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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON FINANCIAL INSTITUTIONS AND PUBLIC ADMINISTRATION

Reference: Australian Securities Commission annual report 1995-96

SYDNEY

Wednesday, 29 January 1997

PROOF HANSARD REPORT

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HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON FINANCIAL INSTITUTIONS AND PUBLIC ADMINISTRATION

Members:

Mr Hawker (Chair)

Mr Albanese	Mr McMullan
Mr Anthony	Mr Mutch
Mrs Bailey	Dr Nelson
Mr Causley	Mr Pyne
Mrs Gallus	Mr Willis
Mr Hockey	Mr Wilton
Mr Latham	

Matter referred to the Committee:

Australian Securities Commission annual report 1995-96.

WITNESSES

CAMERON, Mr Alan John, Chairman, Australian Securities Commission, GPO Box 4866, Sydney, New South Wales 2001 3

DUNN, Dr Michael, Director, Planning and Public Affairs, Australian Securities Commission, GPO Box 4866, Sydney, New South Wales 2001 3

PALMER, Ms Kerrie Elizabeth, Principal Policy Adviser, Government Relations, Australian Securities Commission, Level 16, 2 Chifley Square, Sydney, New South Wales 2000 3

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON FINANCIAL INSTITUTIONS AND PUBLIC ADMINISTRATION

Australian Securities Commission annual report 1995-1996

SYDNEY

Wednesday, 29 January 1997

Present

Mr Hawker (Chair)

Mr Albanese	Dr Nelson
Mr Anthony	Mr Pyne
Mrs Gallus	Mr Willis
Mr Hockey	Mr Wilton
Mr Mutch	

The committee met at 2.03 p.m.

Mr Hawker took the chair.

CHAIR—I declare open this hearing of the House of Representatives Standing Committee on Financial Institutions and Public Administration inquiry into matters arising from the Australian Security Commission's 1995-96 annual report. This is the first occasion on which the committee has reviewed the ASC's annual report, although it is a process the committee has been undertaking with the Reserve Bank for the last four years. This committee has a longstanding interest in the operation and regulation of the Australian financial system. Two years ago the committee extended its reviews to include the Insurance and Superannuation Commission and this year decided that it would invite the ASC to join the process too.

The committee's experience with this review process has been very positive. These hearings provide an opportunity to canvass a variety of issues without the need to go to a more exhaustive inquiry process, although I should add that, if the committee was sufficiently concerned about any specific matter that arose in the process, it might seek a more specific reference on that matter. The fact that these reviews are held annually also provides the continuity to allow the committee to continue to monitor specific matters. The committee has done this in the past with interest rate margins and with derivatives.

The Wallis inquiry has demonstrated the importance of monitoring developments across the financial system and of the need for an ongoing review of the regulatory regime to ensure that it is efficient and effective. By including the ASC in the committee's review process, the committee will be in a position to gain a greater oversight of developments in the financial system than has been possible in the past.

As this is the first hearing with the ASC, I expect that many of the matters raised will be of a general nature but some detailed questions will probably arise from this. I expect that today's hearing will provide a sound basis for future hearings. I also trust that the ASC will treat today's hearing and future hearings as an opportunity to bring to the committee issues of concern to the commission, as has been the case with the Reserve Bank and the banking industry and has proven to be a very useful exercise. Finally, I would like to reiterate that members regard these reviews as a valuable step in extending the process of accountability between agencies and the parliament.

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

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CHAIR—I welcome the representatives of the Australian Securities Commission to today's public hearing. The evidence that you give at the public hearing today is considered to be part of the proceedings of parliament. Accordingly, I advise you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of parliament. Would you like to make an opening statement before I invite members to put questions to you?

Mr Cameron—I have not prepared an opening statement as such. Perhaps I should just say something by way of introduction, in any event. This is the beginning of my fifth and probably final year as Chairman of the ASC. You correctly say, Mr Chairman, that I have not had the pleasure before of meeting this committee. I would not want you to feel from that that we are not accountable to the parliament, however.

During my time at the commission I have appeared before four other parliamentary committees. The parliamentary Joint Statutory Committee on Corporations and Securities has as its main task the oversight of the ASC. In that time the ASC has also appeared before estimates committees; before the Senate standing committee on legal and constitutional affairs—in particular in this room on one celebrated occasion, which might be worth reading about in *Hansard* if you ever get the chance—and, finally, in front of the Senate Privileges Committee, which was an unfortunate episode in the ASC's history many years ago. So I am familiar with the process of appearing before these committees.

I approach this final year, though, with my focus on the expectations that the community has and possibly the government and parliament have of the Wallis committee inquiry into the financial system. I have been involved in numerous submissions to that committee—not only the ASC's two submissions but also the submission of the Commonwealth Law Enforcement Board, the Council of Financial Supervisors and, to a lesser extent, the Companies and Securities Advisory Committee—since I had been or am now a member of all those bodies as well. So I am a little preoccupied with the workings of the Wallis committee—and not just because I spent an hour with them yesterday.

When this committee deals with the report of the workings of the Wallis committee, I will be interested to watch how it views the results of that exercise. It has clearly been a long time since the regulation of the financial system has been so thoroughly reviewed. I know your committee reviewed the review, if you like, some years ago in what I think we still call the Martin committee report mark 2, which led in turn to the creation of the Council of Financial Supervisors.

I have attended every meeting of that august body, which this committee helped bring into existence. I think that body has performed a very useful role in improving coordination among the regulators. It has not

usurped the independence or separate roles of the regulators—it was never intended that it do that—but it has operated to bring about greater harmonisation and greater effectiveness of each of us separately in carrying out our roles. That will be one of the important aspects of Wallis that we will look at with some interest.

There is no doubt that there have been some rough edges that have needed to be dealt with. I see some reference to them in the matters that were drawn to my attention—for example, the overlapping regulation of investment advisers between the ISC and the ASC. That is a matter the ASC has been talking about and trying to act on for some time. In November 1995 we did a major report on the licensing of investment advisers, and we are actively trying to implement that at the moment. That will overlap with Wallis.

The other rough edge to which I refer is the regulation of collective investments of managed funds. At the moment those that are of a superannuation kind are regulated by the ISC and those that are not are regulated by the ASC. I know business finds that somewhat irksome, especially where our regulations either are not harmonised or in fact are directly in conflict, as might sometimes happen. The two commissions are doing what they can to deal with that, but of course the government is still also dealing with the collective investments review. Until there is an outcome of that, it will not be clear that the two commissions can really fix that issue. So there is a lot on my plate.

There are also a few enforcement matters. I know that you, Mr Chairman, did not draw my attention to any enforcement issues in your note but the practice in front of the parliamentary joint committee was for any public hearing to be terminated before I was asked any questions about particular enforcement matters. I am quite happy to discuss in public issues relating to enforcement, but it would be clearly invidious for court processes that may take place in the future if we were asked particular questions about enforcement issues. So, if the committee would give the privilege of going into private session to deal with those, I would be quite happy to talk about those as well.

CHAIR—Thank you very much for that. That probably gives us some interesting insight into some of your discussions yesterday—you may or may not agree with that observation. By way of clarification of something I was going to bring up at one stage: in yesterday's *Australian* there was a specific reference to a takeover. Do I take it from what you have just said that you do not want to comment on that in public?

Mr Cameron—I am not sure which one you are talking about. Several were referred to in yesterday's *Australian*. One is the subject of a referral to the panel. I would find it a bit difficult to discuss the particular case that has been referred to the panel, but I am happy to discuss the workings of the takeover.

CHAIR—This is Cairn Energy.

Mr Cameron—Apart from the fact that I do not happen to know very much about it, I do not mind talking about it. The second one referred to in that column is one in which I have a personal conflict of interest and have no knowledge, but I am happy to discuss the issues involving Cairn Energy if you wish to raise them.

CHAIR—We might come back to that, because I think members have a lot of issues, but I do flag

that at this stage. You obviously speak about some positive things in relation to the Council of Financial Supervisors, but you left it open in your remarks that there is still room for improvement. Would you like to expand on that and what you see as the shortcomings?

Mr Cameron—When the council was established—one of the members of the committee might know more about this than I do—one of the issues was that the commission was then not part of the Treasury portfolio. The council was established by a cabinet decision following a recommendation, I think, of this committee but without any statutory basis to simply in effect deal informally with the Treasurer. At that stage the commission was in the Attorney-General's portfolio. Now that the ASC has joined the ISC and the Reserve Bank in the Treasury portfolio, you may argue that there is less reason for not formalising its structure a little more. That is an issue which the council has raised in its own submissions to Wallis.

The other difficulty we had when it was first established—this was not really related to the different portfolios—was that we had separately expressed confidentiality obligations in our own statutes and those confidentiality obligations meant that even among ourselves we had some difficulty exchanging information. We have drawn that to the Treasurer's attention, and some work has been done on drafting legislative amendments that would ensure that the council can operate effectively, ensuring that there is no real inhibition on the members exchanging information among themselves.

The fourth member of the council—to which I have not referred, incidentally—is the Australian Financial Institutions Commission, which is a state based body in which the federal government has no role. It, too, requires some attention from the confidentiality point of view for us to be able to exchange information with it.

CHAIR—Can we get on to the issue of investment advisers. This has been an area where the ASC have pushed, I think, the line of regulating them. No doubt you would be aware that back in October 1992 the AGNEW committee, in its Law Reform Commission discussion paper No. 53, made a fairly strong statement in relation to advisers: it would probably be better to leave it to the market, notwithstanding some of the shortcomings of the market. I guess the question is: why is it necessary to regulate all financial advisers, particularly smaller operators?

Mr Cameron—First of all, it is among some of the smaller, as well as admittedly some of the larger, operators that we have had the greatest difficulties. One financial adviser has just been gaoled for four years in Western Australia for taking just under a million dollars worth of client money. So there are certainly some issues there.

Why is it that they are licensed or registered? I think it is because there are what I think are called asymmetries of information in the sense that the clients of investment advisers simply are not in a position to judge for themselves the competence and the qualifications of the people who hold themselves out as investment advisers. It is that inability to make those judgments—which is not unique, incidentally, to the financial planning industry—that means that there is a desire to have some form of registration for a service where it may be some time before it emerges whether the service you have bought was worth what you paid for it, or indeed it may have cost you far more than what you paid for it.

That is the sort of reason why the commission has not challenged the fundamental precept of the law that investment advisory services should be delivered either by licensed people or by people who are working for licensed people and are authorised to provide that service. I emphasise that that is still the basis upon which the law is written, so in a sense it might have been thought to be a little inappropriate for the commission to challenge that. But in our review of the licensing of investment advisers we did consider the possibility of negative licensing, in a sense, which was raised with us. It was decided that that, too, was not really appropriate for a service where it could take some years to emerge whether or not you really got any value.

CHAIR—I suppose I could make one observation. You say someone has been gaoled. Therefore, maybe the law has not provided the safeguards anyway.

Mr Cameron—It certainly is not a guarantee.

CHAIR—The next question would be: could that person not have been gaoled without those sorts of regulations? I suppose I could go on to pursue this further by saying that, if it was a matter of choice, there may be advisers who, for all sorts of reasons, would say they are not going to be under that regulation and put it up front.

Mr Cameron—First of all, in excess of 30,000 people are either licensed or authorised to provide these services, so the gaoling of 10 or 100, if that were so, would not necessarily show that the licensing system was not working. We thought the licensing system needed fundamental review and a fundamental overhaul, and that is what we are attempting to carry out. There will be some major announcements in the first week of March about the changes that we are proposing to implement, some of which, incidentally, will require legislation if they are to be effective.

CHAIR—If someone opted out and said they will have personal indemnity, surely the fact that they can get personal indemnity would be a fairly good safeguard?

Mr Cameron—I would like to think about that, but let me say that it is not essential to be licensed. For example, solicitors and accountants in private practice who provide investment advice as an incidental part of their other business do not have to be licensed. So people who are not regulated by us are providing these services. I might say that we go to some trouble to say that that is not quite as broad an exemption as some people seem to read it. For example, we take the view that, if you charge a separate fee for the advice, then you are carrying on that business. It is really about people who provide the advice in a genuinely incidental way.

But I must say that for my part we have not detected any public pressure to remove the licensing rules. The issue about different ways of doing it has been raised, but it is not really about removing them altogether. You may be telling me that there is some pressure within your electorate, which we were discussing earlier—

CHAIR—I raised the matter because, as I understand it, small advisers have found it almost impossible to operate independently.

Mr Cameron—In fact, what is happening at the moment is a fair deal of franchising or other forms of bonding together among the advisers in order to provide those services more effectively. What the future of investment advising will be is not straightforward. For example, the Internet and other forms of electronic communication are freeing up ways for people to deal directly, without intermediaries. I think the investment adviser of five years or 10 years out will not be a person who goes door to door with a swag full of prospectuses of different kinds but will be a person who walks in the front door of a client, sits down, discusses that client's needs and then gets on the telephone line and brings up a prospectus electronically. So in the electronic age the intermediary's role will be quite different from what it is at the moment.

CHAIR—I want to make the distinction between selling and advising. If you are working and selling a particular product, it is a very different matter to just straight advising where, presumably, you want competence and experience. The question is: can you regulate for that in all cases?

Mr Cameron—Yes. One of the ways that we are seeking to do it is by enhancing the role of the professional body so that the professional body, which is better able than we are in many cases to judge the professional skills of these advisers, will take a greater role in assessing this too. We have argued in our Wallis submission, for example, that we should be given the right to delegate some of our statutory role in this area to the relevant professional bodies. It is not just the obvious one, the Financial Planning Association. The Stock Exchange is, in a sense, a professional body of financial advisers too. We are saying that we would be quite happy to delegate some of those roles down to industry bodies which can make those judgments.

But our assessment of competence is more about whether people understand the requirement to disclose their conflicts and the need to ensure that they have understood what their clients want. It is obviously not about ultimate performance of investment advisers.

CHAIR—There is one last point on this. If you wanted to have the choice of opting out of it and putting it in front of your client saying, 'Well, I am not regulated,' what would be the problem?

Mr Cameron—I think my concern would be whether you would be able to be confident in that sort of consumer transaction that the consumers who made a free choice to opt for the unregulated adviser understood the difference between a regulated and an unregulated one. I think any amount of written formal explanation of that will not be satisfactory to a large part of the population for whom English is not necessarily the first language spoken at home, and all the rest of it. It is those sorts of reasons that would be traditionally given in a consumer protection context that would apply to the purchase of these services.

One of the things we are concerned, for example, to emphasise is that we are not very interested in regulating the supply of financial advice on the wholesale market to professional, well educated, wealthy people. We do not see that as our role. Those people should be able to either have the expertise or buy it in. We are more concerned about the people who have had a redundancy payment or some compensation for an injury. They are the people who are exposed. And I might say, they were the people whom the gentleman in Perth had ripped off. He had not ripped off otherwise wealthy people at all.

Mr ANTHONY—On the subject of prospectuses, one of the common complaints is that they are not

easy to read, they are not user friendly. The Transurban City Link prospectus, which has been quoted to you on numerous occasions, is 240 pages long. You do not get enough time to look at them half the time because they close. What is the ASC doing about making them more user friendly to the mums and dads in the street?

Mr Cameron—Certainly, you have quoted all of my objections to prospectuses. In fact, I am afraid I have to run two of your comments together because, of course, the Transurban City Link prospectus, which was 240 pages long, was one of those prospectuses that closed so quickly that no-one could have read it in the time that it was open until the time that it closed—

Mr ANTHONY—Two days.

Mr Cameron—and yet it was fully subscribed. That does tend to cause some concern among the corporate regulator. I will start at the beginning. We did a survey about three years ago to find out what use people made of prospectuses, which we thought was a pretty fundamental thing to understand. Somewhat to the discomfort of the industry, that survey found that people do read prospectuses. Something like 70 per cent of the people who subscribe to a prospectus have spent an average of one hour reading it.

While those people do that, they do not like prospectuses for all of the reasons you have articulated. Not only do they not like them, they do not actually use them as the basis for the investment decision. They use the advice of an investment adviser, a broker; even the major daily newspapers they use as a better source of decision as to whether to invest. So why are we spending all this money on the prospectuses is a very fair question.

The commission has made several attempts, I think it is fair to say, to address this problem. The first problem with our attempts to do it is that the law is very clear but very general. It says that the prospectus must contain all of the information that a reasonable investor or their professional adviser would want to have before making a decision to invest. That is all it says. It is on the basis of that very general statement that prospectuses tend to have everything thrown into them, because that is the best advice that lawyers are able to give their clients, the company directors, as to what you need to put in there in order to ensure that you are not liable on the prospectus.

When confronted with that piece of law, the ASC has no power to grant guidance to people that would protect them from a subsequent allegation of a breach of the law if they left something out. In one sense, unfortunately, we cannot do anything really definitive to tell people that they do not have to say all of those things. So what we do is, first of all, publicly the members of the commission go around saying that we do think prospectuses are read and that people ought to make more of an effort to make them readable. Secondly, we convene industry groups together to discuss what we can jointly do to make the prospectuses more useful.

The major concrete initiative I can point to in that respect is a joint piece of work that has now been commissioned by the Australian Investment Managers Association and the ASC to see whether we can come up with a minimum set of requirements for what you and I would know as a unit trust prospectus. Those are regularly issued prospectuses that are used by a very large number of people in the population to make

collective investments, not to make individual one-off investments.

Trying to formulate some guidance for the issuing community about what ought to be in an initial public offering—something like the Transurban City Link prospectus in Melbourne, the Sydney Olympic stadium prospectus or one of those—is very difficult. But with these regularly issued prospectuses, I think it is reasonable to expect that there could be some greater ease of use about their preparation, and so on. They could be cheaper for the issuer and more useful to the users if they were written more carefully. This research is presently being undertaken into how you communicate those messages.

In fact, one of the particular interests of Dr Dunn is in ensuring that people understand that what really matters at the end of the day is not whether you set out what it is that has to be in a prospectus, but that you have set out what result you want from the prospectus. The result you want from the prospectus is that the investors have particular information. You can give it to them, in a sense, any way you like. What matters is what results you come out with from the communication. It is a bit hard to draft the law that way, although it is something that we might give some thought to in the future. But as a first step, we have this communication exercise under way to see whether we can agree with the major industry body what ought to be in the standard unit trust prospectus. That research is well under way.

I am sorry, I nominated the wrong body. It is not the Australian Investment Managers Association; it is the Investment Funds Association—although they are talking about merging.

Mr ANTHONY—Comments have been made by people we have seen recently—not so much with unit trusts, which obviously are quite frequent—about smaller companies looking to raise capital having to go through the prospectus phase and that it seems to be geared around what happens when they get to a Federal Court over some type of litigation. As you correctly point out, they are throwing everything in to protect every contingency. It is costing an enormous amount of money for companies who are looking to raise perhaps only a couple of million dollars and the prospectus is 10 to 20 per cent.

I know there have been different phases where, after the 1987 crash, everything had to go in. Then the market collapsed, so they pulled it off and it was the ASC that laid the guidelines down. Even though the law was here, you had different guidelines of what now needed to be included or deleted. It seems to me that the pendulum has almost gone back the other way. I am just wondering how we can try to reduce the costs, which obviously is achievable, whilst keeping within the constraints of the law. It just seems that everybody has to have a piece of the action, but it is to the detriment of those small companies. One part now of the government's charter and yours is to encourage equity investment, or investment generally, and it is affordable.

Mr Cameron—I think your question really extends to the whole issue of how you find equity funding for small, medium and emerging businesses. That is really what you are driving at. That is a really difficult issue, I must say.

Mr ANTHONY—I think there are avenues around, but you have to get to a prospectus stage. If it is costing you 20 per cent of your capital in that that is what is required, it is a major detriment not to go to an offering, is it not?

Mr Cameron—Yes. I think the problem is that there certainly is some risk aversion among directors and legal advisers, which has something to do with it. There has been some major work done on these issues in recent times. The National Investment Council issued a report called *Financing growth*; it would have been in September 1995. That discusses some of the difficulties that those companies face. The Australian Stock Exchange supplementary submission to Wallis also talks about these issues. I might say the *Economist* this week has some material about this as well in terms of venture capital, which is one aspect of this.

What I understand them to be saying, with which I agree, is that a large part of the problem is unwillingness by the junior entrepreneur to give up control over the business—and that is understandable, a lack of willingness to do that. In the Australian context it may be that the businesses you are describing ought to be financed by debt to some extent, by business angels of various kinds in other ways. That is to say, patient, first level equity capital needs to be found and encouraged in the community.

I think the reality is that the prospectus regime is a Rolls Royce system designed around the major issuers, and it really is not a very user friendly approach for small and medium business. It is very hard for the regulator, who is ultimately responsible not only to raise capital but also to protect investors, to say that you should give up on the investor protection to such an extent in the case of small and medium business. There is no easy answer to this question.

I also think that it is sometimes overlooked that there is a real difference between the raising of this patient capital and the creation of a market at which those interests can then be sold. In this country we already have one of the world's largest stock exchanges. If that surprises you, I am merely referring to the fact that the Australian Stock Exchange has 1,100 listed stocks, which makes it the fifth or sixth largest stock exchange in the world. A very large number of those stocks are hardly ever traded. In fact, listing on the Australian Stock Exchange is not difficult. So, compared with the other costs of going public, it is not even awfully expensive to be listed on the Australian Stock Exchange.

The problem is not the secondary market, to such an extent; the problem is: how do you get patient capital into these newly emerging businesses? If I knew the answer to that, I probably would have resigned and gone off and done it because there must be a quid to be made in there.

Mr ANTHONY—That was not the question. The question was about trying to get costs down. It is always going to be a problem raising capital. But this is one avenue, this is your charter. Costs have escalated just through the escalation of the costs of legal fees and independent reports. That is detrimental to companies seeking capital from that avenue. There are layers upon layers of regulations; they start out with the best intent but might not produce the best results. But I appreciate your comments.

Mr Cameron—There are some proposals before the simplification task force that will perhaps reconsider the liability provisions with respect to prospectuses. One of the difficulties is that the task force is not dealing with fund raising until stage 3, which is under way now, and these provisions we are talking about really are in there. So we do not yet really know. But I understand that there is some consideration being given to the liability provisions which, in turn, might lead issuers and their advisers to be a little more robust in the view they take about what should be in prospectuses.

I think it is fair to say though, if you look back over a five- to seven-year horizon when the

Corporations Law was introduced, that provision I quoted earlier was used as the basis for prospectuses to become extraordinarily long and complex. The combination of a lack of any action when they started to get simplified and positive encouragement by the ASC to make them simpler and more concise has produced a reduction in cost and a shortening of prospectuses.

The recent very long prospectuses have been due to extraordinarily complex commercial transactions. I do not think we should be apologetic about the fact that something as complex as the Sydney Olympic stadium float or the Melbourne Citylink prospectus proposal, which involved a simultaneous issue of shares, units and debentures in one stapled security, which is a unique instrument, should be a complex prospectus. It is a complex transaction. It is right at the other extreme of the transactions you are talking about, which is a new, small company trying to raise $2 million to do business. They are just quite different transactions.

Mr WILTON—Are you frustrated by the fact that there is some apparent confusion in the marketplace as to the extent of your prosecutorial role? You often describe yourself as being an investigator and not a prosecutor, yet some high profile people of late have criticised you for not acting more rigidly as a prosecutor. When, for example, just on the matter of prospectuses, you see a prospectus—which may escape your scrutiny later on—which appears to contain false information, do you not wish you had the teeth to sink into it?

Mr Cameron—It is clear that we are an investigative agency, first and foremost. In fact, a quick glance at our law would tell you that we are also a prosecutor; we do have a prosecution capacity in the law. But it then goes on to say, in effect, that the DPP takes over the prosecutions whenever the DPP wishes to do so. I have no problem with that. I think it is a useful protection for the community that there is a division between the investigator and the prosecutor.

You do not have to look inside Australia; you can look outside Australia at the Serious Fraud Office in the United Kingdom, and perhaps in some other places which I will be too polite to mention, to see that sometimes if the investigator is the prosecutor that the lack of an independent decision capacity on whether the evidence justifies prosecution can cause unwarranted prosecutions to be commenced. We have a very good success rate on prosecutions not often acknowledged in the press, but we succeed in 80 per cent of our prosecutions. I am talking about the major ones; I am not talking about the minor ones. If anything, that seems to me to be almost too high. I would be worried that the ASC could become risk averse and try to get to 100 per cent—and it is not our role to be a 100 per cent successful prosecutor. Anybody who tried to be that would never prosecute anybody.

I think it is important to have the distinction between the investigating and prosecuting role. It sometimes happens that the press fails to understand the significance of that distinction and assumes and believes that, because the ASC is too polite and too respectful of the interests of the people that it is dealing with not to say so publicly in particular cases what stage something has reached, we are still plodding around in the background and trying to collect documents, and so on.

That simply fails to recognise what my predecessor and I have said on numerous occasions: that the ASC has a particular investigating role, and then it shuts up. It is then up to others. We cannot and will not say publicly, in response to numerous provocations, what has happened to our investigations once they are under way because the rights of the citizen will be affected if we do so, and we are not prepared to do that.

CHAIR—On this prospectus issue, do you follow up on forecasts?

Mr Cameron—We do, but you would be aware that there is a problem about forecasts because, by definition, they are statements about the future. The law has a specific provision in them to deal with them which says that there is a reversal of the onus of proof, in fact; that if a forecast you make does not come true, then you are liable, unless you can show that you had reasonable grounds for making the forecast. That, incidentally, is one of the other reasons why people spend so much time and money writing prospectuses, of course: to make sure that they can establish that reverse onus of proof in that situation.

If a forecast in a prospectus is justified by detailed assumptions upon which it is based and, preferably, after contact with independent advisers, independent consultants of some kind to show the reasonableness of those assumptions, it is very difficult for anyone to think that they ought to be prosecuted. In fact, I would just make the general point too, of course, as Mr Anthony was reminding me, that I do have a role to encourage the formation of equity capital. It is not part of my role to, at the end of the day, interpret and enforce the prospectus rules so strictly that nobody in their right mind will sign a prospectus. It is part of my job also to make sure that the law is interpreted and applied in such a way that it can achieve both sets of purposes: to protect investigators, on the one hand; and to ensure that equity capital can be raised, on the other.

CHAIR—On this forecast, have you prosecuted people for highly erroneous forecasts? There was a case recently that came up. As you did not want to name specifics, I will say it was in the casino field.

Mr Cameron—I will have to think about that. I think it has already been made tolerably clear that when, within a comparably short period, prospectus forecasts are conspicuously not achieved, that causes the ASC to go back and look and it may well cause us to ask questions. And I use that language deliberately. You would be aware that the language of investigation can and should be used only by the commission when we suspect a contravention of the law—again a distinction the press sometimes has difficulty with. So we do not therefore commence an investigation every time we see something like that, but we may well go and make some inquiries, ask some questions and, if we are not satisfied by that and the circumstances are sufficiently important, then we will perhaps have to commence an investigation at that point, but we would always ask questions first.

CHAIR—But the question is, have you actually proceeded down that path that far?

Mr Cameron—There is a pending prosecution in New South Wales for failure to achieve prospectus forecasts.

Mr HOCKEY—Mr Cameron, what is your view of crown prospectuses?

Mr Cameron—That is a small 'c' crown prospectus. It has been a difficult issue, I think it is fair to say, for the commission because the community believes that something that looks and behaves like a prospectus is a prospectus in terms of the Corporations Law. We have gone to some trouble to say to the government, when it issues prospectuses, on behalf of ministers in effect—and they are prospectuses in ordinary terms of the word—that they are frequently not technically prospectuses at all, they are selling

documents that fall outside the Corporations Law.

The sale of the remaining interest in the Commonwealth Bank is an example of that. It looked like a prospectus and I imagine most members of the general public probably thought it was, but it does actually have a statement right at the beginning saying, 'You may think this is a prospectus, but it is not a prospectus and it is not registered by the ASC under the Corporations Law; it is lodged with the ASC so that you can find it; it fits within the ASC system for record purposes, but it is not actually a prospectus.' That is not an easy issue, nor is the resolution of it easy. Clearly the government as the vendor has a legitimate interest in not unnecessarily giving away, in effect, the community's expectation that the government has certain immunities. That is what crown immunity is all about.

As I say, we have struggled with it from time to time. I do not have in my head the final resolution of it. I do not know whether one of my colleagues wants to add anything. There is some material which we could provide to you later if you would like to see it on, in effect, the understanding we have with the government about how this has been evolving over the change of government. It is not related in particular to the current government.

Mr HOCKEY—It is not just federal government, of course; it is also state governments?

Mr Cameron—That is one of the complications, that it is also state governments. We thought that it would be undesirable to have a different rule for state sales of businesses compared with federal sales of businesses. Crown immunity applies to both, so we were seeking to have a set of rules that would be the same.

I am reminded that it was in the annual report. I had forgotten that we had it in the annual report. In fact on page 28 you will see the statement that I have just made, in effect:

In general the ASC would prefer privatisations to be structured so that the prospectus provisions do apply.

That is simply because we think that the public just assume they do.

Mr WILTON—Can you see any role that you are going to play to attempt to ensure that they do?

Mr Cameron—Sometimes they do, even though the government did not necessarily want them to. I do not know whether Mr Willis remembers all of this, but sometimes they are technically secondary prospectuses, as they used to be called, where the law says that something is a prospectus because the shares have been issued at a particular time. You would remember this too. That has the effect that the prospectus provisions can sometimes apply even when the government would not want them to, and that is one of the reasons why it is such a difficult issue, but those who have signed them—I think Mr Willis has signed more than one or two in his time—would wish to ensure that at least they have immunity.

Mr WILLIS—I am taxing my memory here but, as I recall, it was very much the intention to prepare those documents as though they were prospectuses under the Corporations Law.

Mr Cameron—That is right.

Mr WILLIS—There was no intention in any way to prepare a document which was fundamentally different from what it would have been had the Corporations Law applied to the Commonwealth.

Mr Cameron—I accept that entirely, Mr Willis, and that is quite so; but the difficulty is that the remedies that would apply simply are not there.

Mr WILLIS—Obviously.

Mr Cameron—And nor should they be, if I might say so. Really, the fact that you are here only adds piquancy to the fact that it would be really difficult for you to be personally liable, as a director would have been, if that had been a prospectus under the law.

Mr HOCKEY—One of the difficulties was always the fact that you are usually incorporating an organisation. I do not know that it was the case with the Commonwealth Bank, but certainly with some others. You are incorporating it just before it is publicly listed, so to get the directors to sign a prospectus and put their names to the forecast, in which case they may be new directors, is a difficult process. That is one of the differences between privatisation and the normal spin-off of an organisation.

Mr WILLIS—In all those that I was involved in it was the case that the directors of the organisation did put their names to the forecasts that were in the document.

Mr Cameron—But that was frequently a source of much debate, especially if they were newly appointed directors, which does sometimes happen in the political context as well.

Mr HOCKEY—And you had to provide immunity to them, I would imagine?

Mr WILLIS—The point I am making is that they were not just the Commonwealth, the Department of Finance estimates. They were forecasts agreed between the Commonwealth as the seller and the directors as the director of the enterprise.

Mr Cameron—And also, Mr Hockey, it did not always happen that the directors did get that indemnity.

Mr HOCKEY—No. It certainly did not in the case I am familiar with. Can I just pursue this issue of crown immunity for a moment? It seems as though the promotion of public issues has gone a long way in the last few years, beyond what was originally envisaged when the Corporations Law was drafted, to the extent that in some cases it would be fair to say that, instead of referring potential investors to a prospectus, advertising material on TV seems basically to hock a float and the guidelines for the advertising of investments have become broader and broader just as prospectuses have become more and more complex. Where does it stop? I am particularly thinking about a government based transaction—not a federal one, I might add—where the concept of flogging an investment opportunity has gone to an extreme.

Mr Cameron—The ASC has attempted to issue guidelines on how it interprets the law with respect to advertising. We have not sought to distinguish between privatisation floats, between government floats in

that context, and other very large floats, simply because the reasoning that we have used is really based on the fact that these very large floats in the Australian equity market scene simply would not happen without advertising. The raising of one, two, three or, in the case of one-third of Telstra, $8 billion or $10 billion simply will not happen in a market of this size with any acceptable level of Australian participation and with the prospectus still only having to be open for a comparatively limited time for commercial reasons, unless you are allowed to promote them.

So we accept that there is a need to promote very large floats, and we therefore say that the advertisers—who take principal responsibility for this, after all—should ensure that they do not drip-feed people and they do not pressure sell, that they do not ever give the impression that you get all the information you need by looking at the advertisements. I will not pretend that all of the advertisements you have seen in the last few years would meet those criteria, but that is the way in which we explain our policy. Again, it is a weighing up of public policy interests. We believe that those very large floats in the Australian national interest ought to have significant Australian participation. You simply will not do that in this market unless you allow people to promote them.

In the early 1990s that was clearly overdone in a couple of celebrated cases, I suspect one of which you and I are both thinking about, but we do not think that has been the case in recent years. We think the message has got through. Some people try and ask us to vet their advertisements first. We usually decline to do that. But in the case, for example, of Telstra, where there will be some quite complex mixtures of very large float and crown issues, it may well be that we will do so, simply because of the size of it.

The risk you run, if you do not allow some promotion in the Australian market, is that it will just overwhelmingly go outside Australia, and we do not understand that to be either the government's wish or the Australian community's wish. Getting away a float like that will be hard enough without having a reasonable amount of flexibility to advertise it.

Dr NELSON—Mr Cameron, in the medical area paradoxically the more information you give someone the more confused they become and the less likely they are to make an appropriate decision. Given your comments in response to the survey you have done about the basis upon which people make decisions, is there a place for an abridged version of a prospectus? For example, with drug prescribing, people can be given the *British Pharmacopoeia* but they will not read it. But, if you give them a version which is an abridged part of that, it contains the information that they really do need or it might refer them to a larger text. Is there scope for something like that?

Mr Cameron—At the risk of delaying the committee for half a moment, I should say that I occasionally read *Fortune* magazine. In *Fortune* magazine you can find a double spread advertising a medical product, and you turn the page and there is all the pharmacological information about the product. I read it because I am fascinated that anybody would bother buying a full page of *Fortune* to provide it.

But the idea of an abbreviated prospectus is certainly receiving a lot of attention. It is very difficult to justify in terms of the current wording of the law. But, in the same way as we think an abbreviated annual report would satisfy the needs for very many shareholders, so it is quite possible an abbreviated prospectus might be able to be developed that would satisfy the needs of the ordinary investor, perhaps coupled with a

recommendation from a financial adviser. So there is talk about that in the context of the simplification exercise, and I think there is a real possibility some such proposal will get up in the next little while.

In terms of prospectus costs, that saves much more by way of printing costs—which really are not such a large proportion—but in terms of just wasted exercise and useless information being sent around it is probably quite a good idea.

Dr NELSON—There is one other thing I wanted to ask you about. Next week you have your conference on regulation in the electronic workplace, the electronic financial area. What do you envisage are the major problems that you are now coming up against in the electronic marketplace? This morning at the Australian Stock Exchange we engaged in a discussion where we were told that the processes of the parliament and reviewing Corporations Law are unwieldy and, in this modern technological world, in a legislative sense we are going to be left well and truly behind. Would you like to make some comments about that?

Mr Cameron—Yes. Let me deal with the second part first, only to say, of course, that it is just possible you are getting a bit of special pleading relating to their own desire to de-mutualise, in the sense that I know that they are very keen to, in effect, get the legislation into the parliament quickly and through the parliament quickly to enable the de-mutualisation of the Stock Exchange to occur, I think some time at the end of this year or soon after.

CHAIR—Brendan's point is a separate issue, I think.

Mr Cameron—I just merely mention that that is there as well.

Dr NELSON—We did touch on de-mutualisation, but this was a separate issue.

Mr Cameron—It is true that the corporations area is slightly more difficult than almost any other because the Commonwealth is required to consult with the states, as well as to have a three-month exposure period on legislation with respect to this area under the terms of the corporations agreement. That has tended to mean that—whatever comments you might want to make about other legislative delays—in this particular area it is more difficult than usual, and that is something to which the government and the parliament might wish to pay some attention at some stage. It is true that this world is moving very quickly and for Australia to be able to react to changes in its region in this area it might need to find some more flexible method of legislating—for example, more principles based legislation with more ability to provide the detail by way of regulation.

Nor do I want to be thought to be contradicting the Treasurer, who was reported in yesterday's *Financial Review* as saying that he thought the law ought to be changed, that the law ought to be in legislation. I do not disagree with that, but I think you can, consistently with that, still have legislation at a broader level of principle and allow the detail to be filled in, whether by regulation or by agreement among the professionals in the area. Our Corporations Law, which I do not happen to have brought with me, remains a monumental tome, despite the best efforts of the simplifiers.

If I could return to your first question, as to what I think is behind the conference next week, I suppose it is my belief that we are currently in the position of trying to adapt the markets to a paperless age. What we can now expect to have happen is that the real ability of the markets to look and be quite different because paper is not involved will be the next stage of the development of the markets. At the moment, for example, the Stock Exchange no longer, except for options purposes, has a trading floor. But everything that you see that happens on the Stock Exchange trading system in a sense reflects what used to happen in a paper based world. What I would expect you will next see in the development of our financial markets is the evolution of a system that is independent of paper and does not rely on a paper analogue.

The best way of explaining that in terms of what the ASC does is that the ASC is now using its exempting powers to enable unit trust prospectuses to be issued electronically. But that prospectus that is issued electronically is an analogue of a paper prospectus; it must be able to be put into paper form. So, for example, if your all-singing, all-dancing prospectus was in fact going to be in the form of a film or some other moving representation that cannot be depicted on paper, then you cannot do it. So what we are now having to evolve into is the idea that this paper was never part of the equation—what would the markets look like if they did not have a paper background to them? That is a very exciting challenge, and it is a challenge that we face all around the world. What the ASC is trying to do is to ensure that Australia remains at the forefront of those developments in world terms.

The member of the US SEC who is responsible for their policy in this area is one of the two special guests next week, as is the chairman of the UK Securities and Investments Board. So I am hoping that we will, by the end of next week, have some idea at least of what change in regulation we might need to be suggesting to ensure that Australia is at the forefront of that electronic market age that lies in front of us.

Mr WILTON—Is that something, Mr Cameron, that your Companies and Securities Advisory Committee review is looking at? Is that specifically part of its brief? Can you also tell me whether or not it is looking at any amendment to Corporations Law as it applies specifically to derivatives? If so, what might that be, and when is that committee due to report to you?

Mr Cameron—Perhaps just to clarify one aspect, the Companies and Securities Advisory Committee is not my committee. I am a member of it, but it is actually set up separately under the same statute and reports to the Treasurer. It is not looking at these electronic commerce issues as such. It is the committee, though, that is reviewing the law with respect to derivatives. The ASC did a lot of work on derivatives two or three years ago and then said, 'This is what we can do under the current state of law. We will recommend, in fact, that the Attorney-General grant various exemptions to enable exempt futures markets to operate.' About 40 such exemptions, I think, are now in operation.

But the law still needed to be reformed. We suggested the Companies and Securities Advisory Committee should do that. They have almost finished their work. They in fact gave us a submission to the Wallis committee a few weeks ago that presages some of the things that they will say, but their final report is probably not going to be out before the middle of the year. But their Wallis submission is public. Among other things they are saying that there is a case for a merger of the two divisions of the law that deal with securities and futures, so that you would have a single chapter of the law dealing with financial instruments and then you would have specific provisions that relate to shares, specific provisions for futures, derivatives,

via whatever new definition will be created.

CHAIR—On that issue of derivatives, getting very specific, there would seem to be some difficulty if an individual wanted to get involved in some of the new possible derivatives involving wool because, as I understand, under section 1127 of the Corporations Law someone has to have assets of $10 million before they can do that. That would preclude, I suggest, at least 95 per cent of woolgrowers, yet here is what could be an opportunity for some risk management. Have you addressed this matter at all?

Mr Cameron—I do not think you will find the $10 million in section 1127, if I recall correctly. The $10 million figure is our figure. Is that the—

CHAIR—The Corporations Law?

Mr Cameron—I did not happen to bring the law with me. I thought we had actually thought of the $10 million figure for a different reason.

CHAIR—Sorry, I did not mean to trip you up.

Mr Cameron—That is all right. I thought you had something else in mind. No, it is our figure, if I might say so with respect. What you have here is one of those declarations that I was talking about. The $10 million figure is the figure which we recommended to the attorney ought to be used—this is the attorney's document. I am not sure that I would agree with you about the woolgrowers either because what it says is, 'A person who owns tangible assets with a market value of more than $10 million', not net assets of more than $10 million. That is quite a deliberate distinction—it is gross assets.

CHAIR—But still most woolgrowers would not qualify.

Mr Cameron—I thought more than the number you suggested might. This was an attempt by us to suggest which major providers of markets ought to be exempt from the current provisions of the law. This is the exemption from the law. One of the characteristics is that, if you have gross assets of more than $10 million, we take the view that the government was entitled to conclude that you would be able to acquire enough advice to look after yourself, that you could go outside section 1127. So this is not section 1127; this is the exemption from section 1127. Do I make myself clear?

CHAIR—As I understand it, it would still preclude the majority of woolgrowers from getting involved.

Mr Cameron—Yes, that is true. That is because the law was written following a series of financial scandals in the early 1980s. The futures industry acts were written in the various states in such a way as to say that you could not conduct a futures market unless you were licensed to do so and all futures transactions had to be conducted on market. It was done quite differently from securities. You can buy and sell securities off market at any time, but the futures markets were deliberately done the other way around and everything was supposed to be on market. That was not a very flexible structure and there was an exemption power

created. When that became part of the Corporations Law in 1991, the ASC recommended to the Attorney-General that he grant a wide ranging exemption. The wide ranging exemption was designed to ensure that sophisticated wealthy people were not unnecessarily impacted.

We then had the dilemma how to advise the government at what point that exemption ought to cut in. One of the characteristics at which it cuts in is if you have more than $10 million of assets. Other characteristics are that you are a licensed bank, that you are a money market dealer, that you have got all sorts of other things. The wool growers to whom you refer do have some capacity now to deal in futures on the Sydney Futures Exchange.

CHAIR—I am just thinking that some of the other risk management tools that are being developed are being hindered because in most cases woolgrowers would not be able to access them individually.

Mr Cameron—I am not quite sure where to start to answer that. There is no doubt that there is some truth in it. I suppose it is really based on the fact that the assumption of the law is that futures were things that should not be too freely available. There is no doubt that that was the assumption. I think the better view is that derivatives are very good ways of moving risk around, but in the way that they can move risk around they can also create new risks for people who do not know what they are doing.

The ASC review and now the CASAC review are designed to free up the system. Whether or not something as limiting as this, to which you refer in the context of woolgrowers, will continue as a result of that result will really be a matter for the government to decide when it gets the CASAC report. I am not quite sure I can take it any further.

CHAIR—No. I have flagged it today.

Dr NELSON—Mr Cameron, 1,300 to 950 staff over the next five years—what, if any, functions of the ASC are we likely to lose and do you feel the public will continue to have confidence in corporations?

Mr Cameron—I hope the public will continue to have confidence. It will be something around 1,000 when it settles, I hope. The numbers at the moment are around 1,300, as you say, but it will take some time to get down to that level. The ASC is trying to re-engineer itself at the moment, not for the first time, to try to deal with the reduction in resources. We find it really difficult to provide identical offices all around Australia with these reductions. We need to find ways of delivering service across the country differently and more efficiently so that we do not suffer an overall reduction in service as a result. But we are assisted by some other developments, for example, the electronic commerce issue, which you raised earlier. The work of probably at least 100 of the staff positions that will need to go will effectively be able to be absorbed by new methods of dealing with the public electronically. This year we expect that we might process as many as 400,000 of the one million or so annual returns that we receive electronically and that involves far fewer staff. If we get that number up to 700,000, then again it would be a significant reduction in the staff we need.

Dr NELSON—Like the ATO?

Mr Cameron—Yes. We do not have quite the same ability as the ATO to offer incentives for the use

of our electronic lodgement system. That is why we have been slower than the ATO to sell it to the public. The public do not get much benefit from lodging electronically with us, as opposed to lodging in paper.

Dr NELSON—The Treasurer has indicated that he would prefer a mega-regulator and I understand the ASC is opposed to that. Could you explain why?

Mr Cameron—I am happy to talk about it. There are different versions of the mega-regulator. If by mega-regulator you mean literally that there is one financial system regulator that performs all of the functions with respect to banking, securities, insurance, market supervision, consumer protection, of the financial services sector, the corporate regulatory functions presently performed by the ASC, although that is the least linked to the others, I would not support that simply because I think that puts in too small a number of hands too much power. I am not a career public servant; I am actually a person who will return in due course to the private sector. I am not an advocate of big government. I think big regulators are just another form of big government and I am not quite sure why one would want to advocate it if that were the result.

I think we already have in the ASC what, in world terms, is a super regulator because you combine in the ASC securities regulation, futures regulation and corporate regulation. There is no such super regulator in Canada, the United States or the United Kingdom. So in world terms, amongst the economies we normally compare ourselves with, we already have a super regulator. We also have a separate insurance regulator and a separate banking regulator. There are some rough edges that need to be smoothed off between those existing regulators. But I remain far from convinced that the community would really welcome a mega-regulator that would have all-encompassing powers, one of the consequences of which would be, for example, that the inevitable issues would arise about priorities between those areas and apparent conflicts of approach would all be internalised within the regulator.

One of the advantages of the council is that it does issue annual reports which this committee and other committees of the parliament can read and see how the regulators are getting on with each other, which is quite a useful exercise. Having been at all the meetings, I can say that under the chairmanship of the former Governor of the Reserve Bank the meetings were always amicable but they have certainly involved exchanges of different views from time to time. I think it is quite useful that the regulators get together, exchange those views and still produce an annual report that sends a message.

You might wonder, for example, why it is that the members of the council did not lodge one grand submission to the Wallis committee. It might have been thought that perhaps the regulators should have done that. I do not know whether it would have been possible, but I am really not sure it would have been desirable. It would have meant that the committee would not have had the benefit of the views of those who do have specialised regulatory roles to perform. In fact, you would not have seen how the compromises were worked out. One of the great advantages of the separate regulators is that compromises get worked out in public. I do not think that is such a bad thing.

Short adjournment

Mr PYNE—There has been media speculation in the last six months that the ASC plans to take its mergers and acquisitions capacity out of Brisbane and Adelaide and put it all in Sydney, Melbourne and

Perth. What is the likelihood of that decision being made?

Mr Cameron—A decision to that effect was made last June, or whatever. But then, under some pressure to reconsider from the local business communities expressed forcibly through the state governments, the commission reversed that decision and has put the present arrangements on hold. Those arrangement are that there is a mergers and acquisitions capacity on the ground in all those five cities. The issue will not go away, in the sense that our concern is to ensure that we deliver an appropriate takeover service around Australia. We think, in the current technological age, that does not require people on the ground in all of those places forever. So, as part of the consideration of the ASC's future strategic direction with these reducing resources, we will have to keep issues like that under review.

Similar decisions have been taken without comment or concern in various other areas over the last few years. For example, virtually all of the processes about registering auditors and liquidators are done out of Darwin. I do not think anybody outside Darwin who has dealt with the ASC would have known or cared that that was what happened. They just get a call from somebody from the ASC; that person happens to sit in Darwin. We consolidate processes into particular areas according to the efficient way of doing the business.

It is also hard to say where a takeover is located. For example, the second reference to the takeover panel, to which I alluded earlier, is technically a Tasmanian takeover and it is being handled from Tasmania. But I did not say, and you did not say, that we officially have any takeover capacity in Hobart, and yet we are quite capable of referring a matter to the panel from Hobart.

The ASC has talented professionals operating its offices all around the place. The only issue about the so-called national takeover team is where the immediate specialists might sit from day to day. It does not mean that we cannot handle a takeover if one is to occur in Hobart or Canberra or Darwin. Similarly, if we did not have people sitting on the ground in Adelaide and Brisbane, it would not stop us handling takeovers in Adelaide and Brisbane as we handle them in Hobart—including very difficult ones.

Mr PYNE—One of the arguments, though, was that a mergers and acquisitions capacity in places such as Adelaide and Brisbane had spin-off effects within the ASC: if you took those capacities out of the Adelaide and Brisbane offices, the professionals who would have been doing that work would leave and have to go somewhere else, such as Sydney, which would remove the capacity to do other work within the ASC and, therefore, that work would also be going to places where those specialists had gone. There was also the concern that the cost of doing those things in Sydney was quite high compared to the cost in Adelaide. The business community was concerned that it would reduce the capacity of the ASC and be a thin edge of the wedge in terms the office of the ASC being in Adelaide in the first place.

Mr Cameron—I would simply say that if it had happened—and I emphasise again that it has not happened—it would not have prevented the Adelaide business community from being able to deal with the ASC on takeovers. It just would have been handled within the ASC rather differently. I do not think the flow-on effect—was that the expression you used?

Mr PYNE—The flow-on effect of reducing the expertise of the ASC in places such as Brisbane or Adelaide. What would you have to do, for example, if there was a case like Normandy Poseidon and the

mergers that occurred out of Adelaide because Normandy Poseidon was based there? If there was a similar situation in the future, would you bring the Sydney lawyers to Adelaide to do that work and put them in the ASC?

Mr Cameron—It is unlikely that it would be handled more than marginally differently from the way it would be handled now, because the major Normandy Poseidon schemes of arrangement and so-on were not all, at all levels, resolved just in Adelaide. People are brought in with expertise. 'Brought in' does not necessarily mean physically brought in anyway; the ASC has world-class, leading technology that enables people to talk electronically, or use video conferencing, either with the customers—the people we are dealing with—or within the ASC. So it was always a bit overrated as an issue, from my point of view, but there is no doubt it generated a lot of heat.

In the future the ASC can be seen more, and ought to be seen more, as aligned along a professional services model, rather than along a bureaucratic model. If you were to ask a professional services firm how they would deal with transactions around Australia, it would be by identifying relevant expertise and making sure the right people were dealing with the matter wherever they happened to be. Clearly, the geographic proximity is one of the leading factors in that choice, depending upon the size of the transaction. For example, on one geographic model, I recall that a Perth law firm advertised that it handled a Brisbane based privatisation of a power station. Clearly, that was a commercial decision in that context, but it is merely an example that professional services firms in effect provide expertise in different ways across the whole country.

The ASC ought to be seen in the future as a professional services firm helping the public all across Australia. Where its staff happen to live from time to time ought not to be the determinant. I am merely arguing that the commission ought to be given some capacity to manage its affairs in order to ensure that we deliver a high quality product at the end of the day, and it not be told to cause people to live in particular places, but ought to be judged according to the service in provides. That is all we ask. But I know that it is not a popular argument and it is one that we will have to continue to have for some time to come.

Mr PYNE—When the Australian Securities Commission was first established and Western Australia took so long to come into the scheme of things, which was some years ago now, one of the concerns amongst the smaller states, including South Australia, Queensland and Western Australia, was the feeling that the ASC would be based mainly in Sydney. I think that is why the ASC established substantial offices in each of the major capitals and the regional areas, and also gave commitments to having things like the capacity for mergers and acquisitions in various places such as Brisbane and Adelaide. So for the ASC to be saying now that they need to provide the best service and that that is all in Sydney—which could be the case if that is where all the expertise is—would impact on the states' first decision. I think they would feel that they had been perhaps led down the garden path for a later decision by the ASC to centralise all their activities in one place.

Mr Cameron—The commitment the Commonwealth gave in 1989 and 1990 was to provide a full service all around Australia. We do provide a full service all around Australia. We will continue to provide a full service all around Australia. All we ask is that we be allowed to provide that full service in a modern and efficient way. It never did involve, incidentally—and should not involve—any explicit statement that the offices of the ASC would replicate the previous offices of the former local corporate affairs commissions

forever and a day. It was all about levels of service, and type and quality of service, so that the customers were ultimately getting what they wanted.

If we were not delivering an effective mergers and acquisitions service in Adelaide or Brisbane any other way than by having people on the ground there all the time—nine to five, Monday to Friday, and longer—then I would agree with you that we would have to go back to doing that, as we still are. Members of the commission believed, and still believe, that it is possible to provide that level of service across Australia without necessarily having people resident in all of those places all of the time. It has only ever been at that level that there has been any real issue.

We believe that we would have been able to satisfy the Adelaide and Brisbane communities in the same way, for example—and I think it is still true to say this—that the Australian Competition and Consumer Commission does not deal with mergers and acquisitions issues to any significant extent in Adelaide and Brisbane. That does not seem to prevent those issues arising in those places or being dealt with in those places; nor would it with us—in fact, in our case, to an even greater extent, since we will always have full service professional offices in those places.

Mr WILTON—As you know, Mr Cameron, company directors of financially troubled companies which, on two occasions, have returned less than 50c in the dollar to creditors can be asked to show cause why they should not be removed as directors of those troubled companies. How do you assess which should and which should not? In the instances where that has happened on two occasions, shouldn't it be mandatory that they be removed from any managerial role?

Mr Cameron—As to how we assess it, if they fall within the technical description of the law which requires, as you say, that it should have happened more than once—meaning at least twice—it also requires that those companies actually have gone into liquidation or whatever. Unfortunately, all too frequently that has not happened. But if they have met those requirements they would normally be called upon to show cause why the ASC should not take that action, and then it is up to them to explain. In fact, I think one of my colleagues has brought a media release indicating that, in the last couple of days, 42 people were banned in Victoria from managing companies in similar circumstances, and there is a list attached to it.

That process is designed, in effect, to protect the public; that is what it is about. But we still believe that that is not sufficient and I think we have persuaded the simplification task force to reduce the 'more than one' requirement, on any one occasion, and bring it down to one. One of the reasons for that is not that we are really keen to get people who fail. Let me make it clear again that it is not a sin to fail; the sin is to continue to trade when you should not have traded and to clearly demonstrate that you are not capable of running a company. But very often these companies have not in fact gone into liquidation; they have just been allowed to be deregistered. We are trying to deal with that as well by making the requirements easier to satisfy. It is a difficult row to hoe because, as I say, we are not trying to send a message that you are never supposed to go broke. It is just that when you are broke you should stop—that is really what it is about.

Mr WILTON—I will keep that in mind!

Mrs GALLUS—That takes us on to the issue of the phoenix companies. I believe you have had a lot

of trouble with sorting out what is going to happen about them. We have not had the prosecutions that we should have, yet these companies persist in preying on people and on small business people, builders especially, around the country.

Mr Cameron—Again, it is a reflection of the same problem we were just discussing, in that some things that look like phoenix companies to members of the public who write to their members of parliament are not, on examination, that at all. What makes a failed company into a phoenix company situation is some abusive act such as, for example, taking the goodwill of the former business without paying anything for it and continuing to trade on that goodwill, as in taking a very similar name or taking the staff across. Of course, you can in fact rip off the staff by doing that. It is that sort of abusive behaviour that we are after. We are not trying to send a message that it is a sin to fail in business and that you cannot start up again.

Mrs GALLUS—Maybe there is a misunderstanding on my part in what I define as these phoenix companies. But I am certainly aware that preying around my electorate are people who are consistently going broke, leaving the traders without any return on their money and then reappearing. They are the same directors who are appearing again. They have wiped themselves clean, but my traders are still suffering. Yet there they are happily trading again—under a different name, perhaps, but they are basically the same people.

Mr Cameron—If they have in the first instance—in the company that has gone broke—continued to trade when they were already insolvent, then that is at least a civil penalty matter, if not a criminal offence. If they have taken the assets out improperly, that is a civil penalty or a criminal offence matter. The point I am trying to make is that, while the ASC has succeeded in creating a great deal of public knowledge of phoenix companies, of the fact that the phenomenon exists, it has also tended now to produce some instances of, in a sense, a false identification of a phoenix situation merely in a company failure. Company failures, unfortunately, are quite common. We need to get a higher degree of understanding of when they involve the sort of behaviour the ASC can act on and when they simply involve a failure.

Mrs GALLUS—I want to labour this point, because I think it is an important one. You can have a group of people who are basically not that honest tradespeople. They may not get to the point where they are trading when they should not be, or anything that they can be prosecuted for, but they willingly take these small traders with them, do not pay their bills, collapse the company, and keep coming back and doing it to another group of traders. You cannot, with all the best will, say that these are innocent businessmen who happened to have failed in one venture and have started up again. They know the system, they are working the system, and they know enough just to stay the right side of the law. But they are affecting a lot of people out there.

Mr Cameron—They would and should be caught eventually, even under the current law, if their companies actually go into liquidation—and they should go into liquidation if they cannot pay their creditors. Under the simplified form of the law that is being introduced now, I hope, it will be easier to deal with them. I simply do not characterise them as phoenix companies.

Mrs GALLUS—I am happy to drop the name.

Mr Cameron—That does not matter, in a sense. It is not an offence to be involved in a phoenix

company. A phoenix company was merely something that was a way something was being described, especially in a Victorian parliamentary committee; it was a particular aspect of this problem. The problem you are describing is part of the general phenomenon.

Mrs GALLUS—Perhaps I should describe them as phoenix directors.

Mr Cameron—Yes. Phoenix directors are a genuine problem.

Mr HOCKEY—Mr Cameron, do you think the current provisions relating to insider trading in the Corporations Law are adequate?

Mr Cameron—Yes, I do. Among other things, as I suspect you might know, the law has been changed in recent years so that the ASC no longer has to prove that the apparent offender is an insider. It is still called insider trading, but the person does not have to be an insider. What we do have to show, though, is that the person had information that was market sensitive information and, while in possession of that information, either gave it to somebody else or used it to gain themselves an advantage. The fact that the person had the information can sometimes not be easy to prove.

Nevertheless, we already have our first conviction—in fact, on a plea of guilty; we have other people presently awaiting trial; and we have some significant investigations under way and some significant civil proceedings under way that you would be aware of. So it is too early to say that the current state of the law is not right. I have been taking an interest in insider trading, academically and professionally, for 20 years and there is far more scope with the current state of the law to get some results and to send some clear messages.

What is interesting is the vexed question of just how much insider trading there is. There is some academic work done in the US, with the cooperation of the US SEC, which tends to show an extraordinary number of insider trading events. Unfortunately, that work has not been replicated out here, but it would be interesting to do the work and see whether you could detect the patterns of trading which they can find in the US.

I mention that if only to seek to dispel the myth that the world's leading regulator, which clearly is the US SEC, has somehow stamped out insider trading. It has not done it. I would not therefore expect that of the ASC, which has only recently got the law into a state where it is really sensible to expect us to do much about it in terms of the matter I was just referring to and is, in any event, a much newer organisation and still has to prove itself. I would not be surprised if there is still more insider trading out there that we have to get to, but we are certainly getting closer to it now with the cooperation of the Stock Exchange. I think you will see the back broken, at least of the public issues about it, in the next little while.

Mr HOCKEY—Do you think there is room to move to the Japanese model? I know it is quite different, but some parts of it seem to work, such as where they have to voluntarily give the profits associated with their insider trading back to the company. Basically, if you feel you are going to be caught for insider trading, you say, 'Here I am. I'm sort of guilty here. Here are the profits,' and you give it back to the company that you have been trading the shares in. It is an extraordinary line, but anecdotally there seems

to be quite a bit of activity that is on the fringe of insider trading. Is there room for a voluntary code?

Mr Cameron—I suspect the chief difficulty in our society—I am not quite sure how it works in Japan—is that the concession you would effectively be making, that you were an insider trader, when it is offence to be an insider trader, would have such an effect on your future that you just would not voluntarily make it. I would be surprised if the community would accept it as a sufficient penalty that you simply give back the profits. It is certainly one of the arguments that the Director of Public Prosecutions uses a lot to say that you should not be unwilling to use the criminal law in the case of corporate crime, that unless you use the criminal law, if you merely use civil remedies and take away the profits, then any rational decision maker will run the risk, because the greatest risk they run is having to give the profit back.

Mr HOCKEY—I suppose what I am talking about, rather than the larger players, is the copy boy who picks up some information on the grapevine and says, 'Now's the time to buy,' and invests such a small amount, or a reasonable amount so that at the end of the day all the best logarithmic calculations by the assessors in the Australian Stock Exchange will not pick up the trade.

Mr Cameron—I am really not sure how to answer that.

Mr HOCKEY—It is just a different way of picking it up.

CHAIR—Mr Cameron, can I follow up on what Mr Hockey has been asking you on insider trading and come back to that point I made at the beginning about that article in yesterday's *Australian* referring to the Cairn Energy. It would appear that somebody got an advantage. They must have had some information so that they could then buy shares in anticipation that a cash offer that had closed was in fact going to be increased. Would you comment on that and, as a matter of course, would you be following up that sort of situation?

Mr Cameron—In the discussion we have just been having, it occurs to me that I was not being precise in saying that it is not only information that will have a material effect on price; it is also information that is not generally available. In the Cairn Energy situation which you are describing, that may have been relevant because I had understood the article to be more about the issue of whether the ASC's modifications to the law had had an unintended effect upon the subsequent course of the takeover. But I do not think I read that as suggesting it was because of information that was not generally available. It was rather because they had been allowed—I must say in circumstances I am not personally aware of—to vary their offer at a particular time, in a particular way, which then had a particular result when they came to do compulsory acquisition of the outstanding shares. Somebody appears to have noticed that, as I understand it.

CHAIR—Yes.

Mr Cameron—I am not sure whether it was inside information in the technical sense at all, because I think the change in the terms of the offer was presumably public and what they would do on compulsory acquisition. Without the benefit of knowing more about the facts, it is a bit hard to comment. I had read it more as being a comment upon our use of our exempting powers, modifying powers.

CHAIR—But still in that case some shareholders who had accepted the offer earlier would feel that they had not got the best offer that those who had come in later and taken advantage of a situation did get.

Mr Cameron—Yes, but I would need to look at it again to check whether that is the factual result of the situation that is described. I think it is really talking about people who saw the change in the terms of the offer and then decided to buy—and somebody selling obviously—in order to take advantage of the subsequent compulsory acquisition, which is a very unusual situation, I must say. It was the first time I had ever seen it happen, whatever that means. It might well be something we will need to look at. As I say, I read the whole tenor of the article as more about our modifications than about any suggestion of any impropriety in the trading.

Mr WILLIS—On staffing, you said before that you are going to reduce to 1,000 over a period of time. What is the period of time?

Mr Cameron—The reductions in our funding take effect over the four-year period. Our funding has reduced by about $2½ million this year, but reduces by $10 million in the third and fourth years. So from being a $125 million to $130 million per year organisation, we will effectively be about a $113 million to $115 million per year organisation three years out.

Mr WILLIS—You said 100 of those reductions would come through increased use of electronic services. That leaves another 200. Where do you see them coming off, and do you think that their loss will have any impact on the service you provide?

Mr Cameron—Where do I see them coming from? They would come from all over the ASC—support activities from some programmed work on prospectuses and takeovers and so on. It must have some impact across the commission. But we would seek to minimise the effect of that by reorganising what we do and working out what activities do not add any value and can be given to other people to do or not be done at all.

I mentioned earlier, for example, the registration of auditors and liquidators. You might well ask why we do it. We are certainly asking that question, and it may well be that the particular function can be devolved to the industry bodies. If we do that we might save 15 people in the process. So that is the sort of exercise. I thought you asked me one other aspect of that I may not have answered.

Mr WILLIS—What were the areas and what was the likely impact on service, if any?

Mr Cameron—The aim of our exercise is to ensure that you still have a corporate regulatory presence in Australia, right across Australia, now and in the future. I believe, and the members of the commission believe, that it is possible to do that for $115 million a year.

Mr WILLIS—Presuming it is possible to do it for any particular nominated amount of money, you can provide the service that the money allows, but presumably you are providing less service than you would if you had more money. What I am really asking you is do you think in this situation that you are going to be divesting services that basically have real worth?

Mr Cameron—I think we will have less activity, but we will have a credible corporate regulator. That is the adjective I would emphasise. We will not have shed any of the critical functions that are important to the credibility of the regulator so that, for example, we will still have the capacity to respond to referrals from the Stock Exchange of apparent market manipulation. We will still have the capacity to deal with enough phoenix company and insolvent trading type allegations. We do not now have, and never have had, the capacity to deal with them all. So it is not as though we have ever had the capacity, or ever sought the capacity, to deal with every instance of corporate wrongdoing that has been referred to us.

Mr WILLIS—But you will have the capacity to deal with less than in the past?

Mr Cameron—Yes. But we are investing more money now than we ever did before on intelligence, for example, in terms of being able to work out where it is that we should be taking action in order to make an impact. It is more targeted with the intention of ensuring we get the same result for fewer dollars. But there will be less activity just because there will be fewer people doing it.

Mr WILLIS—In relation to the prospectus issue that was raised before, I am not quite sure that I got this right. Were you accepting that the law should be changed to require prospectuses to be issued in sufficient time ahead of the closure of the offer so that people could actually read and understand those prospectuses—not, as you said in the case of Transurban, where they would not even have had time to read it, let alone understand it?

Mr Cameron—I have in fact argued that, yes. I am not sure the commission has supported me in a formal sense, but I have argued that it is a concomitant of the expectation that people ought to be able to sue on the faith of a prospectus, that it is totally illogical to expect that the prospectus could have closed without anybody reading it. Therefore there should be a minimum period during which it is open. There may be trade-offs in that, and I am aware that it is a market-sensitive suggestion, but I cannot think there could be too many prospectuses or too many issues that would be gravely affected if the prospectus had to be open for, say, 10 days. I really cannot think there are too many like that.

Mr WILLIS—Are you aware of any other cases which are perhaps similar to Transurban where there was insufficient time given to potential investors to appreciate a prospectus?

Mr Cameron—It is the most stark example that is in my mind, but I am sure it is not the first or only one. I assume there is some circulation of the material that is in the prospectus to sub-underwriters and underwriters that means that there are many professionals out there who quite legitimately have access to material. It is rather the unequal effect of that on what you might call the ordinary investor, because the professionals do get access to the material through their ability to see copies in other capacities.

Mr ANTHONY—It is frequently happening with mining companies all the time.

Mr Cameron—Yes.

Mr HOCKEY—You can issue a prospectus before opening the offer.

Mr Cameron—Once it is registered you can, yes.

Mr HOCKEY—So you can just delay the opening of the offer for seven days?

Mr Cameron—In the case of the prospectus we are talking about, my recollection is that it was actually registered either on that day or the day before and opened immediately and closed immediately.

Mr HOCKEY—That is just absurd.

Mr Cameron—On the same day.

Mr WILLIS—The only other question I wanted to ask was about the Council of Financial Supervisors. It was implied in what you have said that you think this has been a worthwhile body. It has operated for the last few years. Can you give us an overall impression of the operations of that body from your point of view?

Mr Cameron—It has had a positive impact in its ability to ensure that the regulators of the financial system understand what each other is doing; to have, for example, a coherent and consistent approach on derivatives and on the whole issues to do with the regulation of the official financial markets—the Futures Exchange and the Stock Exchange which, of course, is also a derivatives market. It has had a positive impact on all of that, at very low cost. It is a virtually no-cost operation; it just involves the heads meeting, there is no significant support for it and there need not be. In terms of just having a cheap and effective way of ensuring coordination among people who are jointly responsible in practice for all sorts of activities, it has been very effective.

Mr WILLIS—Has it helped, do you think, in eliminating unnecessary duplication of activity?

Mr Cameron—I am trying to think of a specific example that would back up a positive answer. It has rather been the pressure it has put upon the ASC and the ISC in particular to continue to work to harmonise their requirements. There has been some positive outcome of that in the investment advisory area already and I think that was far more likely to have happened because of the existence of the council. It may, to some extent, have happened eventually without that, but the council's presence has brought that about.

Dr NELSON—Mr Cameron, in the Advance Bank takeover you allowed unused votes to be deemed as being in favour of the takeover. Is that really a legitimate use of proxies and is that going to cause us problems in the future?

Mr Cameron—Let me make it clear, first of all, that it is not strictly the ASC that allows that. It was a term of the scheme of arrangement that that would be the effect of a deemed proxy under the scheme of arrangement documents. After a deal of publicity, one way or another, the matter was actually determined by the Supreme Court, whose role it is. The ASC made submissions to the court saying that, while such a process was not unreasonable in the particular circumstances of this merger, it was not something which the ASC thought ought to be generally encouraged or allowed. In effect, the court adopted that in the way it gave its reasoning.

Advance-St George was a curious transaction. It was a takeover that had to be done by way of scheme of arrangement. The articles of association of Advance had some very unusual provisions in them, for quite good reasons going back many years, including a requirement that a particular shareholder had to vote against this resolution even though it was in fact in favour of it. In those sorts of unusual circumstances that sort of device was explicable and, in the view of the ASC, in such unusual circumstances, was not a major problem.

Our concern, at the end of the day, was mainly to ensure that people did not think that, because it was acceptable in Advance, it was going to be acceptable next time Blue Sky Mines NL—managing director well known to you—decided to adopt some new form of capital raising and lock its shareholders in forever to supporting the board, or whatever. We were simply aiming to ensure that the precedent that would be established by the approval of that scheme would not be misused in the future. I think, despite some hiccups, we have achieved that result.

Dr NELSON—So you do not envisage any future problems as a result of the nature of the takeover in New South Wales?

Mr Cameron—I do not. I think the attention that it received publicly and in the courts will ensure that the proprietors of that esteemed establishment would be reluctant to try and use it. It was an unusual scheme of arrangement, in unusual circumstances anyway, and I think there has been sufficient attention given to it that it would not be likely to happen.

That is not to say, now the matter has received such attention, that when simplifying and reforming the law one might want to think about whether you need to make special provision for these continuing operation proxies. There is something unusual about them, there is no doubt about that, and that is something that the government might wish to pay some attention to.

Dr NELSON—The ASC was criticised in the press for its handling of the takeover. Would you do anything differently if it happened again?

Mr Cameron—Yes. We would probably make a decision earlier and communicate it more clearly earlier. The real problem was that the press had a particular starting point about the transaction which did not match ours. Despite frequent repetition by us and by the bank concerned, two basic assumptions were made, perhaps all growing out of one: the National Australia Bank was fiercely opposed to this merger and was lobbying us so that we would be acting at their behest if we were to stop these deemed proxies.

I do not know what the National Australia Bank's attitude to this merger was. I am not aware it ever really said. It did not appear at the meeting, it did not vote at the meeting and it did not lobby the ASC. The press simply never seemed to accept that. So when people did not act consistently with those expectations the press thought that the ASC was acting strangely, but in fact we were acting consistently all along. We were not being lobbied; therefore, we were not responding to it. Our mental model of the transaction was quite different from the journalistic model of what was happening and, if it did not fit their model, it simply could not be explained.

Where I think we did not cover ourselves with glory was that it took us longer than it should have to

make up our mind what our view was about the matter, and then there were some communication problems right at the end through quite unfortunate personal circumstances. They were just bad luck right at the end, but they did not have any effect on the transaction.

CHAIR—Mr Cameron, I want to come back to your report. On page 23 there is a section on the time limit on laying serious criminal charges and you mention that a parliamentary joint committee recommends the five-year time limit be removed. I presume that you would be in favour of that, having incorporated it in the report. In terms of the perceptions for the public, time delays of that order or greater do leave people with a feeling that the law is not really keeping up with—

Mr Cameron—One of the reasons—

CHAIR—Why is it necessary to have it as such a long period?

Mr Cameron—My only concern is that the five-year limit acts as an artificial barrier. The removal of that particular five-year barrier will not give the ASC carte blanc to launch prosecutions 10, 15 or 20 years down the track. What it will do is restore corporate crime to the same status as all other crime; namely, if a prosecution is brought too late after the events, then the court will intervene to prevent it on the grounds that the accused cannot get a fair trial. The problem is that, if corporate crime is the only category of crime to which there is a special limit, that creates a particular injustice. Corporate crime is frequently discovered late and is proved on a documentary basis. So it is easier to deal with corporate crime late and you frequently have no choice about it.

The time period we are talking about is not the time when the ASC investigates it; it is the time at which the prosecuting authorities are ready to file a charge and prove the case. We were talking earlier about prospectuses. Let us assume a hypothetical prospectus case where the forecasts go wrong three years down the track. It becomes apparent, some investigation is launched, the evidence is collected, the prosecutor is then convinced—to get that all done within five years in a corporate case would be quite difficult and quite unusual. So for better or for worse we took the view that you should not have to disturb the Attorney-General every time that five-year period came up.

CHAIR—There have been some high profile cases that have taken an awfully long time to come to judgment. It was pretty obvious from the scuttlebutt at the time that something pretty odd was going on, yet it has taken years and years.

Mr Cameron—I cannot think of any that have started since the ASC was created. There are some the ASC is still dealing with that predate its creation. But in all of those now I think charges either have been laid, dealt with or are still pending, or there will be no charges. There are no ongoing investigations that pre-date the creation of the ASC, which is now just over six years ago. There are some circumstances that have come to public light, to anybody's attention, more recently than that that go back over the five-year period where there will have to be some consideration given to that five-year period, of the kind I was describing a moment ago, where you simply cannot commence an investigation because you are not aware of them. That is the reason we think there should be the removal of that limit.

CHAIR—To follow on from that, on page 15 you have a list of offenders who have paid a price of some sort. But do you find it very difficult to get some of the more really high profile cases? While it is excellent to see that justice is being brought about, there are some high profile cases that seem to still slip through?

Mr Cameron—'Is there anything special about the high profile cases?' is another way of asking your question, I think?

CHAIR—Yes; is it that much harder to prosecute them?

Mr Cameron—First of all, they are quite frequently complex transactions that have been deliberately organised in a particular way where professional firms have been used to set them up. In terms of finding the criminality sufficient to convince a jury, it frequently can take a great deal of time. They will be the high profile cases. Frequently, I suspect, in the public eye these people may even have been assumed to be guilty the moment the charge has been laid. We cannot make that assumption; we actually have to prove it. Indeed, before a charge will be laid, we have to satisfy the Director of Public Prosecutions that it is more likely than not that the person will be convicted. It should not be easy for us to do that—and it is not.

In the public interest, you do not want people being charged unless it is more likely than not that they will be convicted. That is reasonable and I do not have any complaint about it. Unfortunately, they will be the high profile cases. I am not saying they get special treatment; it is just the way it is. There is some delay, too, in some jurisdictions—including in this one—in getting court time. So one has to distinguish the time taken by the ASC and then the Director of Public Prosecutions to prosecute with the time taken to get into a court, because these are now federal matters and the state system is effectively trying them. They do have to get time in the state system in due course.

Mr WILTON—Mr Cameron, on the matter of the listing of the Australian Stock Exchange, I understand your view on its regulation to be that you would not want the ASC to do it for a range of reasons, among which are that you do not have the correct computer set up and it would require staff that you perhaps do not have. What do you say to those who, in arguing against that, say that all that is required is that you would have to plug into their computer system and it would simply require one ASC person in attendance to ensure that ASX shares were not illegally manipulated? Also, what do you say to those who argue that, unlike perhaps one of the big six accounting and auditing firms who, if appointed as such a regulator, might use that appointment to further their profits in some other way within that regulatory system, that is something that the government based ASC, being a non-profit oriented body, would not do?

Mr Cameron—I am very pleased you asked me that question, if only because it gives me a chance to correct any misunderstanding about what my view is. In October last year, I went to some trouble to make it clear that I thought there were other options to the ASC being the regulator of the Stock Exchange's listing. I took that view because I did not want to be put in the position where we were the only alternative and where we might be thought to be saying, in effect, 'Unless the ASX and the ASC agree upon the regulatory method, then the ASC will de facto veto the listing of the Stock Exchange.' Those apparently subtle remarks just were not getting through. Fortunately, it ceased to be relevant after a while.

Let me make the ultimate position from my point of view quite clear, as it now stands. The government has before it a request by the Stock Exchange to alter the legislation to enable the Stock Exchange to demutualise. They also wish to have the capacity to list on themselves. The probability is that, in that event, it will be the ASC that will regulate the listing of the Stock Exchange, that will stand in the shoes of the Stock Exchange with respect to the listing of the Stock Exchange itself. That was always the most sensible option. It would be done in exactly the way you described, namely, that the Stock Exchange staff would continue to do it, reporting to the ASC for that purpose. Any additional expense the ASC incurred would be met by the Stock Exchange, not by the public.

In any event the role is not nearly so much about the watching of the trading. It would only just be one of the 1,100 listed entities after all; it is not a major exercise in itself. It is rather that there are some quite complex questions about the application of the Stock Exchange's own listing rules to itself. The granting of exemptions, the checking of disclosure notices and so on lodged by the Stock Exchange with itself would be things that somebody else has to monitor. It is that process that the ASC would do directly and would use staff of the Stock Exchange to do it under some form of contract or arrangement between the ASC and the ASX. At least in the broadest of principles I think the ASC and the ASX are agreed on how that could be done, and the government, through the business law division of Treasury, is involved in those discussions.

I think in fact it will all work out, and those press reports that tended to suggest that I was refusing to do it were always a misunderstanding. I was merely saying there were other alternatives so that neither we nor the government nor the ASX were put in a position of appearing to have no other way of dealing with it. Clearly there were other ways, but they have never been as efficient as us doing it.

CHAIR—Does anyone have any more questions? We have had a fairly good innings. Just getting back onto money, the revenue collected by the ASC seems to be going up rather rapidly. Do you wish to comment on that at all?

Mr Cameron—Respective governments have increased the fees payable. The effect of fee increases has mainly been on annual return fees on the bulk of companies. We have just under a million companies around Australia. The average annual return fee is now $195 a year. So it is not surprising that we now collect the large amount of money that we do. I think this year we will collect around $280 million for consolidated revenue. About half of that goes to the states; less than half of it goes to the ASC. It is a full cost recovery regime, and the balance of the money is used to pay for—apart from the obvious entities that fall close to the ASC such as the Companies and Securities Advisory Committee and the panel—the business law division of Treasury to the extent that they deal with Corporations Law, the Australian Federal Police and the Director of Public Prosecutions. All the corporate law aspects of those are covered by the fee collections. So we just collect the fees that the government sets; we do not set those fees.

CHAIR—If there are no further questions, can I thank you very much indeed for coming before the committee today.

Resolved (on motion by Mr Wilton, seconded by Mr Anthony):

That this committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 4.09 p.m.