



**COMMONWEALTH OF AUSTRALIA**

# **JOINT STANDING COMMITTEE**

**ON**

**FOREIGN AFFAIRS, DEFENCE AND TRADE  
(Trade Subcommittee)**

**(Reference: Australia's trade relationship with India)**

**SYDNEY**

**Thursday, 22 May 1997**

**OFFICIAL HANSARD REPORT**

**CANBERRA**

JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

(Trade Subcommittee)

Members:

Mr Sinclair (Chair)

Mr Price (Deputy Chair)

Senator Chapman  
Senator Margetts  
Senator O'Brien

Mr Brough  
Mr Dondas  
Mrs Gallus  
Mr Hollis  
Mr Nugent  
Mr Slipper

Matter referred:

Australia's trade relationship with India and to consider the emerging economies of South Asia, and report on such areas as:

India's economic significance for Australia, and the opportunities for expanding trade and investment;

the prospects for continuing economic reform and trade liberalisation in India and the implications of this for Australian trade and investment;

India's growing economic engagement with Asia and the Indian Ocean region;

South Asia's emerging economic significance for Australia, and the potential implications of closer economic cooperation amongst South Asian countries, including through the South Asian Association for Regional Cooperation;

trade and investment opportunities for Australia in Pakistan, Sri Lanka and Bangladesh.

**WITNESSES**

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JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS,  
DEFENCE AND TRADE  
(Trade Subcommittee)

*Australia's trade relationship with India*

SYDNEY

Thursday, 22 May 1997

Present

Mr Sinclair (Chair)

Senator Childs	Mr Dondas
Senator Forshaw	Mr Nugent

The subcommittee met at 10.00 a.m..

Mr Sinclair took the chair.

**FRASER, Mr Michael Henry, Chief Executive, Copyright Agency Limited, Level 19, 157 Liverpool Street, Sydney, New South Wales 2000**

**McKENNA, Ms Bridget Anne, Legal Officer, Copyright Agency Limited, Level 19, 157 Liverpool Street, Sydney, New South Wales 2000**

**CHAIR**—I declare open this public hearing of the trade subcommittee of the Joint Committee on Foreign Affairs, Defence and Trade. The subcommittee is presently conducting an inquiry into Australia's relations with India and the emerging economies of the South-East Asia region. In particular, we are going to inquire into, and report on, India's significance to Australia in terms of expanded trade and investment opportunities; prospects for continued economic reform and trade liberalisation in India, and the implication of this for Australian trade and investment; and the nature of India's growing economic engagement with Asia and the Indian Ocean region. In the course of the inquiry, the subcommittee will be conducting a number of public hearings around Australia, speaking with government, business and various representative groups, as well as professional analysts of the south Asia region and individuals with experience of India's economic environment.

On behalf of the subcommittee, I welcome the witnesses representing Copyright Agency Limited. The proceedings are legal proceedings of the Parliament and warrant the same respect which the proceedings of the respective Houses of Parliament require. Although the subcommittee does not require you to give evidence on oath, you should be aware that this does not alter the importance of the occasion. The deliberate misleading of the subcommittee may be regarded as a contempt of Parliament. The subcommittee prefers that all evidence be given in public; but, should you feel that any evidence you wish to give would be better given in private, please ask and the subcommittee will give consideration to your request.

We have a submission from you which is submission No. 4. Would you like to open by making some introductory remarks? After that, you might feel free to respond to some questions from us. Obviously, we are interested in the general field of copyright. I found your submission very interesting, I confess, so we will be interested to hear from you.

**Mr Fraser**—Thank you very much for inviting us to appear today. We greatly appreciate the opportunity. We are happy to make our submission today and also to follow up with any inquiries you may have in the future course of your task, which is a very important one, I believe, in the national interest.

The Copyright Agency Limited is a not-for-profit company limited by guarantee, representing authors and publishers. Our task is to protect and foster the interests of our members, who are the authors and publishers of Australia. By way of background, we administer the statutory copying licences for educational institutions to photocopy and now

digitally copy in Australia. We are declared by the Attorney-General, approved as the declared collecting society to administer the statutory licence to education. For that, we submit our annual report to Parliament, and it is tabled in Parliament.

My colleague, Bridget McKenna, is an in-house lawyer at Copyright Agency Limited, with special responsibility for the Asia-Pacific region. She assists me in the international work of the Copyright Agency, which I will come to. I will also mention, by way of personal background, that at the moment I am the Chairman of the National Book Council of Australia, a director of the Arts Law Centre of Australia and a director of the Centre for Copyright Studies at the Australian National University.

I also have a role in the international non-government organisation of which CAL, our company, is a member. The international non-government organisation is called IFRRO, the International Federation of Reproduction Rights Organisations. It represents copyright collecting societies, such as ours, and national and international authors' and publishers' associations from around the world. IFRRO has standing with, makes submissions to, appears before and is present with observer status at WIPO, the World Intellectual Property Organisation, and at UNESCO. It also makes submissions to the EC and other international bodies on behalf of copyright owners. That is an explanation of who we are.

Our submission is in the interests of Australian authors and publishers, the publishing industry and, I believe, in the national interest. Intellectual property, in general, is the fastest growing area of our economy. Copyright is the fastest growing area of intellectual property, which includes patents and designs. Of copyright, print is the largest sector—still larger than software or film. The copyright industries have about five per cent of GDP. It is not often recognised that it is not just an arty area but in fact also a significant industry for Australia, growing at the moment at twice the rate of GDP. Although people often have the idea that it is a fringe or arty activity—it has its cultural importance, doubtlessly, and I need not explain that—copyright is an important industry and, I hope, has trade importance.

Very quickly, before I launch into the body of our submission, copyright is the only basis on which the book industry rests, in economic terms. The economic value of the book industry depends on copyright: the right to control the copies of the work. Whatever the artistic or cultural value might be of a textbook or a scientific, technical or medical journal or a novel, its only economic value depends on the ability to control copying of the work. Traditionally, that has rested with the author, under the Copyright Act, since the Statute of Anne.

The author would go to the publisher and do a deal with the publisher—a licensing agreement for the publisher to make copies; and then the author would receive royalties under the Copyright Act, according to the contract. That system worked very well for about 400 or 500 years. It is the basis of the book industry and it is an important basis of

a liberal democratic society that authors are able to make their livelihood by this means.

However, with the introduction of copying, reprographic technology and digital technology, the whole basis of that industry, nationally and internationally, has been revolutionised. Firstly, photocopiers appeared and everybody could copy a chapter or the whole book. I need not tell you that now, with digital copying, people are simply scanning the journal articles and the chapters from the books that they need; and making them available on line from libraries in educational institutions to students and to you and me at home at our PC terminals, without the permission that is required by law of the copyright owners—the authors and the publishers. So we have a wonderful new technology which provides access, but the entire legal and economic basis of the book and journal industry has been undermined because of our lack of speed in addressing these new technologies by changing the law and administration of copyright.

These have led to certain problems for us nationally. I will pass over that and go more to the international trade focus of this committee. But I will just note now that there are many textbook authors in Australia, members of CAL, who, through our photocopying licences to educational institutions for the copying of their works, received more from us for photocopying of their books than from royalties from sales of their books. That is just from photocopying. We are struggling with digital scanning and transmission. The market has shifted enormously. That is the task of the Copyright Agency and who we are and what we do.

This so-called information revolution has already happened in our region. The telecommunications infrastructure, which Australia has played a big part in providing, now provides for a borderless potential market for copyright works. Australian books are being scanned into databases here by database providers and, even as we speak, are being downloaded in Malaysia, Vietnam, China and India without any payment to the Australian author and the Australian publisher.

We have this massive investment in communications and reproduction—the copying technology. The convergence of these two technologies has made for an information revolution. In terms of trade, it seems to me that information is the most valuable commodity in the world today. The entire Uruguay Round of the GATT was held up when the Americans realised that they were making more in earnings from exports of intellectual property than from agriculture. The whole process was held up while the TRIPs, trade related intellectual property rights, agreement was negotiated as part of the GATT to enforce the protection of intellectual property.

We have this enormous investment in telecommunications in reproduction technology. What is it for? Of course it is for talking, but more than that, it is for passing content information. There is no protection for that content by way of administration of copyright law in our region. The content is potentially a most valuable commodity because it can so easily be expropriated by means of this technology—just scanned in and

transmitted.

There is potentially enormous value for our content providers, be they authors, publishers, creators of software or music, but the digital technology just passes it all along the line. This enormous potential market for our creators and producers of intellectual property cannot come into existence because the copyright law and administration in our region has not taken off. It is ways of developing that structure and the administration and enforcement of copyright that I want to press home to this committee today.

The groundwork—the very fundamental building blocks—for that are in place. That is why it is an opportune time, quite apart from the commercial opportunities. All the countries in the region joining the GATT—and, of course, India has joined the GATT—have to sign the TRIPs agreement. The TRIPs agreement requires signatories to adopt the Berne convention, sections 1 to 21, excluding, sometimes, the moral rights section, article 6.

Before, if you did not respect copyright, you might have to go to Geneva and explain yourself to WIPO. Now there is a fundamental shift in the equation and in the balance of power, because a sovereign state can take another sovereign state to the World Trade Organisation, and complain to the WTO because another country is not respecting and enforcing copyright. For example, because Australian works are being pirated or photocopied in another country we could complain to the WTO and ask for trade sanctions to be applied against another country.

No-one has yet done this—it has only been put in place this year—but because of the threat of these sanctions and the seriousness of them in real trade terms, every country in the region is scrambling to do more than pay lip-service to intellectual property law and enforcement, but to actually look for mechanisms of applying and enforcing them lest they be hauled up before the WTO and have sanctions applied against them.

Australia should play to its strengths and really become the clever country or, possibly even more than the clever country, the intelligent country. We have great strengths in our creativity and in the production of intellectual property—in educational services, legal services, writing fiction, non-fiction and textbooks of every sort. I think we are second to none in those fields.

All of the Asia-Pacific region, and in particular India, is the most lucrative imaginable market for those kinds of services provided directly in the traditional way—through books and journals and our educational institutions—but now, in terms of this—if you will forgive the jargon—information revolution, on line we can provide these services and overcome the problems of distance.

We can have a situation where Australian books are scanned onto databases and provided by our information services from our national libraries, our state libraries, and



our universities. A country like India, which is growing at a phenomenal pace, with a highly educated, vastly growing middle class, is hungry for educational materials, and scientific, technical and medical information services. We have the potential and the infrastructure to provide information broking services and to be the provider of choice to the world of information through our databases, through our educational institutions, and through our service providers on line.

The only thing that prevents this from happening, it seems to me, is the lack of enforcement of the copyright laws which India is striving to adopt but is only now turning to. I would ask for the support of the government in the efforts of Australian authors and publishers, as part of our international network, to help India to establish a copyright administration scheme which would create the marketplace for our works.

No Australian author and publisher is going to export to India now because the moment the first book arrives it is photocopied and millions of copies are made and millions and millions of dollars are lost, and so we just do not pay any attention to that market because the marketplace does not exist. First, there is the gross problem of piracy and then there is the second problem of photocopying, not for sale, but simply photocopying for use. Each use amounts to a small value but, when taken together, means losses of hundreds of millions of dollars.

We would like to support the Indians, who have a very strong legal tradition and good copyright laws, to enforce copyright laws which provide for national treatment under the Berne convention—they have to treat foreign works the same as local works—so that our copyrights are respected so that we can create the conditions to export Australian books and journals and information services on paper and on line into India.

**CHAIR**—Do you wish to add anything, Ms McKenna?

**Ms McKenna**—No I don't, thank you.

**CHAIR**—I want to ask a fundamental question. India, I would have thought, was part of the agreement to which we have been subject, and protest about occasionally, that Britain and British publishers will have prior access to former Commonwealth countries. I presume India is part of that, as is Australia. Americans have their own sphere of influence. Is India part of that British agreement on publication of books?

**Mr Fraser**—That kind of agreement is no longer a formal agreement but, in effect, yes.

**CHAIR**—It still happens.

**Mr Fraser**—It still happens.

**CHAIR**—Whether it is a formal agreement, in Australia you rarely see American publications. They are all, essentially, from the British stream rather than the American stream.

**Mr Fraser**—I do not mind it going on record that in my personal view, we and India, in terms of the publishing industry, are a colony.

**CHAIR**—We certainly are in that sense although there have been some efforts made to break away from it. But the point that I was getting to was that, if that is so, it seems strange to me that the Brits have not tied up the copyright law so that their interests are protected. You are really saying that India, like a number of other Asian countries, is open slather as far as copyright is concerned. You did say that the Indian copyright law is okay but it is the enforcement that is the trouble, is it?

**Mr Fraser**—Yes. They have not been able to tie it up in the way they want it. They have put effort into it in the past and a lot of wrist slapping and wringing of hands went on but it is only now because of the GATT that there is a real sanction. The British and the Americans will be moving strongly to try and get the actual enforcement in place.

There are all kinds of impediments to that. The court system in India is slow. Although it has the utmost integrity, it is slow. There will be a lot of pressure to get the enforcement there. It is already happening in the music industry, that copyright administration and enforcement is gathering pace. However, it has not happened in the area of books and journals.

Although there are a lot of multinational publishers here in Australia and doing a good job, there are a lot of smaller publishers, particularly in the educational sphere, that are local publishers, national publishers, who are publishing for the New South Wales education system, highly respected in India and in the region and for other states, who would find openings in the Indian market if there were enforcement of their rights and who presently just would not even begin to consider it. They do not even go to the trade fairs when they are offered a free stall.

**CHAIR**—What is the problem in the enforcement? Is it that the courts are so congested or is it that there is no process for administrative law to back up the enforcement system? What is the difficulty?

**Mr Fraser**—In my view, they need to have an organisation such as ours. That problem has called our organisation into existence and I do not think it is an accident that practically every author and publisher in Australia is a member of the Copyright Agency. This year we will be distributing over \$15 million, most of which goes to local authors and the local publishing firms for copying of their works. When I say local, that includes the local multinational publishing firms for publishing of their works.

Harking back to my introduction, it was possible in the days when the means of production, of copying, were in the hands of very few publishers, for the authors and publishers to protect their own copyright by contract and by litigation when anybody pirated their works. Now that the means of copying, of reproduction, are in the hands of everyone—there will be many photocopying machines in the corridor outside here—it is impossible for an individual author or publisher to administer the copyright. The copying is in the millions of pages, the millions of instances, in hundreds of thousands of locations around Australia, and in millions of locations in India.

We need to persuade and to assist the countries in our region to set up centralised copyright management to act in the interests of their thousands of author and publisher members at the point where it becomes impossible for them to individually administer those millions of copying instances. We need to persuade them to set up copyright collecting societies, or in our field they are internationally called reproduction rights organisations, RROs, which are the only realistic practical way of administering individuals' rights in the new digital environment.

**CHAIR**—Do you, in your organisation, cover music and film or only print?

**Mr Fraser**—We only cover print. I have mentioned music and there are other entirely separate organisations—APRA, which has been in the news lately, and AMCOS. There is a film organisation, Audio Visual Collecting Society. There are other collecting societies representing different rights holders—composers, music publishers, performers, and so on.

**CHAIR**—Is the problem the same for those other media?

**Mr Fraser**—Yes.

**Mr NUGENT**—The same with software. So are we saying then that, really, there are almost no Australian publishing businesses operating in India because of these problems?

**Mr Fraser**—Believe it or not, that is the case.

**Mr NUGENT**—You talked about that potentially being a loss of large amounts of money. Has any work been done on how much might be lost in potential revenue?

**Mr Fraser**—There has been some work done. I have some figures about it here. Some of the background is that there are 160 universities and 7,000 colleges. There are 115 million school children and there are 250 million people in India who are literate.

**CHAIR**—Only 250 million? I saw that figure and queried it.

**Mr Fraser**—In English.

**CHAIR**—Literate in English?

**Mr Fraser**—Yes.

**CHAIR**—Oh, I see.

**Mr NUGENT**—What is the dollar figure?

**Mr Fraser**—The International Film Producing Industry estimate that they are losing about \$US275 million. That would be from copying on VCRs, which I would suggest is very much less prevalent than simply photocopying and the piracy. If you walk into bookshops throughout the region you will see very low quality photocopied and bound pirated books for sale.

India is considered to have the third largest pirate market in volume and sixth largest in value for film. IFPI, the International Film Producing Industry, say that the book industry losses would be commensurate. I would suggest that they might be commensurate in terms of the losses for photocopying at the very least, for piracy; but when you take into account the millions of instances of photocopying which are going on, I can tell you anecdotally—having been to India and around the region—that the losses are far in excess of that. I do not know what they would be.

This coming financial year, the Copyright Agency in Australia for photocopying will collect about \$20 million, we estimate, just for copying in educational institutions and a very rough estimate for governments. We have just made agreements with state and Commonwealth governments for your photocopying, excluding parliamentarians. Parliamentarians are free under the act—strange about that.

**CHAIR**—You get some benefits—

**Mr NUGENT**—Some of the public service—

**Mr Fraser**—We do get it from the public service. But that excludes copying in corporations, who copy a large amount of scientific, technical, medical and professional material where Australia has a lot of expertise and publishes a lot. So it is very hard for me to estimate what the losses are. I feel confident in saying they are vast.

**Mr NUGENT**—Tens of millions, hundred of millions, or billions?

**Mr Fraser**—I would hesitate to say billions; but I would certainly say hundreds of millions, and billions would not surprise me in the least.

**Mr NUGENT**—Given that scale of problem, you are saying that it really is a total disincentive to publish in India. What have you or other people in the industry done in terms of trying to address it? Have you made formal submissions to government? If you have done so, have you had any response from government?

**Mr Fraser**—These problems, first of photocopying and now of digital copying, have proven to be extremely confronting to what has been a traditional industry. As I said, it was 1709 that the Copyright Act came in in England, the Statute of Anne, and the industry jogged along very happily from then until about the 1970s. So it has thrown the industry into turmoil, firstly in trying to stop people photocopying and digital copying, and more recently in acknowledging that that is like trying to turn back the tide and trying to come to terms with it.

The Copyright Agency, I would like to think, has played its part through the international body, IFRRO, the international non-government organisation, and we have been present in all the World Intellectual Property Organisation and UNESCO regional round tables and seminars. We held an Asia-Pacific seminar here in Sydney in 1995, to which the Indians were invited, to explain these views. I have just returned from Jakarta from the most recent seminar, on the occasion of which the President of Indonesia signed the Berne convention. Other representatives of my Asia-Pacific committee have recently been in India.

Colin Hadley, my counterpart in the UK, has been travelling there promoting these views, and I took a number of meetings with the Indian government and industry representatives just now in Jakarta. I also attended and spoke at the Asia-Pacific Publishers Association conference in January. At the Indian book fair, which is in October or November, they are hoping to make copyright the centrepiece of that, and have given me a tentative invitation to speak there. I could go on; we are very active.

**Mr NUGENT**—Have you approached our government, and has our government done anything about it?

**Mr Fraser**—We have been making submissions along these lines for reform of our Copyright Act firstly, because that is also an enormous disincentive when people are uncertain about how their products will be treated digitally; and we have also been looking for funding from government to help us in this promotional work on a number of occasions. It has been a large responsibility of Bridget's to do that. There have been some small—and, in my view, greatly insufficient—reforms of our Copyright Act but, apart from general expressions of support, we have had no other support from government. That is a pity, because there are enormous potential gains to be made by close cooperation between government and India. I did go in one joint mission with government to Vietnam, but that was the only one.

**Mr NUGENT**—I went to India last year as part of a parliamentary delegation, and

we had a very comprehensive briefing from the Department of Foreign Affairs and Trade before we went on all the issues between Australia and India—good, bad or whatever. I have to say that I think of China when we talk about ‘the issues’, and the copyright problem comes to mind. When we think of India and our briefing on India, the copyright problem does not come to mind.

This is the year of South Asia, from the government’s point of view: we have had a number of ministers go there, and there is a possibility the Prime Minister will go there later in the year. If this is a major issue, costing all that potentially lost money to this country and having significant economic ramifications, it would seem to me that perhaps it is something the government should be pursuing. That is why I am interested to know—and you may not have it with you today, but it would be useful if you could supply us with it—any information about which government ministers or departments you have made submissions to, and when, and what their reaction has been.

**Mr Fraser**—We have done it frequently. It comes to mind that I was at the APEC business forum—that is not directly on India—with Mr Fischer just a few weeks ago, and I spoke very briefly in these terms there and at the previous one. I think they are doing great work. We have made numerous submissions and we are in constant contact with Foreign Affairs. Only a matter of weeks ago, I was making these kinds of submissions to them. We will give you the information on what we have done.

**Mr NUGENT**—I am as interested in their response to you as in what you have given to them.

**Mr Fraser**—You may detect that I feel a great sense of frustration. I think we are behind the eight ball, because it is not a widget. That is what it comes down to. It is an intellectual property and it is abstract. It is not that you can ship it out. It is harder to explain and harder to come at, and it is seen as a very esoteric area; but I see it as a very hard trade issue that ought to come to the forefront no less than wool or wheat or our traditional areas do. I think we have to come at this a lot faster.

**Mr NUGENT**—DFAT has been able to come to terms with the fact that services are as important as widgets or wool—with the greatest respect to my rural colleagues. Coming to grips with intellectual property should be something that is within their capability, I would have thought.

**Mr Fraser**—Yes. There is no suggestion of downgrading our traditional exports. This is just another string to our bow and one which we are very well placed as a highly educated country to offer. There just has not been the response there to the submissions we have made. I think you will see, when we give you some supplementary information, that we have been extremely busy in trying to promote these interests.

**CHAIR**—On your own? Or do you work in association with the parallel

organisations in music and film?

**Mr Fraser**—Generally we do it on our own because our authors and publishers are not the filmmakers and the musicians.

**CHAIR**—But your authors would aspire to having their text transcribed into film?

**Mr Fraser**—Yes, they do; and we cooperate with them. We are friendly. There is a climate at the moment where people are very wary of being seen to cooperate with similar organisations, in case the ACCC objects to it.

**CHAIR**—I do not think even Allan Fels would object to that, though, would he?

**Mr Fraser**—He has the music industry very much in his interest at the moment. So we are pushing our own barrow more; although, under the umbrella of the Copyright Council, which is a government funded organisation which gives free advice to authors and publishers and makes submissions to government, all the copyright collecting societies, being members of the Copyright Council, do make joint submissions. The Copyright Law Review Committee, under the chairmanship now of Professor Dennis Pearce, is also taking submissions about reform to our national Copyright Act, and we are cooperating in that, too.

**Mr NUGENT**—I would have thought the software industry would have been a major ally for you, quite frankly.

**Mr DONDAS**—Michael, are there any Indian authors whose work is being copied in Australia, and are funds being made available back to Indian authors through your organisation?

**Mr Fraser**—I would have to take that on notice. In principle, when the work of any foreign author, including that of Indian foreign authors, is copied here, under this principle of national treatment—

**Mr DONDAS**—I know there is a principle, but is there any cash flowing back to India through some of their work being copied in Australia?

**Mr Fraser**—We would be holding that money, waiting for there to be a copyright collecting society set up in India—as has happened already in 23 other countries, mainly European and American—so that we could distribute the cash to them. If we think that we have a chance, because it is a notable person, of finding them, then we will distribute it even before there is a collecting society set up in that country. We may have been able to track down some Indian authors. We made distributions to 4,000 direct recipients in our last distribution, and there may well be Indian authors among them.

**Mr DONDAS**—In terms of enforcement, and if we have got some Australian authors' work now being copied by whichever way in India, the enforcement principles obviously would go through the international law courts. Would you not be able to take legal action through the Australian law facility? How would you enforce it, say, if I had printed a book and they bought it at a local book store here and took it back to India and reproduced it?

**Mr Fraser**—You would be able to enforce your right in a local court. You would have standing—

**Mr DONDAS**—In India?

**Mr Fraser**—Yes. They, being signatories to Berne, are obliged to give equal protection to the foreign works.

**Mr DONDAS**—What chance have I got, though? That is the \$64 question.

**Mr Fraser**—First of all, what chance have you got of detecting it? And then, what is the value of that one instance of copying? How many dollars will the damages be, and how hard is it to push that through the admittedly excellent but somewhat slow court system? Our system is somewhat slow, too. To go over to India and push such litigation through is beyond the means or the interests of individual owners.

**Mr DONDAS**—When is it likely that you will have a CAL office operating in India?

**Mr Fraser**—We do not want to set up a branch office there.

**Mr DONDAS**—Or the equivalent?

**Mr Fraser**—We think that they should be the equivalent. They will want to develop their own intellectual property industries and have their own copyright collecting societies. I simply do not know. I would like it to happen today. We have even got a copyright development fund through IFRRO in which we are prepared to match them dollar for dollar—up to a cap—to help them set up. We have been in discussions with Singapore, Malaysia, Hong Kong, Vietnam and others along those lines, and India is included in that. Although there have been expressions of support, we have yet to see that interest galvanised into real action.

**Mr DONDAS**—Would you say that there has been a greater emphasis on the audio side of copyright rather than on the print side?

**Mr Fraser**—Yes.



**Ms McKenna**—Traditionally, the performing rights societies have always been established in these countries before the reproduction rights societies have. The reason for that is that the technology which allowed the dissemination of their works was available well before the reproduction technology that threatened the owners of work protected by reproduction right. The international body of CAL—IFRRO—works very closely with APRA's international body, which is called CISAC. There is cooperation at an international level.

Traditionally, the performing rights societies always set up first. They provide us with a lot of very useful market information, and there has been cooperation—as in Australia—in other countries. For instance, in Thailand, there will be work between the performing rights society and any possible reproduction rights societies, so that they can share that information in developing the organisation.

In India, all of the conditions for setting up the reproduction rights society are there. They have got a very good copyright act; it provides specifically for the establishment of collecting societies in the legislation, and so it is enshrined in the legislation. The authors and the publishers themselves are also in well-organised groups. This means that contacting the members is made easier.

There are some other factors that I wanted to mention. Copyright education is one of the greatest factors in compliance: people actually being made aware of their obligations and their rights. In many countries, authors and publishers are not aware of these rights and, in many cases, the users are not aware of their obligations. In India, a copyright society has been established which has a specific educational role. That has only been set up in the last couple of years, and I think it will make a difference. The publishing society in India, the Federation of Indian Publishers, has shown a lot of interest in the establishment of an RRO. It is prepared to offer accommodation and other sorts of support mechanisms to the RRO in its early days.

**Mr DONDAS**—Do the Indians enforce their own copyright laws? Are there many cases that get to court and compensation is paid? Or is it just that it is on the statutes and nobody really worries, because it is too hard?

**Ms McKenna**—Yes, very much so.

**Mr Fraser**—That is right; that is the way it has been. When compared with other trade issues, we have not been able to get the support that we would like to have from the government in this work, because the other trade issues are more about marketing and market access. Here, we are trying to create the market itself by enforcing the laws which make the market. At the moment, it is just open slather; people can take your intellectual property. It is only by setting up a structure that gives the same respect for intellectual property as is given for personal property or real estate property, and by approaching the same kind of enforcement, that you can create the marketplace. That is why it is a difficult

issue. It is not just marketing; it is making the marketplace. That is what we are doing here: setting out the square and putting up the stalls so that the market can move in and people can market their works.

**Mr DONDAS**—Bridget, if there was such a thing as a wish list for a recommendation to come out of this committee to the minister, what would it be?

**Ms McKenna**—Following on from the question before, there is some work being done by the publishers in Australia towards marketing their works in India. That is being done through the Australian Publishers Association. They have an export activities coordinator and I think her job is funded by the Department of Communications and the Arts. She is responsible for providing information to the publishers on the state of the Indian market and other markets in the region, and setting up opportunities—book fairs et cetera.

With regard to the publishers, there has been very little interest in India. I have called a number of the publishers recently to find out why. Basically, it is a fear of loss of control of their works. There is one publisher, a very large one, who is going to be putting final stock into it, but they are not prepared to trade rights; they say it is far too difficult to get the money out. What we would like is, firstly, a recognition of the importance of copyright as a trade issue; and, secondly, recognising the work of Australian publishers and CAL, with its IFRRO Asia-Pacific hat on, and the role that that can play in trade in the region, so supporting our education and development role.

**Mr Fraser**—I would agree—

**Mr DONDAS**—Recognition, right?

**Mr Fraser**—Recognition of copyright as among the really important trade issues, not a peripheral issue. It is actually also an important cultural issue. The next thing that I would wish for is a lot of government support in helping the Copyright Agency and IFRRO go around India and speak to government, the judiciary, the authors and the publishers, and to help them, with our knowledge and expertise, to set up an RRO. It will be in their national interest to do that, because their own writing and publishing will flourish if their rights are protected; equally, it will be in our interest, because we will be able to export our products to them.

So that would be my wish: for support—if possible, funding; and any kind of cooperation with government that gives more weight and activity to this drive of ours. We are a small organisation—our office has 55 people in it—and trying to do this international work on behalf of Australian authors and publishers is a big ask for us alone. We cannot do it without government support.

**Mr DONDAS**—Are there any countries in the Asian region that are playing ball,

so to speak, with our Australian authors, or is it the same position as with India?

**Mr Fraser**—There is a collecting society for whom we operate on a bureau basis in New Zealand. There is one in Japan which has been negotiating with their industry organisations and MITI, and is now beginning to collect money from corporations for copying of scientific, technical and medical journals, computer manuals—things like that. We have been instrumental in establishing copyright collecting societies: one incorporated in Malaysia which is dormant, one now incorporated in Hong Kong—

**Ms McKenna**—Hong Kong has been established for some time.

**Mr Fraser**—but also dormant. We have been in intensive negotiations with publishers in Singapore to set up a copyright collecting society. We have been working with WIPO. But none of them are actually operational and I see Australian works being copied to a mind-boggling extent in all these countries.

**Ms McKenna**—I get a lot of calls from educational institutions in Australia who are wanting to export their educational services overseas. Sometimes that means putting works on line and sometimes it means copying them on to disk here and then distributing them to that country. It is happening in Vietnam, it is happening in Hong Kong, it is happening in Singapore and it is happening in Malaysia and Indonesia.

The Australian publishers are terrified about what happens to their works once they get to that country. They are reluctant to give permission for their works to be distributed as part of these educational programs which have, potentially, immense cultural value in terms of their cultural engagement but, again, there is that fear.

One of the things I was going to add before is that we had a visit from a delegation of Indonesians—I believe it was supported by UTS and one of the government departments. That delegation consisted of government representatives, lawyers and judges. They studied at UTS, they had visiting lecturers and they also visited people in law firms, people in government, people involved in customs and people involved in collective administration, to get a view of how copyright actually works in practice—not just what is on paper. I think that was a very valuable exercise. Michael met with some of those people on his recent visit to Indonesia. I think they are able to start to put that into practice.

**Mr Fraser**—Yes. WIPO announced at this last round table meeting that they wanted to send people from all around the region to our office to train but, while they would cover their travel costs, they wanted us to support them. I do not know whether Australian authors and publishers would be willing to support their stay here. While our office would certainly be willing to bring them into our office, I do not know whether we can actually support them with accommodation.

**Mr DONDAS**—It is one way of selling the message, isn't it?

**Mr Fraser**—It is, but we are a private company and, although we do a lot of cultural activities, training representatives from all around the region—

**Mr DONDAS**—You could charge an extra 1c per sheet of paper for accommodation.

**Ms McKenna**—We are trying to do that at the moment.

**Mr Fraser**—We are very proud that they want to set us up as a so-called centre of excellence, but we feel that we are carrying a lot as a small company in trying to train the entire region.

I must say that I admire—this is not only in India but throughout South-East Asia—the Japanese who are sending intellectual property officers to work in the government intellectual property offices of countries in the region. There are 12 Japanese officers, at Japanese government expense, working in the Department of Intellectual Property in Bangkok at the moment. They are promoting respect for intellectual property. They are also promoting the adoption of Japanese law and Japanese systems of intellectual property.

In the 21st century, all elements of trade and every Asian businessman will have to have some understanding of intellectual property—patents, designs, copyright and trade marks. If one has influence in international registration offices and international systems, one has a very important influence in international trade throughout the region. I would very much like to see—though in the current climate I think it is very unlikely—something like that happen. I think that is really smart long-range thinking.

**Senator CHILDS**—If I were an author, what would be my relationship to your organisation? Would I pay X amount of money to you? Could you explain what happens.

**Mr Fraser**—Any copyright owner, as soon as they prove that they are a copyright owner, may join. There is no fee to join and there is no liability whatsoever. It is an appointment of us as a non-exclusive agent to act for them in respect of licensing. Under the Copyright Act, we are the only one that can administer the rights to education for books and journals, although we can be disauthorised.

In other areas, we ask for them to give us a mandate or not for voluntary licensing to corporations and other kinds of institutions—they can choose. They can also choose whether they want us to act for them only for photocopying or also for digital copying. The membership means we can license on their behalf and then distribute the fees that we collect to them. We retain our running costs, which are currently at about 22 per cent, including all these activities. The other promotional activities that we do and the test cases

that we run, as well as actually functioning as a collecting and distribution agency, we are doing all that at about 22 per cent of licensing fees—that is excluding interest. So we collect the fee and distribute it. There is no liability for a member.

**Senator CHILDS**—I cannot understand why you are not proposing some sort of an aid project where, for example, working with IFRRO in India and all the other developing countries, the First World countries should not be in a combined effort to collectively raise the ability of these countries. One of the propositions I normally have from an organisation such as yours is a proposal that we play our part of that in our own self-interest, particularly, having in mind, as you have just described, the Japanese with their long-term interest and us with short-termism as our natural way of life. So, why are you not proposing something like that to the government through us?

**Mr Fraser**—I do propose it. I adopt your suggestion. We have been talking to a number of schemes—I forget the acronyms.

**Ms McKenna**—Through AusAID.

**Mr Fraser**—Through AusAID. Some of the schemes focus on ASEAN countries, and others focus on APEC countries to get aid. We just find that we do not fit in. We are still negotiating it. It is, again, intellectual property. What is it? They say, ‘You want to sell books? We have got a scheme for that.’ We say, ‘No. We are not wanting to sell books.’ As I say, it is this prior step of creating a climate, an infrastructure for the market. We just do not seem to be able to get the aid because we are a new kind of fish.

**Mr NUGENT**—We do it for human rights activities, so I do not see why we should not do it for you.

**Mr Fraser**—Copyright is a human right under the Universal Declaration of Human Rights.

**Senator CHILDS**—His question to you has almost given you a commercial advertisement in our report because if you put to us the proposal A and alternatives B and C, we would almost certainly at least report those as part of that debate and as part of the pressure on government to look more closely at your difficulties. I just put to you that you have not put a specific proposal. I read your submission here, but if you were to put a series of alternatives, at least it forces the bureaucrats and, of course, ministers in turn, in whatever area, to address those problems.

**Mr Fraser**—I very much appreciate that suggestion and we will carry it through. It has been our experience in the past and it is reflected in the submission that first of all we need to clearly explain what the issue is about and, secondly, what the opportunities are, and we focused on that. Since we see that those issues are very much appreciated here, we would be very pleased to take that next step and talk about practical ways of cooperation

and funding and support by the government to promote this work.

**Mr DONDAS**—Did you say earlier how much revenue we may have lost, or are you going to provide information of that at some later stage?

**Mr Fraser**—We will provide you with the best guess. Certainly, it is hundreds of millions of dollars.

**CHAIR**—There has recently been a New Horizons initiative launched among a number of Commonwealth countries. Did you seek to play any part in that, and is there some representation regarding copyright within the proposals?

**Mr Fraser**—There is one program about distance education that is part of that. It has to do with providing education materials throughout the Commonwealth on-line, so that everybody in Commonwealth countries will have access to the highest standard of educational services. I am not 100 per cent certain whether it falls under the New Horizon's scheme, but we did send one of our directors who is a copyright lawyer and chairman of the Copyright Council, Peter Banki, to attend that and report on that. We have made various submissions to that.

**CHAIR**—I thank you both very much for coming along this morning. If you have those several additional items, the recommendation to Senator Childs, and the figures which Mr Nugent and Mr Dondas referred to, it certainly would help. We will ensure that you get a copy of the transcript of your evidence and you can check through that. If you want to make any alterations, then we will understand and you can do so. If you have any further information that you might wish to submit to us in any way, please feel free to do so. It could be that we, in turn, might want to get back to you, depending on what happens in the course of this inquiry. Thank you both very much.

**HUNTER, Mr Alan, Chairman, Pulse Australia Ltd, Level 11, 60 Pitt Street, Sydney, New South Wales**

**CHAIR**—Welcome, Alan. The proceedings are the same as legal proceedings of Parliament and consequently warrant the same respect as proceedings in the respective Houses of Parliament demand. Although we do not require that you give evidence on oath, you should be aware that it does not alter the importance of the occasion and any deliberate misleading of the subcommittee shall be regarded as contempt of Parliament. The subcommittee prefers that all evidence be given in public, but should you at any stage wish to give any evidence in private, you may request to do so and the subcommittee will consider your request.

Would you like to make a short opening statement? You have not made a formal submission, so perhaps you can tell us how you feel our relations with India might be able to benefit from the pulse industry.

**Mr Hunter**—Certainly, Mr Chairman. Perhaps it is as well to start with who Pulse Australia are and some of our aims and objectives. As a result of a strategic plan into the grain and legume industry three or four years ago, the gaps and the duplication in the industry were identified as one of our major limitations, along with the need for more coordinated efforts into our plant breeding programs and developing markets in those areas where we feel we have some potential. We needed an industry organiser and that is primarily the role of Pulse Australia.

We are a company limited by guarantee. We are registered with the Australian Securities Commission and we are governed by the company acts. We have a board of directors made up of nominees from the following organisations: the Grains Council of Australia; the Pulse Industry Council; GRDC, the Grains Research and Development Corporation; the Australian Wheat Board; the Australian Grain Marketing Federation, which coordinates the state statutory marketing authorities such as the New South Wales Grains Board, the Australian Barley Board and the West Australian Grain Pool; NACMA, the National Agricultural Commodity Marketers Association; Grain Exporters, and one member with special qualifications.

We are supported by an executive officer and office staff in Sydney. We act basically around our six aims established in the strategic plan. The first is to improve the industry coordination, leadership and planning—which I referred to earlier—to develop new markets, to increase targeted production, to improve international competitiveness and to improve linkages with other industries. All this has to be achieved by improving the industry profitability, making it profitable for all sectors of the industry.

We are now in our second year, so we have not had much time in which to get moving, but we have been instrumental in setting up the memorandum of understanding on faba beans into Egypt, which our Minister for Trade, Mr Fischer, signed in Egypt in

recent months.

We have had a trade mission to India. We have coordinated the pulse plant breeders through the pulse improvement group. We have provided promotional material: grain cards, videos and the like. We are producing newsletters and press releases. We have held conferences, such as a conference called the pluses of pulses in Melbourne in the middle of last year, where we aim to bring the benefits of pulses to the retail and commercial sectors of the domestic market. We have completed the design of a quality assurance program for our farmers and are embarking on the implementation of that program.

We are coordinating the chemicals for farm use with pulses. There have been chemicals designed and released a long time ago. Because the pulse crops have come of age in recent times, a lot of the chemicals now off patent do not have registration over some of our new crops. We are addressing that quite important issue for our farmers. We helped to coordinate the industry response to the disease outbreak in Western Australia last year of anthracnose in lupins.

How do we do it? I just mention the funding it is on the top of everybody's tongue when we get to this stage. Pulse Australia primarily source funds from a 50c voluntary contribution from the first buyer of pulses from the farmer. At the moment, we are getting about half the contributions coming through, which I think is not too bad an effort. That is, in total, about 25 per cent because half of the crop is lupins in Western Australia, in which the Western Australian growing pool has vesting rights. They say they do not need Pulse Australia because they are doing everything themselves. They are quite entitled to say that. We are getting half of the remaining 50 per cent of the crop.

We have been successful in getting a lot of assistance from the Grains Research and Development Corporation, from other government assisted programs such as clean food—initiatives of our federal government. We have charged commercial fees for service. We intend in the future to charge certification and registration fees in the auditing process for our quality assurance. Of course, we have made some profits from our industry conferences. Basically, that extensively puts who Pulse Australia is.

**CHAIR**—We would like to ask you some questions. As far as the marketing is concerned, is it all done by individual wholesalers who go out and market it? Are they virtually grain dealers? Who sells pulses? Do the growers sell them? You do not operate as a vendor.

**Mr Hunter**—We are not a marketing authority at all. We do not have any interest in getting into the marketplace. We leave that to the commercial forces. The farmer sells to a variety of companies. He has a number of options: he can put his crop to the wheat board, who conduct pools; he can put it to private companies, who also conduct pools; he can trade it to his local merchant, who then aggregates and sells it to the statutory



marketing boards. In the eastern states, there are no statutory marketing arrangements for pulses. The only arrangement is with the *angusta folius* lupins in Western Australia.

**CHAIR**—As far as our production is concerned, lupins are predominantly produced in Western Australia. I think that state is the largest producer of lupins.

**Mr Hunter**—Yes.

**CHAIR**—I know New South Wales and Queensland have quite extensive summer crop production, but what other states do?

**Mr Hunter**—All states, even Tasmania, although it is very small. We have a total production of around two million tonnes in total of which 1.2 million tonnes is lupins and of which about one million tonnes is in Western Australia. About 200,000 tonnes of lupins are grown in the eastern states. The balance of production is made up from chickpeas, field peas and faba beans. There are other crops like mung beans and peanuts. There are 17 different crops of one form or another and that is one of the contentious issues at the moment, that we might be trying to spread ourselves too thinly on too many targets.

**CHAIR**—But you are not worried about peanuts, surely, because they would be a different field.

**Mr Hunter**—They are very small and for that reason they are self-reliant. They are dependent on their own organisation because there are only 5,000 tonnes. It is relatively, geographically, a narrow area, so they do not need an industry organiser, they can do it themselves. My purpose in mentioning peanuts was just to indicate the diversity we have.

**CHAIR**—What about soya beans?

**Mr Hunter**—They are considered to be more an oilseed and because there is more legislation with the oilseeds industry, we let the oilseeds look after soya beans.

**CHAIR**—And in each of these instances, your major market presumably is domestic?

**Mr Hunter**—No, for human consumption our major market is export. About 30,000 tonnes of pulse is consumed domestically. Out of two million tonnes of total production, 30,000 tonnes comes to the domestic market.

**CHAIR**—I have been told that you represent 20 per cent of India's total pulse imports. Where else do your exports go?

**Mr Hunter**—Basically, throughout Asia, but on to the Continent as well. We have

lentils going to all points of the compass including Japan. Mung beans are going all over but South East Asia and the subcontinent are the basis for our production, for sure.

**CHAIR**—Again, according to these notes, India is the largest producer of pulses in the world.

**Mr Hunter**—Yes, and also the largest consumer.

**CHAIR**—I notice that their imports fell, and not because of our drought, by 100,000 tonnes in 1994-95. Why was that?

**Mr Hunter**—It is very seasonal. India has been concentrating on supporting the farmers to grow wheat and the broader cereals at the expense of the pulse areas. Their plant breeding efforts have left them with only minimal returns for their farmers and they have been pushed out into the more marginal areas. Their production varies enormously.

It is important to note that India does not export anything that it grows. India imports it, processes it and exports it but of the production India has, it consumes it all. Its own consumption per capita from the 1950s has declined from 67 grams per day down to 35.

**CHAIR**—Does that mean they have switched to other foods?

**Mr Hunter**—Yes, vegetables, milk products and so on. But the government is quite concerned about that because it feels that the population is not getting its daily protein requirements. We have actually had approaches in recent years to grow pulses on contract for the Indian government, the approaches I could say not too many farmers relished or embraced.

**CHAIR**—Is it the price or is it the payment that is the problem?

**Mr Hunter**—It is the trading difficulties for both sides, really. There is the trouble we have in meeting our contractual arrangements.

**CHAIR**—Our problem in producing to contract, you mean?

**Mr Hunter**—That is a problem but the biggest one is that the purchasers in India will not open an LC unless the price has moved in their favour. So they establish a price, do business, the companies in Australia put the parcel together and wait for the LC—the letter of credit to be opened—and if the price has gone up, it is opened. However, if the price has gone down, it is not opened. So our traders are left here holding—

**CHAIR**—They are left lamenting.

**Mr Hunter**—Those companies that have got reciprocal trade arrangements are the ones with whom we seem to be doing the most business, so that restricts us to one end—a relatively few companies.

**CHAIR**—I noted that you participated in this pulse industry mission as part of the Australia-India New Horizons program. Did you go on that?

**Mr Hunter**—Yes, I did.

**CHAIR**—Was that worth while?

**Mr Hunter**—Very definitely. We put a report together as a result of that. Unfortunately this is the only one I have left but I can get you a copy.

**CHAIR**—Could you get one and send it to the secretary? It would be very helpful if you could.

**Mr Hunter**—By all means. I will do that forthwith. We identified a number of changes. There were four years between my visits to India. On the first occasion, I came away thinking India was just a bulk commodity market; there was nothing more, nothing less we could do. If we were going to try to get our products into the higher value end of the markets, I thought that India was not the place to look for.

I came away this time thinking there are 30 million people in India who are quite wealthy as determined by OECD income standards—possibly millionnaires. Nevertheless, in their choice of food, price was number eight in their consideration. Ahead of price were the size of the packet, the quality, the colour, the cleanliness and the cooking time. These were the considerations for 30 million people, which is quite a sizeable market now. We came back with some recommendations for industries and strategies that we are hoping to support with our quality assurance program to encourage our growers and our marketers to aim for this higher value market.

They get the bulk of their protein from pulses. Nowhere else in the world in the grains industry do we have a quality assurance system, so we are hoping to be first and have a marketable advantage there.

**CHAIR**—Where else do they get their pulses from? We represent 20 per cent of their imports. Where else do they come from?

**Mr Hunter**—Bangladesh. Pakistan rarely exports but other near Asian countries do.

**CHAIR**—Near Asian countries basically?

**Mr Hunter**—They produce roughly around 13 million tonnes, give or take a few. They have a market for 18 million tonnes, so there is a five-million-tonne potential there, but they are heavy on substitution. If the price gets too high, they will put whatever they can into it such as fruit and vegetables, milk products or so on to get the protein.

**CHAIR**—I confess to not knowing how it is in marketing terms in your industry, but India is an enormous country. When you talk about imports, are you talking about all of India or is there a greater demand for example in the Punjab than there is in New Delhi?

**Mr Hunter**—You are quite right to identify that. There are 950 million people in a place not much bigger than our Queensland and that begs belief. The resources must be enormous. Basically, in the northern part of India, they have different cultural and eating habits from the southern part. Field peas go into the southern part of India; not many are consumed in the north. Chick peas go into the north, but they are not really consumed much in the south because of the price of them. Northern India is generally considered a more wealthy part of India than the southern part. The Punjab and Haryana are two of the premier primary producing states and they are both in the northern part of India.

There are products for markets. Definitely there is a clear market segmentation, but right throughout India there are wealthy people, whether they are south or north. It is to that market that I think we should be attempting to aim when we target our production.

**Mr NUGENT**—I have got two questions. You have talked predominantly about our exporting products to India. Is there any potential for us to perhaps export expertise in terms of management skills, research skills and that sort of thing? In a whole range of areas into Asia and India we have got opportunities in the health and education fields and so on. I wondered if there was similar potential and, if so, do you have a feel as to how much or what type and all that sort of thing?

**Mr Hunter**—The only area in which I am not aware of any technical exchange at the moment is in the farming practices. Certainly in plant breeding there are strong cooperative efforts internationally, including India and Australia, where there is an international exchange of ideas for plant material and they swap material and ideas backwards and forwards. When we were there we attended a trade fair at Chandigarh for two days. We met with a lot of farmers, ministers for agriculture, state ministers for agriculture and consultants—we would call them consultants, but they were in a farm adviser type role—and they were desperately short of knowledge in farming systems. I think there is big potential there. It is not like China, where we took cotton to China and now we have her as a major competitor—we will not be doing that—but, in the spirit that Australia operates, I think there is an obligation there to help Indians do what they can for Indians.

**Mr NUGENT**—You would have dealt with Austrade through New Horizons, but

have you dealt with them other than that as well? How have you found Austrade in terms of being effective?

**Mr Hunter**—We have only had limited dealings with Austrade, but I was impressed with their professional approach in India. They looked after us very well. They did a lot of research before we arrived. We told them what our aims were and so on. They supported us enormously there. They had a lot of good facilities. We had six presentations, and the smallest number of marketers we had was 60. We showed a video and told them what we were about and what our aims and objectives were. Austrade gave us the names and addresses of all those companies and helped provide the venue and so on. There has been follow-up work since. We are still talking to Austrade in various areas there so, generally speaking, I am extremely impressed with Austrade.

**Mr NUGENT**—Looking at South Asia as a region, do you have experience or knowledge of other countries in the region—Bangladesh, Pakistan, Sri Lanka? Do the same things apply as apply in India or are they different markets?

**Mr Hunter**—Only from what I read—I do not have any personal experiences there.

**Mr NUGENT**—Do we export pulses to those countries?

**Mr Hunter**—Yes, we do.

**Mr NUGENT**—In volume?

**Mr Hunter**—Depending on the season. We are talking about exporting 500,000 tonnes to the region.

**CHAIR**—The region being the region of India or—

**Mr Hunter**—Including India.

**CHAIR**—Including India, of which most will go to India—India would be 400,000 and the rest would go elsewhere, or what?

**Mr Hunter**—It depends again on the yield, but India could be as high as 400,000. I do not think we have actually got to 400,000, but it would be more like, on a year in, year out basis, 200,000 tonnes to India and 300,000 tonnes to the neighbouring regions.

**CHAIR**—That is a big lift on these earlier figures we have—they were way back from there, so there has been a—

**Mr Hunter**—It varies, as I say,—

**CHAIR**—In 1994-95 you have got 91,600 tonnes, so it was under 100,000.

**Mr Hunter**—Yes. In 1994-95 we were lucky to have anything. That is one year.

**Mr NUGENT**—So that 300,000 that was going to the region other than India, is that predominantly to Pakistan or Bangladesh, or do you have a feel for that?

**Mr Hunter**—No, I do not have a feel for that. It is spread around. That would be including everywhere. Very little goes to Japan, for example, in—

**Mr NUGENT**—So you have got the whole of Asia.

**Mr Hunter**—Yes, the whole of Asia. Very little goes onto the Continent, so I am not including that, but basically there is a mixture into the whole of Asia, and it really depends on the seasons as to where that mixture goes—who is taking the bulk and who is short and who is producing.

**Mr NUGENT**—Would Pakistan take a fair amount?

**Mr Hunter**—On average. Bangladesh would take more.

**Mr NUGENT**—Sri Lanka?

**Mr Hunter**—Sri Lanka, is only small but, yes, that is southern India and she takes the chickpeas. I have got to include in that 500,000 tonnes too, about 70,000 to 80,000 tonnes—which is not a big deal—of faba beans into the Middle East, but certainly what happens in India underpins the price for everywhere else. If India is buying, the price is up; if India is not buying, the price is down. She is such a big player in the game that she has a major influence on the price of the product.

**Mr DONDAS**—You say that your organisation has been going for only two years. Is that right?

**Mr Hunter**—Yes.

**Mr DONDAS**—So obviously the cooperative bulk handling and all the little organisations were doing their own promotion of their produce. You say that you are not in the marketing business, but how do you propose to expand your overseas sales if you are not marketing it?

**Mr Hunter**—I do not believe—I am getting a bit political here, I suppose—that you have to market to influence the product and the development of a market. I think you can do that by registering trademarks, brands and the like, and by promoting the product on the basis of the way in which it is produced. That is our quality assurance. If we take

our farmers through an internationally certified third party audit system, we can give an ironclad guarantee that our pulses are at least equal if not the best in the world.

**Mr DONDAS**—Let us say that you have the best product in the world. How do people hear about it?

**Mr Hunter**—Part of the cost of that registration and certification for the farmer, the agronomist, the bulk handler, the handler, the shippers and so on will be reinvested in market promotion and development. It is about getting over there and attending trade fairs, putting together experimental packets, getting companies together, and working with Austrade and everyone else that is around and doing it. In the commercial world that does not really happen. We have been restricted, I believe, in our diabolical need to stay in the commodity markets. While we stay there, we are so easily influenced by the political occurrences and the seasonal effects overseas.

We have to move our product out of the commodity markets and put it into the higher value markets and that is what we intend to do. I do not think commercial companies can do that en masse. They can certainly assist if they have some support there. But that is not the main interest for the major grain traders. Their interest—it is really a part of the distribution mechanism in the industry at the moment—is in making a profit on each trade and not doing too much for the development of the markets.

**Mr DONDAS**—Does it sustain growth in that area on those principles?

**Mr Hunter**—With a lot of hard work. I do not have all the answers. I just have a strong desire to win. I know we will get there but I am not too sure that I can tell you how many bends there will be in the road or how many potholes there will be.

**Mr DONDAS**—Say you fall over tomorrow: who is going to pick up the cudgels and run with it, if you have not got a market?

**Mr Hunter**—If nobody does, it means we were not needed. I think we are there because the industry has perceived the need for us. If we are going to make a difference, we have to have an industry organiser. But it was not happening commercially.

**Mr DONDAS**—Has Pulse Australia got an agent in India?

**Mr Hunter**—No, we have Austrade.

**Mr DONDAS**—Apart from Austrade?

**Mr Hunter**—No. We have discussed it and as we find our feet it is quite likely we will have. The Supermarket to Asia program is something that we think we can have a strong alliance with too. There are many programs out there and I would be reluctant to

duplicate any more. I would be thinking that our first choice would be to use the facilities that are already in place. The US and Canada have both had agents in India for some time and they have a significant piece of the market share.

**Mr DONDAS**—What about New Zealand? Do they have agents over there?

**Mr Hunter**—They do have agents.

**Mr DONDAS**—But Australia does not have an agent yet?

**Mr Hunter**—No.

**Senator CHILDS**—What are the supply limitations in Australia?

**Mr Hunter**—Growers basically: grower confidence. We have a lot of growers doing very well growing pulses and right beside them there are growers that have never tried them. There is fear and uncertainty about the markets, about the production, the varieties and about disease. Clearly, our biggest restraint to the development of the industry at the moment is the confidence that our growers have.

**Senator CHILDS**—You mentioned that you are taking product from all over Australia. What are the transport limitations as far as India is concerned?

**Mr Hunter**—To India there is not much. In India there are severe limitations. Everything goes on the backs of donkeys, and on the tops of heads and so on but they seem to manage one way or another. Nearly everything coming into Calcutta or Delhi, especially, has to go by road, and of course the roads are 'only just'. There seem to be speed bumps every few hundred metres and that is in between the donkeys, the people and everything else that is on the road at the same time.

**Mr NUGENT**—I thought they were a bit more frequent than that when I was there—the speed bumps and the donkeys!

**Mr Hunter**—It is a difficult place to get around in. If I might say this in part answer to your question about the ports, we saw a 5,000-tonne vessel unloading field peas in Tuticorin and it was taking 10 days to get her unloaded. They drop a sling into the hold. They had about 30 of these little fellows, using buckets and their hands, who would throw all the grain on top of it. Then they would pick up the sling and take it out, and they would release it. There was a truck somewhere underneath—a couple of tonner—and about half of it went on the truck and the other half went on the wharf. They would have another lot picking it up and putting it back in the truck. Then they would take it around to a shed and they would drop it on the floor and pick it up and bag it. It seemed to me to be an incredible waste of time. If they could have had some automation there to put the peas into some bulk storage, they could have let the ship go and then they could do what



they liked. The demurrage on that is something fearful and it is clearly an impediment to the competitiveness that we blokes are trying to get—

**Mr DONDAS**—They should bag it in the hull while it is there.

**Mr Hunter**—That would not have been any slower, I am sure, but I am thinking more in terms of letting the ship go. Companies trying to deliver field peas to Tuticorin are clearly restricted by the price they have to pay to the companies that hold up the ship for that long.

**CHAIR**—It would just about pay you to provide the silo for them.

**Mr Hunter**—That was a suggestion. I think we might need you guys to help us, because the governments do not like the thought that they would be doing someone out of a job, but it needs to be explained to them that they are only letting the boat go and they can then do whatever they like. That is quite feasible. Until recently, with the deregulation of the investment opportunity legislation and so on in India, clearly there has been a reluctance on the part of commercial companies to invest in India, but that is changing rapidly.

**CHAIR**—On the overall potential, do you see that it is really just a matter of farmers being persuaded that there is a profit and a continuing profit to be made, rather than anything else, that limits the production of pulses?

**Mr Hunter**—Basically speaking, we have got a market. We need to produce to that market, that is for sure. We might finetune it by getting a bigger share of the higher value market, but basically speaking the market is there, the people are there. We have the ability here; what we have to do is to concentrate on bringing up our farmers' skills. Again, and I hate to push this too often, we see the quality assurance system as being a way in which we can encourage our farmers to employ the best practices, make the best profits and get more confidence in growing these crops.

**CHAIR**—Without arguing it through with you, part of the problem is with the new grower, though. If you persuade him to adopt your crop, he is not going to go into the quality assurance phase until he is aware of whether or not there is a price and a volume of production which will guarantee the investment that he is going to be required to put into producing whatever the crop is. That's so, isn't it?

**Mr Hunter**—That is true. What I meant by quality assurance is this. The codes of practice can employ the best known techniques to give him the best yield likely outcome. It is there now for the guys that want to take the extra trouble and treat it like a dinky-di crop, not put it in the back paddock, visit it only twice a season and find that when they come to harvest time all the grubs have been there before them and taken it away. They need to put some priority on it. Basically, it is because it has all been too easy with the

wheat: you drop it down a hole and you do not have to worry about it any more. Everybody else has had all the problems.

**CHAIR**—The other thing that has me totally bemused with these pulses—which, as I explained to you, I had not even heard of until a week or so ago—is that you have got all sorts of them. You have got 11 varieties, I think you said, plus a few.

**Mr Hunter**—Yes.

**CHAIR**—How do you choose which one you are going to produce? There are pigeon peas and black mapte, which I had not heard of, either.

**Mr Hunter**—It is a summer growing phaseolus bean, a bit like the mung bean.

**CHAIR**—Let us look at Alan Hunter, in his operations: what do you produce, which pulses?

**Mr Hunter**—We grow not only pulses. We have the same choice with wheat varieties, barley, and everything else, and there is no difference there. We have got planting windows, planting opportunities. Each crop has different agronomic traits. If a particular soil type has limitations for one crop, it often has a benefit for another. We are getting pretty professional in the way in which we choose crops. What we need to do is to have the confidence that when we do choose the crop, that the technologies to grow the crop and to market and distribute it is all there. That is the role of Pulse Australia.

**CHAIR**—You talk about the overall volume but, in fact, it is not an overall problem. We have got all of these different crops. If you produce mung beans, that does not mean that you are necessarily going to be able to sell them at the same market that you sell lupins, for example, which is another pulse crop.

**Mr Hunter**—Yes.

**CHAIR**—The point is that if you are going to choose these windows of production opportunity, that has no relationship to the market, does it? You decide you are going to produce mung beans—

**Mr Hunter**—I see what you mean.

**CHAIR**—This year, say, there are 50,000 tonnes of mung bean produced. Next year, the window of opportunity is slightly different: you have got 20,000 tonnes and you might have an increase in black mapte, or lupins, or something else. Isn't that a real problem?

**Mr Hunter**—Yes. It is one of the restraints that we have in Australia, though. We

were born with that problem.

**CHAIR**—If you produce wheat, you produce relatively identifiable varieties. It is not the variety as much as the hardness of the crop.

**Mr Hunter**—That varies from year to year and whether you sow it early or late. If we are talking wheat, we can say that it is all one crop, but it is not really. There are 18 different categories of wheat. Some years we have an oversupply of one grain and limited supply of another. We are talking various crops here. This has got an advantage over one crop because agronomically we need to rotate them all. We cannot continue to grow wheat on wheat and expect our soil to survive and our environment to remain healthy. We must rotate our crops.

**CHAIR**—If you are going to have quality assurance and you are going to produce a particular crop, it is no use producing it only occasionally. Surely, it is a real challenge if there is total unpredictability in the volume of each one of those separate pulse crops that you are going to produce. The market will not be able to survive if this year we have got 50,000 tonnes and next year you have got a fraction of it or, conversely, you have got far more of it. Surely, part of the problem with pulses is that you have got such a diversity of crops and, as I understand it, relatively few markets. While you are going into quality assurance production, you cannot really guarantee what your volume is going to be. Isn't that going to be a real limitation on the future of them?

**Mr Hunter**—Yes, but I do not think that it is the most limiting. I think that the scenario that you have outlined is a very valid concern, but it is not the major concern. We have a variety of farmers from north to south growing chick peas and these other crops, and each farmer would be putting some area aside for rotational needs—you put one paddock in one year. If the rains do not come here, they come somewhere else, hopefully, and if we have got this standard production procedure we can say, 'We have still got the product available this year. It just did not get grown in southern New South Wales; it came more from northern New South Wales.' We complement each other in that regard. Our geographic and climatic variation can work in our favour as well. I was born an optimist.

**Mr NUGENT**—You are saying that notwithstanding the sort of management concerns that the chairman was expressing, that if we are able to deal with those management concerns but actually increase our overall production of pulses, there is a market there waiting to be filled.

**Mr Hunter**—Yes.

**Mr NUGENT**—Whereas, with some other products—wheat, for example—we are constantly battling Americans dumping it on our traditional markets, and things like that.

**Mr Hunter**—Exactly. One of the exciting things is that there is very little subsidisation for the production of pulses anywhere. We are commercially able to survive with the rest of the world.

**Mr NUGENT**—Would you make as much profit out of selling pulses to India as you would selling wheat?

**Mr Hunter**—Yes. From 1986 or 1987 until 1993, chickpeas were my most profitable crop in my farming—

**CHAIR**—That is per hectare?

**Mr Hunter**—Yes, per hectare. And they beat wheat like you would not believe. There was almost twice the return from those crops than there was from wheat. We were getting \$400 a tonne on a couple of occasions for chickpeas, and wheat was flat out making \$100. I remember talking to some Walgett growers in western New South Wales and remarking at one of their field days, ‘Why would you bother growing wheat when you can grow chickpeas like that?’ Now, there is a major chickpea growing area out there and very enthusiastic pulse growers.

**CHAIR**—How many chickpeas would you grow per hectare, or acre?

**Mr Hunter**—The average, Mr Chairman, is about two tonnes to the hectare—a tonne to the acre—10 bags in our old wheat terms.

**CHAIR**—What about the United States, do they produce any?

**Mr Hunter**—Not so much chickpeas. They are big into lentils, navy beans, the blackbean, and the black-eyed beans—they are summer growing pulses. They export only a small amount. They consume most of their production.

**CHAIR**—So the EDP programs are a real concern for you—

**Mr NUGENT**—So, why would you grow wheat and not more pulses?

**Mr Hunter**—We have certainly reduced our wheat area. The area in which I am farming is considered to be in some of the best growing areas in New South Wales, and pulses have certainly made big inroads into the area that was formerly held by wheat. But we need them all to rotate our production. The cereals complement the legumes. The legumes are a taprooted crop. They go down and use the moisture from deeper in the soil profile. The wheat, being a fibrous rooted crop, stays much more around the surface. Agronomically, there are a lot of diseases sneaking into our wheat, restricting our yields. So a break in the production cycle spells our soil—it gives the disease a bit of a clip under the ear, and so on.

**Mr NUGENT**—I am not a rural member so, maybe, this is a very basic question: what is the scale of our wheat production, not so much in terms of wheat exports, but just production in this country compared with our pulse production?

**Mr Hunter**—Everywhere we grow wheat, there is a pulse we can grow. I would be very hesitant to say that we could throw out all the wheat and grow pulses.

**Mr NUGENT**—No, I am not suggesting that. But are we growing 10 times more wheat than we are pulses?

**Mr Hunter**—It is two million tonnes, but the yields are different from the hectares. We are talking two million tonnes of pulses, and we are talking 20 million tonnes in a big year.

**Mr NUGENT**—So, we could afford comfortably, given the pulse availability of market and the difficulty of selling some wheat, to actually move the proportional line a bit more in favour of pulses?

**Mr Hunter**—Yes.

**Mr NUGENT**—So why wouldn't people do that?

**Mr Hunter**—It is this fear, I think.

**Mr NUGENT**—Is it technically more difficult to grow pulses?

**Mr Hunter**—I think the farmer needs to be more disciplined. He needs to watch the insects and the disease a bit more. We have grown wheat for a long time here and we have not been commercially producing, or growing pulses broadacre for that long. We have got the more innovative farmers out there showing us the way, and they are doing a pretty good job. But by and large, there has been a certain amount of apathy out there. I think that a change of economic circumstances is making most farmers realise that we cannot continue to do what we have done in the past and expect the same benefits to arrive at our doorstep for the future.

**CHAIR**—Who produces the seed?

**Mr Hunter**—Each grower. It is not a hybrid.

**CHAIR**—So you do not have to develop new species—

**Mr Hunter**—To make the gains and improvements, we do. But developing new varieties has been the role of our public funded research organisations, basically, the state departments, and the like. There have been very few commercial seedplant breeding

efforts. This is of concern to us because we think that there is a lot of expertise in the commercial world out there and we ought to be tapping into it. We are very keen to support our minister for primary industries who seems to be having an emphasis on getting commercial forces back into the industry. And with the PBR—

**CHAIR**—Yes. Getting some return—

**Mr Hunter**—Exactly, we should be supporting those efforts in such a way that commercial companies are able to get a return on their investments. At the moment that is one of our problems.

**CHAIR**—Yes, you ought to try to produce new species and varieties. You have got to get somebody who is going to do a bit of work on it and do some experimentation.

**Mr Hunter**—Yes. We have got the Middle East, Indian and Australian plant breeders working together in joint efforts. We have got a lot of effort going on here. The Grains Research and Development Corporation hold it as a priority. In fact, the pulse industry has been very fortunate in getting the funding because proportionately we have been getting more than we have been putting in. Wheat levies have been brought across to support the pulse. I am strongly of the view that we are supporting the wheat industry by having a strong pulse industry as well. It is all complementary. In terms of annual seed production, farmers keep their own seed like they do with wheat but in terms of new varieties and so on, I think this PBR is something that needs a little bit of modification to make sure that those companies can get a return from their investment.

**CHAIR**—I suppose the thing we really want to ask is: in terms of India and the sorts of things you want from government, is there anything you would say to us that needs to be done from the Australian point of view to try to increase our penetration into India and our capacity to be able to service that market more efficiently?

**Mr Hunter**—Mr Chairman, I think the government has very seriously made some attempts in the past to give us representation. There are a couple of things. Food aid would give us a better profile if we could put more pulses into the food aid for these countries rather than the wheat and the traditional crops. I know that is not an Indian problem; that is the International Food Authority or the International World Health—

**CHAIR**—FAO.

**Mr Hunter**—Yes, FAO. They determine how much wheat should be put in. I think it would help us enormously, especially in protein starved countries, if we could get a bigger share of pulses into this food aid.

There is a five per cent tariff across the board on pulses that are being imported into India. The Indian government authorities say that if they remove the tariff altogether

their traders would grab it. I am of the view that it is so competitive that that would come back to our farmers and effectively increase the price here for farmers. That would encourage our farmers to grow more pulses and hence get a bigger share of the market.

Certainly some work needs to be done on streamlining the port facilities there. You cannot tell them how to do it, but maybe we need to talk more about cooperative initiatives to try to streamline the port facilities.

**CHAIR**—What do we do with our grain, our wheat? Does it go to the same ports, to the same facilities?

**Mr Hunter**—Yes, it does. We do sell wheat to India. It is a net exporter most times, but last year we sold wheat.

**CHAIR**—We have sold wheat. That is what I wondered; do they do the same thing?

**Mr Hunter**—I did not see any wheat, but yes, it would have to go through the same process. I would be surprised if any wheat got into Tuticorin where we were with field peas, but in Bombay or Mumbai—I think they have changed the name back again now—there is a major facility there, but it is still incredibly slow. I would be suggesting that wheat would suffer from the same problems.

**CHAIR**—Have you taken the problem of on-wharf handling of your product up with the Wheat Board?

**Mr Hunter**—No, not with the Wheat Board. In fact that is something I might do.

**CHAIR**—It just seems to me that if you are selling a similar crop then it might be worthwhile investigating what others are doing and seeing whether you might be able to do something instead of just asking the government to do it.

**Mr Hunter**—Certainly. That is a good point; you have done well.

**CHAIR**—Any other thoughts?

**Mr Hunter**—No, I am full of expectation and hope that on the Supermarket to Asia initiative we can assist each other and work closely. It is programs like that that hold a lot of potential for being able to get a bigger share of the market. I read the statements by the chairman, Reg Clairs. I think he would see that the Supermarket to Asia program was about trying to effectively do things in Asia that would give Australian product a higher profile. That is what we are doing. Not many Indians know that they are eating Australian pulses, or even that Australia grows pulses: very few people know.

**CHAIR**—You could have a great tag saying ‘Australian made’ on each grain of it! Thank you very much indeed, Alan, for coming in and giving us the benefit of your years on pulses this morning. It has been quite fascinating. Obviously, if there are any other matters that you wish to submit to us, we would be very happy to receive them. So, if you think of anything that you have not told us, please feel free to let Jane Vincent, our secretary, know. Equally, if there is anything we want to ask you, we will get back to you. There will be a copy of the transcript of your evidence sent to you for correction. We wish you well and we look forward to hearing more of the export of pulses to India and other places. Again, thank you very much for coming.

**Luncheon adjournment**



[12.58 p.m.]

**REDDY, Mr Vishnu Vardhan, Solicitor, Clayton Utz, 1 O'Connell Street, Sydney, New South Wales 2000**

**WEST, Mr Murray Allan, Partner, Clayton Utz, Level 27-35, 1 O'Connell Street, Sydney, New South Wales 2000**

**CHAIR**—Welcome. The proceedings pertain to our inquiry into Australia's relations with India and the south Asian subcontinent. We are doing it in two parts, and the specific matters that we trust you will deal with are those dealing with Australia's relations with India, in particular.

These proceedings are legal proceedings of the Parliament and, although we do not require witnesses to take the oath, they warrant the same respect which proceedings of the respective Houses of Parliament demand. The deliberate misleading of the subcommittee is the same, and may be regarded as a contempt of the Parliament.

We prefer that all evidence be given in public but, if at any stage you wish to give it in private, you may ask to do so and the subcommittee will give consideration to your request. You might be prepared, as you have not provided a submission to us, to tell us a little about Clayton Utz's involvement in India. From there, be free to take questions from my colleagues and myself as to the particular matters that you tender and, in particular, your involvement in the New Horizons program, which I understand has been a recent involvement by Clayton Utz.

**Mr West**—Clayton Utz is one of the large national law firms in Australia, with offices in Sydney, Melbourne, Brisbane, Canberra, Perth and Darwin. We are a full service commercial law firm, focusing on various industries and providing specific advice in respect of a number of strategic areas that we think are relevant in the commercial field at the moment. As part of our service to our clients, we also look to follow their interests into Asia or into other parts of the world.

At a national level, we have decided as a firm to focus particularly on specific countries in Asia, rather than utilising our resources in a scattered approach across Asia, because we figured that we can do that more effectively. These specific areas we are focusing on are Indonesia, Malaysia and India. That is not to say that we are not looking at other areas as well, and helping our clients in those areas; but these are the specific target areas that we are looking at in Asia. The national firm decided this at a national committee level, which is equivalent to our board of directors. With that in mind, we are devoting resources and money to developing our business, and assisting clients and non-clients, in those regions.

With specific reference to India, in early 1995, when the decision was made to

focus on that area, the firm established what we call an Indian services group. We have appointed an Indian services desk partner in each of our offices. I am not only the Indian desk partner in Sydney, but also the national Indian desk partner. We believe that the establishment of this group gives us focus, and also give us an ability to assist our clients going into India and Indian clients coming to Australia.

We are looking at providing services not just of a pure legal nature, but also assisting clients with financial management, taxation advice, consulting services, introductory services, market research and feasibility studies, market entry strategies, joint venture partner selection, advice on foreign collaborations and investment, and assistance for tendering for work in India.

In developing this group, we have identified a number of specific areas which we believe are of relevance or which might be beneficial for Australian companies entering the Indian market. We have identified particularly the areas of infrastructure, which include power, transport—and by transport we mean road, rail and ports—telecommunications, health, water and environmental management services, mining, financial insurance services, agricultural business, and machinery and transport equipment.

Through our affiliations with international legal networks, we have very close associations with several prominent Indian law firms in Bombay and Delhi. Through our visits to India, we have also established close working relationships with other law firms there, such that we probably have a network of about six prominent law firms in Delhi and Bombay that we can call on at any time, depending on the type of service that our clients require, two firms in Calcutta, a firm in Madras and two firms in Bangalore.

We believe that the commonality of our heritage through Great Britain—the fact that we all speak English, the fact that India is just emerging as a developing country; particularly since 1991 since the deregulation of the economy started to occur and the liberalisation program started—makes India a logical place for Australian players. We have seen the significant presence already of US and UK companies there. But, unlike China, we think that there are advantages for Australian companies there because of the commonality of language and background. Also, we play cricket too, so we have something to talk about when the business is done.

We think that there are also opportunities for smaller business there in working with Indian firms because, perhaps, the orders that those Indian firms might have are somewhat smaller than what the United States or UK companies might require to do business there. So we think that there are opportunities across the business spectrum for Australian companies to work there.

I suppose there are a couple of things that we think are really attractive at the moment, seeing it from the point of view of our clients and the developing infrastructure that needs to be done in India. As a law firm, we have probably the largest infrastructure

practice in Australia, and we think that we can add value to Australian companies going there; to Indian companies participating in the infrastructure field, and to governments who are looking at that, along with aid agencies as well.

We are also interested in continuing to follow the developments that are occurring in the insurance and banking industries there as they unfold. We think that, again, there are opportunities for Australian financial companies to participate in that. We have already seen how ANZ Grindlays has a good size of the market share there and is doing well.

By travelling there regularly, which I have been doing since the early 1980s; by having secondees from Indian law firms working with our firm here—Vishnu has worked for a law firm in New Delhi; by developing an Indian law library here; by maintaining close contact with our counterparts there and by following and observing what is going on there, we are hoping, and we believe, that we can add value to Australian companies moving into the Indian market and also for Indian companies that may look at the Australian market—for instance, Tata and companies such as that. I think that is where we are up to as a law firm.

**CHAIR**—Thanks very much. We are interested in the range of our relationship. Are there English firms practising? I have not quite followed the extent to which the practice of the law has divorced itself into an indigenous profession since independence, or to what degree—because of the very close connections there were within the public service with British law and the common law, and I know the judicial system still essentially retains much of the panoply of British law—British firms have remained registered there. Essentially, is it now only those who have been admitted in India per se who practise law? Are there American firms there? Are other international firms practising, in fact, in India? And is Australia late on the field, or is the 1991 date significant in that everybody virtually is beginning again from then?

**Mr West**—The laws in India preclude the practice of law per se in the strict legal sense by non-residents. At the time that independence was granted, there were a number of English lawyers practising in India, and they continue to do so. Interestingly enough, a number of the law firms in India bear English names—Little and Co. and Crawford Bailey—as do a couple of the accounting firms.

Since that time, or thereabouts, it has not been possible for foreigners to practise law, advising necessarily on Indian law, in India. So there are no major international law firms practising as such with offices in India. There have been attempts by a couple of English law firms and American law firms to open branch offices in India to service client needs. They have been challenged in the courts, and in fact I understand that all of them have now closed their operations because it was violating Indian law. That being the case—and it has only happened recently that these international law firms have had to close down—there are only Indian law firms practising in India.

There is another restriction there in that the Indian law firms are only allowed to have 20 partners, which constricts their size as well. What we are finding is that, as the companies move into India—from America, the UK and Australia—as in other places in the world, they bring their advisers with them, including their lawyers. In fact I do not think the Americans move in India without being accompanied by a lawyer. However, they do not actually have law offices there.

We believe that a lot of what is being done and what we are interested in doing in India is the type of law that is practised at an international level. The agreements and documents substantially that are being negotiated in infrastructure projects or other things really are things that you would use in China or you would use in Australia or elsewhere. So we do not believe that in advising Australian companies or other companies there that we are violating Indian law. That is a view shared by many people. To that extent, there is no resistance to us accompanying clients into the Indian region. In fact, there is not the expertise in India to deal with what are mega-projects and mega-dollars.

**CHAIR**—Where you have one of these mega-projects costing mega-dollars the work is of course undertaken in India, but is the contract signed out of India?

**Mr West**—The work is not necessarily carried out in India. A lot of the legal work—and this is where we feel that we can add value to our client's business—can be done here in Australia. A lot of the documents are on our systems here, and they are common documents that you can use anywhere, depending on the type of project.

What we then do with our Indian counterparts, to the extent that we need an Indian law sign-off or we need to understand Indian regulations and procedures or we need to talk to officials there, is utilise the services of the Indian law firm. There is no requirement for it to be signed in India. Some of them are signed there and some of them are signed elsewhere.

**CHAIR**—If you have cause to pursue an action, I presume you would employ an Indian firm as your agent. Are there undue delays? Is the process more obtuse than ours? How does it compare?

**Mr West**—The advantage of dealing in India is that it is based on the English common law. That has significant advantages for us and Australian companies in dealing there because a lot of the general principles are the same. English is the legal language and the written language. The problem though is that the delays in the courts there are very significant. Matters that might take two to three years here to come to trial will take easily 12 years there.

One of the things I meant to mention earlier was that we are interested—in fact we have been speaking with a gentleman from India this week—in taking our ADR experience, alternative dispute resolution, into India, and assisting to train people there and to help people there understand different ways in which they can resolve disputes without

having to use the Indian legal system. I think that that has significant potential and would benefit the economy and projects there because disputes, if they do arise, might not necessarily have to be dealt with in the courts. What also is happening is that, in some of these agreements, they are nominating places outside India for the purposes of resolving disputes.

**Mr Reddy**—If it is a contract or a project which is being done in India, you can use Indian law. To a large extent, a lot of the government projects require that you use Indian law. However, you can use procedures outside the country to resolve disputes. Often you find that parties use London, Geneva, Hong Kong—

**Mr West**—Malaysia.

**Mr Reddy**—Even Malaysia now. They use their arbitration centres to resolve their disputes.

**CHAIR**—We actually have Mr Kwatra coming to talk to us about dispute resolution later this afternoon.

**Mr West**—We met him earlier this week.

**CHAIR**—As to the nature of your efforts within New Horizons—this project with which you are involved—what exactly did you feel you got out of it? Did it put you in contact with the market? Did it open up new business initiatives? How did you see it? I gather you gave an address on private sector infrastructure financing.

**Mr West**—It had a couple of advantages for us. It galvanised our firm into a position where it needed to make a decision about resources and a commitment to its Indian services group. By having a project there it galvanised us within the firm. It gave us recognition by being one of the sponsors there. I think it became known to quite a number of Australian companies that we are seriously involved and interested in India. It gave us the opportunity to meet a number of people whilst we were there.

We were able to put together companies that we identified as having serious Indian interests. We were able to identify companies in India which potentially have interests in Australia. It was educational, from our point of view, because we took more than just the promotion period—we were there for some weeks. It was educational in that regard.

I was a little bit disappointed with the business forum in that I think too much was tried to be achieved in too little time. The one thing you have to appreciate when you are dealing with India is that things take a lot longer and processes are a lot slower. The business forum being conducted in two cities on consecutive days made it very difficult for people attending to attend all of the sessions either on the Tuesday in Delhi or the morning sessions in Bombay on the Wednesday. It takes forever to get to the airport, to

get through the airport, to travel down to Bombay and then to book in. So you really found you had to leave the Delhi forum in the afternoon in order to be at the Bombay forum. I think it should have been spread over four days rather than three.

**CHAIR**—Have you generated much interest in Clayton Utz since the seminar? In terms of your business output from India and your commitment there, has there been a significant build-up in work because of your commitment, or is it still very slow?

**Mr West**—I think it is slow. There are a couple of opportunities that we can point to that have arisen because of our involvement in the promotion. But I think a lot of it is our own doing and our commitment to investigating what is happening there following the projects, following the budget and following the people who we have identified as having serious interests there.

**CHAIR**—You have described India as a market where there is potential. How would you rate it against, for example, ASEAN countries, China or some of the tigers? Is it way behind? Can you put that sort of a measure on it?

**Mr West**—I have not. Maybe our management committee has in determining where in Asia we are going to focus particularly. I suppose what we have identified is that China started to open up 20 years ago, or whatever. India has only been doing that for the last five years. We think that a lot of Australian companies have missed the boat in China, whereas we have still got the opportunity to get in on the ground floor in India providing we act fairly quickly now.

From our point of view and from the point of view of a number of people that we have spoken to, India offers an easier option in that, again, there is a common language and a common legal system. The fact that it is just opening up now, the fact that there are huge opportunities and a huge population there, would, in our view, offer significantly better opportunities for Australian companies than, say, China.

**Mr NUGENT**—You talked about some of the megadeals, but earlier on you talked about opportunities for smaller Australian companies, particularly vis-a-vis American or European smaller companies who will probably find it a bit too far to come, I suppose, in some senses. Without giving away commercially sensitive information, could you give us a feel for what sort of areas you think that Australian smaller companies might get involved in?

One of the things that has happened in terms of Australian export activities in a number of countries is that the big companies have got the resources to either do it themselves or buy in the bigger law firms, the bigger accounting firms and so on and actually stand on their own feet. But a lot of the smaller companies are very intimidated by going overseas and a lot have been burnt, of course. However, given that so little of our industry is made up of big companies and so much is made up of small companies, if

we do not get more small companies going overseas we are going to have a long-term problem. Could you elaborate on the opportunities for smaller companies in India?

**Mr West**—I do not have the list with me that we have identified. We have actually gone through and identified what smaller industries in Australia might be compatible with industries in India. My notes here indicate that we have identified opportunities for small business in the agricultural area, in technology, in machinery and in transport equipment. That is one area where we think there are quite significant opportunities for a small Australian business. It is already obvious to us that a number of small Australian companies are focusing on that and have started small operations with Indian companies.

I am also aware of one of the large Australian companies that is focusing on that area as well. We have been helping them on three projects that they are doing in that field. But it seems to me that in machinery, spare parts area, there are quite a lot of opportunities for small operators here.

**Mr Reddy**—That is particularly true in the car industry. You are probably aware that there is a burgeoning middle class within India who are buying a number of cars. You have companies like Mercedes and BMW that have established operations. The major American and South Korean firms have tie-ups and they are producing cars at incredible rates. There is definitely a niche opportunity for Australian companies, primarily because they are getting in at the ground level. The productions will not really come out until probably the next couple of years, so they have the opportunity to get in and be there first.

Also, through my experience in New Delhi the bigger companies from the US or Europe say-it is more economical for us to produce seven million seat belts in China where we are doing it now, or in Europe or wherever they are doing it, than to establish a plant in India and produce 2,000. However, those are opportunities because Australian companies do produce 2,000. They do it efficiently; they do it competitively. In that sense there are niche opportunities for them to enter the market and provide these needs which often the larger players overlook.

**Mr West**—That is the sort of area that we have managed to identify. The quantities which at this stage are required in India are still small, even though they have a big population. The American and European companies are not interested in dealing in those small quantities, whereas Australians cannot deal with a huge order but they can deal with small orders.

**Mr NUGENT**—There is certainly a need for new cars. The government fleet, for a start, needs replacement—but that is an aside. For small companies going in, is there a need to pick a local partner?

**Mr West**—I do not think you can do business in India without having a local

partner, or at least an association or an affiliation, whether you are a coal producer, a law firm or a small producer.

**Mr NUGENT**—Presumably the risks in how you go about picking that partner can be challenging. In your experience, what are the best avenues for small companies in particular to pursue? They all cannot afford a Clayton Utz, presumably, to advise them.

**Mr West**—There are a number of consultants who have established themselves in Australia. These consultants are people who have been educated in India, grown up there or have families there. NRIs are what they are currently referred to as. Some of them put seed money into these things, find the opportunities and then go and find the partners here that they think they might be able to put in touch with their people there.

But I do not think it is quite right to say that they cannot afford the likes of Clayton Utz, because we also are interested in developing our business and, as part of our commitment, there is a considerable amount of time and effort put in by us which we do not charge for. We are prepared to put seed money into this as well. We act for a number of people where we will do the work for nothing until the time that the deal goes live or that something far more beneficial comes to pass.

We have identified that a lot of the very large Australian companies might well have the resources within their own organisations to do a lot of the work that we can provide, so they might not need us. We also have identified that probably there is a market there which does not have the internal resources and which needs the resources that we can provide to help them. We would deal with that on a case-by-case basis, as to whether or not we think it is worth following a particular client or industry, and then we will work with them.

**Mr NUGENT**—Whilst Australian lawyers cannot practise there, do you have Australian members of your firm based in India on the basis, say, of two or three years at a time?

**Mr West**—Currently, we do not, but the plan is for there to be two-way secondment. We have to get through a few hurdles on that in relation to the legal system there. But Vishnu has worked there. Vishnu is Australian educated and has been on secondment with one of our affiliates in Delhi. We are also looking at not necessarily just seconding into law firms there; perhaps it might be easier for us to second into actual organisations, into the financial sector particularly.

**CHAIR**—What about accountants and other professionals? Do you have affiliations with them? Obviously, tax is a major part of operations.

**Mr West**—We do. We have decided not to have an exclusive arrangement with anybody. We went down that track initially, where we were looking at having a more or



less exclusive arrangement with one of the large accounting firms there. For a number of reasons, that did not come to pass. But, at the end of the day, we also were able to look back and take the view that having an association with a number of the players there, rather than with one, was better, because different people within different accounting firms there have different expertise, and it depends on the job.

**Mr DONDAS**—In terms of Australia's foreign policy, do you think that is doing enough in trying to generate a lot more trade or interest between Australia and India?

**Mr West**—I do not know a great deal about Australian foreign policy there; but, from my limited knowledge, I would say no. I do not think that there is sufficient recognition by the government—and not enough effort being put into making people aware—of the significant opportunities in that region. Whilst there will be difficulties always in dealing with a developing country, this is one developing country that we have got a lot in common with and that we can do a lot with—more so than some of the other Asian countries.

**Mr DONDAS**—If we do not miss the boat!

**Mr West**—Yes, if we do not miss the boat.

**Mr Reddy**—There is a considerable amount of goodwill that Australia has in India and that, unfortunately, is not being exploited. British firms and British governments and players do come in, and they are often viewed with that sort of imperial outlook.

**Mr DONDAS**—We are still colonials.

**Mr Reddy**—Yes. The Americans come in with their greenback, and their money is quite flashy; but they do not like their naivety, I suppose. Whereas, when it comes to Australia, besides loving Richie Benaud, they like everything that is Australia. They have a very positive attitude when it comes to anything that is Australian. Given that goodwill, there is considerable opportunity to take advantage of that, especially at a political level, but advantage has not been taken of that so far.

If I may say so, the Prime Minister not attending the New Horizons promotion was a clear example of how the amount of importance which Australia should be placing on these matters is not there. When I was in Delhi for six months, they literally had the top premiers, presidents and state officials, and not only the heads of state but of different governments and different states from Europe, the US and Canada: they were very high level delegations that came out. They saw significant potential in India but, for some reason, that foresight is lacking here. But if we had that sort of foresight, we have probably got a lot more to gain from it than have the Europeans or the Northern Hemisphere players.

**Mr NUGENT**—You would be happy to see the Prime Minister go there this year?

**Mr Reddy**—Is he planning to go there?

**Senator CHILDS**—I thank Mr Reddy for that optimistic assessment. Since Mr West has been going there since the 1980s, could he give us his distilled wisdom as to the problems—or the difficulties, first of all—that he faced with the differences between the two countries, so that we might be able to draw attention to those things for other people who want to follow.

**Mr West**—You have to understand that it takes a lot longer to get things done in India. You have therefore to be accommodating in your approach to doing business there. You cannot expect things to happen today or tomorrow, as we are used to having them happen here. So you have to take longer term view of things. One of the other difficulties is dealing with the bureaucracy there, which is unbelievably slow, unfocused and unwilling to assist.

There has been noticeable change in the past couple of years, since the liberalisation process has started—and it is quite a significant change that has happened from the time when I was first going there in the early 1980s—albeit, for example, just seeing different cars in the street, where previously you would only see two types of cars. There seems to be a will at a political level to get things to start to change. What has not happened yet is that that has not filtered into the bureaucracy and, as much as the economic policies might be changing and there might be opportunities opening up, which are at a political level being expedited, when you actually come to do something you have still got to deal with the bureaucrats; and that is a very timely and frustrating process. This is where you need Indian partners, as well, because you have got to have the Indian partners deal with that and they know better how to deal with that than we do.

**Senator CHILDS**—I have another question about our cultural relationships which Mr Reddy has touched on. In previous inquiries it is seen that places like Western Australia, particularly Perth and, perhaps, the Northern Territory—Darwin—had more direct relationships with India and some of the other countries in the area than, say, the eastern states of Australia. Is there in India a sister city relationship, or anything of that nature that you are aware of? In other words, is there any cultural blending between the two countries? In other inquiries we have had, clearly, language, cultural exchange, and local government exchanges have been the precursors of increased understanding between the business people.

**Mr West**—I am not aware of there being a great emphasis on cultural exchange at all at this stage which is a real pity. I know that with the Asian cities project that was in Brisbane late last year the mayors of Bombay and Calcutta actually came across and there was apparently some good development of compatibility between those two cities and Brisbane, but I am not aware of there being any sort of major effort in that regard.

The one thing that struck me is that—you mentioned Darwin and Perth—a lot of the people who seem to be seriously interested in India are actually in Victoria. I am not quite sure why that is so.

**Mr NUGENT**—Victoria on the move.

**Mr West**—Maybe it is, but that is where we find a lot of the interest. In fact, I am somewhat surprised that Perth and Western Australia do not take more advantage of their proximity to India.

**Senator CHILDS**—Mr Reddy, India is the one place where a sporting exchange, particularly of cricket, might be the way in which some of the cultural exchanges could be spearheaded. Do you have a view on that? Are cricket and some of the other sports perhaps ahead of the traditional cultural exchanges?

**Mr Reddy**—It is probably a good place to start with hockey and cricket, yes.

**Mr West**—I find that when you are doing business in another country you find it very difficult to talk about things other than what the deal is all about and families and things like that. The thing in India that you can talk about, as an introductory comment, or at the end of your discussions, or whatever, is the cricket. They are following the test matches between England and the West Indies, or us and England. Last year there were test matches going on whilst we were there and there is definitely that sort of bonding there. If we were to encourage any cultural exchange, that would be a good place to start.

**CHAIR**—The hockey exchanges never got anywhere. We had better send Ric Charlesworth over and see what he can do with that. I suppose both Pakistan and India are very significant in hockey. In terms of New Horizons, have you any ideas of where we could go from here? In other words, the New Horizons promotion has gained a bit of momentum, is there something you think the government might well do following New Horizons?

**Mr West**—I would like to see a follow-up to it. I have not really put my mind to the precise form that would take, but I think that, given the time and the resources that were put into New Horizons, if something were to follow within two to two and a half years, all of us would get a lot more benefit out of what was done late last year. In dealing with Asia—and I am sure you are aware of it—it is not a matter of just going there and hopefully picking something up and coming home with it. You have got to go back time and time again; you have got to develop a relationship. If we could follow up with something there along those lines, it would—

**Mr DONDAS**—Is that a relationship, or trust, or both?

**Mr West**—Both. And understanding.

**CHAIR**—Has the Australia-India Council been any help to you, generally?

**Mr West**—Not really. I do not know whether that is a product of us not utilising the services. I would like to see them be more active but, again, we have not necessarily availed ourselves of what they might be able to provide, although I do not know that they provide very much at a commercial level.

**CHAIR**—That really was relevant to the fundamental concern we have. What needs to be done to give the whole of the Indian-Australian relationship a bit of a kick along? The Australia-India Council is a group which is sponsored. The secretary is in DFAT. It is a group that something might be done with. Is there anything else that you can think of that should be done at a government level to help you in the professions, for example, that can be done to assist with the exchange of services and generally promote this relationship which I think you are to be commended for initiating at a professional level?

**Mr West**—I am sure there is. I would like to think about that and, if you like, I could put a submission to you.

**CHAIR**—Just drop us a note.

**Mr West**—I suppose this is speaking from naivety, but maybe it is a consequence of the way in which the Australia-India Council is presently structured and the way it operates that the likes of us have not found it useful and, let me tell you, we have been looking at every angle to get opportunities for ourselves and for our clients. What it provides and whether it just acts in an insular way probably needs to be looked at, along with why it does not take decisions from there out into the marketplace and help those that are actually wanting to participate in the region. It seems to me to be very isolated. It meets very irregularly and then does not really put forward ideas, or do anything for those of us that are actually participating in that market.

**Mr Reddy**—If you are going to follow up on your horizons theme, you might benefit from something which is a bit more focused, as well, on the sectors of the Australian economy that would benefit with tie-ups in India. It is wonderful having a whole array of programs, but I think that you might benefit much more if it were actually focused on certain industries or areas.

**CHAIR**—With infrastructure you have for some of this?

**Mr Reddy**—Secondly, just one of the things that I realise is lacking is a base for small to medium enterprises in Australia. They do not really know what is going on. I am sure it is not just the government; it is a combination of factors that results in people not knowing what is happening in another country. Often, when we talk to various people in the industry, they do not know what is happening. They do not know where to go for their

resources or their material.

I know that Austrade, for example, used to do country briefs and I think that they might still be doing them. But if they were actually commercially oriented to small to medium firms it would help. At the end of the day, large firms are out there knocking on their administrative doors and there are people waiting outside these bureaucracies trying to get their permissions and their approvals. They know exactly what has to be done. They know when the next project is going to go up for a bid or for a tender. But it is the subcontractors, the small to medium enterprises, that can play a niche role in India and that are missing the boat because they do not know that there are opportunities there. I am not sure how you fill that gap, but there has to be some mechanism by which this sort of information gets to them.

**Mr NUGENT**—How did you find Austrade?

**Mr West**—We have found Austrade, in relation to India, very good. They have been very helpful. It is a little sad that they have had their resources cut because they probably could have provided more. From our experience in India, they know what is going on there and we have been very pleased with the degree of helpfulness.

**Mr NUGENT**—But wasn't the thrust of your comments, Mr Reddy, that they were probably a bit limited in terms of not doing enough in the small sector? We are saying that if you go to Austrade and ask the questions—

**Mr West**—If you go to Austrade and ask—

**Mr NUGENT**—They are fine.

**Mr West**—Yes. But nobody knows that.

**Mr NUGENT**—But nobody is proactive enough and Austrade perhaps is not proactive enough.

**Mr Reddy**—Yes, I think proactiveness is probably what we need.

**Mr NUGENT**—We have been talking about India, which is one of the three countries you were talking about targeting. Do you have any knowledge, experience or exposure to some of the other countries of South Asia—Bangladesh, Pakistan, Sri Lanka—and any views on those areas?

**Mr West**—We are currently working on projects in Sri Lanka and Nepal, but we do not have a great deal of experience there. They are not part of our focus, although we will go where our clients go. It seems that those that are interested in India—some in the infrastructure field and power—are also looking at the opportunities in those neighbouring countries as well. Interestingly enough, we have found ourselves doing things in both of

those countries. I cannot say that, as a firm, we have a very good collective experience in either of those countries. I have been to Nepal and know a bit about it, but I have tended to focus on India. That is where we, as a firm, are tending to focus.

**CHAIR**—You said the Indian economy has opened up virtually since 1991. But it is still very slow, isn't it?

**Mr West**—Yes, it is incredibly slow, but you can see the changes in the street. You can notice the changes from one visit to the next. There are a lot more cars or different types of cars on the road. It is hard to say what it is, but every time you go there you can see that there has been a change inside 12 months. It is moving, it really is happening. But there is a long, long way for them to go.

On one project we were talking about, you had to go through 36 different approvals in order to get something done. They have cut that back to eight or 10 approvals which is good, but you still have to get the eight or 10 approvals to deal with the bureaucracy, which is a long way behind. It will only be the next generation of the bureaucracy that will grab the political changes that are occurring and be able to deal with them. That is where the difficulties are in doing business in India. You have to appreciate that.

**Mr NUGENT**—Do you find a corruption problem?

**Mr West**—We have not come across corruption face to face. I know it exists and I know how it operates there. I think it is entrenched there and, until such time as they deal with that issue, doing business in India is going to be difficult. But they at least seem to have started to do something about it. It is widespread. It is right from the fact that, in order to get in here, somebody has to pay a few rupees to get to visit that particular person.

**Senator FORSHAW**—I imagine that some of that initiative for change may have come about as a result of the break-up of the Soviet bloc—the realignments of India, Pakistan, China, Russia and the US.

**Mr West**—That is what I understand. They were very much aligned with the USSR before 1991. When that all started to fall apart, their support from there started to fall apart. I think it was at that stage that the World Bank and others stepped in and said, 'You need radical surgery.' They also had a prime minister who had sufficient foresight and guts to start the process.

Another thing that we believe is good about doing business in India is that there seems to be, across the political spectrum, a recognition that the change has got to occur. It does not really matter which party or coalition is going to be in power, all of them now seem to be committed to this new path. Some people say to me, 'How could you do

business in India when you don't know what the government is going to be next week or next month?' But the thing is that you all know that those various governments, in what shape or form they might be, are all going down that path.

**Senator FORSHAW**—Even if you look at the G7, they can change every week. We are looking at Australia's trade relationship with India, but from an Indian perspective, are they targeting or focusing on any particular parts of the world, whether it be Europe or North America? Are there any strategic trade approaches that they are looking at in the same way as we are obviously recognising a greater need to build our links with Asia?

**Mr West**—I do not think from a trade point of view that we focus very seriously in the eyes of Indian business for a number of reasons, and population is one of them. Our market here is quite small. They need only look to Europe or America and they can put three zeros behind the order that they can get for the same trip to America as it might be to Australia. So they are looking to Europe and America as their main focus, as I see it.

**CHAIR**—What about Japan?

**Mr West**—Vishnu might be better able to comment on this, but one thing that I have sensed is that they find it difficult to deal with the Japanese. I do not think they look towards the Japanese with the same degree of enthusiasm that they look to Europe and America. Would that be right?

**Mr Reddy**—Yes. I think India is trying to get into APEC, and I think Australia has been quite supportive of that.

**Senator FORSHAW**—Yes.

**Mr Reddy**—They do see, probably like the rest of the world, that Asia is also where it is happening. And, of course, they are part of the Pacific Rim.

**Senator FORSHAW**—The Indian Pacific.

**Mr Reddy**—Yes, with South Africa and some of the African countries.

**CHAIR**—What about the World Bank and those multilateral agency groups? Do you see opportunities for service, particularly professional involvement, in those sorts of contracts because the World Bank has great investments in India?

**Mr West**—We do, and we are at this stage credentialising ourselves with them and with the various other aid agencies, with a view to participating in projects that they support. But again, you have to take time to develop a relationship with them and to credentialise yourself with them.

**CHAIR**—What about regions? One of the things that strikes you when you look at it is that it is a big country with enormous population concentrations—92 million people. You have picked on three centres, as I recall.

**Mr West**—We have, affiliating with prominent law firms centred in Delhi, Bombay, Bangalore and Madras. We are not necessarily focusing on those states in terms of looking for the work that might go into India. We have identified probably four or five states where we think there are better opportunities for Australian companies than the other states in India for a number of reasons, one of them being that you have the federal government there introducing these liberalisation policies, but you have also got varying degrees of state government commitment to it and state government bureaucracies and how they are structured in particular projects.

So there are different regions that we actually look to which are not necessarily centred on those cities. But in terms of getting legal advice in relation to those regions, you would probably go to the best person in one of those legal firms which is closest to that region.

**CHAIR**—As there are no further questions, I thank you both very much for coming along and giving us that insight into your experience in India. It is a market that demonstrably has been neglected for too long. Yet I think that amongst many there is still a feeling that we are not too sure where it is going, and a bit of apprehension about the extent to which the market opportunities are realisable against some of the more easy opportunities that surround us. I think that is really what it is all about.

If there are any other facts or recommendations you would like to send to us we would be very receptive to them. If you would like to drop a note to our secretary about those, we will certainly take them into account. It could be that we have further questions of you and, if so, we will contact you. You will be sent a *Hansard* copy of what has been said today so that you can go through it and see if you want to confirm, ratify, amend or otherwise return it. Thank you very much indeed for coming.

**Mr West**—Would that brochure be of any assistance?

**CHAIR**—It certainly would. Thank you very much indeed. That will be very helpful.

Resolved (on motion by Mr Dondas, seconded by Mr Nugent):

That the document entitled *Clayton Utz—Solicitors and Attorneys: India Services Group* be incorporated into the subcommittee's records as an exhibit to the inquiry into Australia's trade relations with India.

**CHAIR**—We wish you well in your venture.



**Mr West**—Thank you very much. We wish you well, too, in your inquiry.

**CHAIR**—The hearing will now adjourn for a private meeting.

**Short adjournment**

[3.13 p.m.]

**KWATRA, Mr Gagan Kumar, Executive Director, Indian Council of Arbitration, Federation House, Tarrsem Marg, New Delhi, India**

**CHAIR**—Welcome to this public hearing of our committee. I know you are here for other events and it is a bit rough to get you to come and give us evidence in this way but, as you may know, this committee is inquiring into Australia's relations with India. We have had, in the legal field, very active connections over the years with countries in Asia. I know you have seen a little of Sir Laurence Street, who is a former chief justice of this state and who has been very active in the field in which I understand you are particularly working at this time—the field of conciliation. We have a long history in conciliation and in trying to avoid some of the processes of the courts. There has been quite a deal of work there.

These are normal legal proceedings of the Parliament and they are part of the evidence we are taking in the course of this inquiry. Although we do not take evidence on oath at this stage, they are, nonetheless, proceedings of the Parliament and they are regarded as a very serious part of our parliamentary processes. We prefer that all evidence is given in public, but if you wish to give any evidence in private then, by all means, request it and we shall certainly give that request our serious consideration.

You may like to make a short opening statement and tell us a little about your visit and particularly about the legal process in India. You might also like to mention anything that you think could be of benefit to us in the course of our inquiry. We extend a very cordial welcome to you and in this rather formal setting. I trust that you find benefit.

**Mr Kwatra**—Thank you very much. The Indian Council of Arbitration is a body which mainly looks after the promotion of trade and commerce with a view to preventing disputes that come in the business community. When a dispute arises, we provide a procedure for dissolving the dispute through arbitration, remediation and conciliation. This body began in 1965 and the apex chambers of commerce are giving full support to this council. On the governing body of this council there are five representatives of government and the same proportion of the different industries, all the chambers of commerce—expert engineers, architects, lawyers and retired judges. It has a large panel of arbitration conciliators. The council has been there for the last 32 years.

I will deal with the question of the judicial delivery system in India. After the opening of the Indian economy in 1991, monetary policy, fiscal policy and industrial policy all had new systems. There were so many licensing requirements before a foreign partner would come to India. To a great extent those barriers have gone. It brought a new era of deregulation. There are single window clearances. That is what is attempted on the part of the government to attract foreign investors to India.

After these major steps were taken by the government, questions have been asked and queries have come to the chambers in various meetings. Of course, the Indian businessman, while sitting with a foreign businessman, finalises all the terms of contract in a very plausible, very workable way. Finally, it increases the cost of the project by a few per cent.

One of the reasons given in that discussion is the cost of litigation. Delay brings more cost to the project and because of this delay they expect some lawyers to be taken by the government. I am very glad that the government of India and some of the chambers, like the traditional Indian Chamber of Commerce, brought out a new task force called the Task Force of Judicial Reforms. I am the secretary of the task force. It worked on this project and highlighted various areas and various measures by which reforms could be brought in the judicial system in this country to give a better image to the outside and, of course, it is good for the country. So a foreign investor will feel that if he comes to India, he can get justice in the minimum possible time, not as happened in the old time.

It started with the Supreme Court. We have already tried it with our Supreme Court, the common point of law. A number of cases now could be disposed of expeditiously. Matters have been resolved so that a number of opinions in the Supreme Court and similarly the High Court have been computerised. The number of cases pending in those courts have gone down to a great extent.

The only area that is left is the district court. We have 8,000 courts all around the country. State governments are making all out efforts to increase the number of judges, to train them to all new systems in the court procedure, and to frame their rules so that we can move faster. In particular we want to reduce the backlog and improve the timing of the disposal of the cases. Of course, at the higher level we are through, but it is a very hard task. At the district level we should proceed in a few years. I am not saying a few months, it is a very difficult task.

Coming to arbitration, the foreign investors were saying that even the arbitration was taking a good deal of time. One of the reasons for the slow running of arbitration proceedings was the 'bad' law—and I am using the word 'bad' for what we should call the old law for arbitration, that is, the Arbitration Act of 1940. Of course, the objective of that law was to assist the arbitrator and regulate his behaviour so that the parties' interests could be protected, whether it was a commercial dispute, a family dispute, or any kind of dispute; but it resulted in delay. As usual, anywhere in the world, the legal community will take the benefit of any of the grounds laid down in the law, get a stay from the court and stay the proceedings.

People were using ad hoc arbitration, people were using institutional arbitration, they were using all clauses, but unfortunately the institutions could not move with the great speed that they should have done because the law was getting in the way. So I am very glad that in 1996 we adopted the model which does not permit court intervention to a

great extent. I understand from my discussions over 15 days with different persons here, with the institutions, the judges and the expert mediators, that Australia also brought that model into the law in 1995.

So after the adoption of the model which has minimised the role of court intervention, we are expecting that arbitration will move in a big way. But the old mindset is the challenge before my council. For 1½ years since the enactment of the new law, we have taken all avenues to give the message—through conferences, seminars and presentations in different parts of the country. You had a bad impression about arbitration, but with this new law you can expect better results. Include the arbitration clause in commercial contracts—and I am concentrating now on commercial contracts, not on other disputes.

We are promoting arbitration in a big way, giving the messages and convincing the business community. I am sure as far as the business community is concerned that they are convinced, now that they know the new law will help them. After this move by the council and various other associated bodies, there is an acceptance in the business community of using arbitration. The next step will be conciliation. But there is one problem: the legal community responding to the new law. As happens in any part of the world, it really requires something to be turned around. Where do I get the breakthrough?

Naturally, a lawyer, an attorney, likes to move to the court in terms of his personal and professional gains. How to turn that around? After listening to so many institutions in this country for the last 18 days I feel that the breakthrough point here was the empowerment to the court to give the order to the parties to sit for arbitration or mediation. It was experienced in Victoria. I understand there was a very good response. Of course, there was a bit of resistance from here and there, but the legal community was compelled to come forward and hold mediation because the court ordered it. It did not come voluntarily; it came only after the court was empowered to order the parties to come to mediation and conciliation.

This is the first step which I am thinking of taking back. Maybe I will suggest to the legislature to amend the law or, if that is not possible, I will request the chief justices to frame the rules of the court procedure so that courts can take the initiative. I am sure that with the court initiative the parties will surely come together and try to resolve their disputes through conciliation, arbitration or mediation. That empowerment or change of the rules I am sure will be a turning point for us.

I can assure the foreign business community that they can expect better results now with, first, the new law of arbitration; secondly, acceptance by the legal profession by changing the rules; and, thirdly, good institutions in the country. In 1996 we set up absolutely first-class infrastructure for providing arbitral and mediation services. Our offices in New Delhi and eight offices around the country can provide services at any centre convenient to the two parties to the contract, so there is the developed

infrastructure.

The last part now, which is a very important task before us, is that we have trained arbitrators and trained conciliators and mediators. After undergoing a few of my programs with institutions like LEADR here, the International Council for Commercial Arbitration, the commercial dispute resolution centre—in fact, I have contacted most of the institutions here—I feel with their assistance and with my own bit of expertise which I have got in the last 18 days, we will be able to move towards that objective of training mediators and conciliators, and to bring this new culture to the country instead of going to the court to use mediation and conciliation. And I am sure, with this development of the culture in the country, my foreign counterparts, businessmen, can expect it will not increase the cost of the project on this count.

Another small area I would like to mention is the harmonisation of business loss—why conflict comes, why dispute comes. Dispute comes because many of the commercial legislations in the country are not in line with the UN conventions. Australia has acceded to the conventions but India has not done it. Maybe India has done it, but Australia has not done it.

To bring unification of the business laws, we are taking all measures. Whether from the council or the chamber, we are pursuing the government now to adopt those UN conventions and try to harmonise the business laws. So that the lesser the conflict, there is lesser chance of dispute, and the business community can expect better results, and this is what our main objective is. Of course, prevention of dispute is the main focus in my council. The name is Indian Council of Arbitration but it is not only for arbitration, its main objective is prevention of disputes.

We have an expertise here in my council—‘Before you enter into a contract, come to us; we will vet it, we will see it and we will give you all guidance in drafting your contracts. Use plain language.’ In fact, in the last three months I have done more than five programs—the use of plain language in your commercial contracts, techniques on how to enter your international joint venture agreement a very common mistake, you know. ‘Mistakes bring poor results, you know; write a proper contract.’

So with this main objective of prevention of disputes, we in the council and the chamber are in the business of making all of our efforts so that disputes do not come. We promote trade and commerce, and never think of having a dispute and going to arbitration or conciliation.

Before I finish, I would like to present a small book which we have written on the new law of arbitration in India.

**CHAIR**—Thank you very much. We might receive this as an exhibit. The document will be incorporated in the trade committee’s records as an exhibit to the inquiry

into Australian trade relations with India. Thank you very much for that.

**Mr Kwatra**—One other small point. Recently the government of India has slashed the tax rates in the new budget that was presented. Now we are just like a tax haven. The tax rates have been slashed to a great extent. And this document that I would like to present gives all of you an update of the Indian tax system.

**CHAIR**—Thank you very much. I will also receive this as an exhibit. The overview of the Indian tax system by Mr Kwatra will be incorporated into the trade committee's records as an exhibit to the inquiry into Australia's trade relations with India.

In introduction, could I say that we have just had before us as our last witness an Australian firm of lawyers who referred to the very considerable delays in your court system. Can you tell me whether these processes that you are incorporating are going to be open to international or, in other words, non-Indian national corporations and individuals conducting business in India in the field of commercial law? Will they, as much as any Indian litigant, be able to turn to conciliation and arbitration in the manner you have described?

**Mr Kwatra**—Yes. In connection with the international business transactions, of course, the judicial reforms that we have already taken out are applicable to all, but it is national and international. Coming to arbitration and conciliation, the new law of arbitration for the first time. In fact, there were separate enactments. It has consolidated the domestic law of arbitration as international law. With international, of course, the norms are the same for the procedure of arbitration. But coming to the question of enforcement of foreign awards, sometimes the question is asked by the foreign partner and the procedure has been laid down in the new law. We are a party to the New York convention which deals with enforcement of foreign awards.

Bilaterally we have our ordinary agreement with a number of countries I have listed in this book, which are the countries where we provide bilateral on a reciprocal basis, for the enforcement of foreign awards. I would like to make it very clear that if any entrepreneur from this country has any doubt, and usually it is the company that is in doubt, that doubt should be clarified. After the award has been given by the arbitrator in any international commercial arbitration, that will get proper enforcement in India with the Indian courts, as with the New York convention, to which Australia is also a party. So this is what the chapter specifically talks about—enforcement of foreign awards in India.

Now coming to the facility of arbitration to an international business convention, we in the council have entered into arbitral service agreements with more than 25 countries now, and a copy of the agreements has been given in this book. Only the day before yesterday I signed an agreement with the International Council for Commercial Arbitration, and we propose to sign a cooperation agreement with other institutions. The objective of these agreements is to assist each other in conducting the arbitration

proceedings.

We have agreed on different areas that we are going to see. If you want, I can give you a copy of the agreement that we have entered into with the Australian institute of arbitrators. Once these institutions enter into agreement the business communities of both countries are very comfortable that, in case some dispute arises by virtue of this agreement, they will get all assistance for resolving the disputes—first to the infrastructure facilities, which we are providing at a world-class level, and secondly, by good arbitrators, trained arbitrators—just as I now mentioned to you. Our next step is to train arbitrators. We are improving, but it takes some time.

With the training courses for arbitrators we will provide from India, we will use the panel of arbitrators of these institutions. It will be the option of the parties to opt for any arbitrator from the panel maintained by the institution in Australia or a panel maintained by the Indian Council of Arbitration in India. So these are the normal rules of appointment of arbitrators. But the only thing is, after these agreements, we are expecting that Australian businessmen need not have any apprehension of not resolving disputes through arbitration with the help of these institutions. I hope I have clarified the point.

**CHAIR**—When there is an arbitration proceeding, is the result of that arbitration then tabled in the court and registered by the court, or how do you identify the legality of the findings that you have reached within some—

**Mr Kwatra**—I am very glad to inform you that so far, under the old act, that is one of the main features which I have been highlighting. Of course, as I said, there is the matter of court intervention. Another feature was that under the old law, after getting the award of the court—I am talking now of domestic arbitration—one had to go to the court for making the rule of the court. That procedure again would take months and years. I am very happy that the new law has eliminated that procedure and the world award is automatically used for domestic enforcement. It is for domestic enforcement.

**CHAIR**—Then do you register it with a registrar or somebody? If that was the finding of an arbitration, do you register that so that it gets a name and a title and then becomes enforceable by the court? Is that what happens?

**Mr Kwatra**—Mostly, in my institutional arbitration, people just comply with the award. Here I would like to make a mention of institutional arbitration and ad hoc arbitration. If an arbitration is ad hoc, ad hoc means that both parties just state, ‘We opted for Mr A.’ I am not against ad hoc arbitration, but the risk taking. There is quite a risk in appointing an ad hoc arbitrator, particularly after the court intervention has been made into law. The object of the law was to supervise the working of the arbitrator. Now the law has minimised this rule. The question is that, after minimisation of the role of the court in the arbitration proceedings, somebody should guard the interests of the parties.

Thereby, we request the business community, instead of opting for an ad hoc arbitrator, to appoint institutions. When you write your contract, write that in case of dispute the matter will be decided as per the rules of A or B institution. Once the arbitration is conducted under the arbitral rules of the institution there is hardly any chance of the award being challenged. In the history of my council, hardly any awards have been challenged in the court. In fact, the provision of arbitration in my country is bad because there is a bad impression of ad hoc arbitration.

So we have given this message to the business community now: use institutional arbitration. We are providing services everywhere. Do not come at this mistake.

There is one thing I would like to say. Even in the case of ad hoc arbitration, where the parties are very confident that Mr A is going to do them justice I am not recommending an institution. I am recommending ad hoc. But he has to run the risk, because after the new law he will become the supreme court. What he decides is final. It is at the risk of the party. We always tell them it is a risk point but leave it on them.

**Senator FORSHAW**—As I understand it, what you are saying is that this is designed to speed up and/or take the place of using protracted legal proceedings. Is that essentially so?

**Mr Kwatra**—Yes.

**Senator FORSHAW**—It is interesting: I would argue—and there may be disagreement from people at the table—that in this country we are heading in the other direction. That is, there is less emphasis on a regulated system of arbitration, particularly in the area of labour law, and more resort to a system of bargaining agreements where, at the end of the day, if a dispute arises the only way it may be dealt with is through a common law legal system or the courts, rather than through an agreed arbitration process, whether it be by agreement or by legislation. I was fascinated by what you were saying. How much of this do you see applicable in labour law disputes as distinct from, say, commercial disputes between companies?

**Mr Kwatra**—In labour matters, among the industrial dispute resolution mechanisms we do not have the process of collective bargaining. There are procedures for compulsory conciliation and compulsory adjudication before the matter goes to the court. The conciliator is appointed—as I understand is the case in Australia also—by the government. It is a government machinery. It is a compulsory conciliation machinery for resolving industrial relations disputes. A similar pattern is followed in India.

I was looking mainly at the commercial context from the business community point of view.

**Senator FORSHAW**—Yes, I understand that.



**Mr Kwatra**—But if I look at this aspect, I think if the same techniques are used as a mediator and conciliator for labour disputes it will go faster. The question is that here everything, the machinery, is in the hands of the government. The conciliator is appointed by the commissioner of labour. It is not the option of a worker in industry to appoint Mr A as a conciliator or a mediator. It is an appointed person and then one has to go and ask for conciliation. This area, I think, needs to be improved.

If I look at it as an academician—I am a teacher of law, so I taught the subject of the collective bargaining process for some time—from that point of view I feel that this area needs to be looked at. When I look at free collective bargaining, okay, we have compulsory adjudication. We are not a free economy; we have to protect the interests of workers—to protect their full right. That is what has been continuing for a long time. Of course, some reforms need to be taken. I am making this statement in my personal capacity and not in the capacity of the Indian Council of Arbitration.

**Senator FORSHAW**—I did not want to get into a discussion about labour law but it was in the context of the argument that is put, that it is an impediment to business, investment or whatever to have a regulatory system as sophisticated as we have had it or the one you are talking about, by its very nature.

**Mr Kwatra**—It is good next to mediation, you see. I think I have answered your question.

**Senator FORSHAW**—Yes, you have.

**Mr NUGENT**—What role, if any, do you see Australian expertise being able to provide you in the implementation of this arbitration process that you are putting into place or want to put into place in India? Do you see a role for people from here assisting in that or will it be done entirely by yourselves? My second question is a much broader question that is not just about arbitration but also about your legal system. As I understand it, your legal system at the moment is closed to outsiders and only residents can practice in India. Do you see any change to that in the foreseeable future?

**Mr Kwatra**—Did you say only residents can practise?

**Mr NUGENT**—Yes, only residents can practise in your courts, as I understand it.

**Mr Kwatra**—Are you referring to the practice of the lawyers?

**Mr NUGENT**—Yes. Do you see any change in that, potentially, as your economy opens up and becomes more of an international economy? I mean, lawyers around the world practice around the world these days.

**Mr Kwatra**—As far as lawyers in India are concerned, they are also practising at

the international level. In fact, our very senior advocate of the Supreme Court is now the president of the International Council of Commercial Arbitration, ICCA, Mr F.S. Nariman. So the legal practice is also turning. In fact, my view is that it is slowly building up to assist the international business community in getting their matters resolved. I hope I have answered your question about this aspect.

**Mr NUGENT**—Do you see the day when Australian legal firms can come and set up shop in New Delhi?

**Mr Kwatra**—That is a very important question—entry of the legal profession in India. We always welcome this for a specific case. Any law firm can come and appear in the court and argue the case and get the things resolved. That is provided our professional services provide for the client in India and for any client in Australia, for resolving the dispute. With respect to opening an office, that is the big question. In fact, the legal profession has not yet adopted that particular thing. It is my understanding that the legal profession does not want a full right to be given to a foreign law firm to establish offices and have a legal practice. The reason may be that there is no reciprocity. If they want to come let them also be allowed to go there.

I use this example: if you recognise my degree, I recognise your law degree. But there is that non-recognition of that law degree for practising in A and B country. That is the right reason to say, 'If you do not recognise, we do not recognise.' It is a matter of reciprocity. But about the individual case, there is no bar, you can come and appear in the case, but the legal profession will not be willing to accept the other. This is what I understand. This is not my statement.

**CHAIR**—You would not have status before the court if you appeared as a foreign practitioner, would you?

**Mr Kwatra**—Yes, they can appear. There is no ban.

**CHAIR**—So you are not required to be accredited to a court to appear as a lawyer in a particular case in India?

**Mr Kwatra**—Once you are representing a party in a case that is pending in the court, you can file your power of attorney and appear in it. That is what the Indian courts apply. They accept that. But there is no reciprocity. An Indian lawyer cannot go to other countries. I do not know about Australia but I know about the USA. I had my law degree but I was asked to do another program in New York to enter the profession. In fact, I got some placements but I said, 'No, I want to go back to my country.' That was 1986.

**Senator FORSHAW**—Do you have a split profession? Do you have solicitors and barristers?

**Mr Kwatra**—There are some. This concept is developing in a big way now because of the international business transactions. That is certainly a new area that is developing. Would you repeat your first question? I do not recollect that.

**Mr NUGENT**—You have talked about picking up some ideas on arbitration and so on in this country. Do you see some role for Australian expertise?

**Mr Kwatra**—Yes. For the past 18 days I have been fortunate to undergo some programs on mediation and conciliation. Today I feel, after undergoing this kind of program, this new culture needs to be developed in India. The breakthrough, I told you, is in mediation, unless some other empowerment comes. Simultaneously, we need to be trained, and I am looking for assistance from Australia on this aspect—because Australia has been, to a great extent, successful in developing this culture in this country. That has been my feeling for the last 18 days, interacting with the churches, lawyers and businessmen in Australia in the Business Council meeting where I made a presentation. I got good feedback. This was the breakthrough.

You have had good experience and, hopefully, with assistance, we can develop the use of ADR in India. I am looking forward to that. Of course, our council cooperation will be there. The Federated Indian Chambers of Commerce will all be there to support these kind of projects with complete help: intellectually, infrastructure-wise, and with any other thing.

**CHAIR**—Many of our retired judges have found it a very interesting career path, post-retirement: Mr Dondas, your brother-in-law included.

**Mr Kwatra**—But, with some of the judges—with due respect—no. A person might be a judge for 40 years but he may not be a successful mediator. Training is a must.

**Senator FORSHAW**—Hear! Hear!

**Mr Kwatra**—The legal community mindset in my country is a major question, and for that we need to have a monumental change in the rules to create the right culture.

**Senator CHILDS**—That is an interesting question. Separation of powers between the judiciary and the government is also something that is cherished in both countries. You talked about training of judges, and some of your conciliators are going to be people who get into a strange position compared with the classic judicial role. How do you handle that training of judges, and also the training of conciliators, if I can put it that way? How do you solve that problem of there being a certain danger that you will not have the same standard, with conciliators, as has long been built up with the judiciary?

**Mr Kwatra**—Before I come to judges, you use the word ‘standard’, but I use the word ‘criteria’ to put a person on a panel, whether as a mediator or an arbitrator. It is a

good question. One of the main qualifications they must have in order to undergo these kinds of programs in Australia is to have gone on an intensive course. Of course, after that training program, one is given a formal test on the last day, and one is given a grade for that.

**Senator CHILDS**—Who gives it, first of all?

**Mr Kwatra**—That is an excellent question. Here in this country, that was the part I enjoyed best: the institution which was conducting the program was not doing the evaluating. Maybe an institution could convince a person to get more people in, and so on. But here I found, on the last day of the program—I am referring to a program organised by LEADR; I am not advocating ABCDs; I am just talking about a procedure, and maybe it is similar in other institutions—the coach and evaluator came from outside. They were mediators. They may not know whom they are to evaluate. It was given out at random. I did not know who would evaluate me. He did not know whether he would meet Kwatra or not.

After making my half-hour mediation with another two trainees, I mediated a case. I argued that case. I put them in different capital cities. An outside person had come and evaluated and given you the certificate—not a certificate, so much as a clear evaluation report. If there was something lacking—I lacked at one place—he mentioned it to me. It was in the report. It is not that he did not give a report. In fact, this report was handed over to me yesterday. I was really very happy. After treating other matters, it mentioned where I lacked. I also realised that I lacked there. This is a real report given by the institution. The evaluator is a third party.

For this kind of evaluation or accreditation by an institution, the system indicates an outsider, a mediator, coming from an institution being elevated like this, because that criteria is like that. The system is like that. After experiencing this, I feel that if you want this kind of system, these kinds of criteria, the standard of making A and B a mediator or a conciliator, we can really expect good results from that person—they will do it justice. Of course, the mediator function is not to give a decision, but learning those techniques of negotiation and the techniques of discussing things can bring the parties together.

I know in the last case I just kept mum. I played my role and in the last 20 minutes the parties cancelled the discussion and came to a conclusion. I did not intervene. Had I intervened at that time, things would have gone wrong. I am not deprecating mediation or conciliation. It is an art; it is a skill.

**Senator CHILDS**—In your original remarks you referred to training judges. In what context did you mean that? It was not quite clear to me.

**Mr Kwatra**—There are two points which I have in mind. One is the change of mindset. The judges have been doing only court cases—they never thought of mediation.

In a number of cases they have been sending people there. There are a large number of courts here. The majority of the judges need to be given the message that, if ever there is an opportunity of the case being conciliated or mediated, they should make use of that possibility and try to bring the parties either into their chamber or provide them with an arbitrator or mediator to finish the case.

The second aspect was promoting a mediation culture, or coordinating mediation with the Law Council. This is the first reason for training them. After they learn the skills of mediation they can use them and they can also guide persons who are possible mediators. Of course, I strongly recommend qualified mediators, but in the long processes of the court, particularly the District Court, where the court finds that a case has been mediated, the court itself can then say, 'We will spend 10 minutes,' and then the case is resolved.

The third aspect is that, with the development of law, with the amendment to laws—I am talking specifically about commercial laws—the norms from private international law are good as there are various terms defined by the International Chamber of Commerce in financing and various aspects. These judges underwent training while they were appointed because their knowledge needed to be expanded, it had to be updated so that the moment something comes they can dispose of the matter without keeping it pending. Sometimes there is a feeling that all cases come with study. There should not be an opportunity for a judge to study—if he can decide, he moves faster. With that objective, again I warned that training was a little bit uncomfortable. They say, 'Have an interactive meeting with them.'

So with that objective I am proposing that we, the council, because we are responsible to the government of India, can propose some kind of interactive meeting with the judiciary at different levels and promote this aspect. I hope I am clear about that.

**CHAIR**—Thank you very much indeed for that. We wish you well in what seems to be an interesting and exciting change. In Australia we have a very real interest in trying to do as you are doing—that is, expedite the process of the law. In your introduction you talked about the cost of litigation and the delays of litigation, and they are endemic, I am afraid. There are obviously very real advantages if the processes can be introduced to expedite the processing of matters. I am sure your concept should assist in doing that.

Mr Kwatra, there will be a transcript of your evidence, which I guess we can send back to you in India and you can have a look at it. Should you wish to correct it, please feel free to do so. Thank you very much indeed for your attendance today. I thank you for both those publications, particularly the book.

If there are other matters you wish to submit to our committee, please feel free to write to our secretary and we would be very pleased to receive that into evidence. We wish you well in your stay here and trust that it proves worth while for you and, in due

course, we will ensure you get a copy of our report.

**Mr Kwatra**—Thank you very much. I would just like to ask a small question.

**CHAIR**—Yes.

**Mr Kwatra**—I have my aims and objectives of what I propose to do in my project. Do you think that the whole circumstance was very convincing?

**CHAIR**—The difficulty that I can see is that we do not know your legal system. I am not too sure of the extent to which the conciliation and arbitration system we have here is therefore relevant to your processes. The degree to which you are going to have legal sanctions is going to be fairly important in persuading parties that it is a genuine alternative to the law. From what we have been told, it is the extent to which the bureaucracy intrudes that makes the delays so difficult.

For your process to work, I suspect you have to minimise the bureaucratic intervention into the processes or it will only be a replication of the delays in the court itself. I think in concept, it is good, but whether it works will depend on those who are going to be your arbitrators. It will depend on getting the bureaucracy out of it and allowing expeditious hearing of matters, because the longer law is delayed, the more law is denied.

Thirdly, it is going to require the sanctions of the court in some way. That is why I asked you about the ratification by the court of the decisions, so that people feel that it is a definitive decision between the litigants. Of course, if you start in one area, in commercial law for example, I feel there is a chance then to spread it into other fields of law. Thank you very much indeed for your evidence.

**Senator CHILDS**—Could I just say that I think in our industrial relations system we have had a long experience of using those techniques. It is just that it is out of favour with the government at the present moment, but there is a long experience of using those techniques in our industrial relations system here in Australia.

**Mr Kwatra**—I can only assure you that we from the chamber, industry and institutions will take all measures to do the best for the country and for the best relations between India and Australia. I thank you very much.

**CHAIR**—Thank you very much indeed.

Resolved (on motion by Senator Forshaw, seconded by Mr Dondas):

That this subcommittee authorises publication of the evidence given before it at public hearing this day.

**Subcommittee adjourned at 3.57 p.m.**