COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE ON CORPORATIONS AND SECURITIES

Reference: Matters arising from the Company Law Review Act 1998

WEDNESDAY, 1 SEPTEMBER 1999

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JOINT COMMITTEE ON CORPORATIONS AND SECURITIES

Wednesday, 1 September 1999

Members: Senator Chaprman *(Chair)*, Senators Conroy, Cooney, Gibson and Murray and Ms Julie Bishop, Mr Cameron, Mr Rudd, Mr Sercombe and Dr Southcott

Senators and members in attendance: Senators Chapman, Conroy, Cooney, Gibson and Murray and Ms Julie Bishop

Terms of reference for the inquiry:

To examine whether:

directors of a listed company should be elected by a proportional voting system;
companies should be required by the Corporations Law to report on compliance with environmental regulation;
listed companies should disclose information, which is disclosed to, or required by, foreign exchanges;
companies should be obliged to report any proceedings instituted against the company for any material breach by the company of the Corporations Law, or trade practices law, and, if so, a summary of the alleged breach and the company's positions in relation to it;
an application to register a proprietary company should include a copy of its constitution;*
listed companies must give at least 28 days notice of a general meeting;
listed companies should be required to disclose more information relating to proxy votes;
whether listed companies should be required by law to establish a corporate governance board and an audit committee;
whether the directors and executive officers of a company should be obliged to report to the auditor any suspicion they might have about any fraud or improper conduct involving the company;
whether a director of a listed company should have the power to call a meeting of members;
whether listed companies must specify a place, fax number and electronic address for the purpose of receiving proxy appointments;
whether listed companies' annual reports should include:
(a)discussion of broad policy for determining the nature and amount of emoluments of board members and senior executives of the company; discussion of the relationship between such policy and the company's performance; and
(b)details of the nature and amount of each of the emolument of each director and each of the five named officers of the company receiving the highest emolument.

**This includes consideration of the proposed amendment to Part 2A.2, Section 117 (2)(k) of the*

Law "Applying for registration" namely, that:
(ka)for a company limited by shares or an unlimited company, a statement that the written agreement referred to in subparagraph (k)(i)

i. includes a summary of the rights and conditions attaching to the shares agreed to be taken up;
ii. sets out the total number of persons who have consented to be members and the information referred to in subparagraphs (k)(i) and (k)(ii);
iii. contains a statement that, if a constitution has not been adopted, the Replaceable Rules will apply and that they create a contract between the members the terms of which may alter if the Replaceable Rules change after the company is registered.

WITNESSES

Committee met at 5.39 p.m.

CHAIR—I declare open this public hearing of the Parliamentary Joint Committee on Corporations and Securities. I welcome the witnesses who will be appearing before the committee this afternoon and early evening. The purpose of this hearing is to take evidence on the operation of sections 249D and 249Q of the Company Law Review Act 1998 and the proposed regulation making power in schedule 6 of the Corporate Law Economic Reform Program Bill 1998. The committee has received 14 written submissions, which it will consider along with the evidence we receive today. These matters will be considered by the committee in the context of its current inquiry into the Company Law Review Act.

Resolved (on motion by **Senator Gibson**, seconded by **Senator Cooney**):

That the submissions be received and made public.

CHAIR—The committee prefers to conduct its hearings in public. However, if there are any matters which witnesses wish to discuss with the committee in camera, we will consider any such request. May I also remind witnesses that giving false or misleading evidence may constitute a contempt of parliament. This hearing is being held while the parliament is sitting so some committee members may have to leave the hearing from time to time if there are votes in either chamber. I hope this will not unduly disrupt proceedings.

[5.40 p.m.]

DEELEY, Dr Christopher Michael, Chairman of the Board, North Ltd

CHAIR—I commence the hearing by welcoming Dr Michael Deeley. We have before us your written submission, which we have numbered 13. Before we proceed, are there any corrections or alterations you need to make to that submission?

Dr Deeley—No.

CHAIR—In that case, I ask you to make an opening statement. Following that, we may proceed to questions.

Dr Deeley—First of all, I thank the committee very much for the opportunity to be able to address them on this matter, which is of great importance to North. I would like to open by saying that the North board is acutely aware of the role of the board and its responsibility to shareholders. We are aware that we are appointed by shareholders to act on their behalf. We are aware that we are responsible to them, that there is a need to keep them informed and to hear their views. We believe that we are very diligent on these matters. Indeed, if there were time, I could demonstrate the lengths that we go to to try and ensure that shareholders are kept informed and consulted.

I want to confine my comments today largely to the specific issue of the calling of extraordinary general meetings because we have very serious concerns about the effect of this on North and, indeed, on the corporate community generally. The first point that I would like to make is that the calling of an extraordinary general meeting by shareholders is an extremely disruptive matter. Not only is there significant cost involved, but also there is considerable publicity which attaches to it and which has to be managed. The issues are extremely important to the company. If a meeting called by shareholders were to go in a direction which was not that proposed by the board it would have some very serious consequences for the company.

For that reason, the issues have to be dealt with at the most senior level. It involves the directors and the senior management. It is not something which can be delegated because, quite clearly, when shareholders call for an extraordinary general meeting it is appropriate that the board should give their personal attention to the matter. As a result of that, it is major distraction to the other business of the company. I can assure you that I and my colleagues, and indeed the senior management, have been very much involved since this EGM was requisitioned on these matters and it has distracted us very considerably from the normal business of running the company on behalf of the shareholders.

Also, in as much as normally at annual general meetings or general meetings we get perhaps 200 or 300 shareholders coming along out of our 67,000 shareholders, there is a need to communicate the issues involved in writing to all the other shareholders who will not be present at the meeting so that they can form a judgment. Preparing, in a short period, written submissions about complex issues in a form which can be readily understood by a large number of shareholders is quite a demanding task. I would therefore make the point that unnecessary EGMs destroy wealth rather than create it. Indeed, if I can use a

parliamentary analogy, it would be equivalent to something like a small number of electors—let us say 1,000 constituents—being allowed to call a special sitting of parliament any time they chose to do so. You can imagine what an effect that would have on the ability to run the parliamentary process. It is a very disruptive process for a company to have to deal with for all sorts of reasons.

I would like to make a few comments on the relationship between companies and their shareholders. The role of companies in the economy is primarily an economic role. They are not political institutions. They are not set up to be political institutions. Their role is primarily to create wealth. Shareholders invest their savings in the company for financial reasons, largely, and they appoint the directors to run the company largely with that in mind.

It is our belief that it is parliament's role to control the relationship between companies and society. When I say, 'parliament's role', I mean all levels of government, whether local, state or federal. This is done through such things as permitting, trade practices, labelling, standards and environment. So the relationship between a company and its shareholders is not a political relationship, it is an economic relationship, and I think there is danger in shareholders subsuming the role of the parliamentary process for this purpose.

I would also make the point that shareholders have many other ways to protect their investment, rather than calling an extraordinary general meeting. AGMs, as the name implies, meet every year and shareholders have ample opportunity to propose resolutions, to ask questions and to raise any matter which they wish to. They have the ability to appoint and remove directors at those meetings and, indeed, a minimum of a third of the directors have to stand for re-election every year.

Shareholders are already by law involved in all major decisions affecting the company. That is to say, if there is likely to be a change of control, or if a substantial part of the company's assets are to be sold, it is necessary—the companies law requires it—that issues of that magnitude get approved by shareholders before they can proceed.

Shareholders have the opportunity to buy and sell shares at any time, on any day. Many of them do so and I have heard it said that, for major public companies, an average of between 10 per cent and 30 per cent of the shareholding changes every year. So shareholders are moving in and out of companies and I would suggest it is largely for economic reasons that they do so.

That brings to me to what is the proper role therefore of EGMs in the corporate governance process. In North's opinion, EGMs fill quite a narrow role. The issues involved need to be urgent if they are not capable of being dealt with at a routine annual general meeting. The issues involved need to be substantial. Because of the considerable distraction and cost of holding such meetings, it would clearly be inappropriate that insignificant issues be the cause of EGMs. EGMs, in my opinion, are only justified when there is no other method which a shareholder has of protecting their investment in the company. Therefore, I think it would be highly desirable to clarify the circumstances that justify EGMs as opposed to all the other mechanisms which shareholders have to involve themselves in the corporate governance of the company. In that respect, I would draw your attention to the guidelines which are given in the Canadian legislation on this matter which I think are helpful.

I think that the rules as they are currently framed for the calling and holding of EGMs are leading to an abuse and rapidly doing so. They are being subsumed into the political process of the nation and there is a tendency for vexatious litigation for the purpose of harming companies, rather than looking after the interests of shareholders. They are increasingly being prompted by the interests of single interest groups and this is very much being facilitated by the Internet. It is now very easy for single interest groups, through the Internet, to gather some of their supporters to call a meeting which embarrasses a company. I believe that this trend is very much against the interests of the majority of shareholders.

In saying this, I would not wish to impute that those shareholders who have recently asked for an extraordinary general meeting at North are not in any way bona fide. I believe that included in those requisitioning shareholders are many shareholders, whom I call genuine shareholders, who are interested in the affairs of the company and are going through a proper process. But I would suggest that many of the other shareholders who make up the 0.2 per cent of shareholders who requisitioned the meeting are not in that category and have prompted the EGM for the purpose of being vexatious.

I would also comment in passing that this trend is likely to have serious effects on overseas companies and overseas investors. To the extent that we are trying to attract, for instance, Sydney as a major international financial centre, if companies believe that in establishing here there is the possibility of themselves being a pawn in the political process of this country, I think they will find it very, very worrying indeed.

With all those things in mind, the disruptive nature of extraordinary general meetings, the fact that the principal role of companies in the economy is to act within the law, which is controlled by governments, and the fact that the board has been appointed by the shareholders to generate wealth to look after the savings of investors—and that is what investors rely on them doing in investing in the company—I think the ability to call an EGM should be restricted primarily to matters which are of substantial economic interest to those involved. I believe it would be wrong for the ability to be vested in one or two individuals. If one set, say, a threshold for calling a meeting of 10 per cent of the total value of the shareholding, it would be possible for one institution by itself to call a meeting. Therefore, I think it is wrong for any one group or few groups of individuals. But, equally, I think it is wrong for a number of individuals who hold an insignificant economic interest in the company to be able to put the company and the other shareholders to the cost and inconvenience of an extraordinary general meeting.

It was for that reason that in our submission we suggested that one of the options that might be considered was at least 100 shareholders, each with a marketable parcel, together with at least 10 per cent of the equity in the company. This is in line with the position in the United States and the United Kingdom. This, it seems to us, would ensure that there was a number of people whose views had to be persuaded that it was in their interest, and also that there was a significant economic interest. Because, in our case, the fact of the matter is that a meeting called by 0.2 per cent of the shareholders is actually imposing a burden on 99.8 per cent of the shareholders. There is a role for extraordinary general meetings but, as the name implies, I think it should relate to extraordinary circumstances.

Our written submission also contains some comments on some administrative problems in the present law. This is the first time we have had an EGM called by shareholders, to my knowledge, and we found it extremely difficult. We received requisitions from 121 diverse people, and the requisitions in the form in which they were originally proposed were not allowable. We didn't want to be dismissive and say, 'Look, they are not allowable.' We wanted to come to some understanding with the shareholders as to what issues they wanted aired, what documents they wanted circulated, whether it was possible to hold the meeting at the same time as the AGM, and whether it was possible for the resolutions to be part of the AGM. There was no-one we could talk to. There was no representative of them.

Regrettably, we had to go through the court process twice. We sought guidance from the Supreme Court as to what was our proper course of action in dealing with this amorphous body on behalf of whom no-one was speaking. Happily, that process gave rise to representatives being appointed, and we were very pleased about that. We were subsequently able to have some very constructive discussions with Mrs Ford and her colleagues which have given rise to a process by which the meeting will be held and what will be circulated and so forth.

Those are the key points which I wish to make, Mr Chairman, in introducing the matter, but I would be very happy to respond to any questions which members of the committee may have.

CHAIR—Thank you very much, Dr Deeley. You referred to various international thresholds for requisitioning of meetings. I think it was five per cent in Canada and—

Dr Deeley—Five per cent in Canada and New Zealand, and in the UK and the US it is 10 per cent. Economic interest is seen as being necessary to justify the calling of a meeting.

CHAIR—Why do you think in Australia 10 per cent is more appropriate than five per cent?

Dr Deeley—As I say, just one single institution often holds 10 per cent of the company's shareholding. So it could be one institution and 99 shareholders with a very small interest. Bearing in mind that it is the 90 per cent that is being put to the cost and the inconvenience, it seems to me that that is a sufficiently small number; it balances the interests of the majority with the interests of the minority who wish to hold the meeting; while at the time, as a sufficiently small number, it is not dismissive of the small groups of shareholders who feel strongly about a given issue.

CHAIR—Have you got any evidence that you can give us that the five per cent which applies in New Zealand and Canada has led to abuse?

Dr Deeley—No, I cannot bring forward evidence on that, largely because I have not studied it. But I would also suggest that this is a very new trend. There are now sites on the Internet which are prompting calling of EGMs for this purpose and giving instructions on how to embarrass companies. So it is a quite new trend. I think we need to be looking to the future in deciding the appropriate criteria, rather than necessarily leaning too heavily on what has been the position in the past.

Senator MURRAY—Dr Deeley, the parliament has accepted that there should be a threshold. Your case is that the threshold is too low. Just to help us, how many shareholders are there in your company?

Dr Deeley—Sixty-seven thousand, roughly.

Senator MURRAY—So one per cent would be 670.

Dr Deeley—Yes.

Senator MURRAY—There are three possibilities for a threshold which could be in the alternative, aren't there? One is the percentage of value. I think the chairman's question about that is relevant, because, frankly, if you were an institution with 10 per cent or five per cent, why shouldn't you be able to call an EGM under appropriate circumstances? It might be legitimate. The second option is a minimum number of shareholders. The third option is a minimum percentage of shareholders. You have dealt with two of those three. Could you explain to me why you would not consider a percentage of shareholders as also a meaningful threshold?

Dr Deeley—There are two reasons. First of all, as I say, companies are primarily economic institutions. Ninety per cent or more of shareholders—I would say 99 per cent—who invest in the company do so for economic reasons. Indeed, they move from company to company as they think their economic interests are served. Therefore, it seems to me that there needs to be a substantial body of the economic interest of the shareholders which is aggrieved or is affected or is desiring to call the meeting. My second—

Senator MURRAY—Can I stop you, if I may, and give you an example so I can get your reaction to it. I think the number of Coles Myer shareholders is in the region of 360,000-odd. For argument's sake, let us say that it is. If the parliament said that the minimum had to be 10 per cent of shareholders, that would be 36,000, which I would suggest to you is a substantial number to organise. The parliament might also say, as an example, that it needs to be one per cent or 1,000 shareholders, whichever is relevant. The point I want to make to you is that it is possible in certain circumstances to visualise a situation where a per cent of shareholders is actually a very substantial number of individual shareholder units.

Dr Deeley—Absolutely.

Senator MURRAY—Given the varied nature of companies with which Corporations Law deals, wouldn't it be more satisfactory from the point of view of the parliament to consider thresholds and the alternative so that the appropriate balance can be found for the appropriate company?

Dr Deeley—Yes. Well, of course, the economic interest does actually cope with that. But, dealing with your point, I think there are three reasons why what probably was relevant in the past is not so relevant in the future. First of all, special interest groups have become adept at obtaining parcels of shares—as little as 50 shares—and distributing one share to each shareholder. This makes it very easy for special interest groups to marshal a large

number of shareholders who have a trivial economic interest. Their whole purpose is to disrupt the company's interest rather than to enhance it.

Secondly, I think we have a responsibility to look after the majority of shareholders as well as allowing the minority a voice. I think we must be mindful of the bulk of shareholders. Certainly the directors feel that they have a prime responsibility to the majority of shareholders. Thirdly, there is the point I made about the Internet. I think the Internet and the ability to communicate in the future have altered the circumstances completely. Therefore, it is very easy for those wishing to cause disruption and who do not have the interests of the majority of shareholders in power to marshal large numbers who have a political desire to bring forward an issue. I am not sure if you were here, Senator Murray, when I made the point to distinguish between the political role, which I believe is properly held by government, and the economic role, which is the role—

Senator MURRAY—Yes, I was here for that.

Dr Deeley—In saying that, I would hasten to add that I in no way would like to leave the impression that companies haven't got a social responsibility. But I take the view quite strongly that any company which does not act in the interests of the community as a whole over a period of time will disappear, and justifiably will do so. But the political process takes care of that.

Senator MURRAY—My last issue is this: we are discussing EGMs, not AGMs. The other alternative available to the parliament to consider to prevent the vexatious and frivolous calling of EGMs is to constrain the topics under which such a meeting could be called. I skimmed this, frankly. I have not read every word, but I did not get the impression that you had dealt with that as a possible, reasonable threshold.

Dr Deeley—We did in our submission. I find it quite difficult to think of subjects which really merit in terms of the urgency, their importance and the appropriateness of their economic impact. But the sorts of issues would clearly be if it was felt that the directors of the whole were acting in a way for which they should be turfed out. If directors were proposing a course of action which was anathema to a large number of shareholders, and there was a danger that, unless it was prevented immediately, it would be too late as it were. As I say, for substantive issues, that is already the case in the Corporations Law. I did draw attention in the submission to the Canadians, where they attempt to define this. They do it by ruling out issues which are not seen as appropriate, and included in those are personal issues and issues which are political in nature.

Senator MURRAY—Are you able to advise the committee whether that has been effective in Canada?

Dr Deeley—I am not. I regret to say that it was only on Wednesday night that I became aware of the need to make a submission. So the research that we have done has been over only the last two or three days. We have an affiliate company in Canada, and I would be happy, if the committee felt it was helpful, to try to get some information on that. I am also not sure as to how long that legislation has been in its current form.

Senator GIBSON—I think it would be useful getting some further evidence about the Canadian proposal.

Dr Deeley—I did attach a very brief excerpt. At the very back page of the submission there is attached some thoughts on this. I am not suggesting that that is necessarily so, but it seemed to us to have some merit. It is done by exemptions, things for which it is not appropriate to call an EGM. In addition to those, there are three criteria that I use: that they are urgent; that they are important; and that there is no other method of dealing with it which is less disruptive.

Senator COONEY—Dr Deeley, this is on the basis of a submission put in by Mrs Erika Ford, whom I think you mentioned before. Have you read her submission?

Dr Deeley—No, I have not.

Senator COONEY—I think it would shorten a lot of the questions I have if I just pass this over. These are the sorts of things she is saying. What she wants is an ethical company. You will see there that she raises issues quite distinct from the economic ones. What she does, in effect, is to challenge the propositions you put; that economic issues are not the sole issue but certainly the predominant one. Would you, as a matter of principle, say, 'No matter how big the shareholders are, if what the shareholders seek is not economically responsible, the company can ignore what the shareholders say.' In other words, if she got enough shareholders to say, 'We don't want to go on with Jabiluka,' which I think is the issue she is raising, would your submission be, even if she had a very substantial number of shareholders, 'There should not be an extraordinary general meeting to discuss that issue.' What I am trying to do is to test where you are going.

Dr Deeley—I think, if the economic issue were large enough, and if there were an urgency about it, that is true. We have been involved with the Jabiluka project since 1991. We have discussed it at length. We have devoted half of the past two annual general meetings to responding to shareholders' questions on Jabiluka, and we have had overwhelming support from the majority of shareholders about this. So it is not a new issue. It is an issue which has been canvassed thoroughly with the shareholders previously and has received overwhelming report.

Secondly, in this particular case, the issue is a company that we have a shareholding in. It is not North; it is another company. It happens to be a subsidiary company of ours. Thirdly, a lot of the premises upon which shareholders are concerned are incorrect. There are a lot of incorrect statements. I believe these are issues which could have been sorted out with those who have a concern. Indeed, in a way, having got used to the disruption of this EGM, we are quite pleased to have the opportunity to be able to put our case in front of all the shareholders. So we are welcoming the EGM in this particular case as an opportunity.

Our only concern is that, as I mentioned previously, there will be 200 or 300 shareholders at the meeting, and there will be 67,000 roughly who will not. And the ability to communicate very complex issues in a written way to a lot of shareholders, most of whom do not read the stuff we send them, is quite difficult. That is why the shareholders appoint directors. I believe that, if the shareholders are not happy with what the directors are

doing, they should get rid of the directors. I also believe that, if they are not happy with their investment in the company, if they really believe that the financial viability, which in our case is only a tiny part of the company, is at risk, then they should sell their shares and place their investment elsewhere.

Senator COONEY—Thank you. Can I go on to the next proposition that has been put on her behalf, I think, by Juliet Forsyth, LLB, BSc, on behalf of North Ethical Shareholders. She says:

> We strongly believe that if the directors hold the view that the shareholders are not legitimate, and simply trying to harass the company, then the directors should use the mechanisms available to them under the Corporations Law to stop the meeting.

I think what she is putting is that, if you think it is a matter of harassment, then you should test it in the courts.

Dr Deeley—We would not wish to do that.

Senator COONEY—You can see there the cases that she has quoted, and I have underlined them, so I will not go through that. What I want to get from you is an answer to those propositions that she puts.

Dr Deeley—Firstly, while this issue was quite clearly prompted by the Wilderness Society and organised by them, we recognise that a substantial number of shareholders are concerned about this issue. Therefore, as I said, we are rather keen to have the opportunity. The only thing is that it is a very clumsy opportunity compared with the annual general meeting. It would have been much easier to respond, as we have done at previous annual general meetings, to any questions on the subject. We believe that the calling of this particular EGM was unnecessary in view of the proximity with the AGM, and the fact that we have had two previous AGMs which have dealt with the matter. It is not an urgent matter, so it is not a necessary process, but we are quite happy to proceed with it. For that reason, we sought to come to arrangements with Mrs Ford and her colleagues which, hopefully, will result in a constructive meeting.

Senator COONEY—In that context, can I ask you about your statement 'Political matters should be left to parliament'? Legislation is often a clumsy sword in the sense that it covers a whole range of companies. It does not necessarily target an issue in the way that she—not only her, of course, to do her justice—and her group want to do a particular action, and a statute could not necessarily do that. But you seem to be saying, 'No matter what the motive, if it's going to interfere with the company, then it should not happen.'

Dr Deeley—I see that there are two separate issues. One of them is the question of whether there should be uranium mining and issues like that. I believe that is a matter for the political process. It is not a matter for 1,000 or even 67,000 shareholders in North to decide national policy on a thing like that. There is a second issue which the shareholders raise, and that is, 'Is this an economic issue? Are we going to lose money out of this?' That is a proper issue. As it happens, it is insignificant. As it happens, it is also incorrect. But that is the sort of issue for which it is appropriate a corporation should receive requests from their shareholders.

If I can use an analogy: I think it would be quite wrong if, in a tobacco company, a thousand shareholders could pass a motion that cigarettes should not be allowed to be sold in the foyers of cinemas. I would happen to approve of that, personally, but it seems to me that that is subsuming the role of the regulatory authorities, which are put there by the political process to act for the whole of society.

Senator COONEY—You would not see the shareholders as owners of the company, rather investors in the company. I am just trying to get the principle, if I can.

Dr Deeley—I have to say, in as much as the shareholders at any time can buy or sell their shares—and between 10 and 30 per cent of them do every year—I think the concept of shareholders as owners, whereas it was true in the past, is becoming less relevant in the future. They are investors in the company. A shareholder today may be not a shareholder tomorrow. Companies find it quite difficult to respond to the interests of those particular shareholders that are your shareholders today. It is a varying population, and it is not possible to try to take account of all their varied interests.

I think the principle things that shareholders look at when they are investing in a company are things like the risk involved, the likely profitability, the capital appreciation, the dividend policy and such issues like that. They are the principal things which, in my observation, 99 per cent of shareholders look at when they are deciding whether to invest in a company.

Senator COONEY—Are the board and the CEO benign tyrants of the company? There are some allegations made in the state I come from that the political leader takes the approach that he is elected for a while and that is it. Do you conceive of the board in that fashion—that the shareholders elect the board, the CEO is appointed and that is as far as they go?

Dr Deeley—No. We go to great lengths to listen to our shareholders. When we send out our notice of an annual general meeting, we send to every shareholder a reply paid envelope and a form inviting their questions. I reply personally to every question that is received. I think in making our decisions, we have to look after the majority of shareholders rather than the minority. That is our role.

Senator COONEY—In economic terms exclusively?

Dr Deeley—Whatever the bulk of shareholders' interests are. I am putting it to you that most of them are interested in the economic and they rely on the political process to handle other matters, whether it is labelling or permitting.

Senator COONEY—Thank you.

CHAIR—Dr Deeley, you said that the people who have requisitioned the EGM represented 0.045 per cent of the company's equity.

Dr Deeley—Yes.

CHAIR—Can you put that in monetary terms?

Dr Deeley—The total value of the company is about $2½ billion. I can tell you that about 40 of the shareholders have got less than a marketable parcel. So we have a substantial number of those who provided the 121 shareholders who really have a minute economic interest in the company. I would need to go back and do my sums. If I tried to quote it out of my head, I would get the decimal point wrong.

CHAIR—I note again in the submission from Ms Ford that the value of the group requisitioning their shares is $1.4 million. Would that be right?

Dr Deeley—I would not argue with that $1.4 million over $2½ billion—let us call it $2.8 billion to make it easy. Probably that 0.045 per cent is about right.

CHAIR—Less than half a 1000th of the company.

Senator COONEY—If nobody else is going to ask, I would not mind intruding.

CHAIR—We are running out of time.

Senator COONEY—I was going to ask about the Internet and whether that sort of technology has enabled people to have a different approach to the company. If you had some time at any time—which you probably have not, but if you did—I would not mind if you could discuss it because it does seem like an interesting concept.

Dr Deeley—There are Internet sites now which give instructions on how to harass companies by this technique.

Senator COONEY—We have not got time now, but I would like to hear a bit more about that.

CHAIR—Dr Deeley, thank you very much for your evidence before the committee this evening and the way in which you have answered our questions.

[6.15 p.m.]

RENNIE, Mr John Campbell, Chairman, Public Company Secretaries Discussion Group, Chartered Institute of Company Secretaries in Australia Ltd

FALCONER, Mr Ian Leslie, Chairman, Legislation Review Committee, Chartered Institute of Company Secretaries in Australia Ltd

CHAIR—I now welcome Mr Ian Falconer and Mr John Rennie on behalf of the Chartered Institute of Company Secretaries. We have before us your submission which we have numbered No. 6. Are there any alterations or errors that you wish to amend in that submission?

Mr Falconer—No, Mr Chairman.

CHAIR—I invite you to make an opening statement, at the conclusion of which we may have some questions for you.

Mr Falconer—Thank you again for seeing us. Since we last met with the committee in Sydney, we have put in a further submission from the institute covering just this question of members' rights to requisition meetings. This submission follows a letter which the institute had previously written to the Hon. Joe Hockey on 29 June setting out the institute's concerns on this matter.

The institute again reassures this committee that it is the belief that shareholders' rights should not be denied for shareholders to nominate items for discussion at a company general meeting, providing that it is a proper purpose. Of course, that right already exists under the law, section 249P, which allows shareholders to put items on the notice of an annual general meeting. The institute sees that as a very clean and efficient method for shareholders' specific matters to be addressed at an annual general meeting which is, of course, quite different from the sort of high cost approach and method which is available under section 249D.

The legislation in 249D does not appear to have adequate regard for the nature of the business which may be considered by shareholders, and that leads to a measure of debate as to the purpose under that section 249Q. Also there is no allowance or consideration as to the timing of a requisitioned extraordinary general meeting in relation to a scheduled annual general meeting.

We heard about the Internet earlier from Dr Deeley. In the 1980s, a provision calling for a hundred shareholders giving them the right to convene a meeting with smaller share registers—also in those days, say 5,000 shareholders on the register—is quite a different situation than we have today with the ability to convene through the Internet and with the mega-registers that we have with, for example, Telstra.

The institute believes that we should consider two changes to the law. Firstly, that the threshold level for requisitioners be increased to the same level that is already required as for the issued capital—that is, a five per cent level—and that those requisitioning shareholders

all have at least a marketable parcel of shares as is now set out in the listing rules. The other point we would like to make is that the proper purpose test of that legislation should be subject to the prior approval of ASIC, as we believe that ASIC is best placed to assess the merits of the items to be discussed at the requisitioned EGM. That is our statement, Mr Chairman, and we welcome questions.

Mr Rennie—I hope this is not taken that I am replying in the absence of Senator Murray, but it might help if I address some of the points that Senators Murray and Cooney raised before we have any further discussion.

I think the concern that we have, with any minimum number of shareholders as distinct from percentage of shareholders, is the vast disparity in the size of companies. What we have tried to draw out in our submission is that Telstra today has 1.4 million shareholders. They have a second tranche which could be as high as 1.8 million but, realistically, will go over two million shareholders. If we say a thousand, there are still 1,999,000 shareholders who are not being consulted. We would therefore say that any minimum number of shareholders does not take account of these large companies.

As we have tried to point out in our submission, if there is an extraordinary general meeting of Telstra called at any time, not only the shareholders but the community as a whole have to bear half that cost, because of the government's interest. We would estimate that cost conservatively at $2 million for a register of two million shareholders. Certainly they would get the benefit of discounted mailings for bulk mailings, but, for the reply paid proxies, the processing and the printing, the general estimate amongst members in the Melbourne institute is that $1 per shareholder for an extraordinary general meeting is a conservative figure.

What we would be saying, and here we do differ slightly from Dr Deeley in our submission, is that we do not challenge the percentage of value. Our focus is on the minimum percentage of shareholders. We submit that the percentage should be the same for value or shareholders. In our submission we focus on five per cent; Dr Deeley, in the case of capital, has focused on 10 per cent. But we do say that the two figures should be equated for value and for number of shareholders.

The other point we would like to make is the one that Ian has focused on, and that is the issue of timing. Although the committee is focused on sections 249D and 249Q, we believe section 249P is of critical importance in this area. That is the section which allows a shareholder to place an item of business on the notice of meeting at a general meeting that has already been called. It has happened, as we said in our previous submission and in evidence in Sydney, in the case of both BHP and Amcor. It is a generally clean and efficient way. There is some cost but it is a measured cost, it does not require a special meeting, and it does not require a special mailing. The shareholders then have the opportunity to address those issues in the general forum of the shareholders.

At the Sydney hearing, we were asked by the chairman of that hearing whether we had consulted with ASIC. We still have not, but in Dr Deeley's submission he also refers to ASIC playing a role. The reason we talked about ASIC is that we think that the prime objective of this inquiry and this committee should be to avoid any meeting convened under

section 249Q having to first go to the courts. By proposing ASIC or some similar body, the body can consider (a) if it a proper purpose and (b) if the timing is right.

If we look at the situation in the Wesfarmers case which we have referred to, Wesfarmers tomorrow will be holding an extraordinary general meeting in Perth which has been convened by their shareholders. That is only one meeting but, if you go to extremes, there would be nothing to stop a different group of 100 Wesfarmers shareholders in three months time convening a separate meeting, and you could have a rolling effect. While the cost in the Wesfarmers letter is estimated to be more than $50,000—and I would be happy to leave the committee with the public documents in that case—in the case of Telstra, as we have said, it is $1 million. We believe therefore that ASIC should have a role not only in terms of the business to be considered, which Dr Deeley has expressed in very great detail, but also in the timing of the meeting.

The other matters were raised by Senator Cooney, and I think they raise two very interesting scenarios. One—and the institute in no way supports this—is the view that has been expressed in certain publications over the years that, if shareholders do not like a business of a company, they have always got the option of selling out. We are not raising that. I am only flagging it as the alternative to shareholders buying into a company specifically with a view to stopping an existing operation. We find that very difficult to accept. It is known that company X performs a certain operation to us. If a shareholder buys into that operation, it does so, effectively, warts and all. In that circumstance, we cannot see section 249Q having any purpose. Therefore, we believe that ASIC would be in a proper position, rather than the courts, to say, 'Basically, you bought into this operation. It is a legal operation. You should not be allowed to convene a meeting. However, you have the right at the next annual general meeting under 249P to have that item put on the notice of meeting.' Chairman, those are the matters that I would like to raise at this time.

CHAIR—Thank you very much, Mr Rennie. Can I ask why you suggest that both the value and the number of shareholders should be fixed at five per cent? There is not really a relationship between the value of shares, necessarily, and the number of shareholders. Why have you fixed on five per cent of both as appropriate?

Mr Rennie—Really as a concession. Were we asked to advise on legislation which was starting out, we would say it would only be value of the interest in the company. But we recognise—and under section 249P, and we are not challenging this—it does also say that at least 100 members can have an item put on the notice of meeting. I think it would be wrong for us to challenge the double threshold or the alternative threshold here if we are basing part of our argument, and a substantial part today, on the validity of the earlier section 249P. But if this committee said there was to be only one test, we would clearly say it should be the value test and not the numerical test.

Senator GIBSON—Why not 10 per cent as in the USA, which is the largest capital market, after all?

Mr Rennie—We would certainly support that. Obviously, we have not been privileged to hear all the background that Dr Deeley has researched. Our figure would certainly be a

minimum of five per cent of shareholders as well as capital if the committee maintains a double threshold.

Senator GIBSON—I raise that because, after all, the rough numbers are that the US capital market is about half of the world's market and the UK is about another 15 per cent. Compared with about 65 per cent of the world, we are a minnow.

Mr Rennie—We are a minnow, but certainly Telstra is not a minnow.

Senator GIBSON—No. I agree with that.

Mr Rennie—We are saying really that the committee and the legislation should focus on a Telstra, and that is why any minimum number of shareholders or any stated 1,000 shareholders in our opinion is not a third alternative.

Senator GIBSON—Good point. Thank you.

CHAIR—Any further questions?

Senator COONEY—The extraordinary general meeting of Wesfarmers is called, it seems, with respect to conservation. I think Dr Deeley's special meeting was because of Jabiluka, and that brings in this issue of non-economic matters which shareholders might want to deal with. Would you agree with Dr Deeley that any consideration must have an economic basis, or a large economic basis in any event? If that is so, what sort of principle should we approach the interests of shareholders on? I will ask a series of questions and then you can answer them all at once.

Do we say, 'Look, you are really not the owners', which used to be the old way of looking at things, but really now you purchase an interest in the company, and that is as far as you can go. If that is so, can we change the rules now for shareholders who might have bought their shares on a different basis to the one we now go on with? That is the other issue I was interested in. Finally, do we leave such issues which people later on in the night will call ethical issues? We have a submission later on from the North Ethical Shareholders. Have they got no merit at all in their approach?

Mr Rennie—Perhaps I will lead off, and then certainly Mr Falconer will follow me because he is with a mining company. He will be attending the Wesfarmers meeting tomorrow, in association with other matters, in Perth. I am sure he would be happy to provide a report of that meeting.

I think the problem I can see is that in each case the company is undertaking a business that has been authorised or, as I understand it, in the case of Wesfarmers, carried on in conjunction with the state government. I would see great difficulty, myself, in a proper purpose ever being to challenge an activity that is carried on, either with government support, or certainly in accordance with government licences, for which there could be a considerable cost to the company if it was to break those licences. I would be arguing personally that the test under 249Q would very rarely be satisfied in such a case. I am not saying it is not an issue to be raised at an annual meeting under section 249P but, as Dr

Deeley said, the extraordinary general meeting should be just that. I would very rarely see that type of circumstance meeting that test.

Mr Falconer—We heard Dr Deeley say that the issue with North has been there for eight years and there have been other opportunities for those to be raised and, indeed, they have been raised at annual meetings. What we are concerned about is the extraordinary general meeting and the ability to do that. I presume it is the same in the case of Wesfarmers. I do not know how long that has been a matter for the company.

Senator COONEY—The issue for us is that we have to say that, even though you are shareholders, and even though you are minority shareholders, you are going to be excluded from what you as shareholders might have thought was your right. What principle would you do that on? Do you look at the majority overall interest?

Mr Rennie—Could I firstly say that the minority shareholders are not being denied that right. They can always follow the other section and have the item placed on the notice of meeting. As I mentioned, both BHP and Amcor faced that situation last year. The additional cost which we brought out in one of our earlier submissions really is only the extra mailing cost. The size of the documentation may put you into a different mailing category. As Dr Deeley said, by focusing on the annual general meeting, as North have, there is still considerable disruption to management's time. What we are saying is that we do not believe that issue that you have raised ever comes up or, if so, only exceptionally, outside of the scenario of an annual general meeting.

CHAIR—Are there any further questions? Thank you very much for your evidence.

Mr Falconer—Could I add something?

CHAIR—Yes, certainly.

Mr Falconer—Following the meetings in Sydney, the committee was looking for evidence on certain matters, as it is indeed today, in relation to the voting at shareholder meetings and the lodgment of proxy voting intentions. As a result of that inquiry, I did some research on the voting and the lodgment of proxies at the Rio Tinto meetings and sent that through to the secretary. I would like to quickly mention that it is relevant here in that over the last six years Rio Tinto Limited has had two extraordinary general meetings. One was in December 1995, and that was to consider a matter of extreme significance to the company and its shareholders. That was to do with the merger that CRA had with RTZ, as it was in those days, and was of huge importance to everybody. It was taken by poll. The level of voting was 62.8 per cent of shares voted at that meeting, indicating the importance of it. There was 33.8 per cent of shareholders voted with their 62.8 per cent. That compared with the annual meeting the year before considering routine matters where only 10 per cent of shares actually lodged a proxy and, of course, it was not used because we did not go to a poll.

The second EGM was in February 1998, which was to do also with an important issue relating to a share buyback. Again, the voting was at a much higher level than the AGM. I just wanted to bring that out. It is in the papers that I am sure that you have. It does

underline the different nature of an EGM, dealing with those very significant issues facing the company and things that have to be dealt with quickly that cannot wait until the next scheduled AGM.

CHAIR—Thank you very much, Mr Falconer.

Senator COONEY—Since we have got a bit of time, I am just fascinated with this, if you like, philosophical side of things. Can I just pass you over this? This is a submission from the BHP Shareholders for Social Responsibility. I do treat them most seriously, and I ask you about it. Why don't I just pass it over to you and you can read it? It says:

It is Government policy to make Australians a nation of shareholders. It presumably is also policy that Australia is a democratic country.

It goes on and then says we should have democratic rights. We are calling the Jabiluka people, so I would be interested to have your thoughts on it, and what I would do is put your thoughts to these people later tonight.

Mr Rennie—Because there are other people in the room, can I read one of the comments:

It is exceedingly difficult to bring together 100 shareholders, of similar views, otherwise unknown to one another. This is an extremely high hurdle.

Senator COONEY—And I think they go on to say, just to make it clear to others in the room, that they want it lowered rather than increased.

Mr Rennie—Firstly, the experience is that if you send a circular around—and we will use here a body of shareholders, a shareholders association—and ask if they would be supportive of a motion to convene an EGM in a particular company, it will be the same way that people just tick boxes on a proxy form. A lot of people just tick boxes; they do not give it any thought. Numerically, I would have thought that, to get together 100 Telstra shareholders, we could almost do it in our office, let alone through the Internet or any formal association. So I think, Ian, that our experience is such that we would totally refute that. They do not have to have identical interests. The question is: would they lend their names to an EGM being called to consider certain issues? And if they are a member of that shareholding association or grouping, they would see it as part of their role to tick the box without really knowing what was going to be debated.

Senator COONEY—What about shareholders in a company like Telstra, which clearly is going to be, I should think, in any event a successful company forever and the shareholders really are going to have good and high returns? Should shareholders in a company like that be simply content with owning the shares in the sense that they have purchased the shares, they are assured of a return and that is as far as the interest should go? Really, behind that question is this concept of: what is a shareholder and is it now changing?

Mr Rennie—Again, there is an AGM, an annual general meeting, and, therefore, those shareholders have that right. Obviously, if all two million were going to turn up together, you would need about 10 football stadiums, so there is a logistical question there as well.

But, even at the five per cent threshold that we have put up in our submission, in the Telstra enlarged by phase 2, there would be over two million shareholders not being consulted as to whether that meeting should be held or not. As I mentioned before, the government would bear—and therefore the community—half the cost of holding that meeting. We just cannot see that that is a valid use of funds, except in extraordinary circumstances.

Mr Falconer—Could I just add, Mr Chairman, being from the resources industry, that many companies in the resources industry do obviously recognise social responsibilities, environmental issues, health and safety, and there is a growing trend to reporting separately to shareholders on those issues. In my company's case, that report has been improved over the four years that it has been sent to shareholders. That improvement comes through discussions with the various community groups that are involved in wanting that reporting, and the company sees it as very important to have social acceptance of the work of the company in the communities in which the company operates. So a lot of that is happening, I feel.

CHAIR—Again, Mr Falconer, Mr Rennie, thank you very much for your appearance before the committee and your answers to questions.

[6.40 p.m.]

FORD, Ms Erika Johanne, Representative, North Ethical Shareholders

FORSYTH, Ms Juliet Elizabeth, Representative, North Ethical Shareholders

POPPINS, Mr John Francis, Coordinator, BHP Shareholders for Social Responsibility; and committee member, Amcor Green Shareholders

CHAIR—I now welcome the North Ethical Shareholders. Do you have any comment to make on the capacity in which you appear?

Mr Poppins—I am a member of the North group but my primary reason for being here today is to represent the Amcor and BHP groups.

CHAIR—Thank you. We have before us your submission from the North Ethical Shareholders which we have numbered 7. We do have a submission from BHP Shareholders for Social Responsibility, submission No. 8. Before we commence with your opening statements, are there any corrections you wish to make to the submission?

Ms Ford—Yes, I will just speak to mine. I actually did my submission at about half past one in the morning the night before it was due in. I have actually put down 249D and 249P instead of Q. If that P could be substituted for Q, I think that is all I need to add, thank you.

CHAIR—Are there any alterations to yours, Mr Poppins?

Mr Poppins—Not that I am aware of, thank you.

Ms Forsyth—I have some alterations. As mine was very rushed as well I was hoping to give you an additional paper that I have prepared which has additional information, especially with regard to section 1322 of the Corporations Law and how that relates. I realise this is probably not standard procedure but due to the time period I was hoping that you would accept it. It might give you a chance to follow my oral submission as well.

CHAIR—Is it the wish of the committee that the document be received as evidence? There being no objection, it is so ordered. Ms Ford, would you like to make an opening statement?

Ms Ford—Yes, please. I am here very unashamedly as a defendant who became involved in a law case recently which called for an EGM to discuss Jabiluka. I hasten to add that at no time has our submission actually been for anti-uranium at all. It was very much in view of some company activity which our subsidiary, Energy Resources of Australia, was involved in. We did see an urgent nature requiring a meeting in its own time and space to discuss the issues. Dr Deeley said earlier that shareholders look at risk, profitability, capital appreciation and corporate governance. These are all the issues which we collectively had problems accepting that North and its subsidiary were handling in this Jabiluka project.

There has been a lot of media attention over the last 18 months which we believe is actually damaging to North—a company that I invested in—as a gold and steel producer with some forestry industries. I was certainly not aware of its holdings to ERA when I purchased the shares three years ago—nor were any of my other shareholders that I represent.

We are a rinky-dink group of shareholders. As I have mentioned in our submission, we hold an average of $8,000 shares each. There is no question that our group have gone out and bought one or two shares and traded off-market. This requisition for the EGM has required over a year to pull these people together.

We have been described as more grey than green. Certainly the issues which brought us together were made known through the Wilderness Society, of which I am certainly not a member, but I have to give my hat to the organisation which has at least been able to make some of the issues regarding Jabiluka available to shareholders with an interest—whereas their own companies have not given that information. There is actually a question of how much information we as shareholders have received about a project which has been damned publicly now for a couple of years.

There is the issue of being able to write letters to the chairman to have information made available and of attending an AGM, in fact I had hoped to turn up to the information session in Melbourne last year, but I could not get through, because of protesters. This morning I got up to go to work; again on the radio there are protesters at North House. Dr Deeley's home was trashed on the weekend. These are certainly not activities endorsed by the membership of the ethical shareholders. We just happened to be a collective of shareholders with concerns about the company of which we consider ourselves owners.

Sometimes management can take a very parochial view of the people who actually hold the money in their companies. But I know when I go shopping in Coles-Myer—or any of the other stores in which I have got a pecuniary interest—I walk in and I look the place over as a part owner. I certainly never buy into a company which I believe has any damaging or immoral activities. I certainly also recognise the fact that sometimes, ahead of legislation, popular opinion can change policy—hence, our move to work with North and try and lead them into the light, rather than yelling and screaming, with money being wasted on a project that really collectively I do not think has much hope. Just to support some of the legal sides to our submission, perhaps I can hand over to Juliet who did a lot of the research that allowed us to go forth.

Ms Forsyth—I want to clarify for you that I am not a qualified lawyer but that I have done over 200 hours of research on this section and would like to answer any questions that you have. I have talked a bit about our frustration with the consultation process but we have got ourselves here, are happy to speak to you and thank you for the opportunity.

I am going to follow the second page of my submission through, so you may or may not wish to read along. We believe that part 2G.2 of the Corporations Law and, in particular, section 249D, section 249E and sections 249N to P are fundamental to shareholder democracy and corporate accountability. They are part of a system of checks and balances

that is essential to encouraging investment in Australian companies and curbing inappropriate behaviour by boards of directors.

There is an increasing trend in Australia for shareholders to want to have a say in the running of the companies in which they invest. This may be because of shifts in corporate governance, larger percentages of Australians becoming investors or a greater awareness of ethics in investing. Whatever the reason, we believe that input by shareholders is really to be encouraged.

Section 249D allows shareholders to have a say in the running of the companies they invest in. It allows shareholders who disagree with their company's investments or activities to try to guide the company towards what they see as a more responsible future. That was of particular concern to us because, in our state of having a very large shareholding and wanting to move towards more ethical investment, we certainly did not want to sell out of Australian companies. We really believed in Australian investment but, at the same time, did not want to be investing in companies that we were not happy with. So we wanted to start moving towards ethical investment in a direct way in terms of putting our money where we thought positive projects were happening as well as guiding the companies that we owned towards what we saw as more ethical issues.

Changes to the law can facilitate a smoother operation of the process of calling an EGM by facilitating shareholder input and dialogue between the company and its shareholders and clarifying the law. There is a substantial body of law on this section; it is not just what appears on the face of the Corporations Law. There is a huge body of common law behind it that has been developed over the past century and that deals with a lot of the issues that have been brought up today: vexatious issues—issues of the company having to spend a lot of money and weighing that up against the issues at stake—and all the types of things that are really thoroughly dealt with by the common law. So I wanted to focus a little bit on that.

On the other hand, changes to the law can hamper the process of responsible development, oppress minority shareholders and discourage individuals from investing in Australian companies. That could have been the case if we had not had this avenue open to us to really find out what was happening with the Jabiluka project, to get information from the company about whether it was financially viable and to see what their opinions were on environmental issues et cetera, which we had not received by other means.

I believe the decision on changes in the Corporations Law is fundamental to the direction the law is going to go in general. It is a choice between maintaining the improvements in corporate governance that we have had over the past decade entrenching shareholder democracy or discouraging board accountability and responsible decision making. It is a choice between entrusting shareholders and companies to self-regulate—I use that word in very broad terms—or leaving ethical issues up to governments imposing more command and control approaches—more regulatory approaches—which I will go through a little bit later.

The federal government has been saying, 'We don't want to use command and control approaches. We want to move towards less regulation of companies and we want market forces to start dictating such issues as environmental ones.' So within the context of government policy that is an important point: do we want to stifle market forces by directing

ethical investments or not? I have outlined in the submission the difficulties that shareholders face in reaching the hurdle, although I think Erika has probably dealt with that in her submission as well.

The other hurdle to shareholders getting involved is the legal issue. Drafting a requisition letter is extraordinarily difficult because all sorts of resolutions are held by the common law to be usurping the power of the board—all sorts of things—so you need to get really top level QC advice. You need it to be double checked and this is extraordinarily expensive for a minority shareholder who has got a concern. So we would seek clarification of the law to try to make it easier for both sides as well as a smoother process overall. We hope the committee will try to alleviate that burden on shareholders, who really should not have to put their house on the line because of a view they take about their company.

Dr Deeley pointed out that there is no guidance as to how the company should liaise with the 100 shareholders and there has been no guidance in the common law either. North took the step of serving my stepmother with papers at 1 o'clock, I think it was, in the afternoon for her to appear in court the next day to try to get this resolved. As you can imagine, that was quite unfortunate because we felt very badly about that. We did not have any time to get legal representation and it was problematic, especially as it was a deceased estate, and probably quite inappropriate.

It is my understanding that there have been changes to the ASX rules and that off-market transfers are no longer available, so the issue of people buying 500 shares and selling one to each of their friends to call a meeting is not so much of a problem any more. There are so many other mechanisms in the law to deal with that issue that I do not know if that change had to happen, but it is an extra protection for companies and this may, in fact, alleviate the problems that have caused this inquiry to happen.

North Ethical Shareholders would not object to a prescription in the legislation that you have to hold a marketable quantity of shares. North Ethical Shareholders, as Erika has said, have mostly had shares in the company for a long time and see it as inappropriate for someone with one share to try to harass the company. That is certainly not where we are coming from.

Raising the number of shareholders is not really going to address the problem and it is going to whittle away at shareholder democracy. I have actually done a little bit of research. Section 241 of the companies code was changed in 1983 so that there had to be 100 shareholders with a minimum level of 200—average paid-up sum—on those shares. That was continued in section 246 of the Corporations Law but has been taken away.

On another historical note, I have just found a law textbook which pointed out the problems of having five per cent. If you have a level of five per cent, what do you do in a really large company where shareholders have very genuine concerns? It would be very expensive for one shareholder to put an advertisement in the papers to get the people involved to make that contact and not many of these shareholders would have access through shareholder associations or the like to get that out in a cheaper forum. So it is doubtful that someone is going to spend $100,000 to put an advertisement in the paper to get all those shareholdings.

It is a high hurdle, even though there is a lot of people who agree with what North Ethical Shareholders have done, which has been confirmed by all sorts of people ringing up after they have heard about it through the media. We did not have immediate access to those people because we did not have the finances to put an advertisement in the paper or the like. So we would call on the committee to make it easier for shareholders to get together in some way, whether this would be a lowering of the hurdle but lifting the amount of shares that you should have to have, or leaving it as 100 shares. We would leave that up to you to decide.

I want to look at section 249Q. It is certainly not the case, as might have been indicated earlier, that companies are unduly oppressed by minority shareholders as a result of section 249D. There is a whole range of legal grounds upon which companies can challenge the notices of shareholders. These mechanisms protect the company from shareholders holding meetings simply to harass the company and also from legitimate shareholders whose interests are not urgent enough for the holding of a meeting. Section 13(22) of the Corporations Law allows for an extension of time, so the company can say, 'There is going to be no prejudice to you shareholders if your issues are dealt with at the AGM. So, no, you cannot have the meeting.'

Such things as the costs to the company and the amount of resources that they would have to divert are things that are considered. So, in the example that was given of 100 Telstra shareholders, if it is going to cost $2 million—or whatever the figure was—to hold the meeting, that would be weighed up against the concerns of the 100 shareholders. I do not know any shareholders who would go to court knowing those odds—having to put their house on the line, pay QCs' fees and all that—so I think those issues are very well dealt with already in the Corporations Law.

CHAIR—Can I ask you to address your main points and your recommendations, because we do have your written submission to which we will give detailed consideration. Please highlight your main points and your recommendations to the committee and then give us a chance to ask questions, which is the main purpose of the hearing.

Ms Forsyth—Okay. I have not really addressed in my submission the issues of substantial injustice and the thresholds under 13(22) of the Corporations Law. That would just take too long but I want to point out that there is a whole lot of case law to deal with these issues and the concerns of the company.

The other main point I want to make is the one I brought up before: the government's policy of encouraging market based solutions and the government's policy in trying to thwart those solutions. Those are a little bit at odds. I have listed a couple of examples of where meetings have not been able to happen because it was oppressive on the minority and various other things.

I ask for clarification of the law on the certain issue of whether you have to have resolutions to call a meeting. It is unclear whether you can call a meeting simply to make inquiries of the directors and get information or whether you actually have resolutions. The Corporations Law says you must state 'any' resolutions; it does not say 'the' resolutions. The case law is very unclear on this. It has never actually happened, although there are

indications that it might be a valid object simply to make inquiries of the directors. That would be a valuable thing to clarify.

We urge the committee to recommend that shareholders can call a meeting to make inquiries of directors. That would simplify the process of drafting the letter and also stop ambit claims. For example, shareholders might be inclined to say, 'We want to sack the board because we know this under the law is a valid object,' even though what they want to do is actually get information or get an independent report, so there is a recommendation that that be clarified.

I want to make the connection between the test of valid objects and proper purpose and how they are interlinked, proper purpose being more of a subjective test and valid objects being more of an objective test on whether the requisition letter is valid. The valid objects test is another safeguard for companies in that they are not going to have to call AGMs in circumstances where there are not valid objects—once again being a separate ground. That really concludes listing all my main points. I look forward to any more consultation that the committee might have.

CHAIR—Mr Poppins, do you want to add anything?

Mr Poppins—If I could speak briefly to the submissions that I lodged by fax, I am a little concerned about the Amcor one. Is it not listed? I did fax it about seven minutes before the BHP one. They are very similar because of lack of time to prepare. I have the original here with the fax time and date noted. I would like it recorded that both groups sought to present some material.

CHAIR—It seems that we have only received the BHP submission.

Mr Poppins—I faxed the Amcor one, which has differences because of different background, at 15.25 on Friday, and the BHP one at 15.32.

CHAIR—We will check the secretariat records.

Mr Poppins—I could give you the original but I have not got multiple copies of it, unfortunately. It is almost identical to the BHP one.

CHAIR—We can get copies made, if you want to tender that.

Mr Poppins—Thank you very much.

CHAIR—We will receive that as a submission, in case we have not received it at the secretariat.

Mr Poppins—There are just a few small differences. I came primarily representing the Amcor Green Shareholders and BHP Shareholders for Social Responsibility. We had only a couple of days notice—by accident, virtually—of the inquiry so we had very little time to prepare anything. I had to quickly get some consensus from the key players in both cases, by phone, and put something in. I personally happen to be also a member of the North Group

and a member of the Australian Shareholders Association. Like a lot of us who are growing a bit greyer, I am becoming more and more dependent on the shareholdings as superannuation, and hold quite a wide ranging share portfolio. I have accumulated these shares since I began work—a long time.

The Amcor and BHP groups have not sought to use these particular provisions of the legislation and have had no intentions of so doing, but we are anxious to maintain, in particular, the rights of shareholders to put resolutions to AGMs and we are pleased to hear all parties here today strongly supporting that right. We have seen no cause to go to the extent of an EGM so far as those companies are concerned—Amcor and BHP. Our interest in the legislation is the general one of shareholder democracy. My interest today is to listen to the discussion of all parties and the questions that you are putting, in order to gain a broader appreciation of the issues and, hopefully, to contribute to any further development of the criteria for requisitioning an EGM—bearing in mind our concern for shareholders' rights.

I would particularly like to draw the committee's attention to the difficulty of bringing together 100 shareholders. Dr Deeley stated that in this day of the Internet, this is very quick and easy. I wish it were so. In the case of Amcor, for example, which is a reasonably mature group, it has probably 150 members on its list. It has taken some years to get to this level. The majority of those members are not on the Internet. They certainly have not been obtained that way. It is unfortunate it is not possible to communicate with them as easily as we would like, because they are all over Australia. It is a very diffuse group and it has been very difficult to put it together.

I would say I have a number of levels of involvement with Amcor, apart from a reasonably substantial shareholding and other family holdings, which are even more substantial. I see the company from other perspectives, being involved as a representative on the Community Environment Consultative Committee at the Maryvale Mill, and their level of disclosure and discussion in public in that area is excellent. I have held these shares for 30 years. I just have one problem area—and this is typical with what happens insofar as some shareholders are concerned.

There seems to be a blind spot, in Amcor's case, in terms of forest practices, with logging according to even the codes of forest practice. If one has bought shares a long way back—as I did in North: I bought over 20 years ago and I bought at that time into an iron ore mining company, which then changed its constitution by acquisition and merger to take in things like uranium; these shareholdings go back pre-1985—one does not readily sell these long-term investments, for obvious reasons, without first considering there might be ways, rather than just taking that as a way out, of perhaps changing some small aspects of the company's performance where one has concerns.

I have a problem with the description that is sometimes bandied about, and it has surfaced here, of ethical shareholders as single issue shareholders. I am very much dependent now on my dividend income. I am typical of certainly the majority of the BHP and Amcor groups, which are fairly long established—BHP group goes back to 1994, Amcor early 1997. We are all greying. We are all bottom-drawer investors. We have tended to buy a long time back and are patient investors; we are not in-and-out traders; we tend to have some identification with the companies we invest in. Many of us will not invest in some types of

companies for ethical reasons; but, as I say, we have some investments in which we have concerns with just some aspects of their work, and we are very supportive of legislation which provides some access for shareholders not only to question the board but, more importantly, to communicate with other shareholders.

I have a small side comment on something else that was said earlier: I cannot speak for the ASA as I am not here representing them, but I am a member and I happen to know something about its views and stated policies. One of its stated policies is that companies should, in all fairness to the shareholders, disclose political donations. Some companies still do not do this. It has been said that companies are primarily economic in purpose, but the level of political donations from some of these companies is such as to give rise to some concerns as to disclosure.

The distribution of the donations seems to represent board preferences, rather than the range of political interests likely to be held by the work force, suppliers, customers and community. Companies do not behave apolitically. Small shareholders have not the resources to address the political situation in the same way, but they would hold a much wider diversity of opinions, and I do not think companies can walk away from the fact that they do behave politically and that they should not expect small shareholders not to take an interest in political issues nor claim that we should be focusing purely and simply on the financial side only. We conceive of ourselves as being multiple issue people. We are dependent on the financial side but I do not want to earn my money regardless of the cost, particularly to the environment and the community. Thank you very much.

CHAIR—Thank you very much, Mr Poppins. Accepting the need for shareholder democracy, the shareholders who requisitioned this meeting to which reference has been made, as indicated by North in their submission, represent in total 0.045 per cent of equity or, as I worked it out, about 1/1800th of the value of the company. Don't you think you need to have some reasonable prospect of succeeding in the matters you will bring before the EGM before putting the other 1799/1800ths of the company to the considerable expense, as has already been given in evidence, of an extraordinary general meeting being requisitioned?

Ms Ford—I do.

CHAIR—Therefore, shouldn't you have to garner perhaps more support than 0.045 per cent of the equity of the company before being able to requisition that EGM?

Ms Ford—Perhaps I can attack that in two parts. First and foremost, as a shareholder in North who was quite aware of some of the issues in Jabiluka, having read the polls that 67 per cent of Australians are absolutely anti-mining in that particular little spot in the world, one would have to say, 'Okay, I've got $10,000 worth of shares in this company. I certainly didn't buy into a company which mines uranium. With the fact that they went off without my permission and bought it, I should be able to ask questions of directors.' When they are not giving me the information, I should be able to ask.

CHAIR—But they bought this company some years ago. Why haven't you taken that opportunity at the annual general meeting to ask these questions?

Ms Ford—Because their last information session down here in Melbourne was cancelled and it was, I think, in the year before I was living in England.

CHAIR—The ownership of ERA goes back prior to just the last couple of years.

Ms Ford—Yes. But the point I made earlier was that a lot of the shareholders were not even aware. They have become aware of links between ERA and North in the last 12 to 18 months since there has been media attention about the protests. Certainly, if you did not know what ERA was, why would you presume when going through an annual report that there was anything controversial about it?

The reporting has been one of the issues that has really been brought out by a lot of the shareholders who came into it, as I did. The Wilderness Society originally contacted me just over a year ago off the share registry. It was only a few months before that that I had learnt about the links between the two companies. North have not made the extent of the Jabiluka uranium mine nor the capital very obvious to their shareholders.

CHAIR—What do you mean by the extent of the mine?

Ms Ford—The extent financially, and also the implications upon the parent company.

CHAIR—Were you aware of the Ranger mine?

Ms Ford—Yes, certainly I was. But that is not within the confines of the Kakadu National Park, which is what all the hullabaloo is about.

CHAIR—Neither is Jabiluka.

Ms Ford—Yes.

CHAIR—That is the sort of misinformation that occurs. Jabiluka is not within the confines of the park.

Mr Poppins—That is a semantic point, I would beg to comment. As a long-term shareholder, I was concerned when ERA was purchased. I was not triggered to do anything, but I have been watching anxiously. The position of Ranger and Jabiluka geographically is within the park. No mathematician would accept that boundaries, drawn the way they are, are not inclusive.

I have watched with some concern as Ranger made assurances of total retention and control of water and effluence, and there have been progressive demands to release materials over the years. As a small farmer in the Strzeleckis, I am also very well aware of what activities that I indulge in do at the headquarters of the Narracan Creek in terms of sediment and other dispersal within a catchment. It is not really valid to say that they are not within the park. They are fully enclosed by the park; they are within the water catchments.

CHAIR—But these are not issues that have suddenly arisen. These are issues—if they are issues—that have been there for several years. Why is it not competent for these issues to be raised at an annual general meeting?

Mr Poppins—In terms of public perception, certainly it is only Jabiluka that has roused me far enough to display an interest. That is all I can say. I should not interrupt further.

Ms Forsyth—We decided to trigger it urgently because there was a further $200 million at stake in trying to push ahead with the project or not. That was a critical issue. It was a financial issue. Also there was the Senate inquiry producing scathing reports, as we knew it would, and their financial implications for the company, as well as the world heritage aspects which have financial implications.

Only yesterday, there was an article in the *Age* saying that, if Australia does not pull its socks up in environmental issues, it will face trade barriers in international markets and things like that. It was the connection with the financial issues of these public relations implications as well as the direct $200 million issue that was of direct financial importance. You say, 'Why at an AGM?' The issue had to be dealt with quickly. But, more important than that, the issue had to be dealt with not in amongst arguing over director's remuneration or in the five minutes at the end of the meeting; it needed a forum for real discussion and debate. I hope that answers your questions.

CHAIR—You have indicated that there were certain events that triggered this. You have referred to a Senate committee. As it happened, quite by coincidence, I chaired the Senate Select Committee into Uranium Mining, which found quite differently. That was a committee that worked for more than 12 months of inquiry—rather than this one, that was a fairly brief inquiry—and found, on a bipartisan basis, that there were no reasons why uranium mining should not proceed.

Ms Forsyth—For the shareholders certainly there are those ethical issues, but there are also the financial implications of this project receiving scathing reports, mention of the European Parliament. It was out in the media that the Senate committee had said various things that were very bad PR for the company. North was directly implicated or links were drawn, obviously, and that has a direct financial bearing on the company.

CHAIR—You have not answered my question about the prospects of success of any action that you are seeking to take as a relatively small group of shareholders and the cost to which you are putting the overwhelming majority of shareholders.

Ms Ford—Certainly with what I know of Amcor—I can call on you here, John—and the questions put to the annual general meeting last year, you received a 130 votes for every ethical shareholder, didn't you?

Mr Poppins—In the case of Amcor, it is quite astonishing what happens when you do canvass the shareholders. We controlled around 200,000 shares at the last AGM; that is about $1½ million worth. They were all long-term shareholders, not toy ones—I do not approve of those sorts of things.

It was interesting: if one put up very moderate resolutions with some reasonable arguments, I was quite astonished at the number of shareholders who supported those resolutions. We controlled 200,000 shares, and 26 million proxies were counted in favour of those resolutions. It was a quite astonishing factor.

CHAIR—What percentage of the company did that represent?

Mr Poppins—The thought that that many people would read the papers and then go and tick the boxes and put a stamp on an envelope did astonish me. It is a case study.

CHAIR—That is in terms of proxies?

Mr Poppins—Yes.

CHAIR—What did that represent in terms of the capital of the company?

Mr Poppins—I am not sure in terms of the percentage of the capital of the company, and we do not have a breakdown of the number of shareholders but we believe it was probably the smaller shareholders. Probably we had not canvassed the major shareholders, and 152 million shares voted proxies the other way, but that is a significant proportion of the total voted share body. I do not know what the total share body is.

CHAIR—Are there further questions?

Ms Ford—I just want to raise one other quick issue. What we hope to achieve from the EGM is to canvass the issues. The document that we have sent out is extraordinary. It is all a matter of public record that has been written about, and we have read it as shareholders. We have taken it on the chin up until now, and, while Dr Deeley has said that so much time has been dedicated to the issue at AGMs, I think last year the traditional owner spoke for 20 minutes at the AGM.

Ms Forsyth—A representative spoke—Christine Christopherson representing Gundjhemi Aboriginal Corporation—but what she said about the $200 million veto was not actually reported in the company material. The chances of someone voting for an independent report to be done on these things is hardly a radical step. We are not asking to sack the board. We are not taking those steps. We are asking for information so we can make an assessment and incorporate ethical guidelines into the company. They were hardly radical resolutions.

Ms Ford—I do not think any of us are babes in the wood. I have been married for nearly 16 years to somebody who works for a large mining company. He is also an economist and an ex-stockbroker. I think we have taken on—very much so—the responsibility of understanding that we are in a very tenuous position in being nuisances, I suppose, to a large company. But I would hope that we have really tried to engender a good relationship with the company ever since we have been able to at least communicate outside the halls of the law courts, and certainly Juliet's family being subpoenaed with 24 hours to appear in the Supreme Court is not a friendly way to do business. When I went up in front of the Supreme Court, I felt—and I have told Dr Deeley this—much like the virgin bride

being served up to King Kong. I have never done anything which has stuck me in the law courts before. It is an intimidating process and one that I have not taken on lightly.

I believe that there are some fundamental issues wrong with this project, and there has not been sufficient discussion and informed debate about the financial aspects. Fortunately, there are at least 99 others who felt the same way. I agree strongly that the potential for the radical ratbags to jump on board to use a rather good piece of legislation for mischief needs to be considered. I have roughly $175,000 involved in the Stock Exchange today. I go to bed at night feeling a lot more comfortable that, if I can see a company really going off the rails, there is some mechanism to be able to bring questions to directors and get some answers instead of either being fobbed off with letters or having to wait a year to go to an annual general meeting and then just slip that in between a couple of other items. I hope that there is change and people get information so that we can ask questions and have them answered.

CHAIR—Surely, if a company is already going off the rails, you are going to have the institutional investors jumping up and down. You will not have much trouble requisitioning an EGM.

Ms Ford—Unless it happens to be something. This is one of the issues. I know five per cent has been bandied around. I think the only shareholder in North, for example, holding five per cent was Westpac.

Mr Poppins—It was Westpac nominees, I think.

Ms Ford—I think AMP is about three per cent.

Ms Forsyth—Just as an example, Westpac has responded, whether it is to this or something else, by setting up a superannuation fund that does not involve investing in uranium. Its ethical investment is not something for small people paddling around. It is becoming of concern to people.

CHAIR—That would be their market niche, I would have thought.

Senator COONEY—As I understood what was being said before—and the people who gave evidence might correct me if I am wrong—there is this concept of proportionality. In other words, leaving aside what the argument is, there ought to be some limit, below which you should not go, to be able to call an extraordinary general meeting. Do you agree with that or not?

Ms Ford—Yes, I do agree.

Senator COONEY—So the question really is: what should the level be? Am I correct in putting that?

Ms Ford—Yes, absolutely. I messed around. For example, my shares range in price from about 2c up to $30. To come up with a minimum number of shares is probably difficult. How serious are you going to be? Is it going to be $500 or $1,000 times 100 shareholders? I think that is probably a reasonable lower limit.

Senator COONEY—What do you say, Ms Forsyth and Mr Poppins? Do you agree there should be some limit below which you cannot call an extraordinary general meeting, or do you say that if it is important enough anybody should be able to call an extraordinary general meeting?

Mr Poppins—I do believe that there should be a limit, as there is at the moment. I think the law needs clarification, particularly as to the minimum parcel. The most effective definition would seem to be a marketable parcel, which is something that varies with inflation and share values.

Senator COONEY—Do you believe that, Ms Forsyth?

Ms Forsyth—Marketable parcel? Absolutely. We are seeing changes in people investing. We are seeing people investing in Telstra with a smaller level of shareholding than perhaps we have seen in the past.

Senator COONEY—Mr Falconer and Mr Rennie were saying that there ought to be a particular limit. It is not the principle we disagree with; it is what the factual limit ought to be that we argue about.

Ms Forsyth—Five per cent of the vote would effectively cut minority shareholders out of it.

Ms Ford—Absolutely.

CHAIR—There are no further questions. I thank each of you for your appearance before the committee and your answers to our questions.

Ms Ford—Thank you for getting us here.

[7.35 p.m.]

CARROLL, Mr Peter Michael (Private capacity)

CHAIR—Welcome. Do you have anything to say about the capacity in which you appear?

Mr Carroll—I am a member of the NRMA. I guess that would be the best way to describe me.

CHAIR—We have before us your submission which we have numbered 3. Are there any corrections or alterations you wish to make to your submission?

Mr Carroll—I noticed there were one or two typos but nothing of substance.

CHAIR—I invite you to make an opening statement and then we will move to questions from the committee.

Mr Carroll—I might say it is a bit of a surprise to be here. I did not expect to be giving oral evidence, but I am very grateful for the invitation. Thank you. I will tell you a little bit by way of my background. I am an actuary by profession. Over my career of some 30 years as an actuary, I have had some acquaintance with mutual organisations. I was a chairman of a credit union for a period of time in the 1970s. I have been a consultant for about half of my working career. In that time, among the companies that I have worked for are AMP, National Mutual and Colonial, all of which have demutualised, as you are probably aware. About half of my business at the moment is in the health insurance industry where, of over 40 health funds, the vast majority are mutual organisations. By some quixotic folly, I ended up as a candidate for the NRMA a couple of months ago, not quite being aware of the zoo that I was joining, to be frank. Over that period of a couple of months, I have become acquainted with that organisation to some extent and, of course, that is what brings me here.

My essential argument, if I may summarise very quickly, is that I believe there is a place in the economy for mutuals such as the NRMA. The NRMA is a very good example of a very successful mutual. It is a service oriented organisation, first and foremost, and profit acts as a constraint rather than as a fundamental purpose for that organisation. If you look at the way it is viewed by the people that use it, it almost has icon status in terms of its level of service. It is up there with organisations like the bushfire service, the Salvation Army and organisations that have a caring side to them. Also, within the insurance industry, I think it is a benchmark organisation in that it sets standards for repairs, its premium rates are often the benchmark in the industry to which the commercial organisations have to set their rates or have regard to, and it avoids some of the problems that commercial insurance companies have in the payment of claims and so on where there is no internal conflict of interest in the organisation over the settlement of claims. It is a matter of equity amongst the policyholders rather than a competing interest in relation to the shareholders and the policyholders. I think it therefore provides a very useful force in the insurance market for those reasons.

The sorts of things that a mutual like the NRMA or a credit union is capable of doing—and I might say this of mutuals generally—is to provide community and social benefits,

which are publicly concerned rather than privately concerned. These are very highly valued in the communities in which they work. Quite often their commercial activities ride on the back of their reputation. I would not argue that all corporations should be mutuals—quite the reverse. I think in some markets there are too many, and the health insurance industry might be an example. But there is certainly a place for them.

The main governance difficulty in these organisations is keeping the directors and the senior managers accountable. This is a particular concern the larger the organisation becomes. Very large mutuals like the NRMA are a good example of that difficulty. There is enormous asymmetry in the power of the individual member as opposed to a director or a senior manager who has at his or her disposal the whole resources of the organisation. When I became aware of the evidence that the NRMA president gave orally before this committee—I think it was last January—it struck me that there was a blindness to that issue in that evidence. This is a particularly concerning issue where there is a question of the directors and managers of the large mutual seeing the possibility of some personal benefit in a course of action. In a large organisation, individual members have to be quite extraordinary individuals and show a great deal of courage—and quite often at considerable risk to their financial position—to try to even reveal what is going on, let alone effectively call the people to account properly.

In my view, the thrust of the proposal that it be made even more difficult for members to call a general meeting in such an organisation is not in the interest of good governance of such organisations. The accountability of directors and senior managers is their Achilles heel. Where there are shareholders, you quite often get accumulations of shares where the shareholders are able to impose a discipline. But in these organisations, that simply does not happen. The bigger they are, the more important it is to have that kind of check or balance in the organisation. That is my essential case. I am quite happy to elaborate on any of that.

Senator COONEY—This is the same question I asked before. You say that there ought to be some level below which shareholders cannot call meetings. Is that right? In other words, there has to be some sort of proportionality.

Mr Carroll—As I understand it, the law at the moment is that 100 members can requisition a general meeting. In the living history of the NRMA, I think it has happened only twice and, on both of those occasions, the issue was the removal of a director.

Senator COONEY—But you say that there should be such a limit. Your position is not that you would abolish any limit at all?

Mr Carroll—No. I think 100 members is about right; I am reasonably comfortable with that. To make it one per cent, as the current President of the NRMA argued, in the case of the NRMA, that would be 18,000 members. It would simply render that possibility beyond reality. I would like to see other aspects of Corporations Law strengthened in relation to these organisations, but the weakening of the power of the ordinary member would seem to me to be going in the wrong direction. If I may elaborate on one example, under Canadian law, I understand directors and senior managers of mutuals are very severely restricted for a period of five years in the personal benefits they can get from a demutualisation. As I understand it, we have no such provision here. I was not witness to this, but it has been

reported to me that attempts to have such a resolution made at the board of the NRMA have not succeeded in the current circumstances, which I find a matter of some concern.

Senator COONEY—Have you spoken to any other people in the NRMA about this issue? I am wondering whether you could reflect your discussions, if you have. The argument is really about is what is a fair limit, isn't it?

Mr Carroll—The difference between 100 and 18,000 members is extreme. I believe the number used to be 200, and it has been changed to 100. I believe you have also received evidence that you could get 100 signatures in a whip-round at an RSL. I have to say that that has not been my experience. I would imagine a member of the NRMA might be able to get 10 from their family and friends, and then they might get another 10 at work. It does require some effort. I believe it has happened only twice, historically—that is anecdotal history. It is not as though it were something that was frequently or frivolously used or as though there were evidence that it has been. I am aware of a dispute at the moment between two of the directors of the NRMA. One of them is proposing this course.

Senator COONEY—What I was trying to get from you was whether you had discussed this amongst members of the NRMA, how many people you had discussed it with and what sort of feedback you got. You might not be able to tell us that.

Mr Carroll—I have discussed it only with some directors of the NRMA.

CHAIR—What is their reaction?

Mr Carroll—The ones that I have spoken to are sympathetic to my general view. Both Richard Talbot and Ian Yates—who have no objection to my saying this to you—have told me that the views that have been expressed to you by the President of the NRMA have never been discussed at the board of the NRMA to their knowledge. As far as they know, it is not a general view of the directors of the NRMA. They would not take the view that a general exemption should be made for organisations like the NRMA.

CHAIR—Thank you very much, Mr Carroll, for your appearance before the committee and your answers to our questions.

Committee adjourned at 7.48 p.m.