COMMONWEALTH OF AUSTRALIA

JOINT COMMITTEE

on

CORPORATIONS AND SECURITIES

Reference: Statutory monitoring role of the Australian Securities Commission

CANBERRA

Friday, 21 March 1997

OFFICIAL HANSARD REPORT

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CANBERRA

JOINT STATUTORY COMMITTEE ON CORPORATIONS AND SECURITIES

Members:

Senator Chapman (Chair)

Senator Cook	Mrs Johnston
Senator Cooney	Mrs De-Anne Kelly
Senator Gibson	Mr Latham
Senator Murray	Mr McLeay
	Mr Sinclair

Matter referred:

Statutory Monitoring Role of the Australian Securities Commission

WITNESSES

JOINT STATUTORY COMMITTEE ON CORPORATIONS AND SECURITIES

Statutory monitoring role of the Australian Securities Commission

CANBERRA

Friday, 21 March 1997

Present

Senator Chapman (Chair)

Senator Cooney — Mr Leo McLeay

Senator Gibson

The committee met at 8.34 a.m.

Senator Chapman took the chair.

CAMERON, Mr Alan, Chairman, Australian Securities Commission, GPO Box 4866, Sydney, New South Wales 2001

GEARIN, Mr Michael, Principal Policy Officer, Australian Securities Commission, GPO Box 4866, Sydney, New South Wales 2001

LONGO, Mr Joseph Paul, National Director, Enforcement, Australian Securities Commission, GPO Box 4866, Sydney, New South Wales 2001

PALMER, Ms Kerrie Elizabeth, Government Liaison, Australian Securities Commission, GPO Box 4866, Sydney, New South Wales 2001

CHAIR—I declare open this public hearing of the Joint Committee on Corporations and Securities. I welcome Mr Alan Cameron, the Chairman of the Australian Securities Commission, and his colleagues.

The committee prefers to conduct its hearings in public. However, if there are any matters that you wish to discuss in private, we can move in camera on request, so please let us know if there are any areas that are being pursued where you would prefer to do that.

This is the first time the committee has had the opportunity to meet publicly with the ASC since the commencement of this parliament. As is customary, the committee hopes to hold a regular series of public meetings with the commission to consider current issues related to its work and to corporate law generally. The purpose of these hearings is to ensure that the committee and the parliament are kept informed about these issues. At the same time the meetings also provide the commission with an opportunity to raise matters of concern which may require legislative action.

Earlier this week the committee received some very detailed answers to a series of questions it sent to the ASC in December last year. We obviously have not had a chance to go through those answers as we would like, but they will certainly help us in deciding whether or not to pursue certain matters further.

You have requested that some of the attachments to these answers, specifically two advices provided in connection with one of your investigations, be kept confidential and the committee accepts them on that basis. Do you have any objection to the others being made public?

Mr Cameron—No, there is no problem with that.

Mr Longo—No.

CHAIR—I now invite you to bring us up to date on anything that you think is of

relevance or appropriateness and then members of the committee might have questions for you.

Mr Cameron—It is a pleasure, as usual, to talk to members of this committee about the work of the commission. I am only going to be brief and just identify the major factors that are on the mind of the commission at the moment. I suppose the first is, as indeed I think Senator Gibson is well aware, since my recollection is we met with the committee in June last year, that the government has brought down its first budget, in the course of which the commission's funding was significantly reduced. So the commission is on a downward spiral in terms of funding coming down over the next four years by a total of about $11 million a year.

As a result of that the commission in July last year lost about 189 people and it has just announced a further program of redundancies which will take effect in July this year which will affect between 125 and 175 further staff. So the commission which a year or so ago was 1,550 in number will be down to about 1,100 in fact, or just under 1,100, within four months.

That must eventually have some impact on the work of the commission. We simply cannot do all of the same work we did before. We are seeking to direct the redundancies at support functions and non-core functions, but clearly it will eventually have some impact on the sheer volume of work that we can go through and that puts even greater pressure on the commission to ensure that the work it does is targeted effectively and produces an effect in the community that is disproportionate to the amount of resource that is actually expended.

I mentioned it particularly today because I imagine that members of parliament will notice the difference in due course, in the sense that the number of representations received about unwillingness or inability of the commission to look at particular matters of complaint will probably rise. I merely draw it to your attention so that you have some idea why the sheer number might seem to rise in the near future. As I say, our attempt is to target our resource reductions at support and non-core functions, but there must be some effect on the sheer volume of things that we do. Despite these reductions, I think the commission is continuing to work very well.

Senator COONEY—Do you want that recorded?

Mr Cameron—Which part?

Senator COONEY—I was about to get up and berate the government for not giving you enough money and then you said it would be alright.

Senator GIBSON—Of course, it is alright.

Senator COONEY—Do you want to take that back?

Mr Cameron—I do not want to take it back. I really want to say that I have had lengthy discussions with Senator Gibson in his former capacity about these matters. There is no doubt that the commission, by organising itself better, in effect, was able to absorb some reduction in funding.

Senator COONEY—Did he give you a warning before you gave that answer?

Mr Cameron—Privilege. The commission and Senator Gibson had lengthy discussions about this and there is no doubt that the commission had some capacity to absorb these reductions. For example, in the information division the growing use of technology is making it possible for a steadily reducing number of staff to do a steadily increasing amount of work. In effect what the government was seeking to do was to get the benefit of those efficiencies by reducing resources. We understood that.

What I would say though is that I would be very concerned at any further reduction. Among other things, we did get a four-year plan in effect through Senator Gibson and the government and it is my expectation and hope that we will be able to stick to that four-year plan. The redundancy program, for example, is conditioned on that plan. I know the government has its budgetary issues at the moment, but I merely mention that we have worked on the basis that we would get that particular level of funding.

So this success that I was foolish enough to refer Senator Cooney to includes this growing success in the information division. Last year and in previous years the level of electronic lodgment of annual returns was between 10 and 15 per cent. This year it is 50 per cent and that is a dramatic increase in the extent to which the public—usually through accounting firms and other professional providers—is dealing with us electronically. That is a significant saving for us as well as for them.

We have had success, too, in the enforcement area with growing insider trading matters coming to attention, the plea of guilty in the Murray Williams matter, some people committed for trial in the Coachlines matter and, of course, the highly publicised matter of the mysterious Mr Mark Booth. I cannot say very much about that, other than to say that there are proceedings in train against a gentleman whom we have asserted is Mark Booth. Those proceedings are cash transactions reporting proceedings. The matter is still under investigation and there may be other developments in due course.

I might say that that has provoked press attention as to whether there is some endemic problem of insider trading and the commission has been doing some work on that matter. We have conducted some quick and nasty research in the marketplace and we have gone back to look at the level of referrals from the Stock Exchange of insider trading matters in the life of the commission.

What we have not found there is any substantive evidence that there is some outbreak or rash of insider trading of the sort that would justify some of the public headlines that it has achieved. I am by no means asserting that it does not exist and by no means asserting that the system is not perfect to find it all, if it does. But it certainly does not justify the headline grabbing attention that there is some widespread problem. For example, the committee would recall that there is now a new continuous disclosure regime in existence. The evidence is that that continuous disclosure regime with its statutory enhancement is providing much better, quicker information to the marketplace, which is quite inconsistent with insider trading being rife.

Senator COONEY—You are not insisting that the media is always fair either.

Mr Cameron—No. I was not claiming that. In recent times we have had good reason to think that it is not. Do not provoke me into discussing those or we will be here all day. I merely say that the insider trading rash of press attention is not justified, as far as we can see, by some new outbreak of a much greater problem. There is more market activity at the moment and there is probably, therefore, more potential for it, but there is no suggestion that it is actually much worse that it was in the past. If anything, the substantive evidence is that it is better.

We have commenced major proceedings against a well-known Japanese securities house on the basis of the alleged market manipulation at the end of March last year. We made every effort to settle that matter by mediation, as is well known now, but the trading house, Nomura, was not prepared to do that. Nomura has relevantly no presence in Australia, in the sense that, while the trading occurred in Australia—it occurred through Australian brokers and so on—those involved in the trading have no presence here. Therefore, the only proceedings that have been commenced are civil proceedings to seek declarations that the trading amounted to market manipulation and so on and to seek injunctions to ensure that it does not happen again. But there would be some major jurisdictional problems with any other sort of action.

Second last, I should mention the major conference we had in February on electronic commerce. The commission is very concerned and interested in the issues of electronic commerce and sees it as a major opportunity for our markets, not merely as a threat, and we staged a major conference which was highly successful. The Treasurer attended and addressed the dinner on the Tuesday evening. Parliament was sitting, which precluded him otherwise attending, but it was attended by, I think, 240 or 250 people. It was a success in raising the profile of the commission in this important issue and bringing to public attention a lot of these issues.

It was also, incidentally, part of our second summer school. That, too, was even better attended than last year and is now becoming an embarrassment in terms of the extent to which it attracts large numbers of people—in a sense, more than we can comfortably cope with.

CHAIR—I will intervene there. We as a committee are having an issues paper prepared on electronic commerce with a view to conducting an inquiry on the subject.

Mr Cameron—We would be very happy to talk to you. Indeed, that leads me logically into the final thing I was going to say, which is that the government's corporate law economic reform program has just been published, and the commission has read this with great interest. Among other things, it talks about electronic commerce. We are certainly planning to brief the department as quickly as we can on our experience from the electronic commerce conference in order to ensure that there is no sort of re-invention of the wheel between the commission and the department in this exercise. Similarly, we would be happy to assist the committee with the benefit of our knowledge from our own conference and the work we have done before and since. That is all I wish to say by way of introduction.

CHAIR—Thanks very much, Alan. It is certainly appreciated and will bring us up to date.

Senator COONEY—Just for the record, I have been approached by Mrs Bunt over Aust-Home. She speaks highly of you. I just thought I would say that to you. I think, in fact, you have mentioned Aust-Home in here somewhere, haven't you? You are paying full and proper attention to that? Have you got any comment that you would like to make?

Mr Cameron—No, I have not.

Senator COONEY—I have got to sneak off for a minute or two, but I want it to go on the record to show Mrs Bunt that I have raised this issue.

Mr Cameron—I do not think the commission presently has any outstanding representation directly from Mrs Bunt that we have to deal with. I think the long experience which Senator Cooney and I both have with dealing with Mrs Bunt over this matter indicates that it is highly unlikely that she will ever be satisfied with any response the commission gives her.

Senator COONEY—But you note my raising it?

Mr Cameron—I do note your raising it, Senator Cooney.

CHAIR—While we are on Aust-Home, as you are aware we wrote to you about that as a result of approaches that we had had, and you provided some responses to our questions. Again, we have not had time to consider them in detail, but there are perhaps a few questions that arise out of that. I do not know the details of Mrs Bunt, but the first question is: why doesn't anyone seem to be very grateful for what the ASC did during the investigation, given the claim of the ASC regarding the misrepresentation and fraud that permeated the scheme right from the outset? No-one seems particularly grateful for the

way in which the ASC intervened—on either side.

Mr Cameron—This is an example of one of those schemes where the ultimate victims of the scheme never saw that they were the victims of the scheme. And, because the ASC intervened when it did, the losses were not realised in the fashion that they would have been realised in if we had not intervened. Indeed, one of the things we are doing at the moment as part of our preparation for 30 June is trying to encourage the public to look on all tax-driven schemes with some suspicion—they are investment schemes and they should be judged in the same way—and, in particular, to look at the ones that involve varying payments of PAYE tax or even provisional tax.

That is what this scheme involved. The reason these victims—and I do think they are victims—feel so strongly about it is that they were actually victims in a very unpleasant way. They made claims for taxation deductions that, when the full details of the scheme were unravelled, caused the tax office to revoke their exemptions. So not only had they invested cash into the scheme, but also they had done so by reducing their tax payments, and they then had to pay their tax. That is a very unpleasant way to lose money. I think that is the reason the victims find it so difficult to accept that the commission had no choice but to act as it did. We are satisfied—and, indeed, I think the evidence before the court indicated—that this was ultimately a paper monster that was going to collapse eventually.

The commission intervened in such a way that certainly caused it to stop and to be unravelled and that revealed that it did not have in it anything like the amount of money that it appeared to have in it. The secured creditors in due course were paid and the net result of all of that was that the unsecured creditors—these people who had varied their tax payments—had lost all their money.

We say that that brought forward only what would have happened eventually anyway and prevented other people from being involved. I do not ever expect that we will be thanked for doing that, but we really had no choice but to do it.

CHAIR—You also said that the Aust-Home litigation was consistently before the courts for a number of years and over that period those affected had many opportunities to challenge your assertions by affidavit, which they did not do. In turn, those people claim that you or the receivers constantly restricted access to documents and this effectively stopped them challenging what you were doing. Can you answer whether there was a real opportunity to challenge?

Mr Longo—No, I am not aware of any of that. When we gather information from businesses, very often we only take a copy and the original is kept by the business. As far as the facts of this one are concerned, my understanding is that anyone who needed access to material in the possession of the commission would have been given it for that purpose and indeed we would have been duty bound to give it.

I should also add, Senator, that at no time was the court, to my knowledge, informed of that problem. It was not as if the people who had a different story to put came to the court and said to the judge, 'We would like to put a different story to the court, but the commission is stopping us from doing it.' I can tell you that fairly confidently.

Mr Cameron—Senator O'Chee, for example, who has been pursuing this issue for a long time, has conceded that the scheme was fraudulent. Indeed his concern is, if it were fraudulent, why we could not prosecute people.

Mr Longo—That is right.

Mr Cameron—That is a fair question and there were reasons which we are happy to talk about why that could not be done. If we were in confidential session, we could say a bit more about that.

Senator GIBSON—As a follow-up, perhaps we should have a confidential session some time this morning.

Mr Cameron—I think at some stage we should talk in confidence about those aspects. I am quite happy to talk publicly about the Aust-Home matter as such, but there may be some follow-up aspects we should talk about more privately.

CHAIR—Okay, there are a couple of other questions before we move to a private session. The other area I was particularly interested in was the exemption of large proprietary companies from audit, which was raised in our corporate law reform report. We revisited it, even though it was quite, strictly speaking, part of the first corporate law reform.

As you are aware from our correspondence, the Motor Trades Association was concerned about its members' situation under, as they put it, not so much the law but the class order that you promulgated under the law. In the response you have provided, as I understand it, you have said that the final class order on audit relief is meant to be general in its application and it does not preclude individual companies or particular classes of companies from separately applying to the ASC for relief.

Mr Gearin—That is right.

CHAIR—If that happened, would you permit a particular company or class of companies to meet less onerous requirements than companies in general have to?

Mr Gearin—I think the policy would have to be maintained, but what we have said is that, for example, the gearing ratio is there at 70 per cent and that is the one that is causing the motor dealers a great deal of concern. Part of their problem is that their

gearing is not just a few percentage points higher but it is significantly higher. I think for most motor dealers it is probably in the vicinity of 90 per cent to 100 per cent—they are fully geared.

Therefore, an operation like that means that we then have to sit back and say, 'Well, we set a benchmark of having assets exceeding liabilities, which is fairly fundamental to most businesses. The way they operate is with that higher gearing. How could we compensate in giving that additional benefit of the higher gearing with something else?' The sorts of conditions that could be possible—whether they would suitably compensate, I do not know—are positive quarterly cash flows, which were taken out of our initial draft because we thought that was too onerous.

In answer to the question: yes, we would have to maintain our policy. There would be flexibility in the benchmarks that we could apply but, in essence, we would have to maintain the sound financial condition, well-managed policy, even with individual applications.

CHAIR—As I recall, they argue that the gearing ratio is not particularly relevant because it relates purely to their bank and to the motor vehicle manufacturer or importer or whatever. Therefore, they are, in a sense, a class apart from other companies that might be in a similar gearing ratio and should be excluded on that basis. What is your response to that?

Mr Gearin—It is a very difficult issue. Without going into all the details, in very simplistic terms, if they get a car from someone and that car is worth $30,000, they can borrow $30,000. The difficulty is that the financier then takes a floating charge and security over that car. So whilst one could say, 'You should perhaps take the liabilities and the assets off the balance sheet'—as I think perhaps they would argue—we would then say, 'Yes, the difficulty is that the unsecured creditors, those outside that, will have to meet the interest bill.'

So, in other words, you have your $30,000, you have your car fully mortgaged to $30,000, but on a 10 per cent interest rate of $3,000. That $3,000 has to come from the rest of the company. So one then has to look at that position and look at the position of creditors and unsecured creditors. That is part of the difficulty. I do not have a solution to it, but that is part of the problem.

CHAIR—You have also excluded intangible assets from the gearing ratio because you regard those assets as too subjective. Again, you say that you look at specific companies or industries that might be disadvantaged by the rule. Has anyone approached you for specific consideration on this issue?

Mr Gearin—We have had one individual application, which we are currently looking at. That has not been fully exhausted, but we are looking at that particular issue.

Again, I think our policy statement makes it clear that the intangible asset was there as a benchmark to try to make sure that the assets were hard assets and if they had to be realised suddenly, they could be. Therefore, we acknowledge that it was a conservative benchmark. That does not rule out companies coming to us and saying, 'We have an intangible asset. This is what it is. We have formal valuations for it.' But we can look at that on a case-by-case basis, and we are doing that.

CHAIR—Large proprietary companies which qualify for audit relief and which have a financial year ending in June will now not be required to lodge audited accounts until after 30 June 1998.

Mr Gearin—Yes, that is generally correct, if they rely on the class order.

CHAIR—What about companies with a December financial year?

Mr Gearin—Their financial year will be December 1997. If you remember, when the legislation came in, they were actually the ones that had a financial year commencing 1 January 1996. The benefit of our class order would take them out yet another year—that is, their audit obligation under the law would have started on 1 January 1996 because of the way the law was structured. With our relief, it will be 1 January 1997, for the year ending December 1997.

CHAIR—Approximately 2,000 large proprietary companies are potentially affected by the new law. Do you have a rough idea as to how many of those would be able to take advantage of the new class order?

Mr Gearin—We do not. That is the difficulty in the whole exercise. We have now run a database of the names of those companies in addition to the numbers we did for this committee—the 2,102, I think, that was in the answer. It is difficult. On eyeballing some of the numbers, it is interesting to see that quite a few of them, for example, are listed company subsidiaries. When you actually look at the 2,000, there is a number that probably will be audited anyway.

I cannot give the committee a lot of detail on that. But we are looking at doing the research on that and, in time, we will have far better information to examine our own policy and we will be able to give the committee a much better indication of what that is.

CHAIR—There was an article in the *Financial Review* on 25 February pointing out that the gearing test that has been imposed would nevertheless catch many of the mum and dad companies where the owners had lent money to the company rather than invested directly in the company as equity. Have you thought about companies in that situation?

Mr Gearin—We have. In the policy statement we say that the class order had to be fairly generic and fairly robust, but in the policy statement we make it clear that where

shareholders have lent, if you like, loan capital and they are looking at ways of being prepared to subordinate that to creditors and potential creditors, we could look at that on a case-by-case basis. Some of the difficulty is getting that subordination right, but that is an issue we are quite openly prepared to look at. But it was difficult to build that flexibility into the class order.

Senator GIBSON—So you have not had any cases of that as yet.

Mr Gearin—No, we have not. We have not had anyone coming in and saying, 'No, we have a shareholder loan and we would like you to consider that.' We have had one on the intangible assets.

Mr Cameron—The public record is quite confused on the issue. I wonder if I could simply reassert the way the commission views this. The law was deliberately changed to require that large proprietary companies should lodge their accounts. At the same time the commission was given a new, additional statutory discretion to provide some relief from audit. We had a special meeting of this committee to discuss that legislation at short notice almost two years ago. At that hearing it was clearly on the table that this sort of debate would break out. It was predicted that it would either break out that we had been far too lenient and there were far too many companies, that we had effectively subverted the legislative intention by letting all of these companies out of the loop that they were supposed to come into, or that it would be that we had been far too rigorous and there were still far too many companies being required to do this for no public benefit.

I merely thought it was worth reminding us all that that was the debate that we predicted and we are having it in the second direction rather than the first. At some stage it may well be a matter for the committee and the parliament to consider again whether they wish to, in effect, put more specific criteria into the law. Clearly, all we can do at the commission is try and generate class orders and provide for categories that ensure that the law does not operate unreasonably and create too harsh a burden on business. But there will be a lot of subjectivity in that judgment the commission is forced to make in exercising those powers.

We are very happy to continue to consult about it. That first round of consultation cost a year in the implementation of the law. We felt that we had to stop somewhere and get it into place and see what happens. We will continue to monitor the effect of the existing relief. If there are circumstances where it is not working and clearly it is still harsh and unreasonable, then we will again amend the class orders or extend them in some fashion, or reduce and contract them in some fashion. But we are simply doing what we can. If the committee wishes at some stage to have even more detailed informal discussions about it, we are happy to do that. It has been a long-running process of consultation with industry and we are happy to have it with the committee as well.

Senator GIBSON—The committee recommended to the government that the matter should be revisited or reviewed.

Mr Cameron—It is still a year away. Indeed, while it is a year away I would encourage the committee to think even now that you may wish to do it a year later. At that stage we all thought we would have two years experience; in fact we will only have one. So there is something to be said for a further year's delay in that review.

CHAIR—That was recognised in our second report, that it was still a year away, but we have had this particularly strong representation from the motor traders to see if we would take it up. What are the most recent consultations you have had with the motor traders? Are you having any continuing discussions with them?

Mr Gearin—We have not for some time but the door is open. The last discussion that I had was a phone call with one of their representatives who had indicated informally that a number of the larger dealers were being audited. They thought it was some of their smaller membership that were concerned about it and that they may well approach us individually. I am aware of one representation we are dealing with at the moment for individual relief out of Queensland. That is the only one I am aware of but there could be others.

Mr Cameron—I might say that it is interesting that the submissions that you have quoted in the questions to us were clearly written before the final version of the class order because they included the requirement that we removed for the positive cash flow. I am not aware that we have had any formal submissions from them since the final form of the class order.

CHAIR—What has happened to the Yannon investigation? In particular, what happened to the case brought by Mr Lew, challenging your release of confidential transcripts to Coles Myer?

Mr Longo—I will start with the second question first. That matter is set down for trial, at the moment, on 26 May. It is likely to be postponed for two weeks because of the unavailability of a key witness. So the answer to your question is that it is going to trial late May, or early June.

As to the first question, the Yannon investigation is continuing. No final decision has been made as to its outcome. We are working very closely with the DPP and, as recent press reports have confirmed, we are making our presence felt at this stage of the investigation among the witnesses. We are doing everything we can to bring the matter to a conclusion.

CHAIR—Thank you. You expressed satisfaction with the outcome of the case against Alan Bond. I think Alan Bond got four years gaol for stealing more than a billion

dollars. In comparison, Robyn Greenburg, another Western Australian, got about 17 years gaol for stealing much less—about $4 million. Have you got any difficulty reconciling those two sentences given the relative sums involved?

Mr Cameron—Yes. The commission had some dilemma as to how to respond to the sentence, which was actually delivered during the middle of our electronic commerce conference, so we were preoccupied anyway. The commission's dilemma was that, if the commission had publicly criticised the sentence, we felt that would be inappropriate because we are an investigator, not the prosecutor. The traditional reason for having a separate prosecutor is that the decisions on prosecution and on sentence and so on are not those for the investigator to make. The investigator by its nature tends to get too close to the subject matter and cannot be objective.

So the commission, at very short notice, allowed its senior investigator in charge of the matter to be as neutral as he could be about the sentence. In due course, the Director of Public Prosecutions decided to appeal. There is an appeal, and that appeal has the support of the commission in the sense that the commissioner thinks that, with the benefit of some time to reflect upon it, there are some inconsistencies in the sentencing of some recent matters.

The most recent example is, in fact, the sentence given to a former officer of the DPP in connection with the same matter. He has received a 15-month sentence with a six-month non-parole period in connection with the unauthorised use of government information relating to the prosecution. It does seem to those of us who have talked about it at the commission that there may be some matters that require further judicial attention as a result of those comparative sentences. The matter will now receive that attention.

As I say, the commission has a dilemma as to how to respond. We do not think it is our job to whip up public support for appeals against sentences. Therefore, we were deliberately restrained in our comment, and that is a policy we would seek to apply in the future as well.

Senator GIBSON—I want to go back to the first thing—the reorganisation. One of the quid pro quos that we had discussed last year in response to the industry demands or requests was getting more expertise into the organisation from the marketplace. You did mention earlier the planned reduction, getting down to the 1,100 mark, for the total organisation. The other side of that coin was the plan to bring in people under contract. How are those plans going?

Mr Cameron—It is tied up to some extent with the government's industrial relations reform in the sense that, for the commission to get into the position to do that, it required some greater flexibility in terms of our agency agreement with the CPSU. Ultimately, that was the sort of reform which the minister has now announced, although they have not yet legislated with respect to the Public Service.

So while, as you know, Senator, we have an independent capacity to hire staff under the ASC law, the present industrial agreement to which the commission is party will need to be renegotiated to enable that to be used more widely than it now is if we are to use that power. On the other hand, in a sense we will not need to use that power once the Public Service reforms go through and the commission becomes the direct employer of its Public Service staff. So, apart from anything else, the current context is that we have to get—

Senator GIBSON—Is that currently part of the agreement with the union?

Mr Cameron—There are provisions in the agreement that limit the flexibility of the commission to retain staff under contract. Traditional sorts of provisions have been there for some time and, in effect, they provide preference to public servants—not in the usual sense of union preference but so that there is a requirement to consult with the union before hiring staff under contract. That process is taken seriously by both the commission and the union. From time to time there are such consultations about staff employed under contract. That is not the kind of easy dual system which you and I have talked about in the past and, until the new agreement is negotiated, it will not be possible for us to move to that. In any event, there is the problem that we are still contracting, so that we have no real flexibility to go and retain new or additional staff until we are back within our new budget. We have to get the numbers down first before we can concentrate on hiring. There has been some continuing use made of the secondment process—which we have talked about in the past—with a very small number of secondees from the Stock Exchange.

Mr Longo—Recently, we have done a swap with the Stock Exchange. We are also looking at getting in some special market expertise in the takeovers area. But, as Mr Cameron has highlighted, that is again within the existing agency agreement—which we are obviously very conscious of wanting to comply with.

Senator GIBSON—I stress, my experience of last year is that the industry is requiring a relatively urgent response from you in that direction. I am not sure the industry can afford to wait another year or so to negotiate an agency agreement with your employees. It will probably take some considerable length of time.

Mr Cameron—In a sense the dilemma is that we have to do these things together. We have to free up the employment system—whether it is under the ASC or under the new Commonwealth Public Service industrial legislation—and get the dollars under control. So it will always be a two-step procedure anyway.

Senator, we do not see much evidence of the marketplace knocking on the door to offer us people whom we have to reject because we do not have the arrangements in place to receive them. The market is quite healthy at the moment, and the practical reality is that getting people out of it to work for the regulator will be just as hard in six or 12 months time, even if we have got through all those hoops. For example, I have an estimable

special adviser at the moment who has come to me from the staff of the commission, but when I go to the marketplace to recruit one person to work with me personally for six months—which is a very good opportunity to learn how the commission operates, apart from the fact that they have to put up with me—I have very great difficulty finding anybody who is available to come and join me. It is not even as though it is costing them money: we pay them the same amount they get in private sector employment. So it is still as difficult as ever to get people to move to join the regulator.

Senator GIBSON—Are you putting out a summation paper on the findings of your recent conference on electronic commerce in the near future?

Mr Cameron—While we have an internal summation of the conference, it was not intended to be published. Perhaps we should give some thought to publishing it. At the moment, we are looking at publishing some of the major papers from it. If you go to the Securities and Investment Board home page on the Internet, the papers by Sir Andrew Large are available. We are proposing to put some of them up on our own home page, but that has not happened yet. The ones that were published at the conference are available. The ASC's own package, issued in May last year, covers most of the issues already.

Ms Palmer—We have also sent a copy of the electronic commerce papers to the committee.

Mr Cameron—Yes. The committee has got the papers. I am really thinking of the summation to which you were referring and while I have seen one, we had not actually—

Senator GIBSON—It would be nice to have someone here to summarise it rather than go through and—

Ms Palmer—Digest it.

Mr Cameron—That is right. I am very sympathetic to that, Senator. There will be some more developments, including some publication of the results at some stage.

Senator GIBSON—If there is anything available that we could have access to, I am sure we would be pleased to see it. On a completely different topic of fundraising, you would recall that one of the suggestions that has been floating around is for small firms, in order to avoid the cost of the prospectus, to lift the number of the offers of that prospectus from 20 to a higher number. Just this week, actually, we had a presentation from a group about employee share ownership schemes. They were basically complaining about the current law, although 'complaining' is the wrong word. They were saying that the current legislation for employee share ownership schemes is very adequate for listed companies but completely inadequate for small private companies.

They were really saying that, for companies of 20 to 50 employees, the current law

really does not cope with that. One of the suggestions that they made to a backbench committee earlier this week was to lift the number of private offers so that in fact AESOP can be instituted within a private company. Again, the number of 50 was raised. I had not come across that particular angle before, but I am just wondering what your current view is, within the commission, about lifting the number of offers privately from 20 to 50.

Mr Cameron—The reason it would be reported to you, for example, that it is possible for listed companies to do these schemes more readily than unlisted ones is simply that the commission is prepared to assume that the disclosure rules that apply to listed companies in Australia and on appropriate overseas exchanges are such that they provide effective protection to these would-be investors as to the level at which they are investing. We use that, in effect, as a substitute for the sort of disclosure they would have got out of the prospectus.

When that does not apply, the commission is rather more wary in its limited role—it does not extend, of course, to the taxation implications—of just ensuring that these people, as investors, are protected. I suppose our concern is that shareholders may think they are in a good position to judge the financial position of the company. But they may actually not be in that position at all, in that they would see only part of the operations and they would not, unless it is otherwise provided to them, be privy to the overall financial position of the company that they work for.

We are simply reluctant to assume, without more information, that employees are in such a good position to invest. I am not aware that we have recently looked at this issue again. As part of this program, the whole matter will undoubtedly come up again in the course of this calendar year. I imagine that we will talk closely with the department, and then to Senator Campbell, about what position the government should take on that issue, quite soon.

As I say, we do have this dilemma. We are prepared to assume that listed companies disclose properly to their shareholders and, therefore, to these potential investors. It is a bit more difficult with unlisted companies, whether public or private. Frequently, some of the specific relief we give is for overseas owned companies where the Australian employees are being offered shares overseas.

There is a series of these special relief applications from time to time. I think the commission is not unwilling—it has shown itself not to be unwilling—to amend its class order relief, but there are limits to which we have to have regard for the interests of the Australian investors.

CHAIR—Another issue that was raised in our report on the second corporate law reform bill was the taxation implications of that bill. We said that should be examined further before the bill was finally passed. Taxation is probably not in the ASC's area, but have you got any comments on that aspect?

Mr Cameron—I saw a newspaper report the other day that described an organisation as the 'Australian Competition and Securities Commission' but perhaps I missed the word 'Taxation' in there. Fortunately, it is not our responsibility and, indeed, I am not aware that we have seen the outcome of the Taxation Office's consideration of these matters. We wait, with the same interest as the committee's, to see that that matter will be resolved to enable that bill to proceed, which we would certainly like it to do.

CHAIR—Another issue is the King Island dairy sale. It is still the subject of a notice of motion by Senator Murphy on the *Notice Paper*, which keeps being deferred. I think it has been left there because the ASC has not reported back on that issue.

Mr Cameron—That is true, the report has not yet been completed, but I am told it is now quite close to completion. As Senator Gibson would know, the Tasmanian regional office of the ASC has been a little preoccupied with the first referral to the panel in some five years and some of the same staff have had, of necessity, to deal with that urgently. But that matter is now, for practical purposes, resolved. I am assured that the report is now close to completion and will be able to be given, I presume, to me first, then to the Treasurer quite soon and then to the parliament. But it might be worth just putting on record, for those who are not familiar with it, that this is a reinvestigation of a matter that is now of some 10 years duration and has been investigated on some 15 previous occasions.

Senator COONEY—There must be some sort of conclusion to this investigation. I notice that with these investigations—not only this one by this excellent organisation that you head, Mr Cameron—there are lots of investigative bodies and they do seem to take hours and hours. You do not expect them to burn the midnight oil, but there has got to be generally a conclusion to a lot of this stuff, just so people can get on with their lives. I know that if you do not investigate, you are wrong and that if you do investigate, you are wrong, but that is the job you have taken on. What do you think about this, not just specifically with the ASC in mind but generally? You know the complaints that tend to be made—people say that you have put them in limbo and that they are innocent and that you have sort of crucified them. Have you had any thoughts about how investigations could be brought into a reasonable sort of compass?

Mr Cameron—Could I deal with it in two ways, Senator, just by saying again that the King Island case is, in a sense, a very difficult example. It relates to events that occurred before the ASC was created. The complaint appears to be that we will not reopen an investigation that we did not originally conduct, and which has been investigated by numerous bodies of quite different character, including directors of public prosecutions, parliamentary organisations, and other jurisdictions and so on.

It is a classic case in which the person who has lodged the original complaint simply will not be persuaded that there is no substance in it. At some stage, someone will have to say that this has to come to an end. Certainly, the commission did not willingly

reinvestigate the matter. The commission is reporting again only because the parliament has asked it to and not because the commission felt there was any reason to go back into what is quite ancient history.

As to the second part of it, the commission is concerned about the overall delay in matters—the apparent delay in finalising current investigations, if you will—in the sense that it is not possible for the commission to keep the public fully informed about the progress of investigations without doing damage to the reputation of the individuals who are subject of them. So that where, for example, the commission has, in a practical sense, completed its investigation but the matter is awaiting legal finalisation with the Director of Public Prosecutions, it is rarely possible for us to go into detail about that without defaming or trampling on the rights of those who are the subject of the investigation.

That is one of the reasons we find it very useful to have the private sessions with the committee, where we can usually say more about where matters are up to. In a sense, it is not quite a case of saying you have to trust us but, to some extent, you do have to trust us. We are accountable in the sense that we can talk to you privately and we are accountable through the ombudsman and through other mechanisms to ensure that we are not taking unduly long. At the end of the day, if people are not satisfied, there is a real dilemma for the commission in how to answer those questions.

Senator COONEY—I was thinking of a person from King Island who lobbied me, but there is another person who is lobbying me over something that happened 40 years ago. He was trying to get it to the State of Victoria—because he had settled the case before the Supreme Court down there—on the basis that the judge was weak. His proposition was that he was forced to settle by the State of Victoria, which had appointed this weak judge. For a start, I might say, the judge was a fellow called Sir Wilfred Fullagar. The man had pursued his claim, suing on the basis that it was a weak judge. I tried to get rid of him. He had gone to the Supreme Court, the Full Court and the High Court. I said to him—I will not tell you his name—that I could not help him, because he had not exhausted his line of appeal since, in those days, he could have gone to the Privy Council, and he said to me, 'I did'!

Mr LEO McLEAY—He was obviously a man with more money than sense.

Senator COONEY—Exactly. I know it is very difficult.

Mr Cameron—I used to work, as you recall, Senator, in a branch of what is now sometimes pejoratively called the 'complaints industry', and it is a real difficulty, for bodies that are set up to investigate complaints, that those who are unhappy with the results find it very difficult to accept those results.

I am reminded, of course, that there are things that could be done procedurally to speed up the process; and we have, from time to time, drawn the attention of the

committee to those. We have, in some of the answers today, referred to the fact that we conduct investigations not knowing what the outcome is likely to be and, therefore, we do not know whether civil or criminal proceedings will result; yet, if criminal proceedings are to be the result, we then have to go back and get witnesses to sign statements in a particular form before we can commence those criminal proceedings. That adds months, perhaps even a year, to the process—time which would not be needed if the criminal procedure laws of the states, which govern these matters, were in a form that allowed our original evidence to be used rather than having us put it into a different format; not to change its content but simply to organise it differently to satisfy local requirements.

Senator COONEY—We could be firmer with our constituents when they come to us, but that would require courage.

Mr Cameron—I am sure you do not want me to answer that. I merely say that if the committee were minded to deal with it, question 3 of the materials that we provided to you today is a good example of the sort of matter we are talking about, and you might be right in inferring that we might have had some recent, very obvious experience of this very problem where, having taken the evidence once, we have to go back and take it again, and we could not have done it any other way. That is a source of great frustration, and it is a matter I have now discussed with the Treasurer.

Senator GIBSON—And is the only route for fixing it up getting state agreement and modifying all the state acts?

Mr Cameron—Eventually, yes, because the Commonwealth has chosen, no doubt for good reason, not to run its own system of criminal courts. That is the other opportunity for you. If you want to be really bold, you could propose that the Commonwealth set up its own criminal court system. But, short of that, you could encourage some uniformity and some flexibility. It may be possible by Commonwealth legislation to provide that the ASC's method of taking evidence will be acceptable in the criminal courts of the states, but that would be difficult legislation to explain to the states, and getting the states to agree voluntarily to a different way of dealing with it might be more palatable.

Senator GIBSON—Is this particular matter currently on the agenda?

Mr Cameron—It has been raised in several fora.

Ms Palmer—It was in the Wallis submission.

Mr Cameron—It was in our submission to the Wallis committee, and originally to the committee that you chaired, Senator, that then became the Ellison committee. I am not sure whether it has been the subject of a government response as such. I do not think anybody objects to it so much that they have got around to putting it on the agenda to deal with it. That is what we really need to have happen to speed up some of these processes.

CHAIR—Is this something that this committee should take on board?

Mr Cameron—We have invited you to do so in one of our written responses. It is certainly a matter on which we could provide further background to the committee.

Senator COONEY—We will ultimately get around to it because when we delay, that is reasonable.

Mr Longo—Can I just amplify that last point, as it is a very significant issue. It is a question of putting information we acquire in the course of an investigation into a form which can be used in a criminal prosecution. It is a very significant source of delay, and one which troubles us greatly.

Senator COONEY—You would not have any trouble with any judges not allowing evidence or anything like that either?

Mr Cameron—The sort of difficulty that we are discussing at the moment is a statutory difficulty; it is not a discretionary matter for the states. The Victorian Magistrates Court Act, for example, specifically provides for the precise form in which the evidence is to be provided to the magistrate. Unless it is in that form, the magistrate appears to be obliged to reject it.

Senator GIBSON—Presumably that particular problem must absorb a fair slice of your resources?

Mr Cameron—Not only ours, but those of the Director of Public Prosecutions as well. Of course, during that period not only is more time passing but also the rights of all sorts of people continue to be affected.

Senator COONEY—That is what you have to remember, isn't it? That is the other side of it; it is the result of trying to give peoples' civil rights the right amount of weight.

Mr Cameron—If you were to use our evidence as we collected it, that does involve some extraneous material being collected that turns out not to be relevant. So it is not free of difficulty as to how it is resolved. I do not want you to feel that it is a simple one-line solution. But we would quite like to have it on the agenda to find some mechanism for speeding up some of those procedural aspects.

Mr Longo—It is not a panacea, Senator, but it would be a big step forward. As Mr Cameron mentioned before, the DPP is the independent prosecuting authority. At the end of the day, it has to be satisfied with the evidence we obtain and it makes the prosecution decision. But I think it is fair then to say that the whole process would be much accelerated if these reforms were introduced.

Senator COONEY—The Chairman has made a great suggestion here that we follow this up.

Senator GIBSON—We could have hearings with each of the states. It might help flush out the problems and the possible solutions.

Mr Cameron—The other advantage of the fact that this scheme is still run in conjunction with the state attorneys is that the ministerial council on corporations do include those ministers in the states who are, in fact, responsible for the court system. The matter could certainly be discussed there.

Senator COONEY—And you are having friendly cups of tea with the DPP?

Mr Cameron—I have spoken to the new director on his appointment. As you will recall, he is the person who prosecuted Mr Bond, so he knows us very well. In fact, he only took office this week.

Mr Longo—On 11 March.

Mr Cameron—On 11 March—last week. I have spoken to him by telephone and I am planning to meet him in the next few days.

CHAIR—He is a good footballer too.

Mr Cameron—That is something I shall be wary about.

CHAIR—I would like to ask a couple of questions in relation to accounting standards. The first one is in relation to the Reef Casino Trust. On 4 March the *Financial Review* had an article that pointed out that the accounts were overstating the value of the casino by between $60 million and $80 million, and that both the directors and auditors had warned that the accounts did not comply with accounting standards. The article went on to say:

> Indeed the market in RCT units is so misinformed it's hard to see how the Australian Securities Commission can avoid taking action against the trust and forcing it (via the trustee) to comply with the accounting regulations.

Have you done anything about the Reef Casino Trust?

Mr Cameron—I am not aware that we have at this stage, but I would need to get some information from others. It is not a matter that has come to my personal attention. Perhaps it is just worth saying about the process that the commission has the role of enforcing accounting standards. Where there are issues about their interpretation, they go to the urgent issues group and the standards are set by the Australian Accounting

Standards Board. The commission's role is limited to enforcement.

The front-line enforcement agency in practical terms for listed entities remains the Stock Exchange. If there were a concern that the Stock Exchange had with this, I imagine that they would talk to us, under the terms of our memorandum of understanding. But I would need to get some information from my colleagues as to whether that has actually happened. It certainly is a sufficiently notorious matter that I was aware of it, but I am not aware of what the commission is doing about it, if anything.

CHAIR—As I understand it, the casino wanted the valuation based on likely future performance, knowing that the book value was excessive. But, equally, they believed that a valuation based on historical performance would not be accurate, but no-one would give them this valuation based on likely future performance. Does that make a mockery of accounting standards?

Mr Cameron—The difficulty is that the way the casino was to be valued was, as I recall, dealt with within its prospectus. The issue, in a sense, has arisen since then. If the casino has not performed according to the projections that were in the prospectus, then there would be the inevitable result that has now arisen where that would throw doubt on the carrying value of the casino. I think that it is fair to say that that is a very live market matter in terms of the markets dealing with it, quite apart from any regulatory interest in it. So it might be a little difficult to discuss it publicly beyond that point. But I imagine, as I say, that it is sufficiently obvious that this matter has arisen, and that there will be some attention paid to it at some stage.

CHAIR—There is another issue relating to accounting standards. Have you got any views on the way company accounts and accounting standards treat intangible assets, such as goodwill or knowledge, particularly given that we are now, supposedly, a knowledge based economy?

Mr Cameron—As I was saying a moment ago, of course, the board sets the standards. I am aware from a visit to Australia last year of Sir David Tweedie when he was speaking about these matters—he is the head of the UK accounting standards setting authority and a member of the international one—that there are major issues about the treatment of goodwill across the four or five major accounting jurisdictions and, internationally, through the proposed new international accounting standards. The treatment of intangible assets and goodwill, generally, will be a major issue in that harmonisation debate. Because the commission is not really the standards setter, it is probably not appropriate for us to get into that debate when it is already continuing elsewhere. At the moment, our task is to seek to enforce the existing standards. But no doubt they will continue to receive attention in Australia when certain of our very large companies, including media companies, have very major assets of an intangible kind on their balance sheets.

CHAIR—On another issue, in relation to voting for directors, there was an article in the *Financial Review* at the end of last year suggesting that you could have a system of cumulative voting to elect company directors. You could have the whole board retiring every year and if there were, for example, five board members, each share would have five votes which could then be allocated among candidates for directorships, or the five votes could all be allocated to one candidate. It was argued that this sort of system would allow smaller shareholders to have a better say in the election of directors and there was a possibility of small shareholders getting a representative director elected. I am just wondering whether the ASC has had a look at that and whether you have any views on that sort of proposal.

Mr Cameron—It is an issue of corporate governance where, subject to compliance with the law—and I do not recall that there is anything in the law that would prevent it—a company could choose to adopt such a rule. But striking the balance between individual shareholders and institutional shareholders is one of the great challenges for law reform and corporate governance in the near future. Without a deal of prior thought, I could not give a considered answer to that particular proposition.

I think there will be consideration, as part of this corporate law economic reform program, of the way in which voting for directors should occur, having regard to the availability of electronic means of voting, for example, which would enable the decisions to be obtained rather more quickly. But it would also enable the adoption of such innovative systems if that was what was thought was necessary to provoke greater shareholder democracy.

I should have mentioned earlier, perhaps, that the ASC held its first investor forum on Tuesday evening in Sydney. Without any great effort it attracted 350 ordinary shareholders to come and talk about issues of investing, investment advice, and so on. One of the questions that was raised at that forum was about the rights of small shareholders in contradistinction to institutional shareholders. I did point out that institutional shareholders are just an amalgam of other small shareholders; they are representatives of superannuation funds and other collective investment vehicles. While they have handed over the management responsibility, it is not as though they are some large amorphous group of non-people; they are actually representatives of smaller investors too.

So it is not clear to me that there is a self-evident case for unduly advantaging individual shareholders, as opposed to institutional shareholders. It is not self-evident that they should be given greater voting rights. Clearly, both ought to be encouraged to exercise their voting rights. The commission, in recent times, has taken steps to make it easier for institutional shareholders to vote, because there were some blockages in the system that made it hard for them to vote, including the possibility that they might be thought to be acting in concert and be caught by the substantial shareholder and takeover provisions when they were doing so. So we are seeking to free up institutional shareholders to vote, not in order to get them to gang up on small shareholders, but

because they in turn do represent a different variety of small shareholders as well. It is a good suggestion, but I am not sure it is self-evident that it should just be adopted without further consideration.

Mr LEO McLEAY—I think it is more than a good suggestion. When we had evidence in Sydney in the last stages of the inquiry we did on the simplification process, I was quite frankly appalled at the evidence that the committee got from people representing institutional voters in the big end of town. The inference you got at that meeting was that shareholders were really just a bit of a nuisance and you should not have to put up with them too much; that the only role they had was to elect the directors and then they ought to nick off and not bother attempting to have any say in the business that they owned shares in.

I was struck by a lot of comparisons to the industry we are in. If politicians attempted to rig the system in the way that directors of companies do, it would be an appalling situation. There is the mechanism that some companies adopt of advantaging certain directors by the place that the board puts them on the voting sheet. If we tried to do that in general elections, the public would tip us out very quickly. I think there is a massive gap between the ethics that are involved in corporate governance compared with the ordinary democratic system, as people understand it to work. There has been a deadly silence. As governments and the wider community suggest that more people should be involved in owning shares in businesses in Australia, as superannuation companies become the dominant players in business in Australia, you have more and more got a small clique of people who control these companies.

I put a question to one of the people from one of the institutional areas who tried to echo the point you made, Mr Cameron—that all these big superannuation funds are really just little people getting together, aren't they? That would be fair and proper if anyone ever bothered to ask the little people who owned the superannuation company what they thought of something. But, of course, we would never get around to doing that, because that would upset the old apple cart, wouldn't it? The AMP is a mutual organisation. When did the AMP ever ask the people who own the AMP what they thought of something? They tolerate them coming along to the annual meeting to elect the directors to—as one of their colleagues said to the committee—'get on with running the business'. It would be amazing if politicians said to the voters, 'Look, you have elected us, but don't come back and tell us what you think ought to happen to the company. We're here. You gave us the authority.'

I think that this area of corporate governance is an area that needs a lot of light shed on it. The Yannon transaction shed some light on it, but the outcome of that for anyone who was a little investor in Coles Myer would have been horrific. None of them actually got the company to give them a multi-million dollar benefit. They would have to find someone who was a director of the company and making a big profit out of the company and then say, 'I'll pay some of it back to you.' The director says, 'Oh, that's all

right because we're all in this together here in a sense, aren't we?' I think to say that big institutions are just little people in another guise is a little bit ingenuous.

Mr Cameron—Certainly, Mr McLeay, I agree with you entirely in the sense that the small investors—who to a significant extent are represented by institutional shareholders—do not control the exercise of the vote; I am well aware of that. I merely suggest that the fact that they do that means that it is not self-evident that you adopt a preferential voting system in favour of the direct small investors. I am by no means saying that they should not be actively encouraged to participate in the affairs of the company. Indeed, one of the other debates that we have had—in fact, I think it was outside the public session on Tuesday night—was with a small shareholder who said to me that he found it particularly galling to be told by the chairman of a public company meeting that there was no point in him expressing any view on a matter because the chairman already held sufficient proxies to bring about the result of the meeting in the way that he wanted, whatever the small shareholders at the meeting thought about it.

We then had quite a useful but not public debate about the dilemma that chairman is in. I said to him, 'What do you want the chairman to do? Do you want the chairman to leave you in ignorance of the fact that he has got that or do you want him to be up-front'—I am not for a moment condoning the way in which the chairman said it—'or, in effect, to conceal the fact that he has got these proxies?' I am merely suggesting again that it is not self-evident how a chairman acting responsibly with respect to all the people at the meeting should deal with the fact that he happens to have proxies that do give him control of the meeting. It was interesting. I will use a non-Australian example so that it does not get too toxic. When Disney—

Mr LEO McLEAY—You might consider this: some of the evidence that was given to us at that last hearing was, I think, from a company directors association—

Mr Cameron—It was AIMA—the Australian Investment Managers Association.

Mr LEO McLEAY—They thought that, if the chairman had enough proxies, the idea of shareholders being able to ask for a poll was very inconvenient for everybody. For example, the chairman was sitting up there, he had the numbers and you had a bit of a hide coming along and saying, 'We ought to at least ask people to put their hands up.' He was going on at some length about this. I might be maligning the wrong person, but I think it was the fellow from the—

Mr Cameron—Investment managers.

Mr LEO McLEAY—Yes. This went on for some time. I must say that most days of the week down here I participate in the same sorts of arrangements. The minister comes in and we all know that the minister will prevail in the end, because on one side of the House of Representatives there are 100 of them and on the other side there are 50 of

them, so the people with 100 win. But that does not mean that the minister can walk in and say, 'We're not the least bit interested in what you've got to say. Hands up everybody and we're going home.' If the process is about people having an understanding of what is going on, you have to have a debate. The arrogance of these people who say, 'What I'm doing here is . . . .' That small shareholder you spoke about might have had a superannuation interest.

The chairman is, in fact, sitting up there saying, 'What I've really got is one of your votes in my pocket, but I'm not going to exercise it in your favour. I'm just going to tell you to sit down and shut up.' If someone tried to do that in the parliament, there would be a riot out there in the newspapers. But the journalists are saying that these people have the right to that. Sooner or later someone has to start making the argument that they do not have that right, that a person who is an ordinary shareholder in a company, at least at the annual general meeting, should be able to have their day and should be able to have their say. The board should have to be at least willing to listen and explain. If we cannot have that, then companies are open, despite the best efforts of your organisation, to rorting and manipulation. One can only get the impression that, if people do not want to hear the argument, maybe there is a lot of rorting and manipulation that would make Senator Colston look like goody-two-shoes.

CHAIR—Leo, if you recall, those points you have made were part of our recommendations in our report on the second corporate law bill.

Mr Cameron—That second bill does provide for some assurance of the right that there will be a debate at those meetings. I was also going to comment on the order of names on the ballot paper. The way in which a company chooses to put the names of directors on the ballot paper is not a matter that is covered by the law. When there was a recent controversy about the order in a very well-known public company case—

Mr LEO McLEAY—You could be the last person on the ballot paper, with overwhelming support, but not get elected.

Mr Cameron—You did not get elected because the earlier candidates had been elected as well, which meant that there were no longer any vacancies for you. I must say that the commission did speak to the company concerned—and perhaps others were speaking to the company as well—and, following that, the order on the ballot paper was changed. It is a nice question as to whether it is necessary for the law to deal with that when market reaction, including the reaction of the commission, is such that you can solve those problems most of the time without the need for legislative intervention.

I merely draw to your attention the fact that, even though the commission had no statutory right to intervene, the commission did intervene privately in an endeavour to persuade the company concerned to adopt an order of names that would not mean that shareholders were effectively disenfranchised by the way that the ballot paper was put

together. If that can be achieved, virtually all of the time without legislative intervention, that is probably a more appropriate result, bearing in mind this is a marketplace of ideas and innovation and we do not need to legislate unless it is necessary.

Senator GIBSON—The surveillance by the ASX of the marketplace: is the commission happy about the level of expertise and the reporting by that effort by the ASX back to you? Are you happy with the current system?

Mr Cameron—I might ask Mr Longo to comment on it in particular.

Mr Longo—I am responsible for that relationship and we work very closely with the ASX and its referrals. We have several meetings a year with them where we go over their surveillance systems. Jim Berry is well known to all of us and he is very committed to constantly improving the systems used by the ASX for bringing unusual trading to our attention. And he does more than that: he brings it to our attention in a way that helps us investigate it quickly. That is really the trick, if you like, because, as we all know, there is a lot of trading that goes on and that judgments have to be made about which alerts the ASX's surveillance team do actually put some time into having a second look at and then forming a view as to whether or not they should bring it to our attention.

I think the system is working well; we have a close working relationship. Two weeks ago we had a workshop, a day and a half, with the ASX and the DPP where there was a lot of interesting discussion and points made about the surveillance systems used. In particular, coming out of that workshop, a joint project is being put together for the purposes of assisting the ASX in gathering information in a form which is more readily usable in court. There is always room for improvement and those improvements are happening.

Mr Cameron—Perhaps I should also say that we are giving a lot of thought to the legal nature of the relationship at the moment as part of the process of demutualising the Stock Exchange. No doubt, when the government considers that in due course, it will have regard to the views of the commission about this relationship between the Stock Exchange—as the regulator of the trading—and the commission, with its ultimate responsibility for the health of the securities markets. Just how that relationship will be described will be quite important for us when the Stock Exchange becomes a fully commercial organisation and not the traditional club that it was, and still is technically.

CHAIR—The National Institute of Accountants has been in dispute with their auditors and has attempted to remove them. I understand that the first attempt failed because of a procedural problem. They then asked you to intervene to appoint a new auditor and you in fact reappointed the auditors that they were trying to get rid of. Do you have any comment on that?

Mr Cameron—Only to say that I am not personally briefed on the matter, but I

would simply say that the question of removal of auditors is difficult whatever the nature of the organisation concerned. The commission's role is to ensure that a company, of whatever complexion, does not use the removal procedures to avoid difficulties with its auditors when the auditors are merely performing the statutory role.
The only curiosity, if you like, of this particular instance, which is obvious on the face of it, is that the organisation concerned is itself a professional body of accountants.

As I said, I am not briefed on the particular details, but it is always a difficult and sensitive issue. Indeed, it is a matter that, at some stage, will need some further attention as to how one ensures that those who are effectively responsible for the appointment of auditors do not use that power to, in effect, control the way the statutory audit process works. The commission's present role is limited to the very circumstance you describe, namely, to ensure that we give our consent or not in such a way as to ensure that the statutory independence of auditors is preserved. That is what we would have been seeking to do in this circumstance.

CHAIR—I will refer you to the 1994-95 annual report of the Companies Auditors and Liquidators Disciplinary Board, which makes some fairly strong criticisms of the ASC. Basically, they say that the ASC was not fully using its services. They say the ASC did not always present its cases before the board in an effective manner. There was a need for competence in proceedings before the board, and the ASC should address this problem. Could you enlighten us on your problems with the disciplinary board?

Mr Cameron—I am not up to date with the present nature of the relationship between the commission and the board. All I will say is that the board is a statutory creature with only one function, namely, to receive complaints where the commission has investigated them and found them necessary to refer them to it. There are two basic types of referral to the board. One is where there is a serious disciplinary matter, which requires a full hearing and the presentation of evidence, because that usually involves the livelihood of individuals who may even be members of very large accounting firms. Those matters can become major pieces of litigation, even though they are conducted before a special purpose one-off panel.

On the other hand, there is a whole series of minor referrals for comparatively routine matters: people who are no longer actively in practice and need to be removed and so on. Those matters are handled in a routine fashion. So you have got a special purpose body with some major pieces of litigation, highly contested, which go on appeal to the Administrative Appeals Tribunal or even to the Federal Court—and they have done that in the recent past—and, on the other hand, comparatively minor ones.

If you are about to disappear for a division, I might get some further information while you are away.

CHAIR—Thank you. We will be back as quickly as we can.

Short adjournment

CHAIR—The committee is now resumed.

Mr Cameron—I am happy to look again at the issues relating to the CALDB, and I am happy to talk further to the committee about it when I have some further information. But it is not a matter that has come particularly to my attention in recent times.

CHAIR—In their 1995-96 annual report they said that your referrals tended to be of a minor administrative nature and that you do not refer more serious conduct matters. That was another one of the comments made.

Mr Cameron—I think the assumption that underlies the comment is that there are serious matters that we should be referring that we are not, and I am not aware that that is so. I am not aware that the board would be in a position to be aware of that if we were not. So it is one of the dilemmas, I suppose, of an enforcement agency. If you are accused of not referring matters, it seems to me that that would only be a substantial criticism if there were matters that we should be referring. I am not aware that that is so, but I will have a look into the matter and let the committee know if there is some substantial cause for concern.

It is a matter to which the commission is paying some attention, as to just how we should relate to a specialised body like that and whether the private professions should play a greater role in referring matters to the board rather than the commission doing it. So, as part of our re-engineering of the ASC, that is a matter that we are considering.

CHAIR—Are there any other questions? If not, we will move into the in camera session that you offered.

Evidence was then taken in camera—

Committee adjourned at 10.28 a.m.