

STATEMENT OF MAJOR ISSUES

The purpose of today's sitting is to enable the Authority to indicate to the Applicant and to the Objectors the matters that the Authority regards as having the greatest importance and relevance to the question whether a licence should be granted to the applicant.

The parties should bear in mind the following in considering the issues or matters indicated -

- (i) The Authority has not set out matters favourable to the Applicant as the purpose of the present process is to assist the Applicant in addressing the main matters which the Authority considers it has to meet;
  
- (ii) The Authority is not to be taken as being exhaustive in its indications as to any particular matter but rather as setting out the principal issues that arise in each particular class of matter. For example, it does not mention sales or profitability in connection with insurance although the level and importance of insurance sales to HFC clearly has potential relevance to almost any aspect of the matter of insurance.

However, the Applicant is assured that one or more of the matters specified by the Authority today would have to be determined unfavourably to the Applicant before the Authority would seriously consider refusing to grant a licence.

In these indications many references are made to the evidence in terms such as "the evidence is" or "the evidence suggests". It is important that the Applicant and the Objectors understand that the Authority has not reached a concluded view in any area where there is a dispute as to the evidence and that in every such instance the Authority should be taken as indicating only that on one view of it is the evidence to the effect stated or suggested.

#### INSURANCE MATTERS

The following practices which the evidence suggests were carried on by HFC either alone or through or with its wholly owned subsidiaries, Heritage Life and Heritage General, with respect to credit insurance arguably constituted dishonest, unfair or inefficient conduct -

- (i) the failure to notify consumers prior to 1.1.1986 where the amount of insurance was reduced as a result of underassessment of premium by HFC branch staff;
- (ii) the increasing (which may have been unauthorised) of the amount of insurance prior to 1.1.1986 where premium had been overassessed by

HFC staff in lieu of insuring for the amount sought and refunding the excess; also failing to notify the consumer;

- (iii) the breaches of Section 130(2)(b) which occurred in all the above cases;
- (iv) the failure to promptly refund amounts of premium overpaid on and after 1.1.1986 forthwith upon the fact of overpayment having been established;
- (v) the failure to refund amounts by which insurance rebates had been under-rebated forthwith upon the fact of the under rebating having been established;
- (vi) the use of deceptive practices in the sale of insurance by over-quoting loan instalment amounts and the inclusion of insurance in the loan documentation without prior request from the consumer;

- (vii) failing to make rebates of insurance premium when loans were terminated early, unless the borrower asked for such a rebate;
- (viii) inducing borrowers to let credit insurance continue to run, notwithstanding the termination of the relevant loan and with it the expiry of the insurance policy and risk;
- (ix) failure to disclose to the Authority until late December 1988, the existence of the unrefunded excess premium problem, especially in the light of comments made in support of the AC2 proposal at page 2060.

#### SECURITIES

The evidence is that HFC staff lacked knowledge and understanding of the subject of securities (including voluntary surrenders) in areas relevant to HFC's business. See -

- (i) HFC's admission of threats to repossess unsecured goods and the explanation thereof "HFC employees were simply ignorant of

nature and significance of a security or of a goods mortgage" (p.2079);

- (ii) Mr. Weste's evidence;
  
- (iii) Mr. Turner's evidence that it was not until some time after September 1987 that he learnt that it was incorrect and the wrong thing to lodge a caveat over a borrower's home in connection with an unsecured loan.

In the light of that, it is arguable that individual incidents of misconduct in connection with securities ought not to be regarded as being particularly remarkable in themselves but rather as the predictable consequence of the state of ignorance of HFC staff.

It is arguable that it was a fundamental obligation of HFC, whose business includes secured and unsecured lending, to ensure that the members of staff assigned to deal with the public had sufficient knowledge of the various types of loans made and securities taken and of the rights and obligations of the parties to enable such staff on behalf of HFC to deal honestly, efficiently and fairly with borrowers.

It is further arguable that HFC's failure to ensure such knowledge on behalf of its relevant staff reflects adversely both on the honesty, efficiency and fairness of the company's dealings and also on the company's determination to act honestly, efficiently and fairly.

The evidence of Mr. Wilson given well after these deficiencies had become evident suggests, at pages 5246-7, that training sessions did not deal with the matter of securities in detail and that rather the matter was principally left to be dealt with by the use of manuals.

From the evidence it is arguable that HFC continued to fail to deal adequately with this matter.

#### BANKRUPTS

HFC has admitted (see 3.1(c) of AC.2)) that its staff were not adequately trained as to the legal effect of bankruptcy. It is arguable that with one exception (the Stoate matter), the particular incidents in which debtors were asked for payment after bankruptcy ought not to be regarded as being particularly remarkable in themselves but as the predictable consequence of HFC's failure to ensure that staff had adequate knowledge of this matter.

It is arguable that HFC had a duty to ensure that relevant staff were adequately informed about the legal consequences of bankruptcy and that the failure to do so reflects adversely on HFC in the same ways as have been suggested with respect to HFC's failure in relation to securities.

HARASSMENT AND PURSUIT OF IRRECOVERABLE MONIES

The Authority regards the evidence in the matters of -

Toms

Stoate - insofar as HFC's Geelong Manager suggested that Stoate who was bankrupt could have someone else make payments.

Condotta - principally with regard to the threat to involve the Police; and

Carrigan - principally with regard to the threats made to Mr. Baxter that his vehicle would be repossessed unless substantial payments were made the same day;

as raising the issues principally of concern to the Authority in this context.

GUARANTORS/CO-BORROWERS

HFC admits that its employees were confused as to the distinction between co-borrowers and guarantors and further that it asked or suffered persons to be asked to be guarantors of a loan contract but had them sign the contract as co-borrowers.

It is arguable that a credit provider which had a practice of soliciting people not directly benefitting under a loan to partake in

the transaction, had a basic obligation to ensure that relevant staff had an adequate understanding of the matter. It is also arguable that the failure by HFC in this regard is indicative of a lack of determination to ensure its staff can and will deal efficiently, honestly and fairly with borrowers and other parties.

The evidence suggests that HFC failed to take any steps to change its practices in this area for some twelve months after the Corporate Attorney raised the issue directly with the Managing Director and it is arguable that such failure is also indicative of HFC's lack of determination to ensure fair dealing.

#### BALLOON LOANS

It is arguable with respect to Balloon Loans that because -

- (i) the amounts commonly lent were considerably greater than the amount normally lent under HFC's other forms of lending; and
- (ii) the security normally taken was a mortgage of the borrower's home;

a greater duty was cast on HFC to ensure that the borrowers fully understood all salient features of the loans before entering into commitments thereunder. Particularly when dealing with proposed borrowers who had previous normal (single fixed term) loans from HFC, it ought, arguably, to have been emphasised by HFC from the very outset of any negotiations that the loan was of a balloon type, that a substantial amount would remain owing at the end of the first 3 or 5



year term and that no guarantees were being given that HFC would refinance the balloon payment and further that the interest rate at which HFC might refinance could differ from the interest rate originally offered.

The evidence suggests that HFC's pro forma letter of offer was not necessarily provided well in advance of sign-up and indeed the evidence of Downs suggests that at times the sending of the letter of offer was delayed as a deliberate strategy adopted to avoid deterring prospective borrowers.

HFC's practices with respect to the dating the letters of offer and acceptance may have facilitated the practice referred to in Downs' evidence and hindered detection by auditing or supervisory staff of such practices by individual branch managers.

HFC's practices and the conduct of its staff in relation to these matters arguably constituted dishonest or unfair conduct.

#### TRAINING, MANUALS AND SUPERVISION

The evidence suggests that HFC failed for a considerable period to adequately train its staff both in the technical aspects of compliance with the Credit Act and more generally in areas where an adequate knowledge was necessary to ensure fairness and efficiency in dealing with consumers.

The evidence suggests that HFC's supervision, particularly of branch staff but also of District Managers, was similarly inadequate.

It is arguable that the above matters were exacerbated by the extensive branch network, the relative lack of age and experience of branch managers and subordinate staff, the extent of autonomy given to such staff and the high workload level and extensive range of duties and responsibilities of branch managers.

The evidence is that HFC's system, particularly with its branch network, was highly dependent on the availability of adequate manuals but the evidence is also that the manuals were in a grossly unsatisfactory state from the start of the Credit Act until at least the end of 1988.

It is arguable that all of the above had serious consequences to HFC borrowers, including, but by no means limited to, widespread charging of excessive or unauthorised fees and charges.

The evidence also suggests that HFC took a succession of inadequate steps to remedy the above deficiencies rather than taking adequate action when the problems first became evident. Further, in the matter of complaint handling and the role of the Business Control Department, the evidence suggests that HFC treated complaints as isolated incidents and failed to investigate whether the complaints were indicative of systematic or widespread problems.

These matters are arguably indicative of an extremely poorly managed organisation and also of a lack of willingness to spend the time, money and effort needed to attain a standard of efficiency necessary to ensure fair dealings with consumers.

SWINBOURN

1. The evidence suggests that there were four areas in which Swinbourn lied to or otherwise sought to mislead the Authority

- 
- (i) the extent to which HFC routinely obtained from banks issuing Bankcards, Visacards and Mastercards, particulars of payment histories, credit limits, etc.
  - (ii) the availability to HFC staff of a revolving credit manual;
  - (iii) the provision by HFC to retail dealers of a brochure stating their obligations under the Credit Act, the Insurance Act and the Trade Practices Act; and
  - (iv) the matter of the Doyle letter referred to in Mr. Miller's evidence of 10.4.1989.

That a senior executive at the level of Vice President would give such false or misleading testimony to the Authority is itself, arguably, an issue relevant to the honesty and integrity of his employer corporation. But in addition it is arguable that -

- (a) the untruthfulness or misleading nature of Swinbourn's evidence as to the obtaining of information from banks was evident from 12 December 1988; and
- (b) the untruthfulness of Swinbourn's evidence as to the availability to HFC staff of a revolving credit manual was or ought to have been known to HFC in December 1988, particularly having regard to the role of the Business Control Department and to Mr. Shafferman's testimony that the preparation and completion of HFC's manuals was the first priority of that Department;

and on either of those premises an issue arises as to the conduct of HFC in retaining Mr. Swinbourn in a senior managerial position until 11 April, 1989 and also as to Mr. Miller's evidence given after he had read Mr. Swinbourn's evidence that he, Miller, was confident that Mr. Swinbourn is thoroughly competent, trustworthy, honest and fair.

2. Swinbourn and others in the revolving credit incident

The evidence suggests that between the 7th and 9th December 1988 Assistant Vice President Doig and other staff in the Melbourne '91' office acting at the request or the direction of Vice President Swinbourn -

- (i) caused approved application documents to be altered prior to their submission to the Authority in order that the Authority might be misled into believing that all of the credit scoring guides on such applications had been completed prior to approval; and
- (ii) withheld from the Authority a substantial number of approved applications with intent to prevent the Authority from viewing approved applications which, in the opinion of Assistant Vice President Doig, did not qualify for credit.

From that it is arguable that the conduct of the Vice Presidents and other staff in this matter is indicative of a failure by HFC to convince its senior management team and other staff even by as late as December 1988 of the necessity to conduct themselves honestly.

3. Capacity of the Company to secure compliance with expressed policies and assurances given to the Authority.

The evidence suggests that Vice President Swinbourn was able to instruct certain 91 Offices, including the Victorian 91 Office, to make two substantial departures in or about July 1988 from the company's express credit approval policies and procedures. The evidence further suggests that these departures came to the new Managing Director's notice some nine months after they were implemented and even then not as a result of control measures

in place within HFC but rather because of the co-occurrence of the Authority calling for the November approvals for a different purpose.

It is arguable that this is indicative of deficiencies in HFC's management and control which are relevant to the extent to which the Authority can accept or place reliance upon assurances given by HFC as to its policies and generally as to its future conduct.

#### CURRENT SENIOR MANAGEMENT

It is arguable that the following matters raise questions as to the extent to which senior management, especially Vice Presidents and above, can be relied upon to act honestly, efficiently and fairly in the future.

- (i) Mr. Hood - his role in the pre 1.1.1986 practice of adjusting the amount of Heritage Life credit insurance;  
  
his role in the failure to refund promptly excessive premiums and the underpaid elements of insurance rebates;  
  
his encouragement of deceptive selling practices;  
  
his failure to have expunged from the insurance manuals unlawful or misleading instructions;

(ii) Mr. Shaw - his role in the pre 1.1.1986 practice of adjusting the amount of Heritage General credit insurance;

his role in the failure to refund promptly excessive premiums and the underpaid elements of insurance rebates;

his failure as Chief Financial Officer to ensure that proper accounting and auditing arrangements were in place, particularly with respect to the recording, application and auditing of monies appropriated from borrowers' loans for third party purposes.

(iii) Mr. Vona - the evidence suggests that there are marked inconsistencies between Mr. Vona's assessment of the quality, morale and enthusiasm of staff and the assessment of Mr. Miller.

The evidence also suggests significant inconsistencies between the views of Mr. Vona and those of Mr. Shafferman as to the effectiveness of the Business Control Department.

If the evidence of Mr. Miller and Mr. Shafferman is accepted, arguably an issue arises as to the capacity of Mr. Vona to recognise and, therefore, redress deficiencies which impact upon HFC's capacity to deal fairly and efficiently.

- (iv) Mr. Miller - as indicated elsewhere in connection  
with Mr. Swinbourn.