FINANCIAL SYSTEM INQUIRY

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MR W. BEERWORTH, Member
PROF I. HARPER, Member
MRS L. NICHOLLS, Member
MR G. SMITH, Secretary

TRANSCRIPT OF PROCEEDINGS

AT MELBOURNE ON FRIDAY, 13 DECEMBER 1996, AT 9 AM

Continued from 12/12/96 in Adelaide

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CHAIRMAN: Ladies and gentlemen, thank you very much for joining us today for these public consultations in connection with the Financial System Inquiry. My name is Stan Wallis. The reason I don't have a name place is I was delegated to bring them all back from Adelaide last night and somehow I've lost my own. I think it's at home, but that's not because I want to remain anonymous. I have Mrs Linda Nicholls, Prof Ian Harper, and Greg Smith is the secretary to the inquiry. Bill Beerworth should be here. He was getting on an early plane from Sydney and I can only assume that the plane is running fractionally late but I'm sure he will be with us in a moment.

As you all know, the Federal Treasurer established this inquiry in May to undertake a stocktake of the results of financial deregulation since the early 1980s to analyse the forces driving further change and to make recommendations on future regulatory arrangements. The inquiry will report as planned to the Treasurer by 31 March next year. To assist in the task the inquiry has received and examined over 250 submissions. We would be through 270 I guess as of this morning and we have published of course this discussion paper and there are one or two copies of that available for people to examine should they wish, together with the terms of reference.

I draw attention to the terms of reference because the purpose of the public consultations today is to focus on issues raised in the discussion paper and on proposals for regulating the financial system. The inquiry is unable to consider particular complaints about individual financial institutions. I also need to point out that the inquiry has no special legal powers or parliamentary privilege and for that reason I ask participants to avoid making adverse comments about particular individuals or organisations.

The proceedings are quite informal. We have been right around Australia and the approach is to ask those contributing to simply sit at the table here and to make an opening statement and the questions and discussion follow. We do have a fairly busy day so I would like to get on with it. I will endeavour to try and get some time during the morning to have a 5 or 10-minute break and that will be my challenge.

The first organisation today is the Good Shepherd Youth and Family Service, Barry Hahn is appearing. Barry, to commence proceedings, largely for the purpose of the transcript, we'd simply like you to state your name and the organisation you represent.

You've heard my earlier remarks. We'd be very happy for you to make whatever opening remarks you wish and the committee will take it from there. Thank you very much for joining us.

MR HAHN: Thanks for the opportunity. I'm Barry Hahn from the Good Shepherd Youth and Family Service. I have prepared some notes so if that's okay I'd prefer to go through those.

CHAIRMAN: Please do.

MRS NICHOLLS: Please.

MR HAHN: It won't take more than 10 minutes, I wouldn't think. I guess the first point I'd like to make is the Good Shepherd does bring a particular perspective to this inquiry based on our work with young people and families who are low-income earners and the majority of those people are social security recipients. Our submission to the inquiry and the comments I make today are based on our belief that the financial system must serve the interests of all Australians. We believe the inquiry and the Commonwealth government must not allow social policy considerations to become secondary to questions of economic efficiency.

The key areas I'd like to draw the committee's attention to today are some of the points we made in our submission but with others included, including the concept of fairness and what this means in the context of the financial system, how efficiency is measured, issues regarding access and the cost borne by low-income consumers in relation to retail transaction accounts, the question of access to credit by low-income earners, issues regarding the development of new products in technologies, provision of information and a brief comment on the role of regulation.

In terms of efficiency we believe the Commonwealth government must ensure that efficiency is seen in a broader social context. The recently released discussion paper and the inquiry's terms of reference appear to focus on a narrow concept of efficiency measured purely in financial terms. We believe efficiency must not be measured from the perspective of the finance industry. What is cost-effective for the industry may not translate to efficiency for society as a whole and particularly for certain groups of consumers.

We believe the inquiry must aim to ensure that all Australian consumers are guaranteed access to financial services on fair terms as outlined in the terms of reference. Such services must be both affordable and adequate to meet the needs of all consumers.

In regard to consumer needs and demand, terms of reference 2 point D, we believe it's important that the reforms to the system and the development of new products and services are genuinely driven by consumer needs, as I've said earlier, rather than the needs of the industry itself. We believe there are numerous examples of changes which have been instigated over recent years by financial institutions which are in fact contrary to the needs and demands of some groups of consumers. The imposition of over-the-counter transaction fees of as much as $4 per transaction is clearly designed to discourage people from dealing with the teller inside a financial institution when it's clear that some people in fact prefer that method.

Consumers must not be forced to embrace new products and new technologies simply because it's cheaper for financial institutions to provide these products. Such reforms have been justified on efficiency grounds; however, consumers often find they're subsequently forced to pay for inferior services that were previously provided free.

We were pleased last year with the outcome or findings of the Prices Surveillance Authority inquiry into fees and charges on retail transaction accounts, particularly where it was identified that a transaction account should be available to all in the community who require it. I'd like to comment specifically in relation to young people.

It's our experience that this group, or many young people, face particular barriers in terms of access to the finance system due to low incomes, high unemployment and other factors. A recent example is where a major bank refused to open an account for a young person because they were unemployed at the time. That was a matter of weeks ago here in Melbourne. Some people have difficulty producing the necessary ID to open a bank account.

The comments I'd make in relation to the cost of credit are based on our experience as a community-based welfare agency providing no interest loans, programs to low-income people, and these programs provide small loans, generally under a thousand dollars for people to buy essential household goods. There have been about 30 of these programs developed across Victoria in recent times and due to the demand or level of interest from people in other states, our agency is actually running a national project to help people establish

similar programs throughout Australia, so we've actually networked with some 200 organisations in all states.

The need for these schemes is a direct consequence of the failure of the financial institutions to appropriately meet the needs of low-income consumers. Obviously credit is an essential resource in our society and it's something that low-income people also require access to. One of the aims of the Campbell Committee was to reduce the cost of finance to this group and clearly this hasn't occurred.

Just three quick points in relation to the options available to low-income people at the moment when it comes to credit. One such option is pawnbroking, where effective interest rates of 150 per cent are common and there's been a real upsurge in the number of pawnbrokers operating in a number of states. Low-income households across Australia are increasingly resorting to renting household appliances and some furniture items. It can cost a family over $1600 every year to rent a fridge, a washing machine and a television, items that they may never own.

Finance companies predominantly serve the needs of low-income consumers with few assets. Despite significant reform to consumer protection regulation in this area, low-income people who use this form of credit remain vulnerable to the overselling of insurance, taking of excessive security and guarantors and the associated costs, extra costs, that this entails. I suppose the further point with that is that interest rates within that sector of the industry still remain generally above 25 per cent.

Clearly the solution to these problems is not to exclude this group from access to credit. The inquiry's discussion paper appears to be based on an assumption that the financial system operates fairly. The experience of our agency and many low-income consumers paints a very different picture to that. The free market will not deliver services efficiently and on fair terms to everyone who needs them. This has been confirmed through our experience and through the numerous research projects that have been done by consumer groups over the last 5 to 10 years.

It's our belief that the deregulation of the system which occurred throughout the 1980s has resulted in the polarisation of outcomes in terms of the effects on those from low socioeconomic groups as compared to those from higher socioeconomic groups.

Financial institutions are clearly not developing new products designed to meet the needs of those from low socioeconomic groups, therefore these people are not able to take advantage of the flexibility, choice, that's now available in the retail banking sector.

Despite the findings of the Prices Surveillance inquiry last year and the subsequent pressure applied by the former Labor government on major banks to introduce basic banking accounts, the situation has improved little. These recent events highlight the need for effective regulation to be put in place to ensure that the delivery of adequate financial services does not become politicised and as a consequence subject to erosion over time. The inquiry must adequately define the concept of fairness in regard to the operation of the financial system. Further, mechanisms must then be put in place to ensure that fairness translates to tangible benefits and that such outcomes are monitored to ensure they are maintained in the longer term.

In regard to information provision we wish to stress the importance of effective information provision, whether it's in regard to fees and charges or disclosure on contracts. Consumers are required to make complex decisions both in regard to credit transactions and in relation to retail transaction accounts. Consumers currently experience real difficulty in interpreting the information provided by banks. Information is not presented in a comparable form, making it difficult for people to make decisions regarding the most suitable product for their situation and needs.

As previously stated, we cannot have a system which does not incorporate social policy goals. There is a clear case for government regulation to ensure that those on low incomes are not locked out of the system and that they do not pay disproportionately high costs. The focus of past and existing regulation in the consumer protection area has been remedial. We believe that regulation must be developed which sets certain benchmarks, which guarantees access to financial services on fair terms. We believe that specific regulation must be put in place to ensure that the interests of low-income and other disadvantaged consumers are safeguarded.

In concluding, we would argue that there needs to be a thorough assessment of the potential impact of further financial deregulation on disadvantaged consumers, particularly in relation to this group's access to affordable credit. There is a danger that low-income earners will be marginalised into a ghetto of high-cost services provided

by small-time inefficient providers on the fringes of the finance industry. Decisions regarding future reforms to the financial system must take adequate account of the needs of all consumers.

We would urge the committee to make a thorough assessment of any proposed changes from the consumer perspective and, as stated earlier, the concept of the consumer perspective must acknowledge the diversity of needs of different groups.

CHAIRMAN: Thanks very much, Barry. Perhaps to start it might help the committee if you could perhaps draw some comparisons pre-whatever - your term is deregulation from early eighties to now I guess. I mean, where do you see the significant changes that have made it different for your constituency?

MR HAHN: I guess we had a period I believe in the mid-eighties where low-income people did gain greater access to credit, but I don't believe that it was necessarily at lower cost. I mean, that's probably debatable. But certainly in the last 3 to 5 years there's been a noticeable trend towards almost blanket exclusion.

CHAIRMAN: So it's been a hardening in the approval processes and the attitude of a lending institution?

MR HAHN: Absolutely, yes, and I think that's also flowed through to other services. We're not just talking credit here. I mean, the example I gave of the young person being basically told, "Well, we don't open bank accounts for people who are unemployed" - I mean, that is new. I've not experienced such a hardened attitude.

CHAIRMAN: What was the outcome of that case?

MR HAHN: A youth worker went up and assisted them to open a bank account at the same branch.

MRS NICHOLLS: Just a follow-on question, chairman. In these changed credit terms that you were speaking of, is it changes in the same product - that is, for example a credit card that was once available is no longer available, or not available on such favourable terms, or is it that some products that your constituency found particularly helpful to them are really not offered in the same way by banks - for example, a great reduction in personal loans?

MR HAHN: Certainly there was greater access by low-income people to credit cards in the mid-eighties. That's not the case now. But I think low-income people have always experienced difficulty in accessing what I would regard as appropriate or affordable credit. So largely your mainstream financial institutions haven't traditionally

catered to that market. I think it's got worse and I think that there are what I've described as perhaps the fringe dwellers who have exploited that opportunity - pawnbrokers, appliance rental is prolific now in low-income suburbs in all the major capital cities that I'm aware of. So these are fairly recent changes. I mean, that's in a sense replaced what was the hire purchase option for that group 10 years before.

CHAIRMAN: Yes.

PROF HARPER: Yes, thanks, chairman. Barry, have you noticed any difference in the degree of hardening that you describe in the attitudes between the banks and the non-bank financial institutions? Particularly I'm thinking of the building societies and credit unions - is there anything discernibly different about the way in which those two types of institutions have approached your constituency over the last 10 years or so?

MR HAHN: I think credit unions have attempted, in a difficult environment, to base their lending practices on their traditional philosophies, but I think they've found that increasingly difficult to do, so I think unfortunately again for the group that I'm perhaps speaking on behalf of today, some of them have experienced fairly poor practices and harsh treatment and lack of access by credit unions as well.

PROF HARPER: I guess what I'm driving at there, Barry, is that that particular part of the industry - credit unions and building societies - over the period that you describe, certainly since 1990, have been the subject of more intensive regulation than in the past.

MR HAHN: Yes.

PROF HARPER: As you would be aware the prudential regime imposed upon those institutions has been tightened up substantially, and the difficulty that I have in my own mind is trying to separate out how much of the problem that you describe is the result of so-called deregulation, and how much of it is the result of the tightening up of prudential requirements which have actually forced credit unions and others, by virtue of the need to hold tighter credit limits and capital adequacy and suchlike, to walk away from some of the people that you're describing, I think, so, yes, that's the hard part.

MR HAHN: Yes, I guess it's one of the dilemmas but it's certainly one of the challenges that confront us all.

PROF HARPER: Indeed.

MR HAHN: And I think the experience we're having, not only here in Victoria but in other states, is that increasingly low-income people just have diminished options.

CHAIRMAN: It was put to us, Barry, that with the new Credit Code from 1 November that was actually forcing some of the - I wouldn't say marginal providers of credit, but forcing some providers actually to tighten up and in fact to drop out of the marketplace. Have you experienced that at this point in time?

MR HAHN: I couldn't - yes, I'm not aware of - I would be guessing.

CHAIRMAN: It's an example of where you've got a more formalised, tighter system and it in fact does make it more difficult.

MR BEERWORTH: Barry, I notice from some comments of yours in the press this morning - in The Australian in particular - that you think we think the market can solve everything. I don't think the market can solve everything by itself. What we're talking about here of course is regulation, and what sort of regulation would in fact make the system more competitive, more accessible to consumers generally, which is obviously the critical issue if - to me, deregulation means making markets more competitive, more contestable, giving greater access to more people, and I think that's certainly happened.

The real issue is one of pricing, as far as you're concerned, and the extent to which I think governments, through the banking system, ought to impose some requirement on banks to provide particular accounts and so on. Is that a fair observation?

MR HAHN: To some extent, however I think it goes further than that. I think that it's not just a question of price, it's a question of products that are particularly designed for particular groups, and as I said in my statements, clearly the industry the way it is now and the way it's heading - that the group that I'm perhaps speaking on behalf of are not going to be a contestable group in that sense, that we're not going to see innovation or creative products aimed to assist the particular needs for say flexibility in terms of repayment that that group may have, but certainly cost is a major issue.

MRS NICHOLLS: Barry, we have had throughout the course of our public hearings a number of representations made to us from people who are very concerned about the level of credit in the community, and some of the suggestions put to us are that there should be quite specific limitations on the amount that anyone could borrow - this coming from

groups who are concerned that there is too much credit. Equally, we have had views put to us that there needs to be a greater role of financial advice and planning associated with credit so that rather than simply selling a loan on the basis of price, greater regard should be had for the total circumstances of the individual, much as is now required of financial planners when counselling an individual about their investments.

Can I ask you to express a view about that wider notion of putting an onus of understanding a borrower's full circumstances and developing a plan and ensuring that the credit is actually in the borrower's best interests. Would you see something like that as helping your members, or would you have concerns that that might further restrict their access to credit?

MR HAHN: No, on the basis of what I'm hearing I would fully support that, and I think in fact what we are doing currently in the community sector organisations in fact is very much along those lines where in fact people's whole circumstances are considered, where the assessment process for getting a no-interest loan is in fact one where people are encouraged to be open and honest about their circumstances rather than be sort of made to jump through hoops like we experience with the finance system where you have point scoring and other methods, that people meet a certain criteria - "Yes, you've got the loan." That's not the case with the programs we operate and, yes, I would support some notion along those lines to be adopted by industry where, yes, perhaps a more open and honest assessment were made - if that's what you're suggesting.

MRS NICHOLLS: Yes. Thank you.

CHAIRMAN: I guess the big issue in the subjects that you're dealing with, or where the line is drawn between what's the obligation of the private sector and the financial system, and where does the government's obligation cut in - I mean, would you care to comment on that for - from our point of view?

MR HAHN: Yes, look, I agree, I think it is a difficult one and I think we probably pointed that out or made reference to that in our submission, that the issues, particularly around access to credit that are increasingly financial transaction accounts is complex and the needs of low-income people are not easy to be met, I suppose. I'm not saying it can't be achieved but there does need to be perhaps greater coordination between the regulation that exists in the financial system

and that within the social security system. So that's where I think it is important that the inquiry does take a holistic approach; that it doesn't just look narrowly at the financial aspects, that it does take a real social policy perspective on some of these issues.

CHAIRMAN: Is it possible for you to sort of rate for us whether it's access to the system, the availability of credit, the cost of credit, the cost of transactions? What's the pecking order in your mind of all those issues for the people you represent or help?

MR HAHN: That's a difficult one. I guess the cost - - -

CHAIRMAN: You can say, "All of them" if you like.

MR HAHN: Yes. I mean, they're all important. Cost is a very important one, but certainly access is crucial. But when we talk about access, I suppose it's access to the products that are appropriate - is the issue - because increasingly we're finding people that we're having to even support or give advice to who are perhaps using a particular retail account that's not appropriate for their circumstances and they're paying extraordinarily high costs simply because they haven't been able to make sense of the information and no-one at the bank appears to have assisted them in any way and, yes, they're paying through the nose, so to speak, for basic services.

PROF HARPER: Barry, to what extent are the sorts of problems that you're describing reflective of low-income status as such, and that the many problems which people in low-income tranches in the community face are, you know, of a similar nature to those that you're describing across a whole range of things in dealing with utilities, the public transport system, whatever, and therefore they run into a similar set of difficulties when it comes to the financial system?

To what extent, therefore, is it appropriate for the financial system to address these issues, or is that simply papering over something which is of much deeper concern to do with distribution of income and access and means more generally? And therefore would it - I'm just asking you to comment on this, Barry - to what extent do you think it's appropriate that these issues actually be taken up by the government through the mechanisms which exist for dealing with the problem of low income, which is at base the root cause?

MR HAHN: As I mentioned and we put in our submission and I said in my introduction, I think we've got to accept that the financial system fundamentally has to provide services for all Australians, and I think the important thing is that people who are on low incomes aren't

necessarily always on low incomes, and I think that's one thing that the industry needs to recognise, that young people who may be currently unemployed - the very young person I referred to in my example may in 6 months or 12 months' time be in employment.

So I think we've got to look at perhaps a life-cycle process for people, and accept that people - particularly with the employment market and the way industries are moving - that people are not always on secure incomes; sole parents are not always sole parents. So categorising people into groups and saying, well, yes, their problems are of their own making is not necessarily - - -

PROF HARPER: No - please, I did not say that.

MR HAHN: Sure.

PROF HARPER: I did not say the problems were of their own making, and nor did I say that people would be condemned to be in particular categories throughout their lives.

MR HAHN: Right.

PROF HARPER: On the contrary. What I'm simply suggesting - let me be more explicit. How would you react, for example, to a proposal which suggested that folk who find themselves in particular circumstances at particular times of their lives would then be able to access, by virtue of the public assistance to those people, not just concessional public transport or concessional electricity or telephone bills, but some other sort of concessional package for dealing with the financial system; that one might add, you know, amongst pharmaceutical benefits and the other things for people who are either elderly or totally incapacitated or whatever the story might be, some concessional access to the financial system, but within the general rubric of assistance provided under DSS. I mean, how do you react to that sort of idea?

MR HAHN: Look, I think it's something that could be considered, and I think there's perhaps some overseas examples - I'm aware that the committee has looked overseas as well. I know that there's the social fund in the UK, there are other things happening in the US, so I think perhaps an examination of those sorts of models could be looked at in that broader contest.

PROF HARPER: Yes.

MR HAHN: But I would also reinforce my point about the need for coordination between the sort of regulation that's put in place over this industry with the government's role in that broader sense,

particularly in regard to social security and other concessions, and I think that does take us into that realm of Commonwealth-state relations as well, but I'm aware that - - -

PROF HARPER: Yes, but if the Commonwealth were coordinating this package of assistance across a number of areas - as I say, you know, electricity, telephones, financial services - that one might think about this problem within that context rather than within the narrower context of the financial system.

MR SMITH: Barry, in your submission the various statements that you make in it rely mostly on secondary sources for their support but what you've told us this morning is that you've got basically direct experience in the financial system operating a variety of credit services. I wonder whether it would be possible for you to provide us with a supplementary submission which gave us the actual figures and assessment of costs and credit performance of your financial business as some way for us to get a better handle on exactly what it is that you're dealing with, the type of clients and the actual nature of the services and the costs that you - I gather - would prefer banks were serving, but which you are in fact serving, so that we could get a stronger feel for exactly what it is that you're asking.

MR HAHN: Yes, we're certainly happy to do that, providing we've got the resources to gather the information that you're requesting, because I guess the point you make about secondary sources is that there is a real lack of resources in the community sector. There are very few people that have time to even do the sort of work that I've been involved in recently, but we can pull together what's available.

MR SMITH: Are there services operating with their own budgets, and what's the source of the credit - the funds that you grant?

MR HAHN: There are 30 programs operating throughout Victoria. They're based on a model that the Good Shepherd Youth and Family Service developed some years ago, and they are all operating now out of local community-based agencies, community health centres, welfare agencies, and the money is provided by philanthropic trusts. We have actually put a proposal to Senator Jocelyn Newman suggesting that she might like to pilot the development of similar programs in other states and really assess them from the government's perspective of their viability along the lines of what you're requesting.

MR SMITH: Are they stand-alone credit services or do they mix those services with other welfare services?

MR HAHN: They're part of a more comprehensive range of things like financial counselling, family support, and sometimes even emergency financial aid.

MR BEERWORTH: Thank you. Barry, I enjoyed your submission. I thought it was very clear and very sensible. I also think you've acknowledged very properly that what we're talking about here is a balance about who should provide what is ultimately a transfer payment or a subsidy in ordinary terms. I'm wondering, as you look at overseas models, if there is anything which would be of direct assistance. For example, you wouldn't suggest that food stores should give away free food, but in the United States for example the food stamp program came into being for exactly that sort of purpose, to effectively subsidise certain groups in the community, and very properly so. Is there any equivalent or do you think there may be equivalent schemes overseas whereby the government or other agencies directly subsidise say financial costs of particular groups in the community?

MR HAHN: I don't know in detail about the overseas models. I think it would be something that would be really interesting to look at, but I suppose what I'd like to think would happen would be some way of enabling people to gain access at a certain point. For example, a lot of the people that may use our services might use them in a situation of crisis. Once they're more stabilised we might refer them on to the local credit co-op, where they might open a transaction account and in future get a loan from there, so I'd like to see whatever was put in place as a way of linking people back, or giving them access to mainstream services, rather than sort of resigning them to a - - -

MR BEERWORTH: (indistinct)

MR HAHN: Yes. So yes, if something along those lines could achieve that, I think it's worth looking into.

MRS NICHOLLS: Barry, a final question, again, drawing on overseas experience. In the United States, there is a system that they call positive credit reporting, and that means that in the public domain is information, not only about those who have failed to repay their loans on time, but a substantive body of data of those who have borrowed money and paid it back. One of the things that's interesting to me in the United States that may be relevant to your constituency is that where there are community-based loan schemes, even those for very modest amounts of money, where lower-income individuals have borrowed through those schemes and successfully repaid the moneys, that helps contribute to

their positive credit report and therefore helps them build, shall we say, a degree of stature that can be taken into account by the mainstream financial institutions. Could I ask you to react to that sort of idea? I mean, I appreciate there are issues of privacy, it's quite a complex area. Is this something that your group has looked at or that you have a view on?

MR HAHN: The notion is certainly worthy of support. I agree, it is a complex one, and I'm aware that it's been discussed here in Australia in the past. In fact we do get asked for references. Low-income people who have used our schemes in fact do from time to time get basically a reference saying that they have successfully repaid the loan, so it's in fact something we've been happy to do. So yes, again I think it's something that could be considered.

MRS NICHOLLS: Thank you.

CHAIRMAN: Okay. Well, I think we've covered it pretty well, Barry. Thank you very much for your contribution, we appreciate it.

CHAIRMAN: We now have, ladies and gentlemen, Cliff Stephens and Rod Irwin from the Head Injury Council of Australia, please. You were both here at the beginning of the proceedings, were you not?

MR STEPHENS: We certainly were.

CHAIRMAN: So you understand the approach. If you just state your names and organisations so we can get it recorded on the tape over there. Thank you.

MR STEPHENS: Thanks, Mr Chairman. My name is Cliff Stephens and I'm president of the Head Injury Council of Australia, and I make this submission today on behalf of the National Caucus of Disability Consumer Organisations which represents throughout the country approximately 3,000,000 persons with a disability.

MR IRWIN: My name is Rod Irwin, and I'm executive director of the Head Injury Council.

MR STEPHENS: Mr Chairman, I have some notes and I would like to read from them if I may.

CHAIRMAN: Yes.

MR STEPHENS: The other thing I guess I should say is my position is an honorary position, like most people in disability organisations, and I appreciate the time to make this submission. My involvement with this situation goes back about 2 years, and I guess our submission carries on from what Barry said, but it's more focused and relates specifically to technology in banks.

We have within our scant resources advocated with the banks in relation to this issue, and it's essentially related to the fees in the banks. Our members have difficulty in accessing services with banks and specifically the advent of technology in relation to ATMs. Your terms of reference understandably are directed at financial and economic issues, and I would like to argue with reference to promoting the cost-effective services for consumers consistent with integrity and fairness. We have provided a discussion paper in relation to this and we left it with your staff, and I must say I've lost my position in my notes, so I'll go for it.

CHAIRMAN: Well, if you go too long, I may suggest you give us some time to ask some questions.

MR STEPHENS: Not a problem. Our position essentially is that your position was that access to the banks and the financial services and the difficulty that our consumers have is essentially a welfare issue.

We would put it that it's a legal obligation in relation to the Disability Discrimination Act. People with a disability have a lot of access difficulties with the banking system. They cannot access ATM machines because of physical aspects. They cannot access them because of graphical user interface; with visual impairment they can't obviously see.

In terms of cognitive difficulty a lot of our consumers cannot remember PIN numbers. What used to be the situation was that they could access a teller directly, and they could either communicate with the teller verbally or they could communicate with the teller in some other form and access their accounts.

With the advent of technology this has been overturned, and there is a move, and I can understand in relation to the expenses of running the banks why this is, but they've essentially now been forced to not address tellers and try and use ATM machines, and of course there's a cost involved if they cannot use the ATMs.

We have actually over the last 2 years, with the help of the Treasurer or Treasury approached the banks in relation to this, and two banks in particular I've got to say have been very good in their response to that, and assisted our submission.

CHAIRMAN: Do you wish to particularise those banks?

MR STEPHENS: Well, the Commonwealth Bank was very good, and Westpac.

MR IRWIN: Westpac is the second.

MR STEPHENS: And one other bank has talked to us about it, but nothing has come of it.

MR IRWIN: To be fair, we haven't pressed because of our lack of resources, but we put a lot of effort into those two major banks, hoping we'd encourage the others.

PROF HARPER: And were successful in both cases?

MR IRWIN: Yes.

CHAIRMAN: There's nothing like peer group pressure.

MR STEPHENS: Well, yes, and I mean we do represent, as I say, 3,000,000 consumers across the country, although I understand that our consumers are quantity, not as it were, I guess, quality, in relation to the banking system. Our consumers are very often pensioners, they have very little resources, and because of their disability and their situation, often want to access very small amounts of money very frequently, and of course this is quite the opposite of what the banks are trying to do,

but they have no choice in this very often, because of cognitive difficulties, physical difficulties.

And just to reiterate, I mean, our view is that it's - and I noted in your comments and in the press that it's regarded as a welfare issue, but we believe that is not the case. Under the DDA it's very specific in relation to business and financial services and institutions providing fairness and equity to all consumers, so we really see it as a DDA situation.

CHAIRMAN: To be very clear, it's a question of the cost of the transaction over the counter, through the telling system? That's really where the focus should be?

MR STEPHENS: In our view, if there's a penalty imposed because our consumers cannot access the system - - -

CHAIRMAN: Access.

MR STEPHENS: Yes, this is our difficulty, and irrespective of how they are finding it difficult to access, and in this case it's really the technology advances - yes, that's the difficulty. The other difficulty that our consumers have, and again echoing one of the comments of Barry, was the access to information. Mainly, again related to banks, it is very difficult to get - and I mean I find it myself - very difficult to get comparative information out of banks and financial services, and if you're fortunate enough to be able to buy BRW or get onto the Internet, then you might be able to overcome that.

Our consumers aren't so privileged, and they have a great difficulty getting even basic information out of the banking system, and specific information for instance about - if there are any special arrangements been made, as we've been able to negotiate with some of the banks, in relation to disability and accessing automatic teller machines and tellers. So our submission in that sense is quite specific.

CHAIRMAN: Cliff, could you be a bit more specific about the numbers? I mean, you're executive director of the Head Injury Council, and I think you talked about representing a coalition and you mentioned a figure of 3,000,000. Could you just try and elaborate on that for us a little bit, so we just understand the extent of the population we're dealing with?

MR STEPHENS: Yes, Mr Chairman. That's a Bureau of Stats figure actually, in relation to 18 per cent of the community that have a disability, and it's divided between - our constituency is between

250,000 and 500,000 with head injury, and that often results in the difficulty of physical, sensory and cognitive impairment. Physical is obviously - if you have a wheelchair you can't physically get to the ATM. Sensory may be a difficulty in actually seeing, so you have a difficulty with graphical interfaces, and cognitive, if you have difficulty in short-term memory, whether you can remember PIN numbers.

We also represent the Blind Federation, which again is specific; the Deafness Forum, people with AIDS, women with disabilities, and indeed women with disabilities again have a specific disability with - or perceived difficulty - with ATMs in the sense that they feel threatened if they have to access an ATM, in terms of their security, as opposed to being in a bank where they feel more secure. Have I missed anybody out, Rod?

MR IRWIN: You've missed intellectual disability, but I can forward to your staff the detailed listings.

CHAIRMAN: Okay.

MR BEERWORTH: Rod, you gave us in one of your submissions a figure of 143,500 from one of the ABS statistics. You're talking about a much broader group obviously, Cliff, in this instance?

MR STEPHENS: Well, that was focusing on our consumers.

MR BEERWORTH: That was people with disability who needed personal assistance with banking.

MR IRWIN: That was an estimate, it was something out of the air in fact.

MR STEPHENS: Yes, but more specifically related to our consumers, but across the total disability field there is a far larger group. Of course it's very difficult to know exactly, but there's an awful lot of people who have difficulty with accessing - - -

CHAIRMAN: Does the Department of Social Service have a good handle on this or - - -

MR IRWIN: No. In fact it's not an issue for government as such, it's an issue for the Human Rights Commission, which will be putting a submission to you. What we're saying is that the relevant legislation in the Disability Discrimination Act does provide that all businesses of any sort will not discriminate in any way, will not put barriers in the way of people with a disability having equal access to services. Now, that access can be physical. Wheelchair people have a great deal of difficulty. It can be sensory, and so on, but it's not in our view a social policy issue, it's a legal requirement under the legislation.

PROF HARPER: Whose responsibility is it to enforce that, Rod?

MR IRWIN: The Human Rights Commission.

PROF HARPER: The Human Rights Commission enforces that act?

MR IRWIN: Tries to.

MR BEERWORTH: Has there been a case or has there been any determination by the - - -

MR IRWIN: We have not - because we've done reasonably well in getting responses, we've not sought to bring a case. A case can be very expensive, very time-consuming.

CHAIRMAN: How long have you been actively pursuing this subject?

MR IRWIN: We got directly onto the relevant people in the Commonwealth Bank and Westpac, and had some very extensive negotiations.

CHAIRMAN: Years, though, or what are we talking?

MR STEPHENS: No, it's about 2 years.

CHAIRMAN: 2 years.

MR IRWIN: About 18 months ago.

MR BEERWORTH: Cliff - if I may, chairman - I'm a little confused with the chairman, I think. In what you've arranged with the banks, it's a questions of exempting from fees, but are you also talking about physical access or do you oppose ATMs or do you want to make sure there is adequate provision for people to deal with human beings, or what is the - - -

MR STEPHENS: Well, the latter is the first point. We are concerned that our consumers don't have access to human beings, as you say, for all sorts of reasons.

MR BEERWORTH: Right.

MR STEPHENS: And the banks have addressed that in relation to exempting fees, which is essentially where all this started because of them trying to cut down on their labour and going to machines.

We've also raised with them the question of physical access. Now, a lot of our consumers, if they were able to physically access ATMs with wheelchairs, etcetera, then that would solve the problem for them. The difficulty with physical access of course is you can't get close enough with your wheelchair, and often you need to do that and see there, and it's not possible, and the banks have addressed that issue, but I haven't seen any changes actually, but that would be a way of assisting some of our consumers.

CHAIRMAN: When you say "addressed the issue", they are physically changing the, redesigning the - - -

MR STEPHENS: They've talked about it.

CHAIRMAN: They haven't done anything.

MR IRWIN: Well, the banks that we've talked to, the two, have in fact got plans; have reviewed all their premises and so on. This is being pursued separately. Under the DDA there are provisions for standards to be set, and those standards to be met by - - -

MRS NICHOLLS: Rod, we had the opportunity to view some of this new equipment both in Toronto and in New York, where the kiosk-style banking for all consumers is no longer designed to be used standing up but designed to sit down and be in perhaps a more relaxed environment, which does seem to offer some potential to assist your constituency. Chairman, I had several questions, if I could ask the first one - and I don't know if I want to ask Rod or Cliff so you can decide.

We have had a number of representations put to us about the reconfiguration of branch networks, and some of those have highlighted experience overseas where, although the traditional branch of the bank may have closed, a mini-branch, if you will, has opened in a supermarket or whatever, offering extended hours, and while these facilities can involve quite a deal of high-tech equipment it is certainly usual in some of the ones that we were exposed to that they are manned by an individual for hours that are greatly extended relative to what we'd be used to in branches today. For example, at Wells Fargo they're manned from 10.00 in the morning till 10.00 at night, 7 days a week.

So my question to you really is: do you see a potential benefit for your membership in some of these alternative branching arrangements, and the second part of that, could you comment on the experience of your constituency in using GiroPost?

MR STEPHENS: Well, I'll take the first one first because I've never heard of GiroPost.

CHAIRMAN: Australia Post's banking service. If you walk into Australia Post you can do a substantial amount of banking transactions with banks.

MR STEPHENS: I'm sorry, I don't go into - - -

MRS NICHOLLS: All of the smaller banks are signed up. None of the four majors has signed.

MR STEPHENS: In terms of kiosk banking, that would seem to satisfy the difficulties of a lot of our consumers. You have the human access, you have in terms of general access perhaps a better ability to access more sites, and in shopping centres where it's easier to access rather than - often it's difficult to access banks in strip shopping centres because they're old, with steps, and what have you. It also avoids the difficulty that is perceived by women with a disability, of insecurity; an open area with again a human being there.

So, yes, that would solve a lot of the difficulties perceived by our consumers, assuming that there again weren't fees involved in accessing that, and accessing multiply within a certain period of a month or whatever.

MR IRWIN: The only negative element in that is the degree to which some of those kiosks look to be psychedelic with flashing lights and so on.

CHAIRMAN: Sure.

MR IRWIN: People with cognitive disabilities and other psychiatric disabilities can in fact be put quite off by that sort of appearance. Just quickly to - we recognise that the technology is rapidly changing. There may be for example advantages for some in using telephone banking or personal computer hook-ups and so on. What I think we would like to see is some sort of consultative framework in which the banks would address these problems with perhaps our organisation and other disability organisations.

CHAIRMAN: Okay. I think you've made your - - -

MRS NICHOLLS: Taking it in a slightly different direction, my understanding is that within your constituency there are a number of profoundly disabled individuals whose financial affairs have been taken out of their control and either put with a trustee organisation or in some kind of trust, and I use that term loosely, with the hospital or facility where they're a resident. Are there any issues that are arising from these arrangements that you'd want brought to our attention? I'm thinking of issues about the safety of the money, the adequacy of the investment returns, access of these individuals to their money.

MR STEPHENS: No, there are no issues that we would wish to bring to attention. I would have to say there probably are issues, but our submission really is focused on the access.

MRS NICHOLLS: Thank you.

CHAIRMAN: Can I thank you both for a very clear presentation. I'm sure the inquiry will have no difficulty picking up the issues that you're raising.

CHAIRMAN: We now have, ladies and gentlemen, Edith Morgan and Gerard Thomas from the Australian Pensioners and Superannuants Federation. I'm sure you understand the very informal procedures this morning. We just need you to state your names and the organisation you represent so it's recorded adequately, and if you'd like to make some remarks to us we'll pick up on the points that we wish to raise. Thank you both.

MS MORGAN: Edith Morgan. I'm the national secretary of the Australian Pensioners and Superannuants Federation, and I have with me Gerard Thomas who is one of our policy officers.

CHAIRMAN: We'd like Gerard's voice so we can register it.

MS MORGAN: Good.

MR THOMAS: Gerard Thomas. I'm policy officer with the Australian Pensioners and Superannuants Federation.

CHAIRMAN: Okay, it's over to you.

MS MORGAN: We have a membership of approximately 300,000. It is a national body, a federated body, and with affiliates from all the states, and it's through that association that our policies are formulated. They're formulated by the members through their delegates to our council meetings. One of the things that we're very concerned about and we've had for some time - had a campaign, particularly at the introduction of the automatic teller machines, recognising the difficulties that many people have in accessing that sort of equipment and taking away that personal contact with individuals in banks.

I for example have a visual impairment problem so there's no way I can use the automatic teller machines, and my association through the bank is through talking to the teller, and I would say we also have a great fear that many people, particularly at my age and older, have had some very nasty experiences with banks, particularly in the Depression, and it hits them hard; that we would be very fearful that any system that's put in place does not force individuals with concerns to take the money from the bank and have it under their bed, and I think that's a real fear for us with many of our older affiliates.

So we're looking for a system that will recognise some of the difficulties that older people have, and certainly I've never used an ATM and am unlikely to. I also have a great sense of my own worth, an individuality, and I'm not prepared to just be pushed around by the quest of the bank to operate in certain ways. So I think that's a very

important element to take into account, that we don't take the right of people to operate in whatever way they feel comfortable with.

MR THOMAS: I might just also add that I think certainly older people have got a significant interest in the deliberations of this inquiry as one of the main users of financial investment industry but also I think as many retired people are accumulating more and more superannuation, I think the regulation of the financial system and how it meets older people's needs is particularly important. I think certainly people need a system that will actually protect their interests, and certainly I think we need to look at how we can assure the particularly unsophisticated investors, as many of our members are, that their needs are particularly met.

We've noticed in the report that there's a discussion about issues around technology and the rate that that's driving a lot of these changes. I think there's certainly some I suppose salutary lessons about the way that banks have introduced electronic technology and the impact that's had upon older people in Australia. Certainly older people are always seen as an afterthought whenever they're introducing any of these new systems, even I think with some of the - certainly we don't believe older people are technophobic, if you like. They will adapt to these new systems, but it certainly needs more better information and understanding coming from financial institutions about older people's reluctance to use them.

I mean, many people simply don't even understand the difference between a debit card and a credit card. We have people asking us, "Do I use an ATM card or do I use an EFTPOS card?" so there are clearly some significant misunderstandings on these sorts of issues. The other sorts of issues, I suppose, we would just briefly like to raise relate to I think access to dispute resolution schemes, and older people's understanding of those schemes.

We've certainly found that whether it be the Australian Banking Industry Ombudsman or the Telecommunication Industry Ombudsman, all those schemes that have done research clearly show that it's older people who aren't aware that the schemes exist, so I think certainly we would see the need for some sort of rationalisation in that area. There's a whole proliferation of schemes, it's good that they're there, but people just don't know how to access them. So I think the idea of a single entry point is certainly something which is attractive to us.

CHAIRMAN: Across the financial system.

MR THOMAS: The other issue I suppose relates to - well, I might just leave it there and we can maybe raise some other issues later.

MRS NICHOLLS: Yes, thank you, chairman. The issue that I'd like to explore with you is the licensing of financial advisers. I'd be interested firstly in hearing the experience of your members in working with the advisory community, whether they've had good experiences or bad experiences and the nature of those experiences, and secondly, I'd welcome your comments on whether the licensing of advisers should perhaps go further than it does today; really picking up on your point, Ms Morgan, that your members want that safety and security of knowing they're dealing with someone who has their interests at heart. Could I ask you to address that issue?

MR THOMAS: Yes. Well, I suppose our members' experience with financial advisers is, as you would imagine, quite mixed. The most frequent type of call that we get in our office about financial advisers is, "How can we find someone who's going to work in our interests?" and not basically try and hide whatever commissions they're making or will disclose what commissions are out there, but many older people tell us they experience a lot of difficulty trying to work out what are the benefits that will accumulate to them and what benefits will go to the investors, so there's a real difficulty and there's certainly a perceived need out there for much better information, and that's one of the reasons why, for example, the Department of Social Security set up the financial information service.

While they're not investment advisers, they do go some of the way to at least providing people with quite useful information. The other point I would say is that we find that many - one of the problems with the financial advice industry as far as many of our members go is that the government's continually playing catch-up to a lot of the rules that relate to the regulation of financial products. The government will change the rules, advisers will devise new ways to get around the system, the government introduces grandfather rules and then people cry foul because they're caught up by changes of the rules.

So I think that's certainly a worry, that often some of the messages that financial advisers are trying to give to older people aren't necessarily in their interests.

There's certainly not a great deal of understanding about issues around the risks involved in certain types of investments

and there are certainly many people who are sold very inappropriate investments. We've had recently an 88-year-old woman who contacted us and she was sold a 10-year term deposit. Some of the products are clearly - they're certainly being sold the wrong types of products in this area.

MRS NICHOLLS: How would you see those practices being stopped? Currently advisers are deregistered or they have to pay a fine. Does that help consumers or not?

MR THOMAS: I certainly think that does help consumers and I think certainly we've noticed that the Australian Securities Commission has got a lot tougher in recent times on the activities of advisers and I think that putting that information in front of consumers and making them aware of the inherent risks involved is one of the ways of doing that. On the other hand we probably do see that there are probably some negatives with licensing, of giving in essence accreditation to a particular adviser, because many people will see that as a stamp of approval. While they want that stamp of approval, it does carry with it the risk that something may go wrong.

MS MORGAN: We would be very insistent that regulatory bodies be set up that will work in the interests of users of banks. I think that's very important and I would think you'd find that most older people have banked with the Commonwealth Bank - in fact they have almost a monopoly on older people's moneys - because they felt secure that it was a government institution. It no longer is. It's now a player in the private marketplace and so it puts those older people at risk somewhat and I think that's a very important point, that there has to be a regulatory body overseeing - - -

CHAIRMAN: I can assure you there's no intention on the part of this inquiry to lessen it anyway.

MS MORGAN: I'm not saying that.

CHAIRMAN: The security of ordinary Australians and old people's deposits is a really big issue.

MS MORGAN: We have with us Mrs Jean Wilkinson, who's the president of the Older Women's Network here in Victoria and we can say, working with older women, that there are lots of areas where they're very insecure. Very often they've been dominated in their marriage through a man doing the marketing and the banking, and they're living longer. Maybe it's because they didn't have that responsibility, who knows? But however, I believe that when you come across older

women who have never ever had charge of a cheque account, and having to then do it on their own, there are some significant problems for older women in the marketplace.

CHAIRMAN: Could you elaborate a little bit more on it? What are the issues that this inquiry should endeavour to get its mind around that relate directly to this? A regulatory body, for example?

MS MORGAN: Yes, and I think part of that regulatory body is providing information that's readily available. Banks have been notoriously bad in providing information and if you go and pick up anything it's always in very small print. For people like myself it's useless, so you just go along and do what you feel you have to do but they have to be more up-front in providing information for older people that is readily available and that they can read. So that means a little bit more cost to them in providing print that is larger and, believe me, the incidence of visual impairment within older people increases as you age. It's very significant.

MR BEERWORTH: It will give you comfort that I've never used an ATM and I probably never will either; but a question, if I may, particularly to you, Gerard. Are there any specific instances of problems you'd like to put to us? Obviously the old do constitute a particularly vulnerable group but do you think that there are evidences of fraud or people preying on the elderly?

MR THOMAS: I'm glad that issue has been raised because we've certainly been trying to discuss with many of the banks that we have regular discussions with about how they can actually tackle the issue of financial abuse of older people. We certainly feel that this is a hidden issue and while there's a lot of talk about abuse of other people in society, the issue of abuse of older people certainly doesn't really hit a rating in terms of the public's mind.

We certainly know that changes towards more electronic forms of banking mean that many older people may have their son or daughter or their carer - very well-meaning, I suppose - to look after their affairs but that opens up the potential for abuse and certainly our discussions with the Accommodation Rights Service in Sydney, which is an organisation for people in residential care, indicates that the financial abuse of people in increasing. They say at any one time it's 4 or 5 per cent. It's only, I suppose, anecdotal evidence. There have been more and more reports come out on this issue but I think it's certainly something for us to ponder; that some of the changes with the

introduction of new technology are leaving older people more open to abuse.

There was a report from the Western Australian Public Guardians Advocacy last year, saying that they had been coming across increased cases of financial abuse of older people.

PROF HARPER: Your constituency deals both with the banking industry and with the superannuation industry and in particular I expect that the latter is likely to grow as time goes by. Most of the comments we've had this morning have dealt with the banking industry. I would like to invite you to offer some views about the relationships between your constituents and the superannuation industry. Is it different, the same? What can be said about that?

MR THOMAS: There are, I suppose, a number of similar concerns that people - just as people have difficulty accessing information about banking, the same could be said of information about superannuation. Certainly I think government initiatives in recent years to provide much better disclosure in those sorts of areas has improved, but I think people certainly aren't aware. We get a lot of calls about - you know, people just don't know how they can access their benefits, how they can get early release, who they take complaints to. At times it's so confusing to tell them where to go, so I think they're some issues. I think there are some similar concerns about lack of information, lack of disclosure. While superannuation is a long-term investment, people are looking at it in a short-term way, I suppose, as well.

MRS NICHOLLS: A final question. I think it's to you, Ms Morgan. I'm still going back to your earlier comment about the tremendous desire of your membership to have that absolute surety that financially they are safe. What I wanted to ask you about was the field of retirement villages, nursing homes and lifetime care. It would be common overseas that the big life offices and banks are active in the provision of these services. Currently this is not the case in Australia to the same extent. Does your organisation have a view about the desirability of banks being permitted through change of law to move into the business of offering lifetime care and owning retirement villages and nursing homes?

MS MORGAN: I must admit we haven't talked about it, though we've been very involved in the nursing home issues that arise - regularly, I might add. I would feel I'd be much happier if nursing homes

and facilities for people were much more in the hands of the community rather than a banking system. I believe that we need watchdogs but I think they're more likely to come from people who live in and are part of a community that's involved around those issues, rather than a banking system being able to provide the protections that are needed.

Financial rip-offs have taken place in nursing homes, there's no doubt. It's improved as the government put in more regulations but people with dementia and Alzheimer's are very, very liable to be ripped off and I could tell you individual cases but I don't know if it would further this debate at all, but that's my feeling.

MR THOMAS: The other point to raise on that is that certainly we find that many retirement villages cater to the more wealthy end of the spectrum, I suppose, in terms of retirement incomes so we would also probably have a feeling that if they were going to move into the aged care insurance industry, again that's an option for people who do have resources. I suppose you would have to look at what's the impact of having an insurance-based aged care system upon access for people who don't have those resources. So you're looking at perhaps a two-tier type of system, so there are certainly more deeper ramifications on that issue if you're looking at banks, etcetera, getting more involved in selling aged care insurance-type products.

CHAIRMAN: If I've captured it correctly, there are really three areas you've been talking to us about: access of the older community to the banking system on a satisfactory basis and not just being pushed towards a new electronic technology; you want better information disclosure and explanation in the totality of what that means both in terms of perhaps using some of the technology and the size of communications - print size; and I think the third thing was access to dispute resolution mechanisms. Are they the three things you've basically said to us?

MR THOMAS: Yes.

CHAIRMAN: Okay, that's fine. Thank you very much. We now have, according to my program, the Consumers Federation. Mr Kirk from the Consumers Federation is just coming up the stairs, I'm told, so it will be just a moment.

CHAIRMAN: Ladies and gentlemen, we'll recommence. I did say at the beginning that I would try and fit in a break. We've had the break so we're not doing too badly at all on the timetable. We now have Greg Kirk and Anne Stringer from the Consumers Federation of Australia. Greg, I perhaps just need to repeat that the inquiry has no special legal powers or parliamentary privilege so you should understand that. These proceedings are being recorded and we would simply like you to commence by both stating your name and the organisation you represent for the purposes of the record, and we'd welcome your opening remarks and we can proceed from there.

MR KIRK: Thank you, Mr Chairman. My name is Greg Kirk. I'm from the Public Interest Advocacy Centre in Sydney here on behalf of the Consumers Federation of Australia.

MS STRINGER: I'm Anne Stringer from the Consumer Credit Legal Centre, New South Wales, here on behalf of the Consumers Federation of Australia.

CHAIRMAN: Thank you.

MR KIRK: Mr Chairman, the federation most appreciates the opportunity of addressing the inquiry. Our focus today will be on consumer protection regulation and the ongoing need for it and how that need might best be addressed. It's not that we undervalue other forms of regulation and in particular prudential regulation but we consider that they have been better addressed by some other bodies, including some of the regulatory bodies.

We would stress that there is a need for consumers of financial services for a fair marketplace and surprisingly to us that wasn't listed in the discussion paper as one of the main requirements of a good regulatory regime, but we think that that's one of the fundamental aims and other matters such as costs, although important, are to some extent subsidiary to that.

In that context, the existing regulatory structures which exist - things like the Credit Code, the various codes of practice specific to industries such as banking and the two insurance codes and now the credit unions and building societies, the dispute resolution schemes - they haven't appeared from nowhere and they are the result of problems which have been identified over a long period of time, they being brought to the attention of government and eventually having been addressed after lengthy negotiation and compromise by both sides as to what the content of the regulatory solution should be. Certainly

the time it's taken to produce the current Credit Code is fairly legendary, but in addition to things like the FT Code, it took 9 years and multiple drafts. The Banking Code - it's 5 years since Martin recommended the banking code of practice.

So these things take time and they involve very detailed examination of specific market failures, what consumers' needs are, the problems that are arising, and involve a large amount of negotiation between the parties. No doubt any piece of regulation like that should be examined from time to time but it should be done in similar sorts of detail to its evolutionary process, and we are somewhat disappointed in some of the submissions to the inquiry at the moment in terms of the lack of specificity in some of the criticism of this regulation. It's terribly hard to address things when there are wholesale criticisms which aren't focused on particular aspects of regulation, and we think it would be folly to abandon any of the significant pieces of regulation in the absence of that sort of debate and discussion at a detailed level.

In relation to a fair marketplace we think competition itself is never going to guarantee a fair marketplace and, although it's essential to it, detailed disclosure is also insufficient to guarantee that. Much that is unfair in contractual relations between providers of services and consumers can be hidden in the detail of contractual provisions and that detail is not subject to competition.

There are many examples I could go into of that but perhaps one of the classic ones is the early electronic funds transfer contracts, the ones in relation to ATMs. They provided for daily limits, that you couldn't get more than $200 out yourself and that you couldn't take out more than was on your account, but if someone else got hold of your card and, through no negligence of yours and through a failure in the system, managed to obtain large sums of money, you were liable for the whole amount, not limited to your daily limit, not limited to your account balance, nothing to do with whether you're negligent or not - and every bank had a term like that and it wasn't subject to competition and it wasn't competition that eventually addressed it. It was public outcries, it was the consumer movement getting involved, and regulators getting involved and even then it took a long time.

There are a number of other examples of those sorts of things but they come up in all areas, certainly a number in current insurance contracts, of terms which are terribly unfair and which people are unaware of. I think we have to be realistic in the extent to

which we can expect consumers to actually go through that sort of detail, not just on the contract from the service provider they choose but from every other service provider or for at least a sufficient number of them to get an idea of differences across the marketplace.

In reality that just doesn't happen and it's not going to happen and that leaves scope for very unfair terms to be included in contracts and they're the sort of things that are not addressed by disclosure and not addressed by competition and there has to be a regulatory structure in place that will address them.

In terms of some of the industry submissions in relation to a number of these pieces of regulation, I think there needs to be some looking behind those submissions. There's a large number of assertions with not very much evidence provided for them. Well, one example is the Credit Act inhibits securitisation of loans. I don't think there's any evidence that establishes that there is any significant inhibition of that process by the Credit Act at the moment. If there is, if there's some irrational fear, then it is an irrational fear and it should be addressed by creating greater understanding, not by abandoning the protection that is necessary.

MRS NICHOLLS: Sorry, on that, you're aware that's been taken up through proposals for change regulation and then subsequent amendment to legislation?

MR KIRK: No, I don't know about the detail. There's also suggestions from at least one of the banks that the Trade Practices Act is responsible for an explosion of consumer litigation against them and that most of that is unwarranted and unmeritorious and it costs an enormous amount to defend it and that the institutions eventually win. Now, I think anyone with any knowledge of the legal aid system and the cost of litigation in this country would know that consumers just don't have the resources to bring large amounts of litigation when there's no prospect of winning. If they are, it's a problem of their lawyers. They are giving them bad advice and that should be addressed, but I just don't think it's happening.

Institutions seem to be very quick to blame their own failure to innovate on existing regulation, but more often than not in our experience it's the complacency of the institutions that prevents this. There's talk of them tailoring products to individual customers, the individual customer's needs, but I've had experiences even in the last week where because of the innate conservatism of the legal

departments of major banks, they are just unwilling to change anything. They don't want to have anything different from what their standard product is, and nothing to do with credit regulation.

It is partly because of the historical sorts of regulation that they are under the pre-eighties regulation. They are entrenched in the idea that we provide a particular product on our terms and we don't change it.

CHAIRMAN: You don't see any innovation in the marketplace in recent years?

MR KIRK: I certainly see innovation but it's at the level of one bank introduces some new change which becomes generally available to their customers and it's in a standardised way. It's not tailored to individuals and then there's a general copying of that. There's nothing wrong with that process and there have been some very good changes produced out of that process, but the idea that if not for consumer protection regulation they would be providing very particularised services and products to individuals I think is just far-fetched.

I think that comes a lot from innate conservatism, particularly in the legal departments of major institutions. It's that same conservatism that has generated the very lengthy documents that you've historically seen in relation to most transactions; that again loan documents have never been regulated in the past up until 1 November this year and they have always been incredibly long, incredibly archaic and full of legalese, a lot of which has been unnecessary and it's conservatism just to make sure that they address every common law case that's ever occurred.

CHAIRMAN: So have we made progress?

MR KIRK: Have we made progress?

CHAIRMAN: Mm.

MR KIRK: Well, I think partly from consumer demand, partly from the code processes and stuff that came out of the Martin inquiry, there's been a lot of pressure towards plain English. I don't think the institutions are good at it yet but they're certainly making attempts and they're spending money on it. I guess that's another thing. They talk about how much money particular bits of regulation is costing them, but it is in part to address long-standing problems in their own practices and procedures which have never had anything to do with regulation and they really need to come up - - -

CHAIRMAN: The statement has been made this week - and I'm sure you will probably disagree with it - but there's a hundred basis points there out of the former Credit Code in extra cost to the creditor.

MR KIRK: Yes, I would like to see some proof about that. I just don't think - - -

CHAIRMAN: It's an assertion, I guess.

MR KIRK: Yes, but there are always going to be costs involved in improving those credit products. Pre Credit Code and pre the Banking Code for loans outside the previous Credit Act, which were the vast majority to consumers, none of the major banks thought it either necessary or warranted to give people a copy of their loan contract.

CHAIRMAN: Can I just make it clear that the committee are focused about breaking down consumer protection or regulation. I mean, we're dealing with the issues that have been brought to us in the submissions and you wouldn't want to come to this table today in the belief that we have got some preoccupation of breaking down, you know, the protection that has been achieved for consumers over the years. Nevertheless, we are dealing with the issues that have been raised. We appreciate your point of view.

MR KIRK: Yes, and it would seem to me that the committee has been bombarded with a large number of submissions attacking this regulation with not much specificity, with not much proof, and I guess that's why we're concerned and here today.

In terms of the regulatory model to be adopted, we're in favour of - and this is specifically for consumer protection - we're in favour of a dual structure where there is a specific consumer protection regulator and there is the ACCC standing over that. The need for the specific regulator arises because in order to do any of this stuff well and in order to make the fine adjustments that are going to be needed to a lot of regulatory regimes, you need to have specialised knowledge of the market. You need to be close to the market, you need to have contact with consumers, and I think that's been one of the problems in federal regulatory arrangements in the past, that there wasn't much contact. In that context I think there's an important role for the consumer movement to play.

CHAIRMAN: Do you represent a national view on that, because we certainly had some feelings out in perhaps the far-flung places of the empire where some of the states' organisations mightn't necessarily subscribe to, you know, a national focus - - -

MR KIRK: Yes, that is certainly - I don't think it's a uniform view nor entirely unanimous but it is the national view, yes.

CHAIRMAN: Thank you.

MR KIRK: And a lot of that knowledge of the marketplace comes either from having a complaints handling function, which most federal regulatory agencies haven't had, and from having contact with consumers through the consumer organisations, through Consumer Credit Legal Centres and those types of bodies. Again I guess in our view there has never been a specific consumer protection regulator in relation to banking. The Reserve Bank repeatedly denied that role before the Martin inquiry, and when we approached them about it, repeatedly.

I think that the lack of a regulator close to the market in banking has led to enormous problems. That's the area where there's been - you know, the Martin inquiry into banking, there's been repeated inquiries into pricing in banking. Nothing happened about banks' major problems without a huge public outcry and political pressure, and most of the regulatory problems with banks have had to be dealt with at a political level, and I think that for all that I don't think the ISC is perfect in relation to insurance, at least there with someone closer to the market there has been pressure at a quieter level, at a more bureaucratic level, to do something about things before they become so outrageously problematic that they become political issues, that there's large-scale inquiries.

And that's really why we see the need for the specific consumer protection regulator, but we think above that there does need to be a body with a broader perspective that's willing to put major resources into major issues when they do arise, that's able to break deadlocks between and within an industry where there just is an impasse, and that again has happened in the past with things like - well, the EFTS Code was one where there had been an inability of the regulators closer to the institutions to do anything about it, and it was only late in the day after state intervention, and eventually the Trade Practices Commission at that stage got involved - there was real move for change and there was a resolution developed.

Similarly with consumer credit insurance that was an area where there were huge rorts in the market and the ISC just had not addressed it, and eventually the ACCC or the Trade Practices Commission came in, and then also at the level of complaint handling,

things like the problem with the AMP and life policies which weren't sufficiently handled either at the industry dispute level, or the ISC level, and eventually the Trade Practices Commission got involved in it. Although they don't have that day-to-day involvement and they're never going to be able to deal with the ongoing small adjustments, I think when things really get out of alignment there needs to be that broader view.

CHAIRMAN: No, we understand that option very clearly.

MR KIRK: I'll say a couple of things about the Credit Code. I understand it's being addressed by various consumer bodies to you and you may not want to hear too much about it, but - - -

CHAIRMAN: It's had a good run. Some people are having two goes at it, I suspect.

MR KIRK: In summary the principles behind it are both rational and clear - and that they should encourage fair competition; that there is a desire out in the marketplace for more information about products - and that comes up in the ABIO statistics about complaints - and again as I was saying before, when you look at these alleged costs of the code it has to be looked at against the position that the industry is coming from and the problems that existed before, and the fact that they didn't even provide any copies of contracts before - - -

CHAIRMAN: As I said before, our concern is how it can be made more effective and better, simply - you tell us. If you're happy with it, that's fine.

MR KIRK: Well, I must say at the time we saw it as involving very significant compromises and very significant losses of rights relative to the previous legislation, but we thought those compromises were worthwhile in the end given the extended coverage. The industry took the same position but they then - you know, it seems every new inquiry that comes around, they want to have another go at it.

And you may also have already heard it, but the major civil penalties cases that occurred under the old regulation gave overwhelming proof of the difficulties that existed in relation to banks' internal structures, their internal management, auditing, cross-checking of procedures, compliance with their own internal guidelines, management of computer programming, which was all mishandled and which were all problems that needed to be addressed, whether or not there's new regulation, and the Consumer Credit Code is really the

vehicle by which that's being done, not the root cause of that needing to be done.

MRS NICHOLLS: Greg, how do fines help consumers? Are fines the best way to help consumers in enforcement?

MR KIRK: It depends on the particular instance involved, but certainly in relation to the civil penalties, in terms of improving the whole standard of treatment of consumers - to have a regime that institutions have to take seriously in terms of compliance is of benefit to consumers as a whole - to every consumer that goes for a loan - and the experience with that regulation, the Credit Code, in the past was that it wasn't taken seriously, that there was wholesale non-compliance with it, and the institutions felt that they could do that with immunity and it was only in the latter - you know, it took some years after that legislation was introduced before there started to be cases under the civil penalties regime which really were revolutionary in the sense that they demonstrated to these institutions that, "This is important, you do have to comply with it. It's important to get this information accurately to consumers."

MRS NICHOLLS: The reason I raise the point is that my impression is that most consumers would be unaware of organisations that had been fined, and therefore perhaps the process of fining doesn't actually influence consumers' choice of who they do business with.

MR KIRK: It's an interesting question, in that I was involved in the two major civil penalty cases and we chose not to run great publicity campaigns after them saying, "These people have been fined huge amounts," because in the process of the case those institutions so much improved - in order to reduce their fine at the end of the day for the wholesale breaches of the act, and as required by the tribunals, they provided evidence of the changes they had made to their systems, so by the end of the day there was no point in going out into the media and screaming that no-one should borrow from these people because of their wholesale abuses of this legislation because the chances were, by that stage, that they were the ones least likely to breach the legislation again.

MRS NICHOLLS: Yes. Thank you.

MR KIRK: Yes, it's not that you try to change people's choice in that way, it's a process where there's pressure on institutions to comply with legislation, and I think the demonstration effect of those few big cases will mean that there won't be the major cases under the new

civil penalties regime. The whole attitude to regulation, I think - because they know that that is there and that that could be enforced against them - has really changed, and I think that was a sea change, and I hope there won't be any cases, that there will be minor ones but there will be an improvement in the marketplace overall. But I think as soon as you took that threat away the trend back to complacency is still there.

MRS NICHOLLS: Yes, thank you. Chairman, may I ask another question?

CHAIRMAN: Yes, surely.

MRS NICHOLLS: I want to go back to the issue that you began your remarks with, and that is the issue of a fair marketplace, and there are a couple of areas here that I'd just like to understand a bit better. One is, I'm interested in your notion that unfairness is in the detail. What I'd like to know more about is whether this is actually a global problem or whether there are financial institutions in marketplaces outside Australia where the details are substantially different and perhaps more fair, and therefore that there is perhaps this avenue to bring this competition in the detail, as you call it, to Australia.

Secondly, I'd like to understand how you would propose to measure the fairness of the marketplace and how you would hold regulators accountable for that fairness. I'd like some really specific suggestions, if you've got them.

MR KIRK: I think in relation to the last question it goes largely to public opinion about what's reasonable and fair, and there are ethical and moral questions there.

MRS NICHOLLS: So you'd pursue the accountability through market surveys, or how exactly would you hold the regulator accountable for delivering a fair marketplace?

MR KIRK: Well, looking at complaints from consumers, first of all, to see what complaints are arising, and then whether those complaints reflect practices which are unique to a particular service provider or are common in the marketplace. If they're common, then why are they justified? Now, with the EFTS example I gave, there was just no justification for putting all of the burden of the risk of unauthorised use of a new technology on the consumer. The consumer had no ability to control that, no ability to minimise - it was standardised through the market, and it provided a positive disincentive to institutions to improve the security of their systems.

MRS NICHOLLS: Yes, so if I understand your - - -

MR KIRK: Now, that wasn't improved by competition, it was improved by regulatory intervention after a big public outcry.

MRS NICHOLLS: Yes.

MR KIRK: And that's one of those things which I think would be apparent to - it's a moral and political issue as to whether that's fair and presumably the cost of changing it relative for institutions is a factor you take into account, but I don't think that there are fairness indicators that you can draft in detail. There might be a few about things like is it a risk that is in the hands of the institution to minimise or change, or in the hands of the consumer? Can they do anything else about it? And I'm sure given time I could come up with more broad principles but I don't think that you're going to be able to tick things off easily in terms of those sorts of issues.

There's one which I'm sure none of you would know, but you all have car insurance policies and there are some car insurance policies which have a provision such that if someone without your permission and consent or even knowledge takes your car and drives it and crashes it, and when they crashed it they were drunk, you don't get paid because the driver was drunk. Now, not all insurance policies provide that; there are about three different levels. The most fair is one which says, "If you both gave your consent to the driving of the vehicle and you either were aware or should have been aware that the person was liable to be drunk then you bear the loss," but there's no competition at that level - - -

MRS NICHOLLS: No, I understand what you're saying about competition, but in terms of mechanics what I think I heard you say was that the number and nature of complaints would be an indicator of the fairness of the marketplace.

MR KIRK: Yes - the nature more than the number.

MRS NICHOLLS: So you would look for that more reactive measure of a regulator, rather than having a regulator charged with seeking out unfairness? I'm just trying to understand exactly what you envisage.

MR KIRK: Well, you know, if I was a regulator I would be looking - - -

MRS NICHOLLS: If you ran the place, how would it be different?

MR KIRK: I would be looking at these contracts at the outset to see if they were fair, and there are some things which are apparent to a person who knows the industry and knows the sort of situations that

are likely to arise, that are apparent just looking at the contract. There are some unfairnesses that in drafting the contract and reading it you could never tell; that in some situations when those terms are applied, they will be unfair. And that's where complaints make - - -

MRS NICHOLLS: So, Greg, is it your expectation that a regulator would take on that active role?

MR KIRK: Yes, an industry-specific regulator should know what products are available in the marketplace and whether there are some factors or some terms and conditions of those products which are so unfair that, if known to the general public, they would be regarded as unacceptable and unfair.

MRS NICHOLLS: Thank you.

CHAIRMAN: I'm just conscious of time. Anne, did you want to say a few more words to us?

MS STRINGER: Just on the regulation, I think it's important that we need a regulator also who can identify systemic problems, as Greg has been saying, and perhaps have the power to do audits of industry sectors, more specific industry bodies, so to take also a proactive role as well as looking at complaints that come through.

CHAIRMAN: Thank you. Do you want to keep going, or would you like us to go on? We've got some more time.

MR KIRK: Well, perhaps a couple of things just about - there's a lot of support now for industry-based codes and alternative dispute resolution, and that's support which comes from industry and regulators and from consumer groups, and that has been a very positive development in the last 10 years.

PROF HARPER: So can I just clarify, Greg, that within your view - you could say the federation's view of the consumer regulator, that you would envisage that being associated with a co-regulatory regime involving an alternative dispute resolution scheme, industry ombudspersons and suchlike? You wouldn't see it simply replacing all of that?

MR KIRK: No - no, not at all, and I think it's a matter of designing specific remedies for particular problems, and there are some things that won't be addressed by alternative dispute resolution schemes, that won't be addressed by - well, the classic example is I'm in one of the insurance dispute schemes, and where there are real factual questions where it depends on who you believe, we just say, "We can't

deal with it. We're not a court, we don't have sworn evidence, we don't have cross-examination, and you'll have to go elsewhere."

PROF HARPER: And in such cases that would then get caught up in the consumer regulator, right?

MR KIRK: Yes, or the normal courts system.

PROF HARPER: But the consumer regulator, right, in an ACCC fashion, would pursue that - - -

MR KIRK: Yes.

PROF HARPER: - - - in the courts in some way on behalf of the aggrieved parties.

MR KIRK: I don't see the broad problems with the consumer credit market, which cover so many different types of institutions, being readily addressed through a voluntary code of practice. I just don't think it's realistic to see that that's going to happen. There are other matters which are more in relation to practice and procedure than law, where codes of practice do work well, and I think it's a matter of addressing the appropriate remedy to particular problems.

CHAIRMAN: Greg, did you have any queries you wanted to ask?

MR SMITH: Yes, I just wouldn't mind pursuing this point as well, because this is obviously quite important to us. How do you see the actual relationship between statute and the industry schemes? What would you see as the relationship? How would that work in your preferred model?

MR KIRK: Well, I think it's important that at some level the industry codes are enforceable. Now, there's a fairly artificial process which exists now whereby it's thought - and I don't think it's ever been tested - that if they stand up in public and say, "We've got this code of practice and we comply with it," then if they then don't comply with it in particular instances and they refuse to do anything about it, you could take them to court and say that they breached the Trade Practices Act in terms of being misleading and deceptive in saying they were complying in the first place.

Now, I would feel more comfortable with that if it had been tested and it was clear that that was going to work. I think that there needs to be some reliable mechanism, such that at the end of the day they are enforceable through some mechanism, and I think tying them to a statute is - - -

MR SMITH Have you looked at the model proposed by the Privacy Commissioner for privacy legislation in this area?

MR KIRK: No, I haven't. I know there have been suggestions, and there are provisions certainly in the state Fair Trading Acts for codes to be promulgated, such that they are enforceable as regulations under the act, although they've been arrived at through a more cooperative process, but I don't think it's ever been done. It becomes a difficult question at the end of the day because the advantage to codes is that if you can get the industry up to speed to take them on and to do something, and to feel that they're doing something about themselves, and they feel that they're taking their destiny in their own hands and they're doing a reasonable job at it, they then don't want - they baulk at the step of saying, "Well, we'll make this enforceable." It will be promulgated as a regulation.

There is some advantage to having industry saying, "We're going to comply with this." The difficulty is that if you let them run it themselves, then the tendency is for the code to get looser in its wording, to be very vague as to what they're actually promising or whether they're really just describing existing practice, and I think that's a process where there needs to be a specific regulatory body which is looking at them and putting pressure on them to do something about specific problematic issues, but also that there is some background pressure, that if you don't - "If your code is not adequate, we're (a) not going to publicly endorse it, and (b) we will probably regulate," and I think that's what happened with the FDS and EFTS, and that's the best of the codes.

I think there's been a gradual weakening of them ever since because there hasn't been enough background pressure, that, "If you don't come to the party and if you say" - motherhood statements are not enough.

MR SMITH: Well, there are two separable aspects, aren't there? One is the process whereby a code is promulgated, and who sets the rules up which enable those codes to be established, and then the second question is how the code is enforced. You've referred to the Trade Practices Act in the second case, I think. Many of the participants would claim it's just a contract-based or contract law obligation that they have, common law obligation. But either way, they're the two tasks. So perhaps I'll put the question in another way. Based on your actual case

load or experience, what are the areas which don't work for you now? What are the priority areas that we need to address?

MR KIRK: I've got a bit of a problem with that because I no longer have a case load in financial services.

MR SMITH: Well, perhaps the federation.

MR KIRK: Yes. Well, the Banking Code doesn't deal effectively with guarantees at the end of the day, I don't think. I think that's a glaring problem in that code.

MS STRINGER: Car purchases, which is a major purchase for most consumers when they buy a car. A major purchase for those consumers that are - - -

CHAIRMAN: You can take Greg Smith's question on board.

MR KIRK: Yes, that may be the best idea.

CHAIRMAN: I think Mr Beerworth has a question of you.

MR BEERWORTH: Thank you, chairman. Greg, again this is a consultation which implies an exchange of views. I'd like to address something that hasn't been directly addressed by you but it's an important issue. In particular, Anne, I see you quoted this morning in The Australian as saying that the committee seems to be prepared to trade off in some fashion deregulation against consumer protection. If that is your view, I'd like to make the comment, particularly if you hold that view, that it's a false dichotomy. There is no trade-off, as I see it anyway, between deregulation - whatever that might mean - and consumer protection.

What we're about is trying to achieve the best possible regulation to give the most competitive markets because that leads to the cheapest possible finance and products for consumers. It leads to diversity of product obviously, and it leads to the widest possible access to the system. It seems to me separately and beyond that one looks at what are the requirements of consumer protection because of course we accept - or I certainly accept anyway, Greg - that markets aren't perfect. How can they be? There always has to be an overlay, at least as I approach it as a lawyer, of what then society or the enforcement procedures ought to be to ensure certain outcomes.

So I think there is a false dichotomy, and I don't think we should be confused by that dichotomy. It seems to me, Greg, to go to your opening remarks, that if can bring about the most competitive system that gives diversity of product at the lowest possible price to the greatest number of people, heavens, that must go an awfully

long way towards what I would call fairness, as far as I'm concerned. We're certainly not all about dismantling consumer protection at all.

Greg, you mentioned that a number of the submissions have been extremely broad and therefore disappointing. I'd be delighted to take any number of submissions you want on detail. I'm fully accessible, and if there's any thought that there are things that we don't want to hear - which is a suggestion I heard this morning; this is the second time we've heard from you - I'm fully available. I'm in Sydney; you're from Sydney, Greg. I'm delighted to hear anything you want to put to us. Thank you, chairman.

MS STRINGER: Thank you.

MR KIRK: Thank you.

CHAIRMAN: Anything you would like to go to?

MR KIRK: I guess just in - - -

CHAIRMAN: I am starting to get a little bit conscious of the time.

MR KIRK: Okay. In conclusion, on the codes and dispute resolution, I think there needs to be background regulatory enforcement to make sure that they happen and that when they're in place, they're actually taken seriously and complied with. It's the same issue as what relates to the credit card. There need to be minimum standards about the coverage of them, and some attempt to get certainty and terminology and meaning of the codes, and what's actually being promised and not just vague statements.

There's a difficulty at the moment with the process whereby particularly dispute resolution schemes are approved. There doesn't seem to be much regulatory examination of them, of the more recent ones. There's one that the credit unions just came up with which had been approved by government and without - through partly miscommunication I must say - not much consumer movement involvement. When we kicked up a bit of a fuss and went to them and said, "There's all these problems with it," they eventually came to the table and said, "Yes, we'll make some changes," but government had not really identified - - -

CHAIRMAN: Where was this - in - - -

MR KIRK: This is in relation to the CUSCAL dispute resolution scheme.

CHAIRMAN: Right, yes.

MR KIRK: That's relatively recently, and those changes occurred through direct negotiation after government approval of

something that was really inadequate enough. There's also a problem with some of those schemes if a particular trader decides that - well, institution decides that it's no longer convenient for them to accept the decisions of the dispute resolution scheme they're in or to comply with the code, and there's certainly one of the insurers that has problems in relation to that at the moment.

So I guess in conclusion, the summary of our recommendations would be for that dual regulatory structure; that to change any existing consumer protection regulation requires careful consideration and balancing of the need to address particular problems, and other factors like costs to industry, and that the costs are certainly only one of the factors in the equation; that in relation to codes and alternative dispute resolution, there need to be those background standards and close monitoring of them by regulatory authorities, and that in all of this there's a very significant role for the consumer movement to play.

I think part of the problems with the alternate dispute resolution is that that tends to take away from government that entry point of all the sort of complaints that normally come through government agencies. They now go to the Banking Ombudsman or the insurance schemes, and with the rate of change in the marketplace, the new products coming, new technology, there are going to be problems and government needs to be aware of them as early as possible to make sure that they can either be avoided or addressed as expeditiously as possible, and that the consumer movement, particularly the organisations that provide an advice and assistance service, a direct consumer service, need to be funded in order to provide that information. So thank you.

CHAIRMAN: Thank you very much. Have we any further questions? I think we've probably covered it. We have appreciated your presence and your contribution, and I can only repeat: if you feel there are some more issues you want to put clearly before us, please do so. Mid-January is about the deadline. We really will have to shut the door and get on with this task. But thank you very much. Thanks, Anne.

MS STRINGER: I'd just like to say that we didn't answer your first question either, and I'd like to say we'll take that on board.

CHAIRMAN: Okay, thank you.

MRS NICHOLLS: Thank you, Anne.

CHAIRMAN: Thank you both.

CHAIRMAN: Ladies and gentlemen, we now have Diana Olsberg and Ian Court from the Australian Institute of Superannuation Trustees. I'm sure you understand our approach here this morning. We'd simply like you to introduce yourselves for the record. We'd be pleased to hear your introductory remarks. The only comment I would make is that if you want discussion and questioning, you need to give us time to be able to do that, so it's up to you.

MR COURT: How much time have we got?

CHAIRMAN: You're down for 30 minutes. We do have a fairly busy schedule today. We've done the best to fit everyone in. Thank you.

DR OLSBERG: My name is Dr Diana Olsberg. I'm executive director of the Australian Institute of Superannuation Trustees, and a trustee of one of Australia's largest public sector superannuation funds, the Superannuation Scheme for Australian Universities. I'd like to start by - - -

CHAIRMAN: Can we perhaps just get Ian on the record so there's no confusion over that.

MR COURT: My name's Ian Court. I'm president of the Australian Institute of Superannuation Trustees, and I'm the executive chairperson of CAPES which is a major industry superannuation fund.

CHAIRMAN: Thank you. Diana?

DR OLSBERG: I'd just like to start by just briefly outlining what the Australian Institute of Superannuation Trustees does. The Australian Institute of Superannuation Trustees is a national non-profit organisation. It's a professional body for the trustees of superannuation funds. We have 900 members, representing 350 corporate, industry and public sector superannuation funds, with accumulated assets of about $50 billion.

The institute has only been going for 4 years, but in that time our most important activities have been to support the performance, the skills and expertise of the trustees of superannuation funds. Just this year we have now started a national education and training program for trustees of superannuation funds following an intensive research study last year in which we identified that trustees have a very strong commitment to their role in the funds, and they're on a very steep learning curve, but particularly need support in maintaining and enhancing their education skills and expertise, and this education and training program is being very well received.

What I'm extraordinarily pleased to say is that the trustees are extraordinarily committed to their responsibilities and have embraced the opportunities to do education and training on a continuing basis, both individually and in small group workshops, and we also train full boards, so we go into the board and actually do a whole day training in the board, and that's generally the operations of the Australian Institute, and perhaps I'll now pass over to our president to talk about our submission.

CHAIRMAN: Thanks, Ian.

MR COURT: Yes, I'd like to just briefly summarise the main points in our submission. The first thing we wanted to impress on the review committee was that superannuation in Australia has got some unique aspects to it, and probably the first is that there is a legislative requirement which became operative last year for all regulated superannuation funds to have equal representation from members and employers on their trustee boards.

That meant that last year about 10,000 new people we estimate came into the system in terms of becoming either elected or appointed trustees, and I'll elaborate on these a little bit later, but the second main point is that there is a stringent legislative and regulatory framework under which superannuation is regulated in this country, the Superannuation Industry Supervision Act 1993, which came after the Occupational Superannuation Act, which was introduced in 87, and that legislation was introduced after a lot of work and consultation by the previous government, and it is world best practice, it's recognised around the world as being as advanced as any superannuation legislation, probably even more so than the ARISSA legislation in the US.

Thirdly we believe that because of some of the unique features of superannuation, there needs to be some specialisation in terms of the regulator who's dealing with superannuation. We think an organisation such as the ISC is important, although we can see the possibility of it being subsumed into a larger single regulator, and there may be some advantages in that, so we're happy to look at both of those options, but we see some specialisation needed.

The fourth point is that there are substantial differences in our submission between superannuation and other deposit-taking financial institutions or indeed other financial products,

and these differences can be summed up probably in about four key points: firstly that it is a sort of savings device which is preserved, in other words it's locked up for the length of the person's working life, which could be 40 years or so, so it's not something - it's not like buying a fridge or a hire purchase contract. It's a very long-term proposition which - the reason why it's locked up of course is it has actually become part of the social security system, we would submit, that it supports the old age pension system and therefore is a very important part of our social security policy in this country.

Secondly, it is compulsory. People don't have a choice as to whether they contribute or become a member of a superannuation fund. It provides for minimum amounts under that legislation. Fourthly, it currently has something over 90 per cent of the workforce covered, about 93 to 95 per cent, so it could be argued in terms of financial products it's the - - -

CHAIRMAN: Where the money's going.

MR COURT: Well, it's a product which most of the Australian population are exposed to, most of the workforce are exposed to, so once again that makes it unique. Fifthly we submit that all types of superannuation funds and retirement savings products should fall within the ambit of a single superannuation prudential framework, and we believe SIS is the up-to-date framework and should be retained at all costs, and that the same regulator should cover all sorts of superannuation products or superannuation funds, and they should include such things as the new proposed retirement savings accounts that the government has announced in terms of banks coming into the industry on the balance sheet.

So they're the key things. In terms of amplifying those briefly, I think it's important for the committee also to understand the sorts of superannuation funds that do exist or superannuation products that do exist, because they are different, and they need to be addressed having regard to those differences. There are around about somewhere between 120,000 and 140,000 superannuation entities in this country, which are made up of five main categories.

Firstly there are the traditional corporate fund, which is a company-based fund which traditionally has been set up by a company and can be defined benefit or defined accumulation. More and more are becoming defined accumulation. These funds have during the eighties become largely based on equal representation, and

by 1993 there was still a proportion which weren't up to that stage but they were caught up in the legislation.

Multi-employer industry funds really came into being in the first part of the eighties, and now cover around about 45 per cent of the workforce, and they are multi-employer, so it's typical to have many thousands of employers contributing to them. I should mention, too, that I suppose another unique aspect which I should have referred to before about superannuation product is that it doesn't simply have two parties to it, it has at least three parties. You have the member or the consumer, you have the employer, who contributes, and you have the fund and the trustees. Now, that's an important component which sometimes is forgotten, and I think the banks are finding that that's a component which makes the administration a little bit more difficult perhaps than they imagined, and it also bears on the issue of choice, which I'll talk about a little bit.

The third sort are the public sector funds which have been largely unfunded, but more and more are becoming fully funded and have - - -

CHAIRMAN: I don't want to sort of interrupt really, Ian, but we've probably got a fair appreciation of the system.

MR COURT: Sure.

CHAIRMAN: We're trying to really get from you where you think improvements, change - the issues that we're trying to address.

MR COURT: Sure, okay. Well, can I quickly just give you a couple of - - -

CHAIRMAN: Sure.

MR COURT: What I'm trying to address is - we are aware of other submissions obviously made to this review, and I suppose the submissions that most concern us are those which suggest that superannuation can be regulated under a simply disclosure-type regime and really the trustees aren't necessary, and I've just put two diagrams before you: the representative trustee-based superannuation funds, which are the funds that we - or trustees that we represent, they fall under the equal representation legislation and they have the Insurance and Superannuation Commission as a regulator.

Employers contribute to them, employers have representation on them, employee consumers both contribute to them and receive benefits from them, and have representation on them, and then you have the providers which could be a bundled provider, or they

could be split as on the diagram, but the important point is that between the provider and the regulator the trustee board sits and is representative; in other words, members and employers participating have some direct influence on the way in which that fund is supervised and operated.

Now, we are concerned to see a draft bill in the parliament at the moment for example with regard to retirement savings accounts which suggests that employers can in fact make choices on behalf of employees as to a retirement savings account, which cuts out not only the trustee of the fund or any representation rights on the fund, but in fact removes any direct relationship in terms of choice between the consumer and the provider. In this case the employer is actually choosing the provider.

Now, if you move over to the other diagram with the commercial superannuation products - we're referring here mainly to the master trust type of product, and we're aware that the AIMA and the Life Insurance and Superannuation Association have made submissions about the role of approved trustees, and I want to make a distinction between representative trustees and approved trustees.

In this model the commercial provider basically appoints the trustee company and has a requirement under the act to offer a policy advisory committee, although this doesn't need to be taken up, and my understanding of the history - of the record - is that not too many of these have been taken up.

MRS NICHOLLS: Sorry, Ian - just a point of clarification. By "approved trustee" in this model, you mean the responsible entity?

MR COURT: Yes, it could be one of the professional - - -

MRS NICHOLLS: It may not be a trustee?

MR COURT: One of the professional trustee companies like Perpetual - - -

MRS NICHOLLS: I didn't mean that, no, but it could also be the manager acting in that role as the responsible entity?

MR BEERWORTH: If the trustee concept is eliminated by the government.

MR COURT: Yes, the entity - the provider normally appoints the trustee, who is the entity.

MR BEERWORTH: Okay.

MR COURT: Becomes the approved trustee. But I think the point I'm making is that we're not particularly concerned about whether

the approved trustee sits there or not, or the trustee requirement sits there. We don't see necessarily that it adds great value, because its connection with the consumer is fairly tenuous. Really taking up your point, I think the provider is really the responsible entity in a practical sense. But the point we would make in saying that we're not too worried about whether the approved trustee sits there is that the product should still remain under the Insurance Superannuation Commission or, more importantly, the SIS legislation or that prudential framework.

We would be very concerned if it went to a simply disclosure regime where there was a commercial contract between the employee or the consumer and the provider, for two reasons. One, there is a third party, the employer, and also the point I made earlier, that 90 per cent of the workforce are covered, and you have a diminishing level of understanding of the financial system and the capacity for people to make decisions. So most consumers who don't come in contact with the financial system do come in contact in terms of superannuation, and in our submission rely on a trustee board in most cases to provide the supervision of the provider of the services, and we see this as a crucial role that should be retained. I think they're the key points, Mr Chairman, that - - -

PROF HARPER: Can you talk about choice.

MR COURT: Yes. Choice is something that we believe is appropriate. We think, however, that attention needs to be taken to the fact that whatever disclosure, financial information, is provided, a significant group in the community simply have not got the numeracy or the levels of education to make an informed choice, so that whatever choice regime is introduced needs to take that into account, but also the employer-employee relationship needs to be taken into account in what people expect from a choice regime, and as I said earlier, I would not like to see a situation where the employer was making choice unilaterally on behalf of employees.

We see at the very least there should be consultation, and some views of the workforce being taken into account, and if there are three-way trusts, obviously we believe exercising their choice in the first instance and then having that choice supervised by a board of trustees is a double protection for ordinary consumers.

I think the question of investment choice is something that - I was referring to choice of fund - investment choice I think is something that most funds will introduce.

Most trustees are moving towards this and I think it's probably the appropriate way by which members can have some influence over the performance of their retirement savings, able to exercise choice within a frame which they understand.

MRS NICHOLLS: If I could ask a follow-on question to that, please. In discussions with groups overseas the issue of the costs of intermediation in Australia has been raised with us and views have been expressed to us that the costs of intermediation in the financial system in Australia are high by international standards. I stress this is only an opinion.

One view that has been put to us as to why costs of intermediation in Australia might well be high by international standards relates to issues of competition and product innovation and in particular it has been drawn to our attention that the plethora, if not proliferation, of individual back offices might well be adding to the cost of intermediation.

Ian, could I ask you in the context of superannuation, and particularly following on this matter of choice that we've been talking about, I think you would agree that we do not at this point have competition amongst industry-based or employer super funds; nor, because there is no competition, do we have much product innovation. Could you comment in that regard on the cost of intermediation and whether you feel superannuation as it's currently constructed is contributing to those, and whether choice might make a difference to cost?

MR COURT: If you look at the issue of competition, I think there could be more competition but I think it's inaccurate to say there is no competition.

MRS NICHOLLS: How do employer-sponsored schemes compete?

MR COURT: Most employers have some sort of choice as to which fund can apply although employer corporate funds, such as BHP for example, I agree don't have any choice. That's true in that sector.

PROF HARPER: Nor the SSAU.

MR BEERWORTH: It tends to be a one-time election, doesn't it? Once you're in, you're in for life. That's it.

MR COURT: If you remain with one employer, which most people don't. They move around.

MRS NICHOLLS: But even when you move you don't get a choice. You get your next employer's.

MR BEERWORTH: But you shouldn't have to move to get flexibility of choice perhaps. I think that's what Linda is getting at.

MR COURT: There's a whole lot of issues there, isn't there, about the long-term nature of the investment, the effects on the investment strategy of the fund - if people are switching regularly. We're not talking about a fridge here, we're talking about a long term.

MR BEERWORTH: But if there's a great deal of competition and innovation, there may be those sorts of different products. That's really what - - -

MR COURT: Sure. It's a question of degree. I'm not arguing that there shouldn't be more competition or more choice but what I was hoping to point out was that in fact there has been a lot of product innovation and a lot of competition in this country. What people don't seem to understand is that when, for example, the industry funds were introduced, they cut costs by 50 per cent. The cost of other superannuation providers has been gradually coming down since that, some would argue not so quickly, but I'd like to also explain how a trustee fund which has an unbundled set of services promotes competition.

What happens on a regular basis is that the providers of those services are tendered out, so if you're an investment fund manager - and the investment fund management industry is quite competitive; the number of players is very large - then the competition to get on the list of a superannuation fund is very strong, and see in our example, we have brought the average cost of investment management down from 50 basis points to 30 basis points over the last 3 years. How have we done that? Through competition. We actually make those fund managers compete.

Similarly with administration, I think if you look at the administrators they are basically low-margin businesses. Insurance, once again, is tendered out and, I would argue, is competitive. The cost of intermediation, the cost of regulation, has been quite high, I would agree, and probably too high. So I'm not arguing that it's a perfect competition.

MRS NICHOLLS: Ian, how are the benefits of your lower cost made available to a wider cross-section of Australians than those who are currently your members?

MR COURT: Because the effect of industry funds coming into the business has caused master trusts and other products to reduce their charge. You can argue that they haven't reduced them quickly enough but there's clear evidence that the costs have come down and certainly, if we talk about investment managers, they have come down across the board.

MRS NICHOLLS: No, I was talking about the apparent inability of members who are locked into an employer fund today to move.

MR COURT: I'm not arguing that - - -

PROF HARPER: But are you suggesting, Ian, that the competition that exists within the funds management sector is exactly sufficient to induce upstream, as it were, some of the benefits of competition that might otherwise have occurred if employees had had a choice of scheme?

MR COURT: I'm arguing that, I think, the corporate fund problem is an issue. In most industry fund areas there are a number of choices. There is a bit of a myth about award superannuation in that it is somehow compulsory with one fund. If you look at 95 per cent of industrial awards, they all provide for some choice. This is normally an industry fund or a master trust or another fund agreed between the employers and employees.

That's where this employer and employee relationship comes into play as well. The agreement between the employer and employees has been an important issue and, I contend, will continue to be important, whatever regulatory environment there is, because the relationship is a close one. All I'm trying to point out to the committee is that there is competition there. With investment choice coming in I think there'll be even more competition within a superannuation framework because remember, a superannuation fund is simply a framework within which a whole lot of service providers can operate. If people are choosing their own investment they're going to have a much bigger say about how their own portfolio performs.

CHAIRMAN: Would you see government's obligation in relation to super funds as essentially to provide the appropriate regulatory structure and formal prudential supervision and that's as far as it goes?

MR COURT: No, because of the fact that it is part of the social security system, government cannot be totally hands-off. Government must supervise the extent to which retirement savings are able to

generate retirement incomes. To that extent - you know, with a hire purchase contract or insurance policy, if somebody pays too much or it isn't a great policy, it doesn't necessarily have an effect on the public, on the taxpayer.

But if superannuation isn't producing retirement incomes of a nature which is going to sustain them, they are going to have a lot of misery in this country. I see in the United States and a lot of countries in the next 40 years the potential for a lot of people to be in a lot of trouble because they just simply haven't saved appropriately. Cash-based products, for example, are going to be a real problem for some people. They're just not going to be able to make it.

PROF HARPER: Ian, the industry makes a great deal of the difference between the trustee-based structure for managing this type of investment product and the sort of structure that a bank uses, for example, a shareholder limited company and no trustees. I'm just wondering, in the light of that - I mean, I heard your earlier comments that you weren't concerned about the regulation of these two types of vehicles, so to speak, possibly coming under one head albeit in separate divisions.

Given the vehemence with which the industry defends its particular approach and the appropriateness of dealing with superannuation - a long-term investment in such a framework - do you think there's such a cultural divide between superannuation and banking, for example, as has been played out over the RSA issue, to be quite particular? Do you think there's such a cultural divide that to bring these two things under one institution or regulatory head would be a recipe for disaster? Should they be left in separate institutions with separate cultures?

MR COURT: I don't see why not. The objective of the retirement savings accounts is the same as that of a superannuation fund so the same sorts of protections should be there. If banks can't become a bit more oriented towards the customer, they'll have to get used to it.

PROF HARPER: Can I be more specific then? When members of the committee visited a number of regulatory agencies around the world where insurance and superannuation are regulated by the same entity as that which regulates banks, there was often a suggestion put to us by the insurance/pension fund arm of the organisation that there was a

banking culture and that the banking culture could be dominant and that in a sense the institution had always had to be on its guard to make sure that inappropriate bank approaches to regulation weren't foisted upon insurers and the superannuation pension fund product manufacturers because of the nature of the banking culture. I'm just wishing to explore with you people whether you have a similar fear or whether you think that that's really not appropriate as an issue?

MR COURT: That's quite a persuasive argument for why you shouldn't have superannuation products on bank balance sheets but that's another issue.

PROF HARPER: That may be true but that's another issue. I'm just talking about leaving super funds and insurance companies as separate entities or whatever but under one regulatory head. Do you see an issue there or not?

MR COURT: Essentially my view is that if banks are going to provide superannuation funds on balance sheets, they're going to have to become superannuation providers and not bankers in that sense, and I think banks are going to change. I think banks as we know it have got no choice but they're going to have to change because what's happening is superannuation providers are providing products. We've introduced a very successful mortgage lending regime, and commercial lending, so the merging will happen and the cultures will have to change.

DR OLSBERG: I think too that the strength of the trustee structure in having such a decentralised structure is a very strong culture in itself.

PROF HARPER: So you think it will win out or at least it will be strong enough to withstand the blandishments of the - - -

DR OLSBERG: I think the fact that it is directly accountable to the members will be a very strong influence on that culture, providing that trustee structure continues to be supportive and allowed to flourish.

MR COURT: Also the other thing is through the trustee structure you're bringing a much wider cross-section of the community into the financial management of capital formation in this country and I think that's - - -

PROF HARPER: You're obviously confident that it's robust enough to withstand any influence of that, correct?

DR OLSBERG: Providing it continues to get the support - - -

PROF HARPER: From the legislation?

DR OLSBERG: - - - I believe very strongly that it will be.

MR SMITH: Just two quick questions. You might want to take the first on notice. In your submission you refer to regulatory duplication. I'd be interested to know what the examples are that concern you there. We'll leave that on notice but the second question you might be able to answer quickly, which is you've stressed the role of the trustee but what I'm interested in is the role of the government in relation to regulatory objectives when they prudentially supervise superannuation.

Okay, so the banks - we've had a debate about the extent to which governments are backing deposits. What do you see as the basic role or purpose of prudential regulation of superannuation? What is the government seeking to achieve?

MR COURT: I think what the government is seeking to achieve is a framework within which a whole range of different sorts of providers can provide a long-term savings vehicle. In other words, the nature of the trustee system I think in turn requires a slightly different regulatory or prudential approach and supervisory approach. The regime we've got in place through the ISC is one of much closer supervision, I would have thought, than the Corporations Law or the ASC provides.

I think that's appropriate, particularly in the early stages of the development of this trustee system. We've got to remember that it's only a few years old and we're bringing a lot of new people into the system. For the foreseeable future I think the prudential framework needs to be more exhaustive and I think the SIS framework does provide that level of continual review, disclosure, compliance obligations which are very clearly articulated and, as an institute, we're very conscious of the need to raise the level of people's consciousness about those.

CHAIRMAN: You don't want anything more specific?

MR SMITH: I guess the more specific question is what is the government's - under that scenario. You talk about a social security role and what is the extent of the government's regulatory promise to members of superannuation funds? Is the intention of the regulation to prevent failure?

MR COURT: To prevent failure? I think yes, and maximise outcomes.

MR SMITH: Should there be some other scheme associated with that in the event of failure?

MR COURT: In other countries there are insurance-type arrangements which I'm familiar with in the Unites States in that respect.

PROF HARPER: You normally insure against fraud - the consequences of that, rather than against bad outcomes of investment.

MR COURT: That's right. I think that ought to be seriously looked at. I've only briefly looked at it in the US and I'm not sure how effectively it works or whether the cost justifies the regime.

DR OLSBERG: Can I just add to that. I've looked at the figures since 1990, and the amount I've lost in the system has only been less than 1 per cent in accumulated assets of $250 billion. I think that SIS has been operating very effectively through the representative trustee structure by having people from diverse interests keeping an eye on what's going on within the funds, and that has shown to be very effective. The problems have been mainly problems that perhaps the trustees haven't been fulfilling - the forms or complying, but in terms of malfeasance or fraud, the record has been outstanding.

CHAIRMAN: One last quick question from Mr Beerworth.

MR BEERWORTH: As I understand, one of the fundamental thrusts of your written submission in particular, your major concern is to ensure that RSAs are treated exactly the same as you, as it were. I take it that's a question of competitive neutrality as far as you're concerned, and you're more concerned that the banks might otherwise have an advantage, rather than any concern that the banks won't be able to be simply subject to their ordinary, proper prudential regulation and to ensure the promise to their investors.

MR COURT: Sure. I think that's the primary reason, but also in the absence of trustees we think perhaps a slightly more rigorous prudential framework is appropriate.

MR BEERWORTH: Thank you.

CHAIRMAN: Thank you both very much. Ladies and gentlemen, we now have Tony Beck, joint national secretary of the Finance Sector Union. Tony? I think you've probably got hold of the nature of these proceedings, but if you could start, Tony, by simply stating your name and the obvious organisation you represent we'll be pleased to hear from you. We have about 30 minutes.

MR BECK: Thank you, chairman. It's Tony Beck, the joint national secretary from the Finance Sector Union of Australia. Chairman, I've got a brief outline of my presentation if it's appropriate to provide you copies.

CHAIRMAN: Thanks, Tony.

MR BECK: Firstly, perhaps stating the obvious, the Finance Sector Union represents 110,000 members employed in the industry, and we do appreciate the opportunity this morning to speak to our presentation, and we think this is an issue of fundamental importance obviously to the constituency that I represent.

There are a number of issues that the inquiry is looking at, and we don't profess to have the expertise to cover all of them but our central concern, you'll understand, is with the employment consequences for our membership, and I would also like to discuss some of the associated skills and training issues that we think should be considered.

So I suppose this morning perhaps I'd like to limit my comments to four key points: the process of mergers and acquisitions, the six pillars policy, the need for industry-wide competency standards more generally, and the issue of community access to services. In our further submission we will address a range of other issues including consumer protection, prudential issues, but we won't deal with those today.

Firstly, chairman, can I perhaps just give a brief overview about the pressure that our membership are currently enduring in this industry. Obviously our industry has been to the forefront of technological change and innovation and rationalisation and the latest management trends and fads that sweep the global economy and impact very heavily in our sector of the economy.

But clearly the pressures the membership that I represent are facing are dramatically reducing staffing levels and increased workplace pressure. Our employers are marked by their inadequate consultation procedures and lack of professionalism in

terms of consulting with not only their own staff but their representative organisation about the nature of these changes. The threat of forced retrenchments is now a commonplace feature of working life; the threat of branch closures and rationalisation; the impact that these negative workplace pressures is having on our members' ability to provide professional effective service to consumers; the increased amount of unpaid work; dramatic changes in job roles and responsibilities; and what we would argue would be inadequate training and uncertainty of career paths.

We'd argue, and it would be the subject for much more intensive debate than time allows for today, but we would argue that these outcomes are not accidental, but they're deliberate management responses, and we'd also argue that they're unnecessary. Now, we believe there is an alternative management paradigm that could've been adopted to cope with these changes, but our industry is being characterised by an obsession with short-term outcomes as opposed to more medium or longer-term planning and considerations.

In terms of the decline in employment, the statistics are quite difficult to really nail down, and our submission I think is probably the best reference that we've been able to collate in relation to that. In terms of perhaps our membership in the major banks and insurance companies, we're confident that at least 30,000 jobs have disappeared in the last 5 years.

In addition to dramatic job reduction, there's been a shift to more precarious work forms, from traditional secure full-time employment to an increasing proportion of part-time and casual work. Now, again from a union point of view all our members are equal, but we are very concerned about the nature in which part-time and casual and precarious work forms are being used by management, not for the purposes of improving customer service necessarily, but simply to reduce costs, and again it comes back to our point about what is the prevailing management orthodoxy that's operating in this industry.

Associated with the increasing part-time and casual employment is the fact that the vast majority in our estimation, at least 90 per cent of those part-time and casual jobs are performed by women, and again of that proportion of part-time work, at least 90 per cent of these women employees are trapped in the lowest grades and the lowest rates of pay in the industry. They're completely overlooked when it comes to the issues of career progression, job

innovation such as innovative work organisation models, job sharing or career progression.

Beyond the loss of secure employment and the shift from full-time to part-time employment, we are very concerned about the issue of skills and competencies within the industry. We believe - and I'll come to it a bit later in my comments - that there is a pressing imperative for a better planned response by the industry to look at the skills and competencies that are required to take this industry into the 21st century, and in the notes that I have before you I've tried to cover a few of those points.

The major debate we've had with the banks in particular has been an absolute failure, and determination not to participate in any form of discussion about industry competencies, recognition of those competencies, planning of those competencies to assist our membership performing an essential community service.

CHAIRMAN: Just to help clarification from my point of view, are you saying there's no consultation within the organisation or with the union?

MR BECK: If I can clarify that point, within the current framework there is opportunity for a finance and administration training board or authority to consider these sorts of issues. Now, whilst insurance employees have been cooperative and responded and have at least applied some intellectual capacity to try and address what the issues might be in terms of skills and competencies, the major banks without exception have refused to participate in that tripartite discussion between government and employers - - -

CHAIRMAN: Is there considerable discussion within a bank amongst - - -

MR BECK: The banks on an individual basis within the enterprise would say that they are considering what their needs are, and I would support the proposition that, yes, they dedicate resources to enterprise-specific training, no dispute about that. Our concern, however, is the industry context, because there is high mobility between employers within the enterprises, but there's also a sense that the major banks are just looking for the competitive edge, and so if they can develop a training capacity that may be superior, they will do that to the exclusion of any industry planning.

In terms of mergers and acquisitions, chair, we understand from the discussion paper that there's no hint that specific

recommendations will be made to change the role of the ACCC or the Trade Practices Act.

CHAIRMAN: I'd be surprised if you could draw any conclusions from the discussion paper.

MR BECK: No, that's right. I'm sticking my neck out, and I'm hoping that - - -

CHAIRMAN: That's what it is.

MR BECK: It's a discussion paper, and we'll be so bold as to draw that conclusion and accept all responsibilities for that.

CHAIRMAN: That's your conclusion, Tony.

MR BECK: I agree with that. So on the basis of that, we would certainly - that would be our view in any event. In terms of the broader options that the paper discusses about regulation for mergers and acquisitions - the broad options of our client there - continuation of existing dual system, to have the Treasurer simply accept the recommendations made under the TPA, or to perhaps narrow or remove the powers - - -

CHAIRMAN: What is it you're saying the Treasurer should do then?

MR BECK: Well, we would say that - we would certainly support the role of the ACCC in terms - as it is currently outlined.

CHAIRMAN: We understand that.

MR BECK: We would be prepared to accept the removal of the Treasurer's separate and reserve powers to determine that, but perhaps there should be powers the Treasurer would have other than competition. There might be prudential issues or - - -

CHAIRMAN: Some discretion or some - - -

MR BECK: Some discretionary power.

PROF HARPER: Except for competition.

MR BECK: Except competition. In relation to that point, in terms of those discretionary powers, we believe that what would underpin that - we will certainly be urging this committee to recommend to the federal government that there be a very clear and transparent process by which the social and employment effects which particularly concern my organisation could be assessed, and we would suggest that such a process could be preliminary to an exercise of the Treasurer's powers.

We and other organisations have sought to present evidence that talk about the detrimental impacts that mergers

may have on the community, and we believe it's important for that social dimension to be considered. If I may just speak to that very briefly, we feel quite overshadowed by the power and the weight of arguments that are being presented, and the public debate that seems to be saying that it's a market-related outcome and the market force is the predominant force, and we certainly understand that orthodoxy, and I suppose we're in a minority in suggesting that in this industry the government should have the capacity to look at the social implications of the changes - - -

CHAIRMAN: You're saying this industry should in some way be treated differently?

MR BECK: In a sense I am, in a sense I am. I suppose I would have two grounds for that. Firstly I would like to put the argument that there's nothing that necessarily says that market forces are necessarily the best way to form policy. I mean, you get good markets and bad markets, so to save - - -

CHAIRMAN: I'm just trying to understand this. You're saying this industry should be different.

MR BECK: On two grounds, firstly that I don't accept that a market-based response is the best-based response, because you can get good or bad markets, but secondly I'd be saying that financial service is in a sense an essential community service. Now, admittedly it's provided by the private sector, but it's nevertheless an essential service, and to that extent we would argue that the community do have an expectation that government would take into account their needs in relation to private sector activity in this area.

In relation to the six pillars policy, again we're clearly in the minority in terms of our submission here, and we argue that the retention of that policy is inappropriate framework, principally on the basis of the impact that major rationalisation in the industry would have on jobs, and again we have sought to present evidence about the scale of job loss that would emerge.

CHAIRMAN: Do you put forward any rationale for why it's there, why it was put there?

MR BECK: Well, I suppose the Treasurer and the government of the time had a view about what was appropriate competition policy and structure of the market, and the committee will be better informed than myself, but from the international literature we've been able to see there is no evidence that economies of scale and increasing concentration necessarily translates into benefit for consumers.

CHAIRMAN: That evidence has been put quite forcibly to us in a number of places.

MR BECK: Thank you. In any event, chair, if it is that the policy is dispensed with, we would submit that at least there should be some alternative policy of transparency to take into account the social dimension that we've previously spoken to.

At 3.3 we make some brief comments in relation to the role of the ACCC. We would support the ACCC's position generally in terms of their definition of the market and would support their continuing role. Again we would rely very heavily upon submissions that support our view that says that increasing concentration, the economy of scale argument, does need to be seriously questioned. I think the major proponents for increased concentration need to meet a greater test and to demonstrate that in actual fact there would be benefits to consumers and the community more generally as opposed to just shareholders.

Chair, at point 4 we sought to - without necessarily putting a final view about the appropriate model of consumer protection for the purpose of the discussion and trying to address the issue of skills and competencies - we've picked up the model that's proposed by the ACCC, which as we understand it is a combination of an oversight incapacity over a self-regulatory process.

Associated with that, there would be an umbrella organisation to look at the self-regulatory functions and the establishment of governing council with representation from various components of the industry. If it were that such a model seemed appropriate, we say that that would demonstrate the need for an industry commitment to the issues of competency training, skills assessment, that we believe is currently lacking - and I do concede the point that individual enterprises would argue that they are trying to meet those needs but we say that is in the absence of a coherent industry position. Chair, if I can just also put in a claim that if there was such a governing council established within industry, the FSU would certainly appreciate an opportunity to be represented.

In terms of access to services this is, I can see, a difficult point and the banks and the major providers argue that it's a question of profitability, market usage, etcetera, but we are genuinely concerned that the industry is not consulting adequately with the community, particularly rural and regional Australia, about the basis and

the criteria upon which a banking facility or another financial facility is retained or closed. The feedback we're having from a range of community groups is of increasing levels of distress and anxiety at the way in which services are being withdrawn.

We sought to demonstrate there the rate and the extent to which retail services are being withdrawn and in conjunction with withdrawal of other public infrastructure and transport facilities, it is an issue that does need to be dealt with.

Chair, just in summary I'd just like to again thank you for your time, indicate that we represent employees but that the considerations will be eagerly anticipated.

CHAIRMAN: Thank you, Tony.

MRS NICHOLLS: Thank you, chairman. Tony, I have a couple of questions but let me just start with one and that really focuses in on your concern for the employment opportunities of your members. Certainly a deal of evidence has been put before this inquiry that the financial services industry is far wider and more diverse than it has been in the past.

It has also been put - in fact just by Ian Court who was speaking to us before - that there is terrific competition in service providers to the industry. Now, this suggests that there is a range of employment opportunities that are opening up perhaps indeed for your members outside the traditional major players. The question that I wanted to ask you is what success is your organisation having in being able to follow your current members into these new areas of employment, whether it be with the providers of securitised mortgages, whether it's with some of the new credit card companies or whether it's with fund managers or superannuation administrators or other service providers to the financial services industry?

MR BECK: I would like to be able to say we're having more success than we are but notwithstanding that, simply put, the Finance Sector Union is an amalgamated union. We're bringing to you the five different unions and on top of that, as you correctly pointed out, there are new entrants and we need to cover and represent and recruit and organise. We are now actually moving into that phase of our development. Our strategy has been to consolidate our area of coverage where it currently is but we are now going into the mortgage originators, the telephone marketing areas, the industry funds and credit unions in particular.

So I think it's slow but steady progress, but we do recognise - if the kernel of the question is do we recognise that we've got a broader sense of responsibility than a narrower one, we certainly accept that responsibility.

MR BEERWORTH: Tony, yours is a progressive union and I'm sure you want to see modernity and social institutions and so in the community. You pointed out that your members feel anxiety and distress because of the pace of change apart from anything else - incidentally so do I; I'm self-employed and I feel anxious and concerned every morning when I wake up - but what can we put in place?

What social institutions can we put in place given that we know that organisations, whether they be banks or the financial institutions, must change over time and must take account of the realities of new technology, globalisation, all of those buzzwords? I mean, what do you really want to see? Do you want to see the government working with you or the banks themselves, the institutions, working more closely with the union to ensure a pace of change that's acceptable? What really is the concern - to obtain employment?

MR BECK: We actually recognise that we're part of a global industry, and technological innovation is a key feature, so we're not about trying to impede the rate of change necessarily. So the question is rate of change - we don't believe it's sensible for us to really give in straight to the need to change that necessarily.

For us the issue is the way in which the change is introduced essentially. The debate in our industry has been that labour market practices or the industrial relations model or the FSU - that we're an impediment to improved productivity. That has been the argument. It's been the argument in a broader economy but I think the Carpin report that was released 18 months ago put a lie to that and said the major test, the major impediment to improved productivity, is really management capacity to introduce change, for instance, and compared this with our 16 OECD competing countries.

What I would like is a more balanced debate about what is the process of introducing change? I would say that our members, every time I see them, they're quite powerless and the real question is what is management's capacity to introduce the change? Research seems to indicate that Australia is very poorly positioned. So I'd be saying I'd like a balanced debate in the first instance.

In a practical sense our submission calls for serious consideration of some sort of council or tripartite or consultative mechanism to actually compel the employers to take on board some of the issues that we believe are important, such as skills and competencies and we are very frustrated the major banks will simply rely upon an enterprise-based strategy and refuse to recognise the need for the industry to position itself well.

MR BEERWORTH: Thank you, Tony.

CHAIRMAN: Do you have a sort of broader vision for the industry, Tony, in terms of what you've learnt from some of your counterparts overseas? I mean, quite apart from this, the numbers. Do you have a view about a totally changed industry and the way your people work and are trained, and positions?

MR BECK: We wrestle with - or are familiar with the British experience and Will Hutton's recent book, The State We're In, is a good critique I think of post-Thatcherite England and it features on the finance industry and I think it's a good critique of where we're heading to in the short term - is the management response. We're familiar with developments in the States and other areas in the region.

For us we would propose a model opposed to what's emerging, which is a highly precarious part-time low-skilled, low-paid workforce with high levels of insecurity. We'd actually prefer and encourage an industry that looks at competency skills, a sense of vision and security, to enable the industry to be dynamic in that sense, whereas what we are dealing with day to day is incessant demands by employers to reduce costs. That is the answer - to simply reduce costs. But we'd be saying that the alternative is to be effective and be able to grow and be more productive.

CHAIRMAN: This is a unified outcome across the sector or does it vary from organisation to organisation?

MR BECK: Look, it may well be both but, for instance, I despair of the fact that our major trading capacity or strategy seems to be to link into the APEC region, but if I go and talk to CEOs in my industry, there is no strategy about how we as an industry. an Australian industry, Australian finance industry, are going to play a role in the Asia Pacific region. There is no industry plan. There is no coherence. All there is is narrow sectional enterprise competitive positioning and short-term response to whatever the capital markets are saying. It's that lack of general planning which can be characterised in the macro area

or it can come down to human resource policies, which we believe are endemic.

So the union would be very pleased to sit down and say, "What do we need to become a major trading centre in financial service in this country? What are the HR reforms that are required? What are the taxation reforms that are required?" but there is no capacity to have that dialogue with this industry. They are very fractious and it makes internal union politics look very comfortable by comparison.

PROF HARPER: If you discovered as a result of that dialogue, Tony, that one of the requirements for us to become a sound regional financial centre was lower costs - - -

MR BECK: Lower costs or higher productivity? There's probably a choice, and there may be a combination of both, but all we're saying is that currently the debate is very narrow and short-termist and it just focuses on costs. Now, I just don't believe that it's sustainable that we're going to have a premium industry that is increasingly built around employees who feel very insecure, lowly paid, lowly trained, and increasingly part-time and casual. I just don't believe that is a sustainable strategy.

I think in the short run, you know, the major - you know, the CEOs of the major enterprises will generate short-term response and they'll defend or grow the stock price. In the long term, I don't believe that it is going to be sustainable for our industry.

CHAIRMAN: I am no expert but there has been a greater emphasis on training in the system, hasn't there, in the financial sector?

MR BECK: Chairman, there's been emphasis on what we would call task-specific training; that is, to prepare an organisation for the Uniform Credit Code, for instance, so there's a massive investment getting people ready for that new development, and that's the important task-specific training. In terms of actually trying to forecast where the industry needs to be in 5 years' time and prepare people with skills and the problem-solving capacities and really underpinning that human resource dimension, that's just not there.

PROF HARPER: One issue that I was a little surprised not to see the union raise, Tony, was the question of foreign ownership and acquisition. Does the union have a view about that?

MR BECK: We're wrestling with it frankly and it's an internal debate that we haven't resolved yet, but for instance the dilemma was

presented with assimilation to the privatisation of BankWest and we were faced with two fairly stark alternatives: a sale, a trade sale, within the domestic market or a foreign acquisition. I guess at the end of the day we're trying to work out the benefits of that. From our point of view in terms of employment certainly the sale to the Bank of Scotland has been quite relatively beneficial. The other public policy issues associated with foreign ownership I think are another debate.

PROF HARPER: Yes, I was really asking about the union's view and what you felt about foreign acquisition. It's one of the issues the committee has been asked to think about.

MR BECK: Yes.

PROF HARPER: It's a traditional concern of the union movement.

MR BECK: Of course.

MRS NICHOLLS: One last question. A view has been put to us, Tony, that in terms of competition and in terms of making services accessible to consumers there's a very strong nexus between the competitiveness of retailing and the competitiveness of financial services. Now, in terms of the consumer access and certainly taking a Victorian perspective at this point, we've seen over the years a gradual change in shop trading hours, the introduction of late-night trading, the introduction of Saturday trading, and of course most recently the introduction of 24-hour 7-day-week trading.

Given your concern about improving consumer focus within financial service organisations, what do you think is the appropriate response of the major banks to this change of trading rules for retailers in Victoria?

MR BECK: We've actually been quite interested by the banks' response. I mean, a couple of years ago there was a press for broader trading hours and liberalisation. That was the focus of discussions with the FSU but we weren't opposed to that and we sought to trial and test the appropriate mechanisms and we are currently doing that with Westpac now.

I sense the way in which it will be handled is by way of remote delivery, telephone delivery, technology delivery, to provide the broader access, and again from the FSU's point of view I would estimate that about 35 per cent of our membership is now working shifts or weekend work or out-of-standard hours. It's not a major industrial issue for us.

CHAIRMAN: Okay. Well, thank you very much, Tony. We appreciated your comments. It was very clear.

CHAIRMAN: We now have Mr Michael Welles, ladies and gentlemen.

MR WELLES: Mr Chairman.

CHAIRMAN: Mr Welles, please. I'm sure you understand how we're proceeding today.

MR WELLES: Yes.

CHAIRMAN: So if you wouldn't mind starting off simply by stating your name and whether in fact you represent anyone other than yourself, and who you represent, thank you. You have about 15 or 20 minutes on my timetable.

MR WELLES: Chairman, as 5 minutes is not a long time I have prepared it in writing for your assistance.

CHAIRMAN: Thank you.

MR WELLES: If I may speak to it, Mr Chairman, I will be able to control the time a little better. May I start out with my name for the record; it is Edward Michael Welles. I'm a chartered accountant in public practice in Hawthorn, Melbourne, Victoria. I'm a licensed dealer in securities, number 12838, with the Australian Securities Commission, and my original submission to this committee was given as reference number 244. I may add that I have had first-hand full-time experience as a financial planner for 8 years in practice.

If I may now speak to the papers, Mr Chairman. I table an example of a financial planning submission I made to a member of the royal family of Dubai in the Middle East 2½ years ago. I show this committee an investment expertise required from a licensed professional dealer in Australia. That is attached to what I have just given to the secretary. I also table a copy of the Institute of Chartered Accountants SRO guidance notes which were distributed to its licensed members in 1988 in the United Kingdom; and various pamphlets also issued by the Securities Investment Board in the United Kingdom advising the general public about any complaints they may have with investment advice and what recourse they may have to the institute as aggrieved investors. I am happy to say that I am quite happy for these publications to be retained by the committee for inspection by public record if necessary.

CHAIRMAN: Thank you.

MR WELLES: Turning now to my notes, Mr Chairman, in the 5 minutes allotted I will be brief and to the point.

CHAIRMAN: You have 15 minutes or so, Mr Welles.

MR WELLES: Well, I can slow down a bit. Thank you very much.

CHAIRMAN: It was a suggestion that you talk for 5 minutes so we can ask you some questions.

MR WELLES: Thank you, Mr Chairman, I will certainly do that. I base my submission, number 244, on the basis of research I did with the United Kingdom, and the committee will notice that in the attachments to my original submission the structure that the English licensing authorities have of recognised professions is set out in the annexure for the established professional bodies, their equivalents in Australia and also in the United States, as I understand. That was the basis of comparison when I - and that's all set out in the executive summary of my submission.

In essence the proper investment professional advice to the unsophisticated investment public I believe has been prostituted - and also in the opinion of people I spoke to in England - by the proper authority device which has been put into the licensed corporations legislation in place of recognised professional qualifications in giving investment advice to the public. We believe that has given rise to a lot of the problems which the ASC regulatory people have been trying to correct in the public place.

In the United Kingdom an investment advisory licence can only be held by a qualified natural person who is not a corporation, or can be a different name subsidiary of a life company, a fund manager, a bank, a proprietary company or anything else. This is the principal position - my appearing today is to reinforce that situation and briefly elaborated, I believe, in the submission report which you gave, which says that the ASC now recognises the importance of SROs in this particular function rather than the ASC being the fountain of all knowledge.

The Institute of Chartered Accountants in England 10 years ago delegated one of its staff, a Mr Christopher Hunt FCA, to represent that institute's members over a strenuous 2-year period of horse trading with the UK Investment Securities Industry Board, and also with the members of the House of Commons to establish and have - the recognised professions have their proper status in being allowed to establish their members as licensed and proper people to give investment advice to the general public.

One point I wish to make quite strenuously, which is being disregarded in Australia, is that the institute in England, as in

Australia, operates under a royal charter from the sovereign under letters patent issued under royal authority by the Earl Marshall of England, which in Australia was granted in 1928 and enacted by legislation in Canberra and given royal assent. I take a very dim view of the fact that this is being ignored by our public service in Australia.

In these circumstances I'm advised that neither the Australian Securities Commission or the legislation has really any jurisdiction over the institute of chartered members in Australia or in the conduct of their lawful professional relationships in investment advice while they observe regulations under their by-laws which were approved by parliament in 1928 unless the legislation in Australia has linking clauses, which it doesn't. In other words if the SIS legislation and the ASC legislation specifically links a royal charter it really has no jurisdiction over them, and I believe that would be found by any court of law in Australia.

MR BEERWORTH: I think in fact accountants and solicitors are exempt from the securities legislation only to the extent that they give advice incidentally to their profession. If they want to give advice as an adviser they're required to operate through a licensed firm and to have a better authority. It's got nothing to do at all with the status of the institute or any of the particular professions as with the royal charter or otherwise.

MR WELLES: I understand that.

MR BEERWORTH: It's straight Australian legislation.

MR WELLES: I understand that position, sir, but it's a grey area, sir.

MR BEERWORTH: It's not a grey area, it's very clear, black and white. I drafted it.

MR WELLES: Thank you for the point. I will take that - perhaps the drafting wasn't - it was intended - - -

MR BEERWORTH: The drafting is precise and clear too.

MR WELLES: Thank you. However, I might add, the United Kingdom under their legislation SROs, the English institute, once it had conformed to the requirements of the Securities Investment Board with its training of its members now adds a premium, I believe to a 200 sterling annual fee - to the annual licensing sum required by the board let out in the legislation, and that sum is used to fund their disciplinary control over their members and used to fund the teaching of its members. I might add that all this is done - the licence collection and

administration is done at no cost to the regulator. What I am strongly suggesting is we have a government looking to reduce costs - to pass this over to the SRO professions that have accepted some of these regulations as a cost saving as well as a more positive method.

I found this method of funding complaints in the United Kingdom very impressive; in other words any complaint from the public was immediately moved on by the institute members. You could make a complaint against an institute member or you could make it direct to the Securities Investment Board; both of them saw that the public was well looked after. I think the public service regulators in your report, which does say in that particular - they now recognise that the SROs may have a place in the new legislation. I gave that reference further over in the page there - page 259, paragraph 8.23 for the record.

The institute in England and the Securities Investment Board both expressed interest in the Deakin University course which was here in Australia under the auspices of the US-dominated certified designation adopted by the Financial Planning Association of Australia. They saw this as a good move and they felt that that would provide for anybody who is not a member of an SRO organisation to apply to the board for their individual registration and have some chance of some professional qualification in their place. But I do not believe that the question of proper authorities should be allowed to persist in Australia under the auspices of a corporation licence.

In conclusion, Mr Chairman, may I commend the ASC for filling the temporary vacuum while potential SROs get their acts together. Attached to my particular application you will see where I got to halts with my own institute for being so tardy in providing professional training courses. This has now been amended; they have now attached themselves to the Securities Institute of Australia and I believe that's well under way for training their own members.

I believe the Australian Society of CPOs has done the same with the Financial Planning Association also attached to the Deakin University. In other words, progress has been made very slowly but I do believe that proper authority recognition of companies must cease because that's where the problems have arisen, from perhaps the sales forces attached to the life companies, banks and similar situation.

I cannot say that it's the same experience I have with the SIS regulator; most of my dealings with them have been far from satisfactory for reasons I won't go into, but the major life companies

have a different area. I believe that risk life insurance is totally different from investment products and should not come under that licensing legislation. I do ask, Mr Chairman, that the submission to control delegations as set out in 259 be supported by your committee in the formation of SRO for the recognised professions as set out in my submission. In England any employee of a bank or a life insurance company can have a proper authority only to promote its own products, which you expect them to be specialists in. Where you have them masquerading under subsidiary companies where they claim to be independent and they're not - there are recent occurrences from very substantial companies of financial planners being bought by life companies - this is where they are abusing the system.

CHAIRMAN: What is the answer to that?

MR WELLES: To extinguish a proper authority situation for other than their own products. And the legislation corrections which I suggest I have attached in my report on pages 2 to 5 and the relevant sections which I ask the committee to consider recommending to the Treasurer be amended accordingly. That's the end of my submission, Mr Chairman.

CHAIRMAN: Thanks, Mr Welles. Where do the sort of ultimate checks and balances as far as the consumers are concerned rest in your mind in all this?

MR WELLES: Quite clearly with the material that I will submit to the board. You can make a complaint if there's restitution to either an SRO professional body or direct to the licensing authority, in this case the Australian Securities Commission. I believe that's proper and the public must have that access in case they're not satisfied with a decision from one of the professional bodies.

MR BEERWORTH: But wouldn't that obtain in Australia? If somebody gave poor advice you can explain to the institute here - and you can certainly complain to the ASC - which will follow through to the licensed corporation if someone's been given a proper authority? So the system is meant to be the same but a little less bureaucratic that obtains in England.

MR WELLES: But I think the proper authority situation can so often be people without qualifications. You are letting in the hordes if you put this way; now, with an institute member in England they would not give him a recommended licence to operate under unless he had satisfied that institute that he was competent in the area. You're quite

right; if the complaint goes to the institute they move immediately and then tell the Securities Investment Board afterwards that they have dealt with the member concerned and this is the result.

MR BEERWORTH: Just as a bit of history, when the securities legislation was first brought in here and federalised, each particular licensee was exhaustively licensed. That was thought to be unnecessary because they were relicensed on an annual basis, and after a very long and intense inquiry, and a large report about an inch thick, the ASC decided to go to the proper authority system to avoid what by and large was regarded as a redundant review each year of each licensee. What happens though, they come down like a ton of bricks on the registered corporation if they give out a proper authority and that person with the authority gives poor advice or wrong advice and so on. I think the ASC thinks that the system is working quite well.

MR WELLES: I must through you, Mr Chairman - - -

CHAIRMAN: Sure.

MR WELLES: - - - find that I had a position in my office a fortnight ago of a proper authority acting with pensioners, and a pensioner was charged once $30,000 to place his investments and was then again within 6 months charged another $30,000 to do the same thing again interstate from Victoria. It isn't working when you give proper authority advice like that because the particular corporation itself could be classified somewhat as greedy. It was not a member of the institute, and I recommend to that particular investor to complain immediately to the Financial Planning Association as they were a member as was I. That is now in process.

But that's the situation - where the ASC is relying on corporate management to look after its proper authority. I mean when you look about and see what happens in the marketplace as I do, then I'm sorry, it too ineffectual, it needs to be far more direct. I do believe the licence should be to an individual, not to a corporation.

MRS NICHOLLS: Mr Welles, there are two matters on that that I would like to pursue with you.

MR WELLES: Yes.

MRS NICHOLLS: One relates to a view that was put to us earlier this morning, and that was a concern that when someone holds a licence, that by some sectors of the community that can be misinterpreted or overinterpreted as meaning that somehow you are assured of getting good advice for them, that the licence is taken to mean too much.

Equally a concern has been put to us that the licensing doesn't go far enough; that is, that there are a number of individuals and organisations in the community who on the one hand may be selling but on the other hand are actually offering financial advice without any particular licensing to do so. The examples normally put are estate agents or indeed even staff in banks.

MR WELLES: Yes.

MRS NICHOLLS: Could I ask you to express a view on those points, please.

MR WELLES: Yes, I do, I believe, as I found in England, that anybody as an employee of a bank should only be able to give advice if they have passed the requisite examinations of the Bankers Institute licensing them to give that advice. All too often, and I'm sorry to use generalities, bank tellers are put through crash courses by banks and then let loose on the community under proper authorities, providing they follow the instructions of the bank management in how they carry this out. That can be anything. I agree with the submission thrust that's been put to you that all too often having a licence is presumed to be a qualification. As a professional body there is no doubt, providing that qualification is exhibited. The second question I just would ask to be reminded was - - -

MRS NICHOLLS: Whether or not the licensing ought to be extended for example to those who provide credit or who are today like estate agents not caught up in the investment advisory licensing regime.

MR WELLES: Yes. I have to strongly agree with the question of estate agents, particularly those that are advocating negative gearing. In my practice I have seen negative gearing proposals which are absolutely outrageous and invariably cause the investor, if something goes wrong or there's a downturn in the economy - I believe that estate agents, particularly where negative gearing and financing is involved, should be appropriately licensed in some special category of their own. I do agree with that submission given to you.

MR BEERWORTH: Aren't they licensed now under the Real Estate Agency Board system?

MR WELLES: Yes. I used to be the secretary of the particular board here in Victoria for a 3-year period, and that made no mention at all - it was mainly on the ethics of buying and selling property. It had nothing to do with the financing of it.

MR BEERWORTH: So you think if they give investment advice which would be negative gearing, etcetera, they ought to be separately licensed.

MR WELLES: They must be included in some sort of category, yes, I do believe the ASC would be proper in doing that.

MRS NICHOLLS: And, Mr Welles, similarly those who provide mortgage finance?

MR WELLES: I do this with solicitors. Where you've got solicitors, and particularly with their contributory mortgages, they are giving advice, and of course they have a spin-off with the legal work which is involved as well. I believe the category should be there too, controlled by the Law Institute.

MRS NICHOLLS: And bankers?

MR WELLES: The bankers is a much broader situation. I believe the banking situation - the banks should concentrate on the lowering of MERs and having the performance of their products at its best. I don't believe that they should be too much involved with getting into this professionally. They're serving two masters.

MR BEERWORTH: But if they do give professional advice, should they be licensed?

MR WELLES: If they have the licence, if they have done the appropriate qualifications, yes. In England if you go to a bank teller who's got a licence, he may give the advice. If his manager hasn't, he can't. That's my understanding of the British preference. In other words, the personal qualification is what counts. As with tax advice, as with audit advice, as with liquidators, the licence goes to the individual. I can't see any difference in the investment area.

CHAIRMAN: I think we understand it pretty clearly. Thank you very much, Mr Welles.

MR WELLES: Thank you, sir.

CHAIRMAN: We appreciate it very much.

CHAIRMAN: The last participant in this morning's session, ladies and gentlemen, is Mr Ian Sykes. I can see Mr Sykes there - if you'd care to join us. Ian, these are fairly informal sessions. We'd simply ask you to in a moment state your name, and I presume you're representing yourself, but please enlighten us if that's not the case. I need to just repeat what I've said a few times this morning, that all these proceedings are being recorded. We have no parliamentary privilege or special legal power, so I'd just ask you to bear that in mind as we proceed.

MR SYKES: Thank you, Mr Chairman. My name is Ian Sykes, I'm an economist and I have a small consulting business at 30 Darling Street, South Yarra. Before I start, might I ask that the submission I've made to you through your clerk at the back of the room be given to you, because you may care to look at it.

MR BEERWORTH: Is that a new one or the original?

MR SYKES No, it's a new one.

CHAIRMAN: A new one?

MR SYKES: Yes, it is.

CHAIRMAN: Okay. Patricia, do we have copies? Mr Sykes is suggesting we could have them, please. We have about 15, 20 minutes, Mr Sykes.

MR SYKES: Thank you.

CHAIRMAN: Because we have to get back on the job at half past 1.

MR SYKES: Fine.

CHAIRMAN: Why don't you start?

MR SYKES: It's all right. I can just talk. The submissions I'm making are just basically two points. First I've looked at the terms of reference of this inquiry, and if I may, I've been so bold as to suggest that you, Mr Chairman, might consider asking whether the government would be prepared to slightly broaden your terms of reference by removing an exclusion that you don't look at the position of the Reserve Bank in its operations, because in my opinion, without that, your committee is so curtailed that you're really restricted in a way that I think is very unfair to the members, because in a way your committee is extremely important, and later on in time what you've said is going to be looked at, and perhaps people aren't going to realise that you were given letters of reference which are in fact so restrictive as to in a way curtail what you can really do.

CHAIRMAN: Well, I appreciate your remarks, Mr Sykes, but I have to say the committee is not feeling too unchallenged or restricted, but we clearly do have some terms of reference and why don't you explain to us your views about all that?

MR SYKES: I would. Now, I'm I suppose in a position of a cabin boy coming up to the committee who's writing next week's menu on the Titanic, because I'm saying that basically we have a systematic error occurring in our large bank accounts, so that the actual company accounts, properly made up of course on the accounting principles - there's nothing wrong there - and properly audited according to the rules of the government, are in fact building up a systematic error in them.

Now, this error comes about because if a nation is sort of borrowing extensively - and by extensively I mean so that the net borrowings are at least 11 per cent or more of the gross national product, and of course ours are now nearly 40 per cent of that - and that's not being reflected over a long period in an increase in our current trading position, in other words, if we just take the simplest measure of how our exports and imports might be behaving - well, if you'd care to look at the table on page 11, we can see that what - - -

CHAIRMAN: Of your submission, is it?

MR SYKES: Yes, page 11 of the submission.

CHAIRMAN: Of this latest one?

MR SYKES: That's right - we'll see that at the time of Whitlam - his Prime Ministership was about 4 years, and in that time our straight trade surplus was $5 billion, and at the end of that period, which was 1975, our total foreign debt was just less than a billion dollars, and that means that our total borrowings could be repaid by our surplus on the simple trade balance in far less than 1 year.

Now, in the early part of Fraser's time, there was still a trade surplus. In the first 5 years of his time, ending in 1980, we had a trade surplus of $7 billion, and our foreign debt by then, at the end of the eighty period, had gone up to 7 billion itself, but that's still satisfactory. But after the Campbell inquiry, something seemed to break, and a discontinuity occurred in the financial system, and after that two things happened. Our trade balance was always negative, and that negativity has steadily increased, so that in Keating's time, from 92 to 95, we finished up with $8 billion deficit on the straight trading account. That means that imports have exceeded exports by 8 billion.

Now, that of course is extremely unsatisfactory. If this position persists of course, it's really saying that we're borrowing to pay the interest, because we've got no earnings at all from our current trading activities. Now, that is most deleterious and dangerous on the bank account. If it fact we're investing, as probably your economic professors here can say, and we were increasing our exports over imports, we'd then have some money (a) to pay the interest, and (b) perhaps to pay the principal back, but that's never occurred in the period since Mr Fraser left in say 1982, and in fact by 81 our trade position was already in deficit. Now, where that's occurring - - -

CHAIRMAN: Are you making some distinction between government debt and private debt dollars?

MR SYKES: No. I have in the paper, but what I'm saying basically is this, that it really doesn't matter whether the government or the private sector has the debt, because the system of double entry accounting which was invented in Italy is perfectly able to be aggregated. In other words, it just applies as much to your own personal tax accounts as to your say branch office account, as to your whole company account, and in the end to the national account.

Now, if you finish up with a position where you're going into a loss position all the time, true enough that people out here in general have some debts and some overseas bankers have some credits from them, but the net overall position when you aggregate it is that the whole nation state can't pay the interest. It's running at a loss, it can't even pay back, and steadily and systematically it's getting into debt.

Now, by difference, by this enumeration that I've used in a book that I've just given you, you can deal with that under the double entry accounting, but the results are appalling if you do, and it's little wonder that our bankers do not want to look at the accounts on this basis, because if you put them out that way, then the banking system as to its share of the financial industry as a whole must take into its bad debts its share, whatever it may be, of the total rise in national debt that isn't paying its way, because in the end a disruption will precipitate exactly that quantum of debt into its bad debt accounts.

Now, that statement is simplistic in a way, because it's just an aggregating statement, there's nothing very clever about it, and also the statement could be said under the doctrine of conservatism, where you never put in a profit into the bank system at all

until it's absolutely certain, and that implies also a second term, that any foreseeable loss at all is immediately taken into account. If you follow this system of accounting, which is the only one that can apply between the great interaction of the financial system and the government, you find that the financial system now and its balance sheets as a whole is carrying bad debts, which will be precipitated in time to come, of about $230 billion.

The banking system - that's the four big banks - taking up about 55 per cent of the banking sector, which is 67 per cent or so of the sector that we're considering - that means the banking sector might be two-thirds of the total of the financial sector, and of that, the four big banks are 55 per cent or thereabouts - well, within their accounts there is now an undeclared bad debt situation of $81 billion between the four big banks. The big banks are reporting profits, and large profits, but under interactive accounting where you're using the doctrine of conservatism, the banks are in fact running at an enormous loss, and not only that, they've accumulated bad debts that are undeclared of approximately $81 billion by the end of this year.

Now, that's very serious, because it can lead then to a collapse in the financial system. The banks of course were warned under exactly this type of arrangement in 1987 when we had a hiccup. In that hiccup - afterwards we managed to reliquefy the economy using the Keynesian method of releasing credit, and the banks escaped, except for two state banks. They fell, but the rest of the banks had a lucky escape, but in that escape, the banking system as a whole had to write off 25 to 30 billion dollars of bad debts.

Now, that's the warning that's already taken place under this system of tables that I've given you on page 11 of my submission. They've already been warned that the accounting system cannot handle the bank account itself. Banks are interrelated to the state. If the state is going broke, the government can't stand back and say, "Look, we're independent. Look, it's the private sector. That bloke over there is going broke, that company over there is going broke. The state can't go broke." But the state in effect can go broke, and it's the instigator of these things.

Now, economists can't do all that much, and it really lies in nursery rhymes that we preserve our great mores of what the state can do, and of course Humpty Dumpty stems from the French collapse in 1720, and remember there that after the banks broke, which

was Humpty Dumpty falling off the wall, all the king's horses and all the king's men couldn't put Humpty Dumpty back together again, so that means the power of the state can't rectify the financial situation if it's actually broken. The second nursery rhyme we have from this period stems from Rockabye Baby. When things are growing, the tree is growing up and waving around, but when - - -

CHAIRMAN: Forgetting the accounting, Mr Sykes, what's the solution in your mind?

MR SYKES: The solution must be to face up to the bank deficit which is hidden now in the bank accounts.

CHAIRMAN: Even if we accept that, where do we go to then?

MR SYKES: You must go to the government. The only way now to deal with the bank situation, if there is in fact, as I say, a roughly $81 billion deficit - I might be wrong by $20 billion too high or $40 billion too short; as I've said in my paper I can't give it exactly - that position is that we have two sources of solution. One I've written to the Liberal Party on prior to 30 June of this year, and I've suggested, when they pushed in their first budget, that they make a trench for the four big banks of $76 billion that the banks could draw on if necessary by issuing shares at say $2 or whatever each. I've given you a copy of that letter because that evoked some response from Treasury.

Also I've had correspondence with the Treasurer himself and his view is that the government accounts or the budgetary process - and I've given a copy of the Treasurer's letter to me to the committee through the secretary - that has said that really in Mr Costello's opinion the budgetary process is separated from the bank stability question. That means he's now divorcing what the budget process might do because 76 billion is already beyond any number that any underwriter or any institution in Australia can handle, and that I say is only part of the problem but that's the part I've addressed here.

MR SMITH: I am just interested to understand a little bit more. What is the nexus in your mind between the security of the assets of the banks and Australia's net foreign debt?

MR SYKES: The net foreign debt, if it was being invested in a way that increased the foreign exchange earnings, would be quite safe, it could be paid back, but that's not the case. In other words, we've got to clearly distinguish the type and character of the debt we're incurring. If we were incurring debt like some of the tiger economies to put in plants, we might well show an increasing foreign debt, but associated

with that would be a rapidly rising credit in their trading position; in other words, their exports would be rising far quicker than imports and they can easily pay the interest and then repay the capital.

That type of debt is not the sort of debt I am talking about. The nexus in my mind is the type of debt we're incurring is weakening the individual in the financial community as the cells in the body - in other words, they're systematically being weakened because they're taking on debt that one day can't be repaid, and that will throw up into the bank accounts as bad debts.

We've already had one experience in 1987 from exactly the same reason but the quantum of debt then was say 30 billion and that could be held and we were able to stop the banks going under, but the debt has risen to that extent now that the only way it can be stopped is the government really getting a plan ahead and saying that if a run or whatever occurs in the banks, the banks will have a trench to protect themselves with and that trench will have to be between 60 billion and 120 billion just for the four big banks.

So really it's within the environment of the misbehaviour in a way of the Reserve Bank by not setting the prudential ratios correctly, by abandoning the doctrine of conservatism, because really I mean it wasn't so long ago, was it, that banks had 30 per cent of their assets in liquid government securities in this country? It wasn't so long ago that they loaned 30 or 40 per cent on the value of property and 15 per cent on the value of machinery. Now you can get more or less 100 per cent on anything, yet the overall stability of the state or the nation is weaker because we can't balance, and that debt gets precipitated out through the financial system.

So if you like, the Titanic has already given way, it's starting to list, and if something doesn't happen your inquiry in a way has the risk of being made a nonsense, and that's why I've strongly suggested to the inquiry on page 8 - which is a bit cheeky and rude, I suppose - that, with respect, I think the real issue before the inquiry - it's a prerequisite to the inquiry really having a valid operation - is to look at the way the Reserve Bank has behaved, because on that behaviour now the financial system is hanging and I say that there's not a proper defence like there was in 1987, so the next time it gives way, something else quite different has to be done.

PROF HARPER: Just very briefly, are you aware, Mr Sykes, of some trial balances that the Australian Bureau of Statistics has been

calculating of the national balance sheet, and more particularly that during the 1980s they actually show - they answer the question I think that you're pointing to, if I understand you correctly, and they show the net worth of the Australian economy growing throughout that period. In other words, notwithstanding the fact that the economy is becoming increasingly indebted, the value of the assets has increased even further.

MR SYKES: Yet on the Keynesian definition of assets, really an asset is only worth the discounted value of what it can earn in the future or be sold for in the future and really, as we all know, accounting is subject to these sort of variances and after the system breaks or changes, all the assumptions that you held to be true are dumped, and economic theory is rather like that. Somebody makes a correct prediction and then after a while, bristling with spines like a porcupine, it gets dumped after it's been qualified so many times.

PROF HARPER: A bit like physics really.

MR SYKES: Yes, it is exactly like physics. In fact, any geometrical thing fits on that. That's the subject of my book.

MR BEERWORTH: Mr Sykes - - -

CHAIRMAN: You're going to get a legal question now.

MR BEERWORTH: No, it's not a legal question. I had the impression, Mr Sykes, given your submission, that you've not had much luck from Treasury with your theory. Have you tried the professional accounting societies?

MR SYKES: Well, I'm available to give a talk to them but bank accounts are quite separate from others and they should in fact be treated a completely different way and have regard to the special factors that affect banks in the state. In other words, Australia getting in debt, if that's true that it can't be repaid, eventually that will precipitate out through the financial system and you get a crash. It should really be raised there and I thank you for that suggestion, Mr Beerworth.

CHAIRMAN: I think your points are very simply made and we understand where you're coming from and we shall deliberate on them. Thank you very much.

MR SYKES: Thank you, Mr Wallis.

MRS NICHOLLS: Thank you, Mr Sykes.

CHAIRMAN: Ladies and gentlemen, we're concluding the morning's session now and we shall recommence at 1.30 in this room.

(Luncheon adjournment)

CHAIRMAN: Recommenced proceedings of these Melbourne public consultations of the Financial System Inquiry. Just for the benefit of any recent arrivals, the proceedings are mainly informal. We would appreciate it if you could start by stating your name and the organisation you represent for the purposes of the record and we'd be happy to receive your verbal comments and then open it up for questions. Thank you very much.

MR BEGG: Thank you, Mr Chairman. My name is Simon Begg and I represent the Law Institute of Victoria. I'm the chairman of the commercial law section of the institute. My fellow speaker is Lyn Boxall who is with GE but her capacity is a member of the Law Institute Banking, Finance, Consumer Credit and Securities Committee and also a member of the like committee of the Law Council of Australia. Her expertise is in consumer credit inter alia and she was responsible for the preparation of the Law Council's submission for amendments of the recently enacted Credit Code, or Consumer Credit Code.

CHAIRMAN: Thanks. Just for the purpose of the record, we'd like to actually get Lyn's voice on the machine, if you wouldn't mind, please, so there's no confusion.

MS BOXALL: Okay. I'm Lyn Boxall and I'm here today representing the Law Institute of Victoria together with Simon and I'll be particularly talking about consumer credit and electronic banking.

CHAIRMAN: Thank you. Over to you.

MR BEGG: We have as observers James Syme, who is the president of the Law Institute, and Lita Gyfteas who is the secretary of the commercial law section.

CHAIRMAN: Okay, we have about 30 minutes.

MR BEGG: Well, I'd like to say that we as lawyers are not into addressing you in regard to the nature of the regulatory framework for the financial sector. Rather we're concerned with its efficiency and the laws both present and under discussion that affect its efficiency, so that we're addressing the way it operates in practice rather than the prudential requirements.

I plan to address briefly the general framework of the submission that we've sent to you and, in particular, areas that I know a little bit about myself, which is state taxes, both stamp duties and financial institutions duties, and personal property security laws, and Lyn, as she said, will address the other items.

There's one very important matter that links all of these submissions, and that is the method by which state in particular but federal laws also are in fact enacted, so we've got quite a bit to say on the law-making methodology. I think that it is our submission that it's the law-making methodology that is the prime cause, the ongoing cause, of all of the problems that beset us and that until that is addressed every new set of laws will suffer from the same problems as the last set.

Australia is a federation and in terms of the financial sector, and I think probably a lot of other commercial sectors, being a federation is not an advantage; it may be politically an advantage but it's certainly no commercial advantage because you end up with competing government laws, and I think that a disadvantage of federation is something that the committee ought carefully to address because you start with a handicap compared with unitary systems in terms of law-making and administration.

Financial transactions are an inseparable adjunct to commercial transactions. You've really got to treat them all alike and it's trite to say that there are diverse state taxes and diverse state commercial laws and their differences have a cost imposed on business. There's a cost in working out what the law is, there's a compliance cost, and there's a very definite cost in submissions on having them enacted or disenacted once they are enacted. All of that is set out in the paper.

To get to the specifics that we've addressed: there is currently a stamp duty rewrite in progress. The rewrite has been rendered necessary by the diverse state laws and they are basically archaic. They're 19th century laws - documentary taxes when commerce has moved on to electronic and it's easy to dodge documentary taxes by doing the transaction in some different way, so that the laws have followed the transactions and the result is a thoroughgoing mess that everybody would concede.

The rewrite process, however, is yielding results that are absolutely no better and will be absolutely no better than the present and they are no better and will be no better because of the way in which these laws are being processed.

They are being processed by individual jurisdictions as a basis of compromise. There are going to be ongoing individual differences between them, and nobody has stepped back from the system and said, "What's a sensible system, and let's start from the ground up and enact it." They've all started from, "What have we got at

the moment, and how should we tinker with it so that it can be made to" - I wouldn't say be ongoing into the future, but rather limp into the future. It's putting a bandaid on it.

There's another process more recently undertaken called the FID Forum, which is financial institutions duties, and presumably it has in its ambit debits taxes. That is an exact replica of the stamp duty rewrite process. I've spent much of the last month reading draft papers, discussion papers and the like, and the result will be absolutely no better in any way than the stamp duty rewrite. It'll just be disastrous.

Nobody again stepped back and looked and saw what these taxes cost the economy because every one of them is passed on to a consumer, nor have they even had any regard to the administrative costs of paying them. I mean, apart from the actual impact of the tax itself, they're imposed from the top down, and leaving the institutions that have got to pay them the task of working out how they'll develop systems in order to pay them, instead of working from the bottom up where the transactions are discussed with the institutions and the taxes are imposed on the way the computers actually work so that it could be an automated process.

One bank estimated to me this morning at a discussion on this very topic that it costs them $20,000,000 a year. That's just one bank alone - to comply with financial institutions duty.

CHAIRMAN: Where would you like the committee to come from then in this respect?

MR BEGG: Well, if there must be this tax, it ought to be imposed having regard to the way the banks actually - or the banks and other financial institutions actually work, and for ordinary accounting principles if you have a debit and a credit you could tax - well, in fact presently they tax both of them, but why not tax just one of them, say the debit, and if you tax the debit double the tax, halve the administrative compliance costs. If it's entries and accounts that are taxed, it can be automated, instead of which they're trying to identify actual receipts.

That means that you have got to a lot of the time, especially with cross-border transactions, do the task manually, and Victoria would go along with, I think New South Wales, with an automated system of the kind that I describe, but the problem is that small states like Western Australia fear that their duty base will be

eroded so they're insisting on doing their own thing, and they say it's not practical politics to talk to Western Australia.

But then surely if the duty was shared on a national basis among the jurisdictions on a population basis or on an economic basis, then this Western Australian difficulty could be overcome. After all it is overcome in some aspects of financial institutions duties, namely short-term dealings duties where there's a formula for sharing revenue. Why not in regard to all of it? I just don't think enough work is put into getting sensible outcomes from these processes.

Personal property securities law is the next topic I've got identified there. Currently Australia, like a lot of other countries, has got a fragmentary registration system, corporations registration, bills of sale registration, book debts in Victoria; all sorts of different registration systems. These all ought to be updated, and the Americans after all with 50 states have managed to achieve it. Canada has achieved it, New Zealand is proposing to do so.

Inefficient security systems again have a cost. The monstrous costs of running the Australian securities register where it costs I believe something of the order of a hundred dollars a registration - and the reason for this is quite simple: because there is an insistence on filing the actual security document instead of a notice of the document. In Canada where they have notice filing rather than document filing for example, the cost of registration is $7. It's just simply costly.

My final point is methodology. Currently any supposedly uniform laws are developed by inter-governmental committees, and fundamentally that's a process of the lowest common denominator. The results are guaranteed to be disastrous. The Americans endeavour to resolve their much bigger problem with many more states. They have a national commission for uniform laws, which I think is largely in the private sector, but where people of appropriate expertise and no political ambitions have the task of trying to produce a competent result, and the nearest thing in the Australian process to this is the process for updating the Corporations Law.

The Corporations Simplification Task Force is the kind of model on which Australia ought to seek to build, and if that were done you could get revenue laws. I mean, once the political process has been sorted out and you've worked out who you were going to tax,

the text of it - personal property security and such things as consumer credit - could all be addressed.

CHAIRMAN: Does the half of the sort of difficulty with all this really rest with that imbalance and the funding issues between the federal and the state jurisdiction or is it just an administrative - - -

MR BEGG: No, it's parochial power bases, I believe.

CHAIRMAN: Okay.

MR BEGG: I think that's the reality. I mean in terms of funding, I think industry doesn't sufficiently recognise that it's own interests would be better served if they helped fund something like this. I'm sure that happens in the States, so that industry puts a pittance into doing things like this and government doesn't put much more in, but if there were competents doing this job the results would be infinitely superior.

CHAIRMAN: Okay. Lyn?

MS BOXALL: Thank you. If I can perhaps add to that: I spent the second part of 1984 and most of 1985 redrafting the documents for one of our major banks. We had to draft eight separate real property mortgages, seven separate bills of sale because Victoria and Western Australia happen to be the same, five or six separate wool mortgages, five or six separate stock mortgages, four or five separate crop lands. Then we had to do separate corporate documents of the securities given by companies, separate procedures for all of them, separate registration systems for all of them, and that reflects I think that we were 200 years ago a series of colonies because in most of those documents there was no need for there to be any difference. It was simply that the legislation was there.

When you're dealing with stock mortgages and wool mortgages you're dealing with legislation that was first drafted in 1855 and hasn't been changed. They're not issues I think on which most of the state governments really care. They don't care enough that anybody has tried to change them, and the financial institutions are kind of used to them being that way, so there hasn't been an impetus for change.

Now, if I'd been, instead of drafting documents for an existing financial institution, if it was somebody from overseas who said, "Okay, I'd like to set up business in Australia," or a domestic person who said, "I'd like to set up a financial corporation. I want to increase the competition in this market because I've got some good ideas and I want to do secured lending or some leasing," they would

have had to do all of those documents again, starting from zero, so that they could carry on business with a national consumer base even if they were only located in one state.

They also would have had to have been registered under eight separate stamp duty registrations for rental business duty or hiring arrangement duty - what is it, Simon - six different systems for financial institutions duty. They would have had to establish seven separate ways of calculating and paying stamp duty on loan securities. It just doesn't make sense. If a bank lends to a company that happens to carry on retail operations in every state and the value of the stock over which the mortgage is secured in each state fluctuates, as it does, and the amount of the loan fluctuates, at the outset those documents have to go to every state for assessment of stamp duty, supported by all sorts of stat decs and financial statements about where the assets are located, and each time the limit is increased the whole thing has to happen again, and from separate bases.

Some states say, "What was the proportion of assets when this security was taken out?" Some say, "What's the proportion of assets now?" Some actually don't know, and it's great business for lawyers, except that it's very tedious, and all it does is add costs to the system, and really the lawyers don't like to earn their fees I think in something that is just so non-productive. We're in the 20th century now, we're one country; we're not a series of colonies. However, my topic was consumer credit and electronic banking.

CHAIRMAN: That's a pretty contentious statement.

MS BOXALL: Well, it certainly had its contention in some aspects of the Consumer Credit Code because we still have uniform legislation that is different in Western Australia, and I don't think I'll buy into that one. I've bought in enough at the Law Council level. That was an idea that was good because people need to know what they're up for. Most of my friends aren't lawyers, and most of them have had experiences where they've found out the day before their housing loan was drawn down that there were all these other things to pay that they didn't know about. So of course there should be disclosure and of course there should be documents that people understand.

The unfortunate part is that we didn't manage to achieve it with the code, and I think Simon's right; that that was because of the consultative process which was undertaken to bring it into play. I was part of that for 6 years so I can take part of the blame as well, but

there have been too many interests that have been tried to be satisfied and you end up with something that doesn't work. You end up with a situation where I understand that if a couple comes into a bank or a finance company for a personal loan and stands there at the counter, it's arguable that they have to be given 11 copies of the contract in order to comply with the code. That's dumb.

That's just wasting money and it's just infuriating consumers as well because there's no way you can explain to them that the law makes you do this really silly thing. We'll work on trying to fix some of those technical problems, but I think it does need to be looked at on an overall level.

MR BEGG: Would you like to address truth in lending?

MS BOXALL: Well, truth in lending is part of the disclosure. We want consumers to understand what it's about, what the deal is about. They're not going to understand if there are 160 pages, as apparently there are for one of the banks or finance company's housing loans. They're not going to understand, they're not going to read it. There are other questions about whether the way the code requires financial amounts to be disclosed achieves truth in lending anyway, and that comes back to, you know, this loan is at X per cent and this one is at Y per cent, but with all these fees - and how can a relatively unsophisticated consumer make a judgment between one and the other.

CHAIRMAN: Comments have been made this week, Lyn - not expressing any personal view about it - that, you know, the banks have perhaps made hard work of this whole process and gone too far, and the complexity of the documentation and maybe for good legal reasons to protect their interests, but it's not necessarily what, as you say, consumers are looking for.

MS BOXALL: Well, you know, when we were drafting the code we tried to draft in plain language, and that was okay. It should have worked, but too many of us were bitten too badly by the very technical interpretations that were given to the Credit Act, and it's kind of scary knowing what to do. One of the items on my list here is to say that if we had a federal authority governing consumer credit for example, maybe we could have guidelines in the same way that the tax commissioner issues guidelines because there are many many parts of the code where you can look at it, look at the plain English. There's two or three interpretations that are open.

MR BEGG: Not really well drafted, that's the problem.

MS BOXALL: Yes, but you could live with any of those interpretations: as a lender you just don't care, as a consumer you don't care.

CHAIRMAN: So is your answer that we should move towards some national jurisdiction?

MS BOXALL: Yes, I think it is, because then you can have some sort of direction from the top where there is an opinion expressed by the regulators - "This is the way we think this provision should work." The financiers will happily go along with it instead of the complexity that they're using to protect themselves at the moment. The consumers will hopefully go along with it because they can see what they're getting. As it is at the moment we're all trying to protect ourselves. If you're a national credit provider and you're going to enter into, I don't know, 10,000 property mortgages a year, you can't take the chance of getting it wrong, you have to do every possible thing to get it right because that error flows through to too many contracts over too many years.

MRS NICHOLLS: Lyn, a couple of different submissions have come to us in representations in the hearing about making a move from the current state/territory-based system we have to a national framework. Given the background that you and Simon have as solicitors and your role with the Law Institute of Victoria, could you give us some specific suggestions as to how you would see this transition being implemented?

MS BOXALL: As to how the federal government would have power under the constitution?

MRS NICHOLLS: How could you actually move from a state and territory-based system to one national system?

MR BEGG: All commercial law should be national law not state-based law, obviously. I mean there are huge inefficiencies in having commercial law as state-based law. It's an historical accident, but in order to have federal law there are huge limitations in the constitution and the corporations' power is said to be the best possible way of achieving - I mean that was what the federal government threatened in regard to the Corporations Law when the states were dragging the chain, and instead they ended up with the Corporations Law as a compromise.

The Consumer Credit Code is a compromise built on similar lines. The difficulty with all of those is they are part of a Commonwealth-state agreement and changes therefore have to go

through a labyrinth process and the initial development process is also labyrinth.

MRS NICHOLLS: So if I could just stop you there.

MR BEGG: Yes.

MRS NICHOLLS: I understand what you're saying is that to get there you would rather not start from here.

MR BEGG: Yes, but if you have got there - - -

MRS NICHOLLS: But we're charged with starting from here, so what would you like to see us recommend that would help us - - -

MR BEGG: National law.

MRS NICHOLLS: - - - advance from a state-based system to the national system - a practical implementable step?

MR BEGG: Well, you would have to say it's a constitutional lawyer's question. But you have got to pick ahead of federal power to - you won't get states to refer the powers - I mean obviously that would be the answer. But failing that, the most likely head of power, if you looked at banking, if you looked at consumer credit, if you looked at large-scale commerce, mostly it's corporations that engage in it. Therefore if the corporations' power is interpreted widely, as I believe it is, by the High Court a corporations-based law would probably catch most transactions and then the state one assumes - same as with the Trade Practices Act; the states then in effect would be left to pick up the remaining transactions and hopefully they would do that in matching form.

By and large, if you look at the consumer protection measures in the Trade Practices Act the states have picked those up. They're lamentably not in identically uniform fashion in various Fair Trading Acts, but I mean that's a possibility. It's the best one I can think of quickly.

MS BOXALL: Yes, I think that is the best possibility: the corporations' power combined with telecommunications' power. The same question comes up in connection with privacy. We're looking at a privacy change to bring us more in line with the European Union but the same constitutional questions come into play there. The trade practices, the consumer parts of the Trade Practices Act and the Fair Trading Act parallel provisions seem to go a very long way. I understand there are 60 or 70 individuals registered as credit providers in Victoria, so maybe you wouldn't catch them all at a federal level but if the states would cooperate we would be very much closer.

If it was federal legislation as well, we could also have one series of precedents and decisions. As it is at the moment, if you're a national credit provider and you've made a mistake, whatever it is, certainly under the Credit Act which is still haunting us from the past, you find yourself in court in every state other than Tasmania and the Northern Territory, and you find inconsistent decisions between jurisdictions. It just adds cost and it doesn't achieve anything for anybody.

MR BEERWORTH: There is a question on all of these things, of course, as to what we can actually do. We're even looking at of course what recommendations we can make on federal tax much less on state tax. I mean on a personal basis I would abolish the state taxes, I think it's inappropriate to levy taxes on those transactions, but that's probably beyond our jurisdiction. And as to getting the states to refer them federally, you know as well as I do the difficulty in doing that.

Similarly the idea of a national registration of security interests. I practised in the United States 25 years ago under the UCCC over there and it was fabulous. For a long time I was in your position of the very small council committees trying to persuade people in the federal government to do something. It hasn't happened and as Lyn says, the problem is how do you make it happen?

MR BEGG: Well, we think we have got a method for that particular problem. There is in fact a process in place that conceivably might happen during the next year.

MR BEERWORTH: Sure. But the question is what this committee can do. When you finally come of course to what's called the UCCC here, being a different thing altogether, the issue is how do you get the states to freely give it to the Commonwealth, and that's what you're debating. After all, it has taken 13 years to get towards something which is frankly uniform, and the question is what this committee can reasonably do, apart from making a recommendation. But maybe, Lyn, can you make - - -

MR BEGG: I thought the most useful thing it could do above all else would be to suggest - in areas where laws should be uniform, to suggest national commissioners for uniform laws picking one of the American models or if you like the corporations' update - - -

MR BEERWORTH: Model.

MR BEGG: Yes. The model that is based on departmental officers clearly can't produce good results because people's little

political empires depend on their - you know, they get their own personal arguments that have nothing to do with the outcome. What you need are national commissioners who have the charge - they're given the policy that is to be achieved and they are picked for their expertise, and in my view the representatives would come from the affected industries and - of course, if consumers are affected, their representatives as well - the affected governments, so that you have got everybody represented but hopefully at a proper expert level. Then a committee like that is likely to come to a sensible result, and everybody owns the outcome. It is done technically competently.

That's what is lacking in all these enterprises we have engaged in hitherto in Australia; they're not done at a technically competent level. If they're done technically competently, results will be dramatically improved. This would apply to every area of endeavour: consumer credit, Corporations Law, state taxes, if it could only be allowed to be done in that fashion. It doesn't set the level of the taxes. What that does is make sure at least they work efficiently at whatever level they have been set.

It would work for personal property, security law reform or security law reform more generally. It would work for things like the Goods Act, commercial law; in every area the results would be beneficial, and what's lacking is the framework to do it.

MS BOXALL: Can I ask you a question more directly perhaps? I think that what you can do is put these issues on the agenda because there's not a quick solution, it is going to take time. But at the moment there's a - it's just the cost of doing business that there's all these things and there's an acceptance of that. I think the whole thing needs to be put on the national agenda, so that these things can change and what can we do about it to make it change so that business starts exerting some pressure politically and then there may actually be a change in the political will.

MR BEERWORTH: The one thing you have put on the national agenda, which I wish you hadn't, is if there is to be a tax on electronic commerce, then that would be federal; I would rather not even suggest that there be a tax on electronic commerce.

MS BOXALL: I didn't notice it suggested that.

MR BEERWORTH: It's in your submission.

MS BOXALL: Okay. Certainly when we turn to electronic commerce, I think the most important thing there is that we actively look

at what the issues are and what issues should properly be solved by legislation or are outlined by legislation. It doesn't make sense for these issues to be solved by whichever parties happen to be the test case on issue by issue. We can't proceed with electronic commerce on the basis of solving the issues by case law over the next 20 years; we don't have that time-frame in that sort of context. I don't know what the answers are to the issues, I'm not even sure what all the issues are, but again it needs to be put on the agenda. It's something that's actively reviewed and solutions sought.

MR SMITH: I've got a couple of questions, just seeking your reaction, just in terms of understanding what methodology works best and why it works best. Your instance of one that works well is the corporate law simplification task force. Why does that work best? As I see it, it's costing the Commonwealth government $2,000,000. In other words they're putting a very significant bureaucratic resource into the exercise. Is that what makes it work best, because most of the state agencies engaged in this type of thing seem not to have those resources available?

MR BEGG: I don't think it's to be measured in terms of a sum for that exercise so small as $2,000,000 so much as it's primarily a personality thing; that if you have say the Consumer Credit Code exercise, that was done at a departmental officer's level. I have sat round - not on this last one, I did the previous Credit Act; I was on that committee for 7 years, and the processes are disastrous. Despite every good endeavour it was impossible to achieve any technically competent result, and the original Credit Acts were catastrophically badly drafted, and that was despite endeavours of people who were trying to get the thing improved in the process.

The fault lay in the people who actually had the final say on how it was worded and how the input went into it. What you need is a small committee of technically competent people to do these tasks, and the people that presently do them are neither small, because there are a lot of people involved, and not only that they aren't technically competent. Qualifications to get on these committees, technical competence isn't one of them.

It's hard to pick an illustration but it's like getting the dustman to govern the economy, to set the settings for the economy. Not quite as bad as that but that's the kind of thing it is. It's really a people thing fundamentally. Money of course also helps. To do any

one of these big jobs properly you need enough money to pay people with the right expertise, and $2,000,000 is a very small sum of money to get a job like this done well, if it could be done for that. I bet it cost more than $2,000,000.

MR SMITH: These should be matters of competitive advantage for the states, so I just wonder whether maybe you should stop dealing with law departments and start dealing with the - - -

MR BEGG: Treasury.

MR SMITH: - - - state government departments.

MR BEGG: Well, on some of the revenue matters I have tried to shift from the state revenue offices to the state treasuries, but where do we go to from there?

The Victorian Treasury is, I think, seeing the light a little. We've read the Victorian government's submission and we're much gratified to see that some of the things that we regard as being in the national interest were being advocated, but that's not a view that's shared among all the State Treasuries.

CHAIRMAN: I think we've just about covered it, Lyn and Simon. Thank you very much. We've appreciated your input and we'll see what we can do.

CHAIRMAN: Ladies and gentlemen, we now have David Boymal and Colin Parker from the Australian Society of Certified Practising Accountants. Can I just make a few remarks that you will not have heard? These are public consultations; your remarks are certainly on the public record. I'm sure there's no need to remind you that we don't have any parliamentary privilege or special legal standing, so obviously one needs to bear that in mind. We would simply like you to state your name and the organisation you represent for the purposes of the transcript and then we'll be very pleased to hear your submission. We only in fact received your documentation, I think, this morning. We didn't get it down here till this morning. So it's over to you, thank you.

MR BOYMAL: I'm David Boymal. I'm professionally a partner in the accounting firm of Ernst and Young and I'm representing today the Australian Society of CPAs.

MR PARKER: Good afternoon, my name is Colin Parker. I'm the director of accounting and audit with the Australian Society of CPAs.

MR BOYMAL: If we can perhaps introduce some of our views, we want to talk primarily on the financial reporting aspects of the financial system because the financial reporting side of things is clearly the aspect which most affects the accounting profession. We must say that we don't think that financial reporting has received very much emphasis and we've mentioned that in the Campbell report, although it only actually took up a couple of pages in the final report, it actually resulted in some quite fundamental changes to financial reporting, including the final giving of legal backing to accounting standards and the setting up of what is now called the Australian Accounting Standards Board as a government-appointed entity to make the standards.

So the Campbell report was in fact extremely influential in terms of effecting change that underlies financial reporting. The role of financial reporting and the role of auditing in the financial system does tend to be underplayed and perhaps it's fair to say it's even taken for granted but in fact these are very important aspects of our entire system because they're the cornerstones of accountability, of transparency and openness in terms of what's going on within corporations and other entities that the public has got an interest in, and basically end up being the cornerstones of the free and open market in securities that we all understand exist in our society, but without financial reporting all of those would fall by the wayside.

So it's in that context that we've suggested that a logical next step in financial reporting is the creation of a generic financial reporting act and one needs to understand that at the moment each piece of legislation, federal or any state, has its own distinct financial reporting requirements. Many enactments do make reference to Australian accounting standards, so creating a common thread, but they really don't have to make any such reference, so what we have is banks reporting differently to life companies under different regulations, non-bank financial institutions reporting differently under their own regulations and legislation, and we've got some sorts of entities with no reporting requirements whatsoever.

So if one is a partnership, even a partnership such as my firm which is as huge as many public companies: no reporting requirements; they basically report how they like. Nor do trusts. There's nothing in any enactment that says that trusts have to report in any particular way unless they're publicly listed or have issued a prospectus, in which case the Corporations Law reporting requirements would apply to them. So we've got a diversity of reporting requirements and a generic reporting act would mean that irrespective of the legal form of the entity, if it has to report its results and its financial position as a matter of public record, then the same sets of rules and requirements ought to apply.

I should remind you that at the moment the legal backing given to accounting standards is legal backing given to accounting standards so far as it applies to corporations under the Corporations Law, so it's not an answer to this more generic issue that I'm talking about. It seems really that rather than each piece of legislation continuing to set its own reporting requirements, the nature of the entity, the legal structure under which it was created, shouldn't really be the driver as to which set of reporting requirements it falls under but a generic reporting act would generalise, one might say.

MR BEERWORTH: David, you instanced their your own firm, which is a private partnership, I assume.

MR BOYMAL: Yes.

MR BEERWORTH: You're not troubled, obviously, by the standards you apply but do you seriously think that standards under a public act should apply to a private firm which is not obliged to publicly report?

MR BOYMAL: Perhaps I shouldn't have said that, basically because it is privately owned and a moment ago what I did say was that if it is an entity that the public has an interest in, then - - -

MR BEERWORTH: Reports would have to be public first of all, would they not?

MR BOYMAL: We would have to say, "Well, what does the public have an interest in?" but already we have separate pieces of legislation that basically say, "The public is interested in this entity so you must report publicly," and it was my mistake to mention my firm. You've really got me into trouble. Wait until I get back to the office.

CHAIRMAN: It's on the public record.

MR BEERWORTH: David, I've got some suggestions if you would like to have them.

MR BOYMAL: So what we'd see is that that would simplify the whole reporting framework and that therefore represents one of our key suggestions. Likewise the role of auditing needs a lot of clarification. There exists an expectation gap between what the auditor perceives his role is, perhaps in preventing corporate failure, and what the public sees is his role in that regard. In addition we have legislation at the moment which tends to put more and more responsibility on auditors and they're now required to report such things as general breaches of the law, which means they have got to be amateur lawyers, and report controls to manage risk, so they have got to have systems knowledge and a high level of business acumen to understand what the business risk is in that particular business, and the responsibilities that get written into the legislation so far as what is required of auditors is actually expanding, and the auditors are having a great deal of difficulty in coming to grips with particularly these new sorts of requirements.

CHAIRMAN: I didn't quite get the distinction between what the consumer or the public expects and - - -

MR BOYMAL: So far as the consumer or the public is concerned, if a company fails it's often said, "Well, where were the auditors?" which contains an implication that the auditors were there to stop company failure. Now, company failure is normally a result of bad business in the main, although we have exceptions, but primarily failures arise from inappropriate business acumen whereas it's not really the responsibility of the auditor to report on inappropriate - so long as it's within the law - business acumen, business wisdom or a smart business move. Yet this requirement - "If the company failed, why didn't the auditors tell us?" - is

part of this problem of what the auditor sees as his responsibility compared to what the public perceives is the responsibility. That's the principal worry.

In addition, in relation to the role of the auditor, the role of the auditor in prudential supervision is also something that needs to be clarified because most of the prudential supervisors call upon the auditor to separately report, so the auditor reports to the Reserve Bank on a banking client, the auditor reports to the insurance commissioner on an insurance client, and the extent to which the auditor has an obligation to the prudential supervisors is something that's, I guess, grown like Topsy and the auditor's responsibility to the prudential supervisor, the auditor's liability to the prudential supervisor are all matters where there really isn't a great deal of understanding at this point in time.

The relationship also between an auditor and his or her client in respect of other services which the auditor might reasonably be able to provide to the client without affecting independence is a matter at the moment of considerable debate. Who really appoints the auditor? It's a bit like, "Who appoints the directors?" It tends to be that the theory and the practice are not quite the same because inevitably it's the directors rather than the shareholders who appoint the auditor but the auditor's principal responsibility is to the shareholders. How effective is the auditor within the whole financial system? It's a fair question to ask and I guess if you ask politicians they're very scathing about the effectiveness of the auditing profession.

So that's a whole area that probably needs a lot of clearing up. Financial reporting is actually also closely related to the question of how many different regulators there should be because one of the products of regulation is actually the financial report itself. Up until now financial reporting for banks and for life companies is exempted out of the Corporations Law so long as the banks and the life companies report under the Banking Act or the Life Act, but the second Corporations Law simplification bill proposes to remove these exemptions and the effect of that will be that the public reporting for those entities will now definitely fall under the Corporations Law and thus under the regulation of the ASC, so the regulatory position is actually about to become more complicated than it was before.

There's also a different regulator for non-bank financial institutions running under a cooperative state system which is

like we used to have for companies and they have their own separate reporting requirements. So at the moment, unless this whole thing gets cleared up, the simplification bill is going to actually make the whole thing more confused than it has been in the past by no longer exempting the banks and insurance companies from the Corporations Law reporting requirements.

We, in our submission, see an advantage in there being two umbrella regulators, one of them for prudential supervision and one of them for what you might call consumer protection. There's probably going to be reporting requirements to both. The reporting to the prudential supervisor should be a private matter, depending upon the industry, and the reporting for the purpose of consumer protection, which is rather more the public matter, should have a consistent set of rules irrespective of the industry. So I have looked upon the issue of regulators only from the reporting point of view and not dealt with it in terms of other factors, but suffice it to say that from the reporting point of view it's a really confused and messy situation at the present time.

CHAIRMAN: Understood.

MR BOYMAL: In some of the other submissions made to you is comment about international harmonisation of accounting and reporting, and the profession feels it needs to respond to that. The accounting profession supports harmonisation and there is at present a large project under way to ensure that compliance with Australian standards - accounting standards, that is - will automatically mean compliance with international standards..

Now, those words are carefully chosen because it doesn't mean adoption of international standards. It doesn't mean copying international standards. International standards by their very nature contain choices which are to be determined by the local standard-setters, whose function it is to select between the choices that are available in international standards. So the international standard-setters will set up a standard saying, "You can either do this or you can do that."

The local standard-setters to harmonise with the international standards will choose one of those methodologies. That's called harmonisation with the standards. It's not copying the standards because one or more of the choices is just not there, and it's not adopting the standards for the same reason. What that means is that one country can have harmonised with international standards by taking

choice number 1, another country can have harmonised with international standards by taking choice number 2, so those two countries are not comparable, although both of them can say that they've harmonised with international standards.

Needless to say there's a fair amount of misunderstanding about all of that because one can't say in the same breath harmonisation with international standards means there will be comparability between countries because, as I have explained, that isn't necessarily the case, and comparability of accounting between countries is unfortunately still a long way off.

CHAIRMAN: Well, where would you see that being of greatest relevance to the financial system?

MR BOYMAL: Well, the relevance of harmonisation of accounting standards comes about by companies wanting to have access to the financial markets of other countries. If there's a country and it wants to be listed in this region, does it choose to be listed in Australia or in South-East Asia? If the rules are tougher in Australia it will choose another country.

CHAIRMAN: Yes.

MR BOYMAL: In relation to our own companies, it represents the amount of trouble that a company has to go to in order to be listed elsewhere. As you probably are aware, in order to be listed in the United States you have to conform to the many many requirements of the SEC, and Australian standards and US standards are not the same so you've got to restate or reconcile your numbers. If there was comparability across the board using the international standards as the common feature, then the local set of accounts which comply to international standards hopefully would be acceptable to another market like the US market without any restating because international standards would be accepted in US. But that's up to the US, not up to us, and I think that it's a long way off.

CHAIRMAN: We're running out of time, David. Was Colin going to also say a few - okay, fine.

MR BOYMAL: I'm leaving the questions to Colin actually.

MRS NICHOLLS: David, I'm interested in your notion of a generic financial reporting act. The question I want to ask you is, how important do you feel it is that financial statements be a useful tool for consumers to understand the creditworthiness of their institution and be able to compare the creditworthiness of one institution with another, and how

would you see your suggestion of a financial reporting act contribute to that objective?

MR PARKER: They have been stated so that it - the lead-up to now. Financial statements are really made for the sophisticated user of financial information. To ask a mum and dad to compare the NAB to the Westpac is an unrealistic expectation of financial reporting. They are made for the sophisticated users that have some understanding of accounting and financial reporting and the way industries operate. So from that point of view the individual consumer has to rely on the system rather than making individual choices.

CHAIRMAN: The profession doesn't see the sort of responsibilities to make financial statements simpler and more meaningful again?

MR PARKER: I think that there are steps afoot to make the financial statements - - -

CHAIRMAN: I used to be able to understand them once, just to make my position clear.

MR PARKER: Concise financial reporting is an example of making - which is in the second Corporations Law Bill - as a way of getting the key points across to users, but I think we've got to face reality; that some businesses are very difficult to understand, particularly the banks and other financial institutions with the use of derivatives and the like. So you can't readily communicate those issues to unsophisticated users.

MRS NICHOLLS: Colin, could I as you a follow-on question to that?

MR PARKER: Please.

MRS NICHOLLS: Do you feel that the various consumer groups are comfortable with your view that financial statements really aren't designed to help consumers? Is that a view that they would advocate as well?

MR PARKER: I can't speak for the consumer. Any time you want to come in, David.

MR BOYMAL: I'm not sure that it's a correct statement to say they're not suitable for consumers. They are designed for sophisticated consumers, and the expectation is that the mum and dad in the street has an adviser to turn to in order to enhance the level of sophistication needed to understand. So they're very useful to sophisticated consumers. The real question is, the acknowledgment that not every

person who invests in shares is himself or herself a sophisticated user, and what do we do about that?

MRS NICHOLLS: I'm sorry, David. My question didn't go to the purchase of shares. It went to the issue of someone intending for example to make a deposit or to invest their funds with an institution to assess its creditworthiness through the financial statements.

MR PARKER: I think the financial statements themselves add to the credibility of the decisions being made within the system because that information is in the marketplace in some way, shape or form. An opinion has been passed by the auditor on those financial statements that adds added credibility to that information, and also where there's a regulator involved there's also been that regulatory oversight. All that adds comfort to the financial information in the marketplace, and must raise the credibility of that marketplace in due course.

MRS NICHOLLS: Thank you.

MR PARKER: Just to pick up on your financial reporting act, it would make uniform rules across a number of the jurisdictions, make it easier for groups to focus in on their reporting requirements, cut down the costs of accountants which get passed on to consumers in terms of understanding the different reporting requirements. It would do a lot for the efficiency of the Australian marketplace if we just had one generic financial reporting act.

MRS NICHOLLS: Thank you.

MR BEERWORTH: How far advanced are you with this generic financial reporting act? I would have thought the ASC and many other institutions and bodies would have been delighted to know that the society wanted to have it. What about the institute? Do they support you in that?

MR PARKER: Yes, the Institute of Chartered Accountants. There was also a joint submission prepared by the Australian Accounting and Research Foundation. That undertakes research on behalf of both accounting bodies. In that submission there is support for neutrality in terms of financial reporting, and a generic financial reporting act. So, yes, the Institute of Chartered Accountants has a similar view.

MR BOYMAL: I don't think it's such a simple exercise though because at the moment with these separate pieces of legislation all having their separate reporting requirements, you would need legislation to wipe the slate clean, and each of the regulators would have a view, because it will be saying to the Reserve Bank for example,

"There's going to be a common reporting requirement that equally applies to banks," and there's a common reporting requirement that equally applies to insurance companies, so the insurance regulator will be - - -

MR BEERWORTH: They're about to do that, as you told us, under something - a simplification bill; once that's occurred.

MR BOYMAL: Well, they're not going to do it that way, Mr Beerworth. They're going to add. So there's going to be a requirement for, let's say, a life company to report under the Corporations Law and therefore comply with all of the accounting standards, in addition to the existing requirement that the insurance or banking regulator, as it may be, calls on those organisations to report to it at the moment. So it's adding to the process and adding to the confusion, rather than replacing.

CHAIRMAN: Okay.

MR BOYMAL: Could I make one other comment?

CHAIRMAN: Yes, sure.

MR BOYMAL: And that's really who pays for the developments in financial reporting? So far primarily the accounting profession with some help from the government has been paying for the whole process. The ASX has offered financial help in relation to the international harmonisation project, but that's all. But in the long run the corporate community, which is really the group that benefits from the free market in their securities, and the financial reporting is part and parcel of the free marketing in securities, needs to play a much greater role in bank-rolling the whole standard-setting process, either by way of ongoing ASX levies or a levy on the ASC filing fees, or some systemic method of extracting money from the beneficiaries to pay for what's turned out to be a very expensive process.

CHAIRMAN: And the corporation can get some input into the process. Is that - - -

MR BOYMAL: Well, they already have input into the process. Remember I mentioned independence before.

CHAIRMAN: Sure.

MR BOYMAL: There'd be a limit to that.

MR BEERWORTH: They see themselves as being beneficiaries, I suppose.

MR BOYMAL: Well, if they don't see themselves being beneficiaries of their accounts being out there in the marketplace to give

credibility to their results and therefore affecting their share price and the like, then they don't really understand what the financial system is really all about.

MR BEERWORTH: Well, then they'll welcome your levy or tax, I'm sure.

MR BOYMAL: I'm sure they won't actually.

CHAIRMAN: Okay. I think we've certainly covered the subject well and it's a very clear statement you put in. Thank you very much.

CHAIRMAN: Ladies and gentlemen, we now have the Association of Superannuation Funds of Australia, Peter Foxton and Susan Ryan. Thank you very much. Could we ask you to commence by each of you just stating your name and the organisation you represent so we get it on the tape, and then we'll be very pleased to hear from you singularly or however you propose to do it.

MR FOXTON: Peter Foxton, president of the Association of Superannuation Funds of Australia.

MS RYAN: Susan Ryan, executive director of the Association of Superannuation Funds of Australia.

CHAIRMAN: You have about 30 minutes, so it's up to you how long you talk and how long you leave for us to ask some questions.

MR FOXTON: Well, with your indulgence, perhaps if we could just speak for about 5 to 10 minutes and then we're happy to take questions and move on from there. I guess what we want to say really is two things: we want to make some comments on the current process for the prudential supervision of superannuation in this country, and we want to do a little bit of crystal ball gazing on where we see superannuation going in the future.

Now, superannuation received limited attention in the committee's discussion paper, we noted, and we'd like to make sure the factors that are special and specific to this sector are clearly understood. The trustee system I guess is at the core of all this. It's long been accepted as the best mechanism for structuring superannuation funds. The principles of trusteeship are suited to the administration of superannuation funds with their long-term objectives and large numbers of relatively financially unsophisticated members.

The trustee system legally precludes investment decisions being taken in the interests of an employer, a union, any of the trustees themselves, or the institution that is providing the superannuation product. It forces the decisions to be made in the interests of the beneficiaries. Superannuation funds of course are regulated as you know by the superannuation industry supervision regime, which is again built on the concept that the responsible entity is the trustee. The duties of trustees under trust law are repeated back into SIS legislation, and they emphasise that the funds have to be invested prudently and with the sole purpose of providing for beneficiaries.

Superannuation and insurance provision I guess, which is a related area, does differ from banking, and one model of regulation and prudential supervision doesn't necessarily seem to us to be appropriate across the whole financial sector. I guess ASFA has argued that there are some special characteristics of superannuation that sort of justify the continuation of this trust-based approach, and I guess there are four key points that I'll highlight, and I think we highlighted them in our original submission.

It's a compulsory structure, it's compulsory for employees to have their money in superannuation. That's unlike other savings and investment vehicles. There's a very large number of funds, perhaps an excessive number of funds, and some of these funds have one or two people in them, no more than that. The large number of financially unsophisticated individuals who are in funds are required to participate to meet government policy, public policy reasons if you like, in a lot of cases - they're not there because they want to be - and there's a very long-term nature of superannuation investment.

So I guess in all of this ASFA has no argument with the principles that regulation should involve competitive neutrality, cost-effectiveness, transparency, flexibility and accountability, and I think I've seen those words repeated in your documents.

It also agrees that prudential regulation should be designed so that it's unobtrusive and as cheap as possible, and complements rather than suppresses market forces, so we've got no argument with any of that, but what we do have argument with is any suggestion that the existing trust structure and prudential supervision arrangement for superannuation should be abandoned in favour of market forces.

While there are areas in which the current arrangements can always be improved, we'd highlight the fact that Australia's prudential supervision of superannuation has the World Bank stamp of approval, it's one of the best protective shields for retirement incomes policies in the world. It was created to withstand the stresses of economic and financial gyrations, and it has done that very effectively for quite a few years.

We don't think the alternative belief in giving greater weight to individual responsibility for investment decisions of individual members of funds is necessarily the most realistic way to go for the superannuation funds. One of the reasons is that requiring

detailed disclosure can result in more information than these relatively unsophisticated consumers can readily use, and this is potentially something that will cause cost and confusion. Superannuation is a real problem area in that regard. You refer in your discussion paper to information lay symmetries and, boy, this is an area where they occur quite readily.

So we're arguing for a continuing principle-based regulation where trustees operate within a broad legislative framework to work to further the interests of their superannuation fund members, not their own personal interests, etcetera. Requiring every superannuation fund member to continually monitor their investment and seek expensive professional advice wouldn't be efficient and wouldn't be equitable. Allowing trustees to do this on their behalf in a collective manner meets the test of cost-effectiveness, transparency, flexibility and accountability.

The principle-based approach affords both strong prudential controls but is also flexible. While a robust system of penalties for non-compliance is available to the ISC as regulator, the current enforcement strategy of the ISC is generally cooperative and it has been aimed towards creating a culture of compliance, but we do have some concerns that there are areas where the strength, flexibility and potential simplicity of superannuation is being eroded because there is creeping prescription or black letter law and complexity coming into superannuation legislation.

Now, we do also have some concerns about the cost-effectiveness and accountability of the regulator. The superannuation industry pays significant levies to the ISC, which more than cover the costs of the ISC's activities. Now, the ISC is required under legislation to consult the superannuation industry over the level and structure of levies, but for some time now the ISC has conceded that the levy has generated more income than has actually been expended in supervision. It seems that concerns are based more on revenue gathering than accountability to the stakeholders in the superannuation industry.

CHAIRMAN: What's the quantum of that gap?

MS RYAN: Since the levy has been applied, about 11,000,000.

MR BEERWORTH: Does that go to consolidated revenue or - - -

MS RYAN: It does indeed, the entire levy does, and then the ISC has to bid for its appropriation with the Expenditure Review Committee, like any other department.

MR BEERWORTH: Just see what happens at the ASC.

MR FOXTON: We also have some concerns with the current consumer protection arrangements. Consumers should also have access to an efficient, cheap and timely dispute-resolution mechanism. The operations of the Superannuation Complaints Tribunal have not in the main met these criteria, and they've placed additional burdens on funds and ultimately the members of funds. We have some concern about that.

So I guess let me just turn to the future for a minute or two. There are some risks, there are some opportunities, for the superannuation industry. There are real dangers inherent in this idea of putting responsibility for selection and management of investments back on the individual members of funds as consumers. It might result in competition of a sort, but it would be the sort of competition driven by commission-based salespeople, extensive retail advertising, and a likely proliferation of simple products that offer capital security, but not much in the way of an upside in long-term returns, and that's the concern we have.

CHAIRMAN: Do you think it was that competition issue that brought the suggestion forward?

MR FOXTON: Yes. I believe some people have a much too simple view that competition per se and open competition can derive correct visions - correct decisions from consumers, particularly in terms of their long-term interests rather than their short-term interests.

CHAIRMAN: You don't think it related perhaps to the issue of whether the government is in fact standing behind superannuation?

MR FOXTON: I'm not quite sure what you mean by whether it related to that fact.

CHAIRMAN: Well, I mean, the implied sort of prudential supervision is implying that the government is in some way prepared in the ultimate to guarantee the superannuation business.

MR FOXTON: Well, I hope no consumer round there believes that the government will do that, because of course they won't. The best they can do is set up a reasonably tight prudential supervision regime.

CHAIRMAN: Sure.

MR FOXTON: But I suspect there are large elements of the population out there who somehow have the mistaken belief that governments guarantee superannuation, and they don't. I guess it would be ironic if pursuit of greater competition and flexibility led to almost the destruction of the types of arrangements which have I guess created some increased competition and flexibility in recent years.

Super trustees themselves have been driving down administration and selling costs of products in the superannuation industry. They've developed investment portfolios with a much more long-term focus to ensure returns are as high as possible. The last thing we want in this country in the superannuation industry is a return to the tired old short-term financial products of the past that were used extensively by the superannuation industry in past years, dressed up as a move to some sort of greater competition.

Let me get a little more positive for a closing couple of minutes on opportunities for superannuation and the superannuation industry. Growth in superannuation has been fairly dramatic, and it has meant that the superannuation industry is now a significant player in the financial sector. The industry is developing an increasing level of financial sophistication, I would argue. Provided that an appropriate regulatory environment is maintained, funds will be well placed to offer flexible and innovative financial products that members need.

Now, some of the hints that are already on the horizon and some areas where superannuation is already engaged in includes the obvious one of providing choice, some choice of investment alternatives within funds, providing housing loan facilities for members, providing retirement benefits on into retirement in the form of income streams, spouse accounts so that the family is in the fund, not just the working employee are on the horizon, and there may be lots of other financial products that we haven't yet thought of that superannuation funds might engage in.

CHAIRMAN: Would you rule some out?

MR FOXTON: At this stage the superannuation industry is pretty up-beat. We wouldn't rule out getting involved in any area, and we would be keen to make sure that governments and regulators did not place any barriers in the way of the industry getting into these areas. I'd particularly like to highlight the provision of non-superannuation medium-term savings plans that is contemplated by government.

I mean, the superannuation industry in our view ought not be prevented from getting into that area. A level playing field would really see superannuation funds getting into that area, just as other financial providers are getting into superannuation-like products.

MRS NICHOLLS: Peter, what about long-term care?

MR FOXTON: Long-term care? The American model? Sorry.

MRS NICHOLLS: Perhaps not the American model, but - - -

CHAIRMAN: Yes, Linda's starting to think ahead actually.

MR FOXTON: It's an area that the superannuation industry I don't think has ever looked seriously at, but again it's something that we wouldn't rule out, but of course the health insurance structure in this country is pretty closed, pretty tightly managed, and I'm not sure that the opportunity exists to open it up to superannuation funds being in there in the present framework. I'm not sure that it's within your terms of reference, is it, to examine the health insurance industry?

CHAIRMAN: Everyone else is challenging our terms of reference.

MR BEERWORTH: You'd be surprised what we've been asked to do. I want to abolish land tax at the end of this.

MR FOXTON: Oh, right. Information technology, just a couple of words: the superannuation sector is becoming a big user of information technology, and there are economies of scale and lower admin costs involved in that. Use of electronic commerce is making it easier for individuals and employers to get their money into funds, and for money to move around between superannuation funds, and so this is going to be an important element for the development of superannuation over the next couple of years.

But I guess one important point, and I couldn't close without highlighting this, is that all these developments are going to have to lead I think to some rationalisation in the number of superannuation funds. We have far too many superannuation funds in this country. Smaller funds are going to find it harder to compete even with the level of competition that I envisage in this model, and they're going to have to fall by the wayside.

any corporate funds are likely to close down and leave it to the industry funds and master trusts, and there will be I hope in that model an unwinding of the recent strong growth in these small excluded funds with only one or two or three or four members, because if there's more flexibility in the bigger end of superannuation, then these

excluded funds can get what they need, or the members of these excluded funds can get what they need from the bigger superannuation industry.

MRS NICHOLLS: Peter, with that restructuring in mind, are there any issues in merger and acquisition that arise here for this rationalisation?

MR FOXTON: Capital gains tax I think is a huge barrier to the restructuring of superannuation funds. There are some very minor exemptions in existing legislation, but there's a sunset on those, and if we want longer-term restructuring and efficiency, we really need some concessions in those areas. That's one that I can think of.

MR BEERWORTH: What about mechanically? I think Linda's concern is often that there may not be the mechanisms or the Corporations Law or the nature of trusts might inhibit mergers between trusts.

MR FOXTON: I think the obligation being always back on providing benefits on a basis which does not in any way affect the interests of members is sometimes a barrier to merging funds and closing down funds, because there are plenty of deeds where the rules when you interpret them say you can't unilaterally move people from one fund to another, you have to have their written permission, and that causes problems certainly.

MRS NICHOLLS: Are rules like that disadvantaging members?

MR FOXTON: Yes. The irony is that one group for their own reasons might choose not to move, and might disadvantage the wider group of membership, but by and large I think those problems can be overcome by the superannuation industry. It's things like the capital gains tax implications that I think are the big problem.

MR BEERWORTH: Peter, as I understood the thrust of some of your remarks, you're particularly concerned that RSAs should suffer the same costs and perhaps supervision as trustee-based funds. Is that too cynical a view? Do you want competitive neutrality? Is that what you're looking for when RSAs come in?

MS RYAN: The RSA legislation I think has just been passed by the parliament, so whatever we wanted or didn't want it's now a fait accompli.

MR BEERWORTH: But you might get another shot through us perhaps.

MS RYAN: We consider that the RSAs should have had to offer some sort of protection to the extent that super funds do. The government chose not to put in a trustee structure there and the

argument of course is because they're a bank product and they're being supervised by the Reserve Bank they have a form of prudential supervision. The fact is, though, that those products will not be growth investments for people who own them and those products will not of themselves deliver a satisfactory retirement benefit if they are held for too long, so I think you can expect to hear some comment from the superannuation industry as the RSAs are offered and as people stay in them for a period of time.

We would not like to see the RSAs followed by a whole plethora of non-trustee products which can attract superannuation on the same concessional terms. We think that the cost of providing the trustee structure - and it is a real cost - is worth it in terms of the protection that's given and the other advantages of collective competition that Peter spelled out for you. So we will be watching very carefully to see what products follow the RSAs and indeed how the RSAs perform once they're on the market.

MRS NICHOLLS: Susan, a follow-up question to that, if I may. If one were in the business of offering a public-offer super or a PST today and therefore had and therefore had to prepare an information memorandum, there is normally quite a substantive section of that document that is devoted to the risks that the intending investor would be taking on by going into the product and depending on the underlying investments, those risks could be about currency or stock market fluctuations or the use of derivatives or whatever. Given your concern about the lack of growth in deposit-based RSAs, how do you see those kinds of risks being disclosed to intending investors in RSAs?

MS RYAN: We would like them to be disclosed very directly by being directly described. It's not a risk in the normal conventional sense of the word "risk" because there's a capital guarantee but the risk is that you will end up without enough money to live on in retirement and we believe that that character of a capital-guaranteed low-growth product should be made very clear when those products are put on the market and, as I said, we'll be vigilant to ensure that they are.

MRS NICHOLLS: Just at this point, given that the legislation has come out, who's job will it be to ensure that disclosure is made?

MS RYAN: We believe that there will be a statutory obligation but those obligations will be spelt out in the regulations. The RSA legislation has left a great deal of the detail to be provided by regulation and we presume that there will be statutory requirements arising from

the regulation to disclose these matters. We also expect that consumer organisations will be very active in seeking to have information available and of course we will be going into an area of competition.

Providers of RSAs will be in the marketplace exhorting people to leave their super funds and take out an RSA and we will be watching very closely the terms of their advertising material. At the same time, of course, super funds will no doubt do some form of marketing in competition with RSAs, so there will be, I think, out in the public arena a lot of discussion about the downside of a low-growth capital-guaranteed product compared with a growth product for long-term purposes.

MR FOXTON: Could I just perhaps pick up your point a little more specifically? I'm a little confused, I must admit, in this question of who's accountable for the communication and disclosure on RSAs because there are two regulators sitting over the top of this product.

MRS NICHOLLS: Quite.

MR FOXTON: The Reserve Bank obviously has some accountability for prudential supervision broadly and we haven't seen the regulations and how they're going to be written, and then they're going to be subject to the SIS Act at another level but we're not sure where you draw that line between those issues when you're talking about disclosure obligations. There are lots of disclosure obligations in SIS legislation and there are prudential supervision implications in Reserve Bank requirements. We're not sure which the RSAs will have to meet and how they'll meet those two competing regulatory structures.

MS RYAN: But it ought to be possible for the ISC to deregister, if you like, an RSA - that is, not allow it to get the tax concessions that usually flow to superannuation - if the RSA provider does not conform with the regulations covering matters like disclosure.

MR SMITH: I was interested in your reference to the World Bank's stamp of approval on the ISC. I presume you're referring to the World Bank's three-part trichotomisation of the retirement income policy, the second two limbs of which - which is compulsory superannuation and voluntary saving - is really what superannuation straddles. So superannuation really isn't a single product, is it? It's intrinsically and inevitably a multi product with a particular tax treatment. Why isn't it reasonable, if that's true, for that multi-product spectrum to have the same risk return characteristics as any other type of investment? And if that's true, why isn't a free choice for members a reasonable prospect?

MR FOXTON: We haven't said a free choice is not a reasonable prospect, that is a free choice between superannuation vehicles, but one of the reasons, I think, for a slightly different view compared with the rest of the financial services industry is the long-term nature and the fact that the money is locked up for a lot of people for anything up to 40 years. Physically they cannot even take it out. They can move it around but nevertheless they have to make those long-term decisions.

You referred to the two limbs of superannuation, that is the compulsory section and the voluntary section, and I guess what the superannuation industry has been working furiously to do is to say let's not separate these two and confuse the population at large by having two totally different strategies apply to those two areas. Let's accept that we have to be simple enough to say, "That is your superannuation. Some of it's been compulsorily put away without your say-so and the other is money that you've voluntarily given up out of wages," but we probably have to - there may be some - taking a lowest common denominator approach in that but we think there is a need to be careful in saying that you can separate the two and therefore allow a caveat emptor approach to apply totally to one section and not to the other.

MR SMITH: The angle that I'm really trying to get to is if it's a multi-product rather than a single-product industry with a spanning of the risk return spectrum but you on the other hand want to give it this unified look, what I'm really interested in is what sort of prudential regulatory promise should attach? Is it the multi-product range where we have everything ranging from Reserve Bank supervision of deposits right across to at-risk disclosure-based schemes - you've got a complete spectrum of regulation at the prudential level - or does your desire to not confuse consumers lead you to the view that it should be a single treatment across the spectrum? And if so, why?

MR FOXTON: You're envisaging in your question that some consumers might say, "I really want to put my money into a product where I have a choice of investment strategy."

MR SMITH: I've only got 1 year to go before I retire and safety is my concern, as opposed to I've got 40 years to go and growth is my concern.

MR FOXTON: I think the only answer I can give you is to go back to what I said in the notes, which is that we think that the superannuation industry certainly has to move to offering choice, and

choice is at two levels. There's choice between funds; people will have the right to choose whether they're in this fund or that fund, and at another level within funds. It will come to pass, and it is coming to pass already, that super funds can offer alternative investment strategies. The master trust structures have done this for many years and done it effectively.

So I think if you're trying to say that we say that every consumer must go into a superannuation fund and be shoe-horned into one form of investment strategy, that's not what we're saying at all. A member might say, "I want to be in this superannuation fund and you can put my company commitments into a capital guarantee structure but I'll have mine in a shares-based investment, thank you very much." I think that's feasible within the superannuation structure.

MR SMITH: With different regulatory implications.

MS RYAN: Can I just add something there through you, chairman? There was a third leg in the World Bank report and that was the provision of a publicly-provided age pension as a safety net, and one of our central arguments about different regulation for superannuation is that it does fulfil a very specific public policy purpose, namely the provision of self-funded retirement for most people instead of publicly-funded retirement via the age pension.

To get back to your question about guarantees, we are in a kind of a guarantee situation because if I blow my superannuation by making a wrong choice of investment strategy the year before I retire, I'm not as yet going to live in a plastic bag on the street. I'm going to get an age pension provided by you, the taxpayer. So because there is that guarantee of retirement income from the government, though not of the particular superannuation benefit you hoped to have, then the safeguarding of the individual's savings becomes a matter of national interest as well as a matter of concern for the individual.

CHAIRMAN: Do you want to be a bit more explicit in your question for the second time today?

MR SMITH: I think I've asked it as explicitly as I can.

MR FOXTON: I think I know what you're driving at; that is a shares-based investment in a superannuation fund - why isn't it subject to exactly and precisely the same regime as, say, a shares-based investment that is taken outside of superannuation - unit trust? I think the answer is bound up in the sort of things that I've said and Susan has

said, which is this money cannot be withdrawn from the system. It can't be pulled out until the person is 55. That's one point.

And point number 2, it gets tax concessions that an ordinary unit trust doesn't get. The reason for that is because, number 3, it is saving the government potentially the price of an age pension for this person and that's the reason those tax concessions are there. For all of those reasons it is simpler - and for the sake of simplicity of saying you're superannuation is dealt with at one regulatory level - we think that you can make the judgment that there is a different regulatory regime, a trust structure and a principles-based prudential supervision.

CHAIRMAN: Is not Mrs Nicholls' unit trust investment having the same impact on the age pension?

MR FOXTON: Yes, it is, but Mrs Nicholls didn't get a tax concession in order to get the money in there. The taxpayer didn't subsidise that.

MRS NICHOLLS: Peter, isn't there a further concern on this issue, that many super funds themselves on-invest into collective investments that are not PSTs?

MR FOXTON: They certainly do. Were you suggesting that super funds should be prevented from doing that for some reason?

MRS NICHOLLS: No, but it goes to the heart of this question about where does the prudential regulatory net extend or pull back from?

MS RYAN: They do, but they do that under prudential rules. Their decisions to do that have to meet the prudent person test as set down in the SIS regime, which is different from you or I deciding to invest in a unit trust to see how we go. So there is a test for their investment decision.

MR FOXTON: And as trustees and ordinary investors they receive a prospectus and go through all of the rigmarole that's associated with investing through that prospectus and they also are subject to all the protections through that side of the regulatory regime.

MRS NICHOLLS: A short final question. Your organisation represents quite a number of superannuation funds. Would you be able to give us any survey information or any other quantitative or factual evidence as to the extent to which superannuation fund members understand the promise that has been made to them, understand the risk they have taken on and understand the price of their super fund? The reason I ask is there's been a deal of debate in the representations

put to us as to the extent of this understanding, so I thought you might be able to give us, perhaps not today but - - -

MS RYAN: There have been surveys from time to time on member satisfaction, member understanding and so forth but it's also the case that trustees are obliged to tell members of funds all of those things. They're obliged to communicate with them at least annually about the administration costs, about the investment strategy and they do. How well they do it is a different question. We wouldn't have at hand a specific survey as broad a kind that you've sought but we would have some member surveys from time to time and we could - - -

MR FOXTON: I honestly don't know off the top of my head of any detailed survey on the specific issues of understanding. It's one of those difficult things to measure and I suspect people have shied away from trying to survey it.

CHAIRMAN: If you hazard a guess, though, what would a member of an industry-based fund believe?

MR FOXTON: I would comment that in my experience - and I guess I've travelled around and talked to a lot of members of superannuation fund that I've been involved with over many years - it varies radically, is all I can say. There are some members who really have very little understanding of the risks that are attaching to the money they've got invested in superannuation funds. There are other people who are quite financially sophisticated about their superannuation, the same as they are about their unit trust investments but by and large it's more the former and - because we're talking every Australian working person, virtually, not just a select group who have spare cash to invest and have chosen to invest.

MS RYAN: I would like to take your inquiry to one of our large members, an industry fund, the Building Workers Fund, because it's made a very major effort in terms of communications and it spends a lot of time having people go to work sites and instruct members about all of these things and they may well have some survey material of their own fund which I'd like to be able to provide you with.

CHAIRMAN: One last question.

MR BEERWORTH: No, two, chairman. The questioning went away from me. Peter, you mentioned in passing your concern that excessive information not be given to members; you'd rather see the emphasis given to trustees. I'm not quite sure I understand that. I'm a member of several funds and the information I get only on an annual basis, given

that reasonably large sums are involved, is pretty unimpressive. It's very hard for even someone with my so-called financial sophistication to understand what's going on.

I'm certainly not given any information about options or choices or what I might do or what I might not do. I get a lot of very fine print information about how clever generally are the trustees around the world but I don't get a great deal of information about my investment and my retirement fund. So as a consumer, and I am a consumer, I'd like to get a great deal more information about the fund and what it's invested in. I have gone to great trouble sometimes to try and find out and I do so with difficulty - get information back. We're talking about major-name funds here.

MR FOXTON: I wouldn't argue with your observation and I think there are improvements to be made in the way in which super funds communicate. One of the flaws in the regulatory environment is there has been a very prescriptive approach taken to what funds must communicate and this has led to a focus on statutory compliance rather than effective communication, if you understand the difference between the two things.

MR BEERWORTH: I do, yes.

MR FOXTON: On the other side of the coin superannuation administrators, managers and trustees are forever in a bind because they feel that they send out to - take the case of the Building Workers Fund, which I think has done some good communication work, as Susan mentioned. They have 300,000 members. They produce a reasonably good glossy booklet but the concern when it goes out - - -

MR BEERWORTH: Glossy booklets always worry me a bit.

MR FOXTON: It's something that at least grabs people's attention so that they pick it up and read it. We're talking of people in a lot of cases who don't focus on financial information presented in a simple written form. They like to look at pictures, with due respect. They love to see things graphically presented and they may pay attention to that.

The problem is that the trustees of super funds such as the Building Workers Fund are always concerned that the vast bulk of the members really don't want to get into financial information and there is always a difficulty trying to work out at what level you do communicate. At your level I suggest you may be looking for sophisticated financial analysis and the vast bulk of people really don't want that.

MR BEERWORTH: The last one I did want to comment on, chairman - I asked a question about was this. You mentioned, Peter, that trustees have done a great deal, particularly in recent years, about driving down prices and administration costs and so on. Do you have any information about that that you can give us, particularly comparing it to comparable costs overseas? I think there's a perception that it's still fairly high costed here in this country and quite expensive.

MR FOXTON: Superannuation?

MR BEERWORTH: Yes, the costs of funds administration.

MR FOXTON: Yes, I think we can provide some evidence but just a story off the side: when industry funds - and I'm not involved with industry funds at a personal level - when they first came on the scene they set up contracting admin out at the cost of about $1.50, somewhere like a dollar to $1.50 per head per week. They have driven the prices down now to where they're moving towards 75 cents and 50 cents.

MR BEERWORTH: I was more concerned about percentage costs and things like that.

MR FOXTON: As a percentage it's lower because the funds under management of the average member are higher, so I can tell you as a percentage costs have been driven down in the industry funds sector quite dramatically in the last 10 years. We can provide you with some formal evidence of that.

CHAIRMAN: Okay, it has been most helpful. Thank you very much.

MRS NICHOLLS: Thank you, Susan, Peter.

CHAIRMAN: Ladies and gentlemen, we now have Robert Williams from the Consumer Credit Legal Centre.

MR WILLIAMS: Good afternoon.

CHAIRMAN: If you could just register your name and organisation for the record, the floor is yours.

MR WILLIAMS: Thank you. My name's Robert Williams. I'm the coordinator of the Consumer Credit Legal Service, Victoria, as distinct from the various other services both in New South Wales and Western Australia. I've been here this afternoon. I've obviously observed some of the comments made by the Law Institute. I have a number of comments I wish to make about code. I don't seek to repeat it. A lot of that has already been made essentially by my fellow legal service members.

What I'd like to do is perhaps expand upon a comment made in relation to what I loosely call federalisation and perhaps bring the inquiry back to some evidence we have of the operation of a personal loan marketplace which I think underscores the need for regulation to ensure disclosure, and a few more comments then about how that can be effected. Federalisation of the code, when we considered it in its simplistic form - that is simply transferring responsibility for consumer credit from the states to the Commonwealth - theoretically one would be ambivalent as well, or theoretically neutral.

The real question there is one of resources. Whoever is regulating this whole legislation, it needs resources, but I think in terms of the model state, simply to - a state-based bureaucracy to another federal bureaucracy - there are some important points which I think underscore the simplicity of that approach. The question is the validity of that approach and this goes not just to enforcement; it goes to administration and policy.

The first point I have is localisation. The state Office of Fair Trading departments or the Ministry of Consumer Affairs equivalents have people on the ground, as it were, who are familiar with the marketplace. Already they've had the experience over many years. The market is far more than national credit providers. There can be, under the code now, providers of services that defer payment. There can be lending through solicitors' practices and indeed, as was mentioned this morning, small lenders and pawnbrokers.

The risk I see of a simplistic federalisation is that that local knowledge could very well be lost and the regulatory attention, as it were, would focus on the national rather than the local picture.

MR BEERWORTH: Could I just interrupt there and say this; did that happen, do you think, when the Corporate Affairs offices in the states became part of the ASC? I don't think it did. I think the attention to local detail remained the same.

MR WILLIAMS: I suppose it's then a question of how the dual system operates and what resources are put in at the state level but that's why I made that first comment about resources. It's also a question of translation of the local picture into the national body and then translating back down to action.

MR BEERWORTH: But I think the intent would be to try and get both and I assume resourcing would be no less than it is at the moment.

MR WILLIAMS: I suppose we've seen in the consumer movement national regulatory frameworks - perhaps the ACCC is an example of that - where due to whatever causes or restrictions, certain local issues just don't get necessarily picked up.

MR BEERWORTH: But that commission started as a national commission.

MR WILLIAMS: Yes.

MR BEERWORTH: The only reason I'm interjecting is it's very important because we've had a lot of evidence that we ought to try and federalise this part of consumer protection certainly, quite apart from others, and it's a very important issue, given your ground experience, as to whether or not it would be effective at the local level as well as the national level.

MR WILLIAMS: In terms of the Corporate Affairs power, I don't have direct experience so I can't address that directly. I do actually want to come to a more practical solution which I think addresses some of the issues that were raised this afternoon, so I will just go through, looking at it in a simplistic term and then perhaps looking at it almost like a hybrid.

Another important link I think local regulators have is with community or consumer groups. Consumer groups I think add to the effectiveness of the marketplace both in terms of observing the marketplace in operation through obviously receiving complaints, dealing with the casework, seeing credit providers in operation, but also

in terms of part of the information provision the market needs to ensure consumers are effectively informed.

Once again, if we had a process of simple federalisation, that could be challenged. That sort of link, I think, could be at risk for basic reasons that local consumer groups would need additional resources to try and feed into a national regulator, typically based in Canberra and typically distanced from the local experience.

The other aspect of federalisation I'm concerned about is that, given the limitations potentially of how this could occur, it will not cover the field. There will be market players which just aren't simply picked up and which would necessitate perhaps even some sort of duplication of function, whether it be at enforcement level or even the sort of policy administration level. Duplication is problematic because it will require obviously more resources to ensure that the field is covered as a whole.

So looking at that sort of simplistic approach, my response was to say that the management committee set up for the UCCC, I believe, should be supported by the federal government because I believe it has shown the capacity to recognise the imperative of supporting uniformity. There are a couple of examples of that already. Firstly in the passing of the securitisation regulations; fairly quickly done in response to concerns that the securitisation industry may not have given the securitisation industry all that is required but that's the difficulty of regulation, I believe, not necessarily of the structure.

Another example of this is the very quick issuing of advertising guidelines on the recommendation of the UCCC management committee to the SCOCA body. I think it shows that the states recognise the responsibility and indeed have acted very quickly to address these concerns. As I said before, generally in terms of what I call the UCCCMC process, it should be supported by the federal government and it should be supported either through assisting in the crystallisation of issues, resourcing as it were, or perhaps even - obviously with the states' cooperation - being involved in the chairing of the process.

Part of the problem of chairing the process, is it's very resource-dependent. It absorbs a lot of resources from each state and the responsibility for chairing a national process within each state I think is a problem. I say that because I've recently left the Office of Fair

Trading and have had some experience of how this can impact. The Law Institute did raise a very interesting concept and perhaps in translating from states attempting uniformity to a perhaps more effective uniform piece of legislation, be it Commonwealth law or whatever, there should be consideration given to this establishment of an objective national expert - what I call fully representative - body made up of representatives of obviously industry but also clearly, as Mr Begg identified, representatives of the consumer movement.

There are a couple of assumptions, I think, for that to work effectively from a consumer group point of view. Firstly, obviously, consumer groups have limited resources. They would need to ensure an active positive contribution and an equal contribution to the debate and to the process. They would need to have the resources to contribute.

CHAIRMAN: What does that actually mean?

MR WILLIAMS: I suppose it means if such a national process was set up there would have to be set aside funding to enable the individual representatives of the consumer groups to be able to actively and fully participate. It may also mean, if it is necessary to delve into certain issues of the marketplace, that there be resources there to research those issues. The sort of national process where we're dealing with disparate state laws, for example, on financial institutions duty where you're dealing with fairly limited factual circumstances may mean that you don't need to delve into the hard facts of what's going on out there. It could be said to be fairly well laid out or at least readily constructed.

The consumer credit marketplace is obviously a very diverse big marketplace made up of many sub-markets and very different players, as it were, and issues, so it may need that additional sort of resource. My recollection of the Westpac submission does hint at that, that one of the processes to ensure effective legislation is that any process to move from what you've got now would require that sort of resource.

The other thing about the way this first step could operate is that it shouldn't simply be made up of black-letter lawyers. Black-letter lawyers create black-letter law and it's all open to interpretation and whilst I have heard the criticisms of the code, any level of prescription, any use of language, has to be interpreted by the courts. Therefore simple black-letter lawyers, whilst perhaps representing various constituencies they come from, may not

necessarily generate the best legislation to address the concerns. Therefore it would need to have some broader skills, be it general public policy skills, or economic.

CHAIRMAN: In framing the legislation?

MR WILLIAMS: I believe so, yes. Yes, I think that's right. It would need to have a depth, not necessarily in terms of saying whether a particular legal phrase will have this particular legal effect but whether the sort of structure in which the protection is attempting to operate at or the disclosure regime is attempting to operate at to ensure that it is or does meet what we call market needs. I have, as I said, some support for that process and perhaps that is an intermediate step.

If there is broad support for its product, then states may not obviously wish to divest their powers to the Commonwealth. Perhaps they would be convinced, though, to adopt this broadly-supported piece of legislation that's had far less partisan influence in trying to get between the various agendas, as it were.

CHAIRMAN: Coming back to Mr Beerworth's point, what are you really saying to us then about this direction that we should take - this jurisdiction - because there have been some pretty cogent arguments about a more centrally, federally focused organisation? It clearly has appeal to some representatives in the consumer area and I would have said it's perhaps geographic. When you get further away from the centre of things there's less appetite for it. You're raising, I think, a different dimension.

MR WILLIAMS: I suppose my bottom-line position is that the UCCCMC process with the existing law as it stands now should be supported, encouraged. That's the basic point but as issues surrounding the legislation, and not just the code - for example, consumer credit - that this could spread out into issues such as new technology, perhaps financial services generally; that rather, having the 8 years of various state governments, various state advisers, various federal governments trying to handle the process, that the process is given in part to this objective body, as it were, whatever way we want to term this, obviously recognising the need for objectivity, equal resourcing and equal representation in the process. There are some other comments I wish to make but I will perhaps - - -

CHAIRMAN: If you'd like to make your comments or complete them, I think it would be more effective at this stage of the proceedings.

MR WILLIAMS: Sure. One of the things the code delivers, I believe - although there has been some comment about the effectiveness of this - is a bottom-line level of disclosure across consumer credit products uniformly and universally; uniformly across states and territory, universally across products. One of the issues that was raised, I believe, in some of the submissions was what do really consumers need and does the code provide the required level of information?

The CCLS has recently undertaken a survey of the personal loan market. It was conducted by the Roy Morgan Research Centre in Melbourne. The survey was conducted in November of this years for determining essentially what information consumers actively use in making credit purchasing decisions. It canvassed 597 borrowers randomly selected throughout metropolitan Melbourne and Victoria. I've only just received the survey results - it's a sizeable survey, it's currently under fairly detailed analysis - but there are some basic results which I think are instructive as to what consumers do use.

78.9 per cent of those surveyed stated that the interest rate was an important factor to the decision to take out a loan. This should not be surprising. 85 per cent stated that the amount of each repayment was important and indeed as you go down the lower socioeconomic frameworks you found that that became even more important. 77 per cent stated that the total cost of the loan, which included fees and charges, was an important factor to their decision. 76 per cent stated that the life of the loan was an important factor; that is the term of the loan. 66 per cent stated that the repayment interval, be it monthly or whatever, was also an important factor.

These are all very vital pieces of what I call price information on consumer credit products and it indicates that consumers use a variety of information in deciding what loan to take out. It's not just the repayment, which has often been a preconception of criticism of this sort of legislation. There is a broad base or a broad need for information in making decisions and it's my premise that the code essentially delivers under section 15 that basic information.

Further evidence to support this, I believe - and I believe the inquiry has been put this evidence before - comes from the Banking Industry Ombudsman, where there's been an increase by six percentage points to something like 19 per cent of complaints surrounding variable home loans. Indeed a fair portion of that

complaint, it would appear, relates to the disclosure or otherwise of relevant fees and charges. Again this would point to the need that consumers require disclosure of this sort of information.

MRS NICHOLLS: Excuse me, Robert, I'm not aware that these matters are in dispute.

MR WILLIAMS: No, I'm not suggesting to the inquiry that it is, although in terms of some of the submissions I've read there is a real questioning of the effectiveness or the sort of information consumers need. What I'm trying to reinforce is the fact that the code essentially delivers that. I want to bring this sort of evidence to the - because one of the problems we have as consumer groups is that a lot of what we try and do is from experience. We have little resources to try and get the sort of information and evidence on a broader spectrum of the sort of needs and information usage out there in the marketplace. What I'm trying to do with this presentation is underscore the fact that the code essentially delivers the informational needs of the public.

MR BEERWORTH: Robert, can you leave us with a copy of those findings? That would be extremely interesting.

MR WILLIAMS: I've only got the one copy but what I intend to do, hopefully by 13 January, is deliver the analysis as well as the detail. I suppose the other point - there's some more evidence I wish to allude to and this was another study that was done by Dr Chee Hwa-Chee and Dr Supara Singh of the Research Institute Circuit. It was done on 534 applications for personal loans for used caravans. They had access to fully-detailed socioeconomic information and it examined how interest rates - it tested the theory do interest rates vary according to the personal risk or creditworthiness of the individual borrowers? Essentially the findings were, in the survey data they had, that they didn't.

MR BEERWORTH: Is that surprising, though, if you're talking about used caravans? Isn't that self-defining?

MR WILLIAMS: I suppose the question is how should a market operate efficiently? Should it be operating on the basis of what you might call general class pricing or should it operate on individual pricing?

MRS NICHOLLS: Sorry, which is your view? You prefer it to be individual pricing? This is an issue in the credit card market as well in Australia.

MR WILLIAMS: Yes, I think that's right. You've got category pricing of product and should we be seeing or observing, if the market's operating perfectly, perhaps more individual or better - obviously absorbing the risk of the creditworthiness or otherwise of the individual and translating that into obviously a more representative price?

MRS NICHOLLS: Robert, to that end do you support positive credit reporting?

MR WILLIAMS: My response to that - and I have heard a few comments about that although I haven't had the chance to go into some detail - obviously at the first, reservation about the whole privacy issue. I'm no privacy expert. I can't make a direct comment on that. My view, though, is that a lot of this information, for example, is within the various hands of the banks. For example, they have a body of credit card users. They know whether they're paying on time or not. My question is will the market actively use it? If they were into price discrimination on the basis of - - -

MRS NICHOLLS: Evidence was presented to us internationally that where that information is publicly available it is an attraction of new entrants into the market to cherry-pick.

MR WILLIAMS: I suppose the real premise of my resistance necessarily is premised more on the privacy concerns and how that would all be administered and protected and how it would be used. When you look at some of the journal articles on the American experience with credit reporting, it's indicative of the fact that the market - there have been abuses in that sense, through the direct mail use of information and the like, and I think there are obviously those sorts of concerns which would have to be addressed to some considerable degree, I believe, before that sort of positive reporting could be looked at.

CHAIRMAN: I'm just a little bit conscious of time. How about some key points you want to leave with us at this very vulnerable stage?

MR WILLIAMS: All right. Essentially the Credit Code, I believe, provides a bottom-line level of disclosure. I believe that the code should not be, as it were, tinkered with unless and until a proper process of evaluation study is done. It's taken a considerable period of time to get uniformity and you don't want to go from one set of compounding problems, perhaps, to another set. The fact is, I think, the code should be supported through the UCCCMC process. However, as I said, also

there should - in terms of the proposal I talked about before, that should also be looked at.

I don't believe the civil penalty provisions of the code should be altered. I believe the civil penalty has been ameliorated in a fashion which addresses some of the major concerns of the old act and will operate, I believe, in an effective way of ensuring that disclosure which is required by the marketplace is achieved. On that point I believe self-rectification is not a viable option.

CHAIRMAN: Why is that?

MR WILLIAMS: I think firstly it really does underscore the whole truth in lending compliance effectiveness. The second point - and this comes from my experience in dealing with quite a number of 86 applications within government - is that effectively in trying to get the government stamp for rectification through the notificational process you are essentially repeating what is already the process for a minor error.

The resources would necessarily be the same. You would still need, as a credit buyer, to properly evidence your case if the government agency is to give the appropriate stamp. Another big loss, I think, is the issue of transparency, and transparency to the public. I think that sort of level of information that's divulged through the civil penalty process is valuable in the marketplace.

CHAIRMAN: Thank you very much, Robert. Ladies and gentlemen, that concludes today's proceedings. I thank you all for your attendance and participation.

AT 3.41 PM THE INQUIRY WAS ADJOURNED ACCORDINGLY