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TRANSCRIPT
OF PROCEEDINGS

PRODUCTIVITY COMMISSION

REVIEW OF AUSTRALIA'S CONSUMER POLICY FRAMEWORK

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

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY ON TUESDAY, 19 FEBRUARY 2008, AT 9.09 AM

Continued from 18/2/08

MR FITZGERALD: Good morning, everybody. Welcome back to the second day of the public hearings in Sydney in relation to the Review of Australia's Consumer Policy Framework. So we start this morning with the National Children's and Youth Law Centre, and if you'd like to give your full name and the organisation you represent, and then some opening comments, and we can have a discussion. Can I just clarify also whether or not you've put in a written submission at this stage?

MR McDOUGALL (NCYLC): I've just finished one.

MR FITZGERALD: You've just got one.

MR McDOUGALL (NCYLC): It's on your desk just there.

MR FITZGERALD: Okay. Great. Thanks. So your name and organisation.

MR McDOUGALL (NCYLC): James Duncan McDougall from the National Children's and Youth Law Centre.

MR FITZGERALD: Good. James, over to you.

MR McDOUGALL (NCYLC): Thank you. There was a further submission that I've provided paper copies of and sent an email version to Jill Irvine which basically I suppose further develops some of the arguments from our original submission from May last year in the light of the draft report. I don't propose to speak directly to that. I think it speaks pretty much for itself. What I thought I might take the opportunity to do is to make some comments about the context for policy development in Australia currently in relation to children, at least from my assessment, because I think that gives us a little bit of a picture of where we currently see children, and then have a look at from the centre's point of view where we would like to see things go, and some of the arguments why.

I'll be frank. I think that we're still only developing that case. I think part of what I'm going to say in terms of context is that whilst there was some good work done in the early 90s from child rights perspective, things have ground to a halt more recently for a number of reasons, and then if I can talk about that in the context of the consumer policy framework, and I suppose invite the commission to think about ways in which that case might be developed, because that's something we would like to do more work on at the centre as well.

For the centre, our history is tied pretty much to the development and progress of the Convention on the Rights of the Child. It's our core philosophical framework, and its history to some extent parallels the history of the centre. The convention was signed in 1990 by Australia and by most other countries in the world, and the centre was established in 1993 soon afterwards, and what has happened since that time at

least on an international basis is that there has been attention paid to the place of children in terms of policy development in a range of areas, including considering children as consumers, as active players, which I think is something that our submission indicates is supported by what limited research there is in relation to the contribution that children make financially, and also in terms of the debt that they incur, and that is the case in Australia as it is elsewhere.

That development has, to be frank, mainly happened in European developed nations, and there hasn't been so much of that development outside Europe. Within Australia and the States, there was initial work done, and the most significant work for us at the centre and in terms of consumer issues was the report in 1997 of the Australian Law Reform Commission and the Human Rights and Equal Opportunity Commission, Seen and Heard Children in the Legal Process. There was a chapter specifically on children as consumers within that report.

It looked at the state of largely the legal system, but also undertook consultations with children, and children's interest groups to have a look at what the situation was in terms of their access to complaint mechanisms, their difficulties with issues facing them as consumers, and in a range of other contexts. That report made a number of recommendations in terms of how the matter could be progressed, in terms of law reform, and in terms of government agencies and other agencies taking a more active role in recognising children as consumers.

Very little has happened in the last 10 years since that report. The centre with some support from pro bono firms undertook an audit of the recommendations of the report last year, and it was clear in a range of areas, including the chapter of Children as Consumers, but very little of the recommendations made in that report have been implemented, and that comes back to that original point that I made, that in terms of policy development, there's been little sign of progress or attention even given to children in the last 10 years. That's not something that's just common to I would suggest consumer policy, but more generally is the case as well, and has occurred at a state and Commonwealth level.

There are obviously some exceptions to that, but I'm particularly talking about those that consider children as active players and participants in processes, and whilst that is something that we as adults most commonly think about as something teenagers would be involved in, I think there's some interesting research which also says that children influence parents quite remarkably in their decisions. So that whilst they're not the sole participants in purchasing at a younger age, they still play a significant role.

One of the things that I suppose has made it more difficult for us to build a case at the current time is that there is very little research around children as consumers. Our submission makes some reference to some New South Wales research which

looks at the level of debt amongst young people. There is the research undertaken by the two commissions themselves in 1997, but there's not a lot more in terms of research that I can point you to. However I would refer to the research that was undertaken in 2005 by the ANZ Bank and ACNielsen, Understanding Personal Debt and Financial Difficulty in Australia. This research - I'd like to make two points. Firstly this research did not include children. Specifically it stopped or did not include consumers under 18 or people under 18.

However what it does include is some interesting observations about the next age group up, 18 to 25, and how they fall into some of the specific groups that experience financial difficulty. The research is also useful because it starts to have a look at why that would be in terms of the lack of skills and knowledge that they possess. I'd argue that the research is still a value when you look at children because one of the issues that we've identified is that the 18 to 25-year-old group are already finding themselves in financial difficulty. It seems to me there's an argument that if we were paying more attention to that issue for children, particularly in terms of skills development, that would have a benefit for them as - not only as children, but as they become adults as well.

There are some exceptions to the general proposition I put that children have been neglected in terms of policy development in the area of consumers. One in particular which illustrates for us one of the main issues, in Victoria there has been some attention given to educating children, school students within the school curriculum on how to be effective consumers, and it's integrated into curriculum, and that's something that our submission argues should happen nationally and should be coordinated at a national level so that there is a consistent curriculum addressing the skills required to be a consumer.

The second exception I would say is that there has been attention recently in the last five years been given to the issue of financial literacy, and that's happened at a national level. Whilst I think it's probably a little early to see what benefits that might have for children generally and also how effective the strategies that have been implemented will be, but it is an indication I think that there is some awareness of it as an issue. However, from my examination of the measures that have been introduced, they do focus on the issue of financial literacy.

It seems to me that the banks have been driving this and supporting these programs, and that's something that is an exciting development. However, we would argue that firstly those measures must be broader and include those skills, not only how to be a good borrower and user of money and personal finances, but also about how you spend that money, and to look at the decisions that you make as a consumer and the impact they have upon you in terms of savings, and future in terms of debt.

The agreement that has been reached that there should be national coordination

of development of consumer and financial literacy endorsed by the Australian education system's officials committee at the end of 2005 is something that I think needs oversight in terms of its implementation. I think that the centre would be keen to see an active role not only of the ministerial council of education, employment, training and youth affairs ministers, but also of the standing council of consumer agencies.

That leads me to another issue that the centre has been considering, and that is what role the ACCC might play. We would be supportive of the ACCC playing a much more active, even aggressive, role in encouraging coordination at a state and a federal level, and particularly working with those education departments, education ministers and consumer affairs ministers to make sure that children as consumers are recognised as a group that deserve attention, and that there are going to be long-term benefits.

As I said in my opening comments, I think that we're still building the case for policy development for children, but it seems to me that there are some good opportunities, particularly recognising the fact that children are obviously going to be active adult citizens and productive units, but also because children often play a role within families in educating and training adults and parents, and this is particularly the case I think in communities of non-English-speaking background. So to me there's a strong argument for saying if you're going to introduce consumer skills into the curriculum of schools, there's also going to be a benefit more generally for the community because those skills given to those children are then going to be used by their parents and families in their decisions in the future. They are my comments, and I'd be pleased to answer any questions.

MR FITZGERALD: Thanks very much for that. We'll just open up with some questions. Just one question if I can start, just in your section 3, you talk about a rights-based approach, and you indicate that you don't think our overarching objective addresses that particular issue, but you go on to say:

> It's clear that the six operational objectives do adopt a practical right-based approach,

Suppose the approach we took was in chapter 3 of the report, to acknowledge and look at the rights that exist in relation to consumer issues, and then I suppose our attempt was to say, but using a different framework, you achieve those rights in a practical way. So I'd be interested in your comments as to whether you think that, whilst we haven't adopted a rights-based approach, and that is true, nevertheless the approach we have taken would secure those fundamental rights that are now recognised through the United Nations and other places.

MR McDOUGALL (NCYLC): I think that's so. I think we'd love to see a more

explicit endorsement of that rights-based framework, but I think we need to recognise that currently in terms of policy within Australia. That doesn't have strong support, although I would argue that that is growing particularly out of the work of the Victorian government and the ACT government in introducing charters. But ultimately, yes, it has to be about practical measures, and looking at it from a child rights perspective, I think that's much more important, that it's quite easy in the area of child rights to pay token acknowledgment to rights. I think it's much more difficult to implement an effective way that actually engages children. So that's why I endorse the approach that's taken.

MR FITZGERALD: My second point - and then Phillip and Gary can raise some questions - is in relation to the youth debt, and I must say that I've been surprised by the figures that are here and in the previous submission, particularly for children under the age of 18 having an average debt of 3300, how that's been derived and what age groups are covered by that I'm intrigued by. In 3.6 you go on to say:

> The sources of those can include car repayments, fines, personal loans, rent arrears -

and so on, and obviously mobile phone debt as well. Putting aside the mobile phones just for one moment, do you believe that much of that debt has been generated from inappropriate conduct or behaviour on the parts of the providers of that credit or is it really that young people seem inexperienced in the handling of credit provision? The debt is high, but what do you think is actually happening that's causing that?

MR POTTS: If I can just add to that I suppose, and to what extent, if you like, the debt is actually backed by the parents. So it's not a financial risk at all.

MR WEICKHARDT: Surely for mobile phone debts and credit card debts, I can't believe that a bank or a credit card company would enter into a debt arrangement with a minor; certainly didn't with mine.

MR McDOUGALL (NCYLC): I think in answer to Robert's question, it is a combination of those factors. I do make the observation that I don't think we recognise what the nature of the vulnerability of children as consumers is, because often they will be intent on giving every impression that they are capable consumers when in fact what they're doing is in effect pretending to be adults. So I think it's a challenge to ensure that you are having children that are making informed decisions, and I think there is a balance between what the role of the service provider is, and the measures that they can realistically take to do that, and the active involvement of the young person.

You're not going to be able to prevent people making mistakes, and that's true of consumers in general. The problem is that we have no measure to know how

children might actually be making better decisions, but my sense is - and this is on the basis of my conversations with children and the issues that I see they find themselves in - is that they lack understanding of the complexity of the transactions that they are entering into, but with some basic skills development. They can relatively easily gain that understanding.

I think in relation to the question about how debt is managed, the debt particularly of children and young people, I think it's true that many children are fortunate enough to have supportive parents who are actively involved in their decision-making processes, particularly around significant issues of significant debt. So motor vehicles is probably a good example, you're going to ask dad about what the right thing is to do. I don't think that's so much the case in the accumulation of debt. If a child does have a credit card, if a child does have a mobile phone, I think there is a slow accumulation issue, and the other point is it's often the lifestyle issue, and it's often something, if it is a slow accumulation, if it is a lifestyle issue, that you are less likely to be seeking advice and support from not only your parents, but adults, because the people who are influencing you in that regard are more likely to be your peers who may or may not be making the same mistakes.

One of the strategies that I'm particularly interested in development of - and it goes beyond what you would do with introduction into schools and curriculum, is peer education strategies. They have been used quite effectively in terms of sexual health strategies, particularly in places like New Zealand. I think there's a clear argument to say that you empower young people and teenagers much more effectively if you see that the best way for them to learn is to teach each other, and I think there are some quite clever strategies around for doing that.

MR WEICKHARDT: So you didn't deal with the issue that Gary and I, I think, both related to, and that is for credit card and mobile phone debt, can people under 18 actually legally get into the situation of being the debtor in that situation? I would have thought in those cases, the parent would have to guarantee the debt.

MR McDOUGALL (NCYLC): That appears to be the case. Whether or not they - - -

MR WEICKHARDT: What appears to be the case?

MR McDOUGALL (NCYLC): Sorry, that they are in fact getting into those debt situations. Whether there is parental involvement or not, I don't know. Most of them when we see - a lot of the children that we see who are having issues are no longer living at home, even though they're relatively young age and, yes, you're right. Yes, there is supposed to be an adult who is going guarantor in respect of those transactions, and that is not always the parent. But once again those transactions aren't always supported by people with the skill levels that are required. So they may

end up relying on people who either aren't directly involved on a day-to-day basis with them or simply don't have the answers themselves.

MR POTTS: Just on that same question, does your organisation have a dialogue with financial institutions or their representative bodies about these particular issues and what their attitudes are and how they respond to the particular situations of the kind you're explaining here.

MR McDOUGALL (NCYLC): We haven't directly as yet. Our involvement in this area has mainly happened through the ACCC up until now. We're a relatively small organisation so we try and be as strategic as possible. We've had some conversations at the ACCC level and also with the telecommunications industry ombudsman. We haven't had any direct conversations with service providers, banks and otherwise as yet, and that's something that I think if we came to do it, we would try and do in coalition with other organisations as well, the Consumer Action Law Centre who have done some really good research around mobile phones, and youth agencies, but it's definitely - - -

MR POTTS: I guess we're trying to see through the statistics and identify what the degree of hardship is as against the level of debt, it may be that some of this debt is quite productive.

MR McDOUGALL (NCYLC): Yes.

MR POTTS: My children know a lot more about mobile phones than I do, for instance. So it seems to me that it would be advantageous in trying to understand the dimension of the problem to have a dialogue with the other side that's providing the credit to try and understand what the real issues are.

MR McDOUGALL (NCYLC): Yes. I agree. It's a question of resources and the most strategic way to have those conversations but, yes, I think that would be good.

MR WEICKHARDT: Can I raise an issue. You say in your para 3.3:

> It is our contention that the needs of children and young people will not be addressed by generic policies aimed at either consumers generally or at vulnerable consumers in particular.

I might be missing the point, but when I read things that you have then fleshed out further on in your submission, it seems to me that they are all generic policies that we've identified that are relevant to consumers generally or to vulnerable consumers in particular. The mechanisms of education might be targeted for youth, and the methods of allowing them to access complaint mechanisms might be targeted. But the generic strategies so far as I can see seem all to be relevant.

MR McDOUGALL (NCYLC): I think that's right. I think that should say generic mechanisms rather than generic policies. I think, yes, the point is you do need to develop specific strategies and mechanisms that address children and young people. I think in terms of policies, yes, generic policies are appropriate.

MR FITZGERALD: If you were establishing a charter to guide regulators and policy makers in relation to children as consumers - firstly has there been any attempt to do that in Australia or like countries?

MR McDOUGALL (NCYLC): Not that I'm aware of. I wouldn't be categorical.

MR FITZGERALD: My point was I'd be interested to know, not necessarily today, but what would be in some sort of a charter. What would it look like - a bit like Phillip's point - that would differentiate from the general, other than continuously referring to children and young people. That's not to dismiss that there are particular needs of children and young people as consumers, but it's a bit like - I was just trying to think as you were talking, if you were going to create a charter for children as consumers, what would it be that would be significantly different from a charter for general consumers other than constantly reminding people that there can be special circumstances or needs or characteristics. I wasn't quite sure whether there'd be anything significantly different in it. There may well be, but it would be something that I'd be interested in.

MR McDOUGALL (NCYLC): Yes. I think one of the key issues is an acknowledgment of the child as an active player, and - because that's one that goes to a lot of the issues that children find themselves into. They want to be part of an adult world, but they also don't necessarily want to be seen as part of or aligned with their parents. So it's about them developing their identity and recognition. So I think you're right. Most of the significant rights are about the right to information, the right to be able to make informed decisions, and the only exceptional matter in terms of a charter of rights I would say would be to recognise the right that a child has to enter into transactions in their own right.

MR WEICKHARDT: Presumably there are some issues at law where children are specifically prohibited from entering into certain transactions.

MR McDOUGALL (NCYLC): Yes.

MR WEICKHARDT: They can't buy cigarettes. They can't buy alcohol, and I assume, without knowing it, that there might be some age limits under which people just can't contract with a child. You probably can't sell a child some real estate or some shares or something like that under a certain age I'd guess. I don't know.

MR McDOUGALL (NCYLC): I think you can, but I think there are obviously mechanisms that are required, but off the top of my head I think it is possible for children to be involved in those transactions in some form. Yes, I think that's right. There are legal impediments. New South Wales and South Australia are the only states that currently have legislation that specifically provides for children entering into contracts, and at common law, the general understanding is that contracts, unless they are for necessities, are not enforceable against children.

I'm not sure that that's actually reflected in terms of the practices of children providers or in fact I think it's quite possible for a child to incur debts in respect to transactions that may not actually be legally enforceable, but a child is also extremely unlikely to challenge that transaction and is much more likely to accept it as a fait accompli, something that's happened that the adult world has done to them.

I suppose another issue is, coming back to your point about what is required that specifically relates to children, one of the issues is complaint mechanisms. Adult-designed complaint mechanisms are not used by children. It's something I've referred to in the submission, and it's a point that is kind of self-evident for us in terms of how we try and relate to children, but it is interesting to see those mechanisms that they do use, and they tend to be the mechanisms that are designed specifically for them, that recognise them, and that they are able to develop confidence in.

Once again there's not a lot of research around about this. My own observation is that it had something to do, once again, with the transitions that children are making, but also that their experiences are limited in terms of interaction with adult institutions. For most children, their experiences with authority figures are limited to parents and teachers, both of whom are institutions that tend to assert authority and don't necessarily provide rights of appeal in a practical sense or if they are, the child has to develop their own mechanisms for knowing how that transaction is going to work. The point is when they come out into the big adult world, they don't necessarily have the confidence or the skills to know how to challenge a decision, or they may be more likely to trust that decision or they may be less likely to believe that they are going to actually achieve any effective outcome from that.

I think those three factors work in combination to mean that they don't make the complaints in the first place. It's obviously the experience of those adults as parents and teachers that they know these children are quite capable of challenging and often do challenge, but that doesn't necessarily mean that they have developed a sense of what is going to be the most effective way for them to get an outcome that they are happy with, particularly outside that context.

MR POTTS: I was just going to ask a related question really. I've just read through your submission quickly, because we only received it at the beginning of the

hearing, but reading through it quickly, it wasn't clear to me what specific measures you were suggesting could be taken up in our report, apart from I think lending your general support to the direction which the draft report went, and also identifying children and youth as a group worthy of consideration. I think I'd find it useful if perhaps you could elaborate a little more along the lines of what you've just been doing and what specific measures would be useful in different areas in relation to children and youth, whether it be now or perhaps in a subsequent submission.

MR McDOUGALL (NCYLC): Okay. Yes. I'd be happy to do that. This is still kind of an evolving process for us in kind of developing the ideas. I can say that the educational strategy and the incorporation of consumer skills in a curriculum would be a key one that's likely to have, I think, benefits.

MR FITZGERALD: That's the sort of area that we would anticipate that there could be improvements in. So any specific comments you've got - just one final specific question. In relation to mobile phones, I note that you refer to the report that was provided to the Commonwealth Consumer Affairs Advisory Council in 3.7.

MR McDOUGALL (NCYLC): Yes.

MR FITZGERALD: Do you know whether there were any recommendations made in that report or to that body, and are there any specific recommendations you have in relation to the way in which mobile phones are provided to children or young people, because it seems to me that just in normal media, this comes up all the time, but here there's no specific recommendation as to what might change in the provision of those phones. There may well be something that we're unaware of in relation to telecommunications, but I didn't pick up any specific recommendation here.

MR McDOUGALL (NCYLC): No. I think it's an issue that the telecommunications industry ombudsman has been paying some attention to and trying to develop mechanisms that do recognise young people as consumers and develop appropriate strategies. I think there's also been some work done with the industry, trying to develop codes more generally, and I think that's had a varying degree of success, and I think it's a challenging issue because it's an industry that is developing quite aggressively, and developing new strategies the whole time, and I think there's been some attention given to that.

I think it needs to be ongoing, and I think a couple of the areas that are pretty obvious and where some work has been done, but further work is required is ensuring that contracts are as clear and easy to understand as possible, and that the sales and marketing techniques that are used by the companies do understand some of the issues around the vulnerability of children as consumers. It's one area where I think my point about peer education strategies has been turned on its head, and some very effective marketing has been done by making young people - selling mobile

phones to young people as a major strategy of the companies. So I think that's something where once again your point, talking to the industry and developing best practice is worthwhile.

MR FITZGERALD: Good. Any other questions? Thanks very much for that, James. That's great, and if you can give us any further clarification as to specific recommendations that you'd like us to incorporate, that would be helpful. Thanks very much for that. We're just waiting for our next participant, Michael Lee.

MR FITZGERALD: Thanks very much. We're just changing the order of this morning, and David Price is going to present. So, David, if you could give your full name and the organisation you represent, and then just go off with an opening statement, and then we'll have a discussion.

MR PRICE (TT): Good. David Price is my name. I'm director of Tortoise Technologies Pty Ltd.

MR FITZGERALD: Please proceed.

MR PRICE (TT): Okay. You have an indication of what Tortoise Technologies does, so I won't belabour you with that. I want to talk about firstly the environmental equation. Does a consumer policy framework work for or against environmentally sustainable business practices. I guess being a grandfather, I am concerned for the future of my grandchildren, and see the environmental equation as being rather important. The question I pose in my submission is does the consumer policy framework work for or against environmentally sustainable business practices?

Consumer policy appears to me to have had many makers, but no overall designer which makes it really hard for a business to reconcile all the competing demands that are made upon them. In my submission I have mentioned seven major environments which any business or organisation operates in and I'd like to speak to these.

The political environment. For a number of businesses, they have a difficult road to walk. If they are seen to support a particular party or a particular ideology, they will alienate a certain percentage of their market. However, they might feel that it's in both their financial and social responsibility to support one or other of the particular parties. They obviously have a vested interest because, as in the case of industrial relations, if you've geared up to work within one particular system and then you find that another system is being implemented, given that you have things like AS3806, the AS8000 series of standards, you might have to pay some very expensive consultant a lot of money to go through and change everything. So sometimes organisations, rightly or wrongly, will be seeking to influence the political agenda.

You have a virtual environment. I say in my submission that we have a growing volume of trade and commerce which is being conducted over the Internet, the governance of which transaction is uncertain. At a conference I was at on something called money laundering, one of the speakers said, "Anyone here who asks any question is obviously going to be investigated," because they are not supposed to have any interested in that, but it was agreed that it's very difficult to control the large volume of money sloshing around the world, and when we look at that and its impact upon a consumer policy framework, how does a company based in Germany who may wish to engage in what's called counter-trade, which is

something supported I understand by Austrade, there's going to be a lot of money flowing backwards and forwards. How do they cope with that in the Australian domestic environment.

The economic environment. It's said if you laid all the economists in the world end to end, you'd never reach a general conclusion. There used to be an old joke for those doing economics are university that the questions are always the same, it's only the answer that changes. But I sometimes think that the importance of trust in business is overlooked. Because it can't be put on a balance sheet, because the rational economists can't fit it in anywhere, they say that it is of no value. But I'd like to suggest that trust is critical. If you can't trust one another, then those lovely people called lawyers rub their hands together, and say, "Wow. We've got a solution for you."

Then there's the physical environment. We have three levels of government here in Australia; federal, state and local. They can rarely agree on how the physical environment should be developed. I had a client who was entering into a negotiation with a very large American corporation, and they wanted to set up an educational facility in the Blue Mountains, which is where I live, and there was absolutely no way that was ever going to get off the ground. Despite the fact that it could tick all the boxes, the American company just got fed up because they couldn't get any answers from anyone.

Then we look at it on a global level. Australia is either a signatory to or a supporter of many international agreements. Sometimes these can work for you, sometimes they can work against you. If you are trying to take a global perspective, you're in a very interesting and difficult situation quite often because sometimes you might be asked for what are called facilitation payments. Some unkind people would see those as corrupt payments, but sometimes if you wish to do business in a certain country, you either pay it or you don't do any business.

Then there are markets. You can look at a market in any one of a variety of different ways, but increasingly people are becoming conscious of environmental issues, and they are asking of organisations, "Explain to us your environmental footprint," and sometimes there is no framework in which you can actually validate that you are being responsible, and finally the psychosocial which is where I spend most of my time. There's something in AS3806 which talks about a culture of compliance. No-one is quite sure what that is, but if you don't have one, you may be guilty of a criminal offence.

I've only been working in business for 30 years, so I'm a newcomer, but it does seem to me that there are good employers and bad employers, and it really doesn't matter what the law says, they are going to be good or bad. The good employers embrace things such as the standard on workers in business, which comes out of

England. Others will do stakeholder audits, and really genuinely try to do what is appropriate, but as I mentioned elsewhere in this submission, they are hamstrung particularly in OH and S by international standards which they might want to comply with, because they want to trade globally; Australian standards. The fact that an employer in New South Wales, if they sent someone to South Australia, will have to take out a separate policy in South Australia makes life a little interesting.

My final opening comment would be that I think we need some agreement hopefully as part of this process that we will come to some understanding of what environmentally sustainable business practices are so that we can put them into part of this framework, so that we can remain an economically viable and socially responsible nation. Thank you.

MR FITZGERALD: That was good. Thanks very much, David. I want to be a bit more specific if I can. The submission that you've put deals in general terms with a range of issues, but your opening gambit was does consumer policy allow for or inhibit environmentally sustainable future in a sense. In relation to the framework that we've put forward in the draft report, I was wondering whether you have any specific issues about what we've recommended that either contributes to or derogates from the ability of Australia to have an environmentally sustainable or ecologically sustainable future. I was just trying to get a bit more precision or concreteness into your comments, if I might.

MR PRICE (TT): Certainly. Under your Objectives for Consumer Policy, chapter 3, which is on page 63 of the review, I notice that it does not mention that anywhere there. I'm also aware that there are a number of organisations in what I'll call the extractive industry sector who are looking for some guidance so that when they come to market their product, whether it is a tin in which you buy your food, they can say we have established and can show that we have a set of environmentally sound standards.

If you look at some of the foods that are imported, there are people who will say, "We would like an environmentally sound statement from the producer to this." We supposedly have these, but they're more honoured in the breach. So nowhere in here did I see anything about ensuring that when decisions are being made at a consumer policy level, one of the issues addressed is, is this environmentally sustainable? Is this socially responsible? Given that corporations have this triple bottom line reporting, as I said, they have AS3806 and AS8000 series which talk about corporate social responsibility, but I didn't see anything in here referring to those standards or that concept of corporate social responsibility. So I guess that's where I'm coming from with that. Does that help put that in the context?

MR FITZGERALD: One of the issues in relation to environmentally labelling, just taking one of the points you've got, and obviously there's been a move to

increase the level of labelling that allows consumers to choose different types of products, there is a danger that you end up with sort of information overload. We've got so much labelling now on products, both in terms of content and risks and other stuff, that in the end, do you not end up in a situation where you look like you're achieving an end, but in fact you're not. In other words, there is a point at which information overload in fact becomes almost no information at all, and there do seem to be some risks of that occurring even now that we're starting to look at some of the environmental issues.

MR PRICE (TT): Okay. Can I give you an example in an unrelated issue before we come to deal with that directly.

MR FITZGERALD: Sure.

MR PRICE (TT): My first 14 years were spent in trustee companies and legal practices, and subsequently doing a range of things in the business analysis and corporate ecology area, but rightly or wrongly, I used to prepare summaries of prospectuses for people. The average mug punter isn't going to be able to get through a hundred pages of prospectus. They just wouldn't understand it. They won't bother. So some of us naughty people would prepare a one-page summary which was unofficially blessed by the corporate regulatory, because the corporate regulator wasn't allowed to actually bless it.

It is possible to give people meaningful information in a short space. The problem is that because we have a litigious society, nobody is willing to engage with plain English. There was an endeavour many years ago to have plain English policies. There was a plain English centre set up at one of the universities. In 1990 there was some reform to superannuation which involved rewriting trust deeds, and I developed a trust deed that only went for one page, and I was told that even though I'm not a lawyer, that was perfectly sound legally. Unfortunately they said, "We can't use it because we can't charge $5000 for a one-page document."

In relation to food labelling, what you would have to do is you would have to sit down and you would have to get a range of consumers and test them, given that apparently the average reading age of Australians is about 11, and if you could agree that we will have some essentials, we will say origin - just an example. We'll say origin. We'll say this contains, and this would not be suitable for. People with peanut allergies for example, it is possible to have meaningful information in a short space. It's difficult, but it's not impossible.

MR FITZGERALD: Just one other related point, there seems to be an issue with labelling and information as to whether or not people have a right to know as a right or a right to be informed about circumstances that may cause detriment to their health or otherwise, and we seem to be moving into this area where we've created a

new right. That is, we have a right to know anything and everything, irrespective of its direct impact. So we move from labelling which basically identifies risk to identify ingredients, and there's a health reason why you might do that, to a new notion that's emerged in more times, the consumer has a right to know irrespective of whether it has any direct impact or not on them.

I was just wondering how far you go with this right to know, particularly in relation to labelling of not only food products, but more generally, because at the end of the day, there is no end to it.

MR PRICE (TT): I don't know that I altogether agree with that. There's a thing called informed consent. I was diagnosed with prostate cancer in March 2005. I had to give informed consent to the surgeon. The surgeon didn't give me great books to read. We just went through some really fundamental issues. "These are your options. This is the result. This is what it will cost." It is possible to have informed consent provided one has thought through what the key issues are.

That for regulators is a bit of a problem because they don't want to address what I call real issues, but if you go to a regulator - and OH and S is a classic example - and you say why can't we have uniformity, they say, "Well, I need to protect my butt. I need to protect my sphere of influence." I think we can have concise useful information, but unfortunately we seem to be in a society which prefers what a certain author in his book Weasel Words says. We have going forward, we have sign-offs, we have all sorts of wonderful words that are pretty meaningless to most of us, but it would require a certain degree of honesty where - to take for example - my wife went to buy some wool yesterday, and it had on it, "This may not necessarily contain wool." That's barmy. Lovely lady, my wife. Been knitting for as long as I know her, but to have on a label, "This may not necessarily contain wool," that's a farce.

MR FITZGERALD: It sounds a very good legal advice, I've got to tell you. It avoids any misleading and deceptive conduct claims.

MR WEICKHARDT: She was informed. Did she buy it?

MR PRICE (TT): No. I could be rude and say there isn't anything that's not made in China, but anyway most of the wool seemed to be made in China, and I was just interested that it's coloured, and I've not seen coloured wool come off a sheep. I'm ignorant. I've not seen it come off in various colours. On an associated thing, some years ago, this Made in Australia, there was, shall we say, a tacit agreement that if something had 75 per cent of Australian content, you could say unofficially that it was made in Australia.

What exactly is made in Australia now? I can get this wonderful logo and I

could slap it on if I've got the money to pay for it, but how much of it actually has to be made in Australia?

MR POTTS: Go back to a question Robert asked and your submission, which spends quite a bit of time on, if I can use the words, ethical corporate behaviour - you use different words, but - - -

MR PRICE (TT): Yes, indeed.

MR POTTS: - - - that's the common term that's used, and you mentioned that you saw some advantage in supplementing the way in which consumer objectives had been spelt out in the draft report.

MR PRICE (TT): Yes.

MR POTTS: But I'm a little bit surprised that if you feel as strongly as you do about the importance of this subject, that it doesn't carry through into any suggestions for changing the law itself, because in the end, the one thing that really can guide corporate behaviour is the need to comply with the law. Maybe I missed it in your submission, but are there any specific suggestions that you've got that would complement the existing provisions about misleading and deceptive behaviour, unconscionability and the like?

MR PRICE (TT): Most certainly. I have over the years made many submissions on that very subject, but if you go initially to my recommendations which, if a minister of the crown was actually to follow that, if a regulator was actually to follow that, they would suddenly themselves start to bring reality into our laws.
Prof Sparrow from the United States came out to Australia, and he gave some examples of how regulators changed laws when their responsibilities were changed. He spoke of a culture which says - and he quoted a particular state - the police officers get graded on how many cars they book. If they book more cars than last year, they wee successful. The fact that crime went up, murders went up, rapes went up didn't matter. As long as the number of cars they booked went up, they were deemed to be successful.

Where you have ministers and regulators genuinely held accountable, they will suddenly start to take an interest. In relation to false, misleading and deceptive, back in the early 80s, the operation of trade marks was not covered by the Trade Practices Act. For some period of time, I've been suggesting that it should be. It's an anomaly. The other thing that would happen - and I mentioned the Granville train disaster where if you actually have whole of government approaches, then that is a process which brings about changes in laws, but in that case, I was actually managing the probate division of a Sydney law practice, and that was the only time I've seen where every level of government said, "Yes, this is what's going to happen." You would go

to the registrar of probates. If it was a Granville estate, you got it, no questions. No pettifogging around.

There was recently a case in America where a landlord was fined, but what was the punishment? The punishment was he had to live in one of his lovely flats for 30 days. Five days into that, he suddenly decided that those flats needed to be repaired, and paid for the repairs. I think that if for example - and I mention this in my submission, instead of giving fines to the ACCC, lovely people though the ACCC are, we actually said, "All right, let us look at how we can compensate those who have been harmed by this action. If the law is changed so that we now actually give those people who have been damaged an opportunity to be reimbursed.

But further than that, there is one change I would love to see - this is very controversial, but I'm going to raise it anyway - and that is that I'm aware of a number of cases where people have a very strong legal case for damages, for redress, whatever it might be, but those people who stand to lose a considerable amount of money manage to rig the legal system so that the people that want to launch the action have to put up sometimes $5 million as security for costs. If they have been financially damaged, they may never have had $5 million, but to set the level at $5 million or $1 million is just a total denial of justice.

If we are in fact going to deliver justice which is seen as credible, again confidence and trust, then I think we need to have a system where there needs to be an arbitration as to whether there is any particular merit in a case and if there is, to have it heard. In 1979 I think it was, there was a gentleman in South Australia who bought a truck. The truck was defective from the beginning. He and his wife were not very fluent in English. They signed a guarantee which meant that their house was available if they couldn't meet the repayments on that truck. This was decided at first instance by a South Australian judge sitting alone. It went to the Privy Council. At the Privy Council, the gentleman there said amongst other things that despite the ingenious argument of counsel for the defence, the truth came out. That case was only got there because there were interested people who put in the money.

I don't think that should have to be the case. If we want confidence, we want to make sure that people have access to an affordable, reputable process rather than a process which is totally adversarial where people who don't really have a valid case will sometimes be able to get some compensation because it's just too expensive to take it through the system.

MR FITZGERALD: And certainly we've, in our report, recognised the need for alternative dispute resolution and changes to the tribunals and so on to make it easier for most consumers to be able to access that, together with representative actions on behalf of the regulators. We've addressed some of those in a practical way.

MR PRICE (TT): Yes.

MR FITZGERALD: Without going to your example which is to remove the ability of the court to require a cost guarantee.

MR PRICE (TT): I'm not saying it shouldn't be there. I'm just saying it is used far too often.

MR FITZGERALD: I must admit it hasn't come up in this inquiry yet in relation to consumer cases. That's not to say that your point is not valid. It just doesn't seem to be the main reason why consumers are not able to seek redress at this stage.

MR PRICE (TT): If I may say so, most of the consumer complaints mechanisms are totally flawed from the beginning. The fact that anybody gets anything out of it is remarkable. In New South Wales we had a provision - section 88F of the Industrial Arbitration Act - which was a maverick provision, but in answer to your question, if we reinstalled a provision like that, that would scare the living daylights out of a number of people who would suddenly say, "Hey, it's good to comply," because the bottom line is this, gentlemen. If it's cheaper to comply than it is to fight it, they'll comply.

MR FITZGERALD: Sure.

MR PRICE (TT): Having been involved with tax management as opposed to tax avoidance, it used to fascinate me that people would enter into these wonderful schemes - they got no more money, but they got this warm feeling. If it had been cheaper for them to comply rather than enter into these machinations - now, you get good consumers and you get bad consumers, just as you get good suppliers and bad suppliers, and I think that at the moment, it seems to me the bad consumers know how to manipulate the system, and the good consumers don't.

MR FITZGERALD: Any other questions or comments? Thanks very much, David, for that.

MR PRICE (TT): Thank you.

MR FITZGERALD: That's much appreciated, and again thanks for coming along a little bit earlier. We might now break for about 15 minutes, and hopefully we'll have our next participant here by then. Thanks, David.

MR PRICE (TT): Not a problem. Thank you for your time.

MR FITZGERALD: We might resume. Thanks, Keith. If you can give your full name, and if you're representing an organisation, the name of that organisation; if not, that's fine, and then if you want to make some opening comments in relation to the points you'd like to make to us, that would be great, and then we'll have a discussion. Over to you.

MR ATKINS (ABWA): My name is Keith Raymond Atkins. I'm representing the Australian Bathroom and Waterproofing Association, and also helping out the Builders Collective from Victoria, just confirming their information they've already given. It's just an overview. It's regarding home warranty insurance, but also just with the productivity in my industry, the bathroom industry, and I've put out that handbook that was put out in 94, and a hell of a lot of issues there that the industry didn't want made public; waterproofing issues and so forth.

It's mainly to do with the Master Builders Association and the Housing Industry Association, that they advertise themselves as a not-for-profit organisation, and I've been a member since the early 80s, and all that they're interested in is profit. I've had a Federal Court case running - well, it commenced three years ago, just the negotiations. We were actually in court almost two years. It's just letting it go at the moment to gather more evidence and restart the case. The judge told me that I had three years in which to recommence the proceedings.

So what it was was over the home warranty insurance, the fact that builders like myself, 20,000 of us, haven't been able to get home warranty insurance, and that's due to the corruption of Sydney developers and developers Australia-wide who have manipulated the industry so that they get slave labour from general builders, like myself. It's absolutely destroyed my life as well as others. You've got that photograph there of Adam Reagan, a 26-year-old builder from Orange, committed suicide. We had 30 suicides when Ansett collapsed that involved 16 and a half thousand employees. What we're talking about here is a couple of hundred thousand men in the four states that were dictated to by the Labor government. So we had Western Australia, New South Wales, Victoria and Tasmania.

Tasmania have now ditched home warranty insurance, which is fantastic. So we're just hoping that it's given away up here as well, but another issue - the issue that I wanted to relate more to you is the productivity in the building industry or the lack of it. We've got James Hardie, CSR for years have been promoting products that are totally useless. CSR for example have been promoting gyprock in bathrooms, and I had a newspaper article in 1985, and that's part of your notes there, and I said that it should be banned. I did say to the journalist at the time, "Make sure you don't mention the brand name," but she put it in, and all they did was just ring me up or they just sent me a letter, "Tut, tut. Don't do that again." But it's been banned in America from 2006.

I don't think it needs banning. It's good for ceilings and so forth, but there's other products, acrylics and polyurethanes which are used for waterproofing. The manufacturers know that they're useless. I've done research with the CSIRO in Melbourne, and we had citric acid contained within eight test beds, and overnight it drained out - the citric acid. Citric acid is in all the cleaners and shampoos. So that's why all the showers are leaking.

With those issues, especially the absolute corruption of the developers, it's significant that you're here today in Victoria Street. We've had the death of a journalist in the 70s, Juanita Neilson. I've got a photo here of where she lived. So it's very close to the hotel here, just down the street. She was killed by Sydney developers because she was interfering with their system. In 1992, I held a bathroom expo in Sydney, and it just unleashed a wave of vitriole from all CSR and Master Builders, the HIA. That was in July. I had 75 ads on 2CH, 25 on 2GB. So it really stirs the hornets nest, and I started to get abusive phone calls at home, and at the end of the month, my 16-year-old daughter committed suicide, and she fielded a few phone calls, and she must have thought because I couldn't - they're abusing saying I'm hopeless and all the rest of it, that she's not going to have a chance in life.

But that's one thing I've been following through. The photograph you have there of Adam Reagan, I went up to visit his parents. I've been involved with suicide prevention ever since, and that was their only son, and he lost his home. He had to put off his apprentice, and he just went through hell. I managed to get Miranda Devine to do a story on it, and that's included in there. You've got a photocopy of her article, and it was just an excellent article, and she's going to be following it up soon with another article, and it just details the circumstances of his death. But there's dozens of other men that have committed suicide, and a lot of road accidents - not a lot, but some road accidents are suicides. People just run into a tree or they'll just go straight into a semitrailer head on. So it's very difficult to determine how many suicides we've had over this.

MR FITZGERALD: I was wondering if we could just break that down into a couple of areas that you've raised. You might want to explore them a little bit more fully. Can we just deal with the home warranty insurance itself. You indicated that you thought the Tasmanian scrapping of the home warranty insurance would be a good thing.

MR ATKINS (ABWA): Yes.

MR FITZGERALD: Can I just understand, in the story that you're telling us, I presume that a number of builders were unable to obtain home warranty insurance in New South Wales or throughout Australia.

MR ATKINS (ABWA): Yes. There's 34,000 builders, 14,000 were able to get it,

20,000 couldn't get it. That's happened over the past eight years. So I've lost my home. My 27-year marriage finished. My daughter now lives in Albury. She lived with me in the family home. I had a five-bedroom, four-bathroom home at Cromer Heights in Sydney. I had a property in Queensland. I was very well off until this home warranty insurance came through.

MR FITZGERALD: So when the rules changed following the HIH collapse and home warranty insurance was - new arrangements were put into place, as you say, your figures are that 20,000 builders were unable to obtain it.

MR ATKINS (ABWA): Yes.

MR FITZGERALD: Most of those builders then went into specific home renovations and that sort of market, as I understand. Is that correct?

MR ATKINS (ABWA): Yes, a lot of them were forced to just - - -

MR FITZGERALD: So they couldn't build homes, but they could actually go into, as you say, bathroom renovations or whatever it might be.

MR ATKINS (ABWA): Yes.

MR FITZGERALD: The principal reason why the 20,000 may not have gained that insurance was what, or in your case, what was your view as to why the majority of those would not have been able to obtain home warranty insurance under the new arrangements?

MR ATKINS (ABWA): It's just blatant corruption. These are builders that have got degrees from university. My solicitor that's helping me with the Federal Court case, her husband can't work. What sort of builder do you think he'd be? He's got a solicitor for a wife. So there's a hell of a lot of guys that were fully qualified and it's just condescending contempt from the Department of Fair Trading.

MR WEICKHARDT: Specifically what were they told about why they wouldn't be insured?

MR ATKINS (ABWA): Initially it was that you didn't have enough assets. You had to sign your home over. So it was fraud in the extreme that this insurance was even called insurance, because we had to provide the backup to the actual insurance. It's just - - -

MR WEICKHARDT: So if you didn't have enough assets, they wouldn't offer the insurance.

MR ATKINS (ABWA): That's it, and other reasons like the Master Builders were just zeroing in on me because I was critical of products. So anyone that spoke out about the home warranty insurance, anyone who spoke out about products was targeted.

MR POTTS: Did you perceive that members of MBA were treated differently from non-members in this process?

MR ATKINS (ABWA): Non-members or a member, just recently I reapplied, and I would have had to have paid $5000 for a guy to inspect my work. I've had two top state apprentices in tiling. My original trade was wall and floor tiling, and I've won an award from the Master Builders Daily Telegraph for a bathroom. There's absolutely no question about my potential and continued potential as a tradesman.

MR FITZGERALD: Why would you have to pay $5000?

MR ATKINS (ABWA): This is another just barrier to you making a profit. There are companies being set up that would inspect your work, charge your $5000 for the year, and then give these reports to the insurance company on the standard of your work.

MR WEICKHARDT: Who was going to do the inspection, do you know?

MR ATKINS (ABWA): I've got details of it, but it was through the Master Builders.

MR WEICKHARDT: So a company contracted to the Master Builders.

MR ATKINS (ABWA): Yes.

MR WEICKHARDT: Was it the Master Builders that were charging $5000 or the company?

MR ATKINS (ABWA): The company, but there must have been kickbacks.

MR WEICKHARDT: It sounds a fairly expensive inspection.

MR ATKINS (ABWA): It's ridiculous. To have people that have been in the industry all their lives, to have their work inspected is just ridiculous.

MR FITZGERALD: Can I just ask, the inspection is for the purpose of obtaining insurance or is it for the purpose of obtaining membership?

MR ATKINS (ABWA): It's just a continuing priority that they wanted to ensure

that they wouldn't have to pay out on any shoddy workmanship.

MR FITZGERALD: So it's an annual inspection which is a requirement of obtaining the insurance cover. Is that correct?

MR ATKINS (ABWA): Yes. That's for people who just can't get the insurance directly and don't even have to pay that $5000 fee. Some people can just get the insurance.

MR FITZGERALD: Are you talking about the home warranty insurance specifically?

MR ATKINS (ABWA): Yes.

MR FITZGERALD: All right.

MR WEICKHARDT: Given the fact that the home warranty insurance only kicks in when the builder is insolvent or dies - - -

MR ATKINS (ABWA): Bankrupt or dies.

MR WEICKHARDT: - - - or disappears - - -

MR ATKINS (ABWA): Yes, useless.

MR WEICKHARDT: - - - why is inspection of the quality of the work relevant to the insurer?

MR ATKINS (ABWA): It's just an obstruction to you continuing to make a profit. There's an article in there that I've included with the notes from Choice magazine, a three-page article which said - and it was also on the 7.30 Report, Channel 2, the insurance isn't worth the paper it's written on.

MR WEICKHARDT: But can you differentiate whether the inspection was related to registration as a builder or whether it was required by the insurance company itself.

MR ATKINS (ABWA): Yes, just by the insurance company and by the Master Builders and the Housing Industry Association. So there was a bit of a trifecta there.

MR FITZGERALD: Which doesn't go to your registration as a builder.

MR ATKINS (ABWA): No, not really. It doesn't really have any relevance to whether you're competent or not. It was just an inspection of - well, it does I

suppose.

MR WEICKHARDT: You say the Housing Industry Association are also involved in this.

MR ATKINS (ABWA): Yes, they're making more profit than the Master Builders Association. There's a note there that specifically states the Master Builders is a not-for-profit association. The HIA made $28 million profit at the expense of Adam Reagan and others like him who are six feet underground just because of their greed.

MR WEICKHARDT: How do you believe the HIA are making profit out of this?

MR ATKINS (ABWA): That's their only profit, from this home warranty insurance. They get a kickback from the insurance company.

MR WEICKHARDT: Does the builder pay the premium directly to the insurer?

MR ATKINS (ABWA): Yes.

MR WEICKHARDT: You think the insurer pays the - - -

MR ATKINS (ABWA): Somehow they manage to get the profit, but it's declared profit and it's amongst their papers.

MR FITZGERALD: If you were to remove the home warranty insurance, as in the case of Tasmania, what is the impact firstly for builders, and what is the impact of that for consumers? Theoretically, home warranty insurance was brought in to protect consumers, albeit in the case of very limited circumstances. So at first glance, if you were to remove that insurance, you might think that consumers would be worse off or more vulnerable.

MR ATKINS (ABWA): Yes.

MR FITZGERALD: But clearly you have a different view about that. So just explain to me, if we were to recommend and it were to happen that home warranty insurance was no longer compulsory as in the case of Tasmania, what do you think the impact for the builders and the consumers would be?

MR ATKINS (ABWA): It would be really good for consumers. It's a complete waste of time to pay the fee that is paid on every job, and the fee that is paid could be put together and made into a government insurance, that there is a proper insurance on building works, just like they did in the Canadian system with health insurance. They just start out from scratch insuring people. All they need is to collect all this money, and they've got all the back-up that they need, and in any case it's useless

insurance at the moment anyway.

So if it was put to good use and even the government made profit out of it - you see, there was 2,116,000 given to the New South Wales Labor Party, and supposedly that was enough to allow this home warranty to continue. It was given from real estate interests and I think insurance interests.

MR FITZGERALD: This is my ignorance. When I commence the building of a home and I contract the builder, apart from the home warranty insurance which only applies in very limited circumstances, what other protection do I have as a consumer in relation to the faulty building work? Do I have to take out separate insurance or do I pay the builder to take out insurance in relation to that work? So not in relation to the home warranty, that which is the last resort, but for other failures during the project, how am I covered?

MR ATKINS (ABWA): The builder is held responsible, and you virtually get kicked to death by the Department of Fair Trading if you have any problem. So the consumer is very well protected by the Department of Fair Trading. It's the builder that warrants the work, not the insurance company.

MR FITZGERALD: So in the event that the builder defaults, then in those three circumstances - bankruptcy, insolvency or death - that was the only way by which consumers could in fact recover because the builder no longer exists.

MR ATKINS (ABWA): And they had to go to court to do it.

MR FITZGERALD: So I just want to push this a little bit further. If you remove any insurance cover, then how will a consumer get recourse in the event that the builder is unable to make rectification or is in fact dead, insolvent or bankrupt? So if you remove it, it seems to me, irrespective of how good or poor the quality of the product is, do you not create a potential vulnerability for the consumer?

MR ATKINS (ABWA): I don't think so. They only paid out 6 million in payouts. I think that was Australia-wide on the home warranty.

MR WEICKHARDT: New South Wales government claim that between 2002 and 2005 they paid out $12 million and $7 million was set aside, 1100 claims. It's not a huge amount, but there is some paid out.

MR ATKINS (ABWA): If that money was gleaned from every person that put a house together, that would more than cover it if that fee was given directly to a government department.

MR WEICKHARDT: If it were made voluntary, how many consumers do you

think would take it out?

MR ATKINS (ABWA): Not after the builder spoke to them, there wouldn't be anyone.

MR WEICKHARDT: Of course the builder is involved in the process. The insurance is to cover the builder either dying, disappearing or becoming insolvent.

MR ATKINS (ABWA): Yes, but they're causing the deaths, they're causing the insolvencies.

MR WEICKHARDT: What, the consumer is causing the deaths?

MR ATKINS (ABWA): This home warranty insurance. Adam Reagan is an example.

MR WEICKHARDT: But from the consumer's point of view, do you think consumers generally are concerned about those risks of the builder disappearing, dying or becoming insolvent?

MR ATKINS (ABWA): Definitely, but that's just a fact of life. You take that risk with whoever you take on, and whether you're insured or not, it's going to cost the consumer money. So taking it to court because they don't come forward and give the consumer the money straightaway is a hell of a lot of a process that consumers have to go through.

MR POTTS: Is your concern with the principle and objective of home warranty insurance or the way in which the scheme actually operates at present, and particularly involvement of key players in the industry, like the HIA?

MR ATKINS (ABWA): It's mainly the key players, yes.

MR POTTS: So it's mainly the second question - the objective of it is fair enough. They're trying to protect consumers in the event that a builder no longer exists for whatever reason, but the way it actually works in practice is flawed.

MR ATKINS (ABWA): Yes, that's for sure.

MR POTTS: Do you think that the system could be remedied in a way so that for instance the private sector could more normally provide this insurance?

MR ATKINS (ABWA): The builder could do it? There'd be no problem there. That's what we're virtually doing. We've put our houses on the line for the guarantee of the work, and in any case, we get penalised if a client makes a claim to their

relevant state body, the Building Services up in Queensland or the Department of Fair Trading here, and they more than adequately are covered if there's a hearing. It never goes in the builder's favour. The client is always the one who wins out, and there's a lot of dishonest clients that are taking money from builders that way. So that's another area of contention for builders. We're just getting kicked in the head from every side. That's why a lot of builders left the industry.

MR FITZGERALD: In the Queensland environment, they have a statutory scheme, as you know.

MR ATKINS (ABWA): Yes, government scheme.

MR FITZGERALD: Run by the government. But that scheme is very heavily linked to registration. So the builder's registration and capacity to continue to trade is tied in with an alternative dispute resolution procedure. Many people have spoken favourably of the Queensland scheme, but many of the other state governments have not, and clearly most of them have said there's no need to change what is, but can I just ask this question. In relation to the builder up there, does the builder have to put their house on the line? What's the obligation on the builder in Queensland as distinct from the obligation on the builder in New South Wales?

MR ATKINS (ABWA): Just totally different. They just pay a fee. If they took all the licence fees from builders, what happens now, it goes into general revenue. 70 million a year from New South Wales builders goes into general revenue. All they need to do is to put that 12 million aside that was paid in payouts, and make it a government scheme, if it's going to continue at just 12 million.

MR POTTS: Are you suggesting that in New South Wales, builders, in order to be part of this warranty insurance scheme, have to mortgage their homes for instance, but in Queensland they don't have to?

MR ATKINS (ABWA): That's right. But they've relaxed the rules because of just such intense lobbying by everyone concerned.

MR POTTS: In New South Wales.

MR ATKINS (ABWA): So it's been relaxed. Yes. So it was at the point there where everyone had to put their homes up as collateral, or in the case of Adam Reagan, he had to put up $20,000 cash, and his father who I met could only get 15,000, and that was the reason that Adam committed suicide. He just couldn't work. So we're virtually insuring ourselves.

MR WEICKHARDT: The insurance companies I think - and we've had a submission from one of them - would say that in 2002, the situation was pretty dire,

but since then, many more insurers have come into this market, and they would say that it's more competitive now. Have you noticed any changes in the way it works or are you aware of any changes in the way it works?

MR ATKINS (ABWA): No, it's still the same.

MR WEICKHARDT: There's admittedly about seven providers now of home builders warranty insurance I think.

MR ATKINS (ABWA): Yes. There's a paper there from the Master Builders that states that it stayed exactly the same. There's still 20,000 builders out of work and can't get the insurance. Nothing's changed.

MR FITZGERALD: Assuming the figure you say is right, 20,000 people are excluded from getting home warranty insurance and therefore excluded from trading as a builder, would many of those also be precluded from registration, say, under the Queensland scheme? Whilst I acknowledge absolutely that there would be a number of those people in the 20,000 that on first instance appear to be unjustly excluded from trading, there would also be a percentage of those that perhaps don't have any viability, and in some senses pose a risk to consumers. The question I've got is does the Queensland scheme for example - would it exclude those builders that frankly shouldn't be in the building game?

MR ATKINS (ABWA): It's the same. It's that 2 per cent of the population that are pathological narcissists. You can't change them. They're a lot of the developers that we've had problems with. They care absolutely nothing about fellow Australians. They're always going to be there.

MR FITZGERALD: My last question, without pushing it, is we've got the Queensland scheme and you've given us an article which indicates how that operates, and then we've got the Tasmanian scheme which is also linked into ADR - alternative dispute resolution - as well. You started off by saying if we got rid of home warranty insurance, that would be good. The Tasmania, scheme is a voluntary scheme, so you can take it or leave it. On your analysis, nobody would take it, but there also does seem to be in the Tasmanian scheme a number of other elements that are now being introduced. So the consumer is not completely left simply to the ability to negotiate with a builder. Do you have any comments on those components if you're familiar with them?

MR ATKINS (ABWA): It would be good if they could get it right, but they don't seem to be able to be trusted to follow the thing through and actually give the consumer value for money. It's this influence of the insurance company. It just seems to be an overriding factor all the time. There's this profit there, incredible profits, hundreds of millions of dollars.

MR FITZGERALD: Any other questions on home warranty insurance?

MR WEICKHARDT: No, thank you.

MR FITZGERALD: You raised other issues in relation to representations made by various material providers. Maybe we can just address those issues. Just your claim that providers of building products are in fact misleading the community in believing that the product is suitable, as you say, for bathrooms, but it is not. If that was so, why have there been no actions under the Trade Practices Act for misleading conduct or under the provisions that say that products have to be fit for the purpose or something? Why is this practice that you maintain is occurring continue to occur if it's of such a significant problem?

MR ATKINS (ABWA): I think there's a couple of the research and development applications I've made. There's 120 pages there. That's federal. There's another state one there's also - with the Building Code of Australia. It's just water off a duck's back for these departments to just pass the buck and declare in the end that there's nothing wrong, and the research and development isn't needed. I had two Federal Court judges. This was Lindgren. He was the former head of law at the university, and he's now a Federal Court judge. He was pulling his hair out trying to get the various barristers that I had to declare a statement of claim that was applicable.

They had to tell me in the end that it was defamation, a breach of section 52, and then Jacobson, another Federal Court judge, said it was a breach of section 82(2) which was causing the death and injury of an Australian or a fellow corporate. I thought it would be just a matter of the case following through once the judge could actually see what was going on, and he allowed - I think it was seven hearings to try and get this statement of claim correct, but it's not that simple.

MR FITZGERALD: If as you say products are being sold that are inappropriate, why would the regulators not take action?

MR ATKINS (ABWA): It's got me beat. I wrote to the Building Codes Board when it started in 96, and said there are problems with all the details that I've given you there, and they've done absolutely nothing. Why do we have the Building Codes Board, the CSIRO. There's cobwebs growing on the facility down there. I was the only independent researcher that was doing any work, and it was off my own bat. I had to pay for it myself. So that research that's in that book was put together, and another thing is the Master Builders were very jealous of a lot of the procedures that I put forward in that book, and they forced me off the committee.

In 2005, they tried to have the book taken off the market, even though it sold

6000 copies, and then they brought out their own publication. They previously just dismissed any of my procedures and research, and then they took the whole lot of it. It didn't have one single thing that was their own research and put it into their own book. The judge could see that. Lindgren could see that, being an author himself. This is just a fantastic book that he put together and it was such a pleasure to be in the court and to have him be so patient.

MR FITZGERALD: So explained to me what happened in the court case.

MR ATKINS (ABWA): We couldn't get a statement of claim, even though the judge knew all the circumstances, but what I'm doing is gathering more evidence, and I'll be getting back to court later in the year.

MR FITZGERALD: I'll just ask one more questions. I don't quite understand why the Master Builders Association or HIA would be interested in protecting poor conduct - - -

MR ATKINS (ABWA): Manufacturers?

MR FITZGERALD: - - - on behalf of manufacturers. Why is it in their interests to do so?

MR ATKINS (ABWA): Just as well the wall is padded here.

MR FITZGERALD: You don't have to answer, but I'm just curious because at first instance - - -

MR ATKINS (ABWA): It's just blatant corruption. They're getting money from the manufacturers. There's no other answer.

MR POTTS: I guess a related question is do you feel that you're standing alone in relation to these sorts of issues?

MR ATKINS (ABWA): No, there's a lot of guys who are - there's so many guys that just haven't got the time to do anything about it, even though they're in agreement with me, and Phillip Dwyer from the Builders Collective, he's in agreement with all the products. I'm getting a lot of - - -

MR WEICKHARDT: He appeared at the Melbourne hearings.

MR ATKINS (ABWA): Yes, and various fellows up here that are aware of shortcomings in products and procedures. There's the background there for help, but no-one has the time to battle these people, because you try and do something, and you're just knocking your head against the wall. You're wasting your time.

MR WEICKHARDT: Do you have an affiliation of any kind or a loose association of concerned builders?

MR ATKINS (ABWA): I started the Australian Bathroom and Waterproofing Association, but that was solely to try and get back in to the Standards Association to sit on the committee. I was the longest serving committee member, and the Master Builders eased me out of the committee. That was the sole reason for starting that association. But if we had the Building Codes Board doing what they should be doing, then there wouldn't be a problem, but their answer is that the Standards Association, they rely on the standard, but the standard is put together by manufacturers. You've got individual builders who just don't have the time or money to spend attending these meetings and getting things put right. But it's overcrowded with manufacturers and it's all just self-interest. There's just a total lack of altruism.

MR FITZGERALD: Are there any other questions? Thanks very much for that presentation. You've given a different perspective in relation to some of these issues. Home warranty insurance has been an issue that's been presented to us both prior to the draft and subsequent to it, and as you know, we're trying to come to grips with it although this is not an inquiry into that particular product. So I'm grateful for the insight you've given us, and we'll take that on board.

As you may be aware, HIA has put in a submission effectively indicating that they believe the insurance is okay, and some of the insurance companies have put in submissions also. So at some stage, you or your colleagues may wish to have a look at those submissions and give us some further specific responses. It's up to you if you do or don't. They should be on the web site by now, and I think the Master Builders Association has put in a submission, but not in relation to home warranty insurance. Anyway, if you have a look at those submissions you might be able to give us some reflections on them. Thank you very much.

MR ATKINS (ABWA): No. Thank you.

MR FITZGERALD: We're waiting for our final participant who should be on their way. So we'll recommence when they arrive.

MR FITZGERALD: We'll resume for our last presentation of the day. Frank, if you can give your full name and any organisation that you represent or otherwise, and you know the drill. Just give us your opening comments, then we'll have a discussion, but can I just clarify, have we received a further submission since the draft?

PROF ZUMBO: No, not yet, but I will.

MR FITZGERALD: That's fine.

PROF ZUMBO: I've got some notes which I'll work into a further submission.

MR FITZGERALD: Thanks very much.

PROF ZUMBO: Associate Prof Frank Zumbo, Australian School of Business at the University of New South Wales. I appear in a private capacity. Firstly the commission may have seen this, but I had an article published late last year entitled Are Australia's Consumer Laws Fit for Purpose in the Trade Practices Law Journal. I'd like to submit that for the commission's assistance.

MR FITZGERALD: Sure. Please.

PROF ZUMBO: Thank you for the opportunity to appear again. I was just reflecting it's almost a year since the last Sydney hearings in this matter. In the interests of time, I'll confine my comments to three areas. I think the commission would not be surprised to find out that one of those areas is unfair contract terms and I think I'll leave that to the end. I've got two other matters I'd like to raise quickly. One is to raise possible alternatives to promoting ethical conduct, and secondly providing for a more efficient way for affected consumers to get compensation once the regulator has proven a breach of the consumer laws.

In terms of promoting ethical conduct, currently we have section 51AB. I agree with the commission's view that the test is very onerous in relation to that. The courts are taking a very restricted view of unconscionable, and that's very much a reflection of the baggage they have from the old equitable doctrine of unconscionable conduct. So we have a judicial approach to the word "unconscionable" that is very narrow, very onerous, and requires very extreme conduct. It focuses almost exclusively on procedural unconscionability.

With all due respect to the courts, that's not in keeping with the original parliamentary intention behind 51AB which was 52A originally. It's not in keeping with the parliamentary intention behind section 51AC, and that's perhaps a reflection of the fact that the term "unconscionable conduct" or "unconscionable" is not defined in the legislation, and therefore it's being left to the courts to develop. That creates a

hit and miss approach, and very much a cautious approach where the courts take very, very little steps if any, and when they reach a particular point, they stop, and it would appear to mean, on my reading of all the cases, that they've reached a point where they are focusing almost exclusively on procedural unconscionability, they are taking a very narrow view, and that view is not in keeping with the original parliamentary intention. So in that context, I was going to suggest if at all possible - - -

MR WEICKHARDT: Frank, I'm sorry, I'm not a lawyer, but can you just clarify to me how do you know what the original parliamentary intentions were.

PROF ZUMBO: Okay. You can discern parliamentary intention by looking at things like explanatory memorandum at the time. When the bill was introduced, that's always accompanied by explanatory memorandum. There will be second reading speeches given when the government of the time introduces that legislation. You can review reports that led to that enactment. So looking at all those things, such as explanatory memorandum and second reading speeches, it's clear that both 51AB and 51AC - and I know that's not directly relevant perhaps, but still, because the same concept of unconscionable is used, I think it's fair to talk about both of them - the clear intention was that the word "unconscionable" under 51AB and 51AC was to have a broader meaning, a much broader meaning, than the equitable doctrine. As to the exact extent beyond the equitable doctrine, that was obviously a matter to be left by the courts, but clearly the intention as expressed in those documents was that unconscionable conduct was to have a much broader meaning.

Over time, and it's almost 10 years since 51AC was enacted, close on probably 20 years or more since 51AB or its equivalent was enacted, and over that time, the development of a concept beyond the equitable doctrine has been very slow and has been minor at the end of the day when you look at it in toto, and what that means is that the courts have gone very, very slowly in trying to develop that concept, but have reached a point where they really want an extreme form of conduct. They will not look at the terms in isolation of the contract. They'll look at the terms when there is a high level of unfairness in the conduct or what's called procedural unconscionability. So all I'm proposing in this context is to provide a statutory definition that makes it clear that "unconscionable" under 51AB and 51AC is a much broader provision.

In defining the term, we could reference the term to concepts such as good faith, fair trading, harsh or oppressive, just to make it clear, just to give more comforts to the courts that 51AB, 51AC are intended to have a broader view. On that point - and I keep talking about 51AB and 51AC, that immediately prompts me to make a further suggestion, and that is it's perhaps time to consider only having one term, one provision, one section dealing with unconscionable conduct. We have three at the moment; 51AA, 51AB and 51AC. We have the equivalent provisions in

the Australian Securities and Investment Commission Act. So we have a multitude of unconscionable conduct provisions.

At the very least that's confusing, particularly given that what is meant to be unconscionable under 51AA is the old equitable doctrine whereas 51AB and AC are supposed to be broader. But it seems more and more over time that those concepts as used in 51AA and 51AB and 51AC seem to be merging into lowest common denominator, which is 51AA; another reason why the courts have been very hesitant. So it's very confusing to have three different sections in the Trade Practices Act, a further three sections, and they're unnecessary. At the end of the day, the concept of unconscionable conduct should apply in trade and commerce, whether it be a consumer or small business transaction. That's already been accepted. To have three provisions is just very confusing and very unnecessary. If you're looking for a way to streamline the laws, and obvious way would be to try to have one provision.

MR FITZGERALD: Sorry, can we just hold there. I share your view that the three are now confusing to most readers of them. Firstly, will you in your written paper be giving a guide as to what a new provision might look like?

PROF ZUMBO: Sure.

MR FITZGERALD: Because that would be helpful, but the second point is that most of the participants in the lead-up to the draft report encouraged us to two views. One was that there was a general view that unconscionable conduct provisions are not working in the way that people either believe they should be or as you might indicate that they were intended, but secondly they then said, "But don't try and change them." So we were given lots of advice by lots of people that this was a minefield, and for the purposes of this inquiry, don't go there. I accept your challenge to us.

PROF ZUMBO: Yes.

MR FITZGERALD: But it goes against the grain of most other people. Whether or not they think we would botch it up or whether or not it is just so difficult or whether or not it's more appropriate for a legal review, the Reform Commission review or some other is an issue. So I just want to put that on the table, because there seemed to be a common view that nobody was very happy with it, but also don't try and fix it in this inquiry.

PROF ZUMBO: Yes. It's good to see that consensus that no-one is happy with it. I can see people concerned about trying to change it. It is a difficult area. However, having said that, I do believe that's not sufficient reason not to try and attempt in this inquiry. Obviously the commission has heard a lot of evidence. I will be providing a form of words to suggest how it may all come together, and it may be as simple as

having a statement that says a corporation in trade or commerce shall not engage in unconscionable conduct, and then back that up with, "'Unconscionable conduct' means for the purposes of subsection (1), X, Y and Z." So you have a general provision prohibiting unconscionable conduct. You define that unconscionable conduct in a way that gives effect to the intention, and as a result you have one provision.

I think another point that needs to be made and is a problem that arises under 51AB and 51AC is that the layperson believes "unconscionable" to mean one thing. The courts take it to mean something else which is much more narrow. So some of the confusion is that there's a word "unconscionable", that the layperson may think that really means unethical conduct. However, the courts say no, it's much more extreme than that. So having the definition I think puts everyone on the same page as to exactly what is meant.

I think initially when having discussions with consumers and small businesses on this issue, they say, "This conduct is unconscionable. It's a real act of bastardry," and I say, "You may think it's unfair. You may find it reprehensible, but it's hard bargaining at the end of the day." So understanding the difference between hard bargaining and what's unethical I think could be usefully dealt with by providing the definition. I think initially when you talk to small businesses and consumers, they have one view of unconscionable. When you explain what the court's view is, they say, "That's not my view. That's not the layperson's view. That's a very strict legalistic view of it." As I said, the judicial approach is simply a reflection of the baggage that the courts have in having applied the equitable doctrine for so long.

The other suggestion would be to provide examples of what would be unconscionable. At the moment we don't have a definition. That leads to confusion amongst the layperson. It leads the courts to take one view. We could introduce a statutory definition of unconscionable conduct. The other thing we could do is provide a list of examples of unconscionable conduct, and that leads me to point out another confusion that arises with 51AB and 51AC.

Both those sections have factors that the court can take into account in determining what is unconscionable. Those factors are not a definition of unconscionable conduct in the legal sense, but many people you speak to, the layperson will consider those factors as the conduct comes within those factors, it's unconscionable, and they're only factors. Courts can accept those factors or reject those factors; take those factors into account or not take those factors into account.

One advantage I found with the unfair contract term regime is that both Victoria and the UK have a list of terms that would be unfair under that law. It would be very helpful to have some examples of what's unconscionable or could be unconscionable. So one suggestion would be to recast those factors in 51AB, and

while you're there 51AC, into examples of unconscionable conduct. That's also a drafting exercise, and I'm very happy to provide some suggestions just for debate. Once again I'd like to emphasise it's about having a debate about these issues, because even though unconscionable conduct is a difficult area, it is a very important area, and it needs to be debated, needs to be understood as to where we take it.

Some people may even suggest that we've gone as far as we can with unconscionable conduct, and some people, as you suggested, may say leave it alone. That may be one view. I think we can resuscitate 51AB and 51AC, but an alternative altogether to unconscionable conduct is enacting the statutory duty of good faith. In that context, what you have is a situation where a corporation shall act in good faith towards consumers in dealing with consumers. The concept there of good faith is one that the courts have been developing as an implied term, particularly in a commercial context.

In a commercial context, franchise agreements in particular, the courts are saying - particularly New South Wales, lesser extent Western Australia and Victoria - that there is an implied duty of good faith. There's considerable case law that's developed in relation to the concept of implied good faith. For example, there are various cases that tell us it means not to act arbitrarily, capriciously, unreasonably or recklessly; cases that tell us that not acting in a manner that's oppressive or unfair in its result by seeking to prevent, for example, the performance of the contract or to withhold its benefits; failing to have reasonable regards to the other party's interests.

We're also told what it's not. We're also told that it's not acting in the other person's best interests, but merely to have regard to the nature of the contract, what's trying to be achieved by the contract, not denying that person the benefits of that contract, not acting capriciously. So we have a body of case law there in relation to implied duty of good faith that would easily be the underpinning of a statutory duty of good faith.

MR WEICKHARDT: Frank, where does this case law come from?

PROF ZUMBO: Various; New South Wales Supreme Court, New South Wales Court of Appeal, Western Australian Supreme Court. I'm happy to provide reference.

MR WEICKHARDT: No, it's okay, but it's Australian case law.

PROF ZUMBO: Yes, they're Australian cases. In my written submission, I will provide a convenient list of all the cases, but this has been evolving over the last five years in particular, 10 years, where the courts are looking at a sort of positive duty, particularly in a franchising context where the relationship may be ongoing. So to fill in the gaps that may be in that contract, you have some overriding, overarching

principle of good faith.

It could be in the same context as consumers You have a mobile phone contract that might last two, three years or longer, or a pay TV contract that may last three or more years, or a health gym membership that may last for a period of time. During that time, you have an overarching statutory duty of good faith. It helps the parties understand they need to behave in a particular way towards one another. The benefit of a statutory duty of good faith is it works both ways. It applies both to the business and the consumer; to the small business, to the big business. So it's about providing standards of conduct by which the parties can act within, and it's positive. Rather than a negative in terms of unconscionable conduct, it's positive as to looking forward rather than looking back.

So there's some general comments in relation to promoting ethical conduct, in terms of resuscitating 51AB and 51AC, providing standards of ethical conduct. I think those standards under 51AB and 51AC are just too narrow. There are a lot of things perhaps that the ordinary person would consider the ordinary standard would be of unethical conduct, but the courts may not consider that unconscionable. So what may be unethical may not be unconscionable in the strict legal meaning of the word, and that creates a grey area and a lot of frustration amongst consumers and small businesses.

The other point I make just in passing is in terms of seeking redress, we have a situation where the ACCC, a regulator, but let's keep it in the context of the ACCC to make it simple. They go to court, they prove a breach. The court finds that there's a breach of a consumer law or a competition law. In that case, the court may make findings of fact, and section 83 of the Trade Practices Act allows findings of facts to be used in other proceedings in order to recover damages. I find that a very inefficient process. On the one hand you've got the regulator, the ACCC, who's brought a case, spent considerable resources getting a result, prosecuting this person for a breach of the law, and then the affected parties have to come along in another case and start again in terms of proving their damages.

They may rely on the findings of fact of course. That is advantageous, but it's a second proceeding. We're clogging up the courts. We see that there's a multitude of these class actions and individual consumers trying to seek redress in a subsequent case. In that context I've thought surely there must be an easier way, and for debate I've raised what I've called a class compensation order. What I mean by that is a situation where the court would be given the ability to order this class compensation order in a case where the ACCC has succeeded in proving a breach. So the ACCC proves a breach. There may be penalties imposed, whatever that may be, in terms of a regulatory sense. The court then in that same case could have the power to say I'm prepared to order a class compensation order.

In that case, what will happen is we'll set up a system whereby we have assessors answerable to the court. Affected consumers or small businesses, as the case may be, or affected parties can then approach the assessors within a reasonable period of time and make out their claim for losses arising out of the conduct, and if there is any issue, the assessor is answerable to the court. Once the assessor makes a suggestion or recommendation in terms of the damages in a particular case, that would be reviewed by the judge. The judge is privy already to all the evidence brought before the court, understands the case fully, and as a matter of procedure could review those claims from the assessor's recommendations, and accept or reject that as the case may be.

But you have a streamlining, you have a situation where the damages flowing from the breach of the Trade Practices Act in this case would be assessed in the same case. It would provide speedy access to justice in that case. The contravening party would fund the assessor process, and it all can be wrapped up in one case. So I put that on the table, and I'll be saying more about that in my written submissions.

MR FITZGERALD: Sorry, just one question. Why doesn't a representative action taken on behalf of the regulator get us there? As you know, we're recommending a change so that you don't have to have named parties to bring a representative action.

PROF ZUMBO: Yes. In my experience, the ACCC very rarely brings representative actions, and they perhaps could give you further evidence in relation to that. My experience is it's very rare. Having spent some time on sabbaticals from the university at the ACCC, having researched the area carefully myself, there are severe problems with representative actions in the sense that the ACCC essentially becomes the legal adviser for the consumers in that case. So they're very cumbersome to run. You may have particular differences between each consumer in that case, and you have a problem where you're trying to prove a breach based on people's individual experiences.

So it may be best that the ACCC does what it does best, and that is prosecute the law. If there's a matter of damages, that may be more efficiently dealt with by some system where you set up assessors to deal with that. So you don't have the ACCC's resources tied up in essentially the recovery of private damages. So I would strongly suggest the commission get advice from the ACCC about the cumbersome nature of representative actions.

MR WEICKHARDT: I think we have taken advice from them, and our draft report suggested a change in the area of representative actions which the ACCC seem to feel is a step in the right direction.

PROF ZUMBO: That may be a step in the right direction. What I'm suggesting is there may be more superior ways to deal with it. So I leave that with you for debate.

MR FITZGERALD: Just one last question on that, are there any jurisdictions that have class compensation orders in practice or is this a new and novel concept that we'd be introducing?

PROF ZUMBO: I'm not aware of any in Australia. I'm not aware of any overseas either. It's simply looking at the matters, looking at the practical difficulties that consumers and small businesses face, thinking of ways to streamline the process to make it more efficient.

MR FITZGERALD: It's very creative.

PROF ZUMBO: Thank you. Now on to unfair contract terms. I have to say that we will perhaps differ on a number of areas in relation to unfair contract terms. If we start from the premise that there may be alternative views, that what I'm trying to do in my evidence today is be constructive in terms of providing an alternative analysis which the commission may review and accept or not as the case may be. I have to say from the outset that I'm somewhat troubled by some of the suggestions made in relation to unfair contract terms. I have to say with all due respect - I know a lot of work has been put into this by the commission, and I am encouraged that they see that unfair contract terms is an issue that needs to be addressed.

I am, however, concerned that there are some propositions put in the draft report that are somewhat questionable from where I sit and debatable from where I sit. Some propositions appear to be judgmental, and I'll explain what that means. Others appear to be more concerned with protecting businesses than consumers. Once again I'll explain what I mean by that as we go through. For example, there seems to be a focus on opportunistic consumers to justify vague disclaimers in the report. This is troubling as it appears to be suggesting that there may be some justifiable use for unfair contract terms which allow businesses considerable discretion on how they may deal with a consumer that the business considers to be opportunistic.

I'm concerned about this latitude that the business appears to be getting under this interpretation. Does this mean that if a business thinks a consumer is nice, then the unfair contract term won't be used aggressively or won't be used as aggressively as it would have been against an opportunistic consumer. To me that sounds just judgmental and shifts the policy focus on to how we protect businesses from opportunistic consumers as opposed to how we promote fairer consumer contracts. Once again it seems more concerned about protecting the business from strategic behaviour from the consumer.

I, once again with all due respect, would have thought that the appropriate policy stance would be to ask whether or not there was an unfair contract term, and if

so how do we deal with that in an efficient manner. It's the existence of the unfair contract term that is the problem. I know the commission perhaps is not so concerned about the existence of terms. Dormant terms don't affect anyone is the proposition put by the commission. However, it's the mere existence that could then be triggered at some point in the future. They lie dormant. It's a bit like, if I can use the analogy, if you have a cancer, it needs to be removed, whether dormant or not. If you an unfair contract term, it should be removed, whether dormant or not, because it could be triggered at any point in time, and under that scenario, the consumer is just a target for when the business wants to trigger that. It's like Russian Roulette. It may be used against you or may not be used against you. It shouldn't be there in the first place.

MR WEICKHARDT: Frank, I think there was an example in appendix E given of a term that might be regarded as unfair by some about, for example, hire car companies or car rental companies being able to charge your credit card for damage that had occurred to a car, and it was pointed out there that it is to the convenience of all consumers or the vast majority of consumers that you can drop your car off at a car rental spot without having it inspected, sometimes at an unmanned spot, and most of these get dropped off and there is no issue. But if the car rental company then finds subsequent damage, they can charge the credit card of the consumer that dropped it off.

The scenario that was pointed out in appendix E was if you disallow that term on the grounds that it is considered unfair by some regulator, then the car rental company's response may simply be to say we won't allow cars that are rented to be dropped off without being inspected. So that might be to the disadvantage of the vast majority of consumers.

PROF ZUMBO: Okay. If I can respond to that, number 1 can I say that it's not what the regulator thinks is unfair, it's what the legislation sets out to be unfair, and the legislation - and I have to keep coming back to this - provides ample protection for the legitimate business interests of a business. As you accept in your draft report, the definition of "unfair contract" is essentially a term that goes beyond what is reasonably necessary to protect the legitimate interests of the business in that case. So if it goes beyond what's necessary, then it's unfair. But if there's a legitimate right to protect, then that's legitimate.

Having the ability to recover for damage to a car I think is legitimate to protect that interest. I can say from personal experience when I hire a car - and this is where consumers perhaps need to take some responsibility - I look at the car carefully before I take it away, and there was one instance recently where I hired a car, and there was a scratch on the car, and I went and got the attendant. I asked that to be recorded on the contract, and I felt comfortable that when I returned it, there was not going to be an issue.

So if you see damage on the car, and it takes all of 10 seconds to walk around the car, you make that known to the business or the attendant and you have that recorded. If subsequently there is damage found that was not noted earlier, then the consumer hasn't a leg to stand on. But I think to target individual instances gives rise to the particular problem we have with unconscionable conduct, because we have to look at each term carefully. As you say, you have to look at it in the context of the overall contract, and obviously in some instances consumers need to take care of their own interests. So those factors all have to be balanced.

But that doesn't detract from setting up a public policy objective which says that you can't have unfair contract terms, terms that go beyond what's reasonably necessary. I hope that addresses your particular question.

MR WEICKHARDT: Yes and no, but go on.

PROF ZUMBO: No. It's a debate that needs to be had. Yes, you have to look at the whole contract. I made that clear in my evidence last year, but there is that in-built protection that has to be reasonably necessary to protect the legitimate interests of the business in that case. To me that's ample. That's ample protection for the business.

I have to say the report talks freely of opportunistic consumers, but I don't see any talk about opportunistic businesses who may hide behind unfair contracts to disadvantage consumers. There's no talk of opportunistic businesses abusing their contractual power to shift contractual risks disproportionately on to consumers. Legislation dealing with unfair contract terms is not about picking sides or being judgmental, but rather such legislation would be concerned with providing a framework for promoting fairer consumer contracts, for promoting efficient markets.

There is a market failure in relation to non-competition on those terms. That does give the business who is tempted to take it. I'm not suggesting all businesses have unfair contract terms but there may be a temptation to include those unfair contract terms because they can get away with it. That sounds like opportunistic business to me. I leave that point. Importantly I say it's not focusing about how a particular term affects a consumer or business. That's certainly an issue that needs to be taken into account, but rather let's identify what the public policy objective is that is the evil of unfair contract terms, because they go beyond what's necessary to protect those legitimate interests of the business. Because they shift contractual risks disproportionately on to consumers, because they deny consumers a benefit, once again with all due respect, that should be the focus.

Also it appears - and this is obviously my interpretation, others may not share it, but it appears to me that the draft report seeks to downplay the evidence of savings

or benefits already achieved, words like "patchy". A number of things need to be remembered. You can't quantify every single benefit, and you can't put a dollar value on every single benefit. You can try, but you might be here for a very long time. I'm convinced that if you did undertake that exercise, you would come up with the right result in terms that the unfair contract terms legislation does provide considerable economic benefits and non-economic benefits.

MR WEICKHARDT: If you can point to evidence, we'd be happy to take that into account.

PROF ZUMBO: The commission identifies evidence. There's the National Audit Office evidence. There is evidence from Victoria. I'm not sure what other evidence the commission is looking for. This law has been working in the UK for over 10 years. I don't hear any complaints. I don't hear that it's undermining business contracts or consumer contracts. I hear that it's been resolved from consultation. I spent time at the Office of Fair Trading in the UK. I am very familiar, by looking at all the work, of the Victorian consumer affairs. There's ample evidence that these terms have been rewritten or deleted.

There's consultation that occurs. The business accepts that it's unfair. If they didn't, they could go to court. There are very few cases that go to court. Are we suggesting that businesses aren't able to make their own judgment about what's fair or unfair? There is ample evidence. Some of the evidence, you cannot put a dollar sign on. For example, all the cases bar one or two or three have been resolved from consultation, no litigation. Compare that with 51AB and 51AC where you have very expensive litigation. All this consultation leading to a result under unfair contract term legislation has resolved it in savings of courts' time, savings of litigation time, savings of regulators' litigation budgets. I mean, there has to be a dollar sign there.

There are several benefits associated with negotiated settlements. You have a norm of conduct that's set out in the legislation. People can talk about it. Is the term reasonably necessary to protect the legitimate interests of the business? There is a criteria there. The regulator can look at that, the business can look at that. They can come to an informed decision. They're all adults. They're all professional. At the end of the day, that's a benefit that they can come to a conclusion. Timely resolution has to be a benefit. How do you put a dollar sign on that? Remember the old adage, justice delayed is justice denied. Consumers are getting immediate results under these pieces of legislation. They're not getting those results under 51AB, 51AC.

At the end of the day there are inefficiencies there, take it or leave it. That obviously reflects on some market failure. The other benefit that we perhaps can't put a dollar sign on is the deterrent effect on the fact that these businesses that may be tented to be opportunistic are not, and when they are opportunistic it may cause distress to consumers. I've had instances where I look at a term and I think I'm

entitled to some things under that term, and the business says no. Probably refer to me as an opportunistic consumer, but at the end of the day, if you're playing a game of Russian Roulette where you're relying on the benevolence of the business to use or not to use a term, you're leaving consumers very vulnerable in that case.

MR WEICKHARDT: So can you point to real differences in detriments to consumers that have occurred in Victoria versus other states?

PROF ZUMBO: Depends what you're asking for. If you're asking for dollar signs, I can't provide an econometric analysis. That can be provided. That needs resources, needs time, and you may not be able to quantify all of it. But let me just say in relation to the benefits of Victorian legislation, I can point to how consumers around Australia have benefited by mentioning my evidence in the public hearing last year, that mobile phone contracts have been reworded, with industry-wide support for that rewording, for the benefit of consumers.

You need not go any further than the National Audit Office report in 1999 entitled the Office of Fair Trading Protecting the Consumer for Unfair Trading Practices where the comment is made in that review:

> One mobile phone company told us that they expected the revised contract to make their services more attractive to consumers.

There is actually a benefit to businesses having clearer contracts, having fairer contracts. Consumers may not be put off by the dense legalese, by these terms that are two paragraphs long. Some consumers may be fearful of that. If they had a simpler contract, a clearer contract, a contract that's perceived to be fairer, consumes may be actually buying more of these services and being more confident with these services.

MR POTTS: Isn't it also the case that a business might not be worried about a particular term being prohibited because it will apply to all businesses, and therefore they will be treated equally. You were saying before that the way in which business reacts to unfair terms is quite different to the way they act to misleading and deceptive behaviour. I suspect the reason for that is that when it comes to misleading and deceptive behaviour, it relates to the behaviour of an individual firm, and their reputation and credibility in the marketplace. So there's a lot of store for an individual firm.

When it comes to unfair terms, as you yourself have just mentioned, when a term is determined by the Victorian government through the Consumer Affairs Bureau, that it's unfair and therefore it's prohibited, whether it's negotiated with the industry or what, applies to all service providers in the country. Therefore it does not affect the relative competitive position of individual firms, and therefore the firms

don't stand to lose anything from that, because they can recover the cost of that in the marketplace. The potential loss lies with the consumers.

PROF ZUMBO: Sorry, what cost to the business?

MR POTTS: No cost to the business.

PROF ZUMBO: There's no cost to the business, that's right.

MR POTTS: But at a potential cost to consumers.

PROF ZUMBO: That I don't understand. Why? These firms are not competing on those terms anyway, because they're unfair.

MR POTTS: But if something is taken out because it's unfair, it may be that it has absolutely no effect, but you would think in a competitive market if something is in there, there's some sort of price advantage for consumers, because new suppliers would come into the market and bid away those super profits that might be made by a provider because they're able to use an unfair term. This is the theory of it.

PROF ZUMBO: But that theory depends on contestable market. There's no contestability about terms of the contract.

MR POTTS: There is. There's quite contestable - - -

PROF ZUMBO: Not all terms, with all due respect. The reality is that there is contestability on price generally unless there's collusion or parallel pricing, a highly concentrated market. There may be competition on key terms, but there's no evidence that I can see that there is competition on all terms. In reality some of these unfair terms are structured in a way that it's trying to extract more from a consumer and giving rise to higher profits perhaps, and that's a point you make in your draft report which I'd like to talk about. There won't be any competition on those terms if it's an attempt to extract more from the consumer.

In your draft report you say for example - and I think this is picking up on the point you made there - and I quote from page 122 of the report, second volume of the report:

> A reduced capacity for businesses to impose some contingent charges on consumers, such as certain termination fees would lower businesses' profits because their revenues, but not their costs, would have fallen,. As noted above, this could be expected to place upward pressure on up-front prices, thus reducing the gains to consumers for acting on the terms.

I hope I haven't quoted out of context. I think it's an appropriate quote in the context, and I'd like to make a couple of points, and if you'd like to ask me questions, I'm very happy to take questions on this one. The maintenance of business profits is not and should not be a relevant consumer policy objective. I'm not aware of when maintenance of business profits should ever be or has been or became an element of consumer policy objective. Consumer policy as we know - and I don't need to tell anyone in the room - is concerned with maximising consumer welfare within the context of an efficient and competitive market.

As for whether a business is able to charge a particular fee, the question should not be whether the charge is necessary to maintain profits of the business, but rather whether the charge that's been imposed is reasonably necessary to protect the legitimate interests of the business. No-one is saying there isn't any legitimate right to impose termination fees. There may be a cost to the business of a person getting out of the contract, but if that then goes to a matter of maintaining business profits, then I get a bit troubled by that.

You say that if you remove a term, that may put upward pressure on up-front prices. A couple of points about that is if it's reflected in the up-front price, there may be competition about the up-front price. There may not be competition on the termination charges. In relation to up-front prices, you may be able to walk away. Once you're in the contract, you're locked into the contract and you can't walk away unless you pay what could be an unfair termination fee. Once again it seems to be about protecting businesses rather than consumers, and if that impression is incorrect, then I apologise, but that's the impression I'm getting from reading these comments.

I come back, there's an unlikelihood of competition on the vast bulk of terms. Yes, it would be nice if there was competition on the vast bulk of those terms, but the reality is it doesn't happen because consumers are time-poor and businesses know that. Businesses will target those terms that they feel are attractive to the consumer.

A mobile phone, you're talking, for the business, maybe a very small price; to a consumer it may be larger, but at the end of the day, the more you spend on advertising and competing on terms, yes, that may lead to higher charges. So it may be inefficient to compete on every single price from the point of view of business profits. But from the point of view of consumer, if there is no competition, if there is no contestability, the consumer is hostage in that case to unfair contract terms, and once again Russian Roulette as to when that term is used or not used.

The other criticism that you appear to make of unfair contract terms legislation is that regulators may be over-zealous. I hear that all the time. I suppose all regulators are over-zealous. I suppose the opposite of that is they're not doing their job. Of course the truth obviously lies somewhere in between. If the regulator has raised an issue, of course the business is going to be defensive. No business wants

the issue raised. But surely how a regulator may pursue a particular case should not detract from the underlying arguments in favour of preventing the existence of unfair contract terms.

If you disagree with the regulatory, you can go to court, and that can happen, and there has been one challenge in the UK where the business felt strongly enough about it. So to claim that the business is hostage to the regulator I think once again is getting the cart before the horse in that particular case. Often both parties, the regulator and the business, have a very keen interest in moving on. There's a criteria about what is unfair. They talk about it, they negotiate, they discuss, they disagree, they agree. Obviously the experience that the Victorians can bring and have brought would be very important.

But more importantly, I think the one thing that possibly undermines all arguments against unfair contract terms is the argument that the commission itself noted, and I think it's at the bottom of page 122 of volume 2 :

> Notably, business has not identified major costs associated with the introduction of unfair contract laws in Europe, the UK and Victoria.

There is no major business cost. Businesses would be telling you if there was. There is no evidence that there are major business costs. So on the one hand, we have evidence that the legislation is working. Everyone is generally happy with the unfair contract terms. We don't seem to have any discontentment with unfair contract terms, certainly nowhere near the discontentment we have in relation to unconscionable conduct. That must be telling you that something is working there, and it's working very well for all parties.

At the end of the day, I do acknowledge that the commission has said that there should be an unfair contract term legislation. The concern in that particular case then is how the commission has restricted the unfair contract term proposal. I'm concerned, if I can say so, that the commission in its recommendations suggests that there has to be proof of material detriment to the consumer before the regulator can bring action. This is a major restriction on the section. It's not only extremely onerous, but it's generally not required of regulators. A requirement for a regulator to show material detriment to consumers as a precondition of reinforcement action is generally out of step with accepted approaches to consumer law and its enforcement.

I'm not aware - perhaps the commission can point it to my attention but the general policy of consumer law is that there is a disadvantage to all consumers that the law is trying to address. If there is a material loss to an individual consumer, then that individual consumer has to show detriment Under the Trade Practices Act, under any legislation, if you have a loss, you claim to have a loss, you have to prove that loss, and there are cases in Victoria where - a most recent one was Free v Jetstar

Airways where one charge was seen to be unconscionable, other charges were not seen to be unconscionable. This was a consumer trying to recover. In that case there was a material detriment to the consumer that the consumer could prove. However, in relation to another case in Braithwaite v GH Operations - and I can provide the citations for these cases - the tribunal there was quite clear that the consumer could only bring a case if there was detriment.

So the consumer, having suffered a loss from the breach of the public policy objective, can recover that damage if they can prove a material detriment, but it's generally not required, I think maybe never required of the regulator to prove material detriment, and the reason why I believe is because when you have a public policy objective - in this case the public policy objective in the United Kingdom, Europe and Victoria - is to prevent the existence of unfair contract terms. When you have that public policy objective, it's trying to overcome a detriment or perhaps a better word is disadvantage to consumers generally, and there is a detriment or disadvantage to consumers generally that needs to be dealt with, and that may be broader and usually is broader, much broader, than the material detriment suffered by an individual consumer.

So the public policy objective is the removal of unfair contract terms because that gives rise to an inefficient operation of the market or gives rise to unethical behaviour, and that's what parliament is trying to address. It's trying to address the inefficiencies in the marketplace, trying to address unethical conduct by rogue businesses, a point acknowledged by the commission. It's the removal of that detriment or that disadvantage generally that's the public policy objective.

The detriment that an individual consumer may suffer is material to that consumer, and the consumer then needs to prove that damage. But the enforcement of the Trade Practices Act is not premised on an individual consumer suffering material detriment. It's premised on there being a public policy objective, a public benefit of promoting efficient markets, of dealing with rogue businesses. So perhaps there's a confusion there about the enforcement of a public policy objective, and the recovery of individual detriment in an individual consumer's case.

Those two need to be kept separate. You have a public policy objective, that is the promotion of efficient markets, promotion of ethical conduct through the removal of unfair contract terms, terms that go beyond what's reasonably necessary to protect the business, and the issue of detriment to individual consumers is a separate matter. If an individual consumer has detriment, they can recover that, and they have been able to recover that in one case, and not in another case in Victoria. So if I can leave the commission with the thought that that material detriment requirement for the regulator should be removed, because the public policy objective to be achieved or purported to be achieved is the removal of unfair contract terms because they are inefficient or because they lead to unethical behaviour.

MR FITZGERALD: Thanks for that very robust articulation of your position.

PROF ZUMBO: I could say - sorry to interrupt - in there you have a further requirement of public benefit, and I have to be emphatic that the public benefit is the public policy objective being achieved. That's the benefit to the public. If you're saying it's a context of looking at the circumstances of the contract, which I think it is, that's already implicit in there. To require public benefit is to confuse another concept which is in the Trade Practices Act where you have a public benefit under an authorisation procedure.

I'm not sure if that's what the commission was thinking, but the public benefit there is never directly relevant to whether there's a breach of the public policy objective under the Trade Practices Act. Public benefit is a reason why you may justify it, and there may be a public benefit in having safe harbours which the commission acknowledges, but the public benefit is the promotion of ethical conduct and efficient markets in these terms.

MR FITZGERALD: Thanks for that. We've got just under five minutes, because we've got to meet with a government later in the afternoon.

PROF ZUMBO: Sure.

MR FITZGERALD: So just questions from Gary or from Phillip at this stage?

MR WEICKHARDT: I don't think so.

MR FITZGERALD: Your comment about the fact that the unconscionable conduct provisions which requires individual circumstances to be examined is universally questioned. That's true.

PROF ZUMBO: Yes.

MR FITZGERALD: There's no doubt at all that the approach taken in Victoria and the UK is a proactive broad-based approach. So they are different. I suppose the only comment I'd make is what we tried to do was to in a sense work out the triggers that would cause action to be taken, and the consumer detriment is a trigger. Whilst you've defined them as saying that there's a difference between private action and public action, one of the issues we were trying to deal with is to deal with that issue of regulators going too far is to find the trigger, and the trigger is where there is actual detriment, and particularly coming from an economic focus, the notion of proving detriment before you take action is a fairly fundamental notion.

You're right. In some parts of the Trade Practices Act, there is absolutely no

requirement to prove detriment, and that's right. In other parts of the Trade Practices Act, you have to prove detriment for private actions.

PROF ZUMBO: Where's there's a loss to the consumer.

MR FITZGERALD: Yes, that's correct, and unconscionable conduct is one of those areas. So I just wanted to make the comment that you're right. There is a fundamental difference in the way you approach it, but would you not accept that a safeguard against regulators acting - let's just use the term you've used, and I think we probably have - over-zealously, is a situation where there has to be evidence of detriment to either a consumer or consumers. So in Victoria's case, I think even Victoria would say that they won't act unless there's a high potential for detriment. We've gone one further and said there has to actually be demonstrated detriment. I'm not quite sure if we're as far as we may at first seem.

PROF ZUMBO: Can I clarify. (1) is I didn't say that the regulators were over-zealous.

MR FITZGERALD: No.

PROF ZUMBO: I have to clarify that.

MR FITZGERALD: You're accusing us of having that view.

PROF ZUMBO: Yes, I have to clarify that. I believe, having reviewed the experience in the UK and Victoria very, very closely, I don't believe - and of course minds will differ - but I don't believe, looking at it objectively without any vested interest, I don't believe the regulators have acted over-zealous. In fact perhaps in some cases they could have taken more action. That's observed in relation to the Office of Fair Trading in the UK by the National Audit Office with subsequent reports. So I don't think anyone is saying that the regulators are over-zealous. To take that as a theoretical concern I think is overstating that concern.

As for the enforcement priorities of a regulatory agency, that's a matter for them. Obviously they will take cases that have higher national significance or higher significance because of limited resources. They cannot take every case of unfair contracts to court, but that's where the consumer can engage in self-help. If the consumer can demonstrate detriment, then the consumer can get that recovered from the tribunal or the court.

The immediate safeguard number 1 is that the regulator does not have unlimited resources. Number 2, the regulator will be very sensible on how they enforce that law. All the instances that I'm aware of in Victoria, they've taken an instance where there is a widespread problem perceived in an industry, such as

mobile phones. That would benefit a great number of Victorian consumers, and by implication a great majority of Australian consumers. So I don't believe there's any evidence that regulators are overstepping the mark such that you need a trigger. You need a very onerous hurdle to get over, and proving material detriment for a consumer is a very onerous - it's such a high hurdle, I don't believe that a regulator can overcome that in all but a handful of cases, because that requires more resources to be spent on determining the individual impact on the individual consumer.

But that confuses the issue with the public policy objective. It is efficient for a consumer to be able to deal with issues across an industry, because it maximises the use of their very limited resources to produce the maximum benefit for consumers. The industry in terms of mobile phones has come on board. They agree it benefits them, it benefits the industry and it benefits consumers. So if it's working well, if there's ample evidence it's working well, to focus on theoretical problems, to ask for evidence quantifying every single cost and benefit to the last sense is just oppressive and unnecessary, given that in the United Kingdom at the very least, if not in Europe, it's been working for well over 10 years. There are no complaints.

MR FITZGERALD: We're aware of that.

PROF ZUMBO: That's the other point I'd like to make, if it aint broke why fix it? The commission is adopting a novel approach, a new approach which is inconsistent with the approach taken in Victoria and the UK. That itself adds regulatory costs. It's a new approach. If it aint broke, why fix it?

MR FITZGERALD: All right. We have to leave it there, and I look forward to receiving your written submission.

PROF ZUMBO: I will.

MR FITZGERALD: I thank you for your time today as always.

PROF ZUMBO: Thank you for having me.

MR FITZGERALD: Thanks, Frank. That now concludes today's public hearing. We'll adjourn and reconvene in Canberra on Thursday of this week. Thank you.

AT 12.58 PM THE INQUIRY WAS ADJOURNED UNTIL
THURSDAY, 21 FEBRUARY 2008

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