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**JOINT STATUTORY COMMITTEE ON
CORPORATIONS AND FINANCIAL SERVICES**

Monday, 27 March 2006

Members: Senator Chapman (*Chair*), Ms Burke (*Deputy Chair*), Senators Brandis, Murray, Sherry and Wong and Mr Baker, Mr Bartlett, Mr Bowen and Mr McArthur

Members in attendance: Senators Chapman, Murray and Wong and Mr Bartlett and Ms Burke

Terms of reference for the inquiry:

To inquire into and report on:

Corporate Responsibility and Triple-Bottom-Line reporting, for incorporated entities in Australia, with particular reference to:

- a. The extent to which organisational decision-makers have an existing regard for the interests of stakeholders other than shareholders, and the broader community.
- b. The extent to which organisational decision-makers should have regard for the interests of stakeholders other than shareholders, and the broader community.
- c. The extent to which the current legal framework governing directors' duties encourages or discourages them from having regard for the interests of stakeholders other than shareholders, and the broader community.
- d. Whether revisions to the legal framework, particularly to the Corporations Act, are required to enable or encourage incorporated entities or directors to have regard for the interests of stakeholders other than shareholders, and the broader community. In considering this matter, the Committee will also have regard to obligations that exist in laws other than the Corporations Act.
- e. Any alternative mechanisms, including voluntary measures that may enhance consideration of stakeholder interests by incorporated entities and/or their directors.
- f. The appropriateness of reporting requirements associated with these issues.
- g. Whether regulatory, legislative or other policy approaches in other countries could be adopted or adapted for Australia.

In inquiring into these matters, the Committee will consider both for profit and not-for-profit incorporated entities under the Corporations Act.

WITNESSES

BEDNALL, Mr Timothy Gordon, Partner, Mallesons Stephen Jaques 20
GRATION, Mr Douglas, Company Secretary, Telstra 10
MATHESON, Mr Ian, Chief Executive Officer, Australasian Investor Relations Association 1
McGLYNN, Mr Gene, Assistant Secretary, Department of the Environment and Heritage..... 28
STARR, Dr Paul, Senior Policy Officer, Department of the Environment and Heritage 28

Committee met at 5.31 pm**MATHESON, Mr Ian, Chief Executive Officer, Australasian Investor Relations Association**

ACTING CHAIR (Ms Burke)—Today the committee will continue to hear evidence regarding its inquiry into corporate responsibility and relevant and related matters. This is the seventh public hearing of the committee. The committee expresses its gratitude to the contributors to this inquiry, including those who will be appearing before us as witnesses today. They are public proceedings, although the committee may agree to requests to have evidence heard in camera or may determine that certain evidence should be heard in camera. I remind witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to the committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

If a witness objects to answering a question, the witness should state the ground upon which the objection is taken, and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time.

I welcome Mr Matheson from the Australasian Investor Relations Association. I invite you to make a short opening statement, at the conclusion of which I will invite members of the committee to ask questions.

Mr Matheson—I thank the committee for the opportunity to appear before it. I will make some summary points about our submission, which follow somewhat the order of the committee's own terms of reference. I think you are aware that the Australasian Investor Relations Association represents listed companies. We currently have 86 listed company members who represent about \$760 billion, or three-quarters of the total market capitalisation listed on the Australian Stock Exchange. Those companies represent a diversity of sectors and market capitalisations. While we have 49 of the top 100 companies, we also have a range of other companies, the smallest of which has a market capitalisation of \$4 million. So we feel as though our members do represent a cross-section of the listed entity community.

The key points of our submission are, firstly, that organisational decisionmakers should have regard to the interests of nonshareholder stakeholders to the extent that they are required to do so by law. Secondly, enlightened self-interest is the most reliable mechanism for ensuring that organisational decisionmakers maximise the long-term interests of their shareholders, consistent with community expectations and retention of a social licence to operate. Thirdly, government will rightly make laws regarding workplace safety, employment standards, environmental matters and in similar areas that will bind corporations. However, beyond those areas that government chooses to specifically legislate, a general requirement that organisational decisionmakers have regard for the potentially different interests of shareholders and nonshareholders would be ineffective, confusing and unreasonable and would expose directors and executives to potentially unresolvable conflicts. Fourthly, sustainability and its interpretation is going to vary greatly across sectors and company market capitalisation. It is not a one-shoe-fits-all approach, such as in accounting standards.

Fifthly, while Australian companies may have a low percentage of stand-alone sustainability reports, for the greater percentage of annual reports of the 1,800-odd listed entities on the Australian stock exchange, there is substantial sustainability related information incorporated within the general annual reports. Sixthly, it was only 10 years ago that companies were permitted to produce concise reports. Concise reports are now as large as some full annual reports were 10 years ago. As an aside, it may be of interest to the committee that many of our members who have large share registers are suggesting to us that we lobby government to reverse the Corporations Act onus on companies to send out an annual report to all shareholders so that companies only send a concise or a full annual report to shareholders on request, on the basis that most annual reports are on the company's website and are also, obviously, lodged with the Stock Exchange. There are potentially significant cost savings to listed companies in doing something such as that without compromising the information dissemination or disclosure to the market or to shareholders. Finally, the association's policy is to encourage members to consider sustainability issues as they relate to their business and then disclose them on their website and/or in a separate sustainability or CSR report.

As a member organisation of the ASX Corporate Governance Council, we are awaiting the recommendations of the council working party that is looking into whether CSR and sustainability issues could be picked up in the ASX governance reporting framework. Whatever its recommendations are, we believe as an association that an approach that provides flexibility and a general encouragement to listed entities to consider and then disclose that sustainability or nonfinancial information that is pertinent to the company and its stakeholders is the preferred approach.

ACTING CHAIR—I take it from point 1 of your summary:

Organisational decision makers should have regard to the interests of nonshareholder stakeholders to the extent that they are required to do so by law—

that you are implying that law as it currently stands provides enough opportunity for nonshareholder stakeholders to be given some licence in the thoughts of directors in their deliberations.

Mr Matheson—Correct.

ACTING CHAIR—So you do not see that there is any need for either changes in respect of directors' duties or reporting at this point in time?

Mr Matheson—No.

ACTING CHAIR—One of the issues doing the traps at the moment is James Hardie. We have heard conflicting evidence on a lot of that, if you have read any of the transcripts and things that are going on. The issue of a safe harbour keeps coming up. Part of Hardie's defence—that is probably too strong a word—or implication at the beginning was that they could not pay out large compensation because it would be against their directors' duties and that they could be then sued by shareholders. You do not think there is any need for a notion of safe harbour in respect of directors' duties at this point in time?

Mr Matheson—I should disclose that I am not a lawyer and not fully—

ACTING CHAIR—Neither am I. It is actually quite a good thing. That is okay. I am not asking from a legal point of view. I suppose I am asking from your perspective representing these people, as a voice in this. I do not want a legal interpretation of it. Suppose you are sitting around having a directors' meeting. You then say, 'We feel that we can't make a decision that we might want to because we could be potentially sued.' What if there was a notion that you would not be sued because you have been given some cover and that you can consider other issues? I suppose it is from a more philosophical level of what your membership is talking about at the moment.

Mr Matheson—In the same way that the business judgment rule gives directors some greater certainty when it comes to making decisions based on the best available information at that point in time and in the same way a safe harbour rule gave directors some similar comfort that they were acting in the best interests of the company, not necessarily in the interests of shareholders, when making a decision and were in the process of specifically taking into account the interests of any third party—in your example, perhaps asbestos holders—if there is a sufficiently strong view. I can see nothing wrong with that from a personal point of view.

ACTING CHAIR—Do you think at the moment directors feel that they are in a legal bind by taking into consideration other stakeholders or, from your summary should I assume you do not think they are in that bind at this point in time?

Mr Matheson—I do not think so. I have not heard any anecdotal evidence to suggest that they are in that bind.

ACTING CHAIR—On the reporting, obviously a lot of your members are also investors, as institutions would be investing. Do they look for information beyond the numbers? Are they looking for more information along the lines of ethical investments? From looking at some of the other submissions and from what is going on in some other countries, the pressure from ethical investments are creeping in more. Are you seeing that in the Australian marketplace?

Mr Matheson—I think there is some evidence of it. I should perhaps clarify that some of the financial services members do have subsidiaries that are investors managing third-party funds. A cross-section of them—AMP or Westpac through BT—do have SRI type funds. I do not have the statistics to hand—they may have been presented to the committee in other submissions—for the size of the SRI pool of funds in Australia at this juncture, but if it is \$5 billion I would be surprised. So, in the overall scheme of things, within the broader managed funds industry, I think it is less than one per cent in terms of total funds under management. That is not to say that it is not growing and that mainstream fund managers do not also take into account social, ethical and other issues in the course of their mainstream investment decision making. If the assumption in your question was: is it only the SRI funds that are really interested in this stuff, I think the answer is no. I think there is a broader community within the funds management industry that looks at governance information and other non-financial information as part of their investment decision-making process.

Having said that, though, I have certainly been in forums overseas where these issues have come up and I have been quite amazed at the strength of feeling. It may have been an

unrepresentative group of individuals and organisations at some of those forums, but I was quite struck by how big a movement it is in Europe compared to Australia amongst the investment community. I would suggest to you that the Australian investment community is perhaps not as far down that path, generally speaking—not just the SRI funds but the funds management industry as a whole—as, say, the European funds management industry is in terms of demanding this information from companies that they invest in.

As another aside, you might be interested to know that one of our larger members said that the only reason they produced a sustainability report was that they were sick of going on roadshows to meet with European investors and being asked for sustainability type information. They got so sick of being asked for that information that they thought they should put it all into a report for all to see.

We are probably where we were at 10 years ago in relation to governance disclosure: until such time, arguably, as the investment industry does shout louder for this information, you will get a number of companies who will disclose the information on the basis that they think it is part of their licence to operate and want to be good corporate citizens. But we should also recognise that there is a very long tail of microcapitalisation stocks on the ASX, and our members are predominantly in the ASX300 that represent about 95 per cent of the total market capitalisation of the ASX. I think that structure of our market needs to be borne in mind very carefully when discussing or considering any disclosure obligation, given the different size of companies that are on the ASX.

ACTING CHAIR—Therefore, your membership base would not look favourably on a recommendation saying, ‘We’re now going to make it compulsory to adopt’—hypothetically—‘a GRI standard’ that they all have to report on.

Mr Matheson—No.

Ms BURKE—I thought that might be the answer. I will now hand back to the chair. We have had an opening statement and a few questions.

CHAIRMAN (Senator Chapman)—My apologies: I was in the chair in the Senate as well as supposedly being in the chair here.

Senator MURRAY—Do you have the feeling that Australia would be better off waiting for Europe to iron this area out and then adopt their practice or that we should involve ourselves in catch-up? I ask you the question with capital raising in mind. This committee is often told by companies how important it is to have a comity of law, information, intellectual property, tax considerations and so on between Australia and major country services to try to ensure that capital raising is made as fluid as possible, because then people can understand our system, which is near their system. One side might say, ‘Just lay back, wait till somebody else has done it and then copy’; the other side might say, ‘We should be proactive and come to a conclusion ourselves, which means we are at least apace with the foreigners.’

Mr Matheson—I do not disagree with a view that Australian laws that impact on the cost of capital be in line with major competing jurisdictions particularly the US, the UK and Europe. In relation to the disclosure of non-financial information—sustainability information or however

you want to define it—it is not unlike governance information; there are initiatives going on all around the world. If one reflects back over the last 10 years and looks at all the governance codes that have been issued over the years, every jurisdiction wants to throw their hat in the ring and come up with something that is deemed to be localised and tailored for the local nuances and culture and law and all the rest of it. I think that there are arguments for and against each country taking a more localised view about disclosure of certain types of information, but at the end of the day the investment community increasingly is a global industry and it looks for the same types of information. Whether it be an analyst sitting in Boston or a fund manager sitting in Frankfurt or a fund manager sitting in Melbourne, they do consider the same sorts of information sets whether financial law or, increasingly, non-financial. Perhaps to a lesser extent it is non-financial but I think the information that the investment community and other stakeholders are looking for is largely the same.

I am not an advocate for reinventing the wheel. Then again, I am not an advocate for being in the vanguard either of detailing particularly if it is quite prescriptive information disclosure. I think that we certainly need to be aware of what is being disclosed overseas and what users particularly in the investment community are looking for overseas. If I could use the analogy again, the thing that really made listed entities take note of the governance disclosure requirements was the investment community saying that they wanted the information, and, in turn, it flowed fairly freely. But the investment community need to step up and say that they want the information. That will be the biggest encouragement to listed entities, in my view, to go further in some cases that they have to date.

Senator MURRAY—I have an interest in business ethics and business morality. To me, governance and SRI has been more about money than morals. I have thought in my reading and my understanding of it that it is dedicated to reducing risk. If you have good governance practices you are likely to mitigate conflicts of interest and you are likely to have a better director spread, better processes, more safeguards and more checks. I see SRI in the kind of performance audit area where you are trying to appraise risk and I think that that is one of the reasons in both of these fields that foreigners have led Australia because the big markets have woken up to the risk management benefits of these programs quicker than have Australians. Do you think that is the right observation? Do you agree with those remarks?

Mr Matheson—I agree with your philosophical approach that at the end of the day it is all about risk mitigation. I think, though, in relation to governance practice and disclosure, that Australia has, to a large extent in many areas, been at the forefront of governance disclosure and practice compared with many other countries, certainly the US. While they talk about having a majority of independent directors in the US, very few companies have that. I think that Australia is actually ahead of the game as far as a lot of things in governance practice are concerned, and that goes for disclosure as well.

Senator MURRAY—On another tack: in item 4 of your submission, ‘Revision to the legal framework’, you made a remark which I have interpreted in a way I will explain to you. You said:

It would be unreasonable to impose obligations to non-shareholder stakeholders on incorporated entities and not have similar obligations for other organisations.

I react positively to that, because it is my view that any large organisation which has an impact on society and the economy needs to be reporting to the community, particularly if they are beneficiaries of tax concessions or the tax regime. They need to be reporting to the community on their governance arrangements and on SRI matters. Take churches as an example. Churches have a massive impact on our society, not just in the spiritual, religious and pastoral senses that we associate them with; they are into employment networks, hospitals and schooling. It is enormous. Is that the point you were making—that, if parliaments on behalf of society take a view that large organisations which have impact should report in the public and national interests, that should be common to all?

Mr Matheson—Correct. If listed entities are singled out for additional disclosure obligations, then it is a positive disincentive to being listed in the first place. It is discriminating against listed entities as opposed to other public companies, which may also be taking funds from the public but are not listed on the stock exchange and do not have the same reporting and disclosure obligations placed on them and therefore do not have that additional cost imposed on them.

CHAIRMAN—I note in your submission that you recommend that Australian companies should be encouraged rather than mandated to produce sustainability reporting through a framework, consistent with international equivalents, that is incorporated in the ASX corporate governance guidelines. Is there a danger that such a requirement could become quasi-mandatory rather than truly voluntary? If so, what is your response to that danger?

Mr Matheson—There is that risk. It comes back to interpretation in the same way that various advisers, as opposed to the companies themselves, have interpreted the governance disclosure obligations, which as you know are an ‘if not, why not’ approach. That is not the way that some advisers have interpreted them and, in turn, they have suggested to their clients, being listed companies, that they have to have a majority of independent directors or have to do this or have to do that. It comes back to interpretation and education of all participants, including companies and their advisers, as to what the intent really is. There is certainly a risk but, as a member of the ASX Corporate Governance Council since its inception, I am acutely aware of the misperceptions that exist, and I think we all have an obligation to ensure that the market is fully aware of what the intent is, without it becoming too prescriptive and mandatory.

CHAIRMAN—But you think on balance, given that risk, that it should be there as part of the guidelines?

Mr Matheson—There is certainly an argument for giving companies some certainty as to the types of information that shareholders and other stakeholders might be interested in, in relation to sustainability information. Having said that, there are different bits of information that different stakeholders are interested in. Hardly a week goes by without a member of ours complaining about some new questionnaire that they have received from some domestic or overseas group who is interested in some particular bit of information. Some of these questionnaires are almost as thick as a phone book—without exaggeration. One of the concerns of listed companies is that there is such a growing and broadening demand for types of information and the information itself from so many different quarters. At the moment they are making a decision as to whether they respond to these questionnaires or not, whomever they come from. Whether they do or not may, in turn, influence the results that are gathered by whoever the party is collecting that information and may determine whether a company is in the

Dow Jones sustainability index—just based on whether they complete a questionnaire, and based on the publicly available information that is out there as well.

Another concern that members often express is that the type of information is increasingly getting down to a level of granularity that is bordering on material information, and therefore should be disclosed to the stock exchange. I think for that reason alone many companies are saying, ‘We need to perhaps take a more holistic approach to how we disclose this information in the first place, and then what information we disclose and what is relevant information to our company.’ Obviously, the amount of water that a company recycles is more relevant to a steel making company than it is, perhaps, to a technology company. So in getting the list of information I would strongly advocate the investment community take a lead role in determining. Certainly, on one view, it would give listed entities and any other reporting entity that might be so inclined to disclose this information more certainty. It should be driven by the investment community. Secondly, it should be flexible enough so that what companies do actually disclose is pertinent and relevant to their business as opposed to other companies in other industries that may have more to disclose than another.

CHAIRMAN—Given the absence of a standard reporting framework for non-financial information in Australia, how seriously do you think capital markets take the information that is published by companies that do report?

Mr Matheson—How seriously do they take non-financial information?

CHAIRMAN—How seriously do the capital markets currently take this sort of information, given the absence of a standard reporting framework?

Mr Matheson—In varying degrees. Some ultimate beneficial holders—be they superannuation funds or trustees—may have particular personal views about aspects of non-financial information. To a greater or lesser extent the broader community, too, has varying levels of interest in this information as well. But I suppose the guardians—whether it is the public or the trustees of superannuation funds—of their money, in most cases being third party fund managers, and the stockbroking analysts who research companies and sectors in varying degrees have regard to this information—as I said in response to Ms Burke’s question. In some cases great interest is evidenced by the greater level of questioning that some Australian companies get when they go on road shows meeting with European investors, for example.

CHAIRMAN—What is your view of the utility or the benefit as against costs of corporate responsibility? There have been a number of research projects undertaken on this, some of which allegedly show that companies perform better in their returns to shareholders if they behave in a corporate socially responsible manner. I do not have the details with me, but a recent piece of research in the UK showed that those that were the least socially responsible performed something like 24 per cent better than those that were more socially responsible. There is conflict there. I suppose it depends on the methodology, but I think this latest research questioned the earlier methodology that showed a benefit. I am wondering what you think.

Mr Matheson—I did not see the research but, intuitively, you would have to say that good governance or a company that is more transparent and takes its shareholders, investors and stakeholders into its confidence will ultimately suffer less than a company that is more opaque

and treats those stakeholders with disdain in the medium to longer term. Without seeing the results of that survey, I would suggest that perhaps you could do some research to show that in the short-term those companies that may have disregard to good governance and good corporate responsibility may throw everything else to the wind and just get the runs on the board as far as financial performance is concerned—but, in the process, may have done significant damage to the long-term sustainability of their company. That is what I would suggest.

CHAIRMAN—Are you aware of whether companies link executive and management remuneration to measures of corporate responsibility? If so, in what way?

Mr Matheson—I am aware of some isolated examples, and I would not like to even mention companies buying them—just because I cannot remember the names of those companies. But I am certainly aware of some chief executives' remuneration and overall performance being tied to certain corporate responsibility criteria. It is something I can follow up if you would like.

CHAIRMAN—Are you aware of whether that is increasing or static?

Mr Matheson—I do not have a sense, I am afraid.

Ms BURKE—I will just follow up the notion of the market leading, which I think is a valid point and probably where Europe has got to. If that were to happen for investors and for your membership, there would need to be a framework by which they were guided. Instead of imposing legislation, if there is something further down the track, there would need to be some set of guidelines: 'We want to hear about the environment, we want to hear about your staff and we want to hear about how you treat other investors and all the rest of it.' There would be some need for a framework so that everybody knew what they were actually reporting against and that that was comparable information.

Mr Matheson—Am I in favour of that?

Ms BURKE—I am just saying: if it came to pass that corporations had to report as listed entities, and all listed entities had to report, would there therefore need to be a framework?

Mr Matheson—I think it would be helpful, yes.

Ms BURKE—The other thing we have been grappling with is this notion of 'greenwash'—that individuals get a tick. One entity, and I will not name it, has just said they will donate \$1,000,000 and therefore they get to be great corporate citizens, but they might not be treating their staff or their customers well. There is a notion that some sort of auditing process that goes on with financial reports should go on for this other reporting so we know that, if we claimed X, we have actually delivered X.

Mr Matheson—I think in our submission we do say that we do not believe that verification or auditing of sustainability reports is required or that it should be put into the same category as the information that goes into the director's report, for example. We think that the information sets are chalk and cheese and should not be put into the same category and that the additional cost that would go with verification or auditing of non-financial information would further increase the burden on companies as well. I know that the auditing firms and the accounting bodies love

to think of the notion that it is a whole new set of information that needs to be audited or verified and of the additional fees that they could gouge out of companies, but I think it is unnecessary.

CHAIRMAN—Thank you very much for your appearance before the committee and your assistance with our inquiry.

Senator MURRAY—Thanks for waiting patiently.

Ms BURKE—Thank you for waiting for us so patiently.

[6.11 pm]

GRATION, Mr Douglas, Company Secretary, Telstra

CHAIRMAN—Welcome. The committee have before us your submission, which we have numbered 18. Are there any alterations or additions you wish to make to the written submission?

Mr Gration—No, there are not.

CHAIRMAN—I invite you to make an opening statement, at the conclusion of which I am sure we will have some questions.

Mr Gration—Thanks, first of all, for the opportunity to appear before the committee. As we said in our submission, Telstra are very proud of our corporate social responsibility record. We have done quite a few things in that field, many of which are outlined in our corporate social responsibility report. There are initiatives in relation to workplace safety, mental health, working with disadvantaged groups and Indigenous communities, the response to the tsunami disaster, the work of Telstra volunteers in the community and the sponsorship of business awards, and some initiatives specifically related to our business around driver safety and mobile phones and ensuring accessibility of products and services for all members of the community.

In our submission we endorsed the Business Council of Australia's submission and approach to this area. I will not revisit that in detail but I would like to highlight a couple of key points as to how Telstra sees the social responsibility issue. We believe that the objective of Telstra and all public companies is to generate long-term value for our owners, which are the shareholders. But, having said that, successful companies, including Telstra, have to recognise that the long-term interests of shareholders are advanced by responsibly addressing the needs and concerns of all stakeholders, including employees, customers, suppliers, the community in which we operate and the public at large.

I think that distinction is quite important as a matter of governance, but it is also the way that we would distinguish—and I think all other companies need to distinguish—between ethical and appropriate CSR initiatives of the kind that we and other companies are engaged in and initiatives like, for example, the donations that were identified in the course of the HIH royal commission, which were seen to be at best of questionable ethical status and to have really no connection to either that company's business or the interests of its shareholders.

We also believe that it is important that there is a connection between the underlying activities of the corporation and its CSR initiatives. That means that the CSR initiatives appropriate to Telstra might be quite different from those that are undertaken, for example, by a mining company or a financial institution. That is one of the reasons we think prescriptive regulation in this area is unlikely to be helpful simply because what we may engage in is so different from what other companies, say, a BHP Billiton or a Westpac might engage in, that to put in place prescriptive requirements and reporting would be an unhelpful development.

The other reason we would say the prescriptive legislation is unhelpful—and, again, BCA highlights this in their submission—is that as soon as you move into that sort of prescriptive regulation you instantly go into a compliance mind-set, and I think that Mr Matheson touched on this in his evidence earlier. As soon as there are ASX guidelines or the Corporations Act requirements as to what needs to be reported, an army of consultants and lawyers put together all sorts of advices about what you need to do, but I am not sure that the outcomes are necessarily that much better than what you get through well-informed initiatives that companies put in place of their own accord.

The final point that I would make is to note that the companies best placed to engage in CSR activities are those that are strong and successful. The best CSR initiatives for those companies are ones that continue to further the success, the strength and the sustainability of those companies. Ideally, we find with our CSR initiatives that they are a win-win outcome both for the company and for the community groups and others that we work with on those initiatives.

ACTING CHAIR (Ms Burke)—Given that you are one of the only entities that actually has a social responsibility legislated by parliament—and I am curious to see that you literally are one of the only institutions that has a requirement to provide and demonstrate social responsibility—I would like your feel on how Telstra has dealt with that. Has that benefited your business? Your competitors do not have the same requirement so wouldn't you see that in some respects you are at a competitive disadvantage if we do not make them take on that same responsibility? Even if it is not doing the same thing by virtue of the inherent nature of Telstra, are you at a competitive disadvantage because they do not even report on that?

Mr Gration—It is an interesting question. I assume that you are referring to the universal service obligation. In some ways I guess that illustrates the point that I was making in the opening statement that we tend not to think of that as a CSR initiative. We tend to just think of that as a regulatory requirement that we need to comply with. You do get the sort of compliance mind-set that says, 'What do we need to do to comply with this requirement?' rather than one that says, 'How do we best serve those customers in that area?' One of the changes that we put in place, the Telstra Country Wide business unit, was to try to get more of a mind-set that said that there are opportunities and customers out there that need to be served rather than a piece of legislation that needs to be satisfied.

Your other point that we would certainly warmly endorse is that where you have requirements that apply to one player in an industry but not others—and I suspect that in the broader context of this legislation where you have got requirements that apply, for example, to Australian companies but do not apply to international companies—then you can get quite a mismatch of the burdens that those companies are under and investors would respond accordingly.

ACTING CHAIR—Some of the other institutions that have presented to us—and financial and banking institutions come to mind—provide what some of us would say is a community service in regional and remote areas. They also do not have any legislation that says that they must do it. While not going down a regulatory route perhaps but at least in a reporting sense, is there any benefit in them saying that they have not closed down any more branches in the bush or they are providing some face-to-face customer service in those areas? These analogies are often drawn between what Telstra is required to do and what other essential services—private,

not public providers—are required to do. In your experience, would there be some benefit in other entities having to report on those sorts of initiatives as well?

Mr Gration—Whether they are required to report or not, I think that there is real benefit in reporting both to make sure that your shareholders know what you are doing with their funds. Also, if you are doing good works then let people know that you are doing them. Coming back to our USO, it is important that our shareholders know both what our obligations are and what we are doing to satisfy them. Our Telstra Country Wide business produces an annual report much more focused on communicating with those non-metro communities and saying, ‘This is what Telstra does in your area.’ It is important to get out there and do it. I guess we do that in the absence of a requirement to do it regardless of whether the banking or other industry needs a requirement to report against it or whether they, for similar reasons, find themselves making that information available in any event.

ACTING CHAIRMAN—Do you believe people read your reports?

Mr Gration—It is an interesting question. I am not responsible for the corporate social responsibility report but I do the annual report and what we call our annual review, which is a shorter form report. I feel I read it a lot more often than just about anybody else in the community. There are reports that are much better read than others. For example, the short form annual review is much better read than the long form annual report, but that does serve a good purpose for analysts. The corporate social responsibility report is probably an example of one that is not as well read as it might be.

ACTING CHAIRMAN—When you started doing your CSR report, did you look at current frameworks, the current GRI, what the ASX is doing? What model did you go to and why?

Mr Gration—We looked at all of those frameworks in putting together the corporate social responsibility report, but it was driven by saying, ‘We do a lot of good things within Telstra in the corporate social responsibility space and do not necessarily communicate them well.’ I think we first did it two or three years ago, bringing it all together into one report. We said, ‘Let’s put it all together and communicate that to the public’—rather than having a disability service report in one area, a health and safety report in another area, what were doing in privacy in another, and no report at all, for example, around some of the philanthropic activities. It was with a view to bringing that all together in one place. I am sure one of the issues you will be struggling with as a committee—we certainly struggle with it—is: what is the definition of ‘corporate social responsibility?’ What do you actually put in that report?

ACTING CHAIRMAN—When you did that, did you look at frameworks, or did you determine that ‘We are already doing these things; we will hive them together in one report’?

Mr Gration—We looked at the frameworks and also at examples of what other companies were doing and what we saw as best practice. Westpac, for example, was seen as one of the leaders in the field, and we certainly had a close look at what they were doing.

ACTING CHAIRMAN—Have you studied what is happening in respect of the GRI and the deliberations that are going on there?

Mr Gration—It would probably be generous to say that I have studied them. I am certainly aware of them.

ACTING CHAIRMAN—One of the comments you made in the opening was that what you do is very different to what a mining company does, and is probably fairly different to what financial services do. So the GRI is going down a route of saying, ‘This is the information needed for this sector, and that sector.’ Is that a viable approach, or not?

Mr Gration—I still struggle to see that. Unless you get down to saying, ‘Here is a telecommunication specific sector and here is a banking sector’ and so on, almost invariably, as soon as you prescribe that, every initiative you come up with will either fit into three or four boxes or none at all. So I would not be all that enthusiastic about going down that path.

ACTING CHAIRMAN—The other question is the notion of auditing this thing that is now coming up and the notion of greenwash—X company reports that they have done this wonderful re-plaqued post or whatever, until somebody goes and takes a photo and discovers that no, there are no new trees there. The notion of auditing is to get some assessment that what you have reported has actually taken place.

Mr Gration—Whether you audit it or whether you just rely on the general sort of Trade Practices Act and so on, as though you cannot engage in misleading and deceptive conduct, clearly you cannot report things you have not actually done. I think there is certainly value in having some sort of independent third party have a look at what you have done, and there are certainly organisations that have set themselves up to rank various governments and CSR/ SRI practices. There is value for third parties in being able to say, ‘This is not just Telstra saying the wonderful things it has done; there is evidence that an auditor has come in and had a look at it.’

ACTING CHAIRMAN—Are the capital markets which are investing in your entity and looking at social responsibility and the side of ethical investment having an impact upon what listed entities are deciding to report?

Mr Gration—There is a fairly limited universe of SRI superannuation funds and so on who are very specifically focused on that. I think that is a very small part of the capital market at the moment. I think more generally the capital markets are focused on returns, but they recognise that part of generating those returns, and particularly generating them into the future, is properly addressing those sorts of issues. You do not have to look far to find examples of companies whose fortunes have suffered where they have failed to address these sorts of issues.

Ms BURKE—So it is about the notion of long-term sustainability. If you are reporting that you are taking measures to be sustainable into the future, be they environmental whatever, investors are also looking at that—they are looking at the longer term as well as the shorter term.

Mr Gration—Yes. I think Senator Murray made the point earlier that, while it does make you feel good to do these initiatives, ultimately it is about generating returns, or money. It is about saying, ‘We can’t generate long-term returns unless we deal with our employees properly, engage with communities properly, have sustainable environmental practices et cetera.’

CHAIRMAN—I suppose Telstra is in a slightly different position from most corporations in that you have an aspect of corporate responsibility legislated, don't you, with your community service—

Ms BURKE—I hate to tell you I have done that. I did start with those ones. Your question might be different. You were not here to hear the answer.

Mr Gration—The response I gave earlier was that we tend not to think of that universal service obligation as corporate social responsibility; we think of it more as a regulatory impost. I guess partly getting back to the point I was making in the opening statement, when it becomes a regulatory impost you tend to think of it that way. Rather than thinking, 'What can we do to engage with community and so on?' you think, , 'Gee, what can we do to keep DCITA or whoever it might be off our back and satisfy this regulatory requirement?'

Senator MURRAY—That is because you see it as specific to you and not general to the market. Is that why you see it as regulation rather than—

Mr Gration—No, that is a separate aspect. It is part of regulation.

Senator MURRAY—If the same thing applied to the whole market, would you still have that attitude?

Mr Gration—I think as soon as it is a regulatory requirement you get into that compliance mindset. I think Mr Matheson was touching on this earlier when he was talking about, for example, the ASX governance reporting guidelines. You get a similar experience with the remuneration reporting in that, as soon as there is prescriptive regulation about how you do something, the mindset turns from, 'How can I best inform the readers of this report?' or, 'How can I best engage with community?' to, 'Here is a regulation; how do I comply with it?'

One of the other points I made while you were out, Chairman, was that one of the reasons we set up the Telstra Country Wide business unit was to get away from seeing the USO as just an impost. We wanted to say, 'There's a whole regional committee out there, how do we engage with them as customers and identify business opportunities out there for the company?' rather than simply saying, 'Gee, we've got this universal service obligation so we'd better get out there and somehow satisfy it.'

CHAIRMAN—So you are saying that, because those two aspects are put in place by regulation, you do not see them as part of your social or corporate responsibility.

Mr Gration—Yes.

CHAIRMAN—That leads on to your argument that there should not be regulation or mandatory requirements regarding corporate responsibility.

Mr Gration—I would probably leave to one side the questions around the USO, because I think there are plenty of debates to be had about how exactly the USO happens. But we would certainly acknowledge there is a real social policy reason for making sure that all Australians have access to communications, and we are having plenty of discussions as to how best to

achieve that. Leaving aside those sorts of things, I would say that as soon as you regulate the other areas that we would see as corporate social responsibility—for example, our engagement with philanthropic organisations—it very much turns into a compliance mindset. As soon as you say, ‘You’ve got to report against these 10 different criteria,’ you get a compliance mindset. I get surveys that say, ‘What’s Telstra’s policy on child labour in the Third World?’ We think it is a bad thing, but it really is not something that impacts on us all that much. As soon as you start trying to tick those boxes, you have a problem.

CHAIRMAN—So your attitude to the proposed incorporation of sustainability reporting in the ASX corporate guidelines would be negative.

Mr Gration—Yes.

CHAIRMAN—You do not believe it is necessary or beneficial.

Mr Gration—It is more that I do not believe it is beneficial, and I think in putting that in place you will lose a lot of the good initiatives that are out there at the moment. It will become much more a box-ticking compliance exercise.

CHAIRMAN—I will ask you the question I asked Mr Matheson earlier: given that you are directly involved in a corporation, does Telstra have any element of its remuneration structure that relates to corporate responsibility achievements? If so—

Mr Gration—It depends how you define corporate responsibility. Certainly there have been past remuneration structures that Telstra has had that have had elements, for example, relating to the outcome of employee opinion surveys. I am not sure whether Telstra has had these, but I am certainly aware that companies have had health and safety outcomes as part of their remuneration structures. If that counts as CSR, I think you can see those sorts of elements being part of remuneration structures, less so around community engagement, philanthropic activities and so forth.

CHAIRMAN—Given your response to my question on the ASX corporate governance guidelines, you do not see a need for a standardised reporting framework.

Mr Gration—I think the CSR activities are so diverse that to standardise that reporting framework really does turn it into: ‘If there is a standard report required, we will produce it.’ I am not sure that investors or other members of the community will come away feeling better informed as a result of receiving that standard report from the top 300 companies on the ASX, for example.

CHAIRMAN—Do you believe the financial markets can make an appropriate assessment of the relative corporate responsibility approaches of companies in the absence of a standard framework?

Mr Gration—I believe so. If they are getting it wrong, I am not sure that a standard framework will make them get it any more right than they are getting it at the moment.

CHAIRMAN—I assume from what you are saying that you are of the view that the current Corporations Law in relation to directors' duties is sufficiently permissive for directors to have regard for stakeholders other than shareholders if they so choose.

Mr Gration—I think the Corporations Act appropriately requires directors to have regard to the best interests of the company as a whole. In doing so, as I have said, we would take that to mean generating long-term value for shareholders. I would say any company—Telstra and any large company—can only generate that long-term value having regard to all the stakeholders who impact on the company. I do not think you will find any successful company that has been successful for a long time that has managed to ignore the stakeholders around them.

CHAIRMAN—Is it fair to say that in recent years the focus has perhaps been on short-term shareholder value rather than long-term value?

Mr Gration—There is certainly an enormous focus on the market on short-term value. Everyone says this is terrible, and everyone keeps doing it. Superannuation funds are there to provide benefits in retirement, yet everyone looks at the quarterly returns generated by the super funds and they are ranked from one to 50, so there is an enormous short-term focus there. It would be nice if that would go away. I am not sure that regulation in this area would make that short-term focus on the markets go away.

CHAIRMAN—But you are saying that, if you are building long-term shareholder value, in a sense enlightened self-interest requires you to take account of stakeholders other than shareholders—

Mr Gration—I think in generating that long-term value for shareholders—

CHAIRMAN—if that is not actually happening, how do we move the focus more to a long-term approach to shareholder value?

Mr Gration—I think most companies try to have that longer term view, notwithstanding the fact that the markets take a quarter-to-quarter—or month-to-month, in some cases—view of the company's performance. Certainly companies are trying to do that. Telstra has done this. From memory, Coles Myer has done a similar thing of no longer reporting quarterly financials to the market to get away from that focus of 'What has happened this quarter?' and get some longer term focus there. I am not sure that there is a regulation you could put in place in relation to corporate social responsibility or more generally that would get away from that shorter term focus.

CHAIRMAN—In their submission to us, RepuTex has argued that a stronger regulatory framework in relation to corporate responsibility would support Australian companies in their efforts to expand, particularly into the Asian region, and China. They said it is vital that Australian companies meet and outperform international disclosure standards and that a leadership position on corporate social responsibility is likely to give Australian companies a distinctive edge in the eyes of government officials, current and potential clients and community groups. You might say they would say that because they might have a vested interest in it and they can offer a service to help. What is your experience as far as corporate responsibility practices as they relate to Telstra's international competitiveness?

Mr Gration—I certainly would not hold myself out as an expert on the attitude of Asian markets or Asian investors, but our experience has been that Telstra, and Australian companies generally, are well regarded for their integrity and so on when going into Asian markets and all overseas markets. Whether Reputex would enhance that further I think it is more a general perception that Australia has good, solid laws and well governed companies with good disclosures. I don't know that it is specifically around CSR disclosure that those markets would make their judgments.

CHAIRMAN—You do publish extensively in this area. In your submissions you enclosed a corporate social responsibility reports for a couple of years, your public environment report for a couple of years and your foundation report for a couple of years. It would appear to be a strong part of Telstra's operation, at least in recent years. How far back does that go?

Mr Gration—I don't think it is new in the sense that we suddenly thought it up two or three years ago. Again, I don't think we're alone amongst Australian companies. Australian companies have always been engaged in philanthropic activities and sponsorship. If you think of things like health and safety or whatever as part of corporate social responsibility, then we have been engaged there. In the last two or three years we have brought that together. We said, 'If we are going to do all these things, let's bring them together and communicate them well as a collective effort'—rather than having, for example, a disability services report that might go to a very small audience. We can bring those together into one report and say, 'Here are all the efforts of Telstra to engage with the community.' It is interesting that both you and Ms Burke led off with questions about the USO, which is not covered at all, really, in those reports, because it is not how we think of the USO.

CHAIRMAN—The government's involvement through the business community partnerships has been significant in this area. Apart from any change to legislation that might be considered—which obviously you regard as unnecessary, imposing further regulation—are there any initiatives you think the government can take to enhance corporations' involvement in corporate social responsibility, or to improve that particular program?

Mr Gration—I don't think you need regulatory intervention or legislative intervention. Certainly you need to recognise and encourage those companies who do engage in corporate social responsibility activities. That does not need to be a particularly financial recognition. For example, Telstra is engaged in small business awards and business women of the year awards. We get involved in those initiatives, and recognise that they generate value for us as a company. I think they also put a lot into the community. Simply having governmental support for those kinds of activities and recognition of those activities is important.

CHAIRMAN—Is there any way the Prime Minister's community business partnership awards could improve?

Mr Gration—I am not sufficiently familiar with those to be able to comment.

Senator MURRAY—Regarding the reports you produce, the number of telecommunications companies of your type in the world are relatively few, and I presume you are in communication with them all at a professional interactive level. I am interested in this business of tailoring CSR reports to the industries concerned, because often there is not commonality. There often is, but

there often is not. Have you ever got together or do you get together with each other and discuss the best way in which you can frame CSR and environment reports and the best methods of collecting and storing data, doing comparisons and so on?

Mr Gration—As far as I am aware, we have not got together either collectively or individually with overseas telecommunications companies on CSR reporting. From memory, GMI, GovernanceMetrics International, will produce sector based reports on both governance and CSR type issues. I remember seeing reports comparing us to British Telecom, Vodafone et cetera on performance against a number of metrics. So there are sector focused reports, but there has not been a bringing together of international incumbent telcos, for want of a better description, to say how we should report against CSR issues.

Senator MURRAY—I was quite interested in the remarks we heard in Perth from Wesfarmers, who indicated that their CSR report on their coal operations enabled them to develop a benchmarking reference point and, with other coal companies reporting on a similar basis, to see whether they were doing better than others. Perhaps it is an ignorant or even naive view, but I would assume that you are not in competition with other telecoms, and information exchange would therefore happen fairly easily.

Mr Gration—I do not think that is correct. There is clearly some competition, but the competition with our domestic competitors is far less than, say, with US incumbent telcos. British Telecom has activities in Australia, and where they do we fiercely compete with them, but on the whole we can have a very cooperative relationship with companies like that.

Senator MURRAY—Do you think this sort of industry specific development should be left to companies themselves, or should government take a facilitative role? It has been said to us that, whilst many corporations and business organisations are resistant to regulation or legislation, they would certainly support facilitation—in other words, government initiating programs which result in a better standard.

Mr Gration—I think that is right. Whether it is the OECD or somebody like that or whether you simply get groups of companies from like industries together, I think there would be value for the government to facilitate those sorts of discussion and ask, ‘What are the common areas where you might all benchmark against each other?’

Senator MURRAY—Would your company react favourably to that sort of initiative? Would it interest you?

Mr Gration—It would, yes.

Ms BURKE—I want to ask about directors’ duties and whether, from your perspective, they are sufficient at this point in time. We have obviously had a lot of discussion about Hardies, and one perspective is that the directors felt that they could not pay out because they would be in breach of their directors’ duties and therefore subject to litigation. From Telstra’s perspective, is the current directors’ duties law sufficient, or is there a need for change and looking at it?

Mr Gration—In my time as company secretary, there has never been a moment when the board has said: ‘We’d really like to go down a CSR related path but our duties are stopping us

doing so.’ The James Hardie experience was probably at the extreme end of the spectrum. I am sure James Hardie and certainly every other company would think: ‘Hopefully we never wind up at that end of the spectrum.’

If you take that sort of enlightened view—perhaps it is not all that enlightened but it is a pretty common view—of directors’ duties to say that directors are there to look after the best interests of the company as a whole, and that means generating long-term value for shareholders, it is pretty easy to then convince yourself that these CSR activities are necessary and certainly very much something that they can consider when making decisions. I think that, if you take that away and give directors the ability to ignore the interests of shareholders and focus on employees or the environment, or whatever it might be, you would rapidly find yourself with the directors being unaccountable to anyone, essentially, for what they do.

So if the shareholders say, ‘What are you doing with our company?’ and the directors say, ‘Sorry, but we don’t have to pay attention to you when looking at these other areas,’ there is really no effective mechanism for those other stakeholder groups to say, ‘We’ll hold you to account.’ I have used HIH as an example, again that is an extreme, of where you apparently get the directors and executives of the company simply spending the company’s funds in ways that clearly are not of benefit to the company and are arguably of benefit in large charitable donations to whoever gets them, but really there is no accountability around that expenditure of the company’s funds.

To take it away from acting in the interests of shareholders is a really dangerous thing to do. I think Hardies obviously got to the point where they had decided that they could come to an arrangement that said, ‘This is in the interests of the company.’ They took it to shareholders and said, ‘Do you agree?’ And the shareholders did. I think that is the better mechanism to use, rather than trying to release directors from the obligation to think about the long-term interests of the company.

Ms BURKE—Some people have put to us the notion of a ‘safe harbour’. I take it from your answer that you do not perceive that directors need that sort of protection?

Mr Gration—No. I think you can see from the activities of Telstra, and no doubt the activities of a lot of other corporates you have seen as part of these committee hearings, that there are a lot of Australian companies engaging in these kinds of activities and not feeling constrained by current law.

Ms BURKE—Thank you.

CHAIRMAN—As there are no further questions, Mr Gration, thank you for your appearance before the committee and for your help with our inquiry.

[6.47 pm]

BEDNALL, Mr Timothy Gordon, Partner, Mallesons Stephen Jaques

CHAIRMAN—Welcome. The committee has before it your submission, which we have numbered 66. Are there any alterations or additions you wish to make to the written submission at this stage?

Mr Bednall—No.

CHAIRMAN—I invite you to make an opening statement, at the conclusion of which I am sure we will have some questions.

Mr Bednall—Firstly, I thank you for the opportunity to speak to our submission. The Mallesons submission is limited to only three of the items of reference. We have limited ourselves to those matters that go directly to questions of law reform, and they are:

(c) the extent to which the current legal framework governing directors' duties encourages or discourages them from having regard for the interests of stakeholders other than shareholders, and the broader community;

(d) whether revisions to the legal framework, particularly to the Corporations Act 2001 ("Act"), are required to enable or encourage incorporated entities or directors to have regard for the interests of stakeholders other than shareholders, and the broader community; and

(g) whether regulatory, legislative or other policy approaches in other countries could be adopted or adapted for Australia

Our submissions on those points, in summary, are as follows. The current legal framework does not discourage directors from having appropriate regard for the interests of a broad range of stakeholders and the broader community. I think the fact that what one might call the CSR industry has grown so rapidly is testament to the fact that it can grow under the current legal framework. The previous witness, and many other witnesses to this committee, have spoken of large CSR programs within corporate Australia. There are no circumstances, to my knowledge, where the duties of directors prevent them from having appropriate regard to those interests. I have been a practising corporate lawyer for over 20 years, and I advise boards of public companies regularly. I have never been confronted with a situation where a company could not act in a manner in which it would otherwise have been minded to act, because of a legal constraint. There are other witnesses, again to this committee, who have given evidence to similar effect.

There are hundreds if not thousands of Australian laws that do ensure that directors consider the interests of stakeholders and the environment. The Corporations Act itself already requires directors to act in good faith, to act in the best interests of the company, to act for a proper purpose, to act honestly, and not to use their position or company information for personal gain. Individuals in our community are not subject to those sorts of laws but directors of companies are.

CAMAC has identified over 300 state and federal acts that impose derivative criminal liability on directors of companies for contravention by the company of laws protecting the stakeholder groups, customers, employees and the environment. Derivative criminal liability means that you are able to be convicted of a criminal offence without having any knowledge or any other participation in the act but the fact that you are a director of the company. So we already have a very large burden on directors to act in a way which is consistent with corporate social responsibility. Directors are constrained in their actions by their fiduciary obligations to act in the best interests of shareholders and by the nature of the corporate entity. It is established for a business purpose or in the case of not-for-profits for a particular objective. However, these constraints do not restrain directors from also having regard to the interests of a broader range of stakeholders. For these reasons, we do not believe that any further revisions are required to the Corporations Act to encourage this sort of behaviour and certainly not a positive obligation. Notwithstanding that, Mallesons does support the notion of enlightened shareholder values, which a lot of the academic writers have identified recently, and which have also been referred to in a number of submissions.

Although there is no mandate in the Corporations Act, directors may take the interests of other stakeholders into account in a manner which is consistent with these obligations to act in the present and future interests of shareholders. It is generally in the interests of the company as a whole for directors to act ethically and in the interests of the broader community and you have had some very specific examples of that. Westpac is a good example where it would give numerous instances of the benefit to the company as a whole of its extensive CSR program.

Finally, the duty of loyalty, which is proposed under the UK legislation, is not something that we think should be adopted in Australia. The terms of that duty, which I can speak to more specifically if you wish, oblige directors to have regard to the interests of certain stakeholders, but they do not identify the circumstances in which directors must do so, nor the relative weight that must be given to the interests of stakeholders when making decisions. There is nothing in that legislation and nothing in any legislation that I have seen that provides any guidance on how you balance the interests of various stakeholders when confronted with circumstances in which they conflict. Making decisions to close a factory or to do something that might affect the economy of a small community are very difficult decisions and they are made, at the moment, in circumstances under the present law which could be severely complicated and, in fact, made impossible by imposing the sort of duty of loyalty that is proposed in the UK. That is my opening statement, thank you.

CHAIRMAN—Thank you very much. In your reference to the UK reform you state that such measures would add nothing to the legal framework in Australia and would bring about uncertainty and confusion. Some witnesses have indicated to us that there is a considerable degree of confusion amongst directors as to the extent to which directors' duties currently are permissive or expansive enough to allow directors to make decisions with regard to stakeholders other than shareholders and which are in the long-term best interests of shareholders. There is also some evidence that directors' duties are misunderstood at a more general level. What is your response to this perception of misunderstanding of directors' duties? How can it be resolved?

Mr Bednall—I agree that that is a misunderstanding. I do not agree with the narrow view that is being promoted and is most often associated—and, as it turns out, no longer correctly—with James Hardie that there are constraints on the way in which a board can act beyond the direct

interests or short-term interests of shareholders. I do not agree with that view at all. I think you have probably had more evidence than you need as to why that view is incorrect. Certainly, reading through the transcripts, I noted that witness after witness has provided that response, but I certainly share that view.

CHAIRMAN—What is your response to the Meredith Hellicar claim on behalf of Hardie?

Mr Bednall—Could you be more specific: which part of the claim?

CHAIRMAN—Meredith Hellicar's claim essentially was that her interpretation of directors' duties was that it did not allow for the directors to make more adequate, or might have been regarded as more adequate, provision for those who had been detrimentally affected in the Hardie case.

Mr Bednall—Firstly, Hardie's is a very particular circumstance, and many events had occurred prior to the point in time at which the chairman of Hardie made that conclusion. There had been a physical separation of the interests of those who had suffered as a result of the activities of the asbestos mining parts of James Hardie. But in circumstances in which a company has been producing a product that harms its customers, I see absolutely no constraint on directors acting in a way that compensates those people affected by the acts of the company—none.

CHAIRMAN—You did not deal with the issue of reporting?

Mr Bednall—No.

CHAIRMAN—Do you have any views on reporting and whether there is a need or, in fact, whether it is feasible to have a standard reporting index? What is your view of the ASX Corporate Governance Council's proposals?

Mr Bednall—I am very sceptical about standard reporting in this area. It very quickly descends into a tick-a-box exercise. That has certainly been the case with the requirements for statements about environmental compliance and other statements that are currently required to be included in annual reports of public companies. If you look at what has happened with reporting of remuneration benefits in the last couple of years, as a result of changes to accounting standards, you now have a concise annual report that is comprised on average of more than 25 per cent reporting on remuneration benefits. It has become an enormous and unproductive reporting requirement, in my view. A reporting requirement relating to CSR, particularly if it is trying to impose broad parameters over an extraordinarily wide range of industries, is not going to be productive. There is no reporting requirement at the moment, but you get companies like Westpac, Telstra and BHP providing extensive reports, triple bottom line reports, and they are setting an example which is being followed. The benefits of that—it is almost a social movement—have been demonstrable, and I cannot see a case for requiring mandatory corporate social responsibility reporting.

CHAIRMAN—But you do see advantage in the voluntary reporting process?

Mr Bednall—Yes. If a company chooses to wave the flag on its corporate social responsibility activities, it is to be commended. On the other hand, there is a view that says that philanthropy of that sort should be private and quiet, and it is best achieved if you do not go sounding your horn about how generous you have been in this, that or the other activity, which is a view that I have some sympathy with. I think a mandatory reporting requirement will be difficult.

CHAIRMAN—So you do not go to the extent of Gary Johns's view that it is, and to paraphrase it, 'a passing fad', and we really should not either encourage or discourage it. If companies want to do it they can, but it is not something that is of great utility.

Mr Bednall—It is an example of the evolving nature of large corporations in our society, and I think it is for the good that there is a recognition of social responsibility. I do not think, for the same reasons that we do not legislate social responsibilities for individuals, that we should legislate it for corporations.

Senator MURRAY—You were listed as 'Partner, mergers and acquisitions'. Typically, I assume you would not go out prospecting. To put people together, they come to you and say, 'We have a mergers project that we want to pursue.' You are an integral part of the raising capital movement industry. I am interested in some inside information. How often do people, wishing to merge or acquire, actually pursue issues of CSR? How important is it in making a decision whether to make an acquisition? How important is it in the due diligence process, because of the risk aspect of it? That is the utility, if you like, as the chair outlined earlier.

Mr Bednall—It has become very important in negotiated transactions for the parties to include what we loosely call social issues as an integral part of the merger negotiation. The terms on which the employees of the target company—the company to be acquired—are to continue are very important. The retention of senior executives, the continuation of workplace safety programs—all those sorts of things—are things that we are asked to look at in our due diligence process for negotiated mergers. In the broader takeover context, of course, you have hostile takeovers where there is no opportunity to do that. You find, even with hostile takeovers, significant space being devoted to the intentions of the company, regarding the employees and businesses and the way in which they will be dealt with by the acquirer following the merger. There is a statutory requirement to include that information, which helps, but it is not mere lip service to that requirement that you see in documentation for takeovers.

Senator MURRAY—As you know, the CSR material available from the best companies is far in excess of the statutory requirement. Can you give me a couple of examples? I do not mean specific company names, but real-life examples. If a company is acquiring another company or seeking to acquire another company which does not have a CSR report, and then you are doing another deal with a company seeking to acquire another company which does have a good CSR report, what is the process? Is it a formal or an informal process? Where there is not a CSR report, is the acquiring company asked to produce the sort of information that would be put in a CSR report? Is it just a question and answer session? What happens? How is the material used?

Mr Bednall—In a negotiated transaction, where you have the opportunity to view information of the target company, voluntarily provided by the target company, we would commonly include what are referred to as CSR issues in our inquiries of the target company and ask it to produce

information about those matters. They would be an important aspect of the formulation of the offer terms and the business and integration plans for the acquisition of the target company.

Senator MURRAY—This committee has played a huge part in contributing to a much more active and fluid market. The work that this committee did and reported back to government on—the takeover panel on changes to the Corporations Law—and the work of another committee to support the tax consolidation regime has meant the market has been opened up and activated in a very considerable manner. I am asking you these questions in that framework: whether it would be helpful for government to try to facilitate the greater development of CSR reports on a market usable basis to facilitate the market movement? That is one angle.

The other angle is simply to say, ‘Mergers and acquisitions are happening perfectly well. It doesn’t matter whether you have a CSR report or not.’ Behind those two separate sets of thinking is the question: when there is not a CSR framework within a target or an acquisition prospect whether that makes it less likely for a deal to go through and makes it harder to put the deal together.

Mr Bednall—No. I think there are no circumstances in which the absence of a CSR report would be influential on the outcome of a merger transaction.

Senator MURRAY—There are or there are not?

Mr Bednall—There are not. I do not think that a requirement to prepare a very broadly based, one size fits all report would advance the interests—

Senator MURRAY—That was not in my mind.

Mr Bednall—I think that companies that have a CSR objective as an acquiring company will make inquiries of the target company in any event. They would not rely on a published report. They would go behind that report, just as they do not rely on the published financial statements. They go behind those statements to investigate. I think that the publication of a mandatory report would not be of particular benefit either way in this very limited circumstance.

Senator MURRAY—You might be misunderstanding me. I am not suggesting a mandatory report. One the possibilities of course is to mandate, but another possibility is simply to facilitate. In other words, the government provide the resources to assist the business community to devise those sorts of report which are relevant, particularly in industry sectors and can make the market work better. That does that with trade, export and all sorts of things. It is just another form of government assistance to make a market work better.

Mr Bednall—That may be quite helpful if it is facilitative rather than mandatory. I would not underestimate the difficulty of trying to tailor reporting requirements across the plethora of industries for which we have public companies in Australia—but it may be of assistance.

Senator MURRAY—The issue of risk which attracts my attention with respect to CSR needs to be attached to the issue of audit. It is one thing to try and do due diligence, but if there is not an audit trail to trial, a data series and framework in which the materials are made available, it is very difficult to assess. Take for instance somebody trying to buy James Hardie 15 years ago.

They might not have been as alert to the dangers as they would be today. That sort of framework is what I am thinking of. In your mergers and acquisitions interest in the CSR area, is it common to consult with auditors or specialists who work in this area?

Mr Bednall—Yes, it is. Also, the review of CSR is more of an internal audit function because, as you say, it is a risk based activity for many companies, including Westpac. The program is driven by a desire to manage the risks that CSR addresses. Yes, we do deal with internal audit staff rather than external financial auditors on these issues. We also come across a very wide range of consultants these days dealing with CSR issues for companies. We have got to the point where we have set up within the law firm a specialist CSR group to deal with CSR inquiries from our clients. It is very much a developing industry for consultants.

Senator MURRAY—Typically, I assume, they would not be accountants, they would be specialists in environmental areas, engineering areas or people areas—that sort of thing.

Mr Bednall—Or employment areas or safety areas, depending on the particular products that are produced by the company, yes.

Ms BURKE—Going back to the James Hardie issue we started with: I am wondering if you read the BCA evidence that was given when they appeared before us.

Mr Bednall—I have read a lot of the evidence, but I cannot recall who specifically appeared for the BCA.

Ms BURKE—Steven Munchenberg.

Mr Bednall—I cannot recall specifically what he said. I have read the evidence of Professor Baxt, Ms Farrell and many of the others that appeared for other organisations.

Ms BURKE—I am just trying to get to the bottom of this. I am not a lawyer—which I think in some respects is a good thing but in some respects is a bad thing. We have had contrary evidence over this. I do not want to put you in a conflicting situation. You have not represented James Hardie? Has your firm?

Mr Bednall—The firm has. It currently represents James Hardie. I have not.

Ms BURKE—You do not. That is all right. I am trying to get to the notion we have had that the chairwoman made a statement about the implications for directors' duties and that that has been taken in the media as fact. The BCA's evidence was, as you said, that there are now separate entities. There was the situation in the States versus here. From your perspective of looking at that material from a legalistic framework, would you believe that James Hardie did not go down the path of saying they were stymied by their directors' duty in providing compensation?

Mr Bednall—I think I said in relation to a previous question that James Hardie is a very particular case because the current listed company is dissociated from the companies that have the liability. Therefore, it does make it much more difficult for company A to pay compensation to customers of company B when there is no link. So that is an entirely different question. If you

asked me whether BHP directors could vote to pay compensation to people who suffered in a mine disaster at a Rio Tinto mine, I would probably say no, that there was a difficulty there. That is the difficulty that James Hardie presents. However, is a company like James Hardie that continues to own the subsidiaries that operated these mines and produced the asbestos products under any constraint in compensating customers, employees or whoever? The answer is no.

Ms BURKE—Thank you. That is what I wanted to get to. We had evidence from a professor in New South Wales about the lack of actual case law in this area. You state there are laws, but there is very little of the case law and precedents that people rely on for determining what directors' duties are. Would you concur that that is the situation?

Mr Bednall—There is enormous case law on directors' duties. He may have been referring to cases that consider whether or not directors can engage in philanthropy or those sorts of things. Yes, there is very little law. However, there is a very long established practice. I think the fact that there has been no challenge to philanthropic acts or other acts of what you might call social responsibility in 200 years of the company law acts with directors' duties suggests that there is really not an issue with this interpretation of those directors' duties.

Ms BURKE—Do you think one of the difficulties that was identified is that directors are not given a lot of education in what their duties are and that nowadays, with more companies and more directors, directors have insufficient ability to understand, to be trained and to know what is required of them?

Mr Bednall—I think it is true that directors of unlisted companies probably have a poor understanding of their legal obligations. I think that directors of listed companies by and large are well educated. They are educated through bodies like the Institute of Company Directors and the BCA. Part of my practice is to train public company directors. So someone gets appointed to a public company board and the company secretary will ring up and say, 'Can you spend a couple of hours running through the basics with this person?' There are active training programs of that nature.

The one thing that you did not mention that promotes education is the personal liability of directors these days. There is an extraordinary degree of personal responsibility that directors take on when they accept a role as the director of a public company. I think that that, as much as anything, drives education.

Senator MURRAY—It is self-interest.

Mr Bednall—It is self-interest in the sense that they need to understand the extent of their personal liability for the acts of the company.

Ms BURKE—I suppose one of the other things is that various directors on various boards are given a wad of papers. They might read it on the plane on the way to the meeting as opposed to taking it all in. Do you think the onus we are now putting on directors in the information they must digest before getting to a meeting to make informed decisions about various things has gone too far in some respects? Bearing in mind that there is a huge range of directors, from not-for-profit organisations through to large listed companies, have we gone too far in the onus and the information that we require directors to take on board?

Mr Bednall—For large listed companies I think the burden placed on directors is certainly growing, and you often hear directors express the view that a point will be reached where people just will not want to accept these positions. The fact that CAMAC has identified over 300 Australian acts under which directors can be personally criminally liable—a criminal offence—for the activities of the company, with no active role by the director, and when you read cases like Grieves, who was the chairman of One.Tel, with personal liability and a very high personal obligation to investigate personally the financial circumstances of One.Tel, notwithstanding reports that were coming to him from management, there has certainly been an increase in burden. Is it too high? I do not think we have reached that point, but it is certainly significant.

Ms BURKE—Turning to corporate social responsibility and to the notion Senator Murray was talking about in relation to takeover, if a company is relying upon a printed report, should that report have been audited under corporate social responsibility so that you have some authority that what they are claiming in their report is accurate? As I have said to other witnesses, people are referring to this notion of ‘greenwash’ and that just because you have written it in a statement that does not necessarily mirror what is happening on the ground.

Mr Bednall—An audit requirement would only be appropriate if there were some obligation to report in the first place. I think that these reports are commonly generated from the internal audit function of a company in any event and, therefore, there is a degree of reliability. I think there are sufficient laws concerning misrepresentation under both the Corporations Act and the Trade Practices Act that would encourage companies not to misrepresent their position on these issues.

Senator MURRAY—Where the Corporations Law went to with financial statements and the term ‘fair view’ discussion, that sort of approach with a CSR report would involve both directors and external auditors signing off that CSR report. If it were to be given a little more bite internally, is there any officer of a company who would be the ideal person to sign off a CSR report? Is it necessary for the chief executive officer to do it, or is it the CFO who an internal auditor commonly reports to? Shouldn’t there at least be a sign off provision internally?

Mr Bednall—We have made a number of assumptions to get to the point of the sign off. If there were a sign off requirement, I think it would be a requirement that should be with the CEO and the CFO, just as the financial sign off is currently with the CEO and the CFO.

Senator MURRAY—Because that puts the liability where it should rest: on the officers who run the company.

Mr Bednall—It does. The production of CSR reports occurs in a haphazard way in the sense that there is no naturally responsible officer that you can identify, like the CFO, for the financial report. You will find a wide range of people, from the company secretary to the investor relations person or the internal auditor, producing these reports.

CHAIRMAN—Mr Bednall, thank you very much for your appearance before our committee and your contribution to our inquiry. That is appreciated.

[7.21 pm]

McGLYNN, Mr Gene, Assistant Secretary, Department of the Environment and Heritage

STARR, Dr Paul, Senior Policy Officer, Department of the Environment and Heritage

CHAIRMAN—Welcome. The committee has before it your submission, which we have numbered 116. Are there any alterations or additions you wish to make to the written submission?

Mr McGlynn—No, thank you.

CHAIRMAN—I advise that the Senate has resolved that an officer of a department of the Commonwealth or a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or a minister. This resolution prohibits only questions asking for opinions on matters of policy. It does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for the claim. Having said that, I invite you to make an opening statement, at the conclusion of which I am sure we will have some questions.

Mr McGlynn—Thank you very much for this opportunity and thank you for arranging the times for us to be able to come here. You will see from my submission that DEH has been focused on considerable activity in the area of corporate social responsibility over the years, especially in the area of promoting sustainability, or non-financial, reporting. We see this activity as being focused on facilitating improved information for companies and the market. For companies it has the advantage of ensuring that they look at their operations very closely and identify options to manage their resources better, with benefits for both the environment and the economy. There is some evidence around to show that generally companies that do manage their environmental issues well also manage their business well and achieve better returns, although the relationship between those two issues could go either way. There are also stakeholder, management and reputation benefits that companies get from this.

For investors sustainability information helps with assessing the likely future performance of companies, therefore allowing them to make better informed investment choices. However, this relies on them being able to translate sustainability information into information that they can understand and assimilate with the normal information that the investment community collects. Some of the past work that we have done, and we are happy to provide copies of it wherever we can, says that there might be benefits from improved consistency of information. For example, the Mays report *Corporate sustainability—an investor perspective* states a couple of things. It was completed a few years ago. I am happy to leave a copy for the committee. I will quote very quickly one of the conclusions that the review came to:

Sustainability needs improved definition to increase its rate of adoption. Challenges exist at both the company and the investor level.

... ..

A shift towards a common framework for sustainability dialogue offers a company and investor win-win.

Those do not specifically refer to reporting, and I should emphasise that those are not universally held views, but they do emphasise that there is a strong view in the community that inconsistency in reporting is limiting the maximising of the benefits that reporting can deliver. Sometimes we see in discussions a chicken and egg phenomenon that financial analysts do not often use sustainability information because the data is not in a form that they can use and then companies do not produce sustainability information because the financial analysts are not demanding it. That creates a chicken and the egg problem. Despite that, Australia is moving ahead against the problem. We have produced three surveys on the levels of sustainability reporting in Australia. The latest of those reports was released on Friday. I have copies of the executive summary and one copy of the full report for senators.

What this shows is that over the years reporting in Australia is increasing. In some areas it is increasing a bit more slowly. It also shows that Australia continues to lag behind many other countries in the levels of reporting that are achieved. This report shows that about 24 per cent of the companies surveyed reported, while in other countries we see compliance rates as high as 70 and 80 per cent. So we are clearly not leading the pack in this area.

Last year our minister, Minister Campbell, talked with the Australian Stock Exchange about what could be done to improve reporting in Australia, including consideration of whether a more standardised reporting framework would help with that. At the time, the minister explicitly stated that it wasn't a regulatory issue, but one of providing more certainty and for companies and investors the sustainability reports would be comparable. Using the if not, why not approach that the ASX is using in this area, he talked about the possibility of an if not, why not approach but relating to the framework rather than the reporting itself. So the issue was if a company did report, they should use a common framework, or if they don't, explain why that common framework is inappropriate for them.

Our department has been working with the ASX Corporate Governance Council to consider this issue and the ASX will shortly be putting out a discussion paper to basically raise some of those issues and get some feedback from both the investment and the general business community on what can be done in that area. We are very much looking forward to those results to get a more statistically valid set of responses than some of the anecdotal responses we have had to date. From our perspective, in the end there are three very broad criteria—the three Cs I refer to them as—that we look at in sustainability: comprehensiveness, comparability and credibility. For us, comprehensiveness relates to materiality. It does not mean that all companies should report on all things, but that those issues which are of particular relevance should be covered. In a framework there may be some things that all companies are expected to do, but also some that are sector specific or specific to companies of different sizes. In terms of comparability, it is clearly important that data that can be understood and compared, not just with other companies' sustainability data and financial data but also with other companies to make those cross-company comparisons.

Finally, in regard to credibility, in order for investors to be confident of the information they need to be comfortable that the information is accurate—that they can use it and trust it.

Standardised format can help with that credibility. There are, however, other ways to achieve it. I think you were talking about auditing. That could be a way, but it could become expensive and unwieldy if it is not handled carefully. So we do not think that there are clear and correct answers to how any of these issues are addressed, but we think those three issues are important in terms of any framework that is developed.

Basically our role to date primarily has been to facilitate understanding of reporting and provide information for those who want to do sustainability reporting. We compile a library of sustainability reports for those who want to compare and we have provided some guidelines on how reporting might take place in Australia for environmental performance. So that is where we see our role—playing a facilitating role to help the market come to grips with what is a complex and emerging issue that we think can help deliver economic and environmental benefits. I am happy to take questions.

CHAIRMAN—The referral by Minister Campbell to the Australian Stock Exchange Corporate Governance Council has been widely interpreted and reported as a recommendation for the inclusion of the Global Reporting Initiative guidelines and the council's principle of good governance and best practice. Can you clarify whether that was the intention and perhaps just give us an update on where that consideration is.

Mr McGlynn—The Global Reporting Initiative, the GRI, from our perspective seems to be the emerging international standard. It is the one that seems to be most commonly used internationally. It means that companies that report against GRI in Australia would then have comparability with international investors. Having said that, from our feedback from companies it is clear that there are concerns with the GRI. We have talked to the GRI about some of these in terms of the apparent scale that is required to respond fully in the GRI consistent way, although the GRI does provide for different levels of response, not just 'fully consistent'. So no, I don't think it would be right to say that GRI was seen as the only way to go. I think it was seen as the emerging framework and one that we would be interested in getting some feedback from companies and investors on as to whether it is a useful framework. What is being looked at is a consistent framework which works for Australia and which provides the comparability and cost-effectiveness that we would be looking for.

CHAIRMAN—What is your response to the view that with a diverse range of activities—in terms of industry sectors, companies and the like—a standard reporting index like the GRI is simply going to lead to a tick the box mentality rather than an active engagement with corporate responsibility, activity and reporting?

Mr McGlynn—I suppose the GRI has a tick the box element. However, it covers both management approaches. Part of the GRI is not just reporting on certain indicators but also on management approach to a number of areas, so it has a qualitative as well as a quantitative area in it. Having said that, clearly a tick the box approach is probably not what is desired. But there are some areas where providing consistent sets of data does assist part of what we are trying to achieve in terms of the investment community being able to take information and compare it. In all of these things it is a balance between trying to achieve a number of different objectives. Regarding a certain set of standardised information, I do not think there are many people who would accuse the financial information that is provided by companies as being tick the box and therefore not useful. It has its value, but it is not a complete set of information.

Senator MURRAY—I am interested that it is your ministry—your agency—that is pursuing this. Do you think CSR should be directed principally towards environmental reporting? What is the motive for your agency to be involved? As you know, it is typically described as a social responsibility project, and the social and environmental legs are sometimes more important and sometimes less important depending on the nature of the company. What is the motive of your ministry and agency?

Mr McGlynn—As the Department of the Environment and Heritage, clearly our primary focus is on environmental issues, which is a core part of sustainability reporting. Some of the advice—the guidance—that we have provided over the years is for environmental reporting as an element of sustainability reporting. We are not by any means the only agency in the Commonwealth working on this. I think the Department of Family and Community Services is looking at making a submission—whether it has or has not, I am not sure. We talk with quite a number of other agencies about sustainability and non-financial reporting issues on a regular basis. We have a particular focus, but we also recognise that in taking forward the environmental elements of this agenda we need to be cognisant of the fact that it is a broader agenda and that companies are being asked to do a number of things and investors are being asked to look at a number of different pieces of information. So we have to have a view to the bigger picture while focusing on our particular environmental responsibilities.

Senator MURRAY—Let me explain why I am asking—and let me stress that the committee has not discussed what the nature of its report or recommendations should be. If we go down the facilitation route—in other words, government actively attempting to increase the penetration, if you like, of CSR reports in the market—we can go in one of three directions. We can go for a whole-of-government approach, which would seem unlikely to me because it is not that sort of thing; we can go to a lead agency approach or we could go to letting whoever is interested in the particular area do it, such as Department of the Environment and Heritage doing the environment, the Department of Education, Science and Training doing education, the Department of Employment and Workplace Relations doing another area—that sort of thing. That is what was behind my question as to whether you would see yourselves as capable of being the lead agency if a facilitation program were to be developed.

Mr McGlynn—I think that is an issue that is a little outside of my area, but, when this report and related reports—the CAMEC inquiry and the PJC inquiry—come out in roughly the same time frame, the government is going to look at how to respond to those. One of the issues that clearly will be looked at is how best to take these issues forward for the whole of government, whether it is through the whole-of-government approach that you are talking about or through some other apparatus.

Senator MURRAY—You do not have a CSR unit—a specialist group of officers who are involved in this area—do you?

Mr McGlynn—No, that is correct.

Senator MURRAY—Would it be fair to describe it as early days?

Mr McGlynn—Mid-early days, yes.

Senator MURRAY—The penetration of sustainability reports is the subject of the document you have provided us: *The state of sustainability reporting in Australia 2005*. The verification interests me. How have you to defined verification—that it is signed off, that it is declared to be audited, that it is subject to an internal audit process? What do you mean by verification?

Mr McGlynn—Can I clarify the question? Do you mean in determining the number that have reported how do we decide whether it—

Senator MURRAY—Perhaps I have misunderstood your graphs, which I have just been presented with this evening. You have two tables there and on both you put ‘sustainability reports’ as one column and ‘verified’ as a second column. What does ‘verified’ mean? Verified by whom?

Mr McGlynn—I am advised that the verification is essentially a process which involves an external verification of some sort, whether it be an accounting agency or some other external source.

Senator MURRAY—When you have done this on a desktop basis, the document would say, ‘This has been verified by such and such a body or group’?

Mr McGlynn—That is correct.

Senator MURRAY—You have not checked that the verification has actually occurred; you have just taken it on its face value.

Mr McGlynn—That is correct.

CHAIRMAN—What is your response to the concerns that have been expressed in some of our earlier hearings that incorporating the reporting index into the ASX corporate governance guidelines, even though it might be intended as a voluntary procedure, could become quasi-mandatory just because it is there?

Mr McGlynn—I guess there are two stages. If the rules expressed an expectation that people reported, I think it is fair to say that that probably is moving a little beyond voluntary but not quite as far as mandatory. As to whether that is a problem or not, this is one of the issues that we would be looking for some feedback on from the survey. We have heard views expressed both ways. We have those who say, ‘That would become too onerous and we’re not ready for that.’ We have had others, particularly those who already do quite good reporting, who feel that some sort of system which provides a bit of rigour will probably make their reports stand out a little better. One of the things we are looking for is that level of feedback.

Senator WONG—The department has obviously considered a number of ways in which government might impact upon more sustainable business practices in the corporate sector with companies through which it procures et cetera. Are you able at a high level to outline the ways in which government can do that? What categories of activity could government engage in to encourage sustainable business practices?

Mr McGlynn—I interpret the question to be about how we encourage corporations to do things which come under the broad banner of sustainability. If you break that down into individual elements, there clearly are pieces of legislation. There is some generalist legislation such as the EPBC Act and then there would be specific pieces of legislation, such as the recently introduced energy efficiency opportunities legislation, which look at more specific areas where you encourage companies to do specific things. Of course, there are a whole range of state and territory legislations—

Senator WONG—All right, there is legislative activity, which is, I suppose, reasonably obvious. Are there other areas that you think government can engage in?

Mr McGlynn—Reporting is clearly one of them. We encourage as good a level of reporting as we can. We do use purchasing power to some degree and the government has policies in terms of its energy efficiency policies and other policies in what it procures for its own operations. In the department itself, we try to assess suppliers in terms of their sustainability. Then there are a wide range of what you would broadly refer to as best practice encouragement activities. They can be cooperative agreements, provision of information, such as these sorts of things, in a wide range of areas.

Senator WONG—I want to talk specifically about procurement shortly but, just before we get into a bit more detail, you might say that the things that government could do would include reporting both by government but also potentially either mandating or encouraging reporting in the private sector—would you agree with that?

Mr McGlynn—Yes.

Senator WONG—Government can encourage through its procurement approach—would you agree with that?

Mr McGlynn—Yes.

Senator WONG—There is best practice demonstration.

Mr McGlynn—Yes.

Senator WONG—I presume there are also things like education—trying to educate companies on the benefits to companies of taking a more sustainable approach and managing environmental risks, for example. Would you agree with that?

Mr McGlynn—Yes.

Senator WONG—I will deal with procurement first. The audit of green office procurement report—did you deal with this before I arrived?

Mr McGlynn—No.

Senator WONG—I presume you are familiar with that, Mr McGlynn.

Mr McGlynn—I am familiar with it.

Senator WONG—Were you involved in its preparation?

Mr McGlynn—We were involved in parts of it, yes.

Senator WONG—It is a very good report but it certainly suggests we have a long way to go, from a government perspective, in some of the things that we said we would do. Would you agree with that?

Mr McGlynn—I think it talks about the fact that within the government there are some areas where we are doing very well and some areas where we are not doing as well. It varies across agencies and across issues.

Senator WONG—Let's have a look at some of the numbers. Forty-one per cent of respondents, which I presume are agencies, have actually reported on the effect of their procurement activities on the environment. Is that right?

Mr McGlynn—I would take it from the ANAO report.

Senator WONG—I think you actually referred to section 516A of the EPBC Act in passing. How many departments failed to comply with that? Perhaps I should read the section of the report:

Under section 516A of the Environment Protection and Biodiversity Conservation Act 1999 Australian Government agencies are required to 'report on the effect of their actions on the environment and identify any measures to minimise the impact of these actions on the environment'. Less than half of the 71 survey respondents (41 per cent) indicated that they had reported the effect of their procurement actions on the environment.

That reads to me that the majority of government agencies are in fact not complying with the legislation. Can you tell me whether I am right or wrong?

Mr McGlynn—I am afraid I cannot answer that question. I will have to take it on notice.

Senator WONG—Is there anybody here who can answer questions about the report, because it deals specifically with procurement, which would seem to me, as you indicated in the beginning, one of the ways in which government can impact on behaviour.

Mr McGlynn—We can answer some questions on some of the more specific elements of that. I do not think there is anyone here who can answer elements that relate to what you are raising.

Senator WONG—Fair enough. So you are not able to comment on the fact that the report certainly suggests that the majority of government agencies do not comply with the government's own legislation with respect to reporting?

Mr McGlynn—I am not.

Senator WONG—In relation to environmental management systems, just explain to me what they are. Explain what an EMS is. What context is that being used in?

Mr McGlynn—Environmental management system refers to a system by which environmental issues are identified and addressed, and it often includes setting targets and those sorts of things.

Senator WONG—The policy as described by the Audit Office is that agencies and entities were encouraged to develop an EMS based on the internationally recognised ISO 14001 or equivalent standard by December 2002 and accredit at least one of their larger sites to that standard or an equivalent standard by December 2003. Secretaries and CEs were to report by March 2002 if there were particular circumstances that meant that they could not do that. The Audit Office says that only seven respondents—that is 10 percent—have an EMS certified to the relevant standard. Are you able to comment on that? I do not think they would be any objection, Mr McGlynn, if your colleague wants to join you—certainly not from this end of the table. It is entirely up to you.

Dr Starr—My name is Paul Starr. I am from the Department of the Environment and Heritage.

Senator WONG—Dr Starr, only 10 percent complied with the policy—is that right?

Dr Starr—Yes. It is a voluntary requirement. This stemmed from a government decision back in 2001. The actual numbers in the ANAO audit report do not necessarily tell you the story about the impact of particular agencies that do or do not have the management systems in place. For example, some of our most resource intensive and impactful agencies, such as the Department of Defence, CSIRO and Airservices Australia, that are directly responsible for some very high levels of environmental risk and have some quite onerous environment management requirements applied to them, do have ISO 14001 certification systems in place or are moving towards it.

Senator WONG—Still, 10 percent is a reasonably low number, particularly given that the date was December 2003. Was there not under the policy the capacity for agencies to advise their minister, copied to your minister, if there were circumstances which prevented their action in this area? The ANAO says that only one of them were sufficiently encouraged so to do. How many was that out of—71?

Dr Starr—Their sample was in the seventies. Roughly speaking, there is 126 or so departments and agencies that were—

Senator WONG—How many have complied with the policy?

Dr Starr—In terms of the voluntary aspect of the policy, it is not a compliance issue. The notification thing is a separate issue.

Senator WONG—So a voluntary approach within the public sector on environmental management systems yields about a 10 percent success rate?

Dr Starr—Yes. However, the agencies that fall within that 10 percent are disproportionately large and impactful. I think that is a fairly important point.

Senator WONG—You might want to point me to where in the report that is discussed.

Dr Starr—In that audit report, they deliberately do not name the agencies because of some of the confidentiality aspects.

Senator WONG—Again on ‘Reporting’, back to the requirement of section 516A of the EPBC Act to ‘report on the effect of their actions on the environment’ being only 41 per cent, are you able to explain that to me? If that is a legislative requirement, one would think that that is not voluntary.

Dr Starr—The legislative requirement is to address section 516A in an annual report, whether it is in your primary volume of the annual report or a subsidiary volume. There is a set of further guidance available on the Department of Environment and Heritage website that breaks section 516A reporting down into smaller components. Basically what 516A is after is some coverage of legislative policy, program and operational aspects of the agency’s activities.

Senator WONG—Which is a good idea, is it not? If we accept that reporting might be one of the ways in which you can encourage behavioural change, and I presume that was the intention behind that provision of the act—

Dr Starr—That was the intention.

Senator WONG—Do you disagree with the 41 per cent compliance?

Dr Starr—I think it is accurate in terms of the audit.

Senator WONG—It is accurate. So, if this is not voluntary, why are the majority of Commonwealth agencies not complying?

Dr Starr—I think it is partly an issue of some agencies addressing some parts of the 516A requirement but not necessarily breaking that down into smaller and smaller elements of disclosure. For some of the small agencies—

Senator WONG—Hang on, Dr Starr. I did not get that in the report—and I have not read every paragraph—but I thought this was an assessment not about partial compliance. Generally the Audit Office does identify if there has been an attempt to comply or some partial compliance with a provision. I understood this to be a finding that, clearly, only 41 per cent had complied with 516A.

Dr Starr—I think we would have to take that up with the Audit Office and get further clarification.

Senator WONG—There was \$17 billion on procurement in 2003-04. Presumably it is more currently.

Dr Starr—Most likely, yes.

Senator WONG—Most likely. How effective is the current voluntary strategy of 516A in actually changing behaviour?

Dr Starr—I am not sure that we are necessarily looking for reporting to be changing behaviour. Reporting is in some regards the public face of the decisions that agencies have taken and the management approaches that they have in place, if that helps—

Senator WONG—You do not believe reporting assists in changing behaviour. Is that what the evidence is?

Dr Starr—Reporting does have a role, but I do not think we have approached these issues from the perspective of reporting first and foremost. Reporting then drives changed behaviour.

Senator WONG—Let us go to the changes in culture: ‘Chief Executive Instructions (CEIs) and internal policies (Chapter 2)’. This, for example, is one of the ways you might actually impact upon your procurement practices. Do you agree with that?

Dr Starr—Yes.

Senator WONG—The Audit Office makes this statement:

While whole of life cycle costing principle is integral to the CPGs, Commonwealth procurement guidelines, half of respondents indicated that they did not have instructions or internal policies in relation to whole of life cycle costing.

Do you have any comment on that?

Dr Starr—We do realise that this is an issue—

Senator WONG—I am actually not having a go at you. I presume DEH is actually amongst the complying ones; I am hoping that you are!

Dr Starr—We mostly comply.

Senator WONG—I am genuinely trying to work out what is happening and whether this is an effective approach. I have to say, reading the Audit Office report, it does not seem to have been hugely successful, certainly in terms of some of the identifiable benchmarks

Mr McGlynn—One of the issues Paul mentioned is that the agencies that are doing this the most tend to be bigger agencies. The way it works in the Commonwealth is that a very small number of agencies tend to be dominant in terms of the environmental impact. For example, I think about eight or 10 agencies are something like 80 per cent of our energy use, so getting the big agencies is very important for the overall picture.

Senator WONG—But wouldn't you think, in terms of the procurement guidelines, that getting more than half of them to have policies in relation to whole-of-life cycle costing would not be a bad idea?

Mr McGlynn—And that is something that is being progressed, and one of the issues—

Senator WONG—But do you agree with that as an objective? Is that something you think is one of the ways in which government can try to impact upon behaviour?

Mr McGlynn—It is certainly an issue that is important for the government to consider. One of the things that we will be doing—we would have been doing it anyway, but we will probably accelerate—in response to that is trying to improve the level of tools and resources available to Commonwealth agencies to help them do that. Life cycle analysis is not an easy thing and procurement on that basis is not a policy that is easy for everyone to implement, so we will be working on making that easier and more straightforward for agencies as best we can.

Senator WONG—Do you agree with the Audit Office's assessment that clear internal guidance in these matters—and this I think broadly refers to ways in which you implement CPG—would assist in providing leadership and giving high priority to important compliance issues in Australia government bodies and assist with its integration into operational decision-making?

Mr McGlynn—Yes, and I think it is a similar answer in that we are working on ways to facilitate that to happen.

Senator WONG—We have discussed four areas. We have discussed reporting. I think you have said you will get back to me on 516A but that you essentially agree with the figures in the Audit Office report about the proportion which you are reporting. As for procurement, we have had a discussion about that. Given the figures we have talked about, do you think government should lead by example or do you think government agencies are currently performing that role?

Mr McGlynn—I think that is an opinion issue. I think bigger agencies have been recognised as having leading environmental practices in a number of areas. The Department of Defence and Centrelink have been recognised—

Senator WONG—I understand your reluctance to give an opinion, but how about looking at it this way: do you think it is a desirable objective to have government, through its agencies, as a leader in terms of demonstrating best practice in these areas?

Mr McGlynn—I think the government has made a clear comment that it would like to demonstrate leadership in these areas.

Senator WONG—That was not really my question. Do you think there is a benefit?

Mr McGlynn—I think there is a benefit—

Senator WONG—What is the benefit?

Mr McGlynn—in that it demonstrates what can be done. In some areas, the Commonwealth has the capability, through its procurement practices, to actually shift the market. The Commonwealth is a major consumer of some products and services.

Senator WONG—That is right. As you said, government as a client—as a buyer of services, products et cetera—can have a substantial impact on a particular market, can't it?

Mr McGlynn—Yes.

Dr Starr—Beyond the issue of procurement, there is also a sense in which, if we are active in a public policy debate around a particular issue, if we cannot demonstrate that we are acting in a way that is aligned with the position we are taking in the public policy debate our role as policy developers, program developers, program implementers and advocates is weakened—and that is something that is acknowledged.

Senator WONG—Yes. People say you are not practising what you preach. So governments have to practise what they preach?

Dr Starr—Yes.

Senator WONG—What I suggest is that if you compare the KPMG report and the ANAO report—again, I am not having a go at DEH; I presume you are among the 'good people' as it were—you see that 23 per cent of Australia's top 100 companies produce sustainability reports, while three per cent of agencies prepare sustainability reports. So, in fact, government is substantially lagging behind the public sector.

Mr McGlynn—There are a couple of things there. Government is not reporting to the investment community in the same way. You do not look at alternative investments in government agencies in the same way as you look at investments in the private sector, so there are different contexts and environments—

Senator WONG—I thought we had agreed there was benefit in government practising what it preaches?

Mr McGlynn—If I can finish: having said that, I think there are a number of things the government does which are not classed as sustainability reports but are certainly in that vein. Every year, the government produces a whole-of-government energy report for every agency in the Commonwealth, which has very detailed information on energy use and performance and exceeds what most if not all public companies would produce. Although it is not labelled as a sustainability report, it is quite a considerable contribution.

Senator WONG—Who is responsible for the CPG implementation?

Dr Starr—The development of the Commonwealth procurement guidelines? The Department of Finance and Administration.

Senator WONG—No, the implementation.

Dr Starr—Largely speaking, implementation of the CPGs in the broad is the responsibility of the heads of the individual departments and agencies.

Senator WONG—Who monitors the compliance?

Dr Starr—It would depend on which part of the CPGs you are talking about. Some parts are subject to compliance measures such as audits conducted by the Australian National Audit Office. With others there is a degree of compliance asserted by the Department of Finance and Administration.

Senator WONG—Do you have a role in relation to any of the sustainability aspects of the guidelines?

Dr Starr—We do not have a role in terms of auditing other agencies.

Senator WONG—Does anyone in government other than the Audit Office, through its occasional auditing of these issues, actually check to see the level of compliance or voluntary behaviour under the guidelines?

Mr McGlynn—Certainly in the energy area we are responsible for producing that government report on energy use.

Senator WONG—There is that but there is a whole range of other things. Who in government is responsible for reporting to a minister or anyone at the political level about the number of agencies and whether or not agencies are complying with the EMS requirements or the reporting requirements that we have been discussing?

Dr Starr—There is no reporting requirement.

Senator WONG—You do not think there is a reporting requirement?

Dr Starr—We are not required to report.

Senator WONG—Sorry, we might be talking at crosspurposes. The Audit Office identifies the 516A reports and EMS and the standards issue. I am asking if there is anyone in government who checks those and provides a report to anyone at a political level about compliance with those or adherence to them.

Dr Starr—Other than the ANAO, no.

Senator WONG—So we have these policies that just sit out here and no-one actually checks, even if the Audit Office has asked for an audit, whether they are actually being complied with?

Dr Starr—As a department we conduct a semiregular survey of environmental management systems in the departments and agencies and run a suite of communication activities. That generates some quite useful data about EMS certification or particular initiatives, but we do not conduct an audit program per se. That is beyond our role.

Senator WONG—Do you have any targets or goals around actual implementation of these policies, given that they were supposed to be complied with by 2003 and the Audit Office has indicated substantial noncompliance? Are you aware of any goals or targets that have been set by the government regarding compliance?

Dr Starr—There is nothing set by the government. It was instituted as a voluntary scheme. There was not a sense of a particular number that we are working towards.

Senator WONG—I will turn briefly to sustainability reporting in the private sector. Do you have any targets as to the level of sustainability reporting that you want to encourage in the private sector?

Mr McGlynn—No specific targets. There is a comparison with other countries and by implication there is an indication that we are not at a level as high as those in many of those other countries. But there is no specific target.

Senator WONG—I refer to the slowing of the take-up of reporting which other witnesses have given evidence about. Have you been asked about this previously?

Mr McGlynn—No.

Senator WONG—Only three additional sustainability reports within the top 500 were prepared for 2004-05, as occurred with the previous year, which would suggest a plateau if you look at the trends of annual increases. Do you have any views about that? Are there any strategies to try to address that?

Mr McGlynn—I think that with annual series of data before you draw any firm conclusions you want to make sure it is not an anomaly. So I think we would be looking to see what happens next year, to see whether that is confirmed or that is just a glitch. However, it is something that we have noted and it is one of the reasons why the sense is that the progress is not as rapid as we would like to see.

Senator WONG—What would you like to see?

Mr McGlynn—Minister Campbell's initiative was not in response to this because it started before this. But I think there is a general sense that the take-up of reporting and the quality of reporting in Australia is not at the level that we would like to see and therefore we are exploring with the ASX whether there are ways we can encourage that.

Senator WONG—Do you have a target? Do you want 100, 80 or 50 per cent reporting?

Mr McGlynn—We have not discussed a specific target.

Senator WONG—Senator Murray asked a whole of government question which I want to come back to. As you are probably aware, in the UK there is a single coordinating body on CSR issues. Do you see any benefit in that?

Mr McGlynn—At this stage, as the minister—

Senator WONG—And it is not located in Environment. I think you are aware of that. I think it is in Industry.

Mr McGlynn—At this stage, as the minister made clear, we are not looking at a regulatory approach.

Senator WONG—I understand.

Mr McGlynn—We are not looking at an individual body to do it. So, in that sense I am not sure—

Senator WONG—I think I used the word ‘coordinating’, not ‘regulatory’. As I understand the way the Blair Labour government approaches this matter is that various policies and strategies in relation to the encouragement of CSR are coordinated through a single department, which is the Department of Trade and Industry or the Department of Industry and Trade—I am not sure what the correct title is. Do you have a view about the benefit of that?

Mr McGlynn—When the government will be looking at the response to this inquiry and others, one of the issues that we will raise is: what is the best way to coordinate that within government? It is an emerging issue; it has been emerging for us and other agencies for a while. We do coordinate at an officer level but, at this stage, there is no single coordination point. I think that is something the government will have to address, as the issue grows in importance.

Senator WONG—Are you able to perhaps give us a sense of what you see as the benefits and disbenefits of such an approach?

Mr McGlynn—I must admit I have not considered the issue in that context. Having a single point of contact has the obvious administrative efficiencies that would be associated with that. There is the obvious issue that, as far as that body would be exercising any expert role, you would need to ensure it has the expertise to handle the relevant issues.

Senator WONG—Is there a downside?

Mr McGlynn—To a centralised role?

Senator WONG—Yes.

Mr McGlynn—Again, that would be the one that you would want to ensure. It is not necessarily a downside, but is something you would want to address in setting it up. That is, if it is dealing with environmental issues in any detail, it has environmental expertise. If it is dealing with social issues, then it should have that social expertise.

Senator WONG—Sure. Has Treasury had any involvement in your approach to sustainability reporting?

Mr McGlynn—We have discussed with Treasury all along in the process.

Senator WONG—Did they endorse this or are they involved in this at all?

Mr McGlynn—They are not directly involved in this study, no, but we have discussed all the approaches that are going on all the time.

Senator WONG—All the time?

Mr McGlynn—On a regular basis.

Senator WONG—That is a very public servant answer. I will tell you how it looks from this side of the table and, again, I am not being critical of you. It looks as though sustainability reporting is given to Environment because people see it as an environmental issue—and probably the evidence before this committee would stress that it is broader than that—but the real business is done in Treasury or Finance.

Mr McGlynn—If you are looking for a response to that, obviously there are important things related to this area done in Finance and Treasury. We think there are important things done in the environment agency and in other agencies.

Senator WONG—What is important that is done in Treasury and Finance?

Mr McGlynn—They have responsibility for implementation and monitoring of the Corporations Act, which clearly is important to this whole debate. They have a role in this debate, just as we do.

Senator WONG—Clearly, they do. I am asking: what role do they have in encouraging more sustainable business practices or encouraging sustainability strategies in companies?

Mr McGlynn—They are responsible for monitoring the implementation of those things that fall into things like the Corporations Act in their areas of responsibility. In doing that, they will talk to us about things. We have a specific environmental interest in what things are happening and between us we have interests in how the different activities relate to each other.

Senator WONG—Can I now turn to environmental risks to business. Has the department engaged in an assessment of key or critical environmental risks to Australian business and made any attempt to look at the impact of these risks on economic sustainability and/or the Australian economy? In other words, do you do things such as look at the effect that climate change might have on different business sectors?

Mr McGlynn—One of the things the government is doing at the moment is undertaking a national impact strategy on climate change, which clearly will have in it, by implication, impacts on different industries, so, in that sense, yes. One of the things the department produced a number of years ago was the report entitled *The materiality of environmental risks to Australia's finance sector*, which referred to how environmental risk relates to financial risk.

Senator WONG—Yes, I think you referred to that in your submission, didn't you?

Mr McGlynn—That is right. This is dated 2003. It talked about the issue of whether in fact environmental risk is seen as a key financial risk. I am not sure that it came out with a clear conclusion, but I think one of the issues it talked about was that, in the past, there has not been seen to be an area where environmental risk caused a major shift in the viability of a company or corporation. However, it did not by any means preclude the options that that would happen in the future. So it is something that certainly the finance sector would want to be aware of.

Senator WONG—That was the Mays report?

Mr McGlynn—No, this is a separate report; it is the Young report. Again, we can table that if you like. It is called *The materiality of environmental risk to Australia's finance sector*. It was completed on our behalf by Ernst and Young.

Senator WONG—We do not have that report officially. So what happened to this 2003 report? Is it something that has been discussed with Treasury? Is it something for which there has been any education or campaign, or discussions with any company, directors or executives?

Mr McGlynn—The report has been used as part of the general policy development process. That is one of the reports where I think you will see raised this chicken-and-egg issue of companies not wanting to produce sustainability reports because they do not see the demand from the investment community and the investment community not using those reports because the data is not available. So I think, in developing the thinking and the policy in this area, that has been one of the inputs to that.

Senator WONG—There are a couple of issues arising out of your answer. The evidence before us has suggested that environmental risk is increasingly a risk that needs to be managed by companies. Would you agree with that?

Mr McGlynn—Yes. The context in which the ASX is looking at Minister Campbell's response is in large part looking at it as the issue of material risk to companies in future.

Senator WONG—The second point which arises out of your chicken-and-egg comment—which I agree with—is: do you think that the value to investors of reports would be enhanced if there were real comparability between different companies' reports?

Mr McGlynn—Yes, and that is a very key part of what Minister Campbell was pursuing with the ASX. The issue is then to balance that with: how do you provide that comparability in a way which is cost effective?

Senator WONG—What do you mean by that?

Mr McGlynn—There are ways you can provide comparability. For example, the GRI is sometimes seen as one of the ways of doing that, and it may be. However, other people raise the question: what is the cost of complying with such a regime? So the balance there is to get the comparability in a way that does not—

Senator WONG—Have you done any cost impact assessments?

Mr McGlynn—We have not.

Senator WONG—People talk about the cost all the time. I would be interested, before things are discounted because they are too costly, if there was actually an investigation as to the cost. It may well be that that is something that militates against certain policy decisions, but is there any intention to look at the cost of proposals?

Mr McGlynn—It is not on our research program at the moment. It is an area that—

Senator WONG—It is not on the research program even in the context of the reference to the ASX?

Mr McGlynn—It is not. At this stage, one of our key next steps is to look at the feedback that comes out of the discussion paper that the ASX provides. If cost is seen as a key factor in influencing decisions, it is clearly something we would want to have a closer look at. It may be that other factors are determined as being more important.

Senator WONG—There are just two other areas, briefly. Are there any sectors which you think have responded more constructively or are more forward-thinking or innovative in terms of environmental risk management?

Mr McGlynn—This report identifies that—

Senator WONG—This finance sector.

Mr McGlynn—It is a manufacturing and mining sector report, more than other sectors. I think generally the mining sector is seen as the area where sustainability reporting really began and grew.

Senator WONG—Are there any which you would identify as perhaps lagging?

Mr McGlynn—I would rather not do that! No.

Senator WONG—What have you learned from these very many reports and research projects that you have done and your engagement with the ASX through Minister Campbell's reference? What can you tell us about the drivers of company behaviour? What drives companies' behavioural changes in this area?

Mr McGlynn—I think one of the learnings is that that will vary quite considerably from company to company. One of the things that has come out of this report a couple of times is the question of the key audience. One of the key audiences, if not the leading one—I do not have the numbers in front of me—for most of the sustainability reports is employees. One of the issues for us is that it is important to understand what it is that companies are trying to achieve. It seems as if staff retention or creating a more satisfied staff is clearly one of the things that companies are trying to do. Coupled with that we have anecdotal evidence that staff members and the general populace are becoming increasingly concerned with some of these environmental issues. When you combine those two together, you come up with perhaps a different way of looking at what sustainability reporting is doing. They may be working in ways that would not be your assumption at a first superficial glance; they might work through quite different sorts of mechanisms.

Senator WONG—I am sure as a department you will give us anything further that you feel you have not covered. There were some issues arising out of the Audit Office report. I wonder if you could get back to us on that—particularly the 516 issue?

Mr McGlynn—We can do that.

Senator WONG—If there is any area of the report that perhaps you do not agree with or you want to comment on—not so much the recommendations, because you formerly responded to those, but perhaps some of the factual analyses—obviously we would be keen to look at that.

Mr McGlynn—I am happy to do that.

CHAIRMAN—There being no further questions, Mr McGlynn and Dr Starr, thank you for your appearance before the committee, for your evidence this evening and for your assistance with our inquiry.

Committee adjourned at 8.17 pm