FINANCIAL SYSTEM INQUIRY

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MR W. BEERWORTH, Member
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TRANSCRIPT OF PROCEEDINGS

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CHAIRMAN: Good morning, ladies and gentlemen. My name is Stan Wallis. I'm the chairman of the Financial System Inquiry, and I welcome you all to these first public consultations which the inquiry is having over the next week or so around the country. Thank you very much for your attendance. There's just one or two points that I perhaps need to make at the outset, and I guess to start with I should introduce the other members of the inquiry who are with us today: Bill Beerworth from Sydney, Linda Nicholls and Prof Ian Harper. Greg Smith is the inquiry's secretary. Prof Jeff Carmichael is not with us today. He has some other commitments up in Queensland.

As you're all aware, the Federal Treasurer, the Honourable Peter Costello MP, established this inquiry on 30 May 1996, 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 the future regulatory arrangements. The inquiry will report to the Treasurer by 31 March next year, and to assist in the task we have of course received and examined in much detail over 250 submissions - 268 I think was the figure last week.

We have of course put out this discussion paper in the last week or so, outlining a lot of the material that's come across our bows in the course of our inquiries, informal and formally, and of course we have set out the committee's approach and the options as they've been put to us and as we see them for regulating the financial system. The secretariat has copies of the terms of reference and the discussion paper available for viewing today should anyone require them.

I draw attention to the terms of reference because the purpose of the public discussions today, the public consultations, is to focus on issues raised in the discussion paper, and proposals for regulating the financial system. The inquiry is unable to consider particular complaints about individual financial institutions. Finally, I must remind you that the inquiry has no special legal powers or parliamentary privilege, and for this reason I ask participants in today's discussions to avoid making adverse comments about particular individuals.

We hope that this can be an informative session. We're not going to operate on a great deal of formality. We have a very solid program, with participants, groups who have sought the opportunity to talk with us, and we would expect that the day's proceedings will finish around about 5 o'clock if we can keep to the program. There will be a sizeable break from about 1 o'clock to 3.30 pm to enable a number of us to fulfil some other commitments in the public forum. So the plan is now to start, to run through till close to 1 o'clock, and we will endeavour to have some break at an appropriate time during the morning, and then to continue in the afternoon from 3.30 till 5 o'clock.

I would now announce that the first submission is coming to us from the Australian Investment Managers Association. I think Charles Macek is speaking on behalf of the association, John Maroney from the Investment Funds Association of Australia - sorry, from LISA, my apologies - from the Life Investment and Superannuation Association of Australia, and Peter Hutley from the Investment Funds Association - if I could ask those three gentlemen, please, to join us up at the table.

The approach that we've agreed today is that participants will make an appropriate opening statement and then we will proceed to questions and discussions as appropriate. There was going to be some amplification round this table - it's coming. So we would hope that you will all be able to hear the discussion. Can I welcome you, gentlemen, and just make it clear to you that these are public consultations and the proceedings will be recorded and transcripts will be made publicly available. Again I'd just like to emphasise that we have no parliamentary privilege, and you should bear that in mind. So for the purposes of identification for the transcripts and for voice recognition, I'd ask each person at this stage to state their name and the organisation they represent, if you wouldn't mind, gentlemen.

MR MARONEY: John Maroney from LISA, the Life Investment and Superannuation Association of Australia.

MR MACEK: Charles Macek, chairman of the Australian Investment Managers Association.

MR HUTLEY: Peter Hutley, executive director of the Investment Funds Association.

CHAIRMAN: Well, I hand it over to you, Charles.

MR MACEK: Mr Wallis, to you and your colleagues, thank you for giving us this opportunity this morning to speak to the joint submission prepared by the Australian Investment Managers Association, the Industry Funds Association and the Life Investment and

Superannuation Association. I don't think introduction of my two colleagues is necessary, as that's already been done.

Our aim in the limited time that we've been asked to present to today is basically to outline the salient features of our submission and in particular the background and all the framework pertaining to it, and then to deal with the detail and the substance of it during the question time which you are affording us.

I'd like to begin by stating that the quantum of savings and the efficiency with which it is put to work are key determinants of a nation's economic success, and that nation's ability to prevent social problems which are the inevitable consequence of economic failure, and in fact this is recognised and reflected in the mission articulated by the Treasurer when he established the Financial System Inquiry.

By any yardstick, we would argue that Australia's savings performance is inadequate. In our view, this means that maintenance of the status quo is not an option. What underlies our joint submission to the inquiry is the need to boost national savings, and therefore the entire focus of our submission is on the saver, the investor or, in short, the customer.

The present institutional and regulatory framework, together with the tax regime, need to be improved if our savings performance is to be improved. In our view, the key elements of lifting national savings are to improve the nation's savings culture, to reduce the cost and complexity of savings and investment products, and to remove substantial tax disincentives which exist at the moment. All of this in our view will result in increased consumer confidence in the concept of savings and in the institutional and regulatory framework that governs the savings industry.

Now, not all of these elements are within the ambit of this inquiry - tax, for instance. However, in our view, without significant change in the tax area, other improvements that are made that might flow from this inquiry will fail to achieve the described outcome.

Regaining a savings culture, whilst it is partially tax-driven, will primarily require consumer education, and organisations such as ours can play a major role, and indeed today LISA is jointly with CEDA sponsoring a national savings seminar. It's with respect to reduce cost complexity of products and increase consumer confidence that the regulatory framework can make a significant contribution to achieving national savings objectives, and in particular the regulatory structure needs to be rationalised and its effectiveness improved whilst reducing its overall cost.

In the model contained in our submission there are three key elements dealing with prudential supervision, investor protection and competition policy. Our focus in the submission and today is on the first two. However, with regard to competition policy, we would argue two things: firstly that it should be applied uniformly across all industries in the economy, and secondly, it should take into account the need for our industries and our companies to be internationally competitive.

With regard to prudential supervision, we believe there is a continuing role for a central bank to guard against systemic failure, as such failure would really go to the heart of consumer confidence. In other words, there is a role for the Reserve Bank to protect the payment system and to continue to supervise all major deposit-taking institutions. With this one exception of dealing with systemic risk, it's our belief that responsibility for supervising financial services activities should vest with a single governing regulator, the so-called financial services regulator.

Our submission does not argue the merits or demerits of any existing regulator, but rather focuses on the regulatory framework which in our view will deliver the desired outcomes which are articulated in your discussion paper, namely competitive neutrality, cost-effectiveness, transparency, flexibility and accountability.

The three aspects of the financial services regulator that we'd like to highlight: firstly, in our view, the regulator should report to its own board, and that board should reflect all of the key stakeholders, and indeed the present composition of the Reserve Bank board might be an interesting role model. Secondly, the regulator should be located in either Sydney or Melbourne, but most definitely not in Canberra, and thirdly, the regulator should have jurisdiction nationally, so that all state-based regulation should be folded into a national framework.

In our view, regulation needs to be product-based, as consumers cannot distinguish between and indeed are indifferent to the organisational structure of the service provider. A single financial services regulator will ensure consistent supervision, regardless of the institutional structure or ownership framework, and in this way duplication and gaps will be avoided, costs can be reduced, protection can be strengthened.

We'd like to note the distinction between collective investments and superannuation, even though the boundaries are increasingly becoming blurred. With regard to the former, we support adoption of the broad thrust of the collective investment bill that was tabled in parliament in December of last year, whilst at the same time we support retention of the present SIS framework for superannuation, and contrary to a very badly written magazine article, we recognise the protection provided by the trustee structure, and are not advocating dismantling trustees or trustee protection with regard to superannuation. However, we do recognise that not all superannuation-related products will require trustees.

We need to emphasise that member choice, as we call it in superannuation, or as I believe should be more properly recognised, the increased personal responsibility of individuals to prepare for their future retirement, is desirable and indeed will become an increasing reality. In this regard, service providers should be unfettered in their ability to offer new products, providing they comply with the regulations pertaining to that product. In other words, there should not be scope for institutional or regulatory arbitrage.

Individual choice, however, if it is to be effective, must be exercised on an informed basis. Consequently disclosure and consistent disclosure within each product category is absolutely essential. Moreover, the greater the risk, the greater the uncertainty of the outcome, the greater will be the disclosure required. As a minimum, disclosure should focus on the expected outcomes, the risks to the achievement of those outcomes, and the costs.

With regard to costs, costs disclosure should be standardised for consistent comparison. So for example the proposal to introduce retirement savings accounts, given that the target market is superannuation, the disclosure of costs needs to be comparable to all other superannuation products. At the moment there is a danger that what is promoted as a low-cost, low-fee product, because of the lack of transparency over those costs, might lead to consumers making inappropriate choices.

Finally, we believe that in looking at the regulatory framework, distinction needs to be made between various activities, depending on their impact, and we can identify four different categories of activities in terms of financial services. There are those that potentially lead to systemic risk, there are those that involve compulsion, there are those pertaining to voluntary savings decisions, and there are those involving risk products. With regard to systemic risk, as we've already indicated, we believe that a higher level of supervision of the institution is appropriate. With regard to products involving compulsion, such as superannuation, we believe a higher level of investor protection is appropriate.

Where savings and investment decisions are exercised on a voluntary basis, then we believe that strong, effective, consistent disclosure should be the prime regulatory objective. And finally, with regard to risk products where consumers are seeking protection against some event, then capital adequacy to ensure that in that event the contract will be honoured by the service provider is essential.

To conclude, we believe the present regulatory framework is too fragmented, it's too complex and it's too costly to be efficient and effective. Consequently, maintaining the status quo is not an option. However, tax reform will be essential if improved regulation that might flow from this inquiry is to be effective in lifting our national savings performance, and lifting national savings in our view should be of the highest economic priority. Thank you for this opportunity, and we look forward to dealing with your questions.

CHAIRMAN: Thank you, Mr Macek. I might just start by asking for some clarification of how you perceive this interface between the Reserve Bank and the new financial system regulator. I mean, you're talking about systemic risk being the focus of the Reserve Bank, but then I think you talk about deposit-taking institutions still being covered in a prudential sense in your other form of regulator. Could you perhaps clarify that somewhat.

MR MACEK: Yes. Traditionally central banks have dealt with I guess what we'd commonly call the payment system, and in days gone by, before the advent of modern technology, that typically was the province of banks and therefore the regulation of those institutions was relatively straightforward. Increasingly over time different types of institutions are involved in providing similar services, and they have typically fallen outside the ambit of the central bank, and we've seen problems arise. For example in the building society area in Victoria, Pyramid Building Society and the economic fallout from that perhaps could have been avoided had building societies been subject to the same prudential supervision that banks were.

So to the extent that the central bank focuses only on a particular category of institution, then those other institutions that would fall under the ambit of the financial services regulator that are also involved in providing that service, there would need to be close cooperation and coordination and indeed harmonisation between the prudential supervision of those organisations. An alternative model could well be to broaden the scope of the institutions that are subject to the prudential supervision of a central bank, say for example any organisation that offers deposit-taking services could perhaps fall under the ambit of the Reserve Bank, but that is not in our view the preferred model.

PROF HARPER: Could we just explore that point, Mr Macek. I guess the difficulty that I had thinking through the distinction between a systemic risk regulator and the financial services regulator as you describe it is that one of the main sources of systemic risk, as you rightly point out, is the payment system, its communication from one part of the system to the other, but I guess traditionally when one thinks of systemic risk problems one is thinking about deposit-taking institutions. Just the crisis of confidence - and I think your example of the Victorian Pyramid situation is a nice one, because it's essentially the example we have at hand. The difficulties that the Pyramid Building Society, the former Pyramid Building Society, faced as a deposit-taker were directly communicated to other building societies and indeed some banks in Victoria in the form of the classic deposit run.

Now, the difficulty I guess that I'm having is how can you separate the concern for deposit runs and systemic risk from the regulation of deposits? How can you place those two things in two separate institutions? The second of your models, the one that you indicated that was an alternative way to go, namely that you would bring in under the systemic risk regulator a focus on all deposit-taking institutions recognising the potential of those deposit-taking institutions to be a source of systemic risk, just struck me as a more natural way to go, so I'm interested to know why the associations have chosen the other route, a separate regulator, given the difficulty in my mind of putting a knife down between those two things.

MR MARONEY: If I could respond to that, Mr Harper. It's an issue where there was a fair degree of discussion and debate in pulling together the final version of our proposal, and there was a number of issues that bore on it in terms of where we finalised the position, and part of it is saying that this is, we believe, a starting point that over time would actually evolve, depending on the way the system evolves, and one of the ideas of having common directors on the boards of management of the Reserve Bank and the financial services regulator would be essentially to look at those sorts of issues over time in terms of where the potential sources of systemic risk were emerging, and there was a strong concern that even if in a theoretical sense it might be better to have all the prudential regulation of all organisations in one place, particularly for reasons of competitive neutrality and for consistency in consumer information, etcetera, there was perceived at this point in time too much systemic risk related to the concentrated nature of deposits, in particular the four largest deposit-taking institutions in this country at the moment, but in 5 or 10 years' time that may well be a very different scenario, and in our analysis of looking at what other countries do, it seemed that even where direct prudential regulation of banks was separate from the central bank, there still was a significant shadowing role from the central banks in setting up teams that were either duplicating or certainly complementing what was being done by separate regulators, and that as an issue was understandable if it was a central bank that would be called upon to make major contributions to liquidity, lender of last resort of other sorts of protection.

So we see it as something that would evolve over time, depending on the way the financial system evolves over time, and from a competitive neutrality point of view and to preserve a range of risk spectrum through increased disclosure of the degrees of capital adequacy more generally, that it would be desirable not to have a perceived government guarantee which is what our research indicates most people think there is attached to Reserve Bank supervision at the moment, and that it would be better to actually have the prudential regulation quite clearly separate and only maintaining issues of systemic risk where there was a general feeling that a Pyramid or something else was going to contribute, but recognising that if there was starting to be runs on similar institutions because of perceived connection, by a class of institution, we would expect the Reserve Bank and the financial service regulator to come out with consistent public messages of explanation, support where it was appropriate, or otherwise from time to time institutions will fail as part of actually having an efficient financial system.

While that is to be resisted as much as possible and hopefully the failure will be restricted to those that are putting up risk capital and be done earlier in the piece through market takeover activity, etcetera, that to not press the risk spectrum and end up with the risk aligned with the taxpayer, we see that as a preferable way of structuring the regulation.

MR MACEK: If I may make just one additional point: the alternative to having the framework that we have suggested would be effectively to have a super regulator where a principal focus of that regulator would need to be protection of the payment system dealing with systemic risk. That would engender in that organisation a particular culture, a culture that in our view would not be necessarily appropriate and suitable for the regulatory framework that is applicable to other types of financial services.

MRS NICHOLLS: Chairman, thank you. I would like to ask a question, and I would hope that each of you would reply briefly because I think you do represent slightly different constituencies in the community. The question is this: Charles, in your remarks you highlighted the desirability of state regulations being folded into a national framework. Could I ask each of you to offer a comment as to exactly how you would see that coming about?

MR MACEK: That's a tough question, given the fact that we have a federation, but - - -

MRS NICHOLLS: Sorry. You can appreciate if you'd like us to do it, you might want to tell us how we should do it.

MR MACEK: Well, I guess the starting point would be to make the desirability, indeed I would argue the necessity of that framework in a marketplace where products are clearly subject to global forces, and Australia is part of that globe - there needs to be a strong recommendation to that effect, and then it is essentially a political solution that is required. How one actually achieves that in the political arena is outside my field of expertise.

MR HUTLEY: If I may, I think it's fair to say we didn't think that question through in all of its detail because we were putting it up as a principle. If it got to the point where, you know, it would be seriously considered as an outcome that was essential, then obviously further thought would have to be given. But there is a precedent I think in Corporations Law for the states voluntarily surrendering or delegating back to the Commonwealth some of their powers, and what we would essentially be talking about I think is trying to do the same in respect of the state consumer law.

Now, there's a first step taken with the Uniform Credit Code that's just come in. I think it really would turn into, as Charles said, a political exercise in getting the states to agree that this is a desirable outcome, and obviously management of that is a little bit beyond our expertise this morning.

CHAIRMAN: Right. Add anything, John?

MR MARONEY: From the perspective of the life insurance industry, we've been fortunate in this country compared to other countries of actually having had a set of federal regulations now for over half a century. Looking more broadly, and certainly most of my members have diversified into businesses outside that area, again one of the favourable attributes of the Australian situation compared to United States or Canada is the degree of regulation at federal level already in securities or in licensing - sorry, regulation of financial intermediaries, and that certainly to my mind provides more efficiency.

The areas that are still at state level that I certainly support being wound into the national level, particularly from the point of view of international competitiveness and attempting to establish Australia and most likely Sydney as a significant regional financial centre that - outside the country I don't think there's any interest at all in terms of the distinguishing laws between different states, but building societies, credit unions, friendly societies have increasingly moved to the same types of regulations like insurance companies, and there is a strong degree of overlap in terms of the nature of their business.

My understanding now is that both the New South Wales government and the Victorian government support the idea of moving their parts of those institutions to a national base, so I'm reasonably confident that there would be sensible discussion from the states in terms of moving those areas there. Consumer credit is not an area that my membership has much involvement with. We're just checking some things on the fringes there, but I think again it provides the legislative template. If there is willingness at the political level to shift that on a national basis, now would be a good time to at least make a strong attempt to do so.

CHAIRMAN: So if the quality of the argument is there; you would hope that the will and the way would emerge.

MR BEERWORTH: Chairman, my question was going to be similar to Mrs Nicholls, which was whether or not your organisations had given any thought to the legal and constitutional difficulties of achieving state and federal legislation being totally unified. I think the answer is you haven't. I wonder if it would be possible, given the strength and the resources of your organisations perhaps to put in a further submission, perhaps from your legal committees or something like that, on the subject if it's a major argument, which I think it is, that you'd like to advance.

MR MACEK: Indeed on the way into this hearing this morning we were discussing in an informal way whether a response to the discussion paper - and I guess the opportunity we've been given this morning would be appropriate, and I think what you're suggesting is you would encourage us to do so, particularly focusing on some of the more technical aspects that perhaps have been skirted over in a broad submission such as the one we've put before you.

MR BEERWORTH: I think it would be very helpful. It took 20 years to get securities legislation federalised and 13 to get to a uniform credit code, and that's still only a state code. So I think particularly given the practical background of many of your members it would be a very interesting submission for us to receive.

CHAIRMAN: I wonder if I could just change the questioning slightly. I mean your world of this new financial system regulator does envisage that prudential bank-type supervision, prudential supervision and the consumer regulation comes under the one body. How do you answer the criticism that I'm sure will be made that the consumer interests would not necessarily receive the right balance in such a structure?

MR MACEK: It's not a criticism that we believe is valid obviously, basically because the two activities would be undertaken by different arms of the regulator, bearing in mind that at the board level of that organisation there are broad objectives and outcomes that are consistent with some of the savings, national savings objectives that we've already articulated, and that by and large we would argue there exists fairly broad-based support within the community and certainly within the hierarchy in terms of policy-making.

So it would simply be a matter of focus, and the fact that there are broader objectives for which the financial services regulator is primarily responsible, then the relative trade-offs would be appropriately considered, rather than one aspect being given undue influence to the detriment of the achievement of those broader objectives.

CHAIRMAN: Do you see a series of co-regulatory formats in that framework, in the consumer sense?

MR MACEK: Certainly that would be one model but there'd be, in our view, several models that would be workable.

MR HUTLEY: We certainly see a danger in capture of the regulator by any constituency including our own, and the structure that we put forward was really designed to achieve an appropriate balance of the interests that the regulator is regulating. I mean Charles mentioned before the perceived dangers in a mega-regulator in which one aspect predominated. We certainly don't believe that regulation in this area should take place in isolation from an understanding of all of the factors that are at work, including the need to have an efficient and low-cost regulatory system that enables business to get on with it.

Now, the other side of the coin obviously is that consumers need to be protected, and so our structure of a governing board with representatives drawn from each of the major constituencies was really meant to address that issue. Just in terms of the issue you raised at the end there, the model of consumer sort of co-regulation. Certainly from IFA's point of view we have had some experience of the British Financial Services Act and the way that that worked, and it's our observation that that act has actually led to increased bureaucracy, vastly increased costs and what appears to be fairly diminished efficiency.

We do I think favour a model where the sort of regulation is done by the government, rather than attempting to devolve regulation too far, but that's not to say that there can't be certain activities such as competencies which could be left in the hands of various industry and stakeholder groups.

MRS NICHOLLS: Excuse me, chairman. Could I get clarification on what you mean by a constituent board? My understanding was that AIMA did not support constituent boards.

MR MACEK: No, that's not correct.

MRS NICHOLLS: Perhaps I'm not understanding the way you're using the expression.

MR MACEK: With regard to the regulator, as we've I think articulated in the submission, we're arguing that the board of that regulator should be drawn from all of the stakeholders who are interested in this area. So that would include the customers, consumers and other users of financial services.

MRS NICHOLLS: But to draw you out further on that, your expectation is that they would behave as company directors acting in the overall best interest or they would be expected to represent their constituent interest?

MR MACEK: No. We would see that they would be acting in a sense in a fiduciary capacity to all of the objectives of the regulator, so not there to represent their sectional interest or to lobby a particular cause but rather to act as a board of directors that are accountable to collectively all of the shareholders.

MRS NICHOLLS: Thank you.

PROF HARPER: Yes, thank you, chairman. Just a little more on the nature of this financial services regulator, Charles. As I've been thinking it through the model, if I understand you correctly you've got a sliding scale of regulatory intensity, if I can put it that way, with the deposit-taking institutions being subject to the most intense prudential regulation, then I think if I've noted correctly the investor protection for compulsory forms of saving, sliding off to disclosure for voluntary forms of saving that are non-deposit presumably, the idea being that within the financial services regulator there is this range of regulatory intervention which is broadly consistent with the intensity or difficulty of keeping the promise that the institution makes.

Can I just put to you then the following question: given that you've put all that under one head, one institution, how will it be the case that members of the investing public will be able to distinguish amongst the different levels of intensity of regulation that's being offered to the products. If we agree for example that it is appropriate - and you made this point in regard to your comments about putting things under a mega-regulator, Charles - you agree that it's appropriate that there be a sliding scale of regulation depending upon the nature of the product, how are you going to make that clear to members of the public?

What they see is that the product is "regulated" by the financial services regulator, and I suggest that in most people's minds they would think of that as connoting a particular level of protection/support/insurance - whatever word one chooses to use - and that subtle distinctions amongst the level of protection provided to different sorts of products would be lost.

So my question to you is, given that the status quo attempts to try to preserve this gradation by actually locating different levels of regulation under different institutional heads - one's not going to argue that it's perfect but that's the sort of idea - if we now collapse these under one regulator, how do you preserve that degree of graduation?

MR MACEK: Are you implying that in the present framework the consumer is aware of the difference between the ASC, the ISC and other regulators?

PROF HARPER: I'm certainly implying that in my mind I think the ordinary member of the public would be aware of the distinction between a bank, for example, and a superannuation fund. I think that's a reasonable claim, and the existing regulatory structure is sort of loosely based around that distinction. I think folk know the difference between a bank and a super fund for instance. We put them all under one head, and I wonder whether that distinction would be lost.

Now, if you believed in a standard level of regulation for all of them of course, you wouldn't be concerned about that, but I hear that you are worried. That's why you don't want to roll it all under, for example, the central bank. I'm putting to you now, how can you preserve that distinction when you've just got a single financial services regulator?

MR MACEK: Bear in mind what we're talking about is essentially a board structure with an overriding responsibility for the totality of regulation, how that board structure then organises some of the specific tasks and functions we haven't really dealt with, but there would be nothing inconsistent with our broad framework with the notion of still having different divisions or arms of the central regulator focusing on particular issues. For example, there would be a division, department, regulatory body dealing with superannuation. There'd be nothing inconsistent with that framework in terms of having an overarching financial services regulator.

So the distinction, the graduation as you call it, could still be maintained, and in our view it is important that it is maintained because the alternatives really would drive us in the direction of one end of the continuum; on the one hand the belief that an investor, saver, depositor should not lose their money and believe that there's protection in whatever form because of regulation, because of insurance. There's an immense cost in that, particularly if that were to be applied across the whole gamut of financial services.

The other end of the spectrum is the notion that caveat emptor, where the risk is totally borne by the individual, subject to some sort of supervision of the way in which services are provided - - -

PROF HARPER: Best endeavours.

MR MACEK: - - - and clearly there are some types of products where the principle of caveat emptor and the risks that that would expose the system to would be unacceptable.

MR HUTLEY: I don't think the present system can also be claimed to be working perfectly, and an area of history that I really don't like dredging up but if you go back to the unlisted property trusts scenario of the early 1990s, you had difficulties in those where that type of collective investment regulated by the ASC was being offered by banks, regulated by the RBA, and the failure to redeem investments at call led to the intervention eventually of the Treasurer and a moratorium imposed on what were actually bank products, even though they weren't on balance sheet product.

So the water is already muddy. I don't think the distinction that you were putting forward of one regulator being safe and one regulator regulating the unsafe really operates perfectly in practice at the moment.

PROF HARPER: Peter, why were units in numbers for property trust bank products?

MR HUTLEY: Well, they were being offered by banks. They were off balance sheet, but they were being offered under the bank name as the bank property trust, and there was a concern that if those products were - you know, if redemptions were frozen in those products, that this would lead to some concern that the bank generally was unable to meet its obligations.

PROF HARPER: But it was the industry generally that went to the Treasurer and asked for the moratorium and the freeze on buyback.

MR HUTLEY: Yes.

PROF HARPER: The Treasurer didn't do it out of the blue. It was in the press for about a week, and the ASC was very much involved in it.

MR HUTLEY: Yes, that's right. The industry did that for a particular reason: in order to endeavour to quarantine the possible flow-on effects under the banking system.

MR MARONEY: Can I just add a little bit more on that one?

CHAIRMAN: If you like, okay.

MR MARONEY: Just a very quick one: since we put the submission in I have certainly come across some interesting research from the US that shows that in that case of mutual funds sold by banks that one-third of people over there mistakenly assume that the federal deposit insurance applies to the mutual funds sold there and another third is not sure. So you have two-thirds of people making decisions to buy mutual funds from banks that have no greater protection than mutual funds from somewhere else because of the flow-on feel and increasingly the conglomerate side is blurring that, and that is one issue why I think a different approach to trying to - we've suggested the use of rating agencies is one way of adding information, not to replace prudential but to have that as a way so that - and more aimed at financial advisers and the media being able to distinguish between the different products and the institutions and parts of them for security reasons.

MRS NICHOLLS: Chairman, thank you. Each of you both personally and through your membership is of course quite active in the superannuation industry, and that's the area that I'd like to pursue with this question. Exactly what sort of prudential supervision do you think is needed for superannuation? And I'd like you to be as specific as possible in your detail, please.

MR HUTLEY: You might find three slightly different points of view, but perhaps I can put the side from the public offer superannuation industry. From where we sit superannuation funds are offered and managed in essentially no different a manner to other collective investments other than in the form that they are regulated, which creates different documentation requirements and other requirements.

It doesn't then follow from that that we would say that superannuation has to be regulated just like another collective investment, but we would note that one of the areas that this inquiry has said it's not going to specifically get into is the collective investments legislation that the government is currently considering. But on the assumption that that legislation was passed in roughly the form that it currently exists, it will create a level of prudential supervision of collective investments that currently doesn't exist; it will introduce capital requirements and other operating requirements which are not there at the moment which would actually bring the regulation of those schemes under what we believe is a better framework than exists at present.

In an environment like that I think the key distinction that would then need to be addressed, as Charles said, is that one form of saving is compulsory and one is voluntary, and I guess that raises the issue of the moral hazard for the government in compelling superannuation saving. I would say that the regulation would just need to address that issue, that in compelling people to put their money into a particular form of saving institution that they have a reasonable expectation that they would get that money out again at the appropriate time.

MRS NICHOLLS: So do you have a specific view as to what prudential supervision of superannuation would be desirable?

MR HUTLEY: We'd certainly put it in the same regulatory body as was regulating other collective investments. I think it's largely a question of ensuring that the institution providing the superannuation fund has enough capital that that institution is not at risk.

MR BEERWORTH: Peter, would those requirements differ from the capital adequacy and other prudential standards you'd apply to life insurance companies, or do you think that should be the same?

MR HUTLEY: Frankly I don't know enough about life insurance companies to really purport to offer an informed comment on that. I might - - -

MR BEERWORTH: Well, John, would you - yes.

MR MARONEY: Well, I'll answer that question at the same time as answering Linda's, if that's okay - - -

MR BEERWORTH: By all means, yes. They're complementary.

MR MARONEY: - - - in terms of - our general position is that superannuation regulations should be integrated into the overall framework of regulating the whole financial system. Implicit in that is, there should not be one single prudential standard for superannuation, it should depend on the type of superannuation product that someone chooses, or in the current situation is chosen for people - and that's in a state of flux.

The problem that Peter has already mentioned of moral hazard is a significant one, I think, for the government, and I believe that genuinely will be reduced to the extent that there is greater choice where, even though individuals are compelled to save for retirement, if they're given a choice as to where they save and they choose to save in something that's at the riskier end of the spectrum because they're wanting to maximise their retirement income, then I think that's a choice that should - on average - benefit them, and should also systemically reduce the moral hazard risk for the government, because if someone does choose to put a hundred per cent of their retirement savings in the Australian Equities Index, that is probably a very sensible thing for a 20-year-old and perhaps much less sensible for a 60-year-old - though people will debate that in terms of life expectancies, etcetera.

So I would be saying that if people choose to put their superannuation money into a life insurance product, it should have then exactly the same prudential supervision as applies to that life insurance product. So if it's a capital guaranteed life insurance product there are defined standards under the Life Insurance Act. That's about to go to international standards. If they choose to put it into a non-capital guaranteed then there is a different form of prudential regulation.

There is certainly a risk for the compulsion side to run down so that's the general one that - and I think the SIS - the standards under the Superannuation Industry Supervision Act do provide a benchmark more generally, but I don't believe they add a lot more to what's under the Life Insurance Act already, and that's one of the reasons we're suggesting that the RSA model could be extended where people want to offer a non-trustee version and just rely on the prudential supervision of the underlying institution, be that a life office, a collective investment fund or a bank product, that that should be there (1) to reduce costs, and (2) to make it clearer to people exactly what their risk and return situation is.

MRS NICHOLLS: Could I ask that if you do come to a view that you would be putting in a further submission, that you give consideration to including some specific detail on exactly what prudential supervision you would think appropriate for superannuation. I'd certainly be interested in your considered view.

MR BEERWORTH: And life insurance, and the extent to which they should differ.

CHAIRMAN: We're drawing to the end of the allocated time, gentlemen. Is there anything else that you'd like to put to us in conclusion?

MR MACEK: There's probably just one point I'd like to pick up that we just touched upon in addressing the last question, and it's to do with capital adequacy. Working for a funds management organisation as I do, I have found that there's often a poor understanding by people outside the industry of the way in which the industry operates, in that fund management organisations, unlike banks or life companies, essentially act as agents, and the savings and the investments that they are managing are typically segregated and are quite independent from the balance sheet of the organisation providing the service.

That is a very important distinction, because it basically means that the sort of capital adequacy regime that is quite appropriate for a banking product or for an insurance product is not appropriate for a stand-alone investment product, including superannuation, because the investors' assets are quite separate and segregated from the balance sheet, so therefore there's no balance sheet risk.

But once we start moving down a different path, as we're beginning to with RSAs, then some of those distinctions get blurred and there's a particularly difficult challenge, I think, in terms of getting the regulation for that type of superannuation product right, because in my judgment in the eyes of the individual contributing member to a superannuation fund, they do not make the distinction: as far as they are concerned some of their wages or what could otherwise be received as wages is being compulsorily driven into a savings structure that they understand ultimately will provide some end benefit - a lump sum or pension - on retirement, and they want to be assured that that money is protected and that it's actually going to be there. They're not really concerned about the distinction between whether it's a life product or a bank-type product or a conventional stand-alone product.

CHAIRMAN: Okay. Well, thank you very much, Charles and Peter and John. We've appreciated your attendance today, and certainly the quality of the material that you've put before the inquiry in the last few months. Thank you very much for being a participant.

MR MACEK: Thank you for the opportunity.

CHAIRMAN: The next organisation, ladies and gentlemen, to appear this morning is the Australian Consumers Association, and I'd ask Peter Kell to join us, if he would. Thank you very much, Peter. Can I just repeat the comments I made earlier which you may have missed, but these discussions or consultations today will be recorded, and transcripts will be made publicly available. I'd point out to you that the inquiry has no special legal powers or parliamentary privilege, so participants should not make comments which reflect adversely on particular persons or organisations. Could I ask you just to start by stating your name and the organisation you represent, largely for recording purposes, and it's then over to you for your opening statement. Thank you.

MR KELL: Thank you. Yes, I'm Peter Kell. I'm the senior policy officer with the Australian Consumers Association. How do you want to proceed, do you want me to - - -

CHAIRMAN: We're happy for you to proceed.

MR KELL: Okay, well, I'll give a very brief introduction and then I'm happy to have questions raised to look at some of the issues that come up. I'd start by saying that ACA has very much welcomed the discussion paper. We see it as being a very important part of this inquiry, and my comments today will mainly address some of the issues that the discussion paper has raised, even though to be honest I haven't interrogated it fully in a very thorough fashion as yet.

We also very much welcome today's public consultation, although we hope that this isn't the beginning and the end of obtaining community views on these important matters, and I'd just flag at this stage that ACA will be putting in a written response to the discussion paper, and hopefully we'll have the opportunity for some further liaison with committee members and the secretariat in the lead-up to putting in that response, and some of the issues that are raised today will be explored in that response in a little bit more depth.

CHAIRMAN: I can assure you there will be opportunities to do that.

MR KELL: Good. In terms of an overview of the discussion paper, as I said, I think it has canvassed a wide range of issues in a way that's been very helpful to ACA. I would note that, not surprisingly given the weight of submissions, it has a flavour that has been more strongly influenced, we would argue, by industry views than consumer views, and that this emerges in some sections more than others. That's in many senses not surprising: the interests of the financial institutions are more immediately and more dramatically affected by this inquiry and they're often larger and better resourced and more able to get their voices heard, and of course as you know the interests of users, of consumers, are more diverse and more dispersed so it's often more difficult to convey those views.

So I think obviously consumers don't come to you in the same way that industry does to express views, and this is reflected in parts of the discussion paper. For example the consumer protection part, I'd argue, that starts with an outlining of the problems - the first problem identified is the duplication of the Corporations Law and the Trade Practices Act - is not something that I think most consumers would start off as identifying as being their problem with consumer protection regulation. So I just thought I'd like to put that issue on the table.

One other issue with the discussion paper which I think would be worthwhile raising at this point is that the discussion of future trends I've found extremely useful, but I believe there's scope for the committee to canvass some of the slightly less optimistic future scenarios. I think that would be a useful thing to do in that you could then discuss how regulatory regimes might prevent some of the less optimistic scenarios coming about.

CHAIRMAN: What do you mean by less optimistic?

MR KELL: Well, an example from the future trends chapter is a section discussing products which says something along the lines of:

> It will be the design of products which will change to provide greater utility, convenience, speed, and personalisation. New products will be characterised by their greater sophistication and tailoring according to consumer preferences. Consumers will be able to select from a larger range of like products and put together a package that best suits them.

I mean, I sincerely hope that we can get a regulatory structure in place that will obviously allow that. It might be interesting, though, to reflect, given recent history in this industry, what some of the slightly less optimistic scenarios are, and what some of the trends are that might actually serve as impediments to those outcomes coming about.

I mean, just a very minor example, the notion that people will be able to get things tailored to their individual needs at every stage of the process might conflict with the trend towards generic credit-scoring or something like that, or that you might end up with a segmented marketplace where that sort of outcome is achieved for say 60 per cent of the consuming population, but another 40 per cent have much more difficulty getting those sorts of outcomes. I think that obviously some of that discussion will emerge when you have a chapter in there that looks at the past history, which is obviously something that's coming in the final report. But I believe it would be a useful way to explore some of the future trends issues.

Beyond that, I'm happy to discuss specific issues with you. I mean, I can run through again the preferred model that we see for consumer protection, and our views on competition, if you think that's helpful at this stage?

CHAIRMAN: I think that would be worthwhile if you did that succinctly.

MR KELL: Okay. Very briefly the things that consumers are looking for in the financial sector marketplace are fairly obvious: they want a marketplace they can approach with confidence; they want clear and comparable information; stability and security; regulators who are clearly prepared to go into bat for them as required; some sort of say in how things are run; and accessible and timely complaints handling. And we believe that those sorts of outcomes would be achieved through a regulatory system that is similar to the sort of dual regulatory model that you have listed in here, out of the three or four models - the status quo, the dual regulatory model, the co-regulatory and the single regulator.

That is a regulatory structure where you have a prudential regulator or regulators - we don't have very firm views on the exact structure of that, as that's not our area of expertise.

You then have a finance sector specific consumer protection and perhaps market conduct regulator based on an ASC-type model. Under that you have a substantial role for self-regulation of various sorts within the finance sector and underpinning this industry, as it does all industries across the economy, you also have the ACCC having its broad consumer protection powers and we see that as being critical to the overall effectiveness and efficiency of the finance sector regulatory structure.

So that is our preferred model for consumer protection regulation and within that we would emphasise that a lot of attention needs to be given to some of the issues that are flagged in here but have not yet been explored in a lot of depth such as accountability mechanisms: how you ensure effective regulatory performance as well as just looking at structural issues; how you achieve a mix of regulation between self-regulation and legal structures that's effective. Some of those issues that were perhaps of the broader principles could be spelt out in a little more detail.

A couple of other issues have also emerged as a result of the discussion paper coming out which have I suppose led us to consider there were some things we could have explored in more depth, and obviously depositor protection is one that I would be happy to discuss in a bit more depth today. In addition to that, some of the disclosure issues have also come up.

Finally, going beyond the consumer protection issues at this stage, my reading of this discussion paper is that some of the key arguments around the competition issue we would say don't support the further concentration of the financial sector in Australia and, as you're aware, we have argued that there's no reason for the big four banks to become the big three or the big two and that we believe that consumers benefit from effective competition and it's very important that that sort of market structure not be concentrated any further. We'll leave it there for the moment.

CHAIRMAN: Would you like to say a little bit more about deposit protection. It seems a worthwhile starting point.

MR KELL: Yes, I suppose where we would start from the issue of depositor protection is that it's very clear, it has always been clear to us that there is a strong demand, consumer demand, community expectation that there be some sort of savings vehicle within the spectrum of investment and savings products that has a guarantee - close to a guarantee of some sort - and as we are well aware there's a lot of community misunderstanding about the nature of that guarantee or absence of that guarantee at the moment but, whatever that misunderstanding, I think there is clearly an expectation that a product of that sort of an institution of that sort should be a part of the spectrum of the financial services sector.

If you start from that point, then I suppose the issue then becomes, well, how do you best deliver that? How do you make sure it's delivered in a way that's most cost-effective, that doesn't create the sort of moral hazards and whatnot that can arise in this area? I wouldn't say I have the clear answer to that. It's something that we will look at a bit more in our response, in our written response, but I think there is clearly a role there for some sort of depositor guarantee for some sort of vehicle and that simply arguing that people can just be given disclosure on the range of risks and the range of products available as a replacement, as a complete replacement for having a guarantee at one end of the spectrum, is not sufficient; that there are still a large number of consumers out there who want some sort of guarantee.

CHAIRMAN: Is the ACA at this stage comfortable with the present basis of depositor protection or are you likely to argue for some clarification and change?

MR KELL: I suppose we would recognise that the current system has worked reasonably well when it comes to depositor protection, despite the fact that we did have some fairly high profile collapses in the late eighties of Pyramid and whatnot, but I think there's a confusion there as to exactly what is and isn't protected and it would be worthwhile clarifying that in the public mind. I think that would be something that could be explored in the inquiry.

I would also say on this issue that looking a little bit beyond the sort of bank deposit-type guarantee, that it's an issue that one way or another is going to have to be confronted in the superannuation area as well, I believe, and I'm not sure how but - - -

CHAIRMAN: You will give a guarantee?

MR KELL: Not necessarily a guarantee but I think, as one of the previous speakers just summarised quite nicely, when you have a superannuation system that is compulsory, that mandates that people put their money away for retirement, I think there is a general expectation out there that people are going to be able to get that money in one way or another at the end of their working lives. Should there be a collapse of a major fund, then I think the pressures would be such that the government would find it very difficult not to step in. It would be nice to have some sort of system that addressed that in a coherent fashion rather than in an ad hoc response at the time of such an occasion. Now, whether that's through private insurance schemes or whatnot, I think again it's something that's worth exploring and I haven't got the answers here today.

CHAIRMAN: You might say something further about this?

MR KELL: Yes.

CHAIRMAN: Okay.

MR KELL: That's right.

CHAIRMAN: Bill, did you have any questions?

MR BEERWORTH: Yes, Peter, I was interested in your submission and that you would see a separate financial consumer protection regulator, as it were. Do you think the ACCC hasn't done well? It's been very active in this area. It has a very broad test. Basically anything false or misleading, the ACCC is onto very quickly. Why wouldn't the ACCC in its present guise be adequate?

MR KELL: Well, I suppose we have argued for the model that we support for a number of reasons, and on that issue in particular firstly the ACCC has broad consumer protection powers that don't extend down to some of, what you might call, nitty-gritty regulatory functions that are nonetheless essential in this area. The licensing regime, for example, which might apply specifically to financial advisers and financial agencies of one sort or another needs some sort of coordinating process within what we would argue would be a financial sector specific regulator.

Some of the compliance activities that have to take place on a more regular basis, going out and checking securities advisers and whatnot, there's certainly a role for a finance sector specific regulator that's also able to gather intelligence and information on the industry on a more day-to-day basis, so to speak. So in suggesting that there should be a finance sector specific consumer protection regulator, it's not to suggest that we believe the ACCC has done a bad job. In fact, we would say the opposite. The ACCC has a very good track record in this area, but its role and its purpose as a regulator don't extend to addressing a whole lot of those nitty-gritty issues.

CHAIRMAN: Could you be a bit more specific about the deficiencies that the association sees in the existing framework and the regulators across the ISC and the ASC and the ACCC, because the committee does have to get its mind around the present system and what's wrong with it.

MR KELL: Sure, okay. Well, for a start we support the general concerns within the industry that there could be greater consistency in the approach to consumer protection regulation and, having the finance sector specific regulators, most of them have some sort of consumer protection function or another and I think there's scope for rationalising that.

One of the key reasons for doing that as well from our point of view is that it's our experience that consumer protection regulation, if bits of it sit within different finance sector regulators, it does tend to slip down the agenda of the regulatory functions and it's often a thing that's attended to last and suffers resource-wise as a result. It would give it more focus and I think more consistency and more, I suppose, cross-industry expertise to have it in the one spot. So that's why we have supported that model. Now, whether that particular regulator could have a slightly broader role in terms of being an ASC-type regulator with some sort of corporate regulatory responsibilities - we don't have a very strong view on that but that's a possibility mainly because of its practical considerations.

You could move it to a regime that's governed by the Corporations Law, but those are I suppose the main reasons why we see CP regulation. It's been a bit uncoordinated and rather low down the agenda under the current structure.

MRS NICHOLLS: Peter, I understand that you have some reservations about mergers. I understand that your organisation has some concerns about rationalisation or a marked reduction in the extent of the branch network that currently services Australia. I'd ask you for a moment to imagine a scenario where there are no mergers and there is no reduction in the branch network. How do you see us reducing costs in the financial system?

MR KELL: And, right, there's no reduction in the branch network.

MRS NICHOLLS: You don't want that to happen - right?

MR KELL: I think there will be for a start a change in the nature of the branch network and that is not necessarily a bad thing as long as it's done carefully with consumer interests in mind, so that you don't necessarily need a full bells and whistles branch on every corner. Consumers should have the ability to access banking through different means and I think things like the kiosk structures and whatnot, which I understand are substantially less costly than the full-on branch, can have an important role to play in the distribution network. Obviously we will see some other changes to those sorts of distribution structures that won't necessarily reduce the number of branches as such but may change them in ways that, whilst still providing consumers with essential access, are a lot cheaper to run.

So that would be one mechanism. I think that educating and encouraging consumers that are able to use some of the new technologies to do so would help to reduce costs. I think the experience of the ANZ Bank in New Zealand in looking at how they introduce telephone banking there, which did involve a substantial education campaign and information campaign, was an interesting way of allowing a lot of consumer transactions to be moved to a different channel but still allowing them to access branches on a less regular basis as they needed.

I suppose I could also be rude and say there's probably scope for reducing some of the back office costs and whatnot in the Australian banking system more broadly and that obviously some of the new technologies will contribute to that happening.

MRS NICHOLLS: So is there a point at which some of the current distribution network or distribution options actually could be withdrawn in your scenario?

MR KELL: Well, I think it's something that is going to happen and so we have to look at how best we deal with that inevitability and I think that in some urban areas in particular there may be scope for looking at how we can allow distribution channels to be provided that aren't necessarily full-on bank branches.

So we recognise that those sorts of distribution channels will change and how best to discuss with the banks and other big financial players how we can ensure the consumer's benefit while that's happening.

CHAIRMAN: I mean, philosophically does the association give an equal rating to the sort of service and the cost aspects of all of this?

MR KELL: Again that's an open question. The cost aspects are very important from our point of view as long as we have a system, as long as we have a competitive structure where those cost benefits are passed on to the consumers at the end of the day.

PROF HARPER: Yes, thanks, chairman. Peter, you haven't raised it this morning but I notice from your submission that the association has quite strong views about privacy laws in this area. In particular, if I read you correctly, that the association would like those laws to be strengthened or certainly not weakened in any way. Do you or does the association acknowledge that there are efficiency implications of strengthening privacy laws in particular - for example, that credit risk premium may actually rise to the extent that credit institutions are less able to obtain the information they need to make proper assessment of a credit risk.

More to the point, that in the absence of certain types of cross-selling opportunities that are ruled out by strong privacy laws, again it's possible that consumers may not be able to be served as well as they otherwise could, clearly acknowledging the importance of privacy law, as any right-minded citizen would. Do you accept, or does the association accept that there is a trade-off that has to be undertaken here and, you know, can I just perhaps ask you to explore a little bit the extent to which the association feels that the importance of privacy is such that the benefits that may be obtained through things like cross-selling and credit risks, scoring techniques, are worth foregoing.

MR KELL: I suppose the place to start is with what seems to be a little bit of a paradox, that Australian consumers value - Australians per se - value privacy very very highly as all the surveys indicate, but at the same time they do like new technologies and distribution systems, so how to achieve a balance there is critical.

The issue of cross-selling is a difficult one and I think it's impossible in the abstract to draw a line, but one of the ways we'd approach this issue is to say that as long as the consumer is happy to - and clearly understands what sort of information about themselves is held by the institution and how it's been used - then often that is the reassurance that's needed and they will accept some of those things that you have been talking about.

Indeed, the Privacy Commissioner's report that came out last year that summarised a few of these issues, I think reassuringly noted that most Australian consumers sensibly understand the need for some sorts of personal details to be collected about them from financial institutions and, if my memory serves me correctly, they actually mentioned insurance companies and banks and whatnot, that they understand that there is a need for that information to be made available in these sorts of markets, but they want to make sure that they have some control over how that information is used at the end of the day.

So I think it's not as difficult as it has sometimes been painted to achieve that balance in the practical circumstances, as long as consumers are given very clear information about how their personal details are being used, and as long as they are being given the options as to what's being used and what isn't. I mean, for example, we have opposed situations where consumers have to write a letter into the institution if they don't want their personal details to be used in a particular fashion. I mean, that sort of approach is unacceptable, but on the other hand if there's a box they can tick and they understand the implications, well, then that's okay.

PROF HARPER: Acceptable for the association.

MRS NICHOLLS: Let me pick this up in a slightly different vein and ask you a pretty pointed question. The view has certainly been put to us that positive credit reporting plays a significant role in facilitating securitisation. Now, we have seen in Australia over the last couple of years that - mortgage securitisation in particular - a number of consumers would say has delivered a very direct price benefit, not just from those companies but by law and price across the market.

So from that point of view securitisation looks as though it is something that should be encouraged and facilitated. So, as I said, the view has been put to us that positive credit reporting, which we do not have in Australia, would facilitate securitisation, and perhaps most particularly facilitates securitisation in the credit card market where interest rates might then be directly related to the individual's credit performance which we see in business markets but not yet in the personal market.

Could you discuss for me your organisation's view on positive credit reporting and what you see as its advantages and, if it has any, its disadvantages?

MR KELL: I think this is - not wishing to sidestep this issue - it's something that I will endeavour to explore more in our written response because I didn't note it as an issue in the paper and it's something that we haven't thought about in detail. I suppose one of the concerns we have is the information upon which a positive credit rating is based.

A few years ago the Australian Consumers Association did an exercise where they shortly got individuals to look at what information was held on them by the credit reference agency - I've forgotten the exact name - and for a very large percentage of those people the information held on them was simply incorrect or contained substantial inaccuracies. Now, in that sort of environment there's a bit of a problem with that approach but if we could have confidence in an environment where the information held about people is accurate, then perhaps that's an avenue that could be explored, because I do understand the cost savings that might emerge in that area.

I would though say that it would again create a category of winners and losers, so to speak, and careful consideration would have to be given as to what happened to people who subsequently found it very difficult to get credit, even with - - -

MRS NICHOLLS: Can I follow up that equity issue with another question? You talk about whether or not it would be fair to those who perhaps might be denied credit. Is it seen as fair now that people who are very good credit risks carry the cost of bad debts, that people who are borrowing money carry the cost of those who take an interest-free period? How do you see that equity issue being resolved? I'm really talking about the cross-subsidy. What's your view on cross-subsidy?

MR KELL: Well, on that sort of cross-subsidy I suppose as credit scoring techniques get more sophisticated, in some ways this issue has been partially addressed already and that agencies are able to make sure they're aware of the credit risks that attach to particular people, and I notice there was an article in this week's paper about a system for identifying people who would be the sort of person that would have repayment problems and how you would deal with them at the outset of the credit contract and get systems in place to ensure that they did meet their obligations prior to problems emerging as those techniques become more sophisticated and are able to identify types more accurately. Then hopefully that would be addressed, but it's something that I'd be very happy to take up in our response to the paper.

CHAIRMAN: Peter, could I ask you a sort of general question that there's been clearly a great emphasis on increased disclosure of amounts of data and there's been a lot of loose talk about, but I mean how does the ACA feel about the progress of all that and whether your constituency is better off, worse off, more confused or whatever?

MR KELL: Well, I think clearly consumers are better off say than they were 10 years ago or so when disclosure was significantly less or simply non-existent in many areas. That was one of the key reasons why we had the experience in some of the financial markets we did during that time with overselling of particular products, the selling of completely inappropriate products to consumers who were hit by high fees and charges. I mean, that sort of environment was really facilitated by the fact that disclosure was inadequate.

So I think we have made some substantial gains and that consumers are considerably better off, but I think there's also considerable room for improvement, firstly in picking up some of those areas where disclosure isn't yet working particularly well and also acknowledging that in some areas there could be more flexibility with some of the disclosure regimes. Certainly ACA has always supported, for example, short-form statements, summary statements, key feature statements, as one of the key parts of disclosure regimes and this could be, I think, explored in the area of prospectuses, and some of the industry groups and the ASE is looking at that issue at the moment.

If we had a regime that was, I suppose, more outcomes-focused, that would perhaps also shift the emphasis towards what disclosure is trying to achieve. That in many cases would require a fairly substantial change of the culture of disclosure.

CHAIRMAN: Does a 60-page housing contract help or hinder?

MR KELL: A 60-page housing contract obviously is not something that most consumers are going to read. Part of it depends on what is in those 60 pages. If a lot of it is bank waffle, then I don't think you could attribute that necessarily to the disclosure regime. I think often with those 60-page documents to the extent that they exist, having sort of a key feature statement up-front is a useful thing, and I notice, having been run through Westpac's disclosure under the Credit Code, that they have what I regard as quite a useful little summary sheet up-front and I am sure that several of the other banks are also going down that route.

I think it would be useful for the inquiry to explore some of the reasons why we've got to where we are with disclosure. For example, some of the disclosure regimes that are now in place in the personal super and insurance area contain information that was required by industry that we frankly would regard as completely unnecessary from the point of view of consumers. Yet it's often difficult to find a very simple explanation of fees and charges in dollar terms, so there's still scope for improvement.

CHAIRMAN: Anything to ask Peter? Peter, we're I guess past the end of your allocated time. Is there anything else you wish to leave us with?

MR KELL: I think that last question actually addressed one of the questions I was going to put to you. I thought it was interesting to see two quotes in the chapter on consumer protection that, "Consumer protection begins with worthy objectives but disappoints in its applications" and, "The consumer needs are lost or neglected in translating goals to regulation" - but I was interested if you were going to explore some of the reasons as to why that occurred in the inquiry's final paper because I thought they were two interesting comments that weren't necessarily followed up.

CHAIRMAN: Well, we would welcome any views that you may have.

MR KELL: Right, okay.

CHAIRMAN: Okay? Thank you very much, Peter.

MR KELL: Thanks very much.

CHAIRMAN: Ladies and gentlemen, our next participant today is Ben Slade from National Legal Aid. Mr Slade, welcome.

MR SLADE: You have heard my colleague, Mr Mikula - - -

CHAIRMAN: Can I just repeat in case you may not have heard my earlier introductions, that these public consultations will be recorded and transcripts will be made publicly available. The inquiry has no special legal powers or parliamentary privilege so I would ask you not to make any comments which reflect adversely on particular persons or organisations. We'd welcome a brief opening statement from you and if you could commence, Ben, by just stating your name, the organisation and perhaps some background to the organisation, we can proceed. Thank you.

MR SLADE: Thank you. I've prepared an outline of a submission - - -

CHAIRMAN: Mention your name and organisation just to start for recording purposes.

MR SLADE: Sorry. My name is Ben Slade. I'm appearing on behalf of National Legal Aid, which is the coalition of the seven Legal Aid Commissions that exist in each state and territory in Australia. My position is in fact the manager of the general law branch of the Legal Aid Commission of New South Wales. I've prepared an outline of submission which of course if I was to go through each part it would take far longer than the allocated 10 minutes and would not achieve any valuable purpose. I'm afraid I've only got four copies of the full document. It did appear to me that you're probably getting an enormous amount of paper and don't particularly want to be flooded, but if I can pass those four copies over. There is in fact a copy of the bare submission without the attachments.

If I just run through the submission but leap over a bulk of the initial information. The initial information concerns the role that Legal Aid Commissions have in Australia in the area of assisting consumers of financial services and I've attached to the bulkier documents that I handed over an example of one commission's civil law program which you'll note has in it civil law centres in various regional centres where three or two solicitors are devoted to the civil jurisdiction and in the main consumer law.

It's estimated that Legal Aid Commissions see approximately 30 to 40 thousand people annually with consumer financial issues that I say are the central concern or a concern that's related to another issue, but due to unfortunately funding constraints, a large number of those people are referred either elsewhere, sometimes appropriately quite often referred to sources that won't provide really adequate services, but will assist in some way on other occasions of course, we have no choice but to inform people that due to funding constraints we're unable to assist them.

I've noted on page 2 of the submission that the Legal Aid Commissions have recognised that the problems of the financially and socially disadvantaged fall into four main areas - human rights, family issues, income security and housing - the point of that being that human rights, which of course covers the criminal law, is where the greatest legal aid dollar is spent, but there is still a significant focus given by Legal Aid Commissions around the country to issues of income security, so we do focus on work in areas such as social security and consumer protection. We recognise that they're fundamental and important to consumers and the financially and socially disadvantaged in Australia.

The concern we have is that we see only the tip of the iceberg. We see and act for consumers who suffer problems in the area of financial services, in only a very few of those cases where people have legitimate concerns, but those concerns and those cases that we do conduct, as I've said on page 3 of the paper, are extraordinarily complex, require a high level of legal expertise, and require in our view many years of devoted attention by consumer specialists in the area of the work for financially and socially disadvantaged.

It is not satisfactory and has not been satisfactory to rely on the private legal profession to provide these services. The private legal profession has been - and in no way criticism of the private legal profession - but has been unable to pull the legal expertise into centres of excellence for consumers. Consumers need expert legal assistance. Some of the regulatory authorities have had pockets of people who have been very good in the area, but our view is that unless consumer legal representatives are adequately funded to provide services, then consumers will continue to be unrepresented in the marketplace, as they currently are.

So I've noted on pages 3 and 4, just an indication of some of the issues such as the Westpac case that was run in the Commercial Tribunal on a grant of legal aid by the Consumer Credit

Legal Centre, the State Bank case in New South Wales. I've noted the issue in the state Supreme Court between one of our clients running it in-house in the New South Wales Legal Aid Commission against the ANZ Bank, where the all moneys mortgage was under consideration, and I've attached a copy of that mortgage document to the bulkier papers. I was somewhat concerned - to divert for a moment - somewhat concerned about the suggestions that have been reported in the press that industry is claiming that the Uniform Consumer Credit Code is in any way responsible for a 60-page mortgage. I dispute that. I do not believe that that is the case, and I would expect that - - -

CHAIRMAN: You're disputing that - - -

MR SLADE: I dispute that a 60-page mortgage is a necessary consequence of the disclosure provisions in the Uniform Consumer Credit Codes. I expect that two pages or three pages would be satisfactory to comply with the disclosure requirements under the Uniform Consumer Credit Code, and the further 57 pages will no doubt be an attempt by the bank in question - I don't know which one it is - to address common law decisions of the Supreme Courts around the country to attempt to direct the law into its favour.

I attach the all moneys mortgage I think as an example of the sort of document that consumers are not assisted by. The clauses in the all moneys mortgage are almost universally in favour of the institution and provide some quite extraordinary rights for the institution that thankfully the Consumer Credit Code has addressed. Of course in the circumstances of that case, the Consumer Credit Code would not exist, because it was in relation to a guarantee securing a business debt. We've relied on the New South Wales Contracts Review Act in that matter and we're awaiting a judgment.

I've also attached a copy of a document from Avco Financial Services Ltd as an example of a sort of loan contract that we were seeing even under regulation, the Credit Act 1984, merely as an example of the - while the documentation looks relatively simple, it is a good example of the fairly complex nature of this work. It raises issues of the sale of consumer credit insurance, it raises issues of how much money was agreed to be lent. It further raises issues of whether stamp duty has been adequately identified and charged, and raises issues again of the negotiations between the consumer and the finance company about how these specific numbers were arrived at, and how it was that our consumer managed to get into the position where he and his wife were caught with such an extraordinary debt. Now, I don't go further into the detail of that, merely to present you with the sorts of issues that a consumer adviser must confront.

So at the bottom of page 4, I note that there just aren't enough expert advisers in Australia to assist consumers. The private legal profession, as I've noted, has not managed to build up the expertise that we believe is necessary. Legal aid commissions have found themselves required to devote resources to criminal and family law, and resources in the consumer protection area are limited. As a result, it is estimated that there are only 20 people in Australia who we consider to be expert in consumer credit law on behalf of consumers. We estimate only approximately 10 lawyers in Australia who are expert on issues relating to insurance, apart from personal injuries and professional negligence issues, issues in relation to refusal of claims on the basis of disclosure, issues that arise under the Insurance Contracts Act, and I say that I believe that there are only about two lawyers in Australia who are adequately capable to advise consumers in the superannuation law area. One of them I'm assuming is sitting next to me, but I haven't examined him, because I'm certainly not capable myself. There is another solicitor who is in fact in the private profession in Melbourne.

The point is this extraordinary lack of expertise for consumers is a direct consequence of the limited legal aid dollar and community legal centre funding, and the fact that consumer concerns in these areas generally arise when a client has no money and therefore cannot pay for the services for a private practitioner, whether it be a lawyer or accountant.

I've noticed some issues about legal aid and the concerns that Legal Aid Commissions nationally have in relation to federal government funding decisions, and then I've gone on to note that in our view consumer protection laws have provided an invaluable resource for consumers. Those consumers who have got to expert advisers have relied on consumer protection legislation. The common law and the formal court system has failed them. Market forces I've noted, as is noted in your discussion paper, don't necessarily provide adequate levels of information to consumers and certainly don't stop injustices from occurring.

Then I've gone on to note what we believe at National Legal Aid is needed. I note that while we don't claim to have the complete answer, and our constituents are the financially and socially disadvantaged and we don't purport to have the complete answer for middle Australia, but we do say that the system at the moment isn't all bad, there are some very good points, but there are some significant gaps. There are significant gaps in relation to the number of consumer advisers with legal expertise. The industry schemes - while some have worked very well, others don't, and the ad hoc nature of the development of those schemes has resulted in a number of differences that are unnecessary.

We say that industries' non-compliance with disclosure regimes continues and ought not be tolerated. Disclosure regimes are central to an honest and sensible system, even if we concede that a great bulk of our clients don't understand what they're signing. Regardless of how simple it is, it is not the fundamental problem. The fundamental problem is that industry must provide consumers with the information so that if they want to consume it, they can, and that they must be honest about what the position is up front. We also have concerns about the lack of consumer protection in some legislation such as for example the Insurance Contracts Act.

So our suggestions which we make with respect to the committee to fill these gaps are, first, the rationalisation of industry-funded dispute resolution schemes into one central financial services ombudsman, with the following characteristics: first, offices in each major city; second, the right of legal or other expert representation and public hearings where necessary; third, that control be held equally between consumers and industry with government involvement; fourth, the power to award costs in favour of the consumer who is given leave to appear with a lawyer; and fifth, the right of appeal to the Commercial Tribunal in each state and territory for consumers alone.

The second central step is to have adequate funding of consumer legal representatives and consumer advocates. It's essential if the power and information imbalance is to be addressed in society for funding to be provided, and I later note some options. The Legal Aid Commissions and community legal centres have the infrastructure to employ and train such people, and the community demand for the service is clearly there.

On the front of consumer advocates, organisations such as the Consumers Federation of Australia are central to the success of industry-based schemes. Industry-based schemes will only work and self-regulation will only work if they are a partnership between consumer representatives and industry. Consumer representatives are finding it very difficult to maintain a cohesive force at the moment, especially in view of the latest decisions in the federal government budget to slash funding of the Consumers Federation of Australia by $400,000, which I understand was its total funding allocation.

Organisations such as community legal centres and Legal Aid Commissions rely heavily on the expertise and the central organising of these organisations such as the Consumers Federation. The Australian Consumers Association is a member of that organisation. There are a number of others - as the committee would know - of the Australian Financial Counsellors and Credit Reform Association, and groups that have differing expertise that all focus into this peak body, and they have processes to ensure that the selection of consumer representatives avoids the allegation of the minister's mate.

We also suggest that there are significant problems in relation to some consumer protection legislation, access to dispute resolution. The Trade Practices Act for example has only really worked to assist the ACCC, and it's very valuable work. The ACCC has done extraordinarily good work, but it's not been a useful tool for individual consumers.

We have avoided, I might note, making any comments about regulators generally in this paper. Our view is somewhat confused about the role of regulators and whether regulators do a good job. Some do a very good job. The ACCC has been fabulous. The Department of Consumer Affairs in Victoria a few years ago was extremely good, but we've had concerns about the performance of others.

So the last point is some proposals for where the funds might come from. The federal and state governments are reluctant to provide funds for resolving this imbalance in society, and the proposals are as is attached, a proposal in relation to a superannuation levy hopefully with the retirement savings accounts possibly coming into force.

The superannuation levy will work in a way that provides for there to be expert solicitors in superannuation areas around the country. I note that there's an estimated $187 billion in Australian funds in superannuation funds, 92,000 different superannuation funds, and yet my estimate is that there are two lawyers who are expert in the consumer side of the transaction in Australia, and the injustice is extraordinary. Thank you.

CHAIRMAN: Thank you, Ben.

MRS NICHOLLS: Ben, we had a view put to us quite strongly earlier on this morning that it would be very desirable in Australia if we moved away from state-based regulation to a national framework, and yet my understanding of what you've talked about with us today is the importance of delivery on the local level, and indeed building up that expertise on the local level. Could I ask you to comment on, firstly, your view about the mooted, the suggested move to fold state regulations into a national framework, and how you might see that coming about; what you might see as some of the advantages or some of the problems.

MR SLADE: I suppose our position is that we're not really sure what the right way is. We know that in some states the regulatory authorities and the administration of consumer protection legislation has been very good, whereas in others it hasn't. It's not very clear to us that the resources, the adequate resources would be put in nationally if, for example, the UCCC was to be nationalised as such and all power coming from the Commonwealth.

It is not clear to us that that would work better for the consumer on the street. It might if significant resources were put into it; it might if you had someone of Prof Allan Fels's ilk running the show, and it might be that with consumer advocates adequately funded throughout Australia and branch offices to enable consumers easy access to those offices, it might be that a nationalisation of the process would work very well. I can't see that it makes much difference though for the Uniform Consumer Credit Code now that we've been through this extraordinary process to get it through. I can't see that it makes much difference to make it into federal legislation, except insofar as it will of course allow the federal government to water it down without much opposition.

MRS NICHOLLS: So you wouldn't see a national regime, for example, offering an advance in the form of flexibility of future amendment?

MR SLADE: I think that after the 10 years or so of being on the consumer side of the lobby to try and get the Consumer Credit Code to where it is today - and we made extraordinary concessions to industry to get it where it is today - that the only amendments that will be made in the future will water it down in favour of industry. So I don't think it would be an advantage for consumers in the long run. That of course is a somewhat cynical prediction of the future political process, but it's the fear.

MR BEERWORTH: Thank you.

PROF HARPER: Yes, thanks, chairman. Yes, Ben, I just wanted to ask whether you thought that the creation of a dedicated consumer protection body for the financial services industry, as suggested for example by the ACA in the previous submission, how far that would go towards addressing your concerns, and as a sort of follow-up aspect to that I notice your recommendation of rationalising the ombudsman schemes into a national system.

I take it from that that the idea of dispute resolution schemes, industry funded and suchlike, that that idea you're in favour of and it's basically working well and what you'd like to do is to see that extended. So to bring those two together: a single CP scheme, right, is it going to help, and would you see that being articulated in some way with a nationwide ombudsman scheme?

MR SLADE: We do, you're correct, like the development of industry-based schemes. We think that some of them are working well, especially those ones that have quite sensibly included consumers in the management of the schemes and consumer representatives in the panels that make decisions. As for a national consumer regulator, the idea is good. We are concerned that it won't be adequately resourced, as I noted in the answer to my previous question, and that without adequate resourcing, without adequate processes within the organisation to get out to the people so to speak so that the people within the organisation get onto the street and see what's happening, or they have open lines of communication with adequately funded consumer advocates who are closer to street level than a centralised regulator, then it won't work.

They will fail again, as some - and I won't mention them now because I don't want to be sued by any department, but some Departments of Consumer Affairs around the country have just demonstrably failed by not getting out and seeing what the issue is. Now, the alternative is that you have people who are out there, who are devoted to representing consumer interests, so they can pick up some of the systemic issues that arise.

PROF HARPER: I guess the aspect I was particularly interested in was, you're obviously pleased with the work that the ACCC is doing in other spheres. To set up a dedicated separate consumer regulator for the financial system would move that away from the ACCC to some extent, and so I guess I was seeking your reaction to the idea that we'd have a dedicated regulator that was not in fact part of the ACCC. although it would come under the general legal aegis of the ACCC.

MR SLADE: Well, as I say, our concern is that it wouldn't work as well as the ACCC because of lack of resourcing. Also the ACCC has started to work extraordinarily well; a lot to do with I think a few individuals within the organisation who we consider to be exceptionally fine workers. Prof Fels and Allan Asher have just done extraordinarily good work. It's hit and miss really with organisations - - -

PROF HARPER: So by that same token, the appropriate persons running a separate regulator could do a wonderful job.

MR SLADE: They could do, yes.

PROF HARPER: Thanks.

MR BEERWORTH: Ben, you say that there are only two solicitors in Australia who are competent to advise on these arcane matters. I find that very surprising. I suppose you mean in a Legal Aid context. I suspect there are a large number of extremely competent solicitors in private practice fully capable of giving appropriate advice. The thrust of your submission though it seems to me is - I've been able to skim it quickly - really is this: that Legal Aid funding has been slashed, as you put it, over the last few years and indeed quite recently, and therefore you advocate a new tax effectively, and you give us five possible taxes which could be applied.

Some of them I suspect may be unpopular. You suggest a superannuation levy, that's a tax; a levy on the insurance industry, that's a new tax; a levy on the banks, such as a proportion of the FID - well, that already exists, but I suppose you'd have to expand it; or something you call a public benevolent tax on bank deposits. I'm not sure what is a public benevolent tax, but certainly the taxes on my bank deposits I don't regard as benevolent. Then finally you have a Legal Aid trust scheme.

But the thrust of this is that new taxes should be raised to inflate the Legal Aid budget. We have a problem. As the chairman says we're just a committee anyway. Even if we were to make recommendations that there be a new or an expanded tax in some form to assist Legal Aid, governments already prioritise their funding and they've done so as you know - they've slashed your budgets. We could have no guarantee, or what guarantee do you think we could bring about or the government should bring about that the money collected under a new tax would necessarily go to Legal Aid, and if it did, there's a second decision to be made of course by each of the various Legal Aid organisations. Why would they necessarily put it into the areas that you think are desperately needed in terms of consumer finance advising if they haven't done so at present?

MR SLADE: There are a number of aspects to that question. If I can try and take them - maybe you can remind me if I forget an aspect. The first aspect in relation to the expertise: I think the point is that the extraordinary numbers of financially and socially disadvantaged people that we have in this country do not have access to lawyers who have the expertise that is available or should be available to them. They can't get to those lawyers because they can't pay for those lawyers.

Even if they could, then I say that the lawyers who have the expertise - and there are some exceptionally good lawyers in the private profession; I'm in no way denigrating the private profession. Lawyers in the private profession must provide their services for a fee because they won't exist if they continue to provide too much pro bono service, and the issues that one gets on top of after years of advising consumers who don't have any money are substantially different to those issues that one gets on top of after advising people who can pay for the service.

The sorts of problems are different and unique and equally as complex as corporate legal issues. So that's the answer to the first issue. The answer to the second major issue is, yes, I suppose these issues can be interpreted as a tax of sorts, although the funds are coming directly from industry rather than through government, but to that degree they are a tax but we say that the fundamental problems in the legal system for consumers are a direct result of the lack of expert advisers available to assist them; that if there was a balance brought into the system by there being significant consumer representation through expert lawyers and through consumer peak bodies and advocates, then the balance would be of benefit to society as a whole, and dare I suggest it, a benefit to industry.

On the third issue of whether Legal Aid Commissions themselves or community legal centres could be tied to where the funding is spent, well, the previous Minister for Justice Duncan Kerr broke the independence of Legal Aid Commissions when providing funds via the justice statements to commissions, and commissions agreed after those moneys were made available to target those moneys in consumer law, civil jurisdiction, the family law.

So that issue has been resolved, and I think that commissions around the country have agreed that if funds are to be earmarked, then we will receive those funds happily, and we will be accountable for the use of those funds. We've already agreed to quite extraordinary accountability requirements and we're happy to meet that challenge.

CHAIRMAN: I wonder, Ben, if you could just respond to Mrs Nicholls' question to Peter Kell earlier about this whole issue of privacy and access of information on consumers and credit in the interests of delivering better outcomes to consumers. I mean, do you have any particular view in that respect? You were here when I think Mrs Nicholls posed the question.

MR SLADE: I actually whispered to my colleague when that question was asked. Our position on privacy is - and I'm not sure if it's correct, so we're really not sure but we don't believe that our clients or our constituents, if we go further than our actual clients, particularly care about privacy. I don't think they think it's much of an issue. I think what they really do care about is that they don't get ripped off, and if they believe they have been ripped off then there is a way of having that complaint aired and resolved in the way that they think that they've had their chance to resolve it. So I'm not sure that we can take it really further if we are representing the interests of National Legal Aid. I don't think privacy is a major concern.

CHAIRMAN: Any further questions? Well, we're pretty much on time. Is there anything else you or your colleague would like to finish up with?

MR MIKULA: For the purposes of the transcript, Christian Mikula from New South Wales Legal Aid Commission. Ian, if I can just follow up the question you asked Ben about how the ADR schemes are working: we would say that they are working perhaps unevenly and there's certainly a lot of work by the consumer representatives to keep them on what we say as the right track. But in terms of how they should be structured, we would have a number of concerns for the future.

We'd obviously be interested in a wider coverage than at present. For example, the Australian Finance Conference doesn't have its own ADR schemes, and the majority of our clients have problems with finance companies relative to banks. So we'd certainly see it as important that they were covered, and that would assist us in avoiding having to litigate matters, and I suspect it might well be cheaper for the industry in the end. Running one or two matters in the Supreme Court certainly costs them a lot of money.

We'd see it necessary that there be equal consumer and industry representation on the councils, and if decisions are to be made by panels, then on the panels as at present, and we'd see it as important that there is some means of these bodies identifying systemic problems and either having some capacity themselves to resolve that; for example, where they come across systematic over-charging or else referring it to some regulator to deal with.

CHAIRMAN: Thank you very much. Well, thank you both, gentlemen. We shall accept this as a formal submission to the inquiry. You will get a number and you will be on the Internet, and it will be there. So thank you both very much. Ladies and gentlemen, I'm going to suggest we take a break of about - let's say 11.15 we'll resume - just for those who wish a cup of tea or whatever. Thank you. The next participant is Tony Rundle from ATAX. Is he here? Yes, okay, Tony, about quarter past 11 then. Thank you.

CHAIRMAN: Ladies and gentlemen, if we can reconvene, the next contributor is Tony Rundle from ATAX, University of New South Wales, and I guess, Tony, I'm bound to repeat this story that we are recording these proceedings, so you should bear in mind that we don't have any legal powers or parliamentary privilege, so comments should not be made which reflect adversely on particular persons or organisations. If I could ask you just to commence by stating your name and your organisation and perhaps elaborate on the organisation, and that's essentially for the recording exercise, and then we'd be happy to hear from you.

MR RUMBLE: It's Tony Rumble. I'm from the Australian Taxation Studies Program, which is a school in the Faculty of Law at the University of New South Wales. ATAX is a cooperative venture with the Australian Tax Office and my submission this morning complements an earlier submission to the inquiry. Perhaps if I could just walk through these points and invite - if you wish me to illustrate or to comment, please do so. I thought for the benefit of brevity that might be the most efficient way to go.

The first comment I'd make is that I think the discussion paper is a very very good framework for the analysis of the issues that face this market. Certainly there are a number of points in there that, having looked at the paper, I would certainly think have some synergy with what I'm talking about here. The sort of regulatory measures that ATAX proposes we would hope provide some fairly simple benefits, both to the inquiry and to the Australian saving and investment market, and in particular I thought there were four that may be of some relevance today.

The first one was that I believe that there is a fairly easy fillip to the corporate bond market. I think that the sorts of proposals we are looking at today could also help supply cheap capital to small and medium-sized enterprises, also increased consumer protection, and I think that that's probably the tone of some of the submissions I've heard this morning focusing on consumer protection.

Certainly these proposals are tax-sensitive and unfortunately I can make no apology for that. I do note the status of tax proposals for the inquiry, and in particular paragraph 9.87 of your discussion paper seems to invite comment on tax where they relate to issues of international competitiveness and innovation. Certainly the issues that I'm focusing on today are ones which our major trading partners and the leading OECD nations have faced as issues, and are ones which in varying degrees the US and the UK probably have got it a bit better than we have.

So the issue I really find I wish to focus on is the tax treatment of derivative-based financial contracts. I think the discussion paper picks up on the way that I look at these products, which is that they provide for unbundling and repackaging of other assets. Unfortunately our tax system is totally hostile to this, and in this regard fails to meet international best practice.

In particular I thought that the inquiry may wish to spend some time on an area which is emerging in this country, but following the US in particular, which comes under the rubric of structured derivative products. All that really means is that in this process of unbundling and repackaging a tailor-made outcome for particular investors is provided, and I'll give some examples of that in a moment.

Typically these structured products provide capital protection and accordingly they often resemble debt. Because of that resemblance to debt the products are often denied the equity tax benefits particularly the ability for imputation or franking credits to be attached to them. The relevant provision in the Tax Act which causes this problem is section 46D, which is the section addressing so-called debt dividends - the circularity is immediately apparent - and the ATAX proposal is for the repeal of section 46D. There's certainly some literature on 46D. Currently there is a case on appeal to the Full Federal Court on section 46D. The case is known as Radillo. This is an area that concerns everyone. The ATO are just as bemused about the operation, I would think, of section 46D as the market is.

I think the important point to note is that despite the fact that a lot of these structured products are capital-protected, and therefore they resemble debt, you get your money back no matter what happens. Many of them are linked to the performance of the equity market, and hence that is the way that I believe individual investors can obtain some value from these products, because it's an each-way bet. The investor says, "Look, I believe I should have some exposure to the equity market. I read the paper and it tells me that I should have exposure to the equity market, but, gee, I don't want to lose my money."

A lot of people stand on the sidelines because of that. What I'm talking about here is products which allow them to have exposure to the equity market, but which provide some capital protection.

CHAIRMAN: Have you got some examples?

MR RUMBLE: Yes, I think an easy example to look at is the endowment warrant product that Challenger International have been marketing over 20 or 30 blue-chip products in the market at the moment. That product is not franked, could not be franked. There's another product which has been released in the last couple of weeks by Westpac which is called the Key Step Fund. It gives you a link to the share market with some protection against falls in the share market - again, not able to be franked because it's capital-protected.

Now, both of those products underperform their more traditional counterparts, and yet the newer products are more efficient. So therefore we've got this distortion, and I think the important point is very early in the Fitzgerald report one of the key planks of the proposals that Dr Fitzgerald made was that we should have a non-distorting system of taxation in relation to savings products.

So the first point is that I believe we should treat them as functionally similar to their more traditional products, and I think that that functional concept flows through some of the points the discussion paper makes in relation to regulation more generally. So basically I'm saying we shouldn't try to treat these things as whether they are debt or equity - in fact they have got some elements of both. They are savings products, they should be regulated functionally as if they were simply savings products, and the impediments to franking and other tax impediments that currently exist should be removed.

I think this theme is picked up by a number of areas in the discussion paper. Paragraph 2.48 states that one implication of the trend away from deposits towards managed funds is that customers increasingly take on risk. That's certainly the trend in a low-inflation environment. You obviously require, if you want to boost the level of savings that you have towards your retirement, that you're actively allocating some of your assets towards growth assets such as equities, so of course people are looking to take on risk. I'm simply saying that there are ways in which we can give some protection.

I think that these sort of structured products, if you actually stand back, are probably the things which will be at the heart of retirement savings accounts. Retirement savings accounts, as we know, are proposed to be capital-protected. It seems to me very odd that the RSA - if it's not going to be linked to some sort of equity exposure, why would anyone bother? I mean, it's probably just in that case a tax-enhanced deposit account and probably does little to compete with the sorts of managed funds that superannuation bodies currently offer. So therefore it seems to me that the banks are probably likely to look at some type of equity exposure for some of their retirement savings accounts, and probably the Key Step product from Westpac is an initial foray into that area.

The issue here is that derivatives give you the ability to structure these sorts of products synthetically without having to actually buy the underlying shares, and they are very efficient in that regard. The point then is that the Tax Act says unless you own the underlying shares you can't frank this new product, so it's a real distortion on the taxation of savings and investment products. Effectively I'm saying that I don't think tax obstacles should deny Australian investors the efficiency and the ability of the derivative market and certainly the international practice is that these products are provided.

Paragraph 2.59 of your discussion paper states the traditional view that product innovation is often driven by tax and regulatory changes. Certainly that's correct, but I think at the moment we have this other point, which is that we are now being hindered by tax and regulatory obstacles. So, moving through, paragraph 2.63 talks about the growth of market-linked insurance products, and I wanted to add into that the products which intermediaries are issuing and have done so increasingly over the last 5 years, and here I make mention of warrants, endowment warrants and instalment warrants.

The point on the corporate debt market - para 2.78 talks about the lack of a corporate debt market in this country. I have somewhat flippantly stated here that we could kick-start the corporate bond market by allowing Australian taxpaying companies to issue capital-protected equity products and frank them. It seems to me with a $20 billion per annum appetite from Australian institutional investors for fixed-yield paper, that by allowing the issue by a company of a capital-protected equity product, that sort of product would be immediately appealing to institutional investors.

CHAIRMAN: Where would that appear on the balance sheet?

MR RUMBLE: It would appear as equity. A converting preference share is an example of the product at the moment which companies are allowed to issue. The difficulty with the converting preference share is that section 46D, the section I was mentioning as the impediment on the growth of this sort of market, has got some very rigid requirements in relation to equity or capital-protected equity product. Fund managers can work their way through those sorts of issues and can do lots of things with converting preference shares - strip out the equity exposure and run them as debt. Retail investors, I believe, unless they're extremely sophisticated, can't. So we've got this horizontal inequity between the wholesale and the retail market.

So the sorts of instrument there, Mr Chairman, that could be looked at include the products that in the American market Conrad Black is looking at in relation to his holding in John Fairfax. The National Bank announced last week the issue of an exchangeable product in the US market. It goes on and on. The US market doesn't provide the impediments to these products that the Australian market does.

PROF HARPER: Just on that point, Tony, you note here that the $20 billion you have just mentioned is an unsatisfied demand, and yet you said $20 billion worth of investment, so - - -

MR RUMBLE: Yes, it's unsatisfied in the Australian market. When I talk to institutional investors they say that the lack of Australian fixed-interest paper means that they buy offshore paper, high yield paper, Third World emerging market paper, and then you get this double whammy: they pick up the old Michael Milken sort of portfolio concept that, "Hey, you're buying a risky asset, you need to buy a bunch of them to reduce the individual risk," so it seems really appalling that our superannuation fund managers, because of a lack of Australian paper, are investing offshore.

That sort of money, I would have thought, could be diverted back into small and medium businesses. Certainly the trend in the discussion paper which notes the trend amongst Australian households moving away from deposits into longer-term investments would I think also allow households to be attracted to these products.

I think that these sorts of comments perhaps, with respect, may be consistent with what you're saying on page 89 of the discussion paper which poses the question about how can regulation be structured to ensure that it doesn't fall behind developments in the financial services market. So something more specific - I have made some criticisms - you know, what can we do? I think that generally we should be looking to treat synthetic equity products very similarly to traditional equity, and paragraph 4.52 of the discussion paper I think supports this because it says that the essential attributes of an effective regulatory structure would include competitive neutrality, so a synthetic equity product that performs the same function as a more traditional equity product should be taxed the same.

I think this picks up or echoes the Treasury approach which in the paper recognises the breakdown of the traditional barriers between securities and derivatives. Treasury seems to be advocating a broad regulatory concept of "financial instrument" and I would support such a functional approach, and I think that that would have the collateral benefit of allowing synthetic or structured derivative products to be treated equitably with more traditional counterparts. So ATAX supports the proposal in paragraph 5.58 of the discussion paper which suggests that a functional regulatory approach may be looked at.

I have made a comment on the corporate bond market, and in brackets at that point I said that in fact there's a surrogate to the corporate bond market, which is the converting preference share market. The success of these sorts of products in tapping investment demand I think can be illustrated by the converting preference share market, because there's currently over $6 billion of converting preference shares on issue.

We have a situation currently with corporate earnings under pressure where many corporates are not willing to consider issuing converting preference shares because of the potential of dilution on conversion. I'm suggesting at this point that we allow companies to issue an instrument like a converting preference share with the ability to redeem it for cash to manage their balance sheet. Certainly the ANZ Bank did that in relation to their converting preference share; bought back over 50 per cent of the product. There were some various loopholes to be gone through before that could occur without upsetting the tax result. Let's streamline all that, let's note the obstacles, let's propose a way in which those obstacles can be removed.

Also I thought capital-protected equity perhaps helps overcome the informational asymmetry that the paper picks up on in relation to small to medium enterprises. I'm not attempting to paraphrase what you say there because I think perhaps you're a little bit more specific than what I'm raising here, but certainly if a small business issues capital-protected equity, then the investors may be more willing to invest on the basis that they may not know as much as that business as the prime banker does but, hey, it doesn't matter, they get their money back - worst case.

I think all of this actually feeds back into consumer protection because a capital-protected product, by definition - subject to the credit risk - ensures that investors get their money back. So rather than saying, look, you can invest in a multitude of new products as a result of the outcome of the inquiry and, hey, the risk profile varies, if we were to allow a fairly liberal tax treatment for capital-treated products, then the investors could say, look, at least that's a stable asset, it may go up in value but it won't go down.

Finally coming to the point in relation to dividend imputation, paragraph 9. 32 picks up the objection in relation to the lack of the ability to screen dividends amongst foreigners and Australians. I'd really have to say in my experience a more critical issue faced by this market is the difficulties in relation to franking of securities such as the ones I've been talking about today. The uncertainty in relation to these is something, which I mentioned before, the Full Federal Court has before it; the ATO is concerned about it; Treasury, certainly I understand, is concerned about these issues. I think more work needs to be done on it. I certainly know it's probably outside the scope of the inquiry to do that work but I thought it might be relevant because of the synergy with some of the things the paper says to come today and pick it up.

Finally, I'd just say I certainly support the move to a single regulator without pre-empting anything the inquiry may do, as long as it's coupled with a functional regulatory approach and that functional regulatory approach should extend into the tax treatment of these sorts of products.

CHAIRMAN: Thanks very much, Tony. Could you say a bit more about what is the fundamental objection to these sorts of products? I appreciate there's a Tax Act and section 46 and whatever, but is it that these products strike at the very heart of what is debt and what is equity and there are a lot of spin-offs if you go in one direction or another?

MR RUMBLE: They certainly strike at the heart, so lawyers like to pigeonhole things and say, "Look, that's clearly debt, that's clearly equity." It makes it easier for regulators. The problem is that financial innovation as it unbundles and repackages says, "Look, this is right in the middle; it's truly a hybrid." Capital protected, that's like debt, exposure to the equity market, that's like equity. So there's a conceptual issue. In terms of dollars and cents there's a leakage to the revenue. The more franking credits that can be moved out of corporates and into the taxpayer's hands, the less tax will be paid.

Coming back to what Dr Fitzgerald said in relation to non-distorting taxation, we have this situation where companies, if they pay the full rate of tax but retain earnings - and that's a prudent thing to do - store surplus franking credits. So that's the distortion. All I'm suggesting is that by allowing a little movement, not a lot, we can allow these capital-protected products also to be franked that will allow companies to move franking out into the hands of the taxpayers. You can cost that and control it. It will be very easy to control.

MRS NICHOLLS: Just a follow-up question to that. Tony, have you made any attempts to quantify what is the cost, the value of the distortion that you believe is there today, and equally have you made any attempts to cost what the Tax Office might view as the cost to them if your ideas were to be implemented? Order of magnitude.

MR RUMBLE: It's an open-ended order of magnitude, so therefore I worked back by saying the government, if it was inclined to address these issues would say, "We're willing to spend 500,000,000 out of the revenue", just like the infrastructure or the R and D concession, whatever the number is, 100 or whatever. And you would cap the ability of corporates to release franking from their franking account on these sorts of products.

The ATO I think agree that an open-ended ability to move franking out would probably be open to exploitation and therefore, you know, it's very difficult to actually - - -

MRS NICHOLLS: They thought only probably.

MR RUMBLE: They thought most definitely, and let's move onto the next topic. But in terms of the benefits to the investor and to the corporate issuer, these sorts of products offer at least a 2 to 3 per cent cost of capital reduction to the corporate, and they also offer to the investor a similar yield enhancement of 2 to 3 per cent. So we're looking at a very significant benefit both to issuers and to investors. It's not really a question of saying let's spend some money from the tax revenue that might otherwise be spent elsewhere; going back to Dr Fitzgerald there is a distortion in the taxation system; franking is meant to give credit to individual shareholders for tax paid by the company.

Because of prudent dividend payout ratios companies accumulate surplus franking credits. That really is a free kick to the revenue and it's acknowledged within Treasury, I believe, as - free kick is probably the wrong word but it's revenue that is certainly looked at and - - -

CHAIRMAN: Is it a black and white issue or do you see some elective process? Is there some trade-off between imputation, tax deductibility of intrastream? Are there issues in there that one needs to understand in this instrument?

MR RUMBLE: Well, I believe if you - - -

CHAIRMAN: (indistinct) infrastructure - - -

MR RUMBLE: Sure, yes.

CHAIRMAN: And that is a particular process we touched on.

MR RUMBLE: I don't believe it's that difficult. I believe if you say as a corporate issuer, "We seek to have this treated as equity and therefore frankable", it's pretty tough to also turn around and say, "Hey, look, it should be deductible as well." So I don't think we're looking at that sort of double counting.

MRS NICHOLLS: Tony, again on the infrastructure policy that you mentioned, how would you see your ideas being implemented? With infrastructure there's an authority that makes decisions about who qualifies. Do you see something similar to that or did you have a different idea for implementation?

MR RUMBLE: That would be one way of controlling it; that you might have this concept of eligible franked debt or synthetic debt products, and the eligibility is determined by a body. Alternatively you simply say in advance every year - the government says, "We are willing for franking to be disgorged on these sorts of products up to a certain amount" or you might simply say that "The value of franking on these credits is only 10¢ in the dollar. So there is a range of proposals to quarantine the cost to the revenue.

MR BEERWORTH: Tony, although you're dealing in a metaphysical area in one sense, your proposal is very straightforward, very simple - repeal section 46D and so on. Have you made a detailed submission to the Treasury and, if so, what has been its response?

MR RUMBLE: I've made detailed submissions to ATO and to Treasury. Treasury's response has been cooperative, welcoming the proposal - I think it's still for discussion - with the overarching comment that the government has indicated no tax reform this time around; so it's sensitive. The ATO, I'm thankful to say, I'm able to work fairly closely with, and they can see some of the merit involved, but really I think we need to elevate it to another step and, you know, the opportunity to talk here today was perhaps part of that process.

MR BEERWORTH: Your submission itself to us is very simple. Can we have a copy of your detailed submission to the Tax Office and Treasury?

MR RUMBLE: Yes. You don't have it and I'm happy to provide it.

CHAIRMAN: Tony, we're right on time. Is there anything else you wish to - - -

MR RUMBLE: No, simply to thank you for the time this morning.

CHAIRMAN: It was a very clear presentation and we shall certainly take into account your thoughts. Thank you very much.

MR RUMBLE: Thank you.

CHAIRMAN: Our next contributor, participant today is Mr Alan Jacobs. Mr Jacobs, do I need to repeat my comments about recording and this inquiry has no special powers and you shouldn't be making any comments which reflect adversely on particular persons or organisations? I'd simply ask you to state your name and anything else you wish to say and lead into your statement to us today. Thank you very much.

MR JACOBS: Thank you. My name is Alan Jacobs. I do not belong to any political party or other group. I doubt that my membership of a couple of bowling clubs would be significant to the inquiry. Thank you for the opportunity to make a brief statement to you. If you have read my submission you may not have appreciated its significance to this inquiry. If you have not read it, it may be because it proposes an understanding and procedures which differ from current economic teaching and practice.

My proposals guarantee the basic requirements for the financial system, deregulated or otherwise: procedures to provide a constant real value for our dollar through time and to maintain full employment. Because I take the approach of recognising that ours is a business economy that responds to conditions through business decisions, my work is regarded by economists as different and therefore to be ignored. Being different may be its great virtue; there is no joy in current thinking.

You may allow my work to remain ignored. If you do you will lose the opportunity to provide a foundation for the good work which you may propose. Without that foundation your procedures, no matter how efficient, will still leave our economy subject to any degree of inflation and unemployment and perhaps to a complete manipulation or breakdown of its financial market. I've spent 50 years through economics degree and full-time designing of commercial computing systems, developing and refining financial understanding and procedures to free us from the trade cycle. I believe I know which systems will work and which will not.

My system includes a book that was distributed worldwide by the New York publishers but never reviewed by any economist. I published extracts of work in economic news groups on the Internet. I have now my own Web page calling for criticism to disillusion me of my views. No-one has yet been able to sustain any argument against my analysis and solution. The fault may be mine. Perhaps I have not made myself clear enough. I'll make a new submission slightly updated and in different words to positively identify the three markets where different financial management and procedures are necessary.

Currently we do not recognise that these three markets exist. We do not have three separate financial instruments to service them, but only one financial instrument which I call funds. We need to measure and control or influence the total flows of funds in these separate markets, otherwise we get into cyclic patterns of strife, never reaching total efficiency. This is the trade cycle.

Some of the required management is in Reserve Bank territory that must be commented on by you. Other parts have not been touched at all. This analysis has not been done before. It will give you a structure for the compilation of your final report that will cover all financial and actual transactions properly analysed and grouped to steer Australia, and perhaps the world, to a future free of the terrible economic and social consequences of the trade cycle.

The three financial markets that I refer to are (1) the business activity of making economic standard of living exchanges through the medium of money; (2) international trade but excluding international finance; and (3) transfers of ownership of existing things and rights including international finance.

Mr Chairman, I want you and your members to know that there are answers to our major economic and social problems; answers that lie totally within the financial system. Unfortunately the vested interests of some economists and financiers in maintaining the status quo may resist you adequately investigating and reporting on them. I hope that I may be of service to you; that I may be given the opportunity to reply to any criticism of my work that may arise. Thank you.

CHAIRMAN: Thank you, Mr Jacobs. Perhaps for my benefit as one of the non-economists, would you like to just in simple terms try and explain a little bit more about the what your thesis is all about.

MR JACOBS: What my thinking is all about? As I say, we have to recognise that our use of funds is all pooled together with no definition of these three markets that I talk about and the pooling of funds from economic standard of living exchanges, the use of funds into those exchanges where they are not eligible to participate causes all sorts of problems, particularly in that area and particularly in the area of international trade.

For example, international trade basically is exports paying for imports and yet we allow enormous pools of funds to bid for the Australian dollar, to bid for currencies, the change - rates of exchange - and so completely upset the formal trade of exports for imports in international trade. That's just the illustration on international trade.

CHAIRMAN: What's the solution?

MR JACOBS: The solution is to recognise that these three separate markets exist and have procedures to record and manage them where necessary. There are only two areas where management is required and that's in our economic standard of living transactions and in international trade. The other area - it's pretty much the area you've been largely concerned with, which is the transfers of ownerships of existing things - does not require any formal overall management, only the preservation of the integrity of the procedures, banking and otherwise, that deal with them.

MRS NICHOLLS: Mr Jacobs, in this area about the standard of living, could you give one or two examples of controls or approaches to supervision that you think would be desirable that we don't have now?

MR JACOBS: Surely. First of all let me say that in 10 minutes I'm not going to give a complete answer to the comprehensive situation that I'm dealing with, but our economic standards of living are basically resources being exchanged for production; resources used exchanged for final production through the medium of money. The money paid for resources represents incomes, the money paid for resultant production of goods and services represents prices.

Now, the money paid for non-equity incomes at the beginning of the period sets the value, the real value of money for that period, and it is a necessary part of the procedure to maintain that real value for this period the same as the last period, otherwise we get cost inflation and that imposes problems on the situation in any case.

One of the things that we'll have to face up to is the fact that labour is the only fundamental contribution that people can make to the only fundamental resource to produce our economic standards of living, qualified later on by the addition of real capital, but labour is the basic cost which sets the real value of money for any financial period, and it is necessary to have regulation, which I call labour cost indexation or wages indexation, whatever, to first of all measure the productivity for this period and relate the indexation of labour costs for this period to make them relate to the previous period.

Now, that's going to involve an indexation of wage rates, if you like to call it that, which you may think contravenes the constitution in that it's controlling wages. No such thing. It does not change the relativity of any market or otherwise determine wage rates, it simply maintains that relativity by indexing all wage rates - salaries, wages, chairman of - directors and others - according to a specific formula which I've enumerated in my book to allow the real value of money for the payment of resources in the first place to be maintained the same as the previous period.

Now, having set that real value for money, it has to be maintained for prices in the second part and that is basically done through management of the rate of interest. It has to be a better understanding of the reaction of the business community to the changes in the rate of interest than exists now, because the rate of interest, higher rates of interest, cannot be used to offset the cost inflation of increased wage rates in the first place. That just does not happen in real practice. So this is the real domestic situation of resources used for resultant production through the medium of money. You must eliminate cost inflation in the first place.

CHAIRMAN: Where do the international market pressures come in in an import replacement context in this world of yours?

MR JACOBS: Where do imports come into the - - -

CHAIRMAN: No, where do the international market forces and pricing come into this model of yours in terms of imposing cost or imposing other pricing pressures on how this operates? Where do the market forces come into play in your model?

MR JACOBS: The market forces have complete freedom to exist. I impose no restriction whatsoever on market forces. I impose no restriction on the government budget of surplus or deficit.

CHAIRMAN: I just read some control in a pricing sense. Was that - - -

MR JACOBS: No.

CHAIRMAN: Not at all?

MR JACOBS: Individual prices, wages or incomes, none of which will I suggest making any changes to the market relativity that exists.

PROF HARPER: Thanks, chairman. Yes, Mr Jacobs, as I read your submission, most of what I read related to macro-economic policy, at least as I interpreted it, in particular monetary policy and, as you've been discussing here, formulation of what one might call a wages policy.

MR JACOBS: Yes.

PROF HARPER: The inquiry, as you'd appreciate, has been asked to focus more on prudential issues and the structure of prudential regulation. Are there - - -

MR JACOBS: Well, as I've pointed out, your market, your systems, however good, will be subject to the pressure as we had on Wednesday on rates of exchange and that could result in the collapse of financial markets if we don't take these other methods to manage our macro-economic policy to maintain a real value for money in the first place.

MR BEERWORTH: Is your book still available, Mr Jacobs? I'd be interested - - -

MR JACOBS: It's out of print. I did submit one copy to the inquiry. I would like to slightly update it - only in emphasis, not in words, particularly in relation to the rate of interest. I think the rate of interest that's of particular relevance to business is that which they pay on their borrowed funds.

MR BEERWORTH: Do we have access to your Internet page? Do we have the number of your Internet page? I haven't seen that.

MR JACOBS: I give it on here.

MR BEERWORTH: Yes, thank you.

CHAIRMAN: Do you have any broader-based support for the arguments that you're putting forward in an international sense, or is this - is this Alan Jacobs, a - - -

MR JACOBS: No, I'm not - as I say, I'm a loner.

CHAIRMAN: You're a loner?

MR JACOBS: I'm battling the world. I'm battling economic opinion from Dr Greenspan to the Governor of the Reserve Bank down, but I feel that I have to make my battle and I feel that I can convince any - if you like to put a panel of economists in front of me and allow me to present - make a presentation to them, I feel sure that I can answer any of the criticisms that they bring up and provide you with a basis for action.

CHAIRMAN: All right, thank you very much, Mr Jacobs. We've appreciated your input and submission and we will do our best to understand it and see where it leads us. Thank you.

MR JACOBS: Thanks very much.

CHAIRMAN: The next participant is Steve Keen from the Faculty of Business and Technology, University of New South Wales. I wasn't sure whether to address you as professor or whatever.

MR KEEN: If you were in America you would, as I'm a lecturer. You have the wrong university, I'm afraid. It's the University of Western Sydney, Macarthur.

CHAIRMAN: We're not going too well with these bits of paper. Do I need to make the introductory comments? You probably heard my earlier remarks about recording and no parliamentary privilege?

MR KEEN: Yes, I could possibly manage to fall foul of part of that in one content of what I'm going to say but I think I'll take the risk anyway.

CHAIRMAN: Okay, well, Steve, if you wouldn't mind introducing yourself and background and proceed with your submission to us today. Thank you.

MR KEEN: Okay, my name is Steve Keen. I'm a senior lecturer in finance and economics at the Department of Economics and Finance at the University of Western Sydney, Macarthur. My specialty in economic analysis is an area called finance and economic instability and the work I do in particular elaborates on the research by an American economist called Hyman Minsky and I'll be talking briefly about that after I make a few comments on the document produced by the commission.

I have enough copies fortunately to hand along, so I'll just put one more forward if I can. Thank you. My potential breach of the libel laws is on page 2. Okay. To make a comment initially on the committee's document I would say that I found the ranking of the functions of the financial system, which is on pages 3 to 4, unsound. The committee's rankings were to start, first of all, the payment - the important functions of the financial system being payment services, pooling of financial resources, allocation of management at risk and some ancillary functions, the bottom of which was providing liquidity. Now, from my perspective, the most important function of the finance system is providing liquidity. If you don't achieve that, you haven't got a finance system.

Secondly, I see it as a bad decision by the committee not to cover paragraph 1 of its terms of reference where it was asked to provide a stocktake of the results arising from the financial deregulation since the early eighties.

CHAIRMAN: We ought to make it clear - I mean, that work was under way - this is a preliminary discussion paper and that stocktake will certainly form part of our final report.

MR KEEN: Yes, I still think it should have been made public in these proceedings. I would have appreciated knowing what the committee's interpretations of that event - to actually look at that event - this is the second of two major committees to review the finance system. The major event between the two of them was the 1987 stock market crash. Now, that crash wiped 20 per cent off the value of stocks worldwide in one day, and to put that in perspective, that is twice the level of percentage cut in the value of stocks that occurred in the Great Depression of 1929 on their Black Friday.

When that event occurred, there was a fear of a second Great Depression and it's rather hard to evoke the atmosphere that prevailed at that time, but certainly everybody here would remember just how panic-stricken the world was on that Black Friday - in Australia of course our Black Monday. There was coordinated - Reserve Bank worldwide to avert a crisis - and it worked but the result of that success in stopping the complete breakdown of the finance system was the speculation which had been occurring in the stock market, then transferred across to land. This happened to be the reverse of the sequence in the Great Depression where there was a land boom in 1927 which transferred over to a stock market boom, and then crash of course in 1929.

Now, the severity of that event, even though the committee hasn't addressed it, is written all over your data. I will just mention a few figures where this comes through. Figure 2.2 on page 13 has a caption which says, "Assets" - talking about the assets devoted to the finance section and the contribution of that sector to GDP - "Assets are increasing but resources used to manage those assets are falling," yet it's clearly - the peak of the contribution to GDP was in 88 to 90 across the period of the rise to the boom and then the collapse.

In 2.3 on page 14 the caption says, "Falling employment during the 1990s," yet again the peak to employment was in 89-90, and on figure 3.2 on page 49 the caption says, "An upward trend in international banking," yet net bank lending fell by over 50 per cent between 1990 and 1991 and by 95 the level we'd reached was only 70 per cent of the 1990 level. So it's not an upward trend, it's a cycle.

Now, I think that issue has to be debated and, as I said, I would have liked to have seen in this document - but I'll have to wait till the final report - or perhaps any intermediate work done then. Now, a lot of people's analysis of that event - have said that it's an isolated experience due to inexperience with a deregulated financial system and of course it was a trend which was worldwide. We weren't so - far from the only country to be deregulating finance systems at that time.

I'm going to put a counterview, and that view is that such disturbances are a systematic event in a sophisticated market economy with finance. It is known as Minsky's Financial Instability hypothesis after the American economist who first devised the theory. It's outlined briefly in my submission which is submission number 167. Its pedigree goes back to Irving Fisher, who was the father of the conventional theory of interest rates in this century, who had a debt deflation explanation for the Great Depression in 1993. The theory has been developed by Minsky in over 70 academic papers published between 1957 and 1988 and of course, although he died only a matter of 6 weeks ago, his publications continue from 88 to 96.

I didn't have a more collated - I need to give you a volume of output - but obviously somebody who has published 70 academic papers in journals such as the Quarterly Journal of Economics, the American Economic Review, the Review of Economics and Statistics, the Journal of Finance, is a serious intellectual commentator. There have been many articles since, as I said, and many other contributors. There would be probably 30 economists worldwide working on this area. I have mentioned a few. I am also one who has been published in this area.

Now, the basic idea of Minsky's hypothesis is summarised in a quote from one of his books there, which is to say, "Stability is destabilising". It sounds like a paradox, and there are many paradoxes in economics. To explain his analysis he argues that the tranquil economic conditions that prevail at some time - for example the ones we're experiencing now, except for the factor of a 9 per cent rate of unemployment virtually - such tranquil conditions are normally preceded by a crisis - in fact always. We can see 87 as a crisis before our tranquil period. The memory of that crisis and the immediate aftermath to it makes both borrowers and lenders very conservative and because they're conservative and the debt financing of investment is conservative, most investments succeed.

Since those investments succeed that encourages both borrowers and lenders to relax the degree of risk aversion. When they do that their expectations rise, the value they're willing to put on capital assets starts to rise, and you have rising expectations. You also, on the back of this, get rising asset prices, and if you recall, if you take a look at some of the charts I've attached to the comments there, you'll see several indexes - the one that I gave to the committee just then - several indexes of asset prices versus GDP prices and equipment prices, and you can see just how severe that rise in asset prices was in the 87 period.

Eventually the economy passes into what Minsky calls the euphoric economy, and I lost count of the number of times I read the work euphoric or euphoria to describe the mood of the 86 to 87 period, and I would not have any difficulty counting the number of financial journalists who have read Minsky. It's pretty close to zero, and in fact I think it's one. So it wasn't a term borrowed from academic research, it was simply a very accurate description of the times.

Now, in that situation, because you have rising asset prices you have the emergence of financiers who are able to make a profit simply by speculating on rising assets. Minsky called them Ponsey financiers after a 1929 real estate speculator and investor of a pyramid bank system. We would call them Bondy financiers or - we've got plenty of nominations, haven't we - Skasey? You could go on. But that sort of person emerges and becomes the darling of the financial sector. They make their money out of debt-financed asset speculation. Eventually the level of debt being accumulated not just by them but by normal corporations exceeds the cash flows - significant numbers of companies - you then have a bust, which is what we went through in 87, and then again in 89. The recession worsens cash flows which makes it difficult to repay the debt; corporations are trying to repay debt accumulated during the boom out of the reduced cash flows of a recession, and you then have a crisis.

Now, Minsky's analysis argues that if inflation is low and government spending is restrained that can lead to a depression. Now, we didn't go through that experience this time around, we had low inflation but a large government deficit, and Minsky's argument would be that that deficit averted the crisis by maintaining corporate cash flows during a period of crisis. But the cycle will recur and I see nothing to lead me to believe that either government management of the finance sector or the behaviour of the financial corporations themselves or private corporations is going to avert another cycle like we went through in 87 at some time in the future.

Now, the policy implications of this are fairly strong. The first is that self-regulation of the finance sector, which was a recommendation of the Treasury to the committee, is a recipe for disaster. We have to have a lender of last resort functions for the Reserve Bank simply to make sure what did happen in 1929 never happens again, and I believe that a guarantee of depositors' funds - which is one thing being discussed by the committee - should exist so that there are at least some risk-free ways of depositors storing their money so that we will not have the possibility of runs. And the part which I think might get me in the libel courts is my description of the Treasury proposal for a form of self-regulation, of taking out insurance, on page 283 to 284 of the report, as "sheer bloody lunacy".

So disturbances like 87 to 89 are a regular occurrence, we're going to see them again, and prudential - - -

CHAIRMAN: You might have to be a bit stronger than that to get sued by them.

MR KEEN: I hope so, otherwise I'd need to see if I can get some legal aid assistance to cope. Okay, so prudential supervision has to be designed to cope with an event like that, and to do it we have to keep tabs on just how fragile the economy is. Financial fragility is one of Minsky's terms. Now, the major indicators of that are the levels of corporate debt - and you'll see again in one of the charts attached to my discussion here data from the AGSM which unfortunately terminates in 85 - I'll be extending that myself next year - showing just how high the level of debt payment to profit flow has got to be - in the 82 boom - let alone what happened in 87 to 89 - by the time of the so-called minerals boom the interest payments being made by firms exceeded their declared profits for the major corporations in the country. It would have been significantly more severe than that when we came around to 1987 to 89.

The rate of asset price growth has to be kept tabs on. Again one of the charts there shows the incredible spike in asset prices, both the 87 spike and again one in 89 when the speculation transferred across to land assets, and the rate of growth of equipment prices is also a strong indicator. I haven't given you the detailed research I've done on that front, but certainly the hypothesis that equipment prices break away from standard prices is confirmed by the Australian data.

The final indicator is a more modern term, the idea of chaos. There is a lot of research done by a number of leading economists to work out whether or not the time series and financial series generate chaos. That is being strongly confirmed for quite a wide range of data. When that starts to become widespread you are then at the point of facing a crisis of some description. So I think those types of issues have to be addressed by the committee. I think to date from what I've seen in the document it's been much more strongly focused on micro-economic issues of competition and consumer sovereignty, and I believe that focus should be balanced by looking at these major systemic risk issues.

PROF HARPER: Thanks, Steve. Can I ask you specifically whether you have a view about the adequacy of our existing deposit protection arrangements. Do they actually meet what you would regard as the necessary criteria to cope with these macro instabilities?

MR KEEN: I think they do, though the problem is - as mentioned by the committee's report - that a lot of those guarantees related to the days in which the major financial institutions were state owned. Now they're moving to private ownership, that is being lost, so we have to bring that guarantee back in.

PROF HARPER: Okay. Can I then draw you on what you would do. Are you suggesting that for example à la the Commonwealth Bank and the former state banks that there should simply be a blanket government guarantee?

MR KEEN: There should be a range of financial institutions in which the deposits are guaranteed.

PROF HARPER: By the Commonwealth?

MR KEEN: By the Commonwealth, and they would be backed by the Reserve Bank action. The problem of course with that is the sort of thing which happened with the American Savings and Loans.

PROF HARPER: Indeed, and how do you propose to cope with that?

MR KEEN: That I would like to have a much more detailed conversations than I can do in 30 seconds, but obviously we have to be aware of the ability of things like that to be manipulated as the Savings and Loans institutions were, and you have to then monitor the debts of those organisations and the extent to which they're getting themselves caught up. The Pyramid Building Society episode in Victoria is a classic example of where that was not done. So once you have got that you have to have again some controls on the sorts of exposures those institutions can get themselves caught up in.

MRS NICHOLLS: Mr Chairman. Perhaps I could continue on this subject of systemic risk and the role of prudential oversight. You noted in your remarks that you'd like to see certain preservation and maintenance, if not extension of the lender of last resort facility by the Reserve Bank.

MR KEEN: Yes.

MRS NICHOLLS: And earlier today we had a number of parties speaking to us about the significance of retirement savings, the growth in retirement savings as a pool of funds, and how that increasingly is not occurring within deposit-taking institutions.

MR KEEN: Yes.

MRS NICHOLLS: Equally we have had a view put to us coming out of North America that there is systemic risk inherent in collective investments like mutual funds and - - -

MR KEEN: I would agree with that.

MRS NICHOLLS: - - - unit trusts and retirement savings. Could I ask you please to address the issue firstly of whether or not you would see a need to extend depositor protection into the superannuation industry; if so, how you would do that, and if not, how you would cope with whatever systemic risk you say may be there.

MR KEEN: I don't think it's feasible to when people are putting their money into assets where they do not have a guarantee that their principal will be returned, and superannuation has elements of that. So in some ways I'm a fatalist; I think there are trends in finance which are pretty well unstoppable. A lot of the information you talked about - the growth of the Internet and so on - is quite valid; it can't be stopped, it is going to increase the level of systemic risk, and I really do not see that it's feasible for us to design structures which beforehand will prevent that happening.

What we have to have is adequate prudential coverage that is aware that this sort of crisis is feasible, and that means a very - - -

MRS NICHOLLS: What would that look like?

MR KEEN: That means an active regulator. That means a regulator who for example takes a look at superannuation funds and where they are going. If we look back to 1983, 30 per cent of super - a much smaller stock of superannuation funds than we have now - 30 per cent of that stock was going into the stock market for investment. By 1987 70 per cent of the superannuation funds were going into the stock market. Now, of course that works to inflate the actual market and thereby sucks in more funds. But any regulator who had the type of vision which Minsky had, looking at that would say, "We're in for a crisis here. We have to stop superannuation funds throwing all their money at the stock market because they're just setting it up to be overvalued, there will be a crash and they will lose their money."

CHAIRMAN: You want some mandatory investment policy on super funds?

MR KEEN: Mandatory policies are very easy to step around. I think there has been some very impressive fancy footwork by the finance sector over the last 10 years and I see no likelihood - - -

CHAIRMAN: I'm only groping for what your vision would be in relation to superannuation.

MR KEEN: Well, my vision would have to be a degree of prudential discretion for the regulator. I don't think it's possible to write that stuff into a statute, but you have to be looking at the degree to which behaviour is increasing systemic risk, and that means very careful monitoring of the statistics and the behaviour of firms, and being able - having some power to redirect or to tell corporations of a particular class they've gone - - -

CHAIRMAN: Trustees of super - - -

MR KEEN: - - - too far into a particular set of assets.

PROF HARPER: Steve, you see these technological developments all heading in one direction in terms of volatility of markets and - - -

MR KEEN: Yes, that's correct.

PROF HARPER: - - - capacities. Do you see no countervailing influence, for example through the derivatives markets or the capacity of payment systems to move to real-time growth settlement basis? Is there nothing which might actually mitigate this trend?

MR KEEN: Certainly not derivatives. I think those things are all based on volatility - - -

PROF HARPER: Indeed.

MR KEEN: - - - and I think we are going to see an increasing degree of volatility.

PROF HARPER: You don't think that they could be better used or they could help to manage this volatility more effectively?

MR KEEN: No. There's a paper in the current issue of the Economic Journal by Paul Davidson, an economist whom I have a small amount of time for - more than most. Paul has the article - it's titled something like Grains of Sand or Lumps of Wood in the Mechanism, and the argument there being we have to put in costs into the financial system that actually slow down the desirability of very very rapid movements, because these rapid movements, far from being equilibrating, increase the degree of instability. The faster you can react to a price discrepancy the more likely you are to get a chaotic behaviour out of that series, the more likely you are to diverge away from an equilibrium.

CHAIRMAN: Steve, this inquiry is not about the conduct of monetary policy. We're dealing with a regulatory framework, and you understand the regulatory framework.

MR KEEN: Yes.

CHAIRMAN: I mean, you have mentioned a couple of things about the positive protection of superannuation. I mean, what are the key issues you put to us in terms of change or no change in the regulatory structure?

MR KEEN: Change, I'd argue, is analysing, looking at the data quite differently so that we look at indicators which are telling us the system is more financially fragile. For example, one of the major indicators is the level of corporate debt - - -

CHAIRMAN: What, do you want existing regulators - - -

MR KEEN: Existing regulators to change their focus. I think that the - I'm certainly not someone who is a fan of interest rates being used solely to maintain price stability, for example, of consumer goods. I see a far more important thing - to look at the price stability of assets in terms of their risk to financial - financial instability.

CHAIRMAN: Is that more an issue of monetary policy rather than - - -

MR KEEN: No, I think it's more - I think a lot of this monetary policy is - whatever way we cut the legal system, while we have a Reserve Bank it's still very much the province of the immediate behaviour of the Reserve Bank and what it focuses upon, so I think it still comes down to the behaviour of that particular monetary regulator.

MRS NICHOLLS: Steve, just following up on that, to what extent does the trend towards asset securitisation alter your scenario and alter the measures that you would think it important the regulator look at?

MR KEEN: It changes who's going to go bankrupt.

MRS NICHOLLS: Favourably or unfavourably?

MR KEEN: Unfavourably, because it's moving to organisations which don't have the government guarantee, don't have the depositors' guarantee, and are more likely to get involved in speculative finance at some point.

CHAIRMAN: What happens with all this securitisation of housing loans in this country? Where is it ending up? Where is the risk ending up?

MR KEEN: The risk is ending up in - if we have another boom in asset, in land prices and home prices, then you will have people who are owing money to lenders like Aussie Home Loans - and I must admit - - -

CHAIRMAN: But all those mortgages are insured, right?

PROF HARPER: They're all fully insured.

CHAIRMAN: They're all fully insured.

MR KEEN: So we have a possibility for an insurance system - - -

CHAIRMAN: That's the international reinsurance market.

MR KEEN: Okay, well, we know what happened when Lloyds went down, or almost went down, so we're going to see - if we keep on moving in this fashion we're going to see the bankruptcies turning up in the insurance system, and they'll be just as devastating, but not quite as immediately as the bankruptcies in the banking system.

PROF HARPER: We should be clear that a government guarantee doesn't prevent bankruptcy.

MR KEEN: No, it doesn't, but it prevents depositors going bankrupt - - -

PROF HARPER: It protects depositors.

MR KEEN: - - - and therefore prevents runs.

PROF HARPER: Debt deposits.

MR KEEN: The really - yes. The really important thing is to stop a run occurring.

MRS NICHOLLS: Steven, when you began your remarks this morning you cited some specific criticisms of the discussion paper.

MR KEEN: Yes.

MRS NICHOLLS: One of the points that was not on that list was the section in the discussion paper on the possible future role of asset securitisation. Is the part of the discussion paper that addresses asset securitisation - does that give you cause for concern?

MR KEEN: I would need to go - - -

MRS NICHOLLS: Would you be critical of us - - -

MR KEEN: - - - and have a look at it again.

MRS NICHOLLS: - - - in that respect?

MR KEEN: I'd need to go and take another look at it to answer the question properly. I'm not at all convinced that insurance is the way to solve the problem, not securitisation. I think to some extent we're looking for a golden bullet that doesn't exist, because the actual underlying - there's a presumption, certainly in conventional economic analysis, and I think to some extent by the advice that is being given to the committee, that the underlying system is stable and we're looking for an optimal arrangement for - over time, and to my perspective that optimality doesn't exist and the system - you have to assess the systems data at different points in time in a cyclical sense.

So securitisation, government deposits - in the end, the only magic bullet that I really see is that guarantee of depositors' funds, and even that will not stop a crisis occurring. You have to look at - I look at prudential regulation as a way of reducing the severity of a crisis, and reducing the build-up - it gives you one - and that means action well before you would normally have one of these magic bullets coming into effect.

MR BEERWORTH: Steve, is Minksy's hypothesis anything more than an appreciation that there are cycles in the economy? It seems to be that writ large, as I understand your submission.

MR KEEN: It is an appreciation of the cyclical nature of the economy onto which you overlay the existence of debt where debt means that you are obliged to repay whether or not the venture you borrowed for makes a profit, and it's therefore an appreciation that companies can borrow during a boom - which is when companies of course consciously borrow. They can borrow more during a boom than they're capable of repaying during a slump, and that that is a system-wide experience rather than just isolated to individual firms.

MR BEERWORTH: The second feature of the theory is, as I understand it, that you say that there should be a control of business expectations rather than of interest rates, but surely a part of interest rate control theory is to change business expectations: if interest rates go down people think they can invest in projects otherwise - - -

MR KEEN: The sensitivity - if you work out the future value of a capital asset, what you're doing is, your enumerator is your expected returns over time and your denominator is interest rates factored over time. The sensitivity of that expectation to a change in interest rates is 17 per cent of the overall volatility. The sensitivity of change in expectations is 83 per cent. So interest rates are one-sixth as effective in changing expectations as a mental change in your assessment of the future. So I see interest rates as a very blunt and very dull instrument compared to capitalist expectations, which is the classic theme of Keynes' general theory, that these expectations are what matter in setting levels of investment, not the interest rate.

MR BEERWORTH: And how again do you affect these investment expectations if not through interest? By hitting them with a club? What does one do?

MR KEEN: No, a lot of it is fiscal policy, which of course is outside this committee's realm.

MR BEERWORTH: Right.

CHAIRMAN: Steve, thank you very much. We've appreciated your contribution, and welcomed the stimulation. Thank you.

MR KEEN: Thank you.

CHAIRMAN: We now have, ladies and gentlemen, Mr Ken Breakspear from the Financial Planning Association. Thank you, Ken. I just repeat my standard words, that we are recording this and you need to bear that in mind. We have no parliamentary privilege. So if you could just commence by introducing yourself and your organisation, and we'd be very pleased to hear your submission. Thank you.

MR BREAKSPEAR: Good. Thank you. I am the acting chief executive of the Financial Planning Association. My background has been 10 years working with professional associations on the advice side. Prior to that I spent 10 years with government licensing and regulating both prospectuses and advisers.

The Financial Planning Association, as you may be aware, is the national industry body representing professionals in the financial planning area. We've about six and a half thousand individual members Australia-wide. We have about 350 licensed advisory organisations both from the very small boutiques up to the very large institutions that are offering financial advice as part of their services.

A recent survey that we did indicated that our membership look after about 2,000,000 clients Australia-wide, made up of about 59 per cent retirees, 41 per cent pre-retirees, and they're advising on some 76 billion worth of investments.

My main focus today is a little on the mundane in some respects, but it's the practical issue of just how consumers access the financial system. It's at that individual consumer micro-end of things that we have some concern. We believe that the discussion paper or the inquiry to date has not given full consideration to the critical role in contribution of financial planners and advisers in helping consumers make better informed decisions about how to best access the financial system, to advise them on strategy and solution, in order to meet their individual needs and objectives.

We believe that generally consumers want more than passive information. They do tend to look for solutions, they do tend to want active advice. We believe that the complexity and choice available to consumers does mean that they do look for specialist advice. The financial adviser plays an active role in filtering and interpreting the relevancy of the mass of information that's around. They tailor that information down to the individual problem or decision at hand. We believe that the adviser does play a key role in redressing the information or knowledge imbalance that exists.

Advice-giving is quite different and distinct from product distribution. Advice-giving is about relationship. It does involve a warm-blooded individual engaged in communication and understanding personal goals and fears and needs of each individual. We believe that there is a clear demand for honest, sound advice from ethical, competent advisers. There should be a range of advice services with a range of prices.

Some references to the discussion paper where we believe that further work does need to be done: in paragraph 2.23 of the discussion paper it talks about - in the context of the financial system summary, it says that the discussion of products and services is not comprehensive, omitting several financial services such as the provision of financial advice. We believe this omission does need to be addressed.

In paragraphs 2.69 and 2.70 there are actually two paragraphs devoted to the distribution channels, but without any commentary on the critical role of advice-giving and without looking at the important contribution that advisers make in converting consumers into savers and savers into investors. However, hope springs eternal, and we find in paragraph 8.53, it says that in preparing its final report the inquiry will also consider the appropriate arrangements for the regulation of financial advisers. We certainly support this initiative to come. We believe that the government should intervene to set some minimum standards and enforce penalties for misconduct.

We do believe it is a most important area and we encourage the inquiry to revisit the FPA's submission at appendix 5, which outlines a blueprint for a universal model of advice regulation. In particular we draw the inquiry's attention to the definition of financial advice, which is much broader than the current coverage of just securities and life and superannuation products. It does extend out into the retail market for advice on investment property and financial instruments. We are concerned that there should be minimum standards covering advice-giving in these retail market situations, that both the asset and the liability sides are covered.

My last few points cover the multiple regulatory scene that we currently face. We currently as advisers and consumers face a number of different regulators, and clearly the submissions and the discussion paper identify that there is very much a large duplication, inconsistency, and even some gaps. This has confused both consumers and advisers and added to the whole cost of regulation.

The experience to date with harmonisation between the ASC and the IAC in developing some guidelines for advice-giving has not been very effective or it just hasn't worked, mainly because of legislative impediments and some different cultural views coming through.

We believe there is wide support in the submissions to rationalise the regulation. We clearly would like to see a single functional approach to the regulation of both product disclosure and advice-giving. We do need a common set of standards, and we believe that this area of rationalisation will deliver real savings, real cost savings and efficiencies for both consumers and advice-givers.

Finally, the availability of relevant product information and quality advice is a very powerful combination for delivering efficient and effective access by consumers to the financial system. That concludes my initial statement, and I'm quite open to take any questions.

CHAIRMAN: Are there any models, Ken, overseas that you could point us to that we shouldn't take note of or we should take note of?

MR BREAKSPEAR: I understand the experience in the UK - though they're coming out of some of the problems that they have had, in that they multiple self-regulatory type organisations; those multiple self-regulatory organisations were effectively just as bureaucratic and cost-ineffective as government - they were effective to government regulations. They experienced problems with overlap and inconsistencies in standards, so I don't believe the UK model is a great one, as it was.

They then rationalised a number of different self-regulatory bodies into one, which is the Personal Investment Authority, and they've also I think understood the problems with overprescriptive regulation. We actually subscribed to the rule book of one of the previous associations, and the new one, the Personal Investment Authority - it was monstrous in terms of the degree of detail. I think generally regulators are now going back to see that principle-based, outcome-driven regulation is preferable, tell people the outcomes and principles, let them work out how to implement it, so there is some consensus that if you bring the regulation together into one body, you do get some consistency, but the culture of that regulation is very important, and we would be concerned that if there was going to be a consumer protection type regulator that culturally it not be directed under the Bureau of Consumer Affairs, but it be culturally located in Treasury where you get the proper tension between the commercial interest of running a successful business versus the need to protect. If it's captured by purely consumer interest, then we lose that tension and balance.

MRS NICHOLLS: Yes, Ken, I had a couple of questions, but my first one is actually a point in your submission, and I'm sure it's familiar to you. I don't need you to look it up. I'm on page 50, section 2.2, where you put forward a proposed model of the regulation. You say that the key issue is the scope of activities, and in that section you enumerate quite a number of investments or financial decisions, and what interested me about this is that you don't mention deposit-taking, and I guess the first part of my question in this area is whether you think that people don't need or take advice in relation to deposits or why you thought that deposit-taking should be excluded from the scope of activities.

MR BREAKSPEAR: Clearly we didn't intend for it to be excluded, no, and so we would've included deposit-taking either under financial instruments transactions or investments - are all catch-all. But clearly we would say that deposits should be included where advice is given or requested.

MRS NICHOLLS: Can I just follow on and ask you how exactly you might see that working, and perhaps to help you with that, if we think of a hypothetical situation where a less sophisticated investor, perhaps an older person, has gone to the bank and the young teller is assuring that person that, "Yes, the term deposit is really a very good thing to do, Mrs Smith." Could you just elaborate how you would see your model working in that situation?

MR BREAKSPEAR: Yes. We believe, and that's why we've extended the definition out of advice, that someone can give information and explain how an investment or a deposit might work, but once someone says, "This is good for you," then they've made a recommendation and they therefore should make some inquiry about the suitability of that particular investment to the client. That's I believe why there must be great care in over-the-counter situations where someone is clearly - and I think this reflects - as I said in the beginning, consumers are looking for more than information, they're looking for assistance, they're looking for someone to help them make the decision, and so there's that expectation.

I would say in that context, if someone says, "This is good for you," that's a recommendation, and they should inquire about the suitability. Now, the suitability may be in terms of the need for liquidity, the length of time, and whether that person has other commitments coming up. That may produce some difficulty in the ease of selling a product, but we're talking about consumers making informed judgments and decisions. We believe that where someone goes over the line of giving information or acting on instructions, there does need to be some minimum standards involved.

MRS NICHOLLS: Do the banks support your view?

MR BREAKSPEAR: The membership at FPA is made up of both large institutions, being some banks and life companies. We deal with the FPA on their advisory side of things, so the advisory arms of the banks and divisions tend to promote a wider range of products, such as superannuation or the investment funds promoted by the particular bank or life institution. We haven't particularly discussed the implication of our definition at 2.2 with them as to how that could be administered. I understand some banks and some institutions are very careful about what is said across the counter, because they understand the liability. Once you set yourself up as an adviser, there's a string of obligations and responsibilities at common law that come through.

MRS NICHOLLS: Thank you.

PROF HARPER: Ken, do you see any tension between consumer regulation and prudential regulation? In other words, the sorts of - you were just mentioning your membership consists of some large institutions, okay. To what extent does the prudential regulation to which they're subject cut across, strengthen, compromise - or simply independent of the consumer regulations?

CHAIRMAN: Would you prefer to see the prudential functions and the consumer regulatory functions in the same body or would you prefer separation?

MR BREAKSPEAR: In our original model that we put, we did actually see that it would be combined in the one body, but having separate divisions or there was some sense where they are separated in terms of function. In our thinking with our working parties developing the submission, we believe that competing objectives and the stresses and strains of working out solutions need to be done internally within the one regulator. One of the problems with having multiple different regulators is reconciling competing objectives and different views, and there is a sense of relationship between the financial soundness of an institution, the product design and the product disclosure and the sale of that product, because it is underpinned by the ability of that institution to honour the promise, and to be able to have some sense of - well, to honour that promise, wherever that might be found.

I don't think we've thought - we've tended to look maybe at the advice side and not at the financial soundness side, though in the research that financial advisers do, certainly they want to make sure that the institutions are going to be able to deliver. Our concern has been more a desire to see a separation of the product manufacture side of things from the advice-giving. We believe that consumers would be better served if there is a separation of these functions by a separate licence. Part of the problems emerging in the system has been where institutions have sought to grow sales, and those sales have been pushed at some loss to the consumers.

PROF HARPER: But if I understand you, those two functions you would see combined at the regulatory level.

MR BREAKSPEAR: Yes.

PROF HARPER: And you mentioned the point a little earlier about the importance of the culture of the regulatory agency, and so if I'm to rephrase my question, I'm saying, Ken, do you see any tension, like some cultural tension that might arise between those responsible for CP - - -

MR BREAKSPEAR: Yes.

PROF HARPER: - - - and those responsible for prudential supervision?

MR BREAKSPEAR: Yes, there may well be some tensions, and that is best reconciled within the one body rather than within - - -

PROF HARPER: It is best reconciled within the one body?

MR BREAKSPEAR: Yes, in the sense that - - -

PROF HARPER: Not ameliorated by separate bodies?

MR BREAKSPEAR: No. When I mean separation, we thought about having separate divisions where you have to have specialisation, so the one person is not going to be specialised in one area, and the prudential side, but where there's an offering made to the public and there is some uncertainty about the financial soundness say of a life company, then that affects the whole integrity of the public offering, so there is a sense where within the one body those separate specialisation divisions these things could be best handled.

CHAIRMAN: In this wonderful new world of technology and internets and screens, I mean, do you see a changing role for the body of your membership? I mean, one of the fundamental points that's been put to this committee is there's going to be an enormous amount of information out there, the consumer is going to be able to access it much more freely, you know, in different modes, and what does that all imply in all of this?

MR BREAKSPEAR: Well, we all know about information overload. Information doesn't produce a decision, and whilst you can have access to lots of different information, that needs to be filtered, it needs to be interpreted, it needs to be assessed. We believe that advisers - and the evidence that we've seen in the US and other places is that the adviser is still seen to be a key player, using the technology, drawing in the information, having available more than just a local product, having a global perspective in drawing down relevant product and relevant research and other information, but being a key player as the navigator for the consumer; having to use that technology - very important that they don't get left behind along the way.

But there certainly will be a certain percentage of people who will do it themselves. There is already that. It may grow. But the evidence seems to be that once you accumulate a reasonable sum, a portfolio, it becomes more complicated - how to manage it, have I got it right? People tend to worry a little more, the larger the sum that they're looking after or the number of different investments that they have. So the tendency is that once you have a bit more, a bit more super even, you start to think about where it's invested and what it's doing and whether I can do better, and the evidence seems to be that the adviser is still playing a very important role.

There will be a role also for intelligent software. A lot of the decisions such as asset allocation and what have you can be converted through intelligent software, but again one has to know how to use that software, ask the right questions in order to get the right answers.

MRS NICHOLLS: Thank you, chairman. Ken, I'd like to take the questioning in a slightly different direction. You did note in your submission that a number of your members now charge a fee for service rather than deriving their income from a commission on the underlying investment product. I think that is something that could be generalised beyond the members of your association, where there are a number of individuals, enterprises, organisations, who provide advice, sometimes at a fee for service, but to a very large proportion of the population the fees that they take are some kind of commission or percentage or it's built into the price of purchase. Juxtaposed against that, I think it is reasonable to say that there are an increasing number of financial products that a portion of the population wishes to buy without advice.

MR BREAKSPEAR: Yes.

MRS NICHOLLS: For instance, many people might feel they did not need advice to take out death cover, and yet currently you have to sign a statement saying that you actively rejected simply to buy the product yourself, and additionally there is rarely, if ever, any alteration to the price whether you purchase the product with or without advice. Could I ask you to comment on these trends, particularly in the light of our desire to reduce the costs of intermediation?

MR BREAKSPEAR: Yes. There are a couple of points I'd like to make there. Firstly, our recent membership survey showed that about 68 per cent of our members provide clients with a choice as to how they will pay for their advice, and that's an interesting trend, where advisers will have a range of options and a person - in other words, they're tailoring the remuneration and the cost of that advice to the individual clients.

The other interesting trend is the average percentage commission received by advisers on a hundred thousand dollar portfolio is about 2.5 per cent. There were days in the past where they were 8 per cent, so we've seen through over time the dropping down of that - well, not only the front-end load that's there for commission but the amount being charged by advisers is coming down, and part of that is the competition that's there, both through direct distribution and through people setting up discount broking houses whereby you can go to them with your product selection and they'll rebate quite sizeable amounts of the commission.

Advisers used to get a little annoyed where they gave the advice and the person walked around and went to the discount broker. I think they now accept that there's no such thing really as free advice; that they need to charge a professional fee for the advice given. So we have seen a reduction at the front-end loads on particularly managed investments. That has caused advisers to actually think about how they charge for their services, and we have seen a trend towards a fee-for-service basis, often through a client agreement, whereby there's a bundle of services provided; not just the once-off advice at the beginning but a long-term relationship being developed where there are regular reviews and updates. So I believe that there is a fair degree, a large degree in fact of competition in the area of pricing advice services.

MRS NICHOLLS: Ken, let me just add a view that has been put to us when we were overseas, and that is, putting aside the issue of front-end loads on managed funds, a view has been put to us that the management expense ratios of collective investments in Australia are high by international standards. Increasingly financial planners receive trailing commissions which form part of that management expense ratio. Is the overseas view in your opinion valid?

MR BREAKSPEAR: I believe that the overall cost of managing the money is under scrutiny where you have very low inflation; that people really do look a lot harder at the returns they're getting. I also believe that the kind of information being disclosed both to advisers and to consumers fully reveals those management charges - that they are actually highlighted now, particularly in a low return environment.

MRS NICHOLLS: So are our prices too high?

MR BREAKSPEAR: I would find it difficult to make that judgment because it's a relative judgment. They're certainly under pressure, and there is certainly pressure there coming from advisers accessing wholesale markets as well. So it's not just the retail market we're talking about through master trusts and other areas. Advisers are drawing wholesale funds which are priced differently and actually probably priced - I won't say more competitively, but certainly they're priced on a different price structure than the retail market.

I would say that those charges, management charges of fund managers are under competitive pressure. I believe that the ongoing trail commission is there, and fully disclosed - that amount being received from a fund manager must be fully disclosed to clients so they can see where it's coming from and appreciate that the adviser is taking that sum into account in the ongoing service. Those trail commissions are actually at the discretion of the fund manager. It's not a contract arrangement where there is a permanency about their payment. They could be turned off at any time.

MRS NICHOLLS: Are they ever rebated?

MR BEERWORTH: Does it ever happen?

MR BREAKSPEAR: Pardon?

MR BEERWORTH: Does that ever happen?

MR BREAKSPEAR: Turning them off?

MR BEERWORTH: Yes.

MR BREAKSPEAR: Well, they've been trying to turn them on for a few years from an adviser's point of view, and we're not aware at this stage that they have been turned off. Certainly advisers have been keen to see them grow over a number of years because they've wanted to use them as part of the offset to the charge of ongoing services. They are difficult to rebate, in the sense that the paperwork involved to date has been difficult. Some advisers do attempt to rebate them, but it's not easy to do in terms of the paperwork.

MRS NICHOLLS: So investors are paying for advice they didn't get?

MR BREAKSPEAR: No, that's - well, that's not clear. I'm not sure where your observation comes from. The adviser is taking a trail to provide an ongoing service, normally under some kind of client agreement, and the adviser when they give the ongoing review discloses to the client that they've received a service commission, a trail commission, and has taken that into account. So where an adviser is not providing ongoing advice and service, then why is the fee being paid? That's a fair question.

There are those who would see that a trail commission is part of the spreading out of the cost of writing the front-end advice. There are those who see, and probably more so, see that the service fee is being paid for ongoing service. If that ongoing service is not there, then there are some fund managers who withdraw the trail.

CHAIRMAN: Greg, do you have - - -

MR SMITH: Ken, on your submission there's just one thing that has puzzled me, which is that you have this very complex proposal for three-stage progression ultimately to co-regulation - - -

MR BREAKSPEAR: Yes.

CHAIRMAN: - - - which sounds very bureaucratic-intensive to me, in terms of setting up three stages. Why not go to the end point straight off of the co-regulation, and given the British experience in particular, how do you get your universal - how do you ensure that you keep your universal model when you go to co-regulation?

MR BREAKSPEAR: Our table there on page 18 of the submission was a compromised position because we believe that to move directly to the co-regulation model was very ambitious and may not be politically acceptable and would be a little presumptuous of us to put ourselves there. We saw that there are some existing models working in the system, such as the relationship between the ASC and the ASX where there is a delegation of powers over time. We believed that that was - a staged progression towards self-regulation was manageable.

In order to make the jump completely from stage 1 to stage 3 would take a very big commitment, not only from our members in terms of seeing that self-regulation was something that they wanted to do, and self-regulation is quite different than being an industry association or a professional body. It's that next jump where you not only have responsibility for standards but you have responsibilities for enforcement, and it's come into groups with the concept of enforcement that's most difficult for most membership bodies and professional bodies to come to grips with. So that was part of the rationale, that we thought it was too ambitious.

MR SMITH: What would be the time-frame of your three stages, do you think?

MR BREAKSPEAR: I think we saw probably over a period of 3 to 5 years at max. It is possible to accelerate a trend towards it. If government is saying to industry, "We believe that's the right way to go," then I believe that industry will respond to that; that our membership would respond to it, but it's also the transfer of cost. Regulation has to be paid somewhere in the system, and our members would have to face up to the fact of bearing the full cost for their self-regulation. At the moment that cost is partially hidden through the activities of ASCIC.

CHAIRMAN: Ken, I think we've just about covered it. Do you have any other points in conclusion?

MR BREAKSPEAR: No, I don't think I have, other than I'm looking forward to seeing your recommendations on the regulation of advisers.

CHAIRMAN: Okay. We will be certainly taking your points and contributions into account, so thank you very much for coming along.

MR BREAKSPEAR: Thank you.

CHAIRMAN: Ladies and gentlemen, we're going to adjourn, if that's the appropriate word, now, and the public consultation process will continue at 3.30 pm this afternoon. Thank you.

(Luncheon adjournment)

CHAIRMAN: Ladies and gentlemen, we shall reconvene the Sydney public consultation process for the Financial System Inquiry. I thank you all for joining us, or rejoining us. The next participant is the Consumer Credit League, and I'd ask Anne Stringer - and I think there may be someone else with Anne joining us at the table. Can I just repeat my comments that I've made before to most of the speakers today that the inquiry has no special legal powers or parliamentary privilege so we'd appreciate if comments are not made which reflect adversely on particular persons or organisations, and for recording purposes we would appreciate if you could just start with your name, and your organisation, and we'd be very pleased to hear what you have to say to us, Anne, if you'll start.

MS STRINGER: Anne Stringer from the Consumer Credit Legal Centre in Sydney. Thank you for giving us the opportunity to speak at this hearing and to meet some of you in person. We've heard a lot about you. Although CCLC put in two submissions we're going to concentrate here on the issues arising for consumers - for the introduction of new technologies in financial services. Since we did put this submission in things have moved, as they do in this area, and we've had a round of consultations with industry, government, the ABIO and consumer groups, and we'll be using some of that new material in our next submission to the inquiry.

We hope, too, that the second round of submissions will be helpful in allowing the focus of the inquiry's final report to be placed more on genuine consumer problems rather than on problems that the industry has with consumer issues. In this hearing we'd like to concentrate specifically on a regulatory regime for new technologies that addresses concerns for consumer protection, and Chris Connolly, who actually wrote our submission - with some input from me - from the policy network, who's also the convener of the Smart Cards Advisory Network, is going to talk to the submission.

MR CONNOLLY: Okay, well, thank you very much. When we talk about new technology, financial products, the ones which I think will have an impact in Australia are smart cards, home or PC banking, telephone banking, Internet banking, and technologies resulting from convergence. Now, Australia remains at the cutting edge of these new technologies. We have five current smart card trials in Australia, including the two largest card providers in the world, MasterCard and

Visa. We have one Internet banking service already established, and we also have one digicash trial, which is one of the first in the world.

From a consumer perspective these new technology issues are vitally important, and the Wallis inquiry provides a unique opportunity to set out consumer requirements in this field. From the submissions to date it is clear that there are a wide range of approaches to these new technology issues. At one extreme there is the wait and see approach and at the other extreme is a heavy interventionist approach. However, in the middle ground the Wallis discussion paper identifies five criteria for good regulation which are particularly important to consumer protection, and these are found at page 261. They are competitive neutrality, cost-effectiveness, transparency, flexibility and accountability.

My submission today will discuss how new technology issues can be addressed within that framework of those five good criteria. I think that the starting point is actually the creation of a new body, a body to look just at new technology issues, and I think this is because it is acknowledged that the Wallis inquiry is not the appropriate forum for consideration of detailed consumer protection arising from every possible new technology financial product. That's just simply not expected here.

However, a number of submitters, including the Consumers Association, the banking ombudsman and also some other private submitters such as Westpac, have suggested the possibility of establishing a new working group or forum or committee or board - they all suggested different names - to consider the regulation of new technology financial products.

Now, if such a body is to be established - and we suspect that this is something which will receive wide support - we have three points to make on what this body should do and what it is. The first point we'd like to make is just a small point, and that is that despite establishing a new technology working group there are still some things which the inquiry can recommend now which will have an impact on consumer protection in the new technology field, and they are the establishment of a single entry point for consumers with a complaint - which is discussed elsewhere in many of the submissions and also the discussion paper; also improvements to consumer representation in both regulatory and self-regulatory forums, and finally the encouragement of consumer education on financial products, which you will also find in a wide range of submissions to the inquiry. That's just the first preliminary point.

The second point is really the bulk of our submission, and in many ways we're restating the submission of the Consumers Federation of Australia which suggested the introduction of a protocol for new technology regulatory issues. Now, rather than just establishing a new technology forum and expecting them to come up with the answers, this inquiry can take advantage of the vast amounts of information which have been put before you to set out both a vision and a process for the regulation of new technology products - in other words to direct this new forum or group as to what it is that they should be doing.

We can only expect a general inquiry such as this once every 10 to 15 years, so I think we need to make the most of this opportunity today. The technology group could obviously act as a liaison point between the existing regulators and policy developers and industry. As part of its work we believe that they could develop a set of basic generic consumer protection principles. This sounds very ambitious when you first hear this idea, but we believe that a set of generic consumer protection principles can be developed and can be tested against new financial products as they are developed.

And let's not make the mistakes which have been made in the past, for example in the EFT Code, of tying down consumer protection principles to descriptions of existing technology; if they can be more flexible - and flexibility is one of the requirements, as you have set out, for good regulation - then we don't need to reinvent the wheel each time a new product comes forward.

Now, we're not asking this technology group to develop new consumer protection principles. It's obvious from a lot of the submissions that a set of basic principles already exists, and this is either in the big picture - and then we talk about privacy, disclosure, equity, etcetera - or right down to even finer details such as the principle that terms and conditions should not be changed without notice in financial products.

The group could establish a protocol for the introduction of a new technology product involving three steps. The first is an initial step at trial stage, for example the trial of a new product such as a smart card. The only requirement at this stage would be a guideline saying that the terms and conditions of such a product should meet basic consumer protection principles, and that's all - a guideline, no other enforcing powers, etcetera - and that's for the trial stage. Then, as the product is rolled out, the industry can work towards adopting those same principles but in a self-regulatory code, and that's the second step. The third step is that if a product becomes successful and has a wide impact, the technology group could encourage the development of a co-regulatory scheme, and take steps to identify an appropriate co-regulator.

Now, one of the criteria you have set out is that regulation must be cost-effective. We believe that this system will be cost-effective in that the level of regulation will always be appropriate to the size and scale of the industry rather than imposing an expensive and comprehensive regulatory system to a small and emerging technology. The basic principles can serve as a structure which can be ratcheted up or down depending on the technology and the industry. There should be no need to reinvent new principles for each new product which emerges.

The technology group must work closely with existing regulators and also it must be representative. We would like to see it as a tripartite body. Now, by identifying key regulators or self-regulatory forums for each new technology product, this would provide clear lines of accountability at each stage, which is also another requirement of good regulation. Their work should be in the public domain; they should hold public oversight hearings to assess how an industry is performing against these generic principles. This would provide a high degree of transparency, which is also one of the criteria for good regulation, and that transparency would lead to improved consumer confidence and improved competition.

Finally, we believe that this structure will provide complete competitive neutrality. This is because products will receive equivalent regulatory treatment at the equivalent stages of their development. Now, some examples - well, the smart card industry and the Internet service provider industry both introduced fairly new products in Australia without oversight or monitoring by any particular body, and in both cases it's involved a great deal of what we believe is unnecessary pain - poor press, jolts to consumer confidence, expensive mistakes, and overlaps and also gaps in consultation.

We believe it's important for this inquiry to at the very least set out the way forward and be forward looking, especially in an industry which will now be bombarded with new products and new players, and many of those new players will have little or no experience of consumer protection issues or structures. I said we had three points to make on this idea of a new technology working group, and for the third point I will hand back to Anne, and this is on representation and funding. Thanks very much.

MS STRINGER: Just briefly, especially in this area it's very important that consumer needs are considered in the development of any regulatory mechanism for the new technologies, and that consumer needs are listened to. Consumer representation on all the bodies is going to be vital. As Chris said, we have had some experience in fledgling development and we've found that without consumer needs being taken into account often industry has to take a giant three steps backwards when consumers start making noises. It for instance has held up the launching of the Asia-Pacific Smart Card Forum Code. So we need consumer representation on whatever bodies are looking at regulating these new technology products.

The other thing that we were thinking about is that consumer representatives don't have a lot of money and in another way neither does the smart card industry which is, as I said, a fledgling industry, and neither apparently does government, so where are we going to get the money from to do this? We haven't thought of Father Christmas yet. But at least further down the track we believe that this scheme could be put into operation very cheaply, and at least further down the track there is going to be some money in the industry from the float and from slippage, and we think it's appropriate that moneys from that pool are used to fund a consumer protection mechanism. It's analogous to the interest from the solicitors' trust accounts being used by the Law Foundation to fund community benefits.

Industry has said that there's going to be quite a lot of money around from fees and charges, and also from interest on the float and from slippage. We'd like the inquiry to look at those possibilities for funding. We need innovative funding, obviously. That's it. Thank you.

CHAIRMAN: Thank you. Would it be possible for you to enumerate your sort of big ticket concerns about all this new technology in a way that might help us? I mean, we've talked about mechanics a lot, but what is it that your organisation and the groups you represent are really concerned about? Is it privacy? What is it that's - - -

MR CONNOLLY: It really does cross the complete range of consumer concerns. For example, when the first stored-value card trials were introduced in Australia, we quickly discovered that the terms and conditions being offered, despite having the EFT Code in place, for example, which had set quite a good benchmark for terms and conditions, provided quite a poor standard of consumer protection on virtually every point that you could imagine, so that the terms and conditions in one trial placed all liability for damaged, lost cards, unauthorised transactions, etcetera, on the customer.

In another trial, from a privacy point of view, it was stated that all information about the card use, transaction use, etcetera, was the property of the smart card promoter, and then from a more - like a wider perspective in security, we see that several of these new products don't really have any sort of prudential or financial backing, and you can see therefore that rather than having to sort of focus in on for example privacy, there's actually consumer issues across the board, and then if we add questions of fees and charges and then access to dispute resolution mechanisms, you can see that basic consumer protections which are provided in almost all other financial products just do not exist for the new technology financial products, and it's really a very poor starting point for an industry to come in without even the absolute most basic consumer protections being in place.

Therefore we're saying that a structure is needed so that rather than having to sort of reinvent those consumer protections for every new technology which comes in, that this inquiry says, "Well, look, we've heard all of this information about what the major consumer issues are. We know that if we establish a group they can go off and establish generic consumer protection principles and a structure for applying them at appropriate levels, at appropriate stages in the development of these new technology products." Anne?

MS STRINGER: I think specific to these new products is that they are very complex and they involve convergence over a number of different industries. For instance, from a consumer viewpoint in one transaction you could have the possibility of three major entity players involved: a bank, an insurance company, a telecommunications company. If anything goes wrong in that transaction, it's almost - it is impossible for the consumer to know where it went wrong and why. All that she or he knows is that it went wrong.

There also is a jurisdictional problem in that the consumer can't be expected to find out who's responsible for the fault. What's going to be very important from the consumer viewpoint and what needs to be in place very soon is a single entry point for consumers for that source of dispute that's involving new technologies, and that the jurisdiction problems are sorted out very early on, perhaps between those three major ombudsmen exchanging between themselves and coming to some arrangement with themselves. So long as the consumer knows where to go, there can be a quid pro quo behind the scenes, sorting out of the actual jurisdiction as far as industry is concerned.

So there's that jurisdictional problem, and I think it also brings up the system failure problem, and at CCLC we are already seeing a few results of system failure for instance by Internet providers, which leaves consumers very vulnerable to loss, and without knowing how or why it happened.

CHAIRMAN: Would you accept a view that was expressed to us on our travels, I guess, in North America by a major player into the new technology whose early experience was that there was less system failure, less fraud, less concern actually in the new electronic way of doing business than in the conventional approach?

MS STRINGER: There are other views.

CHAIRMAN: Sure. I'm just putting it to you. It was a view that expressed though.

MS STRINGER: Yes. For instance, there was recently a major scam that was planned in the UK involving credit cards, which could have - - -

CHAIRMAN: Well, statistically, you know, over a range of transactions in a period.

MS STRINGER: I think that smart cards used as credit cards have been shown to be less liable to fraud, and that's certainly true, but when we're talking about the more complex transactions, I think there are actually a lot more opportunities for not only system failure but also dishonesty and fraud.

MR BEERWORTH: How deep is the problem of consumers needing legal advice in this area? We had a submission this morning from Ben Slade of National Legal Aid that there are probably only two public interest solicitors in the country who are capable of giving advice to consumers. We thought he was perhaps a bit gloomy. Do you have a different view?

MR CONNOLLY: Well, I think that what we've found is that it's a real David and Goliath situation between consumers and these new technology financial product promoters. For example, I think if you analysed in some detail the trial of smart cards in Newcastle you would find that the number of consumer complaints, consumer concerns, major problems - withdrawal of part of a scheme, etcetera - arising directly from consumer concerns has happened in a situation where there isn't really any sort of legal expertise which exists to help consumers, there isn't a public interest body established which could help those consumers, and they really didn't know sort of where to turn. Consumers who had problems in Newcastle were writing to half a dozen different sort of ombudsmen and privacy-type bodies outlining their complaints, and no-one really appeared to have direct jurisdiction or any expertise or knowledge.

MR BEERWORTH: But you're called the Consumer Credit Legal Centre. How many lawyers do you have at the centre?

MS STRINGER: I work at the Consumer Credit Legal Centre. We've got three lawyers there at the moment. We mostly work in the area of credit and debt. This is a new field, and I think that there are very few people who are expert in this field yet. In fact most of the legal issues haven't been sorted out.

MR BEERWORTH: The new technological things are new, but the whole idea of credit legislation, credit law, etcetera, is pretty ancient.

MS STRINGER: Yes.

MR BEERWORTH: You're talking in a very specific area.

MS STRINGER: I'm talking in a very specific area. Yes, there are community legal centres around Australia that are giving advice to consumers, badly under-resourced.

MR BEERWORTH: But your focus is on the new technology obviously.

MS STRINGER: Not the centre, but this particular hearing, and I was addressing a problem as if you're saying, is there legal advice available for consumers who have new technology problems. I would say very little at the moment, because nobody really knows.

MR BEERWORTH: Thank you.

MRS NICHOLLS: Thank you, chairman. I'd like to go back to the chairman's question and pick up on an issue in that. Chris, I felt that when you were speaking that you used new products and what I would consider new distribution channels or new methods of accessing financial services almost interchangeably, and that was of interest to me because of a view that was put to us overseas, and the view was quite a cautionary one. The cautionary view was that we should be alert to those who used security phobia or other anxiety about new technologies as actually an anti-competitive strategy or tactic to delay the introduction into the mainstream of alternate distribution channels and new products that would actually be inherently damaging, if not threatening, to the profit margins or the competitive environment of the established institutions. Could I ask you to give some reaction to that view, and also to address this issue of - in your own comments about structure - product versus distribution?

MR CONNOLLY: Well, I think that there is a danger that established players will raise the threat of security and prudential requirements, etcetera, to discourage use of new technology products. However, I think that there's a distinction which has been missed, especially in the media reporting. For example, I have a personal concern about a new player entering the market with a stored value card which is taking people's deposits, and it's a new technology product and it's not registered or in any way a supervised financial institution.

However, at the same time, in Britain this week we see for example that Safeway, the supermarket chain, is going to introduce credit card/smart card type banking products, and I have less concern about that, a very large - one of the world's sort of largest companies introducing new banking products. It's more the size of the players involved when deposits are being taken, and I don't think that distinction has really been made. I think that the banks for example in their submissions to your inquiry have said, "Well, we believe that the only issuers of stored value cards, for example, should be supervised financial institutions." I think that is much too simple an argument to discourage the introduction of new players, and probably is anti-competitive.

However, balanced against that is that consumer confidence will be completely shattered if for example one of these new stored value card players who isn't, you know, a large supermarket company for example, does take people's deposits, crashes - and you may be aware that John Button in his sort of lengthy inquiry for the Commission for the Future into smart cards came to the conclusion that it would really only take one sort of major breakdown from a prudential point of view with stored value for consumer confidence in the industry as a whole to be shot, and that is quite a strong conclusion for him to reach from his research, and I would agree with that.

MRS NICHOLLS: But surely it depends on the value of the card? A stored value card worth $12 going wrong is perhaps not what he had in mind?

MR CONNOLLY: Well, perhaps that's not what he had in mind, but the result for consumers, once they hear the negative aspects of putting their money on stored value - I think you would really struggle then, it would be an uphill battle for the industry to succeed in replacing cash, and let's remember that as well as this being a new technology product, it's actually replacing something which already has a high level of consumer confidence, cash. It's not a new product which isn't replacing anything. It's designed to replace cash, and that's part of why it has an uphill battle and why consumer confidence will be important, and consumer confidence will best be achieved by involving consumer representatives and having a structured regulatory process for that industry to move along.

MRS NICHOLLS: Not to be facetious, Chris, but I'm sure you've heard the view that if we were trying to introduce cash as a new financial product today, it might not get up. Let me ask you a more serious question about your regulatory model. How is it that you would hold your technology regulator, for want of a better word, accountable for fostering and facilitating constructive innovation?

MR CONNOLLY: Well, I think that the proposal really is to establish a new technology group which will be - its real role will be liaising between existing regulators and policy-makers, a sort of umbrella organisation, if you like, but I think accountability for fostering innovation - you know, as much as that sort of umbrella organisation might add to consumer confidence, I think that it will be the simplified way that a new industry knows that, oh, well, it just has to liaise with me on this one technology organisation rather than having to deal with a myriad of various regulators and policy developers. I think that that will really assist.

MR BEERWORTH: Chris, does it worry you that a coordinating quango of that nature is precisely the sort of thing we'll be asked to unwind in 5 years' time because it's bureaucratic and sclerotic?

MR CONNOLLY: Well, I'm not sure that it needs to be bureaucratic. I think that - - -

MRS NICHOLLS: Sclerotic would be better?

MR CONNOLLY: That's possibly true. No, I think that this organisation dealing itself in new technologies and innovations could itself be innovative. In our consultations over the last few days - - -

CHAIRMAN: Do you see those organisations as facilitating new technology, it's going to be a representative group in your mind across the providers, the technology groups, the consumers, or has it just got this consumer focus to it?

MR CONNOLLY: Well, we certainly believe it should be a tripartite organisation. What its actual role in facilitating industry should be is - our focus obviously is on consumer protection, on establishing consumer protection.

CHAIRMAN: Well, we have quite a number of representations that there is a need for this technology unit to facilitate the advent of the new technology, if you like, across the industry, and that's a pretty broad sort of purview that such a group might take, but it's a matter of where the consumer bit fits into that process or whether it something separate.

MS STRINGER: If I can just go back to your question - your question or the sclerotic question. It may be possible to put in a time line for this group. Once the basic structures are established it could obviously be looked at again. I think if consumer representation is strong on the group that it will not get moribund because the consumer representatives will be feeding in need from the community and community demands, and that I think is very important in keeping this sort of thing on track.

MR CONNOLLY: I think if you did wind back the organisation and asked new technology industries to - "Oh, well, we're very sorry. Now you have to go back to 15 different organisations and speak to them all individually," rather than having a facilitating organisation, I think that even industry then would say, "Oh, well, we actually quite like this new technology council," as Westpac call it, "and let's keep it," and on this question of what its role should be, certainly if the inquiry is accepting of a broad role for a technology council, then consumer protection must be a very important strand within that role.

PROF HARPER: Yes, thanks, chairman. Just picking up this question of the time line that you raise, Anne, obviously the centre regards new delivery channels for financial services very seriously, seriously enough to devote all this attention to it. Do you have any sense over what time-frame it is likely to be the case that these new technologies will become dominant as mechanisms for distribution? There are many other issues out there that are also concerning consumers about existing delivery mechanisms. You're devoting attention to the sharp end, which is fine. What sort of time-frame have you got in mind?

MR CONNOLLY: I actually think it will be quite speedy. There's a wide range of factors at play here. The first is that the cost of a lot of these new technologies, especially Internet access and stored value card chips, has reduced dramatically. Secondly, established large players are now involved. We're not talking about small little sort of backyard computer groups any more. We're talking about Visa and MasterCard, the major banks, etcetera. Thirdly, governments are becoming involved and are really pushing new technology access channels especially.

When we were in Victoria we were speaking to the government there about their vision of ESD, electronic service delivery, which basically comes down to establishing a system by the year 2001 where all government transactions between government and individuals can be carried out electronically, preferably over the Internet.

Now, that sort of pressure from a government will have a strong knock-on effect on the speed with which these systems are developed, and that pressure is felt around the world. In Singapore they simply want to replace cash by the year 2020. Originally they'd said the year 2000 but revised it to the year 2020. I don't think we're looking a long way into the future here. I think that all of those pressures will combine to see quite a speedy introduction.

PROF HARPER: That's useful because oftentimes when we raise the same question with the potential suppliers they respond that, "Of course a lot of this depends upon consumer acceptance," and given that that's in part your constituency I was wondering: do you have any evidence, Chris or Anne, from the centre or other work that you've done that could help us to form a view about consumer acceptance? I mean, I'm actually quite surprised to hear you say that it's faster rather than slower, given the sorts of concerns that you've raised of a legal nature.

MS STRINGER: Yes, I think - I was going to add to Chris's comment that that will depend on how willing people are to pick up the fast introduction.

PROF HARPER: That's exactly right. Do you have any evidence? Have you got any feeling?

MR CONNOLLY: There has been some work done, and it's been submitted to by Suprea Sin of Circuit, which looked - it isn't very conclusive, but it's the beginning of the important research which needs to be done in this area. It did show some basic technological fears and phobias amongst the community and resistance to new-technology financial products; even ATM machines, EFTPOS, etcetera - a real feel that people wanted to cling onto their bankbooks - and that sector of society, I think, will continue and, especially because our society - the proportion of aged people in our society is now greater and is growing all the time, then there will always be that sort of resistance as well.

But at the end of the day if the Victorian government decides, well, everyone's going to have a modem and if you don't, well, you have to go to your local library and that's how you contact us, then that will be a significant boost to the technological advances in Victoria.

CHAIRMAN: Your general submission, the concern is about the conventional modes of delivery I guess being reduced branch networks and how that impacts on segments of the community, but I mean one of the messages that came across to the committee loud and clear when you're dealing with transaction costs in the conventional system in the dollars and transaction costs in the cents for the new electronic age, I mean if we're going to advantage the less well-off groups in the community - not just the young, even the elderly - somehow we need to get these new methods of delivery in front of them. I mean, do you have any particular view about that?

MS STRINGER: Yes, I do have a view. I have a view that new technology and the new delivery systems could advantage consumers. For instance we know that ATMs can be configured so that they can be used by blind people or by people who can't necessarily - don't have the motor skills to put a card in a slot, and the technologies there to do that could be useful. I think that it obviously depends on how industry introduces them and what we've seen with ATMs is a stick rather than a carrot approach, where for instance you get charged fees for person-to-person transactions.

Now, that may look in the short term cost-effective from industry's point of view, but in the long term it may not be so cost-effective, and in fact one bank in the States has employed consumer relations managers who go up to people who are standing in queues and say, "What would you like to do?" and, "Oh, I can show you how to do that better," and they report that, for instance, people are making many more deposits through ATMs which is something that everybody in Australia is very reluctant to do because of security.

I think you'll find there's a very low percentage of deposits in ATMs. They found a huge doubling of deposits through ATMs, diminution of queues, and old ladies being very thrilled with themselves that they know how to use the technology. Now, that's a different approach. It's something that could also come through the council with consumer representation. We can start looking at innovative ways, rather than just dumping the technology there and saying, "It's here. It's good for you."

MRS NICHOLLS: I'd like to ask a question again about your regulator. We've been talking this afternoon with an unstated presumption that the parties that will be behind these new technology-based financial services will be financial institutions of some sort or another. Whether they're banks or not, there's still a presumption they'll be financial institutions.

Certainly a view has been put to us that the most likely early successful introducers of some of this new technology - for example, smart cards - will actually not be from a financial institution, but is more likely to be a Telco or some other definitely non-bank, non-financial institution that has a very strong commercial incentive to put this type of technology out, perhaps in a very limited-use way but a limited use that could take a very broad-based adoption.

How would you see your proposed committee or group dealing with events that are outside the financial system as we would describe it today?

MR CONNOLLY: Well, I think that the structure which has been proposed is the sort of idea of a liaising umbrella organisation. Now, there's nothing to restrict that just to liaising with financial coordinators, financial services regulators. There's nothing to restrict it talking to, for example, the new ACA or TIO, and once again this will be both simpler for consumers and for industry to feel that in this situation of convergence that really there is a place, there is a council which will deal with these issues and will not restrict itself to either banking or telecommunications.

That might actually be one of the most important crossovers which happens in convergence, in that some sort of council will start to bridge gaps and to, you know, build up contacts between the different regulatory - well, the different industry regulators which there are. There may be industries which - for example, if a food supplier, a supermarket decides to go heavily into producing bank-like products, stored value cards, they'll be on a very fast learning curve in having to come to grips with consumer protection and other regulatory issues, and you know it's undoubted that they'll need assistance.

MRS NICHOLLS: So do you envisage compulsion? It seems to me that if I'm not in the financial services industry today and I'm interested in putting out, say, a smart card for limited use, I would voluntarily go to your body because I saw it as someone that really facilitated new things and would help me get going, or alternatively I'm not going to go and talk to them if I regard them as a blocker unless I'm made to. How do you see your group sitting in that?

MR CONNOLLY: A lot of the submissions to the inquiry talked about regulators and other policy bodies being forward-looking and in a way proactive, and some regulators have said, "Well, look, that's really not our role," and the Reserve Bank quite clearly said, "Look, we are not designed to be a proactive body," but others might see that they should be. I think that this idea of compulsion - well, what will really happen is that the body will be offering so much to a new industry that they will come to the body, and the first step is not going to be binding or enforceable.

The first step is that, well, terms and conditions of a new product must meet these basic guidelines, but they're only a guideline. The second step is, if your trial goes well of your new product, etcetera, you're rolling out - well, you should look for a self-regulatory body and code, and finally if it's making a big impact and it's very successful, well, the council would identify some sort of way to achieve co-regulation and independent ADR etcetera, and perhaps meet the benchmarks which already exist for codes of conduct.

So because of those steps, really for a new entrant it's a way of saying, "Well, look, we don't have to go and join the EFT Code," which has quite sort of heavy regulation and independent ADR etcetera, "We're going to start off with these terms and conditions which will meet basic principles and just move our way up as we become more successful, as our industry grows and as we can afford more comprehensive regulation."

MS STRINGER: I think the council should keep an eye though on how wide coverage is and how the industry is, not only members of the council, those who are adhering to the regime, but other issuers of stored value products or other technologies. The council could have the brief of keeping an overview of the industries.

CHAIRMAN: I think we've covered the field and a lot of time. We've appreciated your contribution, and it's been most appropriate and welcome, so thank you very much.

CHAIRMAN: We now have Frances Milne from Economic Reform Australia. I don't think there's any need to repeat my usual introduction, but if you would start both of you by just stating your name and background to your organisation and we'll be very pleased to hear what you have to say.

MS MILNE: I'm Frances Milne, and actually here today I'm not representing Economic Reform Australia but the public hearings that were convened by a range of groups, in particular Economic Reform Australia, and the Centre for Peace and Conflict Studies represented by Prof Stuart Rees here today who will help give our presentation, and several other organisations including Friends of the Earth, the Total Environment Centre, the Uniting Church.

Our concerns were to look at what financial deregulation has done across the wide spectrum of economic, environmental and social concerns, so that we come today bringing to you the outcomes of that public hearings, as we called it, and the aim of the public hearings was to ensure that there was an opportunity for grassroots groups to be involved and to put their point of view, which we bring to you today.

We felt we were able to offer the inquiry a quite broadly-based set of concerns. As inexpert as some of the comments might be, nevertheless we felt it was important that you hear these because we didn't feel that it was necessarily going to come to you from other consultations that you might hold. We had over a hundred people. It was last Sunday that we had our public hearings. We had only just received the discussion paper, so it was a very quick scan indeed, plus some glaring headlines about "Your bank deposits are no longer safe" that we went into our public hearings and we'll speak to those a little later. I would hand over to my colleague Prof Rees.

CHAIRMAN: Thank you.

PROF REES: Thank you. The preamble to the recommendations that emerged from the hearings has to do with the values and language in which the concern about financial deregulation is set, and I'm going to move from that values and language to a proposition about an alternative set of values and language which would produce a wholly different set of questions and a wholly different set of answers.

We think the direction of the debate about Australia's financial systems and evaluations of deregulation is set by values and language. Belief in market freedom and discipline has produced a lazy and simple formula about the role of government. It should roll back its responsibilities; except as a last resort it should not intervene. Corporate images and corporate interests should be promoted. Society, environment and accountability to democratic interests are peripheral to these concerns.

Even though deregulation has had damaging effects on the Australian economy and society, these beliefs remain popular because of their simplicity. They influence the self-image of the fundamentalist economists, they give confidence to the men and women who influence financial systems. A language accompanies and bolsters these beliefs - deregulate, privatise, make the user pay, restructure, downsize, rationalise and compete.

Now, I want briefly to show how that sort of belief system and the language inevitably constructs a certain picture of policies. Such values and language contribute to greed, bullying and other forms of violence, even though the men and women who might promote them would probably not regard themselves as either greedy or as bullies. Greed is apparent in the rewards paid to institutions and executives who profit from deregulation at the expense of those who are taken over and lose their livelihoods.

Bullying has been evident in the insistence that deregulation is the only way to go. Absence of rules encourages predatory behaviour which will reward your shareholders and you. Short-term gain is imperative. Accountability for the environment for a civil society and for the public wealth of future generations would hinder Australia's ability to compete.

The violence of deregulation is apparent in three major aspects of Australian life: massive increase in social and economic inequality and the associated persistence of poverty; large-scale unemployment and the casualisation of the labour market. I won't go into the details of that, except to say with regard to the persistence of poverty and the disastrous social effects which have flown from policies which avoid commitment to full employment, that in addition to individual misery the country suffers.

Not only do poor and unemployed adults face greater health risks, nations which are the most unequal have diminished life expectancy. The more egalitarian the nation, the greater the life expectancy of the citizens. The violence associated with deregulation in the labour market is apparent from the use of techniques such as downsizing and from the implicit belief in a faulty 30:30 formula for the organisation of work; 40 per cent fully employed, 30 per cent neither fully employed nor fully unemployed, and approximately 30 per cent unemployed.

At times like this when citizens most need the support of the state, deregulation policies have meant public sector cutbacks and services have diminished in volume and quality. Let me go then from - and I have missed out several things in the written submission - to spend one minute more before Frances identifies the specific recommendations of the public hearings. Let me move to the question of an alternative set of values and language.

An alternative set of beliefs and language would heal the economic and social wounds of the past 20 years. These beliefs emphasise that it is an appropriate goal of economic policy to improve the lives of all citizens; that if Australia became a fairer society, it would be more competitive and efficient. Such assumptions reject the idea that efficiency means low wages, casual labour, unemployment and cheaper products. Such beliefs make a commitment to non-violence through government policies, standards and resources, as in the government's intervention not to deregulate further the ownership of guns but on the contrary to strive for citizens' security and freedom by regulation.

This alternative language and philosophy takes its cue from numerous international inquiries into policies to eradicate poverty in developing countries, and in particular to improve the life prospects of women and children. These inquiries have emphasised that social and economic development are inseparable. Financial deregulation should not be construed as separate from social policies. Social justice therefore is a major economic and social goal.

These beliefs emphasise a common good, in particular with regard to the preservation of the environment. For example, if environmental protection was perceived as important to directors as returns on investments, this goal could be tied to a corporation's limited liability. In terms of environmental protection the world's finance and business would be more democratically accountable than hitherto.

Different language in our view constructs changed views of government's social and economic responsibilities. Instead of deregulation we would talk of social responsibility; instead of market forces, humanity. Competition would co-exist with cooperation and instead of economic growth we would emphasise a nation's enlightenment. When those values and language become more commonplace, the financial system, as well as the politicians, would eschew violence and advocate quality of life goals, social justice, a common good and a common wealth.

Armed with those beliefs and that language we could then develop modern concepts of citizenship which would be appropriate for the 21st century. And in common with the analysis of the consequences of deregulation in the United Kingdom, which is a thesis that says that the trouble with the policies in that country has been that they have had no modern conception of citizenship. I think around that issue is where we might want to develop questions, but at this point Frances will address goals with reference more specifically to guarantees of security, to the need for social as well as economic audits on the sovereignty of government and on the social responsibility to regulate financial systems, but not by deregulation.

MS MILNE: I would want to just say what our process is in terms of the inquiry. We had our public hearings and we only had a short time to look at what the discussion paper was, so the sorts of concerns that are raised by the people at our public hearings were far wider than necessarily the issues that were raised in the discussion paper. I note that you said in particular that at this stage you had not summarised what sort of stocktake you would have, and therefore the analysis of deregulation wasn't a feature of the discussion paper.

CHAIRMAN: That's in the process - we have a very demanding agenda and that will be a part of our final report.

MS MILNE: Yes. Nevertheless we felt that it was important that we try and influence that to say that not everybody is totally happy about the impact of financial deregulation. We will respond to the discussion paper with a lot more focus by 13 January, which is the closing date. We haven't had time to do it this time, we just take the opportunity now to bring to you the concerns of the people that were at our public hearings.

I bring to your attention too that in terms of seeing the overall effect of financial deregulation in a fairly negative way, it isn't just those of us who attend public meetings from the small community-based groups that we represent, but that Prof Russell

Matthews, formerly of the Australian National University, has recently observed in an article that he wrote:

> In giving up control over financial markets governments have inadvertently but decisively surrendered to those markets control over what should be their own democratically determined and sovereign decisions.

This was a recurring theme in some of the things that we looked at, as you will see from the recommendations. There were 14 recommendations; I won't speak in any length about them because those recommendations to some extent were covered in a background paper which I also table for the inquiry. This was a background paper for our public hearings but it does elaborate some of the particular theses that come through here and were later endorsed in the open session.

We were concerned that we have a very broad approach to financial deregulation and that we look at four key financial areas: guarantees of personal security; that social and economic audits ought to be balanced, that one can't just look at a financial audit without looking at its economic impact. The concern was about governments reclaiming sovereignty and that there be socially responsible regulation.

In the first instant, as far as guarantees of personal security, we had just come, as I mentioned previously, from Saturday papers that were heralding the fact that people's deposits weren't guaranteed. Therefore it won't surprise you to know that one of the most urgent recommendations that came from our meeting was that the government should take immediate action to guarantee people's savings in deposit-taking institutions which are more than 90 per cent Australian owned and controlled. We recognise that what we saw as the two most detrimental outcomes of deregulation was sustained high unemployment or a working-poor situation as well as a current account deficit which was continually out of balance and was generated by increasing foreign ownership and increasing foreign debt.

The second thing: some of the other groups have already been here before this hearing and put their case with a great more detail. They were groups including the Consumer Credit Legal Centre and the Australian Consumers Association, so only in passing I will say that a number of the more broad things that they come up with, rather than any of the technicalities of their structural recommendations were things that our public hearings were very glad to endorse; that is whatever the structure of a consumer protection regulatory body, it must be a public regulated, dedicated consumer protection, be properly resourced, have broad powers and consult widely with the consumers and their representatives.

Secondly, one that goes with it: consumers should access non-adversarial alternative dispute resolution schemes through one point which assess complaints and then refers client to the relevant agency. You won't be surprised to find that people really get a run-around, once they've got a problem, finding just how they work their way through the system in sustaining a complaint.

The social and economic audits that we felt needed to be taken hand in hand, we would plead with you that this be a very primary focus of the stocktake that you do take, and that we would want to see the concerns that our hearings at least brought up, that there has been sustained high unemployment. I've said "sustained high employment", I meant unemployment. I'm sorry about that typo. For those who don't know what I've done, I've actually distributed the 14 recommendations to the panel here.

I would say too one of the things concerning unemployment was also pointed out by Prof Russell Matthews. He says:

> It's particularly ironic that the obsession of governments and their policy advisers has been with efficiency -

and this is in regard to financial deregulation.

> Because there has been no corresponding action to create jobs the result has been macro-economic inefficiency on a scale that far outweighs the inefficiency that has been eliminated through industry restructuring and downsizing of the public sector.

So we would hope too that it was simply an oversight that you omitted the second objective of the Reserve Bank concerning full employment in Australia. We hope it didn't signal that you intended to recommend the removal of this clause from the Reserve Bank Act because we like the balance in the Reserve Bank Act, although we don't think the Reserve Bank has adequately achieved that balance to date. We would also like to see that once you have recommendations in place, that the community gets an opportunity to look at the actual recommendations because they are a far more concrete way to actually approach looking at the sorts of issues that people who have particular concerns can cope with that.

In the areas of government sovereignty, one of the primary concerns was that the government itself, instead of allowing financial markets to dictate finally what government policy is, should be issued interest-free or very low interest credit by the Reserve Bank or the Treasury for public works to create employment, restore the environment and to retire debt. Again I would point out - you might gather that Prof Matthews is one of my fans, or rather I'm a fan of Prof Matthews and he said again in the same article:

> Among the impediments to full employment which have been allowed to influence policy with all the force of holy writ are the doctrinaire assertions that high rates of economic growth and fiscal expansion inevitably accentuate inflation; that governments must never create credit, only banks and financial markets must be permitted to do that; and that monetary policy should be directed to the control of inflation without regard to its effects on employment.

CHAIRMAN: I'm more than happy, Frances, if you want to work through this, but we have some limited time and it's a matter of whether you want some discussion, so - - -

MS MILNE: All right.

CHAIRMAN: - - - it's really up to you. If you wish to - - -

MS MILNE: Perhaps I might just finish by saying that you can see the line that we have taken. It is for more regulation, it is for more government intervention. Perhaps I would pick just one other thing to mention because it is picked up in your discussion paper, and I did hear the Australian legal group this morning, the Australian Legal Aid group this morning referring to one way of increasing revenues, from their point of view, for their work, which is a very important work, was to look at the financial institutions and debit taxes.

However, I do note that the direction taken in the discussion paper on page 319 was a concern that financial transaction taxes imposed by state and territory governments have already increased from 2.4 per cent to 4.3 per cent of the total tax revenue over 25 years. However, we would want to do even more than that, which won't surprise you, given the general tenor of our recommendations. We would like to see an increase in those financial transactions taxes and see them extended over other financial transactions than only those currently addressed because - - -

CHAIRMAN: Notwithstanding that Australia's level of tax on financial transactions is considerably higher than other comparable countries?

MS MILNE: Yes, we note your comment.

CHAIRMAN: A lot in the industry would like us to find ways to making the system more competitive and responsive.

MS MILNE: We note that but we also see that many of the transactions taking place are speculative and we don't see that those ultimately are in fact transactions which accentuate employment, and employment is one of the concerns that we've got. In this regard I know that you already have a much more substantive submission from John MacCauley who has argued this case; he's a member of Economic Reform Australia, and I know that he has argued it far more than I could. So I would leave it there and you might want to comment.

CHAIRMAN: You've ranged far and wide and you need to understand that we have some fairly specific terms of reference but we understand the ramifications of what we're dealing with. But in this narrow area of regulatory structures and areas that we are directly focused on, do you have any specific sort of points you want to make about what we can do in terms of regulatory change? That's what we're dealing with. We can leave the system as it is, we can endeavour to make change that we believe will be beneficial. It may mean less regulation, it may mean more regulation, for all I know. But can you be a bit more specific and try and leave us with some very clear messages. We understand the broader background and the framework that you're approaching the exercise.

MS MILNE: Well, our first recommendation was that in fact the Reserve Bank act as a bank of issue to governments at either interest-free or low interest. This would mean that it may have to impose reserve requirements on the private sector banking wherever credit is being expanded if we got towards full employment and it was seen to have an undue inflationary pressure. So those sorts of impacts might influence your inquiry, I would think.

CHAIRMAN: Well, we pretty much ruled out a monetary policy in that area but I note what you say. Ian, do you want to make a statement?

PROF HARPER: Yes, thanks, chairman. I was interested to know whether there was any acknowledgment on the part of the folk who attended the public meeting as to whether there were any micro-economic efficiency gains from deregulation. I mean, were people - what sort of picture did they paint? Naturally I hear the concerns you have raised about the macro performance. Was there any acknowledgment of enhanced consumer choice for example, you know, easier access to - or were people really very down on the whole experience?

PROF REES: I think the message is mixed. I think where for example the access to services, let's say in health, has involved fewer players and less bureaucracy then choice has some meaning. But choice frequently, say in an area like that, there's a great deal of mythology about it; that it either exists or that it really should be available when you most need it - I mean health is one area. I think most people feel that unless certain standards are set and insisted on, the idea that your entitlement to citizenship depends on your economic leverage in any sphere of life only gives - or the choice increases with that economic leverage. And where inequity has increased dramatically over the past 20 years, that has led to enormous social costs which shouldn't - - -

PROF HARPER: Have you particular examples of the financial system being - - -

PROF REES: Well, enormous social costs across the board, across Australian public life.

MS MILNE: Could I say - I was going to say that we certainly acknowledge the impact of groups like Aussie Home Loans coming into the market, and generally because of increased competition it was immediately obvious in the home market range that this had a tremendously beneficial effect. However, it's a long time coming because before that happened, financial deregulation first saw that enormous credit boom with asset inflation and so on - many people hurt in that because of the failure of banks to - - -

CHAIRMAN: Do you think you can put all that down to deregulation?

MS MILNE: The asset inflation?

CHAIRMAN: Yes.

MS MILNE: Well, it certainly appeared to be - - -

CHAIRMAN: Government policies beyond financial deregulation were ineffective? All I'm asking is whether you're putting the cause of these asset inflation and the problems that did occur totally at the foot of financial deregulation?

MS MILNE: I can really only answer for myself at this point. I couldn't really answer for the whole public hearings because we didn't dissect things that quickly. It was only a day's hearings.

PROF REES: Look, I think it has contributed to it. The question about whether it's direct or not, I think is a fair comment - that probably you couldn't say. A bit like the link between some pollutant and the development of a disease, you couldn't argue that it was that direct. But the fact that it contributed to a culture of gambling and greed and speculation that had all sorts of consequences from the eighties into the nineties, I think yes, it did give a cue to that culture.

MR BEERWORTH: Professor, while I was listening to you - I understand that you want us to revalue or seek another set of values for the system. We tend to a bit hard-edged, I guess, and the economic school I went to is pretty hard-edged. But we talk a lot about things like competitive, diverse and efficient financial system. You want us to have what, a competitive, diverse, efficient and non-violent financial system? Is that a fair - - -

PROF REES: Yes, I think so. I mean I think the best form of efficiency is that one which makes best use of all its citizens in the most productive way possible. I mean, what we have had at the moment, what we have achieved since deregulation, is not only enormous inequity but also enormous inefficiency. You can see that nationally, but you can also see it - and we can give chapter and verse detail - in the way certain institutions operate.

MR BEERWORTH: Just a couple of points, if I may. Prof Harper touched on it, but I see one of the recommendations of the Sunday gathering was that the Reserve Bank should make available free of charge money to the government to retire debt. You don't think that could be inflationary, you don't think that might smack of a Weimar Republic or printing money or anything like that?

MS MILNE: I think that was one of the options. We were far more concerned that it deal with employment issues that also safeguard the environment and start to restore the environment, so the emphasis certainly was on employment issues but as well it could be used in - - -

MR BEERWORTH: The second one was - - -

MS MILNE: We are not looking at huge amounts of money, by the way - the notion of 1 per cent of GDP - - -

MR BEERWORTH: We have a foreign debt of $140 billion almost.

MS MILNE: Yes, we also have an Impex system here. I won't go into it simply because I have tabled this document that looks at a range of different solutions; we're not just - - -

MR BEERWORTH: One of the things we are asked to look at in some areas of course is foreign ownership. I see one of the recommendations of the group of 100 is that we should reverse the high levels of foreign ownership of Australian enterprises. Was there any suggestion as to how we might reverse that level or - - -

MS MILNE: There were two ways of looking at that, first of all that there be reform of the Foreign Investment Review Board, which I understand is part of Treasury, is not an independent unit, and that there be sunset clauses on ownership - people make their profits within a fairly short period of time - that it revert to Australian ownership, say after a 15-year period, that the sorts of foreign investment endorsed by them should have high employment potential for Australian citizens and a range of other things, again outlined in this document here. When I say this document, the name of it is The Myths of Deregulation - Background Information For Our Public Hearings.

MR BEERWORTH: Thank you.

CHAIRMAN: I think we have pretty much exhausted the time. It's been a very interesting session and we will certainly take all of this into account as we move to the next stages, so thank you very much for the time and effort. Thank you very much.

MS MILNE: Thank you.

CHAIRMAN: Our last participant today is Shann Turnbull. I haven't had much luck today in describing the groups that individuals have been representing, but maybe I'll leave that to you, Mr Turnbull. If you could start by just announcing yourself and where you're from, we'd be very pleased to hear from you.

MR TURNBULL: Thank you, Mr Chairman, for allowing me to present to you and your colleagues. I represent myself. I've been working with people in North America for the last 20 years on the issue of local and private currencies, and the concern of self-regulation of those organic, community-based currencies is something I've been studying during that period, and I made submissions to the Campbell inquiry on that topic in 1980, and this is really just a follow-up, and I've got - - -

CHAIRMAN: A follow-up on your submission to the Campbell inquiry?

MR TURNBULL: Exactly. Exactly - it is indeed - where I was quoting the work of Prof Hayek on denationalising money and having competing currencies, and the - - -

CHAIRMAN: I'm sure there's going to be a successor to this inquiry, and I hope you have yet another chance.

MR TURNBULL: Yes. Well, I think what I'm really saying is I think technological change is forcing - it's inevitable that we're going to have deregulation through technological change, and I've got an opening statement here which I've distributed on the Internet to the inquiry - I don't know if you've got a copy of that or not - just six paragraphs which I'd like to present to you, and I make - it's headed Consumer Investment Protection and Competitiveness. I've left some copies on the back chair if anybody in the audience wants to pick it up. And I say:

> My comments are made in the context of accepting the statement on page 61 of the discussion paper that during the next 4 years electronic cash and smart cards displace cash and cheques with significant proportion of transactions.

So that's the context of my six comments. The first one is that:

> Recommendations to the committee will have a use by date of less than 4 years unless the committee accepts that technology will make the private issue of new types of money both a feasible and attractive alternative to the current forms of legal tender. The discussion paper did not raise this issue as financial markets "were defined on page 5 note 3 in terms which denied consideration of any markets of either official legal tender or unofficial forms of money". I believe this definition will

seriously limit the scope and relevance of the inquiry and should be changed.

I have consulted with some financial experts on that matter, and they agree with that - a couple of professors of banking. Point 2 is that:

> The role of government should be limited to introducing and underwriting self-regulation so as to introduce more effective and more efficient protection for depositors and investors in Australian financial institutions. This will reduce the cost of government supervision, monitoring and regulation for both taxpayers and financial institutions, and provide international competitive advantages. Elements of this approach are illustrated in the next four points.

Point 3:

> All deposit-taking institutions should be required to obtain deposit insurance for either official or unofficial forms of money from private institutions which have no secured debts and only normal short-term liabilities. The government should provide reinsurance as a transitional arrangement for the deposits of official money which are held by the retail DTIs.
>
> To avoid the taxpayers supporting profits for foreigners, government deposit reinsurance should only be available to deposit-taking institutions which are at least 90 per cent Australian-owned. The government would not be exposed to any costs unless all the equity of the deposit insurers was lost, and it would underwrite immediate deposit liquidity for official money because there may be unofficial forms of money circulating at the same time.
>
> In this way the private sector would take over and extend to all deposit-taking institutions prudential and monitoring functions carried out by the Reserve Bank of Australia. This would encourage the development of loan insurance markets for small business, commerce and industry, as a - as available for mortgages.

Point 4:

> No local or foreign organisation be authorised to accept deposits or manage investment funds in Australia unless they have a constitution which provides depositors and/or investors, their advisers and proxies, the knowledge, incentive, power and funding to regulate the organisation. This would require organisations or trustees to establish supervisory boards appointed by their customers and/or investors with powers to independently report and to take legal, preventive and/or remedial action.

Point 5:

> No local or foreign organisation be authorised to accept deposits and/or manage investment funds in Australia unless it discloses daily to a publicly accessible electronic database - that is, Web page - the number, size and maturity of all its liabilities, control and management processes, names and details of investor, custom-appointed auditors, watchdogs, ombudsmen and so on. This would facilitate the development of independent accreditation services as mentioned on page 293 of your discussion paper.

The last point:

> The government should provide information infrastructure to allow any Australian or foreign investor customers to obtain on-line real-time information listed in the previous paragraph 1 - all financial institutions are meeting the minimum self-regulation guidelines. This could be more important for the global competitive advantage of Australian institutions than "setting technical standards for communication, electronic commerce" as mentioned on page 59 of your discussion paper.

So that I have also attached an article from The Financial Review yesterday week which develops the point that the increasing complexity of the financial products and services and channels of distribution - if you want to regulate it you must have matching complexity, which means you've got to have self-regulation, diversity, back on each financial institution or authority, and that's just a law of nature which you can't escape from.

And the earlier comments I heard here about having a technology unit misses the point about the political control of whoever is providing the products, and in the last century it was customary in America that you didn't get a licence for a company to exist unless it met social accountability. So what I'm suggesting here is along the lines of the last century where you got a licence to exist or to operate on condition that you had social accountability for your customers to protect themselves.

CHAIRMAN: Do you think we ought to start the ball rolling?

PROF HARPER: Yes. Thanks, Mr Turnbull, for your ideas. I'm often interested to read what you've had to say about alternative moneys, a subject which I'm interested in myself.

MR TURNBULL: Great.

PROF HARPER: I'm a little surprised to hear that you accuse us of putting ourselves in a position not to consider that. For a start on page 239 of the discussion paper, para 7.200, we indicate there that we're taking a close look at cybercash and digicash and other forms of alternative monetary systems or settlement systems, payment systems if you wish to put it that way. Certainly it's far from my impression that the committee is closing its eye to that. As to the definition of financial markets, that's an issue about which we had some discussion and again whatever the merits and demerits of the approach that we've taken, it's not our intention deliberately to proscribe our field of inquiry so as to exclude attention given to alternative forms of, as you put it, non-official money. In fact the likelihood of these alternative systems developing on the Internet is something which is of considerable interest.

MR TURNBULL: Yes. Well, I'm glad to hear on that point that you mention about the process of delivering cash. I'm talking about where money is defined in different ways, like it was during the Great Depression when you had stamped scrip, which was negative interest money, and you talked about earlier consumer acceptance, and there are literally hundreds of communities in Europe and North America which accepted this negative interest rate money in the 1930s, and it spread very quickly, and it was created by local communities, and there are experiments I've been associated with in North America in the last 20 years; it's money which is redeemable into real goods or services. People who produce goods or services create the credit, like they used to in this country a hundred years ago. So it's a different - - -

PROF HARPER: I think we have taken some interest in the experience, not just in this country but elsewhere in the world, with privately issued money, banknotes, and of course with the local exchange trading systems which exist here today, many of which, as you rightly point out, are interesting examples in an analog form of the sorts of things that could emerge on the Internet. So I could certainly assure you that the committee is aware of those issues and the secretariat has been beavering away in certain corners there to try and bring us up to speed with some of these developments.

MR TURNBULL: Right, and if I was sitting at my computer and I wanted to transact with somebody, I'd want to have a government-provided Web page where I could check that the people offering me a financial product, it was registered and it had minimum standards of self-regulation and nominated real-life flesh and blood people in my community who I could sue or I could talk to to get comfort that it just wasn't a $2 company set up in the Bahamas.

PROF HARPER: It raises a whole lot of issues about security on the Internet.

MR TURNBULL: Yes.

PROF HARPER: And one of the difficulties is that rather more rapidly than was possible in the old wildcat banking days - it is the case that on the Internet individual suppliers can replicate and counterfeit legitimate suppliers extremely easily, and the so-called government Web page that you raise could of course itself simply be a sham.

MR TURNBULL: I accept that, and I see this - your monument to your investment in your time in this committee is to have a - to last longer than 4 years - something you'd be proud of in your retirement. This is what you need to address.

PROF HARPER: Well, we're certainly looking at the whole range of what technology can open up to us, and alternative forms of exchange and payment is well in there.

CHAIRMAN: Mr Turnbull, you made this comment at the end of your third point, that the private sector would take over and extend to all deposit-taking institutions the functions carried out by the Reserve Bank. I mean, you're saying that in a particular context with deposit insurance and so on, but I mean can you just elaborate a little bit on that for us?

MR TURNBULL: Surely. Politically we need - I think it's a political consensus that the small savers, the poor people, want to have certainty and simplicity, and they want to be able to put their money in the bank and have convenience, and know it's backed by the government somewhere, but you don't want to have the government exposed to mismanagement by the institutions like what happened in America where you had deposit insurance. So the first point is, the first front of deposit insurance is in the private, non-bank private sector.

Banks are particularly unsuited to take risks of value because they're so highly geared but insurance companies have minimal liabilities and they've got a balance sheet ideally suited to take value risks. So I'm talking about those sorts of institutions being the front-runners doing the deposit insurance.

Now, those deposit insurers could be for all sorts of money, the official money and unofficial money. But to give certainty the government would then reinsure those deposit insurers, so the government would only be at risk if the deposit insurers lost all their shareholders' funds. So they're the buffer, and because those shareholders could lose all their funds, they're going to watch very carefully the credential requirements of the people they insure. Then in that way they would take over the Reserve Bank function in a way where they've got real hurt money in there rather than just policy money - policy concerns like the Reserve Bank - - -

CHAIRMAN: A form of self-regulation.

MR TURNBULL: Exactly and it's an example, my first example of this approach of self-regulation of opting out where the government structure encourages - divests itself of direct intervention. I mean governments weren't in the business of money in the last century, except in England, and it was self-regulated, but there's a lot of problems in that. I think we've learnt a lot and we can design a much better self-regulating machine than in the last century before we understood about designing self-regulating machines. The science of self-regulation has only developed in the last 50 years and has yet to be applied to social institutions.

MR BEERWORTH: Shann, on that point you make what seems to be an absolute statement. I wonder if you really meant it: "The role of government should be limited to introducing and underwriting self-regulation so as to introduce more effective and efficient protection", etcetera. Do you mean that literally? That there should be no direct government role once proper self-regulation has been introduced?

MR TURNBULL: Certainly. Al Gore, Vice-President of the United States made a speech in February this year, and he said, "We don't have the language in politics to understand how to manage society in information aids" - he said, "The role of government should be to imprint the DNA of our social institutions." And DNA is a code of self-replicating - to define whether you're going to be an animal or person and how you self-regulate yourself. And so he saw the role of government of using the language, the lingo, the metaphors, the information aids, where the government doesn't have any direct interventions but creates - and how you make that operational is the conditions that you're allowed to incorporate.

You look at the memo and articles of an incorporated body and say, "You're not allowed to incorporate unless you have a supervisory board by your investors or customers to control you."

MR BEERWORTH: That was my second point. Apart from the fact that even Al Gore tells Al Gore jokes of course.

MR TURNBULL: Yes, he told jokes in the speech too.

MR BEERWORTH: The second point you made struck me - given my background as a corporate lawyer it seemed unusual. You'd require organisations to establish supervisory boards appointed by their customers or investors with powers - - -

MR TURNBULL: Yes.

MR BEERWORTH: But that doesn't happen at the moment, the investors appoint the board of directors?

MR TURNBULL: Yes, but the whole point about a modern board of directors you've got concentration of power. You know what absolute power does, it's exposed to corruption. And the solution to the corruption of concentration of power is divided power to get checks and balances. I mean Lend Lease has tried this with its property trust. It's recognised a conflict of interest of building properties and selling it to the trust and it has set up an advisory board. The fallacy of that - it's window-dressing because that board is still under the same management control; it's not elected by the investors in the property trust. What I'm talking about is the unit holders appointing a supervisory board to decide what properties they should transfer in an out from the management company.

MR BEERWORTH: But in the case of an ordinary corporation, say BHP - just to take a major example - what sort of supervisory board would you have and who would elect them apart from a board of directors?

MR TURNBULL: It wouldn't be the board. The shareholders elect the board of directors by all means. Then you'd have stakeholder councils appointed by the leading stakeholders, and it would have to be custom-designed for each one. There's no set answer to your question. You'd have to look at what are the main stakeholders. Now, in a company - an enterprise cannot exist without its customers, its employees and its suppliers. Examples of this are in Japan and in Europe where they involve those - all those stakeholders are knitted together in the government structure of the leading organisations and they get information and feedback. The world's expert on the competitiveness of your products are your customers. So you link them into your control structure and you get feedback.

CHAIRMAN: That's largely being done in informal ways - the most effective forms of that are the total process of involvement rather than sort of some supervisory-type body where everyone is brought together in a formal structure. If you're talking about customers and linkages being integrated into the process - - -

MR TURNBULL: Yes, like in Japan in the Keiretsu for instance, it's the customers - the chief executive of the customer companies sit down on a monthly and even a weekly basis with the chief executive of a producing company to review their operation.

MR BEERWORTH: So in the case of the National Bank you'd have what? The borrowers and lenders would meet - - -

MR TURNBULL: Exactly. And if I was a banker, a well-known banker that had a bolus association, rather than fighting them with those secret letters that they had, I would harness that customer interest into an advisory board to tell me what's really going on in my branches. That gives me competitive advantages to design my products, to provide protection and to hear them and get confidence - a way of bonding customers to the business. In Telecom, there's a Telecom Users Association, there's two. Now, rather than fighting them I would harness them and formalise them to give them a hearing.

In America Ralph Nader introduced citizen utility boards whereby the electrical utilities, gas and telecoms - people donate $10 per year from millions of paper, and maybe a few hundred thousand donated, and they set up these citizen utility boards to represent the consumers on the regulatory authorities. So it's self-regulation, you get requisite variety and decentralised control. So you don't have the cost of regulation on the government; you're privatising the cost of regulation.

CHAIRMAN: In a nutshell you provide the backstop by your insurance, reinsurance - - -

MR TURNBULL: That's right.

CHAIRMAN: - - - ultimate government guarantee, and then you throw it all back to the system - - -

MR TURNBULL: That's right.

CHAIRMAN: - - - in some coordinated way to look after themselves.

MR TURNBULL: And if you haven't designed the system properly then of course you're exposed. But that's the incentive for the company to make sure - - -

CHAIRMAN: It would be a pretty radical outcome for this country, wouldn't it?

MR TURNBULL: You could be a world leader. It would be a competitive advantage.

CHAIRMAN: Is there anywhere around the world that you can point to - - -

MR TURNBULL: Yes, certainly. I've written up in referee journals, in Corporate Governors International I have an article on a case study of a system in Spain in the Basque area called Innovations and Corporate Governance. In Montregon where there's a banking system which is owned by the customers, the employees of the bank get incentives according not to the profits of the bank but the profits of the customers. It is one of the most profitable banks in the world; it's in the top 20. It started about 40 years ago. There's a number of examples - the Japanese Keiretsu is another example. There's a number of international examples of this.

You do not find it so much in America because they have this anti-trust ideology that you cannot form relationships with related party transactions like you do in Europe and Japan but this is what the citizen utility boards do. It is radical, it is different and I believe it's the only way you can provide adequate protection for customers by having requisite variety. The only way you can manage complexity is with complexity and you cannot do it centrally; you must fail.

CHAIRMAN: Well, that's crystal clear. I think we've probably about covered it. I know some of my associates have to get on planes. I said we would finish pretty much on time. We thank you very much for your very interesting contribution.

MR TURNBULL: Thank you.

CHAIRMAN: **I** thank everyone who has participated and sat through the day. I hope it has been of value. It's certainly been of value to the committee and we're about to embark on the same process around the country, and we have a very high degree of interest and response, so we're going to have an interesting week or two. Thank you very much.

AT 5 PM THE INQUIRY WAS ADJOURNED UNTIL
TUESDAY, 10 DECEMBER 1996