: If I can make a comment. The myth that lenders do not undertake some form of due diligence to assess their borrowers is an infuriating one; it really is, you know. As Mr Grantham has just said, there's a real worry for the lender risking his money or her money. Quite simply, if a borrower substantially defaults - by that I mean if you borrow and you're repaying the amount and principal and whatever fees and charges over 10 payments, obviously if you paid the first nine and you're defaulting on the last one, it's not the trauma I'm talking about. But if you're defaulting in that circumstance on the first, second or third repayment, let me make it clear to the commission that lender has got to lend four to 8.2 loans of identical nature just to break even. That's the cost to the lender of recouping their capital to in a sense start again. So it's not in the lender's interest to lend to anyone and see borrowers walk out the door never to return and never to repay.

The second thing is, despite what some critics say of the industry, our research shows - and it does vary from state to state, and I must say some states are better than others, but in New South Wales in terms of checking out a potential borrower, the New South Wales lender employs approximately 4.7 different methodologies. When I say "methodologies" I mean a methodology, in no particular order, from credit reference check, through to contact with employment, through to looking at three consecutive monthly bank statements, through to looking at the rent receipts of some months prior to the person wanting a loan.

In other words, within the limitations of the current privacy legislation, there is a pretty substantial to do one's best as a lender to see that this person is (1) who they say there are, and (2) have a reasonable prospect of paying. Also of course, under the Consumer Credit Code a lender is obliged where one of those borrowers does fall into difficulty, is obliged when that borrower comes and says, "Hey, I've got a problem, I've just lost my job," there is an obligation under the code to in fact make arrangements to accommodate that; and Peter, you tell the commission how often that occurs and what happens if someone approaches our members and says, "I've just lost my job."

MR GRANTHAM: That happens not that regularly, but on occasions it does happen, and that's where a lot of the genuine customers who have come in with a real need - not the ones who have come in with a desire to rip you off - get into trouble when they lose their job, because obviously their key income has stopped. Now, the first thing that we will do is stop debiting their account, because there's no advantage for us to debit a person's account where there's no funds in the account; all it will do is cost them their various dishonour fees from the bank, $35 or $50 if it's the National Australia Bank or various other ones are different levels. So that's the first step. We then make an arrangement with the person to make smaller payments. My organisation doesn't charge any additional interest while that's occurring, although we have the right to charge interest, we don't generally do that. We just want to see, effectively want to get our money back and as much of the fees that we've charged recouped.

When a person gets into a situation like that, it's often the case that they will go and borrow money from other organisations as well and just get themselves into a deeper situation, so we take a very soft approach about that.

MR WEICKHARDT: Can we talk about that a little because our terms of reference do ask us to look at vulnerable and disadvantaged consumers and one gets the impression from some of the people who have made presentations to us that this industry is one that, I think they would say - I use an emotive term, but preys on vulnerable and disadvantaged consumers and that perhaps the default rates are low. As you say, your members have got no interest to see, sort of, money being lent to

people who will default, but on the other hand I guess it's possible for a lender to get their money back but for the consumer to have to sell their own assets or you repossess assets and that the consumers get into more and more trouble.

I guess the question I've got is, are the typical experiences - and you mentioned that not many people who come to see your stores are the typical consumers that you deal with, people who you see breach some sort of difficult financial position they're in and get themselves out of trouble or do you quite frankly see consumers who get themselves into a spiral of worse and worse financial situations and, you know, eventually end up in a situation where they've lost all their assets, their house, their car, their job and everything? What is the typical picture of the people you deal with?

MR GRANTHAM: Sure. Sure, okay. Well, very seldom do we have customers who are home owners. Generally speaking, I would say a lot of customers will probably be - I don't know if I should categorise them this way, but it's often that I think of them as poor money managers, and although their income may be such that they could handle their outgoings and their lifestyle with some constraint, reasonably well, they will often maybe spend erratically and not - find themselves in a situation where they're short of money when they should have had some savings. They don't have those savings.

They have a car repair bill that has to be paid, a gas bill, an electricity bill, various different bills that come in, which is the very common reason that they come and borrow money from us, and so they've done some erratic things with their money in other areas and then they find themselves in a situation where they need to borrow money from us to pay their, you know, cost of living. So it's never quite a situation where you see someone spiralling from being a home owner down to a situation where they go bankrupt. However, from the situation where they're managing their money poorly, occasionally we do see customers who will continue, and lend and borrow money from other institutions, other microlenders even.

There are certain other ones who will lend money even though they do have loans with another organisation. My philosophy is that if they have loans with another microlender, we would generally decline their application at that time. So yes, certainly it's a very small percentage I would say, would find themselves in a spiral. It's seldom the situation where I see them actually losing their assets. It's more likely that they would apply for protection under a part 9 Bankruptcy Act, or maybe even go full bankruptcy, but that's, as I say, not a regular occurrence that I come across myself.

MR FITZGERALD: Okay. We're over time by about a quarter of an hour or so. So are there any other final questions? Well, thanks very much, Peter, for that.

That's been very helpful and I am looking forward with interest to the submission and I just want to put it in the context, as I said, today. Certainly, we're looking at the whole area of financial and including microlending, and what we are concerned about is that future framework. What is the right way to regulate all of the financial lending arrangements in Australia, of which this is a particular part? So that's our primary concern, and it goes without saying that we are interested in the situation where we can reduce the inconsistencies between jurisdictions if that's required.

The question is how? What is the best benchmark one should use and so on and so forth. Are there any final comments?

MR SMILES: If I may, Mr Chairman. I hope the commission does not ignore our concerns with regard to process. I repeat, poor process or dishonest process leads to lousy regulation and we have lousy regulation in too many areas that affect not only microlenders but other sectors of our society. Secondly, I'd hoped the commission, in terms of framework, would reflect on the fact that if you're going to have consumer policy, that you actually ask the consumers. For that purpose, don't trust us. Don't trust Choice, don't trust some of your other witnesses, but actually get those who are going to make policy changes to talk in volume to the consumers, not to the so-called stakeholders.

And finally, I say this, and it's by way of repetition; however unattractive some practices might seem in microlending and sometimes absolutely quite rightly to our critics - there are rogues in every industry; we've got them, we wish they didn't exist, and they are not members of our association. However poor that may be, in the end I come back to the fact that we are looking at an industry that last year lent $228 million and we are talking about an industry that had 168,000 different people coming to borrow and in the end it's their interests that matter. If you get rid of us, you've got to find an alternative.

MR FITZGERALD: Okay, thanks Philip.

MR FITZGERALD: Okay, if you could give your full name and any organisation you're representing, or if you're representing yourself, just indicate so.

MR MALONE: Thank you, Mr Chairman. My name is Laurie Malone. I'm only here as a concerned consumer.

MR FITZGERALD: Good. Please.

MR MALONE: My interest as a concerned consumer is, to use that hackneyed metaphor, I'm looking for a level playing field and I contrast what happens with say, if you buy some software, the first thing you are presented with is an agreement and you only have two choices, accept it or reject it; you can't negotiate. Yet, the whole legal system is usually based on the fact that you're entitled to negotiate. For example, if you buy a house or you're interested in buying a house, you can have a look at it, you can have people in to inspect it and you will ask the agent for a contract. You will take that contract to your solicitor who will examine it and tell you whether it's fair or not.

Yet in so many cases, in so many industries - some that I've heard since I've been here this afternoon; to talk about 300 pages of agreement which you're presented with by some telecom organisations is absolutely ridiculous, to expect a consumer to read it, even to understand it. And so I'd propose that a way around it would be to have what I'd call a consumer advocate who can negotiate on behalf of the consumers. So that the consumer advocate would negotiate with suppliers - I would think in practice generally with their industry association - and agree on certain terms and conditions which would let the consumer rights be considered as well as the suppliers rights.

I would see that there would be standard terms and conditions after a period that would be inserted into agreements and perhaps we might have something like the Heart Association's big tick that a supplier could say, "Yes, my agreement has been submitted, it's been negotiated with the consumer advocate and the consumer advocate has agreed that it is reasonably fair to consumers." In my submission I've only spoken on two matters. Perhaps I might leave the second one to see whether you've got any questions on this particular matter.

MR FITZGERALD: Thanks very much. You've given us a short presentation of notes. Can I just ask in this regard; fundamental to your notion of a consumer advocate is what objective? The consumer advocate's role - and we seem to have advocates now, we've got employment advocates, we've got other advocates - - -

MR MALONE: Yes.

MR FITZGERALD: What do you see as the objective? Is it to create fairness in the contracts? Is it to give fairness in the process? What is the objective that a consumer advocate is meant to achieve that you don't believe is being achieved at the present time?

MR MALONE: Primarily fairness in the contract. That the contracts at the moment are obviously biased in the interests of the supplier with little consideration of the interests of the customer and I would hope that a consumer advocate acting on behalf of the consumers could ensure that agreements would reflect, as far as is reasonably fair, the interests of the consumer.

MR POTTS: Do you think this can be achieved with some regulatory backing? I'm just wondering how it works in practice. I imagine you're talking about industries which are reasonably concentrated, so there are not many alternatives for the consumer in buying the products.

MR MALONE: Yes.

MR POTTS: So you might only have two suppliers that you can really compare so it's not really a fully competitive market. So if you had a consumer advocate who was negotiating these contracts on behalf of consumers what guarantee would there be that the advocate would be able to negotiate a better outcome for consumers unless there's some regulatory backing that prescribes that contracts or whatever have to be in a certain form. Can you see what I'm getting at?

MR MALONE: I do see what you're getting at, yes.

MR POTTS: I can't what the commercial imperative is that would lead to the sort of outcome that you want.

MR MALONE: Well, I would see that - I hesitate to look for more regulatory procedures in this, there's enough as we've heard already in place. But I would hope that the consumer advocate would have the power to enter into negotiations on behalf of consumers. If an industry or a supplier chose not to well then I would hope that publicity would show that they're not doing the right thing.

MR POTTS: It's sort of a name and shame process in a way.

MR MALONE: Yes.

MR WEICKHARDT: I empathise with your comment about these end user licence agreements and, as you say, you don't have any - well, you have a choice of yes or no.

MR MALONE: Yes.

MR WEICKHARDT: You have a choice of whether you even bother to read them. But in my own experience I have to say if it's downloading a licence for software for, I don't know, between 50 and $100 I say to myself, yes, there's a potential risk this licence agreement is onerous and this software might not work and I might not have any redress, on the other hand, this is not my life savings. And I sort of view it about the same way as I probably do when I go to a restaurant that I've not been to before and think, well, I'm going to spend 50 to $100 here and it might be a poor meal. Only at the end of the day there's a limit to which I guess the costs of having a consumer advocate go through every one of these end user licence agreements for the multitude of software that exists is actually worth the benefit to consumers, surely for smaller fee items.

MR MALONE: Yes.

MR WEICKHARDT: If you're talking about, you know, sort of $5000 or something of that sort then I can understand the benefits might be more significant.

MR MALONE: I accept what you're saying, yes. In fact, I do it myself. I gave you some references there to some research which has been done where some of the licence agreements do give them power to use your personal particulars in ways which you may not wish to and unless you read the agreement carefully you may be committing yourself to things which could be quite detrimental.

MR WEICKHARDT: But in practice are you aware of evidence that these things are actually causing significant consumer detriment?

MR MALONE: I have read of some things happening overseas where people have been disadvantaged by unscrupulous people. But I merely use the licence agreement as an example of the way in which you have no option, but you could look at credit cards or telecom agreements, all those sorts of things, and the same sort of thing applies. You are presented with the agreement - in fact, very often you're not presented with it, it's hidden somewhere else. But you really have no choice to negotiate. I'm looking for a system whereby the negotiation can take place before you come into the act, so that you can be hopefully assured that this agreement will reasonably represent what's required of you.

I mean, to take another analogy, we have things like product disclosure statements, and I think one of my predecessors I heard this afternoon was saying that, you know, it's unreasonable to think that people are really going to read all of this stuff; they're not going to. But what most people want is an assurance that somebody

else has read it for them, and so that they can say, "Yes, okay, I can accept this, it has been read, it has been looked at and I can be assured that it's not too bad."

MR FITZGERALD: An alternative approach is what the Victorian government has done, which is to introduce an ability for their regulator to be able to look at unfair provisions.

MR MALONE: Yes.

MR FITZGERALD: However you define that. In some senses, if you were to introduce that concept of unfair contract review - and New South Wales has a different version of that - then you achieve the same goal. Now, it's not a negotiating party, but it's a party that post a contract being put up can in fact, you know, go through it and say, you know, "This is manifestly unfair." Does that achieve any part of your objective, or not really?

MR MALONE: I don't think so, because it's only looking at what is manifestly unfair. It's not looking at an imbalance between the interests of the supplier and the interests of the consumer. I'm looking to get that balance closer than it is now.

MR FITZGERALD: And do you see this only applying in relation to software agreements, or do you see this as - - -

MR MALONE: No, no.

MR FITZGERALD: - - - a concept that's much more applicable - - -

MR MALONE: I can see it applying, as I mentioned, to all those agreements which affect the majority of consumers.

MR POTTS: You had an analogy - sorry. You had an analogy with the National Heart Foundation that was giving a tick, but listening to what you're saying I think they may be different, because what happens in that case is the consumer is not in a position to know what impact particular foods might have on their health, for instance. They can't inform themselves well enough easily, so the National Heart Foundation is doing it for them in a way. If you sort of move into the area that you're talking about, of complex contracts, for instance, if it was a matter of someone checking a contract and distilling it into its essential elements and then being able to give a tick to it, or a cross as the case may be, that would be analogous, I think, to what was happening in the National Heart Foundation case. But listening to what you're saying, it seems to be going further than that.

MR MALONE: Yes.

MR POTTS: It's actually wanting to negotiate the substance of the particular product and services that's on offer.

MR MALONE: Yes, I wasn't looking - - -

MR POTTS: So the consumer advocate would actually be negotiating on behalf of consumers to get a better product, if you like.

MR MALONE: Yes.

MR POTTS: That's correct. I'm just trying to understand what you're really driving at; whether it's - - -

MR MALONE: No, that was not a correct analogy there.

MR POTTS: You know, whether it's simplicity of information, comparison of information; because in the financial services area, for instance, there are various commercial organisation and newspapers that actually write articles and provide services that do compare different financial products. But I think what you're talking about is something rather different, that's taking it a step further.

MR MALONE: Yes.

MR WEICKHARDT: Are there any models internationally of the sort of thing that you're recommending?

MR MALONE: No, not that I'm aware of.

MR WEICKHARDT: Okay. I know the people from Choice this morning were referring to - I think it was a Dutch situation, where contracts in some way are, you know, sort of standardised or accepted as being fair. But I'm not aware of any of the details of that, and I'll read their submission on that matter with interest.

MR FITZGERALD: It's a negotiated model between the three sectors. Okay, your second point. If you could just raise that? You're talking here about public funding for consumer advocacy.

MR MALONE: Yes.

MR FITZGERALD: Could you just elaborate on that briefly?

MR MALONE: I'm talking about public funding for consumer organisations, yes.

Yes, well I did have some experience quite a few years ago with this sort of system. I was appointed by the then Whitlam government as the first president of the Australian Federation of Consumer Organisations, and then I was - I drafted the constitution and was elected as their first president.

Now consumer organisations, of course - their members are other organisations. Each organisation has one vote, so that big organisations or small organisations all have the same voting power, and organisations can be captured by people who have a particular barrow to push; who have a particular interest to push. And what I saw happening in the consumer movement, as time went on, was that these organisations were captured by people who had certain interests to push, and my own feeling is the Liberal government withdrew the funding from AFCO, which was quite considerable, because it was fairly obvious that it had been captured by people who were really using it as a way of pushing their own line, which was not directly concerned with consumer advocacy.

MR WEICKHARDT: So how do you see overcoming that as a problem, and yet funding consumer advocacy?

MR MALONE: Well, one way of course is to throw democracy to one side, and to have a government organisation to which people are nominated, which does enable you then governance to select people - one hopes that they do it in a reasonable manner - and also enables them to, if they don't behave themselves, to replace them at a later date.

MR FITZGERALD: I'm not sure to what extent you're familiar with the UK model of the National Consumer Council. We will be examining that model in some detail. It seems to have various components, some of which is research and some of which is advocacy; some of which is the ability to take representative action. Do you have any comment about that model, or not?

MR MALONE: I don't know the detail of it, but certainly from what those few comments you made, it sounds as though it could have a lot going for it.

MR WEICKHARDT: We've been surprised, as we've been going around, by the relative decline in the level of public support for consumer bodies, consumer advocacy, and to some extent the front-line services, depending on the state and territory that you're in. Do you have any explanation as to why that has occurred in the last few years, given the extraordinary increase in the level of complex consumer transactions and arrangements? It seems that whilst the marketplace has moved in one direction, advocacy and services relative to that has in fact declined.

MR MALONE: Well, I don't think it is a recent thing. I think it's always been

there, and the problem is who speaks for the consumer, and how do you know you speak for it. In the consumer field, there is a problem with the Australian Consumers Association, the publishers of Choice, who are obviously the pre-eminent consumer organisation. But they always declined to join AFCO, for example, and I don't think they're in the current organisation. And while you have that as the what to the public is the predominant and pre-eminent consumer organisation standing apart, it's very difficult for another organisation to say "and we speak for the consumers" when their members are disparate organisations who represent certain sectors of particular consumer interests.

MR WEICKHARDT: You've actually described them as being, I think, an undemocratic or unrepresentative body, in your notes.

MR MALONE: That was only a little quote. Don't take it too seriously, because what happens is that ACA - I think it's still much the same, if you are a subscriber you have no rights at all except to get the magazine. To be a member of the organisation, it used to be that you had to be invited to become a member, and they only have a small membership which they restrict very much - to make sure that they're not taken over by some of these problems that I mention.

MR FITZGERALD: Questions?

MR POTTS: Just an observation, I suppose, on the last question. Looking at the changes that have occurred in the last 20 years, and associated with that has been this apparent decline in public interest in consumer groups. But I guess it has coincided with a period where in other respects there has been a lot of consumer sovereignty, in the sense that there's a lot more competition in the marketplace than there used to be. Do you think - - -

MR MALONE: Not only that, but there are - you now have consumer protection authorities in every state. There's adequate legislation. You have the media taking its part in current affairs programs, and so I think that the consumer interest is much better taken care of now than it was, even though you might mention it's become more complex. But there are more people taking an interest in it, and so perhaps there is less need for these grass roots organisations.

MR POTTS: But the hot areas tend to be certain very important areas, but areas that have been deregulated significantly in the last 15 years, and a lot more competition has been introduced. So you've got a lot more complex products and services now than you used to have, so the consumer has got a lot more choice. As part of that - - -

MR MALONE: It's very difficult to make a choice.

MR POTTS: - - - it's difficult to make a choice, yes, whereas before 25 years ago it was easier to make a choice, but you didn't have much of a choice.

MR MALONE: Yes, that's true.

MR POTTS: But if you move outside of those areas, perhaps consumer sovereignty is much greater than it was 25 or 30 years ago.

MR MALONE: Yes.

MR FITZGERALD: Any final questions? Thanks for that. Thanks for those couple of important issues.

MR MALONE: And we've caught up on a bit of time.

MR FITZGERALD: That's terrific. Thanks very much.

MR MALONE: Thanks very much.

MR FITZGERALD: Sorry about that - thanks. Hi, Nigel. If you could give your full name and the organisation, and position represented in that organisation?

MR WATERS: Thank you very much. Nigel Waters. I'm a member of the executive of the Consumers Federation of Australia.

MR FITZGERALD: If you can just give us your key points, and then we'll have a discussion about those.

MR WATERS: Thanks very much for the invitation to participate in this hearing. Just a brief word about CFA. You're probably aware that it's the umbrella organisation, in effect, the successor to AFCO that the last witness has spoken about. Currently, it's very much a virtual organisation. We're basically substantially unfunded, operates on the basis of our 19 member organisations electing members of the executive who serve in a totally voluntary capacity. The only funding that CFA currently has is a couple of very specific, small grants, firstly to carry out work on behalf of the Standards Australia in appointing consumer representatives to standards committees, and a very small grant for some networking activity. But we still think that, despite being a virtual organisation, we punch above our weight. We're obviously not able to do everything that the funded predecessors did, but we do our best.

We welcome this inquiry and also the indication in your issues paper that you do have an open mind on a lot of the important issues. We are still developing the submission which you'll get in due course but we didn't want to miss this opportunity to give you an early indication of some of our views.

We're also separately working on a more detailed blueprint for what we're calling A Stronger Consumer Voice, which addresses the specific issues about consumer representatives and the machinery of consumer protection.

Our starting point is that consumers in Australia are entitled to a number of key deliverables: firstly, affordable and equitable access to essential services; secondly, protection from unsafe or unfit products and services - products and services that are sustainable in terms of their environmental effects, and that's something that I think is going to become more important in the immediate future, and long-term.

They're entitled to fairness, very broadly defined, and I'll return to that one. They're entitled to information and education to assist them in making choices in an increasingly complex marketplace, to accessible and effective remedies for failures and breaches of the law, to active monitoring and enforcement of the consumer protection laws; and to input through representative bodies to policy making that affects their interests.

It goes without saying that low-income and disadvantaged consumers deserve special protection and, in the context of the wider concept of vulnerable consumers, we'd also reiterate the point that I think some of your other witnesses have made about the fact that all of us can be vulnerable at different stages of our life or transactions.

Just a few general points: several of those objectives that I've mentioned clearly involve an expressed recognition and support for social justice, access and equity and sustainability objectives for the consumer protection framework; and we want to really put it on record that we certainly feel that consumer policy needs to incorporate some elements of those; they're not something that can just be dealt with later as a distributive or separate area of policy. In that respect, I suppose one of the labels you could attach to that view is a sort of community rating principle, that we feel that, in a sense, all consumers should share the costs of meeting some of those other objectives. So we, I guess, expressly differ from some of the mainstream sort of economics view that you deal with the consumer policy issues here and then you look after those other objectives separately.

We feel that consumer policy should not just be about more choice and lowest price. Those are desirable in many cases, but they're not the be-all and end-all of consumer policy. We consider that there should be a greater emphasis on the protection side of the equation, as opposed to the empowerment side. That's not to say that empowerment isn't important, but we do have a sense that the balance has gone wrong over the last decade or so and that there's too much emphasis on empowerment and trying to make markets work better without recognising some of the limitations of markets, in particular market areas. We should not waste everyone's time pursuing the holy grail of perfectly functioning markets where there is clear evidence that that's unachievable in particular market segments or industry sectors.

Just a few - I'm going to confine myself to some of the big picture issues. Our detailed submission will be supported more by evidence drawn from our member organisations of case-work and front-line activity but I'll restrict myself now to a few general framework issues.

First of all, in terms of the jurisdictional issues, whilst we acknowledge that there is a considerable amount of duplication and wasteful activity generated by the overlapping responsibilities of different governments, we don't think it's always negative. We think that recognition needs to be given to the what you might call competitive-regulation benefits of some jurisdictions being pioneers and setting the pace, and we have a fear that, if you went to a single-jurisdiction approach to consumer policy, you maybe wouldn't get the pioneering - if you like, the braver

pace-setting initiatives. You already mentioned this afternoon the unfair contracts legislation in Victoria; that would be a case in point, that, rather than waiting for everybody to agree, a particular jurisdiction has gone it alone and, in a sense, is raising the bar that others then have to come up to; and we think that there are therefore some positive benefits of competitive regulation in that sense.

The sorts of issues that we'll be raising in relation to the consumer policy machinery would include support for some sort of permanent independent and appropriately resourced body to undertake research - the National Consumer Council not necessarily wedded to that particular model, but, like you, we're interested in that and we encourage you to look in detail at how well that's worked in the UK. But we also see a need for funding of a national peak consumer representative organisation. That obviously sounds like special pleading but we think that the consumer landscape is the poorer for not having a properly resourced peak umbrella organisation. What we can do with our all-volunteer effort is necessarily very limited.

On top of that, there needs to be proper resourcing for all the different layers of consumer advisory processes and consultative processes. The demands from government agencies, from regulators, from inquiries and reviews such as this, from Standards Australia is just increasing year by year and yet the resources, as you've already identified, available to consumer organisations to service those demands has progressively declined; so there is a very serious mismatch and, again, we think the whole framework is the poorer because of that. We suggest, in that respect, in relation to funding, that governments should consider the allocation of business fines and penalties to directly meet some of the costs of greater levels of consumer input and consumer regulation.

In relation to self-regulation and codes, we have to say that the experience of our member NGOs is almost universally that self-regulation is a poor substitute for more effective rules backed by the force of law. Codes of Practice can be useful and can provide greater flexibility and responsiveness, but in our view only generally work as part of a co-regulatory framework where membership and compliance is mandatory and only, also, where consumer input to co-development is properly resourced.

Our preference for legislation or hard regulation is partly because the legislative process is traditionally offered a way of redressing the inherently unequally lobbying positions of business interests and consumer interests. Unfortunately that's become less effective where governments have control of upper houses and the opportunities for prolonged debate in front of senate inquiries, for instance, has been curtailed, but it's still better than code or standard development processes which effectively swamp NGOs with endless meetings and lengthy

processes that they simply can't resource, and which end up being dominated by business interests; and we cite, in particular, the Australia Communications Industry Forum, now the Communications Alliance, processes, and also the Standards Australia's processes as examples of where business interests have really been dominant despite a process which ostensibly invites equal consumer input.

Returning to the issue of empowerment versus protection, we see the provision of better consumer information as being necessary but not sufficient. We think that too much consumer policy in the last decade has been driven by the somewhat naïve assumption that competitive markets will work to the benefits of consumers if only they are given more information. The reality is that, while extra information is mostly helpful and welcome, most consumers will be unable or unwilling to devote the time to make effective use of even more information.

Many products and service offerings are simply too complex for even the best informed consumers and we feel that we're not yet learning the lessons that behavioural economics are - is starting to provide us with. We acknowledge that, you know, it's a relatively new approach, and obviously we all need more work in that area. But we think there's enough evidence already that the way that consumers actually operate in the real world means that simply providing them with more information is not going to be the answer in itself.

Greater emphasis should be placed on ensuring that only safe and fair products and services are in the marketplace. This is not to say that policies should aim to eliminate all risk, but we believe that currently the tolerance for unsafe, unfair, unhealthy and unsustainable products and services is far too wide, and also for overly complex products and services. And there may well be some areas in which it's appropriate to simply say that some offerings are simply too complex, to be fair.

Two final points. One on complaints and enforcement processes. Firstly, easy and cheap access to effective dispute resolution process is essential in all markets. And most markets, we believe that should be guaranteed through mandatory - that is, legally enforceable - membership of an external dispute resolution scheme, meeting recognised standards such as the ASIC policy directions and guidelines, which require such things as effective notice to consumers of their options for dispute resolution.

External dispute resolution schemes, whether co-regulatory or statutory bodies, must be monitored for performance, as too many of them slip into unacceptable standards of accessibility, responsiveness and outcomes - and we'll be giving you examples in our submission, of where we feel that's happened. Too many areas of policy, we think, rely on a set of rules with, at best, a complaint process, and with no proactive policing; effectively, an honour system of self-regulation.

Experience suggests that that approach too often fails consumers in that by the time non-compliance comes to light significant numbers of individuals or families have suffered loss or damage. Consumer affairs agencies need much greater resources to actively monitor and enforce consumer protection rules, and over the long term increase spending on this end of the process will be much more cost effective than dealing with the outcomes of major failures and breaches.

And, finally, a comment on the issue that you include in your paper on the gatekeeper role; such things as regulatory impact statements. We don't dispute the desirability of having those sorts of processes, but we do feel that at the moment they tend to be too narrow in terms of their - in terms of reference. There's too much emphasis on hard dollar costs, which can readily be measured in terms of cost. But the benefits of consumer regulation can be difficult to quantify, and we'd like to see processes such as RIS processes that adopt a broader concept of cost and benefit. So I think I'll leave it at that point, and invite any questions.

MR FITZGERALD: Thanks, Nigel. Thanks. I will look forward to the submission. Can I just take a - one of your more contentious comments, which I'd like just to unpack if I can. Your comment about social justice and sustainability, and the role of consumer policy. It is true that consumer policy does impact on - can impact on both, both aspects, both on social justice broadly defined and on the sustainability. The question is whether or not it should be in fact a prime aim of consumer policy to deliver social justice sustainability, or whether it's only through consumer policy where no other mechanism will achieve that.

So, again on social justice, most of us would say that the prime goal of consumer policy isn't about social justice, there are other mechanisms which achieve that. Nevertheless, it's also true that badly designed consumer policy can have an adverse impact on social justice for a whole range of reasons. So - - -

MR WATERS: Yes.

MR FITZGERALD: And clearly within the commission this sort of balance in between economic, social and environmental issues is constantly at play. So could you just explain to me - because you're taking a fairly hard line of saying that social justice and sustainability should be key roles for consumer policy, where most others would say they're a consequence of or they can have consequences.

MR WATERS: That's right. Yes, I don't resile at all from making that, I guess, somewhat contentious point. It remains to be seen - and I should say that - repeat that our submissions are still being developed, and exactly where we come down in relation to that issue remains to be seen - but I think it's fair say that there is broad

support now within the consumer movement for a view that certainly sustainability issues, and I think to some extent social justice issues need to be built in much more than they have been in the past as an objective of consumer policy rather than simply, you know, being something that is addressed on an exception basis, as you say, where other instruments don't work.

That, you know, I guess it's probably a more holistic view of government policy objectives generally. And whilst we understand the difficulty of any particular inquiry with a particular set of terms of reference, taking too broad a view, you know, I guess, I guess we'd like to make the case, and hopefully sort of push you towards one end of your terms of reference whilst maybe not buying the entire argument about, you know, reorganising the entire structure of government policy making to take this grander holistic view.

MR WEICKHARDT: Can I just clarify, in taking that line, as I understand it, and I don't understand it all that well, so forgive me. I'm not an economist, so I might be corrected by my colleagues here, but I think that it's true that consumer and competition policy is generally regarded as having an objective to maximise overall welfare of the economy as a whole; and as you say then distribution issues being handled separately. Is your position that social justice issues should be handled as part of consumer policy, that that is the only way to, if you like, maximise social justice; or is it your view that by doing so you can maximise economic welfare?

MR WATERS: I guess that partly goes to an issue about how you measure overall economic welfare more generally, and whether, you know, the current sort of accounting basis that we use, you know, incorporates all of the costs and benefits, and you know, we're having that debate in relation to climate change at the moment. There are many other areas where, you know, you can have a broader debate about the appropriate measurements.

But I think yes, we would be saying that - I mean, if I can take one specific example, I think in the financial area, lending area, a lot of our member organisations would feel that on the basis of their experience over a long period of time the needs and the interests of low income and disadvantaged consumers will never be effectively addressed if it's left to an after the event approach to redistribution and compensation; and to some extent, the best approach, the optimum approach is to expect the entire borrowing population to bear some of the costs of even if that means, you know, slightly higher interest rates or slightly more onerous terms for everybody, to look after the interests of the low income and disadvantaged people.

MR WEICKHARDT: How do you suggest policy makers should try and weigh those issues, because that's a difficult sort of balancing act in protecting what one would hope is a minority of vulnerable and disadvantaged consumers and suggesting

that other consumers should pay that cost up-front in a probably not very transparent way. How do you suggest policy makers should think about getting that equilibrium right?

MR WATERS: I guess I'd say I haven't got a solution worked out at this stage, and I don't think CFA has collectively. We simply want to put it on the table as an issue that we will be raising in our submission, and we'll hopefully have some further ideas for you by the time that submission arrives.

MR FITZGERALD: I mean, a lot of the work the commission has been doing in consumer product safety and others, we recognise the social consequences of all policy, both competition and consumer policy. What you've done is slightly - you've put some of these notions back at the core of the objectives of consumer policy. So it's in that area that I'm interested. It's not that nobody - only a fool would not recognise the social and environmental outcomes of both competition and consumer policy, and certainly the national competition and policy agenda acknowledged that up-front through the public interests tests and all those sorts of issues. Gary?

MR POTTS: We could extend that debate, but I'd rather look at it in a more practical way, if I can. You had quite a long action list, and in a sense that's understandable if you come at it from the perspective that you put, where you're using consumer policy to achieve almost any end of government policy, if you like. But I guess I'd like to hear your observations on the current system, how it's operated, and the changes that you've made in terms of looking at the priorities. You've given us a long list, and in a way it's easy for stakeholders to do that. In the end, though, governments have got to set priorities and sort of find what are the most important issues.

So looking at it from your perspective, firstly in terms of how the current system is working, are there any really significant major failures in your view, one or two major failures; and then if you were looking to make changes, going forward, what would be the key things that you'd be wanting to address first?

MR WATERS: We certainly see there being some - quite a wide range of major failures, and you know, they will be detailed in our submission. They include financial services markets in particular, which is where some of our members have particular expertise. But you know, there's a whole range of issues from product safety to environmental labelling issues; the inadequacy of current levels of information available to consumers; the lack of resources to support people's understanding of the information that they are provided with.

In terms of priorities for action, I guess the single most important issues would be the framework issues, because it's only by getting the right framework for, you

know, the priorities within government, the resources, the involvement of consumer representative organisations, and ultimately the wider consumer population in policy making that we'll then be able to have those debates about, you know, whether the balance is right or not. So you know, getting the framework right is important.

One thing I didn't mention was that we will be making some specific points in relation to the Trade Practices Act and the equivalent provisions of - section 51 and section 52 and their equivalent provisions in Fair Trading Acts, and also in relation to the need for a broader net public interest test in relation to mergers and acquisitions and authorisations for anti-competitive conduct. So we will be making some very specific points about the current legislation.

MR FITZGERALD: Can I just - and you may have it in your submission. You've indicated on the jurisdictional issue that competitive federalism, as we'd call it, or competitive regulatory arrangements sometimes have benefits, and the commission has acknowledged that. But it's also acknowledged that that comes at a cost; and in the consumer policy area it does strike us that the majority of participants as a base line would be saying that in relation to general consumer policy it should at least be consistent across the nation, and then in some specific areas you might actually look at shifting the whole responsibility perhaps to the Commonwealth in relation to specific component parts.

How do you deal with this issue of determining the roles and responsibilities of the two jurisdictions and between them? Acknowledging as I have that competitive regulation may have some benefits, it seems that the costs are often much greater; and certainly if you're designing a system for the future, you wouldn't necessarily inbuilt into that system a capacity to have lots of inconsistencies, which is the danger we now seem to be facing. Despite the common agreement we're seeing more and more breakouts from the uniform approach.

MR WATERS: Yes, I mean it's a dilemma which I don't think any of us have got an answer to, and I wouldn't want you to get the impression that we don't see some serious problems about duplication and overlap and inconsistency, and a lot of areas in which, you know, we're already on record and our member organisations are calling for greater consistency, you know. It was really just an appeal for, or reinforcement for the view that you've expressed, that sometimes there are some advantages, and we wouldn't want to necessarily lose the opportunity for individual jurisdictions at least to have the capacity to take initiatives that would raise the bar, even if there then needs to be a process gone through about agreement on everybody raising the bar at the same time.

But you know, we wouldn't want to see a situation where there was only one voice in a sense, and I guess to some extent that feeds back into our support for an

NCC-type organisation that would, or that could substitute for the current creative tension between states and federal government. One of the ways you could get the benefits of that without the disbenefits would be to have a single shorthand machinery.

MR FITZGERALD: But if I could just clarify, the benefit of an NCC-type arrangement is to get some extra analysis and contestability around policy, rather than regulation itself. So that's where the creative tension could be at play, where an independent body is providing additional input into the policy making structures.

MR WATERS: Yes, but the point I'm making about competitive regulation though doesn't just go to policy making. It also goes to delivery and enforcement, that you know, there is clear evidence that some jurisdictions' agencies are more proactive and, you know, more rigorous, if you like, in their application of the same laws, and therefore we wouldn't want to see a lowest common denominator as a result of any standardisation. We prefer to see a highest common standard.

MR WEICKHARDT: Do you see any evidence of competitive federalism in this area working, of some states where there's less active enforcement, saying, "Goodness gracious me, we'd better do more because state A does much more than we do," or - - -

MR WATERS: I think there are examples of where we get there in the end by, you know, states being in a sense sort of shamed into taking action, you know, their counterparts have taken up. I mean, you know, some of the ones that I'm familiar with are things like tendency database regulation and you know, again the unfair contracts one which - we haven't got there yet, but I think if Victoria hadn't taken that initiative we might not be as far down the track as we are.

MR FITZGERALD: I noticed your poor regard for self-regulation. It's a view been put to us by some participants. There are examples even today that we've heard of self-regulation in the telecommunications area and to some degree in the utilities areas and so on. Whilst it is true that we've seen examples where it hasn't worked well, do you think that it is possible to design frameworks perhaps on an industry specific basis - in fact, by nature it has to be on that basis - where co-regulation can in fact work? I mean, that seems to be the model that's emerging in a large number of the very nationally significant industries, a model of co-regulation which has both elements of black letter law and self-regulation in it.

MR WATERS: Sure, yes. I mean, I guess in theory we'd like to think so. I guess our experience in telecommunications is a good case in point where, you know, that clearly is a co-regulatory model you've got, you know, sort of mandatory requirements for (indistinct) codes of practice in certain areas and the ability for

ACMA to register those and make them mandatory and enforceable; and yet we still have, you know, in our view, suboptimal outcomes both in terms of the rules and in terms of the way that they're enforced. So I guess you'd find across the board of consumer NGOs a fair degree of scepticism about how well even the co-regulatory models are working. We'd like to think - I think there's, in a sense, a fund of goodwill there that we'd like to see them work, but we think they've got a long way to go in terms of effective outcomes and processes.

MR WEICKHARDT: Two questions, really, and they're around the peak sort of consumer representation body. The first one is - and I've asked a number of people this and I'm curious about it - no doubt you have made representation to government about funding and support. It's about a decade since, I guess, the body was defunded. I mean, governments say openly that consumer empowerment is important. Your contention I guess is part of a consumer empowerment, is having an adequately funded and resourced consumer body, a peak consumer body.

MR WATERS: Yes.

MR WEICKHARDT: The question is in terms of your representation to government, what sort of answers and responses have you got as to why they are not funding a peak body. The second would be, is the model of a peak body actually a sensible one? I put to the people from Choice this morning the assertion that was made to us by one of the regulators saying that getting consumer bodies to agree is nigh and impossible, they've all got difference voices, and Choice was saying, well, that's probably a good thing. There are all sorts of different sectors, you know, of the consumer, and therefore hearing all of their voices is probably a good thing.

So the question is, in terms of a model, is it better to fund individual consumer groups or to fund a peak body, and, if you like, get a lowest common denominator outcome out of a peak body.

MR WATERS: I think probably a hybrid approach is appropriate, and I think, in the light of experience, we wouldn't be making the bid that we would have done, say, 10 or 15 years ago for a complete restitution of the AFCO model or the early CFA model. We do see the different roles are breaking down with, you know, and something like a national consumer council would more probably deal with some of the policy development and research type issues. Advocacy generally should, I think, be with the specific NGOs that have got the particular expertise and the particular case work sort of support for that; the evidence based approach.

But there is still a call function in the middle of being an umbrella organisation that provides the network function, the communication function, and takes up issues that are common generic issues about things like, you know, the processes for

appointing consumer representatives, are they generic, whether you are talking health or communications or energy; questions of performance monitoring. So the whole range of process issues, and then performance measurement issues which we feel could be most efficiently done by a big organisation. But it wouldn't look like what the big organisations have done in the past.

MR FITZGERALD: I mean, one of the things - just on that, but it does seem to me there's been a significant change there in relation to industry specific areas. There has been an increase in the number of, say, consumer councils or consultative bodies which is significant. However, the second problem seems to be, well, how do you find the people to be able to participate? You've got a model - you have some funding in order to find representatives for the Standards Australia committees, albeit fairly modest, and we've made recommendations in relation to that in our previous report.

You've mentioned the consumer - the Communications Alliance, so I presume as part of this reworked peak body, one of its central functions would be to be able to facilitate the finding of representatives for these other bodies, rather than to substitute for those bodies.

MR WATERS: Yes, that's right. I mean, we've already tried to do that as well as the Standards Australia work that we're funded for. We also try to, on a totally unfunded basis, act as a clearing house for requests from external dispute resolution bodies. They tentatively come to us and ask for nominations or endorsement of consumer representatives, and every meeting of the executive of CFA we have one or two of those on the agenda to deal with and we see that as being an appropriate function. It's, you know, a cost effective solution for everybody.

MR FITZGERALD: Thank you very much for that. Look forward to the submission, and that's been very helpful. Thanks, Nigel. We will resume tomorrow at 8.30, and at this stage the hearings are likely to conclude at approximately 2.30 tomorrow. If anybody in the audience wants to participate but isn't on our schedule, they should advise us this evening. But otherwise, we start at 8.30 tomorrow, and will probably conclude at about 2.30. Thank you very much.

AT 5.09 PM THE INQUIRY WAS ADJOURNED UNTIL
TUESDAY, 17 APRIL 2007

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