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ALLAN ASHER: Good afternoon, everybody. I'm Allan Asher, chief executive of ACCAN, and I'm absolutely delighted to welcome you all to our Responsive Regulation and Policy Seminar. And we'd like to start our seminar by inviting Allen Madden from the Metropolitan Local Aboriginal Land Council to come and speak to us.

(LOUD MICROPHONE NOISE)

ALLEN MADDEN: Bugger...who let that bloody one go? (LAUGHTER) Once again, my name is Allen Madden, and I'm with the Metropolitan Local Aboriginal Land Council as a cultural and education officer.

First of all, two apologies. For the terrible weather we're having outside at the moment, sorry... (LAUGHTER) And not being able to welcome you to my country in my language, as we were forbidden to talk our language a long time ago.

I'd like to acknowledge our Aboriginal elders past and present, and pay my respects, and to all our Aboriginal brothers and sisters, from whatever Aboriginal nation you may have come from, welcome to Gadigal land. Aboriginal land. And to all our non-Indigenous brothers and sisters here today, a very warm and sincere welcome to you to Gadigal land. No matter where you've come from, whether it be across the seas or across the state, once again a very warm and sincere welcome to you to Gadigal land.

As I've mentioned many times before – was, is, and always will be Aboriginal land. Only three things surer than that – coming, taxation, and going. It's an honour and a pleasure to be here today to welcome you to Gadigal, one of 29 clans of the Eora nation, which is bounded by the Hawkesbury River to the north, Nepean to the west, and Georges to the south.

And in between those three mighty rivers is the Eora nation. And in that nation, there are 29 clans. And the clans' land to sea is Gadigal. On behalf of members of the Metropolitan Local Aboriginal Land Council, and of the Gadigal mob, once again a very warm and sincere welcome to you, to Gadigal land. There's a very old and appropriate saying for you mob here today – you've heard it a thousand times before – they say, "Where there's a will...there's relatives." (LAUGHTER) So once again, on behalf of members of the Land Council, and of the Gadigal mob, welcome, welcome, welcome. Thank you.

(APPLAUSE)

ALLAN ASHER: Well, thank you very much, Allen. Our goals today are largely in the hands of the group of people here. ACCAN is a relatively new organisation. We've just been operating since the beginning of July, and we have a pretty clear idea of the sorts of things that we want to do. We want to work for communications, for all Australians.

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And there are lots of tools that can be used in that process. So many of them involve interactions with regulators and policymakers. And that ACCAN, as it's setting out, firstly, its first strategic plan, its work plans and starting to form relationships both with its member organisations and regulators, wants very much to do that in a way that's going to be most productive and most constructive.

It's our view that the current model is not as effective as it could be. In fact, there are many who think it's hopeless. That there are lots and lots of forums where lots of words are exchanged, but few ideas. Where agreement is often eluded, and that so many of the areas of policy and action remain in areas of uncertainty and doubt.

Well, we're not going to solve all of that today. But what we can do is to begin a new process, a new process of engagement with one another, and a new process of engagement with regulators. We're really delighted to have with us in this first panel regulators from three of the fairly critical areas for consumer welfare in Australia, and then, in the session after the tea break, a number of very senior policy individuals to talk about the second dimension of our seminar, which is about evidence-based policymaking.

Of course, the two are connected – the way in which regulators do their work, and the policy settings that justify the interventions in the legislation in the first place, and the establishment of those arrangements. We want to explore all of those. We want it to be interactive. And to that end, we're making a recording of these proceedings, which will be cut down to an edited version that will be posted on our website as a webcast, and also made available on DVDs for the many people who aren't able to attend.

Lots of our members are outside Sydney – lots outside NSW, and in rural and remote areas. Lots in Indigenous areas who weren't able to join us today. But we think that many of the ideas that will be discussed this afternoon will also be of great interest and importance to them, and so we're wanting to capture that. That'll lead to some of the slight complications in the way in which the proceedings are going with different microphones – and in addition, we have a hearing-loop system, so when it comes to making comments or asking questions, it'll be necessary for people to use the microphone and to speak clearly so that our interpreters can pick up those things as well.

So, what do we want to do first? First, we want to have a conversation with three regulators. The first speaker will be Peter Kell, who is the deputy chair of the Australian Competition and Consumer Commission, an organisation that has a lot to do with aspects of communications and consumer protection generally – an enforcement agency, a regulator, and, in a de facto way, a policy body as well. After all, the things that the ACCC either decides to take up or not take up give it quite a bit of discretion – and hence a de facto policy role.

And Peter will be followed by Delia Rickard from the Australian Securities and Investments Commission, and then Chris Chapman, chair of the Australian Communications and Media Authority. And special thanks to the ACMA, who have met most of the costs of us arranging this seminar this afternoon, and we're very grateful for that. And hence we're giving Chris the opportunity of being the final speaker in that panel. Each of the speakers will speak briefly about some of the aspects of their

organisation, and then there'll be an opportunity to respond to some specific questions, and we'll invite some questions from participants as well.

Remember, informality is a key part of this. We want it to be a fast-moving process. We want to bring out the issues that matter. And, as a result, as I said at the beginning, to try and set the scene for a new form of conversation and relationship with regulators.

You'll see, in your pack, a card with the CVs of all of the speakers, so I'd encourage you to have a look at those. Also, outside, there are various research reports from ACCAN that you may wish to take away with you. So let me now invite Peter Kell to make some introductory comments. Peter.

(APPLAUSE)

PETER KELL: Thank you very much, Allan. I'm very pleased to be here today. I'd also like to acknowledge Allen Madden's introduction on behalf of the Gadigal people.

Look, I think you know – should know – about the ACCC. I'm not going to speak for very long this afternoon. I think the objective of today's session is to engage in a conversation about how we can communicate more effectively and how we can make sure that consumers get a better deal in the communications marketplace.

But let me make a few observations. The ACCC is Australia's peak cost, economy, consumer protection and competition regulator. We are an independent statutory Government authority, and most of our enforcement work and regulatory work is conducted under the Trade Practices Act, as I'm sure you are aware.

The purpose of the Trade Practices Act is to enhance the welfare of Australians via promoting competition among businesses. So it's not about protecting competitors, it's about improving competition. It is also designed to promote fair trading by business, and of course, importantly, it provides for the protection of consumers in their dealings with businesses.

We seek to fulfil those objectives through our enforcement work, our compliance work, our work around regulating key infrastructure – whether it's in the telecommunications sector, the energy sector, the water sector, or whether it's work around assessing mergers or other competition issues.

We are within the Treasury portfolio. That's an important issue that goes to Allan's comments about the policy role of these agencies – I think it's important that we keep in mind the role of particular policy departments that we all deal with. It hardly needs saying that we have an enormous range of stakeholders that we deal with, right across the economy, that goes well beyond the telecommunications and communications sector.

So, how do we deal with some of those issues in terms of setting priorities and finding out what's going on and talking to consumers? Well, for a start, we receive consumer contacts from consumers through a wide range of consumer complaints – well over 100,000 – it's been going up by about 60% – more than 60% – over the last two years. So that is one source of contact. We have complaints and information from other agencies, such as the Telecommunications Industry Ombudsman and ACMA that we look at and assess and discuss with these other agencies. We have formal consultation

through some committees such as our Consumer Consultative Committee. We also have a small-business committee. And – look, Allan is right in that I think both the consumer members of that committee and the ACCC itself are continually considering ways to improve the committee.

How can we better get information from the members of that committee to ensure that we know what's going on in the marketplace, to ensure that we find ahead of time where some of the risks are and some of the dangers are happening, and how can the consumer members also find out from the ACCC what we're doing, how we're responding, and make sure that they're satisfied with the way that we're dealing with the issues?

We also have one-on-one meetings, and I think these can be often very valuable in terms of dealing with consumer and other organisations. We undertake our own market analysis. We undertake international liaisons. For example, next week, we have the International Consumer Protection and Enforcement Network – 40 different consumer-protection agencies from around the world meeting in Sydney to look at consumer issues. And of course we regularly issue papers and other decisions for consultation which we understand – of course, it can also be difficult for consumer organisations to find the resources to comment on these papers. As many of you will know, I've been on the other side of the fence so, to speak, so I know what it's like. But where possible – and in particular where we think those sorts of matters will be of particular interest to consumer organisations – we seek to engage them more directly.

I could go on. I could discuss the fact that we're setting up consumer-consultation arrangements in relation to the energy sector – there's a lot of work going on in this area at present. But perhaps if I finish just by noting a couple of matters that we've been looking at within the last 12 months in this sector, just on the consumer-protection side of our ledger. To get all the work we've been doing on NBN, access to Skits (?) and that side of our work for the moment, I'd just like to quickly run you through some of the consumer-protection enforcement outcomes we've had in the telecommunications sector to give you a sense of some of the work that goes on here, and perhaps to generate some questions and discussions.

For a start, we have the recent multi-party enforcement undertaking with Telstra, Optus and (inaudible) in relation to a range of marketing practices that we have strong concerns about – headline phrases such as 'unlimited' or 'free' – phrases such as "no exceptions" or "no exclusions" or "no catches." I think that undertaking collectively got the major players into the room to acknowledge that substantial improvements are needed in terms of the information that's going out to consumers around marketing and advertising so that we didn't have this pattern of one player being, if you like, picked off while others continued to engage in problematic conduct.

We've also had a range of outcomes in relation to Mobile Premium Services. Federal Court decisions in relation to Terracon, a Bulgarian content provider – we would look at that. Misleading mobile services premium advertising in the UK, and court-enforceable undertakings from Pacific and ACP Magazines. We took action against TMG and obtained Federal Court orders by consent that it had engaged in misleading conduct in relation to advertising for mobile premium service quiz services.

We currently have proceedings before the Federal Court in relation to two different Mobile Premium Services scratchie-card promotions being Clarion Marketing and Star Promotions.

We also have Federal Court outcomes in recent times in relation to Carpool and TelePacific for their misleading marketing in relation to international phone cards, with further action under way against other operator. We are undertaking forcible undertakings against Dodo, where the cost of plans involving free computers, cash or fuel are actually significantly higher than similar plans without the free offers.

We have taken action against TBPG for misleading advertising relating to its unlimited cap saver plan where, in fact, there were a lot of qualifiers and limits on what was actually under that plan.

We've taken action against telco companies in relation to warranty issues – we represented that consumers couldn't get refunds from M2 Telecommunications in relation to mobile-phone problems. And we have further action under way in that area. That is not an exhaustive list, but it gives you a sense of some of the matters we are taking on in this area. It is a high priority for the ACCC at the moment, and that's one of the reasons I'm very pleased to be here today engaged in this conversation. Thanks, Allan.

(APPLAUSE)

DELIA RICKARD: Hi, everyone. I thought about this a bit differently to Peter. I'll talk for a minute or two about what ASIC does. When you're asked to think up a speech, and you say yes, then later it's "Damn it" and then you start reflecting – what is it that makes relationships between regulators and consumer-sector work, and when they do work well, and when don't they? I hope I'm not going to end up sounding like Pollyanna, but I thought I'd let you in on some of those musings for the last week or two.

Firstly, ASIC is the consumer-protection regulator for the financial sector. We've had those responsibilities for about a decade now. In terms of how we go about consulting and acting with the consumer sector, it's done at many different levels. We have a formal Consumer Advisory Pin which we seek to have an independent chair and representatives from the key stakeholder peak lobby groups. So – from Choice, from the Consumers' Federation, from the Shareholders' Association. We also have a more general advisory body which has members of industry and the consumer sector feeding in.

Each of the key organisations has a stakeholder-manager. We're talking regularly. I think the smartest thing we do is try and pinch the eyes out of the consumer movement and employ them, which keeps those channels operating well. I'm sure Allan will drill down, when he starts questioning a bit more into the details of all of that. I thought I'd let you in on my musings – when do relationships really work and what's important to get the dialogue happening and the trust happening that we need to have between regulators and the consumer sectors?

At the risk of sounding banal, I really think it has to start with respect. And respect comes, in part, from understanding the shoes each other walks in – what are the

limitations, strengths and weaknesses we each bring to the table? A part of that comes from getting to know each other.

I know a lot of people have a range of stereotyped views of public servants. In my experience, most people I've worked with are there because they want to make a difference – they want to do good. Fairly similar reasons to why most people become consumer advocates.

And I think if you start off by realising that in many ways we're all on the same page but we bring different skills and tools to the process – some of us choose to work within the system, others outside of the system – then that's already starting at a better basis for a dialogue than an us-and-them sort of mentality.

I think the next really important thing is ongoing communication. I so often see misunderstandings happen between regulators and the consumer sector – somebody says something out of context or it's taken out of context, and things can very quickly get blown out of all proportion. So my number-one lesson to take away from 20 years of interacting with consumer groups is, if something's causing a problem or an issue on either side, pick up the phone and talk to each other, and really keep that open dialogue and sense of trust going at all times.

The next thing is about honesty and being open with each other. Obviously sometimes we're constrained by privacy and other confidentiality issues, but to the extent possible, always explain why you're doing something, why you can't do something, and what... what you bring to the table. If you look at the consumer sector, there will be a wealth of knowledge about what's going on in the ground, what individuals are experiencing on the demand side. There may be a scarcity of resources, though, to back that up with the sorts of research that's needed.

If you look at the Government side of things, there will be restrictions about what you can do. You're confined by legislation, confined by confidentiality. You're confined by organisational priorities. But when you start off by each understanding where the other's coming from, it's much easier to find the grounds where you can work together and where you can help each other. I hope that's making sense to people.

The second thing, I think, from a regulator's perspective, is the importance of actually following through and taking action. If I look at our Consumer Advisory Panel, which on the whole I think works fairly well – I know quite a few in this room have been on it at various times through the years, so you can tell me if you disagree – one of the things we do at each of those meetings is to ask each person to come to the table with three things that they're seeing in the community that are causing them concern. And one of the rules we had for us as ASIC is, where we've been brought an issue or case and asked to do something, we either make sure that we do it or, if there's a reason why we can't do it, we explain it and look for another way of dealing with that particular problem.

I can't stress enough the importance to regulators of having that constant input from consumer groups. If I look at our area, I think of a number of important issues we've taken on in recent years, which the first signs and need came through us through the consumer movement – I think, around mortgage brokers, things like book up. The first we saw weren't through people calling us, or through the EDR scheme – it was through on-the-ground financial counsellors saying, "This is happening. You me need to do

something," us putting the funding into some decent research there – that was what the consumer sector there – I'd love to see \$2 million given to the consumer sector in our area – and working together in those ways.

What else did I want to say? Look, I might just leave it. Those are just some of my musings about how you try to make things work, and work well and productively so we get positive outcomes for consumers and how we as regulators, and you as consumer groups, interact on a day-to-day basis. Thank you.

(APPLAUSE)

CHRIS CHAPMAN: Well, thank you, Allan and ACCAN for the invitation. And I'm delighted, also, to be here, and I say that very genuinely, because the relationship between the regulator and the ACMA, in particular, and consumers, can be fluctuating, and it's never as effective as it could or should be.

And I read the opening comments to the invitation, and I'll tell you my reaction to them, but just to remind you what those words were, they said:

"Consumer groups have long expressed frustration through regulation and lack of timeliness, an apparent preference for light touch, or no regulation – unclear parameters about what kind of proof is required to invoke policy change or regulatory intervention, enforcement approaches and priorities, and the extent to which policy decisions generally incorporate consumer perspectives. At the same time, regulators and policymakers complain that consumers are demanding action at them based on mere anecdotal evidence, or in circumstances where there is no clear evidence of a market problem or solution."

When I read that, I wrote, "Bingo." Because there's a strong germ of truth in both observations. So I was genuinely looking forward to joining this this afternoon – and Allan, thank you for the initiative, and I do mean that. I'm also joined this afternoon by the ACMA's acting deputy chair, Chris Cheah – many of whom you would know – and Chris is important in this context as the chair of our CCF, our Consultative Consumer Forum, our executive manager for content material council area and a number of staff in the ACMA. We thought we would support this in a very material way, apart from the additional cash contribution on top of your \$2 million!

(LAUGHTER)

ALLAN ASHER: There's a theme here!

CHRIS CHAPMAN: I wouldn't want to suggest that this was cash for comment in any way.

That's by way of my opening remarks.

Allan said that the ACCAN's a new organisation. Quite clearly, it is. In my view, the ACMA is a new organisation. Yes, we've been around since July 2005, but maybe later I can share with you a far more guttural version of life since July 2005 – and it's only in, I think, in calendar 2008-2009 that this organisation has grown into a greater understanding of its role with confidence, and thanks to Adil and those in the

department, increasingly fit-for-purpose regulatory tool kit. So, yes, we've been around since July 2005, but I still think we're a young organisation. That's my cue, because two weeks ago, I wrote to our key stakeholders about the upcoming restructure of the ACMA, which is going to be effective on December 1 – it isn't particularly public, but I have written to our stakeholders, and I know that there's a shortened version of this on the web.

This restructure is designed to bring additional focus to several key tasks that presently face us while we're maintaining our commitment to regulating converging industries in a converged way. One of the four primary drivers for the restructure – and this is a restructure of our division on our terms, and it's always good to be ahead of the curve – and one of the four primary drivers consistent with recent Federal Government initiatives is an appropriate new weighting to the role of the citizen. I want to state right away that this doesn't in any way imply any lessening of our commitment to the protection of consumers. Later we might have a discussion between the difference between a citizen and consumer. It does bring the human dimension to a wider consideration of public interest in areas such as content classification, cyber safety and emergency services.

With this in mind, one of our six new divisions – we had five and we're moving to six – is the Content, Consumer and Citizen division, and will take as its theme the interests of individuals as consumers and audiences for content. This division will bring into one place – into one place – the ACMA's investigation and compliance work relating to spam, do-not-call register, broadcasting codes of practice, the Telecommunications Consumer Protection Codes, and internet content rules.

Another of our new divisions – the Digital Economy division – will be fundamentally orientated towards the impact of convergence and related changes in the policy environment. It will have responsibility for the Mobile Premium Services regulatory package introduced this year, as well as such issues as e-security, cyber safety and access to services.

As this list begins to demonstrate, the ACMA has a very broad range of responsibilities which have, as their focus, consumers and citizens – some delivered through direct regulation, some through co-regulatory arrangements. At a conceptual level, the ACMA's consumer responsibilities could be categorised as delivering the following five. Opportunity and access – ensuring that all Australians, wherever they live or work, have access to a phone service. Performance and quality of phone services through our monitoring work. Thirdly, facilitating and monitoring diversity and choice for consumers. Fourthly, consumer safeguards compelling compliance with the Telecommunications Industry Ombudsman scheme, and consumer codes, and particularly from your perspective, evidencing to you meaningful redress. And finally, consumer control and consent through the do-not-call provisions, and of course our very successful work, particularly in the last 18 months, in combating spam – and a particularly satisfying result in the Federal Court last Friday week.

The ACMA's role in compliance tools differ across each of these areas. In the co-regulatory regime there's using the minimum power of intervention necessary to achieve the desired result, which is obviously compliance with the relevant provision on a sustained basis. Usually from having encouraged, hopefully, behavioural change.

On the other hand, some statutes we administer – and I cite the Spam Act and Do Not Call Register Act, which set out in legislation a more direct regulatory role, provide us with enforcement options for the ACMA, including financial penalties. But here's the crucial rider. It's important that where the behaviour of market participants, or the shape of market structures, is inimical to the softer options of co-regulatory control. The regulator should and must take harder actions in prosecution as required – recognising, of course, the resources that each step further into the direct regulatory action requires. So I think it's very important this afternoon that I articulated that rider and what sits behind it in terms of a growing consciousness within the ACMA of the need to have a much better feel for what some of those marketplace behaviours, or market structures, might bring.

And I think that that's a very critical lesson for the ACMA over the last several years, and it's one, I think, you'll see far more of from the ACMA in what I'm suggesting sits behind better ex-ante analysis.

I want to turn to the telecommunications consumer codes. A continuing concern of the Government consumer groups, quite obviously, and regulatory agencies involved – including us – is the level of consumer complaints to the TIO. On the release of the TIO annual report, our Minister said last week, "If we don't see a significant improvement in these sorts of reports and the trend starts setting down, we will legislate. We will sit down with the ombudsman and crack down on companies who continue to mistreat their consumers."

I know that ACCAN has called for the introduction of a consumer compensation payment. We, at the ACMA, have said that we will be considering all of our options, including additional investigations and systemic issues into companies, the structure of incentives, and possible changes to the current regulatory arrangements. It's obviously a hot issue. More importantly, it's a real and important issue.

We've been addressing telecommunications industry code and compliance through a program of audits, education and formal action against providers – in particular over the last 18 months.

Since July 1 last year, the ACMA has ordered 250 companies for co-compliance and conducted 24 investigations into the code compliance of individual providers, and 3 investigations into compliance with the TIO scheme.

We've recently undertaken wide industry audits testing that industry participants have processes in place for (inaudible) policies, financial hardship policies, direct-debit policies, and equipment suppliers' disability requirements.

This work has resulted in issuing a number of directions to comply – and, perhaps more importantly, we hope, has resulted in a good deal of changed behaviour in industry participants – and, we think, in at least 40 cases. While the process of audits were very valuable in changing the behaviour of smaller industry participants, the ACMA considers that there needs to be more done to improve compliance in practice, as opposed to on paper, among the larger providers, where we are now focusing more on larger companies.

Overall, there's been a significant increase in our investing of work in the last two years.

Many of the investigations undertaken were suggested to the ACMA by members of our CCF, including ACCAN's predecessor, CTM. The ACMA genuinely welcomes further suggestions about the subject matters of its telecommunications compliance activities, and we are very receptive to working with stakeholders to address issues of concern. As noted in the questions posed by ACCAN, yes, there are barriers to being able to act on all concerns. But we are open to receiving information and guidance that will point us in the right direction, particularly where there is sustained and persistent systemic consumer detriment.

While we're not expecting consumer advocates to provide us with legally binding evidence, we do need some basis to commence an action. While we rely on the antenna of consumers to alert us to problems that are occurring, we need to investigate each issue and determine whether or not a contravention has occurred. We are, at law, unable to simply rely on the findings of another agency as a basis for our regulatory action. Now, where the ACMA has been given responsive tools – like infringement notices and direct legislation, like the Spam Act – we have used them to very good effect. As you may be aware, and as I touched on at the outset of our remarks, the Federal Court imposed a total of \$15.75 million in penalties for contravention of the Spam Act following a first-court action taken against providers of unsolicited SMS messages. Allan, I noted ACCAN called it “a significant victory for communications consumers.” Obviously we thought so too.

What it demonstrates about the ACMA is that when we're given sharp-edged tool, we are more than willing to use them in the active and rigorous pursuit of industry compliance. We, therefore, welcome the Competition and Consumer Safeguards Bill. And the provisions within that Bill which promise to bolster our ability to regulate telecommunications more actively. Provisions in the Bill would convert many of our monitoring responsibilities for important consumer safeguards, such as the CSG, into harder compliance (inaudible). The Bill proposes that the ACMA is given the power to issue infringement notices for many provisions in the Tel Act. So we look forward to Parliament's consideration of these powers for the ACMA.

Let me finally finish these introductory remarks about partnership approach. This audience will be well aware that there are a number of agencies with responsibilities for telecommunications consumer protection matters, as demonstrated by my colleagues from the ACCC and ASIC today. We were in partnership, and we do that very effectively with the ACCC – less so than with ASIC. I'm actually delighted to have the opportunity to meet Delia this afternoon with the ACCC, the TIO and state and territory fair-trading officers to achieve results. We also want to work in partnership with ACCAN, particularly in the area of research and evidence-gathering. ACCAN's members have very valuable, relevant insights, and they are important and useful to our role.

We consider that, as regulators and stakeholders working together, along with Government, we can best ensure that the right regulatory tool is being applied to consumer problems at the right time. So it goes to matters of respect, trust, pragmatism – and, as Delia noted, far more effective communications. And if we get the opportunity, Allan, in the Q-and-A session, I might be able to tease out some of those things I'm alluding to. So, thank you.

(APPLAUSE)

ALLAN ASHER: So we're going to explore some of these things a little more. I've got a few questions to ask, and I'm sure there are others here who might like to do likewise. Firstly, a question for Peter when he's got his glass of water.

I guess, like many, looking at the ACCC, one does see a reasonably active enforcement profile. And what occurs to us, though, is that it's somewhat opaque. Just what are the matters that are most likely to engage the enforcement action of the ACCC? And what's not? You've been reasonably active in the last year or more in a lot of areas in telecommunications. But then, some others seem mysteriously not to receive that sort of treatment. So I guess, when we see the third set of soft warnings to the broadband companies about their statements of broadband speeds and things in three years – three warnings in three years pointing to real gulf there – we wonder why something like that didn't get a stronger response.

Or why the list of practices that you described in that collective enforceable undertaking – which all seemed to be just straight-out, vanilla deception – why the commission would have thought to pursue it in that way rather than another way. And it's just to see if we can get a bit of an insight into how that might work, and how we might be able to link a little more clearly into that. I wonder if you'd care to respond to that.

PETER KELL: Thank you, Allan. Look, there are a number of sort of issues you've raised there. One, I suppose the first one, goes to how do we make decisions – what sort of criteria do we apply to choosing enforcement matters and when we take on enforcement matters? Well, a lot of the issues that we take into account, I think, are ones that have been there for a long period of time, and ones that we apply more generally.

Is it conduct that is clearly affecting a large number of consumers, is it conduct that, if you like, is more likely to be national in scope as distinct from a particular regional state matter that a state-based fair-trading agency might deal with? Is it conduct that might have a particular impact on more vulnerable consumers? Is it conduct that appears to be persistent or to have happened over a period of time rather than just a one-off?

These are all the sorts of issues that we take into account, because, as you can well imagine, we get far more matters brought to our attention than we can deal with. I mean, Chris pointed to an issue as well here, that in relation to your comments about warnings, that we will seek, wherever possible, to encourage industry participants to address problematic conduct voluntarily – it might be through codes, it might be through improving their own internal-compliance within a firm. And if that can be achieved, then that often can deal with the problem more directly, more efficiently. But where that clearly isn't generating the right sort of outcomes for consumers, then the ACCC is more likely to act. It doesn't – the number of complaints will often be indicated for us. But that doesn't have to be the case.

And I think there's one recent example that I mentioned that's a good indicator of several of the issues. I've talked about our action in relation to international phone cards where we actually didn't receive – well, hardly any complaints – less than a handful of complaints about the marketing around those phone cards. And I think one of the key reasons for that is because those cards, more often than not, are aimed at non-English speakers – perhaps overseas students, recent migrants – people who are less likely to complain to regulators like the ACCC, people who are less likely to understand

consumer-protection rights within Australia. But when we looked at the complaints, the nature of the representations being made to consumers, the extent of the advertising, the fact that you had this dynamic in the industry where different companies seem to be almost out-bidding each other in a race to the bottom. So when you've got that sort of market dynamic occurring as well, the ACCC is more likely to step in.

And we did, in that case – we decided that we'd take on several of the major issuers of international phone cards, and that it warranted court action rather than just obtaining an 87B undertaking because of the nature of the representations and the consumer being affected. And that was, if you like, an interesting example of looking at a matter affecting vulnerable consumers – repeat players – an industry where you have a dynamic that was producing poor outcomes but not necessarily a large number of complaints. In other words, matters can bubble up to become front-line enforcement matters through a variety of mechanisms.

In terms of the speeds issue, well, I mean, that is one of the matters that is covered in our recent multi-organisation enforceable undertaking, but – look, we have invited comments from industry and consumer organisations on our recent guidelines in this area.

We've received some fairly vigorous comments back from ACCAN, which is good, including vigorous public comments, and that's helping to, I think, send a clear signal to us that, um, we need to consider how we are prioritising that issue. That sort of feedback is useful, and further information on that and the sort of problems you're seeing is very useful on that issue. So we've deliberately asked for that sort of input. And I think it's terrific to have an organisation like ACCAN providing that. So let's see what else we get on that.

We have no doubt that that will – it's not going away. You're right. So, um, maybe it is something we need to look at more closely.

ALLAN ASHER: A quick follow-up on that, Peter – the pace of things is something that often frustrates consumers, and there are obviously due-process elements to investigations, particularly if something is going to go to court, and hence, I think, we can readily accept that, if you can negotiate a deal with somebody that puts things right and provides refunds straight away against what might be a very long-run and uncertain litigation, that there's a really interesting trade-off to be made there. Do you feel that consumers generally have a sense of the priorities and how decisions are made at the ACCC? And if not, how can we, as part of this building a new mode of communication, make some steps in that?

PETER KELL: Perhaps I'm relying too much on my own past experience on the consumer side. I think there's a general understanding, at a broad level, around the sorts of priorities and issues that the ACCC will take on. We've been out there for quite a long time. But beyond the broad level, yes, I would accept that sometimes people might say, "Why 'A' rather than 'B'?" "Why this issue rather than that issue?" It's probably exacerbated in our case because we're not only looking at communications issues, we're looking at food or energy or environmental claims or whatever.

So we certainly seek to get the sort of feedback that Delia has been talking about from our Consumer Consultative Committee – what are the current hot issues, what are the

priority areas, what are creating the biggest risks for consumers? That has possibly more scope for doing that through those committees and getting more, if you like, up-to-date information about some of the matters that are out there.

If I could give an example on that – recently, we saw some media coverage around the alleged mis-selling of mobile-phone contracts in Indigenous communities. Interestingly, some of the public commentary on that was from an organisation that has been on our Consumer Consultative Committee, but the matter had not been raised at our Consumer Consultative Committee. It's not a criticism of our organisation, but it led me to think, What was the disconnect that this might have been known to our committee, but was not brought to the ACCC's attention? I think that's – we're currently considering what sort of happened – the length of that disjuncture and how we can get in there faster next time and ensure that information is brought to us.

Just one final comment, very quickly, on your comment about whether you go to court or whether an undertaking... I wouldn't say that the new consumer law reforms, I think, will also help us, in some ways, to explain why we've taken certain options if it's in the enforcement area. The broader range of penalties that we have available to us once those reforms are through – the unfair-contract terms provisions, a greater ability to take representative actions on behalf of multiple consumers through the courts – I think some of those fixes will help us to overcome some of the problems at the moment where people go, "Why didn't you take that to court? Why did you only go after an undertaking?" I think those consumer law reforms, for those interested and trying to support them, are certainly very important from the ACCC's perspective. They're not through the Parliament yet. So don't dot your 'i's or cross your 't's quite yet.

ALLAN ASHER: Delia, you referred to what you saw as a bit of a stereotype where consumer groups sometimes see regulators or Government officials as being remote and absent and things like that, when you put it that your experience is otherwise, and that you see us as, essentially, working on the same agenda. In fact, you intriguingly went on to speak about this notion of respect and developing a relationship of that sort. I'd wonder if you could just unpack that a little bit and tell us what some of the elements might be, and then, just to put it into action, who needs to do what, how and when?

(LAUGHTER)

DELIA RICKARD: OK. A short one. Let me start about what the public sector needs to do in relation to better understanding the consumer sector. I think, first of all, it needs to understand the limits which have – ACCAN is so well-funded, so not for them...

(LAUGHTER) ..but everyone else out there – if you look at the sector, we interact with financial counsellors a lot, for instance. And Lisa, when she was at Choice. You've got a lot of people with long hours without sufficient resources to just even get through the day-to-day job. If I take financial counsellors, their number-one focus has to be the case work they're doing with the people who are claiming to see them, and financial hardship.

However, what that casework shows is a whole range of really bigger systemic issues. It will be issues around debt collection, it will be issues around poor sales practices, pressure sales, mortgage-broking, sub-prime lending – all of those things first came apparent through places like (inaudible)...

So we need to understand the limits that they're working under, and find ways in which we can help them to actually put that information together in a way that it comes to us as a regulator or Treasury as a policy agent, and we can do something with it. And one way you can do that – one of the things we do is we have a small research budget, and that budget will sometimes go to a consumer group to actually employ someone who can go around the country and get those files out and build the case. One of my favourite anecdotes at any of these conferences like this one over the years was a Reserve Bank economist who stood up there one day and said that when he was at university, he was taught that the plural of 'anecdote' was in fact 'data', which I quite liked.

(LAUGHTER)

I see Robert is going to talk about evidence-based policy this afternoon. I think another thing that we can do is understand that even then, the consumer groups will – they can see a picture, but they won't have all of the stats, and it's helped them to work out ways to present cases. There's a range of interesting work being done at the moment from the financial services sector, and others, recognising that sometimes you're just not going to have those raw stats that are required for regulatory impact statements. So doing work that looks at other ways in which you can prove cases.

I think, in the context of which we're currently working in – this is work we're doing to feed back into the consumer sector and other groups with an interest – what are the objective hallmarks of detriment? If, in fact, you can't establish the statistics to show that this much harm has happened with this many dollars, what do we know causes detriment? What are those objective things that – around poor disclosure, a whole range of things like that, misunderstanding – so that you could help people find other ways to build the case when that data isn't there?

I think that's just some small examples of things that we can do. I think the other thing, too, while I'm on a roll – we all constantly consult with the consumer sector. Again, ACCAN has all these reports out in two months – I'm so impressed – is just helping people to make feedback. For instance, ASIC produces numerous consultation papers which are lengthy and complex and technical. Things like calling in consumer groups, giving them a briefing on it, outlining the controversy, the issues, and getting their input verbally so they have a chance to have a voice in a way that doesn't overly strain residents.

In terms of looking at it the other way, I think the first point is around trust and recognising that – you know, just pick up the phone and talk to regulators. We all make mistakes, and the old "Is it a stuff-up or a conspiracy?" In my experience, it's usually a stuff-up. To trust enough to talk, to lay out the questions, to respect confidences and have that openness of dialogue, and to look at how you can reformulate solutions to get to somewhere which we can actually assist with. Hope that makes sense to people.

ALLAN ASHER: I wonder, then, if one of the follow-up points might be that we share, with members and participants, phone numbers and email addresses on different issues so that we can actually put some of that to work. And possibly, in the case that Peter mentioned, there may have been that sort of barrier – maybe that wasn't the case, but let's see if we can find a way around that. But Chris, you noted at the beginning that you could understand where some of those, I guess it's part of the same conversation from you – (inaudible) types of the way in which people react to regulators and how

consumers imagine regulators react to them. But I guess, just taking outside of that, and you refer to the increased numbers of complaints to the TIO. Well, this is now the third year in a row with these now-stratospheric increases.

And I guess consumer groups are wondering, is the ACMA doing all that it can to bring more pressure to bear on that? Or what are the limits, do you think, of your proper role in trying to bring about delivered welfare gains to consumers rather than at, say, the structural level where there are obviously vital regulatory things to do as well?

CHRIS CHAPMAN: One of the frustrations that I've had in the role – and we're very actively doing something about this; Chris Cheah and Kath Silleri, who are here, have been the energy doing something hind this – there was a general fuzziness I had – I use that word deliberately – a fuzziness about the ACMA role in the scheme of things. And I've always thought – therefore I've been very frustrated by the frustration directed at the ACMA, to be honest. Because, in part, it means that we're not doing enough. It means in part that we haven't communicated well enough. And it means in part – probably – that those who are venting that frustration perhaps don't necessarily have any better feel for the landscape than I do with my fuzziness. All of that is true.

So we, um...we are making very, very genuine, solid improvements in a whole range of things which you will just have to take on trust from me this afternoon, because over the course of the next six months, in terms of what our view is on evidence-based decision-making – I'll be looking forward to that session after tea, but we have formed our view about what that represents. I prefer to call it "evidence-informed decision-making," but nothing turns on that this afternoon, about the way in which we think respondents to ACMA issues, issues papers, can better structure and feed in, and we have a draft of that which we're about to release.

We have, as a result of the disappointment of the statistics over the last two years in particular, reflected in the TIO's scheme, which we all know very well, gone back and looked at concertinaing in our graded responses, starting from general investigation to prosecution, and we think we can do better by perhaps shortening or tightening that. What I'm saying to you, Allan, is that – look, the final point I would make is, ever since I left the College of Law in June, 1978, I've always been in the private sector. And in one of my more recent roles, I had very strong interaction with a regulatory body. And my experience with the regulatory body was that it was the most appalling interaction that I had ever encountered in my business. And in many ways, that was a counterpoint, and one of the attractions to me of taking on this role, because I figured that there was extraordinary opportunity to do a lot better than what I had experienced.

It was the low point. So, you know, having gone on from being poached to gatekeeper, I'm very well aware of what can and should be done. I'm actually extremely impressed by people who work in the public service. Before coming into it, I had a lot of preconceptions – there was a lot of stereotypical views, there were some urban myths – but everyone in the ACMA – and obviously as chairman I look at it with rose-coloured glasses – but everyone is extremely well-intentioned and motivated. Everyone wants to make a difference. And they just need the encouragement, the support, and the plural of 'anecdote' to assist them to do a better job. And they want to do a better job, Allan. And I see ACCAN as a great opportunity for us, in a way, in our relationship, to take the CCF and shape it into something a lot better than it is at the moment.

It started off in its first year – I think we had a meeting. In the second year, I think we had two meetings. My feedback from the meetings was that it was pretty indifferent. The third year, we've stepped it up to three meetings. I got some feedback that the last meeting was the better meeting. It's chaired by Chris Cheah. Chris Cheah wants to make an enormous difference. You're only limited by your own imagination and energy. There's that formal opportunity. But ultimately, it's just a question of getting on the phone, having a chat, putting issues in a constructive way, and having strong bilaterals. It's amazing what a difference attitude and a pragmatic approach can make.

ALLAN ASHER: (Inaudible). But you raise this issue of how many anecdotes does it take to change a light globe? In my first visits to our member organisations, we had a particular responsibility for representing consumers with disabilities. Every single group from that sector raised a long-standing concern about the problems of consumers with disabilities using mobile phones to make emergency calls and things like that. And we seem, in some areas like that, to never seem to get to the bottom of those things. I wonder if that's one of those data things, or is there something else to it?

CHRIS CHAPMAN: I was actually saying that it's a very good example of the sort of matters we have been working on vigorously lately that you will see the fruits of the labour in a short period of time. So – look, your role is to hold our performance up to the flame, to point out deficiencies and blind spots we have. The very question you asked me does that. I know we have taken that particular concern very seriously. I know we've done a lot of work internally. So, you know, I'm just asking you to take that on trust this afternoon as well.

ALLAN ASHER: In a minute, I'll give you each an opportunity to make some concluding comments. I think we also want to get a question or comment or two from this group. And in fact, if I could invite you in your closing comments to make a short comment on this issue of confidentiality and just how big a constraint is that on the ability of regulators to be more open with consumers about a particular investigation, or perhaps the direction of a report, or do you think that that's sometimes overdone? It's really not – intended just so that we can find a way of reaching an accord – what does represent a reasonable wait, and when should people start tapping their fingers or making rude remarks?

Do we have a question or two? I think we'll just have to arrange for the microphone, and I can see Frank with his hand up just there, Karisha.

NEW SPEAKER: A double-barrelled question, Chris, for you. In using the gun analogy – I assure you I'm looking for information and not target practice. Very, very pleasing to hear about ACMA's ramping-up of its investigative functions. It seems to me that central to the problems that the TIO is revealing is, in fact, lack of co-compliance. I'm wondering if you feel that the new legislation, assuming that it is passed, will give ACMA sufficient power, and the right kind of power, to act promptly, because I think this has been part of the difficulty that you've laboured under in the past – that this new legislation will give you the power you need for code enforcement where it's required, or would you in fact see the need, possibly, to have different and better powers?

And the second barrel is really more of a comment – it's to, I guess, echo the remarks of everyone here as to the role that ACCAN has to play in feeding in to ACMA, and indeed the other regulatory agencies, information about things that are going wrong. In this

regard, I guess, I'm thinking of forums like the Consumer Consultative Forum – I want to put in a bit of a plug that, having been on both sides of the fence, that the need for meetings of the CCF and similar to leave time and give the opportunity for consumers to feed in, as well as performing the very (inaudible) function of getting information to consumers – I guess I'd appreciate any comments you have on that.

ALLAN ASHER: Just in case folk at the back didn't hear that question – the first part was a question to Chris – whether the powers given to the ACMA in the legislation currently before the Parliament will be sufficient to enable adequate enforcement of the various industry codes. And the other comment was a comment on the structure and functioning of the Consultative Forum. Chris?

CHRIS CHAPMAN: I touched on my remarks on the – I think the Bill, in particular in the Infringement Notices Provision that provides, fills in a massive gap in our tool kit. A lot of the 'monitoring' roles we have, with respect to the CSG and what have you, have performance characteristics attached to it that are either just a market practice or have lacked sufficient certainty of enforcement. And I think that we've demonstrated, particularly over the last year, that where we have a sensible measure of remedies, we use them well and effectively. You do not get visibility to the extraordinary interactions we have to have with service providers and others when you have regulatory – we have a regulatory tool kit that doesn't have a sufficient grade in it, and an enormous amount of energy and resources go into that. So I'm very optimistic about what that will bring. It's not only what you exercise, it's what you leave unexercised that provides a lot more substance and momentum.

The second question – well, CCF – yeah. Look, I share that view about the time to act that we prepare, and the equally important aspect is the one in which you communicate the dividends from those sorts of things. And I don't think we've done as great a job as we could – again, Kath Silleri is on the case. I think our whole communications program needs a dramatic ramp-up, and we're doing that. And in fact it's coming before the authority tomorrow – a proposal on a way forward. I'm thinking I see new energies and a new communication style where we're trying to facilitate things on a far more (inaudible) basis. Large gaps leads to uncertainty and a loss of confidence, and it can unravel on you. I thank you for your question.

ALLAN ASHER: Delia, you mentioned a panel system and that you invite participants to come along and bring along three problems. The acid question is, where do they go? Do you feel that that's been a useful thing? Is that a practice that might spread to, perhaps, the ACCC and the ACMA as well?

PETER KELL: It has!

DELIA RICKARD: I think it's a really useful thing. Sometimes they go into enforcement action. We always make sure we have policy people there and enforcement people there as well. We also make sure that the chairman or commissioner are going to turn up – that they hear that part and they don't get to talk until they've heard what the on-the-ground issues are that are happening. You have your action items and we will report back on where they go back to.

NEW SPEAKER: Good strategy!

NEW SPEAKER: We've recently introduced a similar process.

ALLAN ASHER: A mini-super-compliant process. That's good. Another question down here – yes? Could you introduce yourself, please?

NEW SPEAKER: Could I invite – I know that ACMA has a good working relationship with ASIC and the ACCC –

NEW SPEAKER: You can fix that!

NEW SPEAKER: I – I guess it's something that you could put forward through to ACCAN, I guess, but I'd invite you to actually give us the pro forma of how you want a case study presented – give us – we may be able to deliver it that way, but I invite you to start the communication, give us how you want the information presented. We'll say "No, we probably can't do that, but we can probably do it this way," 'cause it seems that case studies can be effective. The submissions that I write to some of the different quarries that I do stuff for – case studies can be an effective tool. But hearing you guys sit there, I'm wondering if we could, as consumers, we could help you, so maybe you might need to educate us a little bit more about how we can help give you that information in a way that's more useful for you?

ALLAN ASHER: It's not just the content – I think we've had this discussion before a few times – it's the language. And I've often pointed out to consumer colleagues that they shouldn't regard the measured, often academic or studied language of regulators as a sign of indifference. But let me tell you that many consumers who have a passionate issue – something about which they've suffered, where there's been exploitation and economic loss and things like that – consumers can, and I think quite reasonably be quite emotional about those things, and often when trying to present these concerns to regulators, get the feeling that they're resented and resisted and held away because they're seen as somehow too extreme. And I've pointed out to consumer activists that it's a 2-way street. And that, for people in regulatory roles where often what they say counts, there are appeal processes, there are evidence-gathering rules and objectivity requirements and things like that, so apart from simply communicating the data, we also have to negotiate the language barriers that often exist between us as well.

We're almost at the time to invite panellists to make a comment. But let's first have another question. Yes, right down the middle there...?

NEW SPEAKER: We'll come back to Joe in a while.

NEW SPEAKER: Heather Wieland, CWA. The Country Women's Association does have a good relationship with all of you up there. But the problem that I have as a new national president is that I like our investigators to be working ahead so that when I need information, I can just ring them up and say, "This is what we're working on now and this is what I need." So, if you are getting any complaints that you actually need and you would like more information on, if you send out to say, "In your concerns, is there a problem in this area?", I could get our SIF team working on it straight away. We have a fact-finding team that does the investigations for us, and also does surveys. So it's helpful if we can actually start surveying in advance and find out what issues are before they become to the point where it's almost impossible to fix them.

ALLAN ASHER, Heather, I wonder if you could pass the microphone to Joe...

NEW SPEAKER: I'm from the Consumer Utilities Advocacy Centre in Victoria. We deal with energy issues, but they're very, very similar to some of the telecommunications issues under discussion today. And I'll start my conversation by saying "With respect..." And I suppose my "With respect..." comment is that one of the frustrations for consumers is to hear conversations about the lack of information about what's going on in the market when there are really clear indications of what's going on in the market through ombudsman's schemes and through the Telecommunications Ombudsman scheme. In Victoria, we've had debates with regulators about, you know, what we see as really poor customer service in relation to door-to-door marketing and telesales, and we'll hear from regulators in energy that there isn't sufficient information to show that there are problems.

I think there is sufficient information to show that there are problems, and I think there is a real structural difficulty we have now between ombudsman schemes and between regulators about what sort of actions are taken. I don't have the solutions to that, but I'd like to pose it to the panel to see what your suggestions are for how we convert what is thousands and thousands of customer complaints and stories and case studies into actually addressing the issues that are going wrong in the marketplace. And as a final stinger, I'll say that one of the difficulties of working ombudsman's schemes getting bigger and bigger – as in more complaints – is that they'll face the fact that it's getting harder and harder and harder to give actual customer service themselves to the people who are complaining, and ultimately that that comes back to bite them, and consumers as well.

ALLAN ASHER: Perhaps, then, to Peter for some wrap-up comments, and you might want to pick up anything from that that you'd like to respond to, bearing in mind, in particular, that you did tell us that your own complaints and inquiries are growing at quite a rapid rate – putting you, I guess, in that same boat.

PETER KELL: Thank you, Allan. Look, there were a wide range of terrific comments and observations there. I've been taking notes furiously, so thank you for that. A couple of things quickly – confidentiality, Allan, you mentioned earlier – look, it is an important and difficult issue. It's very important for investigating agencies to treat investigations with appropriate confidentiality. It's not used just as a stalling device. And sometimes the time frames can end up being quite long on complex legal matters. But, if anything, it's becoming more challenging as mechanisms such as for-requests – used strategically against regulatory agencies in litigation and whatnot – it is a very important issue. I'd say, I'd like to assure people it's not used as a push-back.

Having said that, I think, if you like, at one level up, around having confidential discussions, more informal discussions with consumer organisations such as ACCAN or members around here today for that matter – industry participants as well – that that's a vital part of the regulatory process and getting an understanding for what's going on out there.

And that goes to the issues around trust that both Chris and Delia have raised. And I think it's vital that, in terms of how the ACCC or other regulators are approaching these issues more generally or what they're looking to target or discussions around problems that are out there – that we're able to have some of those discussions in an environment

of trust, to have that informal feedback without a fear that we might see them on the front page of the newspaper the next day or something like that. I think that issue of confidentiality is actually, in some ways, more important in terms of how we interact, rather than those individual investigations that you were talking about.

On the ombudsman schemes – yes, we're certainly seeking to increase our interaction with some of the key schemes, including the TIO, and we have been in this area. There are some confidentiality issues that those schemes face as well. That sometimes it may be difficult to get information from them about particular problematic industry members, because of the way that their schemes work. This will be an ongoing issue in a range of areas – how much information they can put out about the conduct and complaints trends of their individual members. Some schemes publish that openly in other jurisdictions. It's just an observation I've made.

To finish off with one or two comments – well, someone once said to me that the role of a regulator is to make sure that all stakeholders are equally unhappy. But then this was corrected by a recent academic who said, "No, you've actually misunderstood that – the role of a regulator is to disappoint people's expectations at a sustainable reality." They're both very attractive and rewarding job descriptions. But you'll be pleased to know that that's not where the ACCC sees itself or how we see ourselves operating.

As I've said, this area in particular is one where we see the need for significant improvements in the sort of outcomes that consumers are getting in the market. We see the scope for better interaction with ACCAN and its member organisations and other consumer organisations on the consumer side, and initiatives like this, I think, are terrific and I've got a lot of ideas that I'll be looking to take forward. So, thank you.

ALLAN ASHER: Delia, have you got a few ideas?

DELIA RICKARD: I have a few from today, so thank you. On confidentiality, I can echo what Peter said – there's a difference between investigations where you have to abide by all the rules there to where you're looking at working out your own views on regulatory policy, et cetera. Where it's important to have key conversations with confidential groups to bounce around those ideas and get initial feedback before you start going public. As long as that confidentiality is respected by all sides, I think it's beneficial.

On systemic issues and EDR, I think it's a really important point that you brace. I'm not sure how it works in the telecommunications sector, but certainly in the financial-services sector, EDR schemes have to be approved by ASIC. One of the requirements of our approval process is that they must report to us any systemic issues they're seeing on a quarterly basis, which means that: A – we're aware of them. And B – it brings it to their attention to try to deal with something. They have to report back on any one that's raised in the next quarterly report, so that that brings it to our attention, and we can go back and seek information through notices from them. I think that's quite a useful provision to have.

Finally, look, I want to congratulate you, Allan, on holding this. I think it's a really useful forum. I am not quite as pessimistic as Peter about role of regulators, although I do tell young and enthusiastic staff about incremental change. It's a mantra if you want to say, "Stay in some days." There's a role for regulators in brokering win-win situations and being between the extreme ends of any debate. Thank you.

ALLAN ASHER: Chris?

CHRIS CHAPMAN: Allan, where do I start? We live in a world of incremental change, but also of extraordinary paradigm shifts that are occurring. I'm on record as having talked about broken concepts many times. And within the ACMA, we are very genuinely going back to the first principles to try and rebuild. So we have to deal with (inaudible) legislation today, and we need to bridge to the future with some coherency. That's a balancing act we have every day. That's why I love this role, that's why I love working in the ACMA, and it's why I love media and communications – because it's got the most extraordinary challenges.

I'm very optimistic and positive about what the ACMA can be doing. I suggested in my opening remarks that we took a while to learn our role in a truly converging world. We are very hard marketers on ourselves in this country. And that's fine – I've just returned from overseas, and I'm sure many of you agree with this – that one of the benefits from travelling is to again, appreciate, the extraordinary country that we live in and in many, many ways, the simplicity and beauty of the things we have. That doesn't mean we can't improve it – and we should improve it, because we're very fortunate to live in a wonderful country.

The ACMA, if you've had the chance to look at our new logo – it is a beautiful logo – it represents four worlds converging – broadcasting communications, radio communications and online. That trend will continue. The strap line that goes with that new logo is that we are here to communicate, facilitate and regulate.

And that gets to this issue of confidentiality, in a very oblique way. We need to do a lot better in the way in which we communicate. I spoke earlier about the fuzziness of our role in the telco. I know we do very good things in there, but we haven't yet adequately articulated or communicated that. And I think one of the things that ACCAN can do very responsibly is work with us to share some perspectives on that and help us finetune our message. If you're going to regulate, you need to keep your options open, and you need to work on behavioural change, and there are often some outlines where you just need to throw everything at them.

We're going to be getting new powers, hopefully through (inaudible), particularly on the telco side. I'm looking forward to that. It will give us a more measured push and response. I think we've demonstrated, particularly over the last 18 months, that where we get the opportunity to act, we act – and very decisively. I was with the chairman of the FCT in Washington the other day. He was gobsmacked about the nearly \$16 million penalties we got in the Federal Court. That doesn't send a message – he was gobsmacked at the size and effectiveness of our litigation.

The TIO data – someone touched on that there. I think we recognise that – at the time of the spike, particularly with respect to Mobile Premium Services in the middle of 2007 – it was at a time when there was a perfect storm of events – some of which resolved around the lack of progress in telecommunications generally in this country. I'm very impressed with the outcomes from the co-regulatory approach, plus the extra action that we've taken to buttress that. I think that was a very good example, also, of the work between the ACCC and the ACMA, and ACCAN's predecessor, Teresa Corbin, where you had a view about the quality of consumer input into that code, and I think that's an

important heads-up for some of the reassessment of code development. So I'm very optimistic.

Sorry – the short point I wanted to make about being able to regulate is you need to keep your powder dry. We want to communicate better, we want to facilitate – I'm very proud of the spectrum we've been able to put aside for a Government band in the 403-430 megahertz – that's going to provide wonderful harmonisation between Federal and State – that's a good example of what we're doing to facilitate better outcomes. Ultimately, I think we need to be very cautious about the way in which we go out too early with too much information. I've apprehended buyers, compromising their ability to regulate effectively. They're very real concerns within the ACMA as they would be with ACCC and ASIC.

ALLAN ASHER: To Peter, Delia and Chris, thank you very much for joining us in this intimate conversation shared with 80 people here and the million on the web that are to come. There are a couple of things, in closing. Firstly, the diminished expectations that Peter drives us to – I think we live in an age of diminished expectations. Increasingly for consumers, it's the quality of our being ignored that becomes the metric.

There are five 'T's – perhaps even six – to take away from today. The first one that was echoed throughout was the need for a different basis of trust in the way that we deal with one another. And I think that's been argued quite well, and we can all see the persuasiveness of that. But following that, that's not enough – talk. There's a lot more that we can do there. We can share lots more information. For consumers, I guess timing, or the temporal dimension, is an important one, where the time frames in which things happen – we work, in a sense, on different calendars there – consumers who see and feel problems day by day are looking for answers day by day. And often, they're not forthcoming – that leads to frustration. At the practical level, the next 'T' is a telephone that we're going to share – see if we can have a system of sharing some contact numbers.

I heard David Thodey, the new chief executive of Telstra, the other day, say that he was so concerned that the beatings that his staff were receiving when they went to parties and things and their shame at working for an organisation that was constantly dragging along the bottom, below even politicians in public esteem, that he's given them all special hotline phone numbers to call. Well, perhaps we don't want that, but some phone numbers that work in this sector. And then finally, a template for action where we'll see if we can get anywhere in sharing a little bit about selection criteria reporting systems and things that might help add some discipline to the way in which consumers put information to regulators and perhaps encourage some feedback as well.

I did mention a possible sixth, and that's too little time – we've run out of time. We're going to have a micro-break for a cup of tea or coffee, where I'd invite you to go out and stretch your legs, have some tea or coffee, bring it back into the tables – that's what they're here for – and we'll join our next session. But right now, I'd ask you to join me in thanking our three presenters.

(APPLAUSE)

(BREAK)

ALLAN ASHER: Shall we resume for the second session? Please take your seats. Could I ask you to take a seat, and we'll recommence... So, this next session concerns evidence-based policymaking. Please have a seat... So, Australia has joined the growing number of countries who believe that Government policymaking needs to be more rigorous. If we could ask all of those at the back to take a seat, please...

Australia has joined the growing rank of countries trying to bring a greater degree of rigor to Government policymaking, and one of the ways in which that's being attempted in Australia – I say 'attempted'; we can form a view later on whether those attempts are successful and to what extent – but following the experience or the experiment of the Blair New Labour government in the UK, where a whole emphasis went to policymaking following a more rigorous process, whether it was through cost-benefit analysis, through research projects, through the establishment of innumerable consultation processes using royal commissions and white papers and green papers – indeed, it reached the stage, in one entire session of Parliament, where there was just no legislation, but there were something like 32 separate inquiries going on, and that the whole of the machinery of Government had fallen into a form of paralysis.

Well, it's made up for it since, and the output in legislation and regulation and things is now measured in the wheelbarrow-fulls per month, whereas before it was only in the bucketfuls per month, and a question of whether that's superior or not, it's too soon to say.

But one thing that's clear – and that is that governments in Australia are taking that same approach – last year, in April last year, the Prime Minister, in one particular speech, spoke of the need for evidence bases for policymaking, and since then, the Productivity Commission has been something of a leader in this discussion, and many of us who deal with Governments – and this applies also to our conversations with regulators – are often challenged with this notion of the adequacy of evidence around some course of action that we might be urging.

Well, perhaps it's not quite of the scale of the Emissions Trading Scheme, or even of the National Broadband Network, but many of these same issues apply to smaller things as well. We're really delighted to be able to explore this issue in a little bit more depth this afternoon, and we're going to do that through the kind participation of Robert Fitzgerald from the Productivity Commission – many of us will have known Robert over many, many years in his many roles, many in the community sector – as well as more recently as a commissioner at the Productivity Commission.

Following Robert's opening remarks, Abul Rizvi, deputy secretary in the Department of Broadband, Communications and the Digital Economy, will make some observations too. That department is one that is probably one of the most policy-intensive around at the moment, with some of the largest challenges and debates going on. And it'll be interesting to – firstly, to gain the input of these two speakers.

We then have a panel made up of a number of people from both academic backgrounds and consumer-advocacy backgrounds to discuss and raise some questions about some of those things.

And so the first part of this session will be, firstly, led by Robert Fitzgerald, and then by Abul Rizvi, who will speak to us briefly about these issues, and then the panel will join us up here and our conversation will continue.

As with the earlier session, it's intended to try and elicit some meaningful engagement – engagement between us and both the speakers and the panellists – but most importantly, to try and get some insights that, from the consumer side, we can take away and factor into our thinking and action, and dare we also suggest that we might attempt to leave with regulators and policymakers, also, the hope that they might get some new insights into the constraints facing those on the consumer side.

Many of you will have formed the view from the earlier session that there are no financial constraints on ACCAN... (LAUGHTER) I mention just this factoid – the combined budgets of the three regulators who made that comment exceed ours by a factor of 150 times. So let me now introduce Robert to make some remarks.

(APPLAUSE)

ROBERT FITZGERALD: Thanks very much, Allan. I presume that's evidence – of what, I'm not absolutely sure. I must say, it was a joy to sit here during the last session, to watch the last three regulators under the spotlight. We have the added privilege of being able to comment on those three regulators regularly. It was a particular insight into the way in which regulators operate. I was just speaking to a couple of people during the break that it's interesting that the Productivity Commission has a very large work agenda around improving the nation's regulation, but there's been almost no work done on best practice as regulators. And that is well due in Australia over time.

At the moment, I'm in my 11th inquiry. I'm currently on executive remuneration – the not-for-profit sector and gambling. The only way I can put all that together is I think the business sector has formed the view we're trying to turn them into not-for-profits, and the gambling sector is taking bets on it.

(LAUGHTER)

Three draft reports have come out in the last few weeks. I'm more than battle-scarred, but we shall continue. In the consumer-policy space, I think there's been four significant inquiries that deal directly with consumer-policy issues. Just about every one of them deals with it indirectly. They were and are the two gambling inquiries – the first one in 1999, and the current one under way. The consumer safety inquiry I headed in 2006, and 2007 and 2008.

It's interesting that today we talk about evidence. I'd hope that the long history that the Productivity Commission has had as the Tariff Board, then the Industries Assistance Commission, the Industry Commission, and now the Productivity Commission, was always based on some evidence. But I am always reminded of this important fact – that the starting point always matters.

But what also matters is that evidence may change that perspective. So where we face the Consumer Policy Inquiry, you could enter it from a consumer rights' basis. You could take the very document – consumer international rights – that have been established for consumers, and say, "That's the entry point." Some aspects of it, particularly in relation

to public safety, should come from the public health arena. Or, as many of our staff in the Productivity Commission – which has a couple of hundred staff in Canberra and Melbourne, most of whom are economists (but I'm not) – would say, we look at the way in which the market is functioning. We look at whether the prices are in fact signalling the right incentives, and whether the market itself is performing. But in a sense, evidence transcends that. Evidence says whatever part you want to start from, what does the actual evidence tell you?

There are two light-bulb jokes – “How many economists does it take to change a light bulb?”

“None – if it needed changing, the market would have fixed it.”

(LAUGHTER)

The other is about community-welfare advocates. “How many of those does it take to change a light bulb?”

“None, but it takes 12 to write a paper on living in darkness.”

(LAUGHTER)

They are two conundrums. The economist waits for the market to respond, and the advocate finds another way of dealing with the issue and ignores the problem altogether. What does the evidence tell us? Where does it come from? The commission's whole (inaudible) is about collecting evidence. It's about doing that through a number of processes – submissions, private discussions, open consultations, forums, public hearings, draft reports. Then you get through the whole press list again. Unlike the regulators, we don't suffer the problem of transparency. It's all out there. You know what we're thinking in the draft, and you know exactly how to criticise it in the lead-up to the final.

The question is, what is evidence? Well, evidence comes from many sources. It is the study of existing regulations and their impacts. It is the evidence about how consumers actually behave. And both the Consumer Product Safety and the Consumer Policy inquiries, I hope, demonstrated that the Commission does have a capacity – albeit imperfect, and albeit a struggle sometimes – to actually look at the evidence.

And here I want to pay a compliment to the sector. There is no question in my mind, or that in my colleagues', that the Consumer Policy Inquiry – the financial credit advocates were well ahead of the field in predicting what is likely to occur with the global financial crisis than just about anybody else, of all the groups we ever spoke to. There is no doubt that the consumer groups understood better than anyone else, including the regulators, what the potential could be. It's not to say that they predicted either the size or the exact scale or the exact nature of that crisis, but from their interaction with consumers both here and overseas, and a careful listening to what was happening, they were able to put forward propositions.

But I would also say, too, there were very few people willing to listen, and very few people to believe that a consumer advocacy group could in fact be more knowledgeable than the financial sector. History proved that to be incorrect. But a credit to those from that sector.

It is about empirical evidence – finding the numbers that support the arguments. That's hard in the consumer-policy space. But it's absolutely essential if you're going to, in fact, advocate substantial regulatory responses to some of these problems. It is about trying to look at the consumer data. And I was particularly interested in your discussion about the results from ombudsman's office. During that inquiry, we spoke to the banking ombudsman, telecommunications ombudsman – many energy and water, electricity ombudsmen, and others – and it was very clear that there was, in fact, a failure to be able to translate those complaints into systemic responses.

One of the great failures in ombudsman's office is to misunderstand and articulate that information in a way that gives a systemic response. Equally, it is a problem with regulators and policymakers that they undervalue what that particular information is telling them. And they do so because they look at the individual, often who's vulnerable or at risk, and in fact discount the information because of the clients or the consumers. That is a fatally flawed approach, because those consumers do in fact have a story to tell. And the collection of complaints tells us a bigger and different story to that of the individual's.

That information also comes from theories; from different backgrounds and different areas. I started by saying where you enter these policy discussions matter – it does. But being open to in fact looking at both economic and other theories is absolutely essential. And if you are coming to this debate, these policy areas, from a particular perspective, you have to be open to explore other theories from other disciplines. In the Commission, we struggled with that from time to time. It is largely an organisation that sees the world through the economic lens. But public policy is not economic policy. Public policy is in fact the integration of economic, social, cultural aspects. It is that which brings it together. Public policy is not from one screen – it comes from several.

But a second question is, who do you listen to? This is one of the great challenges for advocates. You may have evidence of quality – that doesn't necessarily mean you'll have a ready audience. One of the great challenges of consumer advocacy, but generally for everybody, is to work out how they can ensure that their voice is heard. Those of you that have been around good policymaking, rare though it might be, would understand that you have the best policy under the sun, but it won't necessarily be sufficient to get it up. And that's an issue even in inquiries. And so who do you listen to?

Well, a couple of things that are very important – firstly, people in the Commission, and others, are absolutely very attracted to well-researched, peer-reviewed, academic information – particularly that which is based on empirical information. It's naturally predisposed to look at that information in its initial literature reviews.

Secondly, it looks at what's happening and what are the numbers – not only in relation to complaints, but in relation to consumer detriment. In the Consumer Product Safety inquiry, there is a complete acuity of good-quality data about the impacts on unsafe products in Australia. We spoke to coronial officers and all researchers in this area, but it was incomplete. My point about that, however, is whatever the information is, it should be gathered and used very effectively.

The other point about it, however, is through case studies and the use of people that are actually affected. When we take public hearings, they're open. Anybody can attend and everybody does attend. What I've come to understand is, however, that the personal

story, the personal case study, can be as impactful as well-researched data if one can become convinced that it's telling us a story that has systemic ramifications.

In the inquiry that I did on paid parental leave recently, we had many people – children, women and men – crying and putting their personal stories and difficulties. There's a tendency to believe those stories are only for colour. They make the hearings newsworthy. That is not true. Those stories – if they reinforce a trend that is supported both by academic work, by independent research, by a logic framework – may in fact add to the evidence base, and should never be underestimated. But there is an issue about weighing the evidence, and that's very important to understand. At the end of the day, you collect all the evidence all the sources, but the policymaker, the decision-maker, must now weigh that.

Just two points. For the policymaker, uncertainty is their natural place. Public policy is not based on certainty of information. It is not based on getting it right. Bureaucrats and politicians are forced to say so – it's simply not true. Nothing is right. It may be the right policy for the context and the time that that decision is made. It's always contextual as to place, time, history, culture, content.

What doesn't really happen is certainty. One of the great issues of policy is how do you establish regulation, or a regulatory environment, that actually deals with uncertainty over time? The great challenge facing the environment issue at the moment is to manage uncertainty, when in fact the request everybody wants is certainty. It's a very major issue.

A second is always to look at the second-round effects of whatever you propose. That is to actively understand that just about everything you do in regulatory terms have both perverse and unintended consequences. And it's the extent of that perverseness, or the extent of the unintended consequences, that needs to be looked at. There is a serious problem in Australian policymaking at the moment in the inability to go beyond the first-round effects, and the impossible difficulty to get people to actually acknowledge that there are second-round effects. This means the people constantly say, "It was unintended." It may have been unintended, but it wasn't unknown. Unknown consequences are entirely different from unintended. Most policymakers simply stop at the first round, not the second- or third-round effect. In consumer policy, that's critical. You can propose regulations which may on the surface enhance consumer protection. If it so distorts the market, it may cause greater detriment to a much larger number of consumers than was intended.

When you're putting in that advocacy, one should be saying, "Are there unintended consequences? What is the extent? Is it still reasonable to concede on that basis?"

The other point is that regulation is, by nature, costly, and so the notion of cost-benefit analysis is critical. I notice that we made some comments about the broadband initiative recently, about whether or not that had been subject to rigorous cost-benefit analysis. On the other side, I should say that of course the Howard initiatives in relation to industrial relations were never subject to any cost-benefit analysis, nor never undertook a regulatory impact statement either. It is not uncommon for governments, on the very big items, to ignore their own processes.

But the point that I do want to say is regulation has cost, and that has to be acknowledged. So whilst a regulation may achieve your outcome, it is incumbent on advocates to at least acknowledge that the cost associated with that may be substantial, and to at least enter into the discussion about whether or not those costs are in fact justified.

In the frame report, we put forward a framework, which was based largely on the work done by the OECD, and particularly by Louise Sylvan, now of our office. I urge you to look at that decision-making framework matrix. It puts into a framework everything that I've been saying. It forces you to look at the issues that are of concern, the market, the information, the way in which consumers actually operate, and indeed, most importantly, consumer expectations. It then requires you to look at the various options for addressing those issues. And then it takes you to the third column, which is, "Does it actually work? And how do we know that it would work? Does it pass a net-benefit test? And does it pass a net-benefit test relative to other options?" So the question is not whether the individual recommendation passes the net-benefit test; it's whether or not it passes that relative to other things.

The point that I would simply say – sometimes doing nothing is exactly the right response. Policymakers struggle with that. Not very many ministers want to announce nothing. Many of them announce things that announce next to nothing, but they don't actually want to stand up and say, "It's a nothing promise." So the whole dynamic is to announce something and to do something. I just simply say the Commission is in the luxurious position of occasionally being able to say, "Do nothing." Rare, but it does happen.

Can I just conclude – we could go through a number of case studies, which we've run out of time, but I do think it's absolutely critical that, when we're looking at these issues, that we reflect very carefully about what is the evidence base of the problem – what is the evidence base that the solution you're proposing will actually work?

The critical issue in Australia is, in fact, none of that. Because we deal with uncertainty, it is appropriate for Governments to act in the absence of perfect knowledge. Otherwise, they would never act. In fact, they would never act in the telecommunications area, where imperfect seems to be the daily grind as the market and the content changes. But it must be incumbent on Governments to then evaluate the impacts of those actions, and then to change and modify.

In Australia, we have a great problem. We understand how to add, but we've lost the 'Subtract' from the calculator. And so what we see in consumer policy is an endless array of additional regulation rather than what we should see – the replacement of some completely inappropriate and ineffectual regulation. I've got to tell you, in the Consumer Policy, and the Consumer Product Safety one, it was immensely difficult to get anybody to acknowledge that anything could disappear.

Even those that supported a general safety provision or a general unfairness principle into the law, we would say – on both occasions – "What would it replace?" And Allan's got fears about this, but I have to say, most people said, in the end, "Nothing." That may be an incorrect analysis, but I'll just make the point – it's always been that "If we can replace this..."

So this is not a treaty about evidence-based policy, but it might give you some insights for the need to have good evidence, how to articulate that evidence, and the need to have your case heard. Thank you very much.

(APPLAUSE)

ALLAN ASHER: Let's move on now to Abul Rizvi. However, on that final point, the consumer movement certainly has faced this vexed issue of what are often the trade-offs – what legislation is needed and what could go – and that, I guess, from some points of view, there are large parts of consumer protection law that really serve no practical purpose at all.

I would personally include in that the whole of the unconscionable conduct provisions of the Trade Practices Act – the franchise provisions and the various small-business unconscionability initiatives – all of which have failed fairly miserably except to add lots and lots of pages to the statutes and frustration to users. But that's a case study that we might or might not explore later. However, right now, I'd be delighted to invite Abul to add some comments.

ABUL RIZVI: Thanks, Allan. I wrote a comment on the broad framework for evidence-based decision making that I think Robert very well put – I found very little of which I could disagree. There were some other issues on which he made comment on which I might comment, but I won't...

But there is one comment that he did make where I think I have a disagreement. He said that, in this space – in the telecommunications space – we are faced with a situation of imperfect information. I would agree – perhaps imperfect, but certainly not lacking. In this space – in the telecommunications policy area – we have the benefit of an extraordinary set of data produced annually by the telecommunications industry. The data most recently produced is indeed an absolute goldmine. The recent report provides data that is robust and comprehensive in helping us understand the policy problems we face from the consumer perspective. I think that no-one – not even the telecommunications carriers – would argue with the message the data is giving. It's screaming out at us. Increasingly, or interestingly – and this is perhaps me using the singular of 'data' – I also have an experience with the TIO as a consumer.

I thought I might relate that experience not necessarily as an example of evidence-based policymaking, but certainly evidence that I found of great interest. There were three things I picked up from my recent experience. Firstly, it highlighted to me how effective TIO processes actually are. On the evening that I lodged an online complaint about a telecommunications matter, I received an automated response that evening on the next steps I should take. These were clearly explained and easily understood. The steps I was asked to take led to my complaint being resolved by my telecommunications carrier within a week. So the first message – TIO processes work.

But it left me wondering – how many people are not aware of the TIO and the work they do? Clearly the TIO's resolve-connect campaign has been effective. But despite this, I remain uneasy about how many people just live with the frustration of bad customer service from telecommunications carriers without escalating the matter to the TIO.

The other issues that occurred to me were, firstly – why did it take a complaint to the TIO to resolve my issue within a week? The second question that arose to me was – why don't telecommunications carriers have adequate arrangements that enable issues to be resolved without having to refer the matter to the TIO?

Two possible hypotheses came to mind. Perhaps telecommunications carriers' customer services staff are not particularly empowered to resolve issues. The person I dealt with was exceedingly polite, but essentially gave me repeatedly the same script that the person was asked to give me.

The other issue – the other hypothesis that came to mind – was that maybe the databases of the telecommunications carriers do not have capabilities to allow their customer services staff to resolve issues – they're perhaps neither empowered, nor do they have the data to be able to resolve the problem.

A good way to get a deeper understanding of the possible reasons would be, I think, to jointly analyse the TIO database whilst properly respecting privacy at a much more granular level. It is, I believe, a goldmine. The need for this is something that I suggest would well be worthwhile discussing further, as it is something that all of us today would benefit from. It would enable us to put more evidence around any hypothesis for the root cause of the customer-service problems, the telecommunication (inaudible) are facing. It would also enable a more fruitful and more targeted dialogue with telecommunications carriers and with regulators.

The rising volume of complaints and more analysis of the TIO is not to say, however, that we're still at an embryonic stage in addressing the problems. There have been some very good steps that are entrained to address the very sizable tasks we all face to improve customer services in this space.

Firstly, the creation of ACCAN itself is an important step. It's worth remembering that part of the Government's rationale in supporting the establishment, and increased ongoing funding of ACCAN, was the need for a stronger evidence base to support the complaints of consumers and the calls for change being made on both industry and Government. The Government felt that, for too long, it had been asked to respond to concerns based predominantly on anecdotal evidence, while for their part, the various consumer groups felt that they had never had the resources to mount sustained and serious research efforts. The establishment of ACCAN, with a significant research budget, should go a long way to addressing this concern. ACCAN has, very quickly, established itself as a body to be taken seriously.

Another very significant step is the regulatory reform package the Government has recently introduced. The emphasis in this on increasing competition in the industry is clearly a critical ingredient to improving customer service. The Productivity Commission's review of Australia's consumer policy framework is another important ingredient to addressing the issues that consumers more generally face. The Commission highlighted the variable outcomes for consumers, costs for businesses, and lack of responsive policymaking that has resulted from the current division of responsibility between State and Territory Governments, and the Commonwealth. In response, COAG has now agreed to a new consumer-policy framework based on a single national consumer law in the Trade Practices Act. The challenge will be to make sure the details of this are implemented effectively in the telecommunications area.

Another recent useful initiative – and one referred to in the earlier session – has been the ACCC's paper on how internet service providers describe internet speeds in their advertising material. The fact the paper lists eight examples of how not to do this and only two examples of good practice highlights the extent of the issue.

I recognise Allan's point that this is a relatively tentative step in relation to a long-standing problem. But even in the few weeks since the paper was issued, there is evidence that telecommunications carriers are starting to change at least the more egregious examples of advertising internet speeds. I'm sure the ACCC will review this in coming months. By that stage, we should be in a better position to judge what more needs to be done. The paper will make the case for doing more very much stronger. I think we are all on notice in this regard.

Finally, I just want to say a few words about Mobile Premium Services code. I want to pay credit to the industry, Communications Alliance and to the ACMA for its work on the new code. While there's still a long way to go on this issue, the fact that NPS complaints fell from 3,500 in July 2008 to less than 1,000 in September 2009 is pleasing. The fact that it took as long as it did for the code to be finalised on an issue we all agreed required serious attention is a serious lesson for the future.

As policymakers and regulators, we clearly need to be able to respond to significant consumer issues more quickly, and we need to be better-prepared to enforce the laws that already exist. The TIO data demands nothing less. Thank you.

(APPLAUSE)

ALLAN ASHER: We'll now be joined up here by some panellists. If I could invite you to come up... Our panellists are Gerard Goggin, professor of digital communications and deputy director of the Journalism and Media Research Centre at the University of NSW. Sue Salthouse, president of Women with Disabilities, and also a member of the ACCAN board. Mark Armstrong, director of Network Insight Institute, and Paul Harrison, senior lecturer at Deakin University. We might start, actually, with Gerard and just invite some observations and, if you like, a question.

GERARD GOGGIN: Thanks very much. I suppose I wanted to start by saying I'm all in favour of evidence, and I'm really glad that we're talking about this in communications, because I suppose, to cut straight to the chase now that I'm perhaps no longer of the ACCAN board, it seems to be that we haven't talked about that for quite a while. For me, I don't recognise the characterisation that perhaps comes from the Government when they say we've had problems because consumers haven't been providing evidence – we heard the other side, the frustration from the consumers. But it seems to me, actually, questions of evidence haven't really been openly discussed or called for in communications policy for about the last 10 years. I'm going to grossly generalise here.

I suppose NPS is an excellent example. I'm astonished now to hear it presented as a lesson in this area where it seems to be the lessons have not been learnt at all. It seems to be the lessons are exactly about evidence. For me, the problem in this was in fact very few of the participants around this actually wanted to contribute to an evidence base around this. It seems to be this is the issue that we're facing. We've heard some excellent presentations here that explore the complexity of evidence base and the kinds

of frameworks that you could adopt that I think Robert has presented. Let's do that. We haven't. I think we're still not doing it. And I don't think we've actually been clear about that, because it seems to me it's rather one-sided still.

There's a sense in which we're hearing clearly from Government, and I would acknowledge that the funding of ACCAN is a really significant opportunity for consumers to actually get what they asked and now see how they go with it – the capacity to do with research, and consumers actually do it? It seems to me this is one-sided emphasis to say, "Consumers, if you want evidence in policymaking, where is it?" Whereas we hear from the range of participants – there's often not actually much evidence being produced to actually justify the policies. I get a strange resonance about that. It's not one-sided. I think all the participants are in this.

I really like to hear the discussion on "What is the evidence base we need around communication policy?" I think it's right – there's uncertainty, there's interesting issues around social media, and that actually raises a whole set of new issues. And it seems to me we've got some great signs here.

I commend ACMA, particularly, for the work that they are doing. It seems to me they are doing research and putting it into the public domain. And I know a range of other entities who are engaged in that – I forget on the spot. It seems to me we need to understand – what's the relationship between that kind of research, the research that academics are doing, and I think that I'm doing, that is uncoordinated, and it could be brought together, and that people like Mark Armstrong, predictably, are trying to bring that together. What are those data we need? How can we put that together?

Then I think we have to have the discussion about what counts as evidence. I think if you look at this – we've talked about it a bit today – particularly with NPS, what counts as evidence? Many people have been saying for quite some time there are some problems. One of the difficulties, particularly in the co-regulatory processes with the framework I think the Government rightly claims credit for starting to fix – the regulators were in a situation to say, "We don't have the powers to act in this, although we may have concerns."

What do you do in a co-regulatory process where there's not the arbitrators or the ways to look at evidence? I think one of the problems that perhaps consumer advocates face is to the kinds of evidence that one feels one can be rejected, while people have called "rejected knowledge." So the stories that people have – which are really important, and it's great to hear that they count for something – often there's a feeling that that's not the kind of evidence we want, and that one of the difficulties, I think, which is the interplay between quantitative and qualitative research, is what are the numbers and what are the presumptions about the numbers? Having the interaction between us is very important.

I probably, I suppose, to sum up, I'd be saying what is evidence collectively we need in this area? How would we get it? How would we put it together? That is a joint enterprise. Then I think we should be honest to say, if we aspire to policy that's evidence-informed, do we get that? Is it transparent? We've heard remarks on the big-ticket issues, something that's put out the window. The problem with NPS is that precisely was not about evidence-based policy until about the last two years.

ALLAN ASHER: Before we come to Mark Armstrong, who's been able to look at these issues from, I guess, pretty well every perspective there is, I'd just invite Robert to respond on that issue. Do you see any evidence of one-sidedness in this? And if so, what might be done about it?

MARK ARMSTRONG: There's a couple of things. The first thing that became very clear in the Consumer Policy Inquiry was that, in fact, the consumer advocacies were struggling to provide evidence of sufficient quality – I don't mean that in a negative sense. And one of the things we did in the recommendations was firstly to recommend a substantial funding for a research centre that would be established in Australia, and the second thing is we did in fact promote the support of consumer advocacy. Now, I don't think anyone in this room knows how hard it was to get those recommendations up in the commission itself. But the point that really won the day was, it is completely unfair and inappropriate to ask a disparate sector, poorly resourced, to be able to provide the evidence if you in fact don't provide some of the support – both academic research and funding – to achieve it.

The ultimate point is this is in fact about getting good-quality public policy. So why those recommendations are there – and they would not normally be in Commission reports, I have to tell you – is because at the end of the day, it serves the purpose of public policy to have a well-informed, well-resourced, well-researched consumer group. As it does from business, as it does from Government itself. I might just say, don't undersell yourselves – many of the business groups that present to us – they have much more money than you, but I have to say, their submissions are no more meritorious, nor in fact skilfully presented, in some cases. But there was a glaring problem in this particular sector. I'm pleased to see there's been some responses, at least in different parts of the sector, to those concerns.

ALLAN ASHER: Although there's substantial investment in the advice, it hasn't gone ahead yet. We live in hope. Mark?

MARK ARMSTRONG: I was going to wave the ACCAN goals and activities and say how I thought that was a realistic and good description of what a consumer-oriented organisation should be about. But this is – no criticism of you, Abul – I was horrified to discover that the Government had seen the need to provide evidence as a major part of ACCAN's role with its budget. I can tell you from experience, ladies and gentlemen, it takes a lot more ACCAN could do – I would see ACCAN's real contribution to our society as being to take consistent information provided by somebody in a position to produce it, and to put a good case at all those levels, including policy, on behalf of consumers, citizens or the public – whatever you want to call them, but I certainly wouldn't keep calling them 'consumers' all the time – I think that's a very old-fashioned part of a US model that's not doing so well there, and it certainly doesn't apply to our sector when we are now talking about not telephones just, although there might be some problems there – we're talking about the internet in Australian communications. We're talking about drama. We're talking about culture. We're talking about education. We're talking about health, and a lot of other things. I don't mean about the core of all of those things, but communication is an essential part.

So the sort of grocery-shop model that industry will put the product in front of the consumer and if they get something that's a bit stale or a bit damaged, they will – they just need a right to complain – I think that is, frankly, ridiculous.

I was going to say exactly the same as Gerard Goggin about providing information. From my experience in a Government department, working outside as a lawyer, or as a consultant, as a statutory authority, it is only a public entity with appropriate powers and protections which can collect consistent data – including data, incidentally, about consumer needs and desires – as opposed to the model that we spent so much time talking about was, of, “What is someone today to offer you? Is there something wrong with it? Does it have a defect? Do you need to take it back? I think there are much more important issues than that, particularly in an information society, and we need – it's only a public body which can, and it's always opposed, interesting... I don't want to blame this specifically on Graham Richardson, it's just that he happened to be the minister for communications in 1991, which in my study of the history, was the beginning of the shutting down of the public process in communications.

When Austel was established, there was a very deliberate decision made to leave out the obligation to collect and disseminate information about telecommunications. The next year, the obligation which the then-Broadcasting Tribunal had to collect and disseminate information about broadcasting was removed from the legislation. Ever since, we've had an increasing rise in discretionary power and selective provision of information – the Productivity Commission does an excellent job, but it doesn't provide a consistent data set over time, and it can't by the nature of being asked or directed – forget about the technicalities – to investigate a particular area. It needs boring, hard work by public authorities – I wish they'd put a bit more time into this than into enforcement activities, frankly – to give us a picture.

And we include as much corporations competing in these fields as the public. Without that, nothing else happens. When that happens, there's a chance, but without a public process, and over the 20 years I'm talking about we've also seen a gradual erosion of the public process, to the point where something is called a public inquiry when all that happens is people have to work very hard to make long submissions and post them off to some official office and sometimes, I happen to know, it happens that a junior official is instructed to do summaries of all those submissions, and the people at the top might look at them or they might not. Not always, but that's a common occurrence.

I've always advised consumers to be very cautious about burning the midnight oil for weeks on these formal submissions when there is no public process, when there's no right to have eyeball contact with the decision-maker – and most important of all, from an absolutely practical evidentiary viewpoint, no opportunity to confront and test the people who've provided alternative information. Information only gets value when it's had some sort of testing or comparison, and that's sort of been removed. Here are the beginnings – and it's wonderful – of a fresh approach; when every part of communications can prosper if we have evidence-based policymaking and regulation in the full sense.

ALLAN ASHER: OK. In a moment, we'll come to Dr Paul Harrison, who among other things has a PhD in consumer behaviour. Just before that, a question for Abul. You spoke about the implementation of the code on premium services – Mobile Premium Services – and you mentioned that you thought there were already signs of it having some effect. And certainly there are some changes in the complaints data. Isn't it also the case that, already, the ACMA have launched 14 separate investigations into breaches of that same code?

ABUL RIZVI: Look, I'm not declaring victory... But by no means – I was merely pointing out the relative improvement in the situation, I suppose, and most people will say to me that it's relative to a pretty appalling situation, and that's very true. Certainly not victory as yet, and I recognise the work that the ACMA is doing. And I recognise there's probably more to be done in this space. But I would say that the measures that are contained in the code have been worthwhile, albeit they were brought about probably far, far too slowly. That's probably the key criticism I'd make of the process and development.

ROBERT FITZGERALD: One comment, if I might. It's very important not to ask for more data and information unless you can identify in which the data and information will be used and informed. I think there's a very great danger in Australia at the moment that everyone is clamouring for more information. More information is not necessary unless it achieves, or is developed, for a particular purpose. One of the things you might consider – ACMA, the Department, the regulator and what have you – might in fact try to work out a framework. I use that word deliberately. One of the things we've understood in the Commission in a number of areas – famous blue book that people will see every year that has Indigenous report, which I chair, and others – they all have frameworks; they drive the collection of appropriate information and appropriate indicators.

In the absence of that, all you do is have more information. One of the lessons going forward is you would be well-placed, I think, if you could come up with an agreed framework for the collection of data and information. And part of that is actually saying, "What would we do with this? How would it be used? How would it inform whatever the policy is?" Then I think data and information becomes helpful. The problem at the moment is departments are producing enormous amounts of irrelevant data. And that is not helpful and it is exceptionally expensive. So I just caution – you've got to be able to demonstrate a purpose, and I think that's where some good dialogue, especially, will be helpful.

ALLAN ASHER: Paul?

PAUL HARRISON: It's interesting, because I come to this from a different perspective, which is how marketers behave. And I guess the interesting thing – there's three things that have come out of listening to this, and I'm quite new to the consumer advocacy area as well.

There is already a huge amount of evidence out there – marketers and psychologists have been using that evidence for 40 years to get people to behave the way they would like them to behave, in general. I'm not suggesting marketers have this magical power to make people behave they want them to. There is plenty of evidence – until I try to shine the light on it. This is what marketers do – they exploit vulnerabilities. I recently read a paper which was targeting the poverty consumer. This is something that business schools work on.

The other thing, I guess, is that the concern that I have about a model that people have been talking about is that it's based on a complaining model, or a consumer recognising, first of all, that they have a problem, and then the consumer having the desire, the cognitive ability, the willingness, the courage, to complain. Most complaints are at the end of an entire process. While I understand – when I went to the TIO website, most people wouldn't have a clue what the TIO is. I would question the issue of even broad

understanding of things like the ACCC. Most people wouldn't have a clue what those four letters stand for. I can – most people, I would say the majority of the population. It's hard to even – when I do research looking at the ABC, a lot of people didn't even know what the ABC did.

So I think we have to be careful about over-assuming that people can make complaints. And I think one of the things that comes up often when I deal now with consumer-advocacy groups is that, because you're in it, you expect that people know a lot about what's going on. I would actually say a person who complains is incredibly courageous; they've to some degree accepted that they've made a mistake, which is a huge issue in terms of their ego, so I think somehow – and I'm about to tell you your house is on fire but I don't know how to put it out – somehow we have to have this model which is not based purely on how people complain or when people come to us.

The last thing I would say – the issue that I, as a consumer-behaviour researcher, is not just evidence about what people are doing, but why people are doing it.

If we know why people are making mistakes in the market, then we can anticipate mistakes. Again, there is lot of evidence out there. If I do a research project, most of the time when I talk to these groups, straight away I can say, "This is what marketers were doing 20 years ago. Here's a paper about it." I think Robert is correct. A lot of the time, it's about a literature review or looking at what evidence, translating the evidence and saying, "Where are its similarities?"

I guess, concluding what I'm saying, is the issue is that marketers and consumer-behaviour researchers know a lot about what and why these things are happening. Certainly my contribution as a consumer-behaviour researcher is to explain back to people, or even to regulators, "Here is the evidence."

Now, ultimately what we need to do is collect numbers data. That's the thing that seems to be coming through – policy is based, a lot of the time, on systemic issues, on data. But I think there is already plenty of evidence out there. It's about translating it into a context that regulators can understand, for want of a better phrase.

ALLAN ASHER: I wonder, Paul, if that discipline would lead you to conclude that using those same tools might be prescriptive when looking at types of codes, types of rules, types of commercial behaviour that one is trying to regulate or modify, and being able to predict with a certain degree of authority up-front that these are going to either be more or less successful by the way they're framed.

PAUL HARRISON: I think so. And I think you can translate these broad ideas about human behaviour to any context. And that's one of the things I find interesting – whenever I see something appear, I go, "I can see how that's going to play out, because we already know this about human behaviour." Certainly – and I mentioned this to Gerard once or twice as well – the stuff that scares me is when I look at these regulatory frameworks, because my knowledge is about human behaviour, not about the law. And I guess that's the thing – bringing together what everybody's saying – a range of disciplines, people who can have a dialogue, and to recognise that there's more to it, I guess, than (inaudible).

ALLAN ASHER: I wonder if that might be something Abul wants to respond to. And I think Chris Chapman may have just escaped, but it seems to me he was talking about new approaches to ex-ante management of these things. It might well be that there's a circuit there to get on and to see if we can find more practical ways of constructing things that are more likely to work. So, perhaps if we come back to Abul after we hear from Sue Salthouse.

SUE SALTHOUSE: OK. Thank you very much, Allan. I'd like to pull us back, perhaps, a little, to say that we are talking about small steps here, and we're not going to be able to wipe the slate clean and begin from nothing. But before I do that, I'd like to just say I've been doing a bit of data-manipulating during the afternoon, and to say that we have 21 million Australians, and if I discount the under-2s as not owning a mobile phone yet, I think that that works out at about 11 cents per consumer that ACCAN has been blessed with. So that I think that there was a reason that we were given \$2 million, and that was because there's a damn good need for it.

And I think that what we've talked about today is having a look at that need for how we move forward together. And I think the other thing is that when I say we can't begin with a clean slate is that everything we've talked about today has been predicated on a competitive marketplace.

As a consumer advocate, and a representer of the marginalised, if we're still allowed to use that term, I say that how are we going to operate in a competitive marketplace when there are 5-10% of people who are going to need special-case interventions? So that then we cannot say that we're – I think, Robert, I'd like to take up on a point you said is that we cannot ignore the voice of the lone consumer and the vulnerable consumer. That whilst we're collecting this evidence, we need also to take notice of what is happening just out of our main view. It is those consumers, if we're going to bring everybody along together, that we need to be looking at.

And so I have been really encouraged today when I listened to Delia and Chris and Peter, saying – particularly Delia – putting forward that model of how they engage with consumers. Because we know that the processes of bringing things to attention in the CCC or the CCF has been a very regimented process. So I can understand how, when Peter said there was this huge problem out here which got into the papers from the Indigenous sector, but wasn't raised at the CCF. So I think that we've got to still work on developing that trust and that, I think, one of the big and important things with these consumer-engagement groups is to be responsive. And I was really encouraged to hear Delia talk about how, when something is brought up by consumers, there is a response to it and a visible response.

So I would like to think about that when we're looking at evidence base. We've already seen that Paul said there's a lot of evidence around, and he's not the only one that's said it today. We've got to look at interactiveness and responsiveness, which is part of that respect and trust. I think NGOs are sick of putting in submissions that are only looked at by the ASO 3. Because we have very little resources available to us, and our capacity to respond sometimes is very, very inhibited. So that's why I'm very glad that we've had this conversation today where I think there is a lot of goodwill from the regulators to try and make that engagement better so that the evidence that is around can be utilised better.

I certainly hope that the Productivity Commission's recommendations get a guernsey – especially a national research council, because ACCAN can't do all the research, even though we've already had a damn good go, and we're going to move forward in that vein. So I think that's all I'd like to say.

ALLAN ASHER: Thanks, Sue. Abul, I wonder if you see in the toolbox for a Government policy department – you're going to have a role on future codes or laws and ways in which the telecom sector might interact with it the general consumer law – whether there's scope for behavioural economics or understanding of some of these behavioural issues as distinct from some of the more traditional code approaches, perhaps.

NEW SPEAKER: Certainly I think the scope is there. I think, towards the end of the last session, you perhaps encapsulated it well with your five 'T's – they're probably five 'T's we certainly, as regulators and policymakers, need to be very conscious of.

Robert's suggestion about an agreed framework for analysing these issues, I think, also makes a lot of sense. And I think that might help avoid the submission problem, because I think it would give us a much clearer basis on our dialogue. So I'd certainly support that suggestion. My question on that would be, to what degree could we also get industry to sign up to the same framework?

ALLAN ASHER: OK. I think that's a useful point. I did mention five 'T's. Sadly, I also mentioned the sixth 'T' – this dreadful emergence of time, which has come up again. I'm afraid we've run out of a conversation that could readily go in this form for a lot longer. However, it can't. What it can do, though, is when we finish this particular format, we can all join in our own conversations to follow-up some of these issues just outside over some networking drinks. And I hope you'll join me there.

But before formally closing today, I really want to give my thanks to a group of people who haven't been visible here today except in a background way, and some who aren't even here – Maria from our office, and Janene and Sarah and Karisha and also Teresa who, over these last couple of weeks, put many, many hours into designing the program and arranging things here in ways that I think have just been hugely contributory to what I think has been a very rich and productive session.

I'd like to also thank our presenters and panellists, and particularly thanks to all of you for coming along, and I'd ask you firstly to join me in thanking the panellists and secondly to join me in a drink afterwards.

(APPLAUSE)

(END OF SESSION)