Executive Summary

The ***Consumers' Federation of Australia*** submits in summary that:

1. The Inquiry should assess whether the market can absorb its recommendations to avoid a repeat of the excesses which occurred in the immediate period after deregulation.

2. The Inquiry evaluate *Campbell s* contribution to a better Australia- where it has fallen short, where it has improved the system and to offer solutions.

3. The Inquiry must recommend a structure for the financial sector that operates fairly and equitably as well as efficiently.

4. The system should, after this Inquiry ensure:

- Fair treatment of consumers.
- The capacity of the financial sector to contribute to the well being of the economy.
- A level of regulation that is appropriate to achieving equity and efficiency.
- The primacy of the domestic market.
- A regulatory structure that is effective.

5. The Inquiry recognises the national dimension of the market and where possible seek to install a national system of regulation.

6. That the Reserve Bank be subject to a community responsibility obligation so that banks and others under the RBA's supervision are not able to ignore community expectations.

7. Primacy be given to the Australian domestic market.

8. The Inquiry determine what is the level of real competition in Australia and to identify the indicators.

9. Broaden the range of organisations that can provide banking services.

10. The notion of national champion institutions be rejected and that mergers be acceptable only where the public interest can be advanced.

11. That the Inquiry devise a protocol whereby the introduction of change does not occur without formal attention being paid to consumers interests.

12 A definition of “banking business” in the Banking Act be developed.

13. A standard of “plain numeracy” be developed for use in disclosure documents.

14. Enforcement processes in all aspects of the system be reviewed for their adequacy.

15. There be a common gateway, called the Financial Ombudsman, housed in the consumer protection agency to direct consumers to the appropriate dispute resolution body.

16. The Inquiry identify the gaps in access to ADR and facilitate the development of targeted schemes to meet the needs of those consumers.

17. A new agency be established charged with responsibility for consumer protection within the financial sector.

18. Competition regulation to remain within the ACCC.

19 The Reserve Bank to remain as prudential controller of banks and, perhaps, other bodies delivering banking services.

20. The Insurance and Superannuation Commission to prudentially control insurance and superannuation bodies.

21. Licensing to be considered as more important part of the prudential process - at the higher risk end of the market.

22. In whatever form regulation takes, the values should be universal across the system.

The Consumers Federation of Australia (CFA) welcomes the opportunity to make a submission to the Inquiry. CFA considers that it is timely to undertake this Inquiry because the Australian financial sector of 1996 and the environment in which it operates, both domestically and internationally, is a far cry from that existing at the time of the *Campbell* recommendations. The House of Representatives Standing Committee on Finance and Public Administration its report "A Pocket Full of Change" in 1991 indicated that its assessment of deregulation had been provisional. Now is the time to undertake the full assessment.

The recommendations of *Campbell* were, in their context, radical and CFA considers that the financial sector was not sufficiently mature to absorb them. This is evidenced by the banks' commercial lending policies, the difficulties suffered by individual companies following foreign exchange deregulation and the impact of foreign exchange speculation on the economy. At the micro level unsolicited offering of increased credit by banks led to over commitment for some consumers and a bad debt problem for banks. It is essential that this Inquiry should assess whether the market can absorb its recommendations to avoid a repeat of the excesses which occurred in the immediate period after deregulation.

The basis of the CFA submission is that the Inquiry must definitively evaluate *Campbell s* contribution to a better Australia. We would expect the Inquiry to identify where post deregulation performance has fallen short and to offer solutions. The Inquiry must also look into the future with a view to identifying the developments that could affect the Australian financial system and recommending the means by which the system can accommodate such developments. Specifically, the Inquiry must recommend a structure for the financial sector that operates fairly and equitably as well as efficiently.

We say that if the financial system is to operate at the desired level of efficiency it must be able to inspire consumer confidence. Consumers must be comfortable that the system will treat them fairly; that there will be financial stability; that the system does not exist for the benefit of the mega-institutions; and they must be able to see how the rhetoric about competition translates in the real world.

CFA considers that the ultimate test of the efficiency of the financial system is the way in which it treats consumers. The role of consumers in the market model suggests that they are the sovereign interest. CFA considers that the Inquiry should direct its mind to the following values:

- Fair treatment of consumers.
- The capacity of the financial sector to contribute to the well being of the economy.
- A level of regulation that is appropriate to achieving equity and efficiency.
- The primacy of the domestic market.
- A regulatory structure that is effective.

The thrust of our submission is encapsulated in the following Financial Consumers' Charter of Rights:

1. A stable and safe financial system
2. A system that does not discriminate against consumers on demographic or geographic grounds.
3. Honest treatment
4. Meaningful disclosure
5. Informed choice
6. Safe and reliable products
7. Independent redress mechanism
8. Protection of privacy
9. A properly defined and respected legal relationship with service providers
10. An effective regulator with dedicated consumer protection powers and adequate resources.

In this submission CFA has taken the widest possible view of the financial system so that it encompasses the traditional players, any that are likely to emerge and those factors which are likely to affect the availability or cost of finance such as the stock exchange and derivative markets. In other words CFA is concerned to ensure that the Inquiry considers all aspects of the system that may influence, directly or indirectly, the welfare of consumers.

Noting that responsibility for the legislation and regulatory structures is shared between the Commonwealth and States, CFA asks that the Inquiry not be

inhibited in seeking to install a uniform system. Australia is a national market and non-uniform forms of regulation are a relic of colonial days. Insofar as regulation is concerned it is difficult to accept that a fragmented approach contributes to efficiency. Accordingly we say that if the Commonwealth's constitutional powers do not reach into a particular area there be a formula similar to that employed in the regulation of corporate affairs to ensure uniformity and a national approach.

Our submission deals in turn with each of the terms of reference:

1. *The Inquiry will report on the results arising from the financial deregulation flowing from Campbell: This will involve examining and reporting the consequences for:*

(a) the choice, quality and cost of financial services to consumers and other users

In this respect CFA acknowledges that there has been an increase in the range of financial products available. We note the demise of government owned banks and the failure of foreign banks to make the expected impact on the retail market. We also note the recent entry of new players into the housing finance market. As the Reserve Bank has noted there were considerable changes.

The real question for consideration is what changes were attributable to *Campbell* and what were inevitable. CFA cannot answer authoritatively but suggests that the many of the changes since the mid 1980s would have occurred without the impetus of *Campbell.*

On the matter of cost there can be no doubt that bank fees have increased and banks are adopting, with Reserve Bank approval, a stronger line on fees. Many within the community say that the banks' approach to fees is greedy and that consumers have been forced to pay for losses sustained by banks as a result of their reckless lending policies especially in relation to the 1980s style entrepreneurs. Economically unsophisticated as they may be, the views of ordinary Australians should not be dismissed by the Inquiry. Even if they are wrong, the fact that they exist reflects on the level of confidence in the community.

The performance of banks *post-Campbell* has been, to say the least, disappointing. The Inquiry will be aware of the concern in rural areas about the way in banks are withdrawing services. The same thing is happening even in inner suburban areas eg in the inner Sydney suburb of Waterloo banking facilities are being withdrawn and social security beneficiaries are losing a service. Banks say that they are under profit and margin pressure because of competition. Services are of a lower quality and more expensive. Why this should be so is hard to follow in the light of the competition-is-good-for-you-and -is-the-saviour-of-the-economy rhetoric. Consumers appear to be no better off as a result of competition.

CFA believes that the financial sector as a whole has an obligation to service rural areas. If the banks are forced out by competition it should follow that NBFIs, the competitive alternative, will fill the void. So far, that has not happened and CFA considers that the rural community has suffered as a result of deregulation. We note that the New South Wales government has found it necessary to introduce a scheme to encourage credit unions to operate in country areas. We recommend that the Reserve Bank be subject to a community responsibility obligation so that banks and others under the RBA's supervision are not able to ignore community expectations.

Outside the banking / deposit taking area CFA notes that there have been changes and significant rationalisation within the financial system. The general insurance industry has seen many takeovers / mergers whilst life companies have moved away from their traditional position as "prudential" organisations and are more accurately described as financial services providers with life insurance being one product. In some respects there has been a diminution in the level of competition following the reduction in numbers of participants. Another observation we make is that as convergence takes place eg banks become insurers the level of service to consumers falls away because of a lack of expertise.

<u>(b) The efficiency of the financial system including its international and domestic competitiveness</u>

CFA does not have a simple index by which to measure this. It considers that the system has not yet completely matured following *Campbell.* That is to say

that new participants, new fields of operation and new ways of doing things have not had sufficient time fully to develop.

It is important in CFA's view for the Inquiry to give primacy to the state of the domestic system. That is where Australian consumers live and where they participate in the system and where they are affected for good or ill. There is, of course, no doubt that the international market is a significant factor but CFA submits that the Inquiry should be working to ensure that the domestic system works properly. We believe that this Inquiry should not be about making it easier for Bank X or Insurance Company Y to become players in the international market. Participants in the Australian system, whether they be home grown or international, must subscribe to the needs of, and the standards expected in, the domestic economy.

CFA thinks it would be a useful contribution by this Inquiry to determine what is the level of real competition in Australia and to identify the indicators.

Banks, especially, make much of competition. They say it forces up their prices. They say that consumers have a choice - if they do not like increased fees they can go elsewhere, to the competition - but we say that in many cases the existence of competition is illusory. For example, to change from a bank to a building society is not necessarily simple. In order to educate consumers and satisfy their need for confidence the Inquiry should ask the proponents of competition to demonstrate the benefits that competition has brought - in a practical way, not by sweeping statements and rhetorical flourishes.

CFA considers that there is a need for a competitive marketplace in financial services. The intensity of competition, however, needs to moderated with an appropriate level of prudential control. In respect of "retail banking" services it would be useful to measure whether the barriers to entry are too high. In particular it would be useful to determine whether the regulation of NBFIs is at such a level as to restrict that sector's capacity to compete in the provision of banking services.

(c) The economic effects of deregulation on growth, employment and savings

CFA is of course aware of the movements in these indices- the patchy growth patterns, the unacceptably high level of unemployment and the poor savings

performance are all well known. CFA is not however able to measure the contribution of deregulation to these negative developments. All three are critical factors in the economic equation and we believe that any of the post-*Campbell* developments which retarded them should be reversed. We say that these issues should be used as the benchmark for any recommendations emerging from this Inquiry.

(d) The evolution of financial institutions and products offered by them and the impact on the regulatory structure of the industry

There is no doubt that post *Campbell* saw considerable developments in the range of service providers and the range of products. CFA does not necessarily regard that as a negative development. We do, however, emphasise that in establishing the appropriate level of regulation the twin primary objectives should be to protect the interests of those who deal with the service providers and to protect the economy. The interests of institutions should not be able to dictate the process.

CFA opposes concentration of ownership within the financial sector. We are not convinced that it is a good thing for the economy to see banks and insurance companies merge or to hold significant cross-holdings. It could threaten the stability of the system and reduce competition.

We are at a loss to understand how Australian consumers would benefit from a merger of National Australia with ANZ or if Westpac took over one or more of the regional banks. CFA takes the view that the banks who are advocating this approach should be put to the proof. They should explain why their view should not be dismissed as self-interest. They should demonstrate, rather than assert, how consumers will benefit. They should explain how the Australian banking sector, which would become even more concentrated than it is now, will make the financial system a better place. The proponents of the mergers should be required to demonstrate that the mergers will lead to more than a greater concentration of market power in a smaller number of banks. CFA say that the experience of overseas systems where mergers took place should be examined to assess the validity of the claims for greater efficiency.

The notion of national champion institutions reflects a self indulgent approach to the structure of the economy and serves only the interests of those who

advocate it. Nobody has demonstrated why it is necessary or how it would do anything to improve the system. In any event, if Australian banks want to achieve this status how have they been prevented from doing so under present arrangements? The push in this direction suggests that its advocates are looking to this Inquiry for special treatment or that they see the financial system as their own preserve.

Overlap in the regulatory structure developed as convergence took place eg where a product previously the preserve of one sector is more widely available eg insurance marketed by banks. It is necessary to consider whether the existing regulatory structure adequately deals with the new look market-place.

2. The Inquiry will identify the factors likely to drive further change including:

(a) technological and marketing advances

CFA has no doubt that there will be technological developments in the financial sector and, based on experience, there will be a high level of uptake by Australian consumers. Whether these developments turn out to be advances will depend to a large extent on the recommendations of this Inquiry. The same comment applies to changes in marketing styles.

Whilst CFA has no objection per se to technology it is appropriate to say that the community should not become distracted by the gee-whizzery of new developments. It needs to be kept in mind that not everybody is comfortable with it, in particular the aged. The capacity of the community to absorb changes of this nature is a factor to be considered and it should not be overlooked that in financial transactions it is necessary to have access to a living person to ensure that the transaction is what the consumer expects.

The experience with the introduction of electronic banking was a salutary one. The banks proceeded on the basis of satisfying only themselves. The history of this matter shows that banks approached this significant development with one concern - self interest. The banks made no concession to the fact that they imposed a late 20th century delivery system on to a late 19th century body of law. For example they took the view in respect of lost ATM cards that their's was the sole consideration and that consumers who said an unauthorised person had used their cards were dishonest. It took a substantial effort to change their attitude. The experience was an illustration of how a dominating position can be exploited. The introduction of smart cards involves a similar lack of sensitivity to consumers' legal interests.

CFA considers that this is an important mandate for the Inquiry. The combination of a financial service provider with an organisation such as Telstra that has a well developed marketing network could produce this problem - how is the provision of such products to be regulated? Apart from fair trading issues does this unusual (at first glance) combination pose challenges to the existing system.

The impact of a development such as the Internet could provide consumers with a wider choice of products. There are, however, questions about the impact such commerce would have on the stability of Australian system, on competition - especially if the providers are from jurisdictions without standards as high as those in Australia - and on consumer protection generally. How could an Australian consumer who has been cheated in an Internet transaction with an overseas source seek redress.

CFA does not expect the Inquiry to identify precise developments but submits that it is essential to devise a protocol whereby the introduction of change does not occur without formal attention being paid to consumers interests - and not consumers' interests as perceived by financial institutions. It is also very important that a strategy be in place to ensure that Australian regulators react in a timely fashion ie before, not after, a problem develops. Australian regulators must look forward, not act after the event.

(b) International competition and integration of financial markets

As discussed above CFA considers that the Inquiry should be primarily concerned about the domestic market. If, however, the financial market becomes global - one where the participants in Australia are not necessarily Australian based - there is no reason why Australia should abandon its standards. If globalisation were to take place we would expect that the Australian Government would have made appropriate arrangements through international treaties/conventions and memoranda of understanding to ensure that Australian consumers and the Australian economy did not become hostage to foreign priorities.

An example of the significance of this issue can be seen in the case of stored value cards schemes that are soon to be launched in Australia. These will involve international industry participants. In a report dated 22 August 1996 the Reserve Bank said that it is working to ensure "...that internationally consistent supervisory requirements are applied to these schemes [that have an international dimension]." CFA notes this does not say that any Australian codes or legislation that are relevant would be applied. It could well mean that "internationally consistent" could result in a lessening of consumer protection provisions. This example illustrates the need to maintain consumer protection

levels in the light of the imminent globalisation of products and the Reserve Bank's current approach.

CFA has no objection to the entry of foreign owned financial institutions - provided that they are accountable to the community to the same degree as are Australian institutions.

(c) Domestic competition in all its forms

CFA supports the notion of a competitive financial system. By that we mean a state where service providers compete to obtain the consumers' patronage. In determining the existence of competition in that sense we say that account should be taken of price, product range, the number of suppliers, the capacity for new suppliers to enter the market and consumers' capacity to move from one sector of the system to another. The competition must of course be real, it must be fair and its benefits must be available to all of the participants especially consumers.

CFA considers that it is unrealistic to develop policy in the expectation that market forces operating in the financial services will produce either safe products (see terms and conditions of use for present stored value cards and those when EFTS were first introduced) or products that are truly differentiated enough to give consumers a real choice. Nor is the use of a product by financial services consumers an indication of product usefulness. The lack of a more appropriate alternative and restrictions on access to that alternative play a significant role in customer choice. Marketing ploys by industry are also an important factor, for instance, when Bankcard was introduced the banks flooded the market by sending cards to customers whether or not they wanted them.

We suggest that the Inquiry should examine the level of competition and especially identify obstacles to real competition whether they be by conduct on the part of market participants or imposed by inept or outdated regulation. As mentioned earlier, competition should be tempered by appropriate levels of prudential control. To achieve competition it is necessary that consumers are knowledgeable about the market and its products. It is necessary to ensure that consumers have adequate notice of the risk status of respective products or at least are able to determine that status. Clearly consumers cannot expect the

same standard of protection in a speculative product as they would expect in dealing with a bank. The key point however is that consumers must be able to recognise the risky product.

Banks have traditionally been in a special position. Entry to the sector has been limited and banks have an effective monopoly on the payments system especially in relation to cheques. CFA suggests that if banks wish to maintain their domination they should be required to assume community service obligations. As a matter of appropriate regulation it is necessary to define "banking business" in the Banking Act. The meaning of that term has been in an unsatisfactory state since 1914 and way the term is used in the Banking Act brings the system of regulation into disrepute.

CFA notes the claim made in the post deregulation market that consumers - especially customers who query the level of bank charges - have competitive alternatives. CFA is not convinced that there is truly effective competition. To change from banks to NBFIs is not without difficulty and often involves more than accounts being closed. Very often loans are involved and costs are associated with re-negotiating them and, in addition, fees for termination of credit arrangements are common and will no doubt increase with deregulation by the Consumer Credit Code.

(d) Consumer needs and demands

Consumer protection is more than a matter of prescriptive laws. It involves laws, disclosure practices, education, effective enforcement and an accessible redress system. A high level of quality in the regulatory apparatus should be the aim. It should be as simple as possible, easily accessible and impose compliance costs as low as possible.

We make the point that a quality consumer protection regime is one that supports fair competition. As the Trade Practices Act demonstrates, a proper consumer protection regime adds no burden to honest traders and, indeed, rewards them by penalising those who seek dishonestly to exploit consumers. A properly functioning consumer protection scheme therefore benefits not only consumers. The honest service providers benefit because they are able to participate equally and the market benefits because consumers are confident and competition is not impeded.

Specific aspects of consumer protection are discussed below:-

Fair trading

CFA considers that it is fundamental that consumers should be treated honestly. No efficient financial sector could countenance anything less.

The concept involves fair treatment which, in addition to honest dealing, requires that imbalances between the very large actors that operate in this sector and consumers are redressed. Responsiveness to consumer concerns and access to justice issues are relevant in this regard.

The example of the dishonesty practised on disadvantaged consumers by elements within the life insurance industry in relation to investment products illustrates that the sector is no stranger to this form of conduct. Banks also have been associated with unfair treatment of customers eg in the foreign loans cases.

The life insurance example illustrates the difficulties encountered in making policy and procedural changes to prevent a recurrence. The experiences in attempting to install a proper form of regulation of the life industry and its intermediaries demonstrate that the notion of complete deregulation as advocated by some is fantasy. Some players in the sector cannot be trusted beyond self-interest. The life industry has been campaigning about the regulatory burden it faces in respect of consumer protection. As discussed above the array of legislation imposes no burdens on those who are honest and, indeed, protects them as well as consumers. The fact that a company may now have to install a compliance section in its organisation says no more than it should have done so from the start of business.

Consumers, of course, have a vested interest in the preservation of competition. The absence of a competitive market place increases the possibility of market abuse. The raison d'être of the Trade Practices Act is the preservation of a fair and competitive market. In CFA's view that legislation must remain intact.

Prudential supervision

Consumers have an interest in prudential regulation because, ultimately, it works to ensure that the benefit the consumer has paid for will be delivered. In this respect depositor protection is important. Prudential supervision is the mechanism by which community confidence in the financial system is maintained. CFA notes that there is no guarantee of deposits but the current emphasis in the Banking Act on depositor protection should not be weakened. There is something to be said for consideration of bank level depositor protection being extended to the NBFI sector.

CFA does not advocate prudential supervision of the whole system - clearly an activity such as buying shares on the stock market is not appropriate but, as with the Stock Exchange, the alternative mechanism is that of disclosure. Where a consumer is dealing in part of the market that is not appropriate for prudential regulation there should be a regime of disclosure that enables risk to be assessed and transactions to be carried out in a state of knowledge.

Disclosure practices

Consumers need to make informed choices about financial products, especially those of an investment nature. Disclosure is important in this regard. What that level of level disclosure should be is a matter of judgment. Consumers could be given an excessive level of information with the result that the disclosure becomes meaningless. CFA sees disclosure as an important factor in comparing products and submits that in a disclosure regime there are universal issues that need to be drawn to consumers' attention.

It is now well accepted that plain English should be a feature of documents used by consumers. We suggest that in disclosure statements this should be complemented by "plain numeracy". That is to say that it should be recognised that many people have limited numeracy skills and, for them, disclosure could be ineffective without some attempt to explain simply. A good example of this problem is to be found in the argument over whether disclosure in life products should be in percentage or absolute dollar terms. The Insurance and Superannuation Commission has undertaken research which demonstrates that consumers are more comfortable with dollar disclosure.

The Inquiry will not be able to define a disclosure regime for each and every product but it could recommend a particular approach to disclosure. A model might be s 1022 of the Corporations Law which requires disclosure of "information investors and their professional advisers would reasonably require and reasonably expect to find in the prospectus , for the purpose of making an informed assessment of [what they are getting for their money]". CFA suggests that disclosure in respect of financial products should be "intelligent" in the sense of being a level measured to enable a reasonable consumer to make an informed decision.

In this regard also, CFA supports the requirement for disclosure provided for in the uniform Consumer Credit Code.

Education

CFA believes that the market would be served by having participants who are informed. Disclosure is one important method. Education provides a more long term basis of informing consumers.

We recognise, based on experience, that education of consumers is a wholesome ideal that is largely ignored in practice. Nevertheless, CFA supports the concept of educating consumers even if only to ensure that, by knowing something of how the system works, their expectations are realistic. Consumers are entitled to expect that banks will provide a relatively high level of security but they should be able to understand the factors that contribute to greater risk.

Effective enforcement

There is no point in having a consumer protection or investor protection or prudential supervision system if there is no way of making sure that they are being enforced. It has been a feature of the Australian landscape for too long that governments are half-hearted about enforcement. The area of corporate regulation is one example of regulatory failure. Any recommendations the Inquiry makes on regulation should include a warning that if government fails to provide adequate enforcement the regulatory scheme will be a waste of time for both consumers and the honest service providers.

Accessible redress system

It is inevitable that from time to time disputes will develop in transactions between consumers and finance service providers. These could be the result of unrealistic expectations on the part of the consumer or sharp practice by a service provider or a serious breakdown in the legal relationship. In the case of dealings with financial institutions such as banks and insurance companies no greater degree of imbalance in commercial dealings can be imagined.

In an ideal world these disputes would be resolved by negotiation or through the courts. Unfortunately the formal justice system has failed the community and, realistically, is out of reach of most consumers. The informal dispute resolution systems which have been developed represent the modern alternative and often the only way of obtaining a resolution of a dispute. There is no doubt that the informal systems dispense palm tree justice but given the shortcomings of the formal system that must suffice.

CFA supports the existence of the informal system but with strict qualifications. The resolution bodies must be independent. They must include a consumer voice - not as a delegate of the consumer but to provide a consumer perspective. They must be properly resourced. They must be accountable to the public. They must be easily accessible and in this respect they should be targeted to the relevant market sector.

Of the bodies that now exist CFA regards the General Insurance Claims Review Panel as probably the best model. It is free, it has consumer participation, it reports publicly, issues written reasons and its decisions bind the insurer but leave open to the consumer the right to take a matter to court. Its weakness is in its governance where the board of the umbrella administrative company is dominated by industry related members. Another weakness is that the government has too much of a role in the daily operation of the Scheme. If these weaknesses were rectified the Panel would be the ideal model.

Common to most schemes is the problem of public awareness. The Banking Ombudsman is probably best known because of its name - the public knows what an ombudsman does. The likelihood that a consumer would know that the General Insurance Claims Review Panel does much the same thing as the

Banking Ombudsman is unlikely. Much effort is needed to make the public aware of the various forums and, again, in this context targeting is important.

In this respect CFA does not advocate an office of Financial Ombudsman because the products involved are too diverse. It suggests however that there be a common gateway, called the Financial Ombudsman, housed in the recommended new consumer protection agency. The role of this mechanism would be to provide a focus for the public and to direct consumers to the appropriate body.

CFA sees it as an important role for the Inquiry to identify the gaps in access to ADR and facilitate the development of targeted schemes to meet the needs of those consumers.

3. The *Inquiry will make recommendations on the regulatory arrangements and other matters affecting the operation of the financial system (including prudential and other regulations made by the Reserve Bank and other bodies) as will:*

a.best promote the most efficient and cost effective service for users, consistent with financial market stability, prudence, integrity and fairness;
CFA acknowledges the importance of these qualities. The regulation of the financial system has several strands:-

- Consumer protection
- Competition
- Prudential
- Licensing

The development of Codes of Practice which uphold admirable values is no substitute for statutory regulation. CFA does not object to Codes being used as an initial approach to improving conduct but it strongly holds to the view that it is no more than a secondary form of regulation. Codes suffer from the lack of adequate enforcement, often offering no enforcement rights to consumers. They are often lowest common denominator in quality. Because they are usually industry based they lack a proper appreciation of public interest. The introduction of Codes is welcome if it is more than an attempt by industry to avoid public accountability.

In relation to the administration of consumer protection CFA believes that it is essential that it be a specialist responsibility - not tacked on to an existing institution as an ancillary issue.

CFA submits that it is appropriate to establish a new agency charged with responsibility for consumer protection within the financial sector. The system would benefit in the following ways:

- there would be an appropriate level of commitment to consumer protection;
- a uniform approach;
- elimination of overlap between agencies.

The consumer protection functions which repose in the Insurance and Superannuation Commission (ISC) eg under the Life Insurance Act would be transferred to the new body. The consumer/investor protection provisions of the Corporations Law currently administered by the Australian Securities Commission would also be administered by the new body. We suggest that these matters be specifically enshrined in the Trade Practices Act. Much of the conduct covered by consumer protection provisions in other legislation are caught by the Trade Practices Act - CFA notes the trend to using s 52 of that Act as a catch-all provision against misleading conduct. The new body would also be responsible for disclosure standards and for licensing eg of investment advisers, finance providers.

CFA considers that the ACCC is the logical regulator of competition policy. In this respect CFA considers it timely to review the concept of "market" as it is used in the Trade Practices Act.

In respect of prudential control - embracing capital adequacy, solvency, stability of the system, depositor protection and, as recommended earlier, consumer protection compliance - CFA's view is that arrangements should, for the most part, remain unchanged. With the emerging significance of superannuation funds that area should be the focus of a specialised agency - the Insurance and Superannuation Commission (ISC) who should also monitor the insurance industry, both life and general.

It is submitted that the Reserve Bank should maintain its role of prudential supervisor of banks and other institutions if they are permitted to offer

banking services. Regulation of NBFIs is currently a matter for uniform State legislation but CFA considers it would be appropriate to bring prudential supervision within the responsibility of the Reserve Bank. CFA notes in this regard the framework available under the Financial Corporations Act.

Under the current system there is the possibility of inconsistent regulation of occupational licensing. The case of financial advisers is a good example. It is submitted that licensing of advisers should become the responsibility of the new consumer protection body.

CFA submits that the Inquiry should consider the role of licensing as a strand of regulation. Licensing, if not positive licensing at least negative licensing, or even just registration - depending on the particular activity should be a requirement for *all* participants in the financial services sector. We say that this is a basic requirement to ensure

- prudential requirements are met;
- qualifications / competency standards are met;
- accountability; and
- proper monitoring and enforcement.

It also creates opportunity to require industry participants to meet set standards for consumer redress mechanisms. eg. the FBOCA Benchmarks.

b.ensure that financial system providers are well placed to develop technology, services and markets and that the financial system regulatory regime is adaptable to such innovation;

As mentioned earlier CFA considers that the regulatory framework should be as flexible as possible in order to accommodate new technology and delivery systems. The capacity of the Australian system to deal with new technology will be depend on how the regulators and policy makers approach the issues. CFA submits that the system should be structured so that technology issues are dealt with before they become problems. There is a role for government in determining how new technology will apply. That is to say that there should be no presumption that because technology is new it is good. Many issues will be involved not the least of which will be the consumer interest. The example of electronic banking referred to earlier demonstrates what should not happen.

c.provide the best means for funding the direct costs of regulation:

CFA assumes that, however the regulatory system is structured, the costs will be, as usual, passed on to consumers.

d.establish a consistent regulatory framework for similar financial functions, products or services which are offered by differing types of institutions.

CFA does not believe that the case for a mega-regulator has been made out. If there is to be change in the structure those who advocate it should demonstrate the shortcomings of the existing scheme and why a new scheme is necessary to overcome them. As presently advised CFA considers that with the changes it has recommended in relation to consumer protection the existing structure is satisfactory. That is not to say that there is no need for adjustments.

No matter how the regulatory framework is developed it is essential in CFA's view that the regulatory values are universal. In this way all players will be treated equally