

PART 3

THE COURSE OF THE PROCEEDINGS

- SECOND HEARING

On 4 August, 1988 the Chairman convened a Directions Hearing to determine the manner in which the application and objections thereto should be further dealt with.

At that hearing HFC referred to an indication given by it during the submissions on the bias matter that it would be content in the circumstances for the Authority to be reconvened constituted by the Chairman sitting alone. Such a course was clearly open to the Chairman in the light of HFC's agreement - see section 24(1)(b) of the Administration Act.

The Chairman indicated that he was strongly of the view that it was preferable, having regard to the importance of this particular application, for it to be determined by an Authority comprised by three members. He further indicated that he proposed, unless it could be shown that there were almost overwhelming considerations of a practical nature to the contrary, to have the application heard by himself and Mr. Trevenen and by a new member (in place of Ms Richards) who would have the opportunity before the hearing recommenced to become familiar with all that had transpired during the first hearing.

This proposal contemplated that all evidence and matters which had been taken or done during the first hearing would at the commencement of the second hearing be adopted as if they had taken place before or had been done by the Authority in the course of its second hearing. The only exception proposed to that by the Chairman was that after the

presentation of evidence by the objectors and the applicant, it would be open to the applicant to apply to the Authority to have recalled for further examination any witness who had given evidence in the course of the first hearing and therefore had not been seen by the new member.

Ultimately that was the course that was followed. The Authority reconvened on 1 September, 1988 comprised by Mr. Viney as Chairman, Mr. Trevenen and by Mr. Peter Carrigan in place of Ms. Richards. Orders were made to receive the evidence and exhibits from the previous hearing and to adopt the various rulings from the earlier hearing.

CCLS then continued with the presentation of its case, principally through the calling of further persons who had been parties to transactions with HFC, and the relatives or associates of such persons. In addition to that there were a number of matters arising out of transactions between HFC and consumers where the parties had agreed that the material facts could be placed adequately before the Authority merely by the tendering of documents to the Authority and the Authority consented to that procedure.

As is readily apparent from an examination of the objections lodged by the Director and CCLS respectively, the Director's objections were considerably less extensive than those of CCLS and, further, to a considerable degree overlapped with those of CCLS. In the result the Director called three witnesses to give evidence about one particular transaction only.

HFC then proceeded to respond to the objections and to present material in support of its application. For some time prior to embarking on

its response HFC had indicated that its case would have two distinct parts, namely one part by way of rebuttal or explanation of allegations made by the objectors and the other part comprised of what it termed the positive side of its case.

A number of former employees, a current employee and a partner in the firm of solicitors acting for HFC gave evidence concerning one or more transactions in which they had had some involvement and which had been the subject of evidence called on behalf of one or both of the objectors. The former employees and the current employee also gave evidence of a more general nature concerning the practices and procedures of HFC.

HFC then proceeded with what it termed the positive side of its case and to that end the following appeared to give evidence -

DAVID WILSON, who was, until March 1989, Managing Director of HFC and of a number of its subsidiaries, including Heritage General, Heritage Life and BFC. In addition, Mr. Wilson was a Director of two of HFC's holding companies, referred to earlier, namely HFC of Australia Limited and Household of Australia, Inc.

CONRAD ZION, a Vice-President, Household International Inc.

CHARLES VONA, a Vice-President and Divisional General Manager HFC.

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BARRY HOOD, General Manager of both Heritage Life and Heritage General and a Vice-President of HFC.

ROBERT SWINBOURN, a Vice-President of HFC.

ANTHONY SHAW, Chief Financial Officer and a Vice-President of HFC and formerly General Manager of Heritage General.

KERRY SIDAWAY, Corporate Attorney and a Vice-President of HFC.

GARY SCHAFFERMAN, Assistant Managing Director of HFC.

PAUL MILLER, Senior Vice-President, Office of the Group Executive, Household Finance (of USA), and as such Regional General Manager, responsible for the operations of HFC in Australia and Canada. Mr. Miller became Acting Managing Director of HFC on Mr. Wilson's departure in March, 1989.

At the conclusion of Mr. Miller's evidence on 20 December, 1988 the hearing was adjourned. It resumed on 6 February, 1989 for the purpose of receiving certain evidence of the results of investigations undertaken by HFC and Arthur Andersen & Co. principally into the extent of failures by HFC -

- (a) to duly rebate premiums of credit insurance where loans had been prematurely discharged, either absolutely or by way of refinancing; and
- (b) to affix duty stamps to loan and security documents where amounts representing such stamp duties had been included in the amount financed under the relevant contracts.

The other purpose for which the hearing was reconvened on 6 February, 1989 was for the the re-examination of Messrs. Hood and Shaw in the light of certain documents discovered by HFC to the objectors in December, 1988.

Evidence was taken as to those matters and on 14 February 1989 the hearing was further adjourned to 10 April 1989 to permit HFC to bring more material forward.

On 17 April 1989 the hearing was adjourned until 15 May when it returned for the purpose of receiving the final submissions of the parties. The course originally proposed for final submissions was that the objectors would proceed first with their principal final submissions followed by the applicant. Each objector would then have a right of reply and the applicant would be permitted a closing address.

However, during the course of the applicant's principal submission, the Authority announced that it would, if desired by the applicant, formally indicate the matters which it considered were of greatest

importance and relevance to the question of whether a licence would be granted. The Authority gave three reasons for its proposal -

- (i) there were a great number of live issues and it was desirable to permit the parties, especially the applicant, to concentrate in their final addresses on those which the Authority considered of most importance to the question whether a licence should issue;
- (ii) many of the issues had not been raised in the original objections but had sprung up during the course of the hearing; and
- (iii) whilst the proceedings were in the nature of an application for a licence, the Authority could not ignore the fact that the applicant had been carrying on business in the capacity of a "deemed licence holder" for more than three years before the hearing commenced.

The Authority explained that if its proposal were adopted, the Authority would, after replies and final addresses, proceed to determine first whether a licence would be granted. If the Authority ultimately decided a licence should be granted, further sittings would be necessary to deal with the matter of what conditions, if any, ought to be imposed.

The applicant informed the Authority that it favoured the proposal and on 23 June, 1989, the Authority provided its indications as to the matters of greatest importance and relevance. The text of the indications is set out in Appendix "C".

The objectors and the applicant then made their replies and closing addresses and the hearing was adjourned on 29 June to enable the Authority to reach a decision on the question whether a licence should be granted.