

SHOPPING FOR POLICY: EMPOWERING AND INFORMING CONSUMERS

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George Negus:

The session is called “Shopping for Policy” – very clever little play on words. “Empowering and informing consumers”. And the objective is basically to explore the different way that policy makers might respond. People like yourself and people who assist policy makers respond to a consumer issue. And lots of words are here on my notes that you will be familiar with.

Whether and when to intervene? What is the most effective type or shape of intervention? The costs and benefits of such mechanisms? Self regulation, co-regulation, education, which we have been hearing in almost every session.

Right now the panel: Evelyn from New Zealand, Evelyn Cole is from the Ministry of Consumer Affairs in New Zealand. Would you like me to describe any more specific way than that?

Evelyn Cole:

I am in charge of the Consumer Policy Group in the Minister of Consumer Affairs and I am standing in for Liz MacPherson, the General Manager.

George Negus:

Right and David Cousins as you would all know, who is the Director of Consumer Affairs here in Victoria. And Colin Neave is the Banking and Financial Services Ombudsman.

George Negus:

And Gordon Renouf almost all of you would know who is the General Manager Policy and Campaigns at Choice.

So welcome the Panel. And they agree with me when I promise that these sort of things just develop a life of their own after awhile. They just take off, you know. If you could restrain yourselves and let this lot shoot their mouth off for awhile and then as the scenario unfolds or their response to it unfolds, you have any suggestions to make how you think the situation should be handled, then let fly.

As I said one of my latest best friends Ginger has just received an offer in the mail. It is an advertisement for a new gas and electricity retailer, First Class Energy. As it turns out, yesterday morning, I may have mentioned this. I turned on the telly to see the early morning rubbish and there was an ad for somebody advertising a whole new energy plan, which I had never seen one of those before, let alone in Victoria. So, actually quite pertinent. Anyway Ginger has received this ad for a new gas and electricity retailer, First Class Energy.

First Class Energy are now operating in Ginger's area and they are offering competitive rates and a number of packages. She has never given much thought to her energy requirements, old Ginger and she dismisses the offer out of hand, doesn't even think about it. She is apparently satisfied with her current supplier, and can't see any need to switch from what she is doing to what she has been offered.

However, Ginger then gets another offer in the mail from a different provider, Cut Above Energy. So offer number one came from First Class Energy, offer number two from Cut Above Energy. This time she discusses the offer with her friend Eva who reckons that with all the new and increased competition, Ginger could save some money if she at least considered these offers. So she suggests that Ginger consider all of the offers.

So Ginger... these must be a pretty influential mate because she dutifully looks into each of the three retailers in her area. First Class Energy has three different packages, with various components, including discounts for paying bills by the due date, 3% off gas and electricity charge, and renewable or green energy options.

Cut Above Energy offers a range of peak and off peak rates and one month's free electricity for each twelve months of connection.

Premier Energy which is her current energy supplier, her energy retailer, offers two different packages with a reward scheme and various payment options. Premier Energy says that "Which one you chose simply depends on your personal needs and circumstances". But poor old Ginger hasn't got a clue what her personal needs and circumstances are, and she finds that the information is just confusing and quite overwhelming.

So she refrains from making a decision and stays with her current provider. She tells Eva, who says it is still early days and that maybe there just isn't enough competition around yet to offer consumer real value.

So this is a scenario, it is not a question of what you think she should or she shouldn't do, it is just your reaction to it, or maybe you do have an opinion about what Ginger should or shouldn't do.

Gordon you're a consumer advocate... you're on the consumer side of this debate in no uncertain terms. What should Ginger do? How do you react to the scenario?

Gordon Renouf:

I think the thing is that Ginger is in a difficult position, because there may not be much benefit to her to do anything, particularly if she is busy and places a high value on her time, that the saving of \$50 to \$100 per annum maybe not enough to motivate her to do anything particularly. We have got some additional complexities from the fact that one of them have bundled loyalty points into their offering. An economist that we work with occasionally says when he goes shopping he is very attempted to say, "And what would the price..."
(interruption due to volume control to the audience)

First of all I was saying that the relatively small benefits that consumers can make from shopping around in energy, needs to be compared to the search and switching costs that they face in choosing a different provider. I think Australian evidence is that these sorts of marketing's don't produce high number of consumers switching. The difficulty is compounded by the fact that in one of the offers she has to compare, she has got loyalty

points. It is very hard for consumers to put a value on what loyalty points might be worth, makes it comparing to competing offers difficult.

The third thing that you say... sorry I was going to say that an economist that we did some work with often thinks when he goes into a shop – you know that is \$25 but what is it without the loyalty points. Can I unbundle the loyalty points from the whatever he is that he is trying to buy.

George Negus:

Is this common that consumers don't really know what their own needs and requirements are? So they wouldn't really have a clue how to assess the offer that is being made to them.

Gordon Renouf:

I don't think you can generalise for consumers. I mean electricity is largely an homogenous product, what they think their need is to have electricity. Electricity Einstein said, "E Equals MC squared". I think Australians could say $E = E = E$. I mean each electricity provider is providing electricity. Now there is a little bit of product differentiation in terms of pricing plans, loyalty points or green energy options, but at the base the consumer needs electricity to run their product.

George Negus:

What I hear... sorry Evelyn you might be able to give us a different perspective as a New Zealand person. But what I hear is, well what people here... the folklore seems to be that these packages and bundles of offers end up levelling out and the end result in terms of savings for instance, or better services to the consumer is almost non-existent. Is that in your experience Evelyn?

Evelyn Cole:

I think it is the same experience, except if you are on a very low income, \$50 - \$100 a year can actually make quite a difference to you. And even though with sets only going to be of the order of \$10 a month, it can be just that little extra. But at the same time you also have the problems that if you are going to change electricity retailers, you also probably have to set up a new bank direct debit so that they can also go through that, and that is an inconvenience. And there is also the worry if I switch, will I actually get my account. And one of the problems that New Zealand had when we de-regulated was there was a huge push to encourage people to switch and a lot of people did do switching. It was as high as 25%, but what happened initially was that the bills didn't follow, and so the person who thought they were going to be saving something, they didn't get any bills for three or four months, some of the people didn't get bills for ten or twelve months, they thought this was fantastic, but they had been got lost in the system and they were getting free electricity. They did not think it was fantastic when they got a year's bill, and you are on a low income and it might go to our second scenario.

So I think that what really shows, I am really impressed that Gingers friend mentioned to her that the whole aspect of competition, which I would be very impressed about in conversations. But one of the things that underlies the switching and the getting good competition in the electricity sector is that consumers switch. And when you have got people actually not making the switching decision that is actually undermining a lot of the philosophy behind the electricity de-regulation.

George Negus:

David is it the case that people probably thought it was much easier all round, when it was a government monopoly situation, probably, that they were working in or even a private one. They don't like the idea of making choices.

David Cousins:

Well I think as Michael said on the first day, they have to learn that the market has changed and different, and it may well be in their interests to make choices. I mean I guess if they don't make choices and they are relatively informed, we shouldn't worry too much about that. Maybe as Gordon say, "It is a rational decision, based on the potential benefits of switching as opposed to the costs that will be involved".

George Negus:

Are your people encouraging in the new climate... in the new environment are you encouraging some how or other by campaigns or whatever, to tell people to shop around. I mean isn't basically shopping around what we are talking about here.

David Cousins:

Yes and it is difficult in a situation where you have got a number of packages which are quite different for people to assess. I think one thing to bear in mind, as Gordon says, "Electricity is electricity is electricity" in a sense. And the game plan for most suppliers of homogenous products like that is not to compete on price. So to some extent the packages are all about differentiating and giving certain market power almost through confusing consumers.

So consumers, one thing is how can we help consumers in this environment. Now Consumer Affairs doesn't actually have a big role in this area. We have the general law that we administer, but there is an Essential Services Commission here in Victoria and one of the things that they have put out is assistance for people to compare some of these packages, for example.

George Negus:

What do you do? Ring a number of what? What do you do to get assistance?

David Cousins:

Well, as I understand the system, the suppliers are required to provide details to, if you like to get a standard view of what is being provided and then there is a calculator, a bit like in the finance area that people can use to compare these offers. Now how effective is all that? How many consumers actually use it? My guess would be that the vast bulk of consumers wouldn't necessarily use those systems.

George Negus:

Have I been too sceptical before when I said, "These offers level out and there is not a great deal of difference between them when you cut through all the stuff".

David Cousins:

Well that would be my guess. I mean when you are talking about electricity retail the margins are actually extremely low. So the scope for competition is... on price is arguably not necessarily that great. Though as Evelyn says, "Over a long period of time, the dollars can add up".

I might just make a comment back on this switching issue, because a little bit removed from electricity where we are at the moment. But it seems to be a great pre-occupation with saying that competition has failed if we haven't had consumers madly diving around and switching between suppliers. I mean it may well be that the market is so competitive, that the offers are so close, that people just are happy actually... and so you don't get much movement and therefore from a competitive point of view and so on we shouldn't be too worried about that.

We've actually seen on the opposite side, if you like, one of the reasons there is a lot of switching, is because the suppliers have been out there obviously it is their interests to get customers. So we've dealt with situations under the Fair Trading Act where suppliers, particularly when they engaged contractors to work for them, often on commission and so on, and out there knocking on doors, ringing telephones to get people to switch.

George Negus:

So we are not really talking about a competitive choice, we are talking about superior marketing.

David Cousins:

Yes it is a marketing game to get customers on your books. It is very profitable if you can do that.

George Negus:

Colin, and this is not... the next scenario is far more up your alley, but have you any reaction to this at all?

Colin Neave:

My take on this is starting at the top, we're talking about empowerment here, and there is no doubt that Ginger has got... she is empowered to do something about this problem or issue as far as she is concerned. And it seems to me that it is a little bit like what the banks used to do when they had different sorts of saving accounts – if you have five withdrawals before Shrove Thursday, then it will cost you 25 cents, but if you did it on Easter Tuesday that it would cost you 50. And they had a whole series of magnificent graphs and other material that they put out about different accounts. Now that is all gone, which is a great relief actually, or significantly improved, I'd say, because they have moved towards simplicity in my perception.

I think this is a classic case where it really depends upon the marketers of this electricity that they present their material in such a way that it is clear to consumers. I am also a great believer in comparative advertising. In years gone by when I was mixed up in the Motor Industry, that was an absolute no, no that you never compared your product to somebody else's etcetera, etcetera. But I think there is a case in these sorts of situations for True Energy to publish one of those nice little graphs, not as complicated as the bank ones, to compare

what they are offering compared to one of the other companies, and stick that... an advertisement in the paper and that is going to help Ginger.

George Negus:

Out there any reaction, any questions you would like to put to any of these people, any comments you would like to make?

Robin Brown:

(indistinct) In the UK there is a term that there is a certain amount of stickiness - consumers stick with suppliers as Ginger did, even when another supplier might be cheaper. So the research has shown that they not actually doing switching which is the interest... in their interest. What they have done is allowed intermediaries to operate, to assist consumers, to make those decisions. The particularly interesting thing is that... sorry Robin Brown from Choice again, well from the Council of Choice. Our sister organisation in the UK WHICH? is actually...

George Negus:

It is called Which?

Robin Brown:

Yes it is called Which?

George Negus:

There I have learnt something today.

Robin Brown:

Yes they started about 20 years before we did, did they 10, 5... I don't know. It is actually providing this service, it is functioning as an intermediary...

George Negus:

Just generally across the board.

Robin Brown:

To consumers. Consumers will ring up...

George Negus:

... on any consumer matter, not just something like this.

Robin Brown:

No, no in this particular market.

George Negus:

Alright.

Robin Brown:

Consumers can ring up Which? and say please will you tell me which energy supplier I should use. They give them their consumption details and Which? advises them. Which? then actually gets a commission payment, as do other private sector intermediaries. Which? uses that commission payment to do other good things for consumers.

George Negus:

From whom?

Robin Brown:

From the energy provider. At the moment it doesn't actually rebate as a consumer, it is thinking about that, but it uses that money for its purposes, which are not profit.

George Negus:

What do you think about that?

Robin Brown:

So there is a possible solution.

George Negus:

Anybody got any strong feelings about that?

Unknown male speaker:

That is not permitted under Australian regulations.

George Negus:

Right, you can't do that here? How do we feel about the ethics of that, the intermediary copping a sling, we used to call it? We'd better introduce it here if you don't feel strongly about it. Anybody here.

Evelyn Cole:

George, in New Zealand we have what is called Power Switch, which is run by the Consumer's Institute which is like Choice and Which?, and it is funded by the New Zealand Government, there's also an Electricity Levy that goes behind that. And task which anybody can go to. It is computer, or you can telephone and you can find out for your area and your circumstances, which is the best electricity provider. And they also have done, they do it for the gas sector. The gas sector actually funds that, there is no government funding for that at the moment, and that works a little bit. We actually do promotion of it, but one of the things we are trying to find out, because when we... the anecdotal evidence is that even though we do promotion once a year for a concerted one month period, consumers still don't know about it. So it is quite hard. But in terms of the basics it is there to offer that service. So we would recommend it to Australia, if you don't have one.

George Negus:

I mean in Ginger's case or anybody else's case, is there enough difference in people's circumstances, Gordon, do you think for them to even warrant considering. Eva has told you know you should've shop around, you should have a look at all these opportunities... maybe the competition is not strong enough at the moment. Is there enough difference in people's energy needs for them to either bother?

Gordon Renouf:

I think there are a couple of fundamental questions of that order. The first one concerns consumers' time. The majority of consumers don't have much time - they have got less time as Michael told us yesterday, than they used to have. Then, do they have a right to have a system where they are going to have to choose to make small incremental gains. Is it possible to get the benefits of deregulation of the energy market without having full retail competition for retail consumers? There is certainly very little evidence to date in the UK and Australia that retail competition has been an essential part of energy form. So that is a question that has to be answered by factual enquiry, rather than economic theory. I think it is an open question, I am not saying it won't ultimately produce benefits, but certainly one that has to be asked whether it is in fact worth imposing on consumers the burden of having to choose, when a lot of the gains can be made by industrial users of energy doing the choosing where there is more at stake for them ... not to say that that part of the market works perfectly either.

George Negus:

I can remember an extreme example of this; this has got absolutely nothing to do with energy. Remember when the Berlin Wall came down, and people from East Berlin were streaming across from the East to the West for freedom and free market. I remember a woman being interviewed on the way in about what she was looking forward too. She said, "Freedom of choice. Now that is what I am really looking forward to because in the Old Communist Bloc we didn't have it". So as they streamed across that very first day when thousands and thousands of East Berliners went across and they interviewed her on the way back. "How did you go? How was Freedom of choice? What did you think of democracy and the free market?" She just looked at them, what is the problem, I thought you were looking for freedom of choice. She said, "I went into a delicatessen, and there were 26 different forms of salami. I didn't think that was freedom of choice, I just thought it was very, very confusing". So she is going back home to East Berlin to choose between probably two.

Caroline:

It is easier to choose from 26 salamis than it is from 3 Energy or Telco plans. I think there is a real basic question here – is it fair that companies like this, structure the pricing, so that consumers can't choose and so that they are confusing? And we are kidding ourselves if we actually think they are just trying to make different offers. They are trying to make sure that we can't compare prices. We have heard this in the credit sector. Let's loosen up the regulation, so that Industry can have... they think freedom to offer innovative products... freedom to innovate. Well freedom to innovate seems to me freedom to confuse. And what is happening... what we are hearing now about Energy, Telco's and what is happening in finance, the answer is an intermediary. And the intermediaries come in because they are here to help you through the maze, to help you make difficult decisions. We then see self interest intermediaries... and I will probably exclude Which? here, but they then are basically selling

the items, getting commissions and then the consumers end up having to dispute with the intermediary because of the bad advice.

George Negus:

Who should the intermediary be? How do you find an intermediary? Are there enough honest brokers out there? Who should the intermediary be in all of this, I don't know?

Unknown male speaker:

I will give you a point of information. Energy Watch in the UK does actually keep an eye on these intermediaries and they have to operate to a standard that... Energy Watch is a consumer protection body.

George Negus:

So you have an intermediary for every area of retail activity?

Unknown male speaker:

No this is just for energy. Energy Watch tries to regulate the intermediaries, and apparently it is working.

George Negus:

Is energy a particular product? Is this more likely to happen at the moment in this country for instance, than is in other areas. Telcos Caroline has mentioned.

Unknown male speaker:

They area of where intermediaries are more likely potentially to provide value to consumers is in high value complex choices such as housing finance. I mean, I think that even though there is a lot of problems in the Mortgage Broking Industry, there's certainly some benefits as well. And so I don't think... I think in energy - a homogenous product, fairly simple, maybe we don't... there are ways to avoid that. In more complex products, maybe there is a role for intermediaries that are paid in an appropriate way, then we move into the problems with intermediaries in relation to commission based sales, which distort the market because consumers have no say over the size of the commission. But if you fix that problem, then I think intermediaries per se are not helpful to consumers in all circumstances.

George Negus:

You mentioned the housing mortgage situations, I mean we have got financial counsellors here I presume that are doing that sort of thing. But David is this an area that is a concern to you and your people, and therefore you can imagine in your equivalence in the other jurisdictions? See I learned the lingo.

David Cousins:

As I say electricity in particular is one in Victoria, we've got a regulator... a monopoly regulator so it is a bit of a shared issue for us. Pick up a couple of issues though, if I could George. The question of choice and so on - I mean Gordon raised the issue whether competition in this area was a good thing at all. I think if you are happy with your supplier, etcetera, you've got competitive electricity and everything is fine, you don't need to worry too

much about choice. It is when you get a bad supplier, that choice might become more important for you. The threat of being able to switch supplier is a really important thing.

George Negus:

Are we looking somewhere... anybody wants to comment... are we looking at a scenario that would develop over the years as competition gets greater and greater, where it could be this weeks special energy offer. That is will be like any other retail product.

David Cousins:

Well one thing we haven't talked about around this sort of... these general issues is the contracts that people sign up to with energy providers - providers of services like this. And this is an area where we've got particular interest, and we are certainly, competition can be inhibited by the fact of having had to sign up to a contract, that is very difficult to get out of in the short term. Maybe because there are terms in that contract in relation to termination etcetera, etcetera, which lock people in to those contracts over time. So in a sense you are stuck with your supplier in a competitive market. Now that is a big issue I think, that we're concerned about, not just in this Industry but across a whole range of Industries where the notion of signing one sided contracts, which do cause consumer detriment and are unclear, is something that we think, certainly the law in Victoria has been very effective. And it should apply in this area, just as much as other areas, because after all the Fair Trading Act is a general Act it should apply right across industry, it does in fact. And indeed we have had some discussions with electricity companies in relation to some of their contract terms, so you know we are waiting for other jurisdictions to pick this legislation up.

George Negus:

The next scenario is about that almost precisely, is about people locking them into terms of the contract. You have to wonder whether it is energy or the telco's or any of these other areas where this might be happening. Look at even Graeme Samuel went running... screaming away from the whole petrol price thing, I mean that is supposed to be a hugely competitive industry. It is amazing isn't it how it is sort of 119.6 cents a litre, no matter how many hundreds of service stations in Melbourne you go to. It might end up being that... I think that is what they are getting at in suggesting that these plans flatten out.

Fiona McLeod:

Fiona McLeod - Energy and Water Ombudsman in Victoria. Just some points of clarification: it is important to remember that the energy market is not homogeneous across Australia. In fact the correct facts are that Victoria has amongst the highest switching rates in the world, with South Australia very close behind. New South Wales by contrast is a very flat market. So it is very important to actually look at what is happening across the States which are currently moving to national arrangement.

The price versus service mix is interesting. I think it was David who correctly identified that price isn't necessarily what people buy energy on. I can tell you that the single most successful marketing initiative in Victoria was \$50 to your AFL club. It has been the most successful marketing strategy in Victoria.

George Negus:

If you signed up your footy club got \$50?

Fiona McLeod:

Yes. David was talking about the Essential Services Commission online...

Fiona:

That you're getting from another company and it takes about fifteen minutes. Price is a serious issue. Essential services commission has been concerned about this to the extent that they now have issued a price information disclosure guideline because of what Caroline was talking about, it's so difficult to compare prices. It's now a requirement on their web site for you to be able to get proper information. And also to clarify there are many intermediaries in the energy market in Victoria. You will go into a rental property and you will see a bit of paper on the floor and it will say I'll sign you up to your telephone, your water, your electricity, your gas, what they don't tell you is they have commission arrangements with only a few energy retailers because they are the competitive industry and then the whole issue that David was talking about in terms of contracts coming into play. Because you haven't made any form of consent to join with you know any of the companies because what you don't know is that they're behind the scenes arrangements between those intermediaries and only a couple of companies. So I thought that would be useful information.

Male:

Fantastic, I'm glad you came, amazing pile of information really. That's Fiona is it? Thank you. Yes?

Karen:

Karen Chalmers-Scott from the Commonwealth Consumer Advisory Council. One of the issues that this raises for me is the issue of competition. And I guess this is a question for your panel because I would be interested to know what they think and whether there are industries that could do without competition, you know are there industries in which we didn't need competition and do you have views on that?

Unknown Male:

Is the monopoly dead? I can't think of any industries where a monopoly you know when you think about the health services which of course are critical to life, death and the whole damn thing. But just at the moment I think that overall, just expressing a personal view that the competition is all right but going back to that other point, if you're in that competitive market there has to be some means by which comparisons can be made and I would see that as the responsibility particularly on something like electricity to be the responsibility of the industry itself to make sure that the right simply and easily digested information is available for people to make that informed choice for that level, would be my response. David is it complete or die or?

David:

Oh I think it obviously depends on the circumstances. I mean we don't want to have competition over the whole of the electricity industry for example, we wouldn't want to go back to the sort of situation they had in the states I think with ministerial (inaudible) where you had multiple competing lines if you like running down the road. So there's an argument on the actual monopoly grounds that we don't have competition in transmission and distribution in electricity but in generation and retail those economies of scale and other

factors which you know say to us that monopoly is the most efficient form of supply don't apply. So hence we have broken up the electricity industry and have multiple generators competing with each other and we have multiple retailers. So similarly we don't necessarily have competing airports next to each other or competing gas pipelines. So it will depend on the not necessarily the whole industry, a part of an industry may not be suitable for competition, when it comes to water we just have competing stakes. A bit of competition in water is not undesirable, again some areas of water and we have competition in retailers down here even though they are publicly owned retailers, so it's a question of how much competition we do have in theory we have.

Evelyn:

I think you've raised a very important policy question and in New Zealand we have decided to look at that particular question in terms of whether there are particular areas where you would recognize that competition isn't going to work. And that comes in particular in rural supply but there's also, I suppose we're a small country, we only have just over four million people and there may be some ethics where in fact you're not going to get competition. We don't have any answers, it's actually only just been identified as a policy issue that we have to really look at. We made some very interesting decisions with respect to Fonterra which is our largest dairy company and they from a strict competition perspective were recognizing that perhaps for New Zealand it was better to have one major dairy exporter as compared to a multiplicity of exporters competing against each other if we actually wanted to have any success. So we do have an example of where we've recognized that competition may not actually be the best outcome.

(Inaudible – over speaking)

Unknown Male:

Sounds like the Australian Wheat Board. The answer has got to be very few areas. Let's identify a few areas where there is not enough competition and more competition would help. The airline route between Sydney and LA in particular comes to mind. The pharmacy industry where there is a lot of unnecessary protections on pharmacy owners which harm consumers keep up prices and make availability harder. And the broadcasting industry where for some unknown reason we only have three free to air television channels where there would be plenty of scope for more and more competition. Plenty of scope for more of the same. But on the other hand one of the worst things I think you could do is to combine a natural monopoly type business with a retail business in the same organization and expect to get good competitive outcomes and it's unfortunate in Australia in one of the most important industries we have going namely broadband, we have exactly that situation where a natural monopoly provider is also tied to a competitive retail business.

Unknown Male:

Do we have any final words from this audience or can we move onto the final scenario?

Joe Mumford:

Joe Mumford, Financial Council from (inaudible) again. I just thought I might give you a scenario of what might happen, where it might go wrong. If Ginger is not careful and she's called up by a telemarket or someone comes to her door and she's too friendly she may find in three months' time she gets a bill from another company and that she's changed and she

didn't know she'd changed. She may be happy with that because the bill might be lower but she may not be happy with that...

Unknown Male:

...how could she change without knowing that she changed?

Joe Mumford:

She said yes at the wrong time basically. I think, no I see this with my clients on a regular basis. She may find she's also signed up for a contract that she can't get out of. She may find that the bills gone up. One of the problems we're seeing at the moment is peak and off peak all being billed at peak and that's just a simple billing error but requires her to do a lot of things like that. And then if she wants to change back to her original supplier she may find that she's got a company, she's on a contract. So I guess I would be interested in the comments of what people think when things do go wrong.

George Negus:

This next scenario is, and I didn't really know about the content until I started talking to the organizers about this particular session. But it's pay day lending which is a term that I'm sure much more across than I am. And here we go with the scenario. Fred's a sole parent on a low income, he's been struggling to pay his bills and his rent. So he borrows \$600 for two weeks from a company advertising itself as offering quote unquote, cash and finance solutions. The loan includes an establishment fee of \$350, a loan application fee of \$20 and a 30% annual interest rate, bringing the total amount to be paid by Fred to just over \$1000. The loan came with a promissory note that included quote unquote and irrevocable assignment of wages by Fred including all of his wages, salary, commissions and holiday pay earned or that he might have earned in the future. Apart from that the lender also claims security over Fred's essential household items. The lender provided Fred with disclosure documents including a copy of the contract. Fred didn't read through this information because it was lengthy and confusing, but despite this, surprise, surprise, Fred was just a bit concerned about the terms of the loan. However, he didn't really think he had any other real options given the pretty horrible state that his finances were in. He needed the money quickly and given his poor credit history he didn't think he would be able to obtain a loan from a major bank or a mainstream lender. Fred defaulted on the loan, the lender then rolled over the debt and charged Fred a further administration fee of \$150 bringing the total cost of the \$600 loan to over \$1150. Subsequently the lender contacted Fred's employer and directed them to deposit all of Fred's wages into the lender's account. Fred's employer resisted and the lender contacted Fred's family and this led to extreme tension within the family unit. As a result of this considerable over commitment, for want of a better word, more technical word for getting in over your head, Fred fell behind in his bills and over drew his back account and now he is considering entering bankruptcy. Poor old Fred. Right, is that clear enough for you guys? Is this pay day lending thing, and is there anybody like me who didn't know what pay day lending is? Thank goodness. You're at the right conference. Is this a common thing Gordon?

Gordon:

It certainly is too common in the outer states of Australia. There's, it's not the hugest industry in the country by any means and we should keep that in perspective but it does result in a certain kind of consumer paying rather a lot of money (inaudible) Consumer Law Study in 2001 said that interest rates of the fifteen pay day lenders in Victoria at that time were

between five hundred and something and eight hundred and something percent on the credit being advanced. Of course small credit is more expensive to provide than larger loans of \$2000 or \$5000 or revolving credit like a credit card, so it's going to cost you more. But that's rather a lot more to the point where any objective analysis would suggest that that sort of credit wasn't in the consumer's interest.

George Negus:

Evelyn, are New Zealander's as gullible as Fred?

Evelyn:

Well I don't know if it's a gullibility but yes we do have pay day lenders and they are a particular issue for consumer affairs...

George Negus:

...many?

Evelyn:

Yes. And we've just done a recent survey and they concentrate in low income areas and you can drive through the low income areas and there are more advertisements for these pay day lender type finance organizations in the shops in those areas. So it is a big issue. But we are trying to get better information in terms of the sorts of things that came out with the financial literacy to get a lot more out there so that people can be more confident that they will know to go to budget advisory services, that they will know to go to back stop social welfare type services rather than going to the pay day lender in the first instance. I don't know if we can claim to have been 100% successful. We certainly get a lot of political criticism that we're not doing enough about it.

George Negus:

This goes back to what (inaudible) was talking about yesterday and the lack of financial literacy, people just haven't got a clue what to do in this situation.

Evelyn:

There are two situations in some cases there is a financial literacy and that may be the case with perhaps younger people, but in other cases people just don't have enough income to cover their essential needs, they get into difficulty and that's become a real difficulty. We have a very large pacific island population, they have some quite strong obligations to often remit money back to the pacific islands if there is a family bereavement or some other family occasion there is a strong commitment that comes through the church system for them to contribute money. It is more important for them not to lose face than to worry about the financial commitment. And that's a particular issue. And again low income areas where there's the concentration is also high Pacific Island community.

George Negus:

All right. David is this a modern contemporary version of the pawn shop? And do you have provisions in Victoria, are there provisions in Victoria and the rest of the country that you know about to protect people from this kind of shark behaviour?

David:

Yeah, we have a uniformed consumer credit code that all states have and territories. And this area of pay day lending has been a concern it has been under the code. Your question about, that you opened up with is it a sort of a problem is a really interesting question because I think most consumer agencies actually don't get a lot of complaints in this area and maybe there is some good reasons why we don't hear from the people, but certainly financial counselors and others like the consumer law action centre and so on do receive a lot of complaints about people in these circumstances. The fact of the matter is though there are a very large number of people who use pay day lenders and seem to use them effectively so that...

George Negus:

...are they easy to find?

David:

I haven't needed one yet but there's always every chance in my business. They are quite widely spread around the city and as Evelyn said, often in particular focused on particular areas and neighbourhoods as well appealing to a certain clientele. But the point I was making there I suppose is when we look at issues like this we need to look at the whole market as well as individual cases and these individual cases highlight you know major problems for those involved and as Evelyn says, a lot of it is at the end of the day just simply a low income problem not necessarily a problem with the way that the credit market works and as I say there is a significant proportion of that market that seems to be able to use this service effectively whether that's sensible buying behaviour is another thing. I mean someone who goes and borrows in order to pay for a Valentine's night out is not in my book particularly sensible but never the less that is one of the use of this sort of pay day lending which is...

George Negus:

...serious? Serious?

David:

Serious. So anyway, that just makes it a policy challenge for regulators as to how we deal with this issue and regulate what is clearly a major problem but without doing so in a way which if you like wrecks the market for those that are using this for whatever reasons they find useful.

George Negus:

Colin, Fred obviously though if he went to a normal lender or mainstream lender was the term that I used, or a bank because of his pretty dire circumstances, was he right in thinking the door would be closed in his face that there was no chance of him getting money through the normal channels?

Colin:

No not necessarily I wouldn't think. But I've been dying to be able to respond to this situation actually George so I'm not really going to answer your question. I'd love to get my hands on these disputes. I mean this is one of the sorts of situations where if some of these

pay day lenders were members of the banking and financial services onwardsman scheme, we'd have a bit of a field day on these sorts of cases.

George Negus:

What could you do? (Inaudible) with no real legal...

Colin:

Oh I would forget about the whole (inaudible) side of it, I would go back to the beginning and do the whole lot and re examine the circumstances and what he actually, he said he didn't read the documents, he said he didn't really understand what he was doing. So if this pay day lender happened to be a member of the banking and financial services onwardsman scheme we could put him through the wringer and we'd have a really good look at doing a deal for Fred which perhaps could effectively re write his loan. Which is what we do in the context of maladministration cases which come to us in relation to banks. We have a look at circumstances where someone has been lent money and you know depending upon the circumstances sometimes reach an arrangement which can be that wonderful expression win, win, which did we start with that somewhere a couple of days ago? But it's that sort of possibility that...

George Negus:

...but isn't it the case that both of these jokers would work outside the system?

Colin:

Yeah they do. And I think this is a gap which is recognized by a lot of, not just the regulators but the availability of dispute resolution across the financial services market is a very distinct gap at the moment and that is certainly something with my, you've probably never heard of CCAAC but the Commonwealth Consumer Affairs Advisory Council who have been asked to look at dispute resolution by Chris Pearce will certainly be looking at where some of these gaps might be so that we can make some suggestions about how the dispute resolution side of these sorts of resolutions could be dealt with.

Gordon:

I think this was an area where this particular problem, one is that we are often asking our policy makers to make policies without really knowing what's going on. I mean David may be able to point to an example of someone borrowing money to go out to a Valentine's date and you know good luck to them. But I think what I'm told by financial council alike is that people who use pay day lenders are mostly using them because they're in very difficult financial circumstances typically they can't afford to pay the rent. And so the question is whether access to finance is really the question here or whether there is some other social issues that need to be addressed to respond to those sorts of problems. But to the extent that there is access to finance that it may well be that solutions involved supporting main stream lenders making themselves more available in those markets whether that's through addressing behavioural biases that businesses might have or information that businesses might have and (inaudible) that they're using that may or may not be correct about low income people's ability to repay their small loan. Or whether it's about using other techniques such as the community reinvestment act in the states or social responsibility obligations to a similar effect to get major lenders to provide on a commercial or new commercial basis that the services

that those people, some, some only will need. Some of them are not credit worthy and shouldn't be getting loans.

George Negus:

(Inaudible) bank, and they might end up with a Nobel Prize if they're really nice. Technology, everyone knows how great I am at technology. Touch something and it goes wrong.

Gordon:

I was just going to say that the program which ANZ were talking about yesterday with the brother of Laurence, that's the sort of thing Gordon that perhaps can be developed further and there's other, I'm sure that there's other National Australia Banks that have got similar programs I think. So further developing those sorts of programs should be able to assist Fred.

Diane:

Hello, my name's Diane Hayes. I represent the Financial Council's resource project in Western Australian and we've had some huge issues with a company called Aussie Cash who doesn't come under the pay day lending regulation. They actually use promissory notes only and therefore they're not covered under the consumer credit card as David Cousins stated. They use a bill of exchange act which actually means then they actually have found a loop hole in which they can exploit basically consumers. What's happening in WA is that there has been submissions to both the Department of Consumer Protection and ASIC in relation to this organization. And consumers are paying probably thousands of percent interest on the debts that they incur. We've seen clients borrow \$200 who are paying back over \$10,000 in judgment summonses by the time it actually gets to the local court. So it's a huge problem in WA. It's a WA organization but I actually believe it's actually coming across to the East as well. So it is a huge problem. And although they say WA is booming for our low income clients it certainly isn't. So it is a huge problem and I think that not enough regulation is actually being done out there.

George Negus:

Are there enough lines of communication between people like yourselves and the people working in the strictly social area, the welfare or benefit people who can intervene because they're aware of this person's problem before it gets to the stage of them being flipped? I mean do other people who could help know what's going on?

Diane:

In relation to regulation, regulators do you mean or the actual financial councils on the grass roots?

George Negus:

Oh the grass roots.

Diane:

The financial council, we've had lots and lots of submissions that we've actually put together different organizations that we've actually put together to the regulators to try and actually put

something together. Unfortunately the Bill of Exchange Act is a federal act, it's not a state act. So our state government is actually working on this but until it's changed and actually at the moment there's actually nothing much that they can do. It's actually being looked at to see if it actually can be put under the Consumer Credit Code but I don't know where that's at. But as far as case studies as far as the number of clients that we have is actually quite huge. And as in New Zealand we're having the same problem, they seem to be targeting low income areas, aboriginal communities, basically where people have very little choice.

Unknown Male:

Thank you. George I might just pick that up. On the promissory note issue, that's certainly been an issue that (inaudible) the Uniform Consumer Code Management Committee that looks after the code is well aware of and also the heads of consumer agencies and proposals currently with the commonwealth, that the commonwealth are looking actively at to amend the federal legislation and the, so that will facilitate and exemption, removal of the exemption from the consumer credit code promissory note. So I think that will deal with the matter that you're raising specifically there but it's probably an opportunity for me to say just a few other things George, because there's a lot happening with respect to the credit areas at the moment. Victoria for one has just completed a major review of credit matters and put forward a range of proposals designed to deal with the problems in, if you like, short term lending including pay day meetings and so those proposals have been given substantial endorsements by the Victorian Government. Some of those involve seeking amendments to the National Consumer Credit Code. So things like for example, mortgaging of household goods and so on. In fact those amendments that are in train already are going through the system, it takes awhile to amend the law but that's all in train. Just one other point I wanted to pick up because I think you raised a really important issue about Aussie Cash. Actually my understanding from my Western Australia colleagues is that in effect they are, whilst they're not formally covered by the code they are actually adhering to most of the code at this stage, maybe not for dispute resolutions side of it. But that point aside, I think the real important point you made was that we're not just dealing with separate state markets here. Aussie Cash may well be operating in the Eastern states now or soon. So what we're really actually dealing with in these areas is national markets. And so that says quite a lot about the nature of the regulation, the nature of the intervention by policy makers to deal with some of these situations. Should we just deal at individual state markets or should we actually focus on national solutions. Now...

Unknown Male:

...what do you think?

Unknown Male:

Well clearly that we should have a national focus on this and the sharp end of this is recently the heads of consumer agencies did have a day and a half meeting where we discussed a couple of issues specifically and one of them was the idea of interest rate caps because some people see the solution to this very high cost lending simply to place a cap on it and indeed in Victoria we have a cap on interest but we have no cap on fees. So what happens is the cap is ineffective effectively because it's very easy to increase fees to avoid...

George Negus:

...why don't you have a cap on fees?

Unknown Male:

Well, that's a situation that New South Wales has in place. They have a cap on interest and they have a cap on fees. And I guess after discussions that were held it was pretty much agreed I think by people around the table that we should have a close look and see just how effective that New South Wales legislation is. But the problem is at the moment of course even though you've got a cap on interest and a cap on fees it's still very easy for people to escape the operation of the code altogether. And one of those little escape clauses happens to do with a so called business declaration so that if it's not a loan essentially for as a consumer but it's a business loan and it won't be covered by the code. So that's a bit of a loop hole which again part of these amendments to the code that we're going through will hopefully deal with them.

Unknown Male:

I wanted to say that I would really encourage and this may sound a bit heretical, people not to put the primary emphasis on regulatory solutions and I think that this is a problem where it's a bit like plugging the holes in the Swiss cheese, people you know, there are different ways in which pay day lenders get around the regulations but there are ways that they do it in the states, it's different in the states to here. But there are going to be, I'm not saying don't regulate because I think the experience in New South Wales and all credit to New South Wales department for (inaudible) they've done is that some of the businesses have decided to operate within the 48% cap on interest and fees. And some of them have tried to go outside the act like finding a loop hole, is my understanding. So I think not to forget that for many of the people who are in this situation it's not an access to credit problem, it's a, we've hit the problem and different kinds of social policy responses are required.

George Negus:

It's a socioeconomic sorry financial problem, not the economy?

Unknown Male:

Sorry the New South Wales flyer sort of addresses that by saying, well there are alternative forms of credit and that would suit some people maybe not most but there are other ways of dealing with your financial crisis such as using various (inaudible) and I think that that has got to be part of the approach.

George Negus:

It's a pretty horrible scenario but everything that has been said on the panel and out there seems to back it up. There is wide spread concern about pay day lending, the major problems that this practice includes, the higher excessive price of credit with effective interest charges from 235% to over 1300%. Consumers taking on credit that they cannot afford, self evident truth. Evidence of inappropriate lending practices among some providers, which we talked about. The dispute process is inadequate or non-existent. Unfair debt collection practices. Taking household items as security. Avoidance of the uniform credit code through the inappropriate use of promissory notes and business purpose declarations. These problems, this is their summary, these problems can resolve in inability for consumers to overcome financial difficulties, a depleted capacity to save, continued debt spirals, further exclusions from the mainstream market and bankruptcy. Other than that no problem what so ever. I'm just wondering whether anybody knows how extensive this problem is? Are we talking about a very very small percentage of the population or somebody seemed to suggest that we

weren't. Do we know? Do we know the figures? Do we know how many people are likely to get into this situation?

Unknown Male:

I think it's a real problem for policy makers that we actually don't know a lot of the detail of this but part of the credit review that I referred to was some work that was commissioned by (inaudible) Australia and I can't recall the precise numbers. I see some of my colleagues Ian Cline in the audience, Ian might be able to comment, but it was an extremely high number of Victorians were identified as being financial stress, not quite your question but it is a very high figure. Ian would you?

George Negus:

How do you define financial stress?

Ian:

Well those indicators come from something called the Hilder Survey which the Melbourne University people, it would include things like inability to pay utility bills, inability to pay for your groceries and so on you know you have to use a credit card, that kind of thing. A number of indicators. The other part of the research was that conservatively there's at least twenty five million worth of small amount of pay day loans carried out every year in Victoria and if you assume none of them are more, oh on average say \$200/\$300/\$400 that's a lot of pay day loans. Probably fifty thousand to a hundred thousand and I think colleagues in Queensland would say that the situation is even on a larger dimension just in the south east corner of Queensland. So it's a growing market.

George Negus:

Anybody else got a comment about the extent of it of the problem or solution? Yeah, thank you.

Unknown Female:

Just in terms of numbers, as Ian just said it's perhaps bigger than in terms of numbers (inaudible) but the impact on, it's a very serious impact on the people who are experiencing this particular stress. I think someone just said a moment ago, once you get into this sort of cycle it's a downwards sort of spiral and what it means that people have less and less choice so even if it is a smallish number of people experiencing this, having this experience with pay day lenders, the impact on that number of people are very few.

Unknown Male:

Anyone else, comments from the floor? Yes?

Unknown Female:

A couple of comments I guess. Since this provides a very good example of the cost of failing to provide other sorts of policy solutions to consumers we talked earlier this morning about how difficult it can be to measure some of those things. But I think the costs that individuals are varied in these sort of loan scenarios are an example of where you can start to count some of the costs to consumers of the absence of perhaps some other policy tools. I would also like

to mention that the research that the Consumer Law Centre did find a couple of interesting things. One was indeed, and I tend to disagree with David a bit about this, we did not find that people were successfully using these products in a sense that they had to keep going back to the pay day lender. It wasn't a one off loan that they cured a long standing problem that the consumer had, it was a scenario where they were going back again and again and again and as Jan said, thereby reducing their capacity to use their money for other things when they're meeting these exorbitant interest rates and costs. And we therefore need to look back to some of the things that people are spending these loans on which is rent, which is essential services and looking at home we can perhaps better, in those arenas, target the problems before they spiral to the extent...

George Negus:

...what's the demand that the lender has to make on his salary going to his employer is that completely (inaudible) or does that happen, do people actually do it?

Unknown Female:

We certainly see all sorts of deeply inappropriate collection conduct from some of these fringe lenders, that sort of conduct as well as things like trying to take security of the household goods. Literally threatening to take consumers beds and couches and things like that which are often not carried out but of course the threat in itself is a very powerful thing for the consumer facing that scenario.

George Negus:

Right. Any other comments?

Unknown Female:

It was very interesting because we've just had a lot of discussion on the individuals and some notes that my colleagues provided me on some consultation studies that were done in New Zealand of people who are or families trapped in the fringe lender debt cycle. And what that research found is that they tend to suffer a lot more stresses, illness and deprivation as a result that has a big impact on the health system, on family relationships, that then impacts on the education system and it's a bigger burden on the welfare system all round. So it's not just the individual who is suffering but it's actually having quite a bit impact across the economy and I don't think we realize what that is.

Unknown Male:

Yeah, I mean people tend not to perform all that well when they're in huge debt let alone broke. I mean you don't need to be a psychiatric genius to work that out do you. These things are interconnected, that's today's most self evident comment you're going to hear.

Nick:

My name's Nick Turella, I'm also a Financial Councillor from (inaudible) in Victoria. Just having negotiated on behalf of consumers that have this very problem, I've actually had quite a bit of success as I'm sure other financial councilors have. And the reason is this threat of being legislated out of existence I think a lot of these pay day lenders are actually very scared of having to go before a court or being under some sort of scrutiny. So I usually get exactly what I ask for in my experience anyway.

George Negus:

That's cos they're here. David have you got a reaction to that or?

David:

I think in general the law is effective then it's much more instinctive for people to behave in those ways. Now we not that long ago took an unconscionable conduct case around mortgaging the household goods and unfortunately when we got there the interpretation around what was unconscionable wasn't very helpful. The law wasn't very helpful and so we've recommended a change in the law to something that we think would be more effective and again the Victorian government has ticked off on that and it does involve again amendments to the National Code. But I think that just illustrates a point. It's really important to make sure that the law is effective to deal with those sorts of situations and of course it's very important that people are encouraged to complain whether it's to Colin or whoever else, but where there are breaches of the law that they're brought to the attention of the regulators and the regulators act on those.

George Negus:

You would have thought this was pretty unconscionable behaviour wouldn't you? I'm getting a lot more sympathy for the situation that you people find yourselves in. because this morning we had a discussion albeit brief about what somebody would regard as a benefit to the community and the consumers other people wouldn't, I don't know that there will be an across the board definition of unconscionable behaviour either would there? So you're dealing with a lot of subjective and precise areas don't you and loaded areas as well.

David:

Unconscionable conduct is a difficult matter to prove and it may be that there are in many cases other much more effective remedies, it might be for example raising the issue about unfair contract terms again. Part of the Victorian review was to say that we shouldn't exclude credit matters from the coverage of the unfair contract terms legislation. And again the Victorian government has ticked off on that, we think that that's very important and it may be a much more effective way to deal with some of these matters.

George Negus:

If our friend over here is right, I mean what Graham Samuel was talking about this morning appears to work. You know people will self regulate so long as you've got the (inaudible) sword hanging over their neck.

David:

Well Graham has a view about a lot of this behaviour could be covered by unconscionable conduct. In fact we would very strongly disagree with him and indeed the one case that we have taken under unfair contract terms legislation to the tribunal was a matter that we were successful on, it was a matter that would not have gone up under the unconscionable conduct law.

George Negus:

Right. Anybody with a really burning comment they want to make or question they want to ask and then we'll have to move because we've got the soap box to look forward too. Up in the back corner one of the, there were two hands up there actually.

David:

Hello, David Shonberg, Consumer Affairs in Adelaide. I think there's another group that are even worse affected and that's those on Centrelink benefits. With that there's a thing called Centrepay which is an unregulated form of pay day lending and it's the commonwealth government would be the biggest provider of that. Those people actually get deductions from their Centrelink benefits, they're restricted to the areas that they can go by those traders that will actually provide them with goods and they get locked in to going back to those people. The issue becomes there that the traders become aware of that and then they put the prices up and that's totally unregulated, particularly in remote areas it becomes a huge huge issue and they're locked into it. The commonwealth through Centrelink I would say is the biggest pay day lender we've got there. Some of the figures that are around that, my understanding is that they make, they charge \$1.01 per transaction and I think they made over seven million dollars out of that. If you take the average repayment is about \$50 that makes it about three hundred and fifty million dollars a year worth and the Centrelink stuff is totally unregulated at the moment. And I think it's a real issue.