COMMONWEALTH OF AUSTRALIA

JOINT COMMITTEE

on

CORPORATIONS AND SECURITIES

Reference: Statutory monitoring role: role of the Companies and Securities Advisory Committee

CANBERRA

Monday, 6 February 1995

OFFICIAL HANSARD REPORT

CANBERRA

JOINT STATUTORY COMMITTEE ON CORPORATIONS AND SECURITIES

Members:

Mr Stephen Smith (Chair)
Senator Gibson (Deputy Chair)

Senator Cooney	Mrs Bishop
Senator McGauran	Mr Humphreys
Senator Neal	Mr Sinclair
Senator Spindler	Mr Tanner

Matter referred:

Statutory monitoring role: role of the Companies and Securities Advisory Committee.

WITNESSES

JOINT STATUTORY COMMITTEE
ON CORPORATIONS AND SECURITIES

Statutory monitoring of the Australian Securities Commission

CANBERRA

Monday, 6 February 1995

Present

Mr Stephen Smith (Chair)

Senator Cooney	Mr Humphreys
Senator Gibson	Mr Sinclair
Senator McGauran	
Senator Neal	

The committee met at 10.04 a.m.

Mr Stephen Smith took the chair.

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

PALMER, Ms Kerrie, Manager, Policy Section, Australian Securities Commission, GPO Box 4866, Sydney, New South Wales 2001,

PROCTER, Mr Andrew Thomas, National Coordinator, Enforcement, Australian Securities Commission, Sydney, New South Wales 2001, and

TANZER, Mr Gregory Mark, National Manager, Legal, Australian Securities Commission, GPO Box 4866, Sydney, New South Wales 2001,

were called to appear before the committee.

CHAIR—I welcome Mr Alan Cameron, Chairman of the Australian Securities Commission, and other officers of the commission to this public hearing of the Joint Committee on Corporations and Securities. The purpose of the hearing is to ensure that the committee and the parliament are informed about the administration of the national scheme of corporate law, which the ASC is charged with administering. These meetings also provide the ASC with an opportunity to raise matters of concern which may require legislative action. At the same time, the committee is obliged under section 243 of the Australian Securities Commission Act to consider the commission's annual report, which we will do today. Mr Cameron, do you wish to make an opening statement?

Mr Cameron—Mr Chairman, could I just make a couple of brief remarks about the annual report? That might be an appropriate way of commencing.

CHAIR—Thank you.

Mr Cameron—On page 3 of the report under the bold heading 'Achievements', the commission has sought to set forth some of the major achievements that we see the year as having produced. The first category, under the heading 'Facilitating Business', all

really arise from the commission's attempt to streamline its processes in order to ensure that business gets better service in the matters that are of a routine nature. I think the figures that are set out there indicate that that objective has been achieved.

Under the heading 'Market and Corporate Integrity', we list in brief the results of the major criminal and civil actions during the year. We have treated major criminal prosecutions as successful if they result in a conviction. In other words, that is not a reference to custodial sentences or, indeed, to any particular penalty. It is, rather, the mere fact of a conviction. We then regard it as a matter for the judiciary what penalty is imposed.

There were conflicting signals during the year and just after the end of the reporting year as to whether there is a stronger attitude being taken by the judiciary to white-collar crime, not merely for the commission but white-collar crime generally. There were some soft signals and some hard signals. To the extent that there are hard signals being given, quite comparatively stern punishment being meted out by the judiciary, that will send a strong message to the business community. Even in one celebrated case where a person not only pleaded guilty but turned crown evidence, the sentence was still not entirely suspended. That sends a very stern message to the business community.

Under the heading 'Credible Public Information', we have mentioned what I think is a substantive achievement by any means; namely, the achievement of international quality certification for the information division, a world first for such an organisation and something to which the rest of the commission now really must strive as well. It will take some years to achieve that same level of success, but that indicates the continuing attempts of that division to provide really good quality service to all of its customers.

Finally, under the heading 'ASC' I mention, among other things, the wide-ranging strategic review we commenced in order to ensure that our internal processes and structures delivered results sufficiently and effectively. That review was of some interest to the ministerial council on corporations, with whom I met last Friday in Hobart. I have brought and can give you a background briefing that was given to the ministerial council on the results of that review and what changes it has meant for the commission.

There have been some inaccurate press reports to the effect that it amounts to a centralisation of control of decision making within the commission. In fact, we do not think it amounts to that at all. It amounts to an attempt to ensure greater national consistency in decision making without centralising that decision making. That presentation is available for you and we can hand it to members of the committee.

CHAIR—The committee would not want to rely upon inaccurate press reports, so we had best get the results of the review from you.

Mr Cameron—The final thing I will mention, emboldened by a remark you made in opening the meeting, is a very recent development that may well in the future require some law reform if it is not corrected judicially, as we would see it; that is, the decision of a federal court judge recently involving the Adsteam case, brought by the commission under section 50 of the ASC law. This is one of those cases brought by the commission in the name of a company.

Section 50 refers to the commission's having the right, after completing an investigation, to commence an action in the name of the company or, with the consent of a member, in the name of the member. It draws a clear distinction between being able to commence proceedings with the consent of a member in the name of the member or, alternatively, in the name of the company. The judicial interpretation placed upon that section most recently is that the commission is not entitled to commence an action without the consent of the company unless the company's failure to give consent is because of the board of directors' inherent conflict of interest or some fraud on the part of the company. There is no statutory warrant for that additional qualification being inserted into the section, and we would see it as considerably inhibiting the ability of the commission to use the section in the way that we understood the parliament intended.

While I cannot predict what the result of the matter will be, or even of the commission's consideration—this is a very recent decision—we are presently looking at whether there is some problem exposed with section 50. I might say in passing, I am not quite sure how you could make it more explicit, but we might need to have it made more explicit than it appears to be on the face of the section to avoid this restrictive

interpretation.

CHAIR—You might keep us appraised of that one.

Senator NEAL—Is there further opportunity for appeal?

Mr Cameron—There is, as I understand it. The curious result of the case itself was that we won because they had challenged the wrong decision, which is why it did not attract much attention. Nevertheless, the correct decision has now been challenged and we will lose, if we have not already lost, so it is in a curious litigation impasse. But when we get through that impasse we have assuredly lost the war while we won the battle. Therefore, we will need at some stage either to appeal, when we have a decision we can appeal against, or to seek some other resolution of the matter.

CHAIR—I think last time you were here we spoke about section 1316, which we subsequently received a request from the Attorney-General to conduct a review on, so the committee is obviously quite keen to be of assistance where we do find statutory provisions which do not assist the ASC in the discharge of its responsibilities. Thank you very much, Mr Cameron.

Before we go to general questions, could I just make the point that if at any time there are matters which you would like to discuss with us in camera, that can be done and we would do that at the end of our session if that is necessary. Senator Gibson has the high burden and duty of a shadow cabinet meeting at 10.30, so I will hand over to the deputy Chairman to ask a few questions before he has to leave.

Senator GIBSON—I have a couple of questions which refer to consistency between the states, which you alluded to before. These arose from a chance meeting I had late last week with the manager of a national investment advisory and dealing group. His comments were that he thought the ASC had done a good job for them and was full of praise in general terms for what had been going on, but he was concerned about consistency between the states. He gave me two examples. There is greater concern within Victoria on the regulations with regard to the name of the entity than there is, for instance, in Queensland. Enforcement in Victoria is exceedingly strict and particular, whereas in Queensland there does not seem to be much concern at all. He just used that as a contrast

of differences of consistency between the states.

Another example was with regard to a prospectus exemption that they applied for. They actually got advice from the Victorian office that it would be OK. But then the final decision came out of New South Wales, which was to the effect that it was not right. In the end it got fixed up. He instanced those examples which caused a bit of frustration and talk within the industry about lack of consistency between the state offices.

Mr Cameron—The commission has traditionally taken various steps to try to ensure consistency, including the publication of policy statements, manuals and so on, but despite having been doing that since 1 January 1991 we, too, became aware and have been well aware that there are inconsistencies in administration, some of which perhaps go back to different cultural attitudes even before the establishment of the commission. That was the very thing that underlay the strategic review and the establishment of what are now called national program managers in order to ensure that our surveillance and other programs are consistently targeted and that surveillance works equitably across Australia.

Greg Tanzer, who is sitting at the table here, is the national manager for legal—which is one of these national positions—and Andrew Procter, of course, is national enforcement coordinator—which is a more traditional one. We have had one of those since almost immediately after the commission was formed. But there are now several national program managers, whose job it is to seek to ensure that the programs are appropriately targeted and delivered across state boundaries.

The sensitivity, from the point of view of the minister or counsel, of course, is that they want to see as states attorneys-general that the operational decisions are still being taken within the states. And while there is an understandable pressure towards that, we have both a statutory obligation and, indeed, a policy that we wish to bring about national consistency of decision making. That has required us to take more steps for coordination without taking away the ultimate decision making in individual cases from state and territory based regional offices. So, you will read more about that in this document that I will be able to hand to you.

Senator GIBSON—Thank you.

CHAIR—Mr Cameron, before we go to your annual report itself, I might just draw from a couple of areas which were the subject of the committee's report to the parliament in June of last year, following our examination of your 1992-93 report. On pages 1 and 2 of that report, we made the point that the committee considered that the annual report should be a vehicle not simply for recording statistics and major events, but it should be a vehicle for analysis and interpretation of long-term developments. When one compares the 1992-93 report with the 1993-94 report, I think some of the spirit of that has been taken up. Is that a conscious decision? Do you see further developments in this area, or do you think you have the weight about right?

Mr Cameron—It certainly was a conscious decision. I was mindful of that, particular writing what is called the chairman's review or something at the beginning. I think one deliberate decision to avoid some of the difficulties which media organisations get into was to try to ensure that opinion and fact were separated to some extent, and the chairman's review was deliberately intended to have more of the opinion and commentary, if you like, on what was happening. That is what the deliberate attempt has been. You may say to us that you are not sure that we have even yet gone far enough in doing that, but that certainly was the aim of the exercise.

CHAIR—I think the fact that the chairman's review forms list 2 of questions is a reflection that there is a bit of opinion analysis there, which is worthy of consideration.

Mr Cameron—Yes.

CHAIR—The second matter that we referred to in our report was in respect of staffing. We made the point that, in the report of the review of the Commonwealth law enforcement arrangements, there was a reference to the ASC anticipating problems retaining staff with specialist skills, as the economy expands. I just wondered if we could have an update on this in two respects: firstly, whether you have been losing any specialist staff in recent times; and secondly, the success or otherwise that you may have been having in recruiting specialist staff from private enterprise to do some work with the commission.

Mr Cameron—There are some specialist staff whom we have lost, particularly in

areas that relate to the securities and futures markets. It is very difficult to attract or retain people in those areas. And it remains difficult to attract and retain people with specialist accounting skills. Somewhat curiously, it is marginally less difficult for lawyers than it is with accounting skills. I am not quite sure what the explanation for that is. Certainly that has been my experience in the larger regional offices. We have had real difficulty with the accounting area.

I anticipate that there is a question lurking about our staff turnover rate. I do not think our staff turnover rate as reflected in the report reflects this problem. The staff turnover rate as a statistic is more a factor, as I understand it, of the retaining of temporary staff for a period of four to five months each year at the information processing centre in Traralgon. So that, statistically, our turnover rate is not out of line—when you take it out of that—with the state and public service generally. But I would continue to be concerned about our ability inside the framework of the Public Service Act employment to keep people, bearing in mind that we are competing with the private sector and are in the capital cities. It will always be difficult. People who choose to work for the commission in Melbourne or Sydney are clearly losing money to do so. We, therefore, expect a turnover of them. What I would like to see happen—and I might have spelt it out in the report—is that we would be seen as a professional employer of choice for people who wish to practice in the securities and futures markets in the future. But that is an aim that will be hard to achieve while we are so uncompetitive in salary terms.

CHAIR—As well as the salary constraints of the Public Service legislation, is there an informal constraint in attracting specialist staff to regional areas because of the salary of the regional commissioner? A comment made to me in passing was that there was an attempt by some of the states to attract specialist staff from the legal profession to do a stint with the commission in a regional office, but arrangements could not be entered into because of a glass or plastic ceiling, which was the regional commissioner's salary.

Mr Cameron—I am not sure that that, in practice, is such a major problem. That is quite a sensitive matter of staffing that perhaps we should talk about more privately. There are some difficulties with that, but I think it could be exaggerated.

CHAIR—I had one final point on staffing: from memory, the last time we spoke was actually in our institutional investors inquiry in Melbourne. It was the day the news broke about your predecessor, Mr Hartnell, and the arrangements that he had entered into with his law firm. Now, for two reasons the committee did not ask questions on that day. Firstly, it did not fall within the terms of reference and, secondly, we suffer from a generosity of spirit. Now that the dust has settled, are there any observations you might like to make in respect of that arrangement?

Mr Cameron—I have a personal view of it: the difficulty may have been somewhat exaggerated. It was certainly only ever taken up publicly by one media outlet. It did not attract considerable attention elsewhere. That has always interested me, because I sit with a particular perspective. Trying to judge the way the public has really reacted to it is made much more difficult if only one media outlet has any comment on the matter.

It clearly has upset some politicians—not necessarily at the federal level. I am well aware that there is a great deal of interest in it among the states. I think it raises a perception of a difficulty. Whether it ever was such a difficulty is another matter. It seems to be common ground that Mr Hartnell has never been challenged. Mr Hartnell excluded himself from decisions involving clients of his former firm, so that there was no actual difficulty as a result of the conflict, if that is what it is.

The second comment to make is that the law works on the assumption that there will be conflicts of interest and provides a mechanism for ensuring that they do not impact upon our decision-making. The assumption is that the chairman and the members of the commission will have other interests, and we will disclose them or otherwise deal with them and exclude ourselves from making decisions in those cases. We do that, and he did that. Therefore, I do not think it ever produced quite the degree of difficulty that was reported as being generated.

I have a third concern: it might eventually lead to some pressure for quarantining office holders from further work with the commission. The double bind about that is that it, of course, will make it even harder to attract people for short-term positions with the commission if, when they finish with the commission, they cannot return unhindered to

their normal practice, if not immediately, then at least within a comparatively short period.

There ought to be some inhibition on immediately returning to private practice and attacking the commission on matters that you were handling yourself or whatever. That is clearly unacceptable. But if it led to pressure for some further quarantining beyond a shortish period, that would just make the life of the government, in seeking to fill places on the commission, even harder. Of course, by definition, we are assumed to be receiving less income doing this than we would have been receiving anyway.

Senator NEAL—It does happen in some other areas as well.

Mr Cameron—I am not saying that it should not happen. I am just seeking to ensure that, if it does happen, there is some balance in the decision making. Otherwise, it could work in a double sense—not so much to the detriment of the individuals who are in there, but it might make it harder to find people prepared or able to come and take the positions in the future.

Senator NEAL—Yes, I understand.

Mr Cameron—That is a not a final view of the commission formally; it is simply a personal reaction to some of the issues that have arisen.

Senator COONEY—In my view, if we have got the right sorts of people heading up ASC, why shouldn't they be honourable enough to know what tasks to take on or not take on when they go back to private practice?

Mr Cameron—I believe that they are. I do not believe that there has been a problem with that, despite the fact that my predecessor is now bitterly engaged in challenging commission decisions in the Administrative Appeals Tribunal and apparently making quite a good living at it with a greater degree of success than I would have wished.

Senator COONEY—That is reasonable, too. Every labourer is entitled to his hire.

Mr Cameron—That's right. Therefore, I am concerned about imposing some artificial quarantine beyond that which ought to be imposed on oneself by ordinary prudence. It is one of those areas where—

Senator COONEY—The government is not doing that.

Mr Cameron—No, I am just saying that, in the background, there is the suggestion that that might be one of the results—that some consideration will be given to a quarantine period.

Senator COONEY—This government is too sensible for that.

CHAIR—The same media outlet to which you referred tried to draw a parallel between Mr Hartnell's situation and that of the deputy chairwoman, Ms Ralph, and her relationship with the NRMA. You are satisfied that any conflict there has been disclosed?

Mr Cameron—I think it is a classic case of what I was describing earlier: law assumes we will have conflicts, either because of things in the past that you cannot get rid of or because of present connections that are not perceived to be such that it means that you should have to give them up. Lynn Ralph's position is exactly that. Her position on the NRMA was well known and she has, therefore, separated herself completely from decisions involving NRMA. That was not particularly difficult to do because, in the ordinary course, they would not have come near her anyway. So it has never been, as I have seen it, a matter of particular difficulty. I am a member of the NRMA but, since I share that interest in common with 1.8 million others, I have never seen it as a major problem.

CHAIR—Just to complete the circle and, in a sense, to confirm your point, recently in the Western Australian regional office, Mr Joe Longo, who is a practitioner of some standing, entered into an arrangement with the commission to work with the commission for a couple of years and then return to his law firm, Parker & Parker. He has previously acted for Mr Bond, and the regional commissioner made the point on announcing the engagement of Mr Longo that he, of course, would not be going anywhere near any of the Bond matters. It seems to me that that leads you to a sensible conclusion: you can attract a practitioner of quality to the commission from the profession for a short period of time but avoid those obvious conflict of interest questions.

Mr Cameron—I think that is right, and Mr Longo is not taking up a statutory office within the commission, either as a member or as a regional commissioner. But those obvious Chinese Walls exist—that is an expression I suspect one should not use any

longer, but there has been no new expression generated to replace it. There will be appropriate quarantining procedures put in place to ensure that he does not get near those decisions.

CHAIR—Having mentioned Mr Bond, one of the other matters that we referred to in our own report to the parliament was, of course, the famous big 16. You made the point to us last time we spoke that you were not proposing to list these in the annual report, which you have not done, although there are some comments which update that.

The committee has made the point on a number of occasions that we are generally concerned about the perception of delay, both in terms of investigations and subsequent prosecutions through the courts. Have you got any update comments for us? There has been a bit of activity recently. To the extent that you are able to speak to us publicly, we would be happy to get an update from you on those matters.

Mr Cameron—I think it will continue to be a source of frustration that these matters take so long. It is worth emphasising that one of the reasons the so-called investigation appears to take so long is that, before a prosecution, there is a process of ensuring that the evidence to support the prosecution is virtually in a fit condition to be presented to the court and to the defence almost immediately.

In the case of major documentary matters, that is a considerable task in itself. Supporting these major prosecutions is at least as hard as investigating them to a point of satisfying senior counsel that a charge ought to be laid. These are the factors involved. Sometimes the press is preoccupied with the continuation of an investigation. But the fact is that it is not so much the investigation in the sense of sending out people to ask questions; it is preparing the evidence to a point where it is ready to justify the prosecution.

Senator COONEY—Do you keep in close contact with the DPP?

Mr Cameron—The process that I am describing is one that very much involves the DPP.

Senator COONEY—We have an outstanding DPP at the moment and an outstanding deputy DPP. You would have to agree with that.

Mr Procter—I do, Senator. That is one of the areas that distinguishes our relationship with the DPP from that with other investigatory agencies.

Senator COONEY—The DPP is not an investigatory agent, as you well know.

Mr Procter—Quite. I refer to us as an investigatory agency. Most of the other investigatory agencies do their work and then provide a brief to the DPP. In the ASC's case the arrangement is that the DPP is involved at a much earlier stage, advising during the investigation.

Senator COONEY—Yes, but you want to be a bit careful of not bringing him in too early.

Mr Procter—Quite.

Mr Cameron—The point you make was picked up in the review of Commonwealth law enforcement arrangements which I happen to have in front of me. Paragraph 8.15 reads:

The Review noted the early involvement of the DPP in matters with specialist regulatory agencies such as the ASC and the ATO. This is a useful case practice, provided professional independence is maintained and the role of the DPP is to advise upon the evidence and the technical merit of the case.

It is interesting that the review recognised that there is a potential difficulty in circumscribing the independence of DPP if it gets too involved in the process, and that is one of the competing pressures, if you like, of the early involvement of the DPP.

Senator COONEY—The ASC and certainly the DPP should not be starved of resources, which sometimes happens.

Mr Cameron—We ensured that we were not starved of resources for the top 16. The rationale of my predecessor in establishing that list was to ensure that there were resources available for those matters which were identified as being of the highest priority. That result has been achieved. To that extent, the creation of the list served its purpose which was what it was about.

Senator COONEY—It would be a very bad thing if our DPP got to be in the same position as the district attorneys, or whatever they are called in America. Would you agree with that?

Mr Cameron—Fortunately or unfortunately, I am not familiar with the way the

district attorneys work in the United States.

Mr Procter—If you mean in the sense that the district attorney becomes involved in the investigatory process from the first day, I think we would agree.

Mr Cameron—There is no risk.

Mr HUMPHREYS—I want to go back to the previous head of the ASC. You were saying that he is representing cases at the AAT and is winning more than you would wish. Can you go a little further into why he is winning. Is it because he knows the internal operations so well that he knows the inadequacies of the corporate law? What is the reason?

Mr Cameron—It was a jocular reference to the fact that he had a recent success in front of the Administration Appeals Tribunal in the Colonial Mutual and an Australian agricultural company matter. He challenged a policy decision of the Commission where we had reversed the policy that he had adopted. He was in the position of seeking to argue as advocate before a position which he had espoused while he was at the commission.

While the AAT concedes that it is within our competence to set that policy, our methodology of setting it was to change the policy in response to an application and announce that by media release instead of first going through a deliberative process of calling for submissions, issuing a policy statement and then changing the policy. That is the effect of the challenge. It will now be another perhaps two months before we will have succeeded in implementing the policy which the AAT concedes we are entitled to implement. He has had a win, but it did not involve his use of any internal information. It was a very public discussion of a matter of policy. I do not think it is a matter that we are at all concerned about. It was intended as a jocular reference.

Mr HUMPHREYS—You do not see a repetition of this sort of challenge. If you have changed the rules, are you quite sure that you will not be inadequate in the way that you were previously?

Mr Cameron—No. I should say that I was hinting that there was more than one. There is more than one. He is also acting for, and I think personally involved in, a challenge to a decision we made about horse breeding schemes. As you might recall, horse

breeding is of particular interest to Mr Hartnell. He thinks we should have introduced a policy along the lines that we had done in a related area. That again is before the Administrative Appeals Tribunal.

Mr HUMPHREYS—From what I hear, the horse breeding scheme was full of rorts in the old days, wasn't it?

Senator NEAL—I think it is debated as to whether or not it is an investment.

Mr Cameron—Yes, and that leads to a decision as to whether the principal regulatory body ought to be the jockey club and the self-regulators or whether the commission should be actively involved. The body which Mr Hartnell represents in that case would like to be self-regulatory, and we are not sure it is in a position to be.

Senator COONEY—But only in respect of syndication. You do not want to take over the control of the races or the stewards—

Mr Cameron—Certainly not. I cannot see myself as chief steward.

Senator COONEY—It is just in terms of the syndication of the whole thing. Who determines that there can be no more than six in a syndicate? Where does that come from?

Mr Cameron—That comes from a policy statement of the commission.

Senator COONEY—Which?

Mr Cameron—This commission. They are prescribed interests under the law. But what we are trying to do—otherwise the commission would spend all of its time worrying about horseracing, goat breeding and all sorts of other things—is to try to exclude the small schemes from the operation of the law, but it is usually on the basis that there is some sort of self-regulatory body there.

Mr HUMPHREYS—But there were huge amounts of money lost on this horse breeding scheme, and lots of people who invested were taken to the cleaners. I happen to have a good knowledge of that. My neighbour was one of the victims. Did you say that you do not have any control over that at all?

Mr Cameron—I would hesitate without being briefed—

Mr HUMPHREYS—Tommy Smith and everyone else involved went and took a lot of people with them. But I suppose that is a very high-risk investment.

Mr Cameron—I do not think there has been any suggestion that those particular losses, which were well publicised in the financial press, apart from anything else, were due to a regulatory failure. They were more to do with some commercial aspects.

Senator COONEY—Poor old Bart Cummings got done over by the Federal Court.

Mr HUMPHREYS—They all got done over.

Senator COONEY—Yes, but it was the Federal Court that did that.

Senator McGAURAN—Bart Cummings disputed the prospectus, didn't he? It was a prospectus dispute with his accountants.

Mr Cameron—I am just feeling reluctant about getting into that area without being reminded of the detail.

CHAIR—I have one more question on major investigations. I know Senator Neal has some questions on the NRMA float. You made the point about the complications and therefore the length of investigations. You made the point about the getting up of the trial, and then you have the trial process itself. This is not a matter that the ASC is running but, in one of the Rothwells prosecutions which is due to embark in Western Australia, the relevant judge of the Supreme Court, Judge White, in a hearing the other day, made the point that one of the statements of a prosecution witness went to 2,500 pages. If it were read in court, it would probably take about 3½ weeks. So you have the trial process as well.

Leaving aside the big 16, I was wondering whether the ASC, in conjunction with the DPP, has been putting its mind to how we get over these lengthy, complicated trial processes. The investigation of it getting up may take a long time and then, in the Rothwells case, people are speculating that there may be 18 months worth of trial process. Do you think there are any lateral amendments to the law that might start solving or assuaging that process?

Mr Cameron—A working party is bringing together the regulatory and prosecuting agencies of the Commonwealth and, to some extent, the states, to try to work out ways of presenting all sorts of complex matters much more simply in terms of document handling, computer presentation and so on. In respect of some of the major

matters, we are using at the moment compact disc technology. We are using the facilities available at the information processing centre to put onto compact disc copies of the documents so that you can call up the documents on a screen and show them to the jury and the judge as you go. These major prosecutions, including the state prosecution of Rothwells—which is not ours—are likely to be run on computer screens in that way, which will mean that the process should be a lot quicker. There are still some aberrations—again, not in an ASC prosecution. In a recent case it took weeks and weeks to read a transcript to a jury. How anybody was able to do that, I am not quite sure. We would certainly be striving to avoid that, and so would the DPP, in order to ensure not only that there is a fair trial but also a quick and efficient trial. It is simply unacceptable to everyone that matters should take weeks.

Senator COONEY—Are you taking notice of the body that does major fraud in the United Kingdom?

Mr Cameron—Indeed—the Serious Fraud Office.

Senator COONEY—Are you following it?

Mr Cameron—We are in contact with it in the sense that it attends the same meetings.

Senator COONEY—Did you see that it has convicted a series of people that the courts now say were wrongly convicted?

Mr Procter—We should perhaps separate out the trial process from that particular matter to which you refer, although I am aware of that. In terms of the trial process and presentation, we are aware of the work the Serious Fraud Office is doing, although we think we are ahead of it in the area of technology. I have not read the details of the particular case to which you referred where it said that the convictions were wrongful. It is certainly one of those matters that we are very mindful of. When we come to frame charges to ensure that trials do not take too long, there are not too many counts; the jury is presented with a comprehensible case. One of the matters that we have before us at the moment, which is still at the committal stage, involves 563 counts. But the strategy is that, upon committal—on the assumption that they are committed—there will be separate trials.

It will be a much more confined case, to take into account those sorts of risks and problems.

Senator COONEY—What is the most important thing—fairness or timing?

Mr Procter—Fairness, without any question. In terms of the time it is taking to complete investigations, I think the committee is well aware that we have a self-imposed deadline of 12 months as a performance indicator. I am pleased to say we now meet that performance indicator in over 90 per cent of our investigations—although I think we can do better still.

CHAIR—Page 22 of the annual report shows that only 52 of the 137 investigations completed in 1993-94 met that target.

Mr Procter—I quite agree. I am talking about a figure that I had produced for me as recently as last Friday, so we continue to get better and better.

CHAIR—The rating improves?

Mr Procter—That is right.

CHAIR—In a sense, all of this has been implicit throughout your comments. A few years ago we had the famous ASC DPP non-violent non-cooperation. Last year you told us that all was going well. I assume things are going well and better?

Mr Cameron—Yes, indeed. While the national steering committee on corporate wrongdoing, which was established as a result of that imbroglio, meets—because it is required to do so under the terms of the ministerial direction—it has not had any disputes to resolve. Instead the committee performs a useful role of enabling the secretary to the department of the DPP and I to meet and talk about matters of mutual interest, but it has not been necessary to resolve any disputes.

Senator NEAL—There was a very public attempted float of the NRMA. It is of particular concern to people like me, to the number of potential small investors who probably have very little idea of anything to do with company law or prospectuses or anything like that. Why was it that the ASC took no role in intervening in what the Trade Practices Commission eventually found was misleading advertising and a misleading prospectus?

Mr Cameron—If I could correct you on one minor point, the Trade Practices Commission did not take a different view of the prospectus either. Neither the TPC nor the ASC took any action against the prospectus. It was the individual dissident directors who went to the Federal Court. At first instance, a judge of the Federal Court found the prospectus to be misleading and deceptive under the Trade Practices Act. On appeal, the decision of the appeal judges was that not in all of those respects but in one major respect only was the prospectus misleading and deceptive, and in such a way that, in the opinion of the appeal judges, it may be possible to correct by a supplementary prospectus. So the extent to which the prospectus was misleading or deceptive has been significantly curtailed by the decision of the appeal court.

Senator NEAL—Thanks for clarifying that. In spite of all that, obviously there is some part of it which is misleading. The fact that corrections are necessary indicates that.

Mr Cameron—Yes.

Senator NEAL—Obviously, we have got a huge number of potential small shareholders who, except for the fact that Richard Talbot took action, may have been in some difficulty. I am trying to establish whether there is some basis for the ASC not taking action. Was it just a matter of judgment, or is there something in the legislation which prevents action being taken in these circumstances?

Mr Cameron—I think the simple answer is that it was a matter of judgment. We need now only talk about one instance, one respect in which the prospectus was found to be misleading, and that was in the use of the expression ‘free shares’. That was a matter for judgment; the officers of the commission took it to say that it was a justifiable use of the expression ‘free’. There is no doubt that it is an open grammatical usage. The court agreed with that. It believed, on balance, that the considerable repetition of the expression ‘free shares’ gave an overall imbalance to the description of the shares and created an impression that was too strongly in favour of people believing that they were giving up absolutely nothing by agreeing to the offer.

When the commission was faced with that decision, back at the time the prospectus was lodged for registration, the staff of the commission, being alert to the theoretical

argument that it is not strictly accurate to talk about the shares as being free, nevertheless felt on balance that it was not the sort of thing that they should interfere with; that that was a legitimate way of describing it; that the qualifications were there. The court took a different view. We have to learn the lesson of that particular case. I notice that the announced float of National Mutual has been absolutely rigid in refusing to accept the description 'free shares' to describe its offer of shares in various similar circumstances, no doubt for that reason. The dilemma for the commission is whether it should interpret that decision as meaning that it must be tougher and more restrictive in allowing business people to use ordinary language to describe the offer of securities. I am not sure that we should let this one decision drive us in that direction.

Whatever else you might say about the NRMA float, the prospectus overall was a high quality, plain English document. Perhaps it went too far emphasising the free share concept—and the court has found that it did. But I do not think that we, as a commission, are yet convinced that we should try and send a general message that really technical language is a pre-requisite of prospectuses. The NRMA prospectus was trying to make this prospectus comprehensible to possibly well over a million people who had never seen a prospectus before. That was a really difficult task.

The second complicating factor for the NRMA was that it was trying to combine a notice of meeting for a complex meeting that was intended to change the structure of a company with a prospectus. Perhaps that was a mistake. Perhaps it would have been better to have had two documents: a notice of meeting and a prospectus. If I have read it correctly in the press, that might be what National Mutual is planning to do. Perhaps that is the lesson that you learn out of it: it was trying to put two things together that might have been better kept apart.

Overall, while the commission obviously should not be satisfied with its performance—in terms that it has allowed the document to be registered and did not challenge it, yet a court has subsequently found that it was misleading and deceptive—the fact is that the court made that decision after the opposing case had been presented by Queens Counsel for some days, and all the rest of it. We did not get the opposing case

presented to us. We get the prospectus lodged for registration; a statutory requirement to register it within 14 days; and, in effect, we do not get the opposing case. We get the prospectus on its face and deal with the company. We talk to the company about the basis upon which it has put the prospectus forward. We do not have to make the same decision as the one the court ultimately made.

Senator NEAL—Do you think there is any argument for imposing some sort of stricter criteria in a float, such as a club like the NRMA, than there is for just any old company issuing shares?

Mr Cameron—I think the NRMA accepted a higher obligation to explain the nature of the float and the potential down-side, particularly for social security beneficiaries. It made a particular reference to that in the prospectus, which is most unusual. It was complimented both at first instance and on appeal not only for doing it but for doing it so clearly and making it clear to potential investors. That is clearly an unusual aspect.

As far as I can discover from my discussions with other regulators since the decision was handed down, which was just before I went to Tokyo for the international regulators meeting, nobody had ever had a prospectus like that before anywhere in the world. In a sense, to come up with a prospectus that in only that respect was ultimately found to be defective is probably still an achievement. It was a very complex exercise.

I do not think you need special rules. These things will be rare. I think you could expect that people will normally make the sort of efforts that the NRMA did to try to get it right. The court, again on appeal, has found that it did its best in a difficult situation. Unfortunately, it did not get it right in that one quite large respect.

The commission's attitude to all of this is sometimes misplaced in the press as meaning that we have some positive interest in the NRMA conducting this float. I hope that I am not going to be interpreted as saying that. Clearly, it is and remains a matter for the company, through its board of directors in the first instance and the members eventually when they come to vote, whether it does this. In a sense, we have to maintain a neutral role about the float. But if people present us with a prospectus, it is our role under

the law to register it unless we positively find that it is misleading, deceptive or has some omission from it. That is our role and that is the role that we performed.

Later, with the benefit of considerably more argument and facts being presented, a judge and then three judges have found that in one respect it was, on balance, misleading. So, while obviously we regret that it has got to that point, I am not sure that we should feel too defensive about it. It was quite an unusual situation which we hope will not be repeated.

Senator NEAL—I am not really so concerned about establishing that there was a failure of judgment. I suppose I am more concerned about that in this set of circumstances, which as you say is probably quite unusual, there will probably always be similar difficulties. Confusion between taking up shares and giving up certain membership rights that might come from a club like that almost certainly always leads to difficulties in differentiating between those two aspects.

Mr Cameron—I think that is right. That is why I come back to the proposition I suggested a moment earlier. In some ways it might have been better if the notice of meeting had been separated from the prospectus. The notice of meeting, dealing with the decision to change the structure of the group, would not have raised a lot of the issues of a prospectus kind. They all got muddied together by the process of trying to do it all in one document. When you have to do a mailing of 1.8 million copies, you could be forgiven for trying to do it in one document. I am not being critical of it, but it undoubtedly contributed to the difficulty of explaining the transaction.

Mr HUMPHREYS—So who would draw up the prospectus with the NRMA? It would have had to employ experts to do that. I see in the media yesterday where the Qantas prospectus is costing $3 million. Surely at the end of the day the NRMA might have a case against the persons, companies or experts that assisted it, or did it do it all on its own?

Mr Cameron—I do not think that is a matter I should really comment on.

Mr HUMPHREYS—You have said that it is fine to the people. You say that the media wrongly accused you, but the ASC has a tick on that. A lot of people would

therefore say, 'Well, that must be fine.' That is what I am trying to find out.

Mr Cameron—It does not work that way, because under the law the ASC must register the document within 14 days—we try to do it within three—unless we find something positively wrong with it. The law then works on the basis that there can be a period after that when, if we find something wrong with it during the course of subsequent examination, or the public or the media draw our attention to something that is wrong with it, and if the prospectus is still open, there are various remedies that we can fulfil. But the law no longer works on the basis that the commission actively examines every jot and tiddle of a prospectus and decides whether it is in order before registering it.

That deliberate policy shift, made only five years ago, is really designed to facilitate business. It was a political decision. It was not the commission's decision to do it that way. The law was reworked to produce that result. So the prospectuses always carry within them a warning that the mere fact we have registered them does not mean that we take any responsibility for their contents. I know that people obviously do not read that or do not understand it. In some of the market research we did last year, we discovered that even some market professionals do not seem to fully understand that that is the way the law works. Nevertheless, it quite clearly is the way the law works. The commission does not vouch for the contents of prospectuses. We register them. We might later have to take action against a prospectus that we have registered; we occasionally do.

Mr HUMPHREYS—I was interested in your making reference to National Mutual. You seem to be watching it very carefully. Now that the future prospectuses do not carry the problem that the NRMA did, is that one of the lessons you have also learnt? You seem much more observant of National Mutual, as I heard you.

Mr Cameron—No, not more observant; we are similarly observant. We have been aware of National Mutual for a little while. In order to conduct its exercise—as did the NRMA—it would require some exemptions from the law in a couple of areas. So it would approach us in advance. We have to discuss that sort of aspect with it in advance. We had some warning of National Mutual for that reason.

But I hope that we will not deal with National Mutual differently as a result of the

NRMA decision. As I interpret watching Mr Tomlinson on television yesterday morning, it was its decision to avoid using the word ‘free’. That only seems like commonsense, does it not?

Senator NEAL—So you are saying that, even though you registered the NRMA prospectus, you could have taken action subsequently if you chose to?

Mr Cameron—Yes. While the prospectus is still open, we could impose an interim stop order ourselves. After a hearing, we could go to a full stop order if we found the prospectus to be misleading or deceptive. Once the court action was commenced, there would have been no question of doing that, because the courts had control of the matter. But if matters had been drawn to our attention during the life of the prospectus that satisfied us that there were issues, we could have imposed an interim stop order and held a hearing to make it a permanent stop order. That is a remedy the commission has. I think from memory that it was exercised only twice in the previous financial year. But it is exercised where prospectuses are found, after registration, to be misleading or incomplete in some respect.

CHAIR—I will move from the NRMA to futures and derivatives, which is the subject of comment in your chairman’s review on page 6. It leads out a different point, but you say that you have no separate futures regulator and that the distinction between futures and securities is, curiously, both more important and harder to find than ever. The word ‘curiously’ is put in parenthesis to give it maximum effect.

We had private discussions with the ASX and the SFE in the last quarter of last year. One point that we raised with both of them was this: we are now bound up, as you put it, in this curious distinction between what a future might be and what a security might be. We have seen an agreement between the ASX and the SFE for good cooperation on the basis of a Federal Court case over the internecine definition of one these products. Is it not a more sensible approach to not so much worry about the fine distinctions between these products but to make sure that we have investor protection for both the SFE and the ASX and simply say to them, ‘Trade in what you will provided that the invested protection is there.’?

Mr Cameron—I hope that will be the result of the proposed legislation which has now been introduced which will enable the stock exchange's proposed new share ratio product to be defined, in effect, as a hybrid instrument. There will then be created for it the appropriate regulatory regime which will undoubtedly, I would suggest, be closer to the regime applicable to a future than to a security. I think the difficulty is that with the futures exchange seeking to trade in individual share futures, which have a lot of the characteristics of equities, and the stock exchange seeking to trade in their low exercise price options, which look for all the world like futures, there has been this competition between them.

Again, the commission does not have any view on that; if they wish to compete that is fine. Our dilemma is to ensure, as you suggest, that the appropriate regulatory regime applies in either case. We would say that, in a sense, there might eventually need to be some further legislative intervention in order to ensure that this can be done. But the first step is to ensure that these mixed products, like the share ratio product, can be traded under a regime that will be created, as I understand it, by regulation that will have the necessary characteristics that it needs to give appropriate investor protection. I am sorry; that is a long winded way of saying we will end up, I hope, as a result of that legislation, with appropriate investor protection for the hybrid product.

CHAIR—The SFE and the ASX both have different levels of guarantee funds. Are you satisfied that the arrangements in those respects are sound?

Mr Cameron—It was one of the issues which the government in particular was interested in at the time the legislation was being prepared last year. As far as we can see at the moment, the guarantee fund will cover the situation and will be sufficient to cover the expected exposures. But it is a matter that we can and will keep under review once we see some indication of trading. There is just no trading yet. There is no trading in LEPOs, the low exercise price options, and clearly no trading in share ratios.

CHAIR—From memory, you intervened in the appeal.

Mr Cameron—Yes, in the same way that we did in the NRMA case. We appear as amicus curiae. We are not appearing to support one or other contention but really to

ensure that our views as regulator on the interpretation of the law are heard and, as I understand it, that is welcomed by the judges especially when the parties are tending to be contesting matters fiercely, and I think it is useful to have somebody whose job it is to ensure that the law is being maintained. Certainly we see it as part of our role to do that.

CHAIR—In the paragraph immediately under the reference to futures and securities there is a reference to the continuous disclosure regime. Do you have any comments on how you think it is going?

Mr Cameron—The rate of disclosures coming out of the stock exchange has been significant; 6,000 disclosures of some sort or other were lodged between September and December overwhelmingly from listed companies. If there is a concern about it, which we might want to talk about separately, it is that we are not quite sure at the moment whether we should be concerned about the low rate of disclosures being received from unlisted entities. The listed ones, of course, are originally lodged with the stock exchange which then makes them available to us and they end up on the ASCOT database. The unlisted ones come directly to us.

The promptness and completeness of disclosures, as far as we can tell at the moment, has not been a source of considerable concern. We are not hearing concerns from the stock exchange about that. There has only been one referral under section 776(2)(a) which requires them to tell us when they believe there may have been a material breach of the law. That was one of the circumstances which we were already well aware of and had already talked to the relevant company about. So there have not been any particular surprises out of the disclosure regime at this stage.

Mr Procter—We ourselves have referred one matter back to the exchange but, generally, there has not appeared to be a real difficulty with inadequate disclosure.

CHAIR—So there has been no problem with information exchange between you and the exchange.

Mr Procter—No. We have in place some guidelines and that seems to be working well. Section 127(4)(b) provisions have allowed us, not so much in the area of continuous disclosure but in providing information to the exchange about their own members, to make

sure that they are well aware of any concerns that we have.

CHAIR—Corporate simplification. Any up to date comments?

Mr Cameron—From our perspective, the program seems to be working remarkably well and if it produces, as we think it will produce, a corporations law that is intelligible and understandable I think that will be a great advance. In fact I was looking at it again last night and was reminded that the new small business guide has a little subchapter heading which is just called 'Companies in trouble' and I think it was wonderful.

CHAIR—With which you are only too familiar.

Mr Cameron—Yes, that is right. But I thought anybody will understand what that means—'Companies in trouble'. I think that is the advantage of plain English style; it is accessible and comprehensible. While the program might still take some years to complete, it is moving at such a pace and producing work of such high quality that I think the net result will be a law that we will all be much happier with. So overall we are quite pleased with it.

In our client survey last year one of the interesting results was that people thought we did not take sufficient part in law reform. I found that rather curious because certainly the commission has not taken a leading role in law reform. It has not seen it as its role to do that, but certainly some of our stake holders think we should take a more active role in law reform.

We are actively supporting the simplification process. One of our lawyers is working in the task force to help them understand the way the information division works. We are taking part in the seminars and programs they have around the country, and I meet with the task force just about every month in order to talk to them about directions that they are heading in. We have seen that as a useful thing for the commission to be doing.

CHAIR—I think we are meeting with them formally this week to get an update on the task force, and I think the first simplification bill goes into the House tomorrow. I want to go to the Commonwealth Law Enforcement Board. You represent the board personally, if I can put it that way. Can you give us an update on how you think the

developing role of the board is going?

Mr Cameron—I emphasise first of all that, while the chairman of the commission has ended up as a member of the board, we took no particular role in the review of Commonwealth law enforcement arrangements. We were not represented in that. The recommendation and the government's decision to put the chairman of the ASC onto the board was not something we particularly sought. I was prepared to do it if that was what the government wanted.

I see in a sense that the role of the chairman of the ASC on the board is to represent the regulators, those with a mixed role. The other members of the board, apart from the secretary of the department, are clearly law enforcers; they are the head of the NCA and the head of the AFP, and there is an executive member as well. But because the responsibilities of the board include this quite difficult question of the mixed role of law enforcement and regulation—and that is an issue that is relevant to the customs service, to the tax office and to all sorts of other quasi law enforcement agencies—I see my role on the board as being to ensure that those interests are taken account of. It is a significant commitment because it is meeting every month, so that is another visit to Canberra in the normal sense.

CHAIR—These things must be welcomed.

Mr Cameron—I will not comment on that. The board has published its first annual report—I am not sure whether you would have seen that—and that is available. It refers on page 8 to the achievements of the board. The achievements are—and remember the board was only in existence for two months before the reporting period—limited to getting the secretariat up and running and dealing with the Elliot committee report on fraud and the Australian Institute of Criminology restructure, both of which were really achieved before 30 June last year.

CHAIR—I have often been attracted to the serious fraud office model of the UK as a possible for us, particularly given the dangers with the various state, territory and Commonwealth jurisdictions floating around that serious fraud can sometimes fall between the breaches. Do you have a view on a serious fraud office or a model along those lines?

Or do you think it is covered by the national system of corporate law enforcement we now have?

Mr Cameron—I certainly have not come to believe that we need a serious fraud office as such in this country. The places that have serious fraud offices, I think, are non-federal, New Zealand and the United Kingdom in particular.

CHAIR—To the extent that the Welsh regard themselves as being unitary rather than federal.

Mr Cameron—I do not have sufficient knowledge of that. It seems to me that the serious fraud office brings together the investigation and prosecution processes in a way that creates its own difficulties. Senator Cooney asked me earlier about the relationship between the DPP and the ASC. I have always seen it as one of the great safeguards of the people, of individual liberties if you like, that no serious prosecution can be launched by this commission without our having satisfied the DPP of the bona fides of it, that it is more likely than not that there will be a conviction. If you bring together organisationally the investigation and the prosecution into a serious fraud office, maintaining that degree of independence will be very difficult. By coincidence, that quote I was reading earlier from the review tends to support that proposition, that that issue will become far more of an issue.

To the extent that there is a federal-state problem, attempts are made to overcome it by the white-collar crime working groups that are established in each state under the aegis of the NCA, which bring together the ASC, other federal agencies and the state authorities. The New South Wales police and Victorian police both now have serious fraud operations as part of their operations. That tends to make me think it is not yet an issue in this country. As I say, there are downsides about serious fraud offices. If we are overcoming some of the inter-agency issues by appropriate coordination arrangements federally and on a federal-state basis, I am not sure there is a case to be made for a serious fraud office in this country.

Mr Procter—The only additional comment I make is that the NCA consultative committee, which comprises the chairman of the NCA and the commissioners of the

various state police forces and the AFP, has a secretariat which services it. We are a member of that secretariat and increasingly we are being asked to participate in joint task forces made up of different combinations of the participants. I think that general liaison is improving and I do not see any sense in which significant major matters are slipping through the gaps.

Senator McGAURAN—That is a joint task force?

Mr Procter—To inquire, investigate.

Senator McGAURAN—Does the NCA head those?

Mr Procter—The NCA does not head them; it coordinates them. They are truly joint. It is usually an initiative that is suggested by either the NCA or one of the state police forces. Then it is a matter of composition. Almost invariably it is the NCA and the AFP who provide the greatest bulk of the resources.

Mr Cameron—The board in a sense is now falling within the parliamentary supervision of the joint committee on the NCA.

CHAIR—This committee and that committee have the same secretary.

Senator McGAURAN—The Elliot case ended up in the NCA's brief, I believe, more to do with historical matters. If it was today, you would be handling that case; is that right?

Mr Procter—That is right.

Senator McGAURAN—So has the NCA shifted off its white-collar emphasis of crime and back to pursuit of organised crime? I know that would lead it into white-collar crime, or vice versa, but has it given you back the emphasis?

Mr Procter—I am not sure it actually helps to talk about it in terms of white-collar crime. The Elliot case, as you rightly say, for some quite unusual historical reasons finished up with the NCA. We would see ourselves characterising the matters that we investigate more as corporate crime than as white-collar crime.

Mr Cameron—A narrower set of white-collar crimes.

Mr Procter—Quite so—crimes involving, in effect, the corporate form, where the corporate form is more than just incidental to the commission of the crime. Perhaps Mr

Cameron is better able to answer because of his involvement with CLEB, but the NCA has a list of current priorities that have come out of the review. As I understand them, whilst they may incidentally involve aspects of corporate fraud or corporate law, they are not centrally concerned with those sorts of matters. I think the way you characterise them as organised crime is a better characterisation.

Senator McGAURAN—But we have gone back to that emphasis. When you meet at these summits or whatever, who is leading who?

Mr Procter—It is very much a matter of the particular reference. If it is a matter which could best be characterised as organised crime, then the ASC's involvement is usually confined to the provision of information about corporate entities and their officers. So we act as a kind of service organisation rather than a principal investigator. The investigative work is done by the AFP or the NCA. If it is a matter which crosses state boundaries and involves very much local issues, the NCA would typically act as a coordinator of work done by state police forces.

Mr Cameron—I would not rule out the possibility in the future that some matters that strictly fall within the definition of corporate crime might nevertheless be referred by the commission to the NCA.

Senator McGAURAN—And vice versa, I suppose.

Mr Cameron—Yes.

Mr SINCLAIR—I am interested in the relationship between the ASC and the TPC. There are a number of major issues in where the TPC seems to be having a role. I am interested to know to what degree you have some pre-consultative opportunity. If so, do you express a view on it? In particular, I am interested in the National Mutual position and what is going to happen with the French takeover? Have you been approached? If so, is that an issue where you would give prior approval? If so, did the same thing happen with Caltex-Ampol? Have you been approached, or is it a matter where the TPC has taken an initiative of its own volition without consultation with you?

Mr Cameron—I think in most cases we would be looking at the matters quite differently. The NRMA prospectus issue that we were talking about before you were here

is an example of where our issues are in fact the same because we have, in effect, the same words in different statutes to interpret. But in the case of National Mutual, we do not give it any sort of approval. The only questions that are raised for us are any exemptions they might need in order to put the matter before their members and, indeed, in order to conduct the transaction. We would deal with those on their merits and we would not look at competition aspects for the purpose of deciding that.

I would expect in the case of National Mutual that there will not be any particular need for us to be in touch with the Trade Practices Commission. The only circumstance that could arise there is if, heaven forfend, we get into a similar debate about whether any information, memorandum or prospectus issued in connection with that float or transaction is alleged to be misleading or deceptive.

When that issue arose in the case of the NRMA, there were discussions between the commissions, but unfortunately the matter was proceeding at a considerable pace and the matter ended up in court before anything that might have dealt with the matter could be done between the two commissions. There is no difficulty about the relationship between the two commissions.

Mr SINCLAIR—There is one aspect specifically in relation to National Mutual. It has happened before and it is similar to the NRMA in the sense that you are moving away from one form of entity to another. If you are going to demutualise the National Mutual, as in the NRMA, you are going to move away from what is a different form of association to become a publicly listed company. I would have thought that was very much the ASC's business.

Mr Cameron—Yes, but it is our business in the sense that we will have to look at documents and form a view about whether they are complete and whether any particular exemptions or whatever should be granted. But we will not have a view on the merits of the transaction, which will be a matter for the members of National Mutual, nor will we have a view on the competition. If that is an issue for the Trade Practices Commission, it will not be an issue for us. And the foreign investment matters, of course, are a matter solely for the Foreign Investment Review Board. Again, we will not have a role in that.

Mr SINCLAIR—And demutualisation, you would not see as a matter—

Mr Cameron—No, because ironically it remains within the Corporations Law either way. It is a corporation limited by guarantee that is going to become unlimited by shares. So it is not a turf war. And indeed there is another commission involved which is the Insurance and Superannuation Commission, and we will no doubt have some consultations with them to ensure that their concerns are met in terms of the protection of policy holders. So there will be those aspects as well.

Mr SINCLAIR—And what about in the Caltex/Ampol area? That is again in a different field and obviously TPC and market domination are not specifically matters within your bailiwick—although, they are, are they not? Not specifically.

Mr Cameron—No, they are not. I am just trying to remember whether they are doing that as an asset—I think it is an asset transaction so it would involve very few Corporations Law matters at all, as I understand it.

Senator McGAURAN—What about the TNT/Ansett price collusion. Do you know that case? They have just recently resolved it.

Mr Cameron—Not ours. Definitely a matter for Professor Fells.

Senator McGAURAN—Do you not have a twinkling interest in it? Price collusion may get closer to you than competition is.

Mr Cameron—I am not sure that the Trade Practices Commission would see that we had any role in it and I am not sure that we do see that either. There might be some issues about disclosure in due course; what is said in prospectuses or what is said in annual accounts about these matters. We would be interested in that, but they are not strictly matters within our bailiwick.

Senator McGAURAN—Not that I am trying to find you another job. I happen to think the TPC is doing a great job.

Mr Cameron—Yes. It is simply not our work, as I understand it. I do not know whether any of my colleagues have a different view.

Senator McGAURAN—As you interact with the NCA and other bodies, do you interact with the TPC for any reason?

Mr Cameron—The Trade Practices Commission is a member. It is one of those quasi law enforcement bodies. It is a member of the Heads of Commonwealth Law Enforcement Agencies group as well. And when the board was being set up, the HOCLEA group, so called, was also expanded to include the Department of Immigration and Ethnic Affairs, and the Insurance and Superannuation Commission was added at that point. The Trade Practices Commission had been added in 1993 already. So apart from bilateral discussions, which we do have from time to time, we also have these multilateral meetings involving the commissions.

Senator COONEY—We have passed lots and lots of legislation over the last ten years, I suppose, setting up all sorts of bodies to detect the criminal elements in our society. Can you think of any legislation we have introduced that gives the person accused any sort of help? Can you think of any sort of legislation we have passed at any level that might have protected the rights of a person accused?

Mr Cameron—I do not know that it is really a matter for me to refer to but I understand there is an access to justice statement that is coming out in the next few months, to which I am not privy, but that is, as I understand it—

Senator COONEY—But any legislation up until now. Can you think of any?

Mr Cameron—Their suggestion is to refer to Commonwealth Legal Aid.

Senator COONEY—Yes, but we have cut that.

Mr Cameron—I wonder whether I could refer to the matter we talked about earlier, which is Section 50. There are things that are in the Corporations Law and the ASC law that are designed to help people.

Senator COONEY—I was not just not thinking of ASC, law enforcement bodies. I was listening to you earlier saying 'Look, we have got this law enforcement body, and we have added this law enforcement body to that, and we are cooperating on this law enforcement body'. I think it is time we gave you all boots and leggings; and jodhpurs perhaps; and coats with belts round them in the middle; and a peaked hat to go with it. What about that?

Mr Cameron—I think we could drive the commission into full uniform. I have

been tempted to suggest the commission adopt military rank so that I could become a field marshall and my colleagues could require similar titles. You could become Brigadier-General Procter—

Mr Procter—I have heard that said. We have, at least in the context of the Corporations Law, introduced a civil penalties regime so that people who act inadvertently or who negligently are inappropriately charged with criminal offences.

Senator COONEY—That followed a brilliant report—

Mr Procter—I well remember that brilliant report. But certainly that is one example.

Senator COONEY—That is true.

Mr Procter—And I think the recent amendments to the Crimes Act dealing with search warrant provisions have clarified aspects of that and certainly added some protection for those who are the subject of search warrants.

Mr Cameron—And you have significantly improved the funding of the Commonwealth Ombudsman Office in the last two years.

Senator COONEY—That is because of the quality of people we have had in that office over the years.

Mr Cameron—I can only assume that must be so.

CHAIR—Any other questions.

Senator COONEY—Somebody told me that you do not have to have Memorandums of Articles any more—Memorandums of Association. Is that right?

Mr Cameron—That is a proposal under the new simplification—

Senator COONEY—Do you still have to have them now? You still do, do you?

Mr Cameron—You do. It is not in the first bill, though. It is in the second proposal that will come before the parliament.

Senator COONEY—Does anybody supervise or scrutinise trustees. Who does that: state or federal?

Mr Cameron—That is the subject of a review at the moment. It is state based and there is a working paper prepared under the aegis of the standing committee of attorneys-

general which is suggesting some modifications to that regime. But we do not participate in the meetings of the standing committee and I am not able to tell you where it is up to.

Senator COONEY—I wonder why they do not refer that to the Commonwealth. Trusts are pretty important.

Mr Cameron—Well, referring it to the Commonwealth is probably a less likely option than perhaps some form of interstate cooperation like the Financial Institutions Commission regime. But I am not privy to any decision that may have been taken about that. It is a matter that is of some passing interest to this commission, because to some extent the fact of registration under state trustee legislation assists you to get trustee status under the Corporations Law. So we do have a more than passing interest in it, at least under the present structure of the Corporations Law.

Senator COONEY—Do you reckon Skaggs is up to doing this?

Mr Cameron—I could not possibly suggest to the contrary.

Senator COONEY—You wonder at times. I do not know.

CHAIR—Thanks for those public comments, Mr Cameron. I have a couple of questions to ask in camera. We might just give *Hansard* a couple of minutes to arrange themselves in that respect and then resume.

Committee adjourned at 11.27 a.m.

Evidence was then taken in camera—