HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON INDUSTRY, SCIENCE AND TECHNOLOGY

Reference: Fair trading

CANBERRA

Thursday, 6 March 1997

OFFICIAL HANSARD REPORT

CANBERRA

HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON INDUSTRY, SCIENCE AND TECHNOLOGY

Members:

Mr Bruce Reid (Chair)

Mrs Bailey	Mr Jenkins
Mr Baldwin	Mrs Johnston
Mr Beddall	Mr Allan Morris
Mr Martyn Evans	Mr Nugent
Mr Richard Evans	Mr O'Connor
Mr Forrest	Mr Zammit
Ms Gambaro	

The committee will inquire into business conduct issues arising out of commercial dealings between firms, including claims by small business organisations that some firms are vulnerable to and are not adequately protected against 'harsh or oppressive' conduct in their dealings with larger firms.

1. The committee is asked to investigate and report on:

the major business conduct issues arising out of commercial dealings between firms including, but not limited to, franchising and retail tenancy;

the economic and social implications of the major business conduct issues particularly whether certain commercial practices might lead to sub-optimal economic outcomes.

2. The committee is asked to examine whether the impact of the business conduct issues it identifies is sufficient to justify Government action taking into account, but not limited to :

existing State and Commonwealth legislative protections;

existing common law protections;

overseas developments in the regulation of business conduct.

3. The committee is asked to examine options and make recommendations on strategies to address business conduct issues arising out of dealings between firms in commercial relationships, taking into account, but not limited to:

the potential application of voluntary codes of conduct, industry self-regulation and dispute

resolution mechanisms, including alternatives to legislation and court-based remedies, and mechanisms to support these measures;

legislative remedies.

4. In developing options, the committee will seek to ensure certainty in the market place, contract dealings and other commercial transactions, minimise the regulatory burden on business, and keep litigation and costs to a minimum.

WITNESSES

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON INDUSTRY, SCIENCE AND TECHNOLOGY

Fair trading

CANBERRA

Thursday, 6 March 1997

Present

Mr Reid (Chair)

Mrs Bailey	Mr Jenkins
Mr Bob Baldwin	Mrs Johnston
Mr Beddall	Mr Allan Morris
Mr Richard Evans	Mr O'Connor
Mr Forrest	Mr Zammit
Ms Gambaro	

The committee met at 1.00 p.m.

Mr Reid took the chair.

CARLSUND, Mr Bjorn Kenneth, Registrar of Retail Tenancy Disputes, Department of State and Regional Development, Level 35, 1 Farrer Place, Sydney, New South Wales 2000

CHAIR—Welcome. Do you wish to make an opening statement before we commence our questioning?

Mr Carlsund—Yes, thank you. I would like to give some background to the Retail Leases Act of New South Wales and my role under that act. In the early 1990s, BOMA—now known as the Property Council of Australia—and the Retail Traders Association, under the auspices of the New South Wales government, worked on the establishment of a voluntary code of conduct. That code of conduct was in place by 1993, but by 1994 the New South Wales government had perceived that it was not working and the New South Wales Retail Leases Act was drafted and brought into force in August 1994—for all parts, except the part of that act which dealt with dispute resolution, and that came into force in November 1994.

My position is, firstly, to arrange the facilitation of solving disputes in New South Wales by means of mediation. My second responsibility is to report to the Minister for State and Regional Development on the operations of that act.

The process we use in New South Wales is based on a pyramidic system. At the base is an inquiry, advice, information process that is available to landlords and tenants in New South Wales in the retail leasing area. We do not give legal advice; however, we do help people understand what their leases say, we help them understand what the provisions of the act say and we help them understand that the relationship they have with the other party, whether they be landlord or tenant, is fundamental to a successful business relationship and we give them assistance in how to approach the other side, how to deal with the other side in a non-confrontational way for the benefit of their relationship with that other side.

The next stage up the pyramid is an informal mediation process—by telephone or by going out to a shopping centre or to a shop. We assist the parties, look at their dispute and work out ways collaboratively to resolve that dispute to their mutual satisfaction. If that is unsuccessful, we then go into a formal mediation process where one or other party applies for mediation. We allocate a professional, trained mediator who will then assist those parties work their way through the dispute with a view to resolving it. If all that fails, the act provides for the dispute to go for a hearing before a commercial tribunal that fits into that particular jurisdiction or into the court process for final adjudication by a third party.

One thing we are currently working on in New South Wales is to take this concept of dispute resolution further and actually look at dispute avoidance. To do this, we are toying with the idea of what is a dispute adverse company. How would such a company look? What would its profile be? Although we have not finalised the identification of this sort of corporation, we believe that it would have to have a well publicised in-house system for addressing issues before they can fester and become a dispute. They have to ensure that in their work they have open communication and an honest relationship with the other side. They would need to have a policy enforced from the top of the company and known all the way through the company that mistakes are accepted and not treated harshly—not punished—and that mistakes are used as a growth factor in the corporation's life. Communication should be full and free and travel both ways. The important thing is that it must be adopted by the Chief Executive Officer and be communicated right through

the company.

Another thing that has come to mind—a lot of what I say will involve shopping centres and not strip shops; it is very hard to develop a group relationship in a strip shopping centre where it is a single tenant, single owner—is multiple shops in shopping centres. We have noticed that the major shopping centres now are looking and thinking of a concept of community within that shopping centre. They are doing this by having one or many theatres, amusements and activities such as Intencity—a computerised, electronic game centre of a more sophisticated kind than the ones you see down the bottom end of George Street where you get involved in very interactive, mature, sophisticated games.

Because this sense of community is developing, we are now looking to see how we can integrate that into the whole relationship in the centre and make sure that retailers are brought into that sense of community. If we are to look at that from a school concept, schools are now looking at a sense of community by bringing in the parents and citizens in a much stronger way, but you cannot have that without having the school teachers as a very integral part of that. The equivalent is that, if you are going to bring the community into a shopping centre, I do not see how you cannot have the shops and the retailers as an integral part of that. You cannot shut them out and have the community excluding them. This is going to have to involve a lot stronger relationship development between retailers and shopping centre owners.

It is fundamental to the concept in the industry of construction, where you are getting this move towards partnering. Partnering is a concept that would be very hard to bring into retailing because you are getting people starting their retail business at different times, whereas in a construction job everyone is starting at the same time so you are able to get them involved from the beginning in common purposes. I think it is a lot harder where you are getting tenants starting different months, different years, to have that same concept of partnering. But this sense of community will bring it into the retail shopping centre area along similar lines without being able to have the huge benefits of that common start.

Another issue that we are looking at is the fight of legislation or a code—whether legislation is needed or whether code is the appropriate way to go. Unfortunately, in New South Wales the retail leasing voluntary code of conduct did not work. If that is the case, you are getting the problem, 'Do we need legislation?' You are getting the owners of shopping centres saying, 'We're really dealing well with out tenants. We don't have a problem and we don't need any legislative intervention.' On the other side you are hearing constantly, from my point of view, anecdotal evidence that there are big problems in many shopping centres and we need legislation to come in and protect the tenants.

It seems to me that if that is the case, if what is being said by the shopping centre managers and owners is correct, then legislation is not going to cause them any heartache. But, on the other side, legislation is going to at least give the retailers some comfort that their concerns are being addressed and the protection is there. The only people who would be caught adversely in such a step, we would see, would be the landlords who are not performing in a good relationship way with their tenants.

As regards legislative intervention, I would not see that there is a major problem with any strengthening of the Trade Practices Act in the Commonwealth jurisdiction. I would not see any conflicting problem with the Retail Leases Act in the New South Wales jurisdiction. Any strengthening that may occur

under the Trade Practices Act I think would sit side by side with the current legislation of New South Wales under the Retail Leasing Act.

CHAIR—Thank you very much. You have given us a breakdown of the Retail Tenancy Disputes Unit receiving a number of different inquiries that relate to a whole range of things—leases, exercising of options—but you have not been able to provide us with what percentage of those total inquiries end up in the courts.

Mr Carlsund—It is very hard to know because, even though under our act there is a requirement in the New South Wales jurisdiction or courts to have a certificate that mediation has failed, the act virtually mandates mediation and a certificate that mediation has failed has to be issued by the Registrar of Retail Tenancy Disputes. However, a lot of matters we do know are going straight into the federal sphere, into the Federal Court. Our act does not catch the Federal Court with the requirement to have that certificate that mediation has failed. So there is a drift into the Federal Court under the Trade Practices Act, particularly the misrepresentation provisions, without the fact that there is a dispute coming to our notice.

As at the end of December, we had had 157 applications for formal mediation. They arose out of informal mediation of 213 that had been successful. So, if you take the 213 and add the 157, that is the range of disputes we had had up to that time. You would be looking at pretty much 370 disputes, 213 being resolved by this informal process and 157 which went into formal mediation.

The success rate, or the rate of success in resolving those, at that month was 79 per cent. The numbers from month to month vary between 75 and 80 per cent. Our success rate in resolving disputes that do go into formal mediation is somewhere around 75 to 80 per cent.

CHAIR—In the part that the Commercial Tribunal plays in following up on these issues that have been represented to the department, does the tribunal in its decision making process have force of law and how is that actually constructed? If they make a decision, how do they enforce the decision? If you have a landlord perhaps who is resisting that, are they able to use any force of New South Wales law to implement their decision?

Mr Carlsund—Yes, they are. It is recorded as a decision of the District Court of New South Wales and has the same enforcement mechanisms as are available in the District Court. The jurisdiction of the Commercial Tribunal is up to $250,000, which is identical on money terms with the District Court.

CHAIR—What happens if there is an appeal of that decision? Where does that go to then?

Mr Carlsund—Such an appeal would go to the Supreme Court, but there are very limited rights of appeal from the Commercial Tribunal. You are looking at natural justice or that sort of thing.

CHAIR—What are the restrictions on appeal? Perhaps you could provide us with that information.

Mr Carlsund—Yes. There are two grounds: first, the tribunal has or has no jurisdiction or has exceeded its jurisdiction and, secondly, a denial of natural justice. The tribunal is seen by the government as

a point of final solution, subject to those two issues.

CHAIR—But they can appeal to the Supreme Court. That would have to be heard, even though the tribunal has made a decision. So a large land-holder or landlord could in fact use a stalling process by appealing to the Supreme Court?

Mr Carlsund—They could. They would get a cost penalty, which I guess to them in many cases would not be a problem. It certainly has not at this stage become apparent that they are doing this sort of thing.

CHAIR—You have not found that landlords are exercising their financial strength against a small retailer, using that financial strength to take that to a higher court and prolonging the proceedings?

Mr Carlsund—We are certainly not seeing that at this stage. We would have a very good idea. We have a very close relationship with the Commercial Tribunal.

Mr ALLAN MORRIS—Would you know if the person had been told or taken to court?

CHAIR—Can we just have the response first?

Mr ALLAN MORRIS—I was asking a slightly different question.

CHAIR—Order! Can we have the response first?

Mr Carlsund—As I understood the question, it was, 'Would I know that this appeal mechanism was being made?'

Mr ALLAN MORRIS—No, what I was asking was, 'Would you know whether the financial might was being used?'

Mr Carlsund—I guess it would not be all that clear. They might have valid grounds for that, but you would probably pick it up if it became something of a repetition. In a one-off case there might be a genuine concern that jurisdiction had been exceeded.

Mr RICHARD EVANS—I guess this inquiry really is all about trying to seek some solutions for people who are perceived to be hard pressed. A lot of the evidence that we seem to have is that a lot of inexperienced business people are coming into business expecting a considerable return, finding that there is no return and then suddenly finding that they are out of the lease as well, so they have got no security. You cannot make it mandatory, but what would you suggest as an education process to help people? You are talking about the end result. What is there at the start that we could be doing to help people going into business to be more aware of the loopholes, so to speak?

Mr Carlsund—One thing that could be done, if mandatory things were wanting to be put in place, would be to have some sort of compulsory training on business principles and understanding the dynamics of

being in business. Another thing that could possibly be done is to somehow strengthen chambers of commerce. In Europe a chamber of commerce has a very active role in the conduct of business whereas in Australia they seem to be more a representative lobby group rather than a resource to business.

Mr BEDDALL—One of the great problems is we weren't conquered by Napoleon Bonaparte. In every country that he conquered he made it compulsory for there to be membership of a chamber of commerce. It still exists today.

Mr Carlsund—Yes.

Mr RICHARD EVANS—There is one follow-up question that I want to ask and that is on people who give advice such as accountants or solicitors who may or may not be experienced in business affairs. There probably is a duty of care, but should there be more accountability of these people in their original advice?

Mr Carlsund—I would find it hard to answer that there should be more accountability, but I would say that there could well be grounds for a wider education for advisers. If you take the retail industry, there are a lot of industry specific matters such as in a lease—you get various provisions of lease that may not be applicable to the leases in the commercial sector generally. If the operation of retail was better understood by the people advising on retail, then some of these problems might be weeded out early. I think there certainly would be an argument for that.

Mr RICHARD EVANS—So the education should not just necessarily go to the small business operator or the new one but we should be directing it at advisers as well?

Mr Carlsund—Yes. I think they need a wider understanding. I think a lawyer really today has to step a bit further apart than just operating on the law. They need to understand the environment in which that law is operating so they can advise on that environment.

Mr ZAMMIT—In my former life I had cause to visit as a state member, because I was interested, the Residential Tenancies Tribunal. I went there on a couple of occasions and I must say I was impressed with the way it was handled—very quick and decisive and a decision was arrived at within half an hour. I note in the dispute resolution process in New South Wales under the Registrar for Retail Tenancy Disputes the mediator has no jurisdiction to give directions. Why is it that you have a mediator who can decide on the spot who is right and who is wrong and what the penalty is for the residential tenancies but it does not—as far as I can tell anyway—apply in regard to the retail tenancies?

Mr Carlsund—I think because what we have got with the mediation process is something intervening between the source of the problem and an arbitration type hearing, which is what the tribunal you mentioned provides. The Commercial Tribunal will provide that solution, but because the relationship is seen as so important and the financial commitment, particularly by the tenant, is seen as so great the mediation process will allow that relationship to be enhanced in resolving a dispute.

Mr ZAMMIT—Are you talking now of the retail tenancies or the—

Mr Carlsund—I am talking about retail. In retail, this is seen as a massive investment by a retailer and a relationship that is going to continue for a five-year term and maybe longer. Mediation will work on that relationship as well as the dispute and will help those people work together more effectively in the future.

Mr ZAMMIT—So, if the mediator sits down and says, 'Look, this is the situation, I think this is the way it should go,' and one of the other parties says, 'No, it's not to go like that,' you then go to the Commercial Tribunal?

Mr Carlsund—Yes, that is right.

Mr ZAMMIT—Is that an expensive thing to do and can the Commercial Tribunal give directions?

Mr Carlsund—Directions as to—

Mr ZAMMIT—Directions as to who is at fault and what can be done.

Mr Carlsund—It will make a finding the same as the—

Mr ZAMMIT—Is that binding?

Mr Carlsund—It is binding, yes, and it is enforceable through the enforcement procedures of the District Court.

Mr BOB BALDWIN—I think it needs to be clarified that mediators do not make decisions or give directions. It is actually something that is arrived at between the parties and they are only a facilitator; it is not a directional meeting.

Mr ZAMMIT—I understand that. I will give you a hypothetical case of someone who has, say, a smallgoods shop and there is a Franklin's store nearby. Franklins goes a step further and expands into smallgoods as well. That person in that shop finds their business drops by 50 per cent or more. They cannot afford to pay the rent. What is the situation there in your view? What steps are available to that person to take?

Mr Carlsund—Unfortunately, under the Retail Leases Act, there is nothing because I guess that would be seen, in its purest form, as the result of competition. The argument could certainly be run that it is unfair competition. Certainly the big companies would run the argument that it is quite reasonable competition. I guess in that sort of case you are getting a small operator caught in the middle, quite often in a war between major corporations such as Woolworths and Flemings or Coles and Franklins. You are getting that fight for market share and growth, resulting in a small operator getting caught up.

Under the legislation, as it is now, there is really no solution. One could well say, 'Is it appropriate that the centre that is getting the benefit of this major development in its business to have some obligation to release the tenant from his lease?' The only result available to the small businessman as a result of

competition he cannot match is, I guess, to go broke. That is really what he is facing. He is going broke in that situation.

Mr ZAMMIT—This is specifically the thing we are looking at which I think is unfair—unconscionable conduct. He has put all he has got in the world into that shop and all of a sudden, through no action of his own, the centre management has agreed to that enterprise including exactly the same thing as that little shop has and destroying that person's life completely. He is utterly shattered.

Mr ALLAN MORRIS—So he comes to you. What happens then?

Mr Carlsund—We would have that matter mediated, and I guess one of the options that would be generated through the intervention of the mediator would be an option of perhaps releasing that tenant from his lease to allow him out of that competition arena. I cannot see anything that is going to allow him, the way the law is now, to meet that competition, match it and survive in it. That operator is in a very unfortunate position.

Mr ALLAN MORRIS—Have you reduced his rent?

Mr Carlsund—Reduction of rent is one of the options.

CHAIR—We have to attend a division. Hopefully, it won't take too long.

Short adjournment

CHAIR—I was just about to ask a question in response to the matters that were presented to the unit for advice. There were three in particular that I wanted to refer to. The areas that were referred to you were: new leases, 22 per cent; exercise of an option, 15½ per cent; and terms of the lease, eight per cent. How many of those referred to what we describe as sitting tenants? There has been a lot of evidence given to this committee about what rights a sitting tenant has. Does he have a right to an option? How can he exercise that option or enter negotiations for a new lease? How can he exercise some strength in that negotiation in comparison to a major owner of a shopping centre? Can you just give us an idea of how that is handled in New South Wales?

Mr Carlsund—Yes. Anecdotally, my unit becomes quite aware of problems of the sitting tenants. We do not have any statistical information—figures—to support that, but we are certainly aware of the problem.

To answer that I will just step back a bit in time. The Retail Leases Act was the result of a lot of collaboration between the then BOMA—Business Owners and Managers Association—and the Retail Traders Association. They worked very hard to adjust their positions and their views to try to accommodate an act that would work for both. I think it is clear, from the state of the industry and what the act contains, that there are still unresolved issues. It is probably time for more collaboration. Once started, this sort of collaboration really needs to snowball, it needs to build up, so that all these issues are addressed in the same way.

There is an issue with sitting tenants that we hear about that there has been a quite significant percentage increase in rentals which, in many cases, are offered to renew a lease. Anecdotally we hear that, where that tenant has refused to accept that offer and has left the centre, a new tenant has come in often at a rental that is less than the last rental paid by the outgoing tenant. This probably needs the same strong collaborative effort for the parties to work out how this dispute can be resolved. Failing that, it may well mean that there has to be government intervention in New South Wales—to look at some of the options that may be available, providing a right to a second five-year term. Some mechanism should be in place to determine the starting rent for that second year term; market rent will always need to be obtained before an offer of a second five-year term. Some mechanism should be in place so that this degree of difference does not obtain. As I say, we do hear about this as being a problem. I just regret that I cannot give you actual percentages of problems we get of this nature.

CHAIR—In your response to us, you mention market rent. In New South Wales, how do you establish that market rent? As a small trader in a shopping centre would I be able to get a valuer to come in and give a valuation which would put me in a position of some strength to negotiate with a large corporation?

Mr Carlsund—Yes. If I could explain. In New South Wales currently we are running on leases that were enforced before 1 August 1994. Those leases and any options taken up under those leases are exempt from the provisions of the act. It is only leases that started on or after 1 August 1994 that are subject to the provisions of the act. There was no retrospectivity under the act.

If their lease is affected by the act there is a mechanism in the act which allows for joint valuations and the appointment of a person as an arbiter where there is no agreement reached between each party getting their valuation.

CHAIR—And you find that works successfully?

Mr Carlsund—We certainly find it works a lot better than the scheme that used to operate under the leases that are exempt from the provisions of the act. One of the reasons is that under the act a valuation must be a speaking valuation. A speaking valuation is where the valuer has to outline how he arrived at the valuation. That can be looked at and quite critically examined. It often produces a result that is more realistic than just a one line valuation, which is allowable under those leases that are exempt from the provisions of the act.

CHAIR—And each of the parties would pay for their own valuation?

Mr Carlsund—They obtain their own at their own cost and mutually pay if they have to get a third one to overwrite it.

Ms GAMBARO—How does the system you have working in New South Wales compare with other states and is it working fairly well at this stage? I do not know if that question has been asked.

Mr Carlsund—I do not think it has. The provisions generally have a thread of similarity across the

states. Queensland and Victoria brought their acts in somewhere around 1986, and New South Wales in 1994. New South Wales seemed to have quite a leap forward in the provisions that they had—quite a jump forward in the protection and the mechanism for fair dealing between the parties. The other states then looked at their acts and have either brought in a lot of our provisions or reviewed them along the lines of many of our provisions.

There is still a big discrepancy in the provision for dispute resolution. Queensland have a dedicated tribunal. They go into informal mediation. They have a formal mediation process, which at this stage has not been very successful as against our very successful one because of the structure of their mediation process, and then they go into the tribunal. In Victoria you get arbitration instead of mediation as the primary or first method of resolving a dispute. So in Victoria the parties have an adversarial manner from the word go. Even though in arbitration there is provision for somewhat less severity in the application of the processes of the law, the way lawyers operate they would tend to treat that very much as if they are conducting a court case. So you are getting that same sort of process that you would get leading up to a court case because of the arbitration.

Ms GAMBARO—You said that there are some problems in the Retail Tenancy Tribunal in Queensland. Can you highlight the areas where the difficulties arise?

Mr Carlsund—The way they structure their mediation. In New South Wales we allow and encourage a four-hour mediation process to allow time to unravel the issues and then start to rebuild a solution. In Queensland they tend to have a two-hour process. We in New South Wales would probably find that too short.

The other thing is that currently the mediators on our panel are paid for by the parties. They are paid $200 an hour. In Queensland they are paid for by the government, and it is a much lesser rate paid for the mediator. So we are able to attract mediators at a very high level of competency in New South Wales. I do not know what level of competence the Queensland mediators are. I am prepared to say that they are highly competent, but the time frame of two hours to get a problem, unravel it, look at all of the issues, look at options and then get parties to collaboratively build a solution would be in most cases insufficient, even though in some cases it can be done in that time.

Ms GAMBARO—So the shorter time frame, you are saying, is not sufficient for parties to present their cases?

Mr Carlsund—I think it makes it very difficult for them to get the process done in that time, yes. They do allow an extension, but I do not think it is a very long extension beyond that.

Ms GAMBARO—What sort of background do the arbitrators have?

Mr Carlsund—I do not know. It is done by a private arbitration organisation. So it is not actually done by a government instrumentality in Victoria. I just do not know who they use. I know very little about that process.

Mr ALLAN MORRIS—Mr Carlsund, we have been told by Westfield that there are industry standards or industry standards of rent to turnover which the industry uses for various sectors within, say, a shopping centre. Do you have access to those?

Mr Carlsund—No.

Mr ALLAN MORRIS—We have also been told by shopping centres that a valuer or independent accountant or business adviser who may be advising a prospective tenant or an interested tenant has access only to the information regarding that tenancy and has no access to information regarding their future plans or other rents within the centre or anything else to do with the centre. Is that the case, to your knowledge?

Mr Carlsund—I think it could be the case because, in shopping centres of the size Westfield or Lend Lease run, where they make any upgradings their plans would be made quite a reasonable time ahead. They are not going to decide today to upgrade at the end of this year, for example. Their whole planning process would give them a longer lead time. I mentioned earlier that one of the important things in a dispute adverse company is to have free flow of information, and that sort of information should probably be made available even if those plans are not firm.

Mr ALLAN MORRIS—Perhaps you should follow our transcripts.

Mr Carlsund—I think that will certainly allow more arm's length transactions.

Mr ALLAN MORRIS—The point I am trying to make is that shopping centre owners have said that, because of privacy and commercial-in-confidence, they do not currently allow valuers access. How valuable are the valuations based on such a narrow slice of information?

Mr Carlsund—If they are under the act, there are prescriptions on what the valuer must take into account. So there has been an attempt in New South Wales to try to assist with an appropriate valuation. For those leases that are outside the scope of the act—

Mr ALLAN MORRIS—You may respond to that after some thought. We had New South Wales witnesses—New South Wales companies—saying that they do not give information about the centre, only the actual tenancy that is being inquired into.

Mr Carlsund—Yes, I understand that.

Mr ALLAN MORRIS—I would rather you thought a bit more about such valuations. Perhaps you have some examples of valuations that have been done and you could give us some idea of how the valuer works out what is happening in the centre—traffic through the centre, flows, shifts in movement over time; the kinds of things that you would take into account in, say, a strip shopping centre which I understand management have access to. I would have thought that if they cannot be included the valuation probably is not as valuable, but it may be. You might give us some examples—some samples—of valuations that have been provided in the past.

Mr Carlsund—Where a dispute comes to our unit, because the mediation process is confidential I do not find out what goes on within the mediation room. All I would ever see is an agreement that might arise from a valuation dispute.

Mr ALLAN MORRIS—That brings me to my next question which was raised in Victoria about the arbitration process and the mediation process. Because they are confidential they cannot be used by anybody else, unlike a court case which is visible and therefore can influence others. People have put forward that as being a real weakness in that process—the lack of visibility of the outcome and why.

Mr Carlsund—I guess there is always the potential that in some cases it will be, but I think there is a far greater benefit of that confidentiality provision. It allows more open discussion of issues and information because that information cannot be brought out later and be used in an arbitral or a court hearing. To allow the parties to work on resolving a dispute has very great advantage, but to allow skulduggery, if that were to occur, would be a disadvantage. Where the skulduggery is occurring, I think the mediation would fail very quickly and a hearing would be sought.

CHAIR—We have run out of time I am afraid. The bells are going to ring in a moment and regrettably—

Mr ALLAN MORRIS—No, Mr Chairman, I have to ask these two questions. I am sorry.

CHAIR—No. I am sorry.

Mr ALLAN MORRIS—Mr Carlsund can answer them later. Please. I have been on committees before. These must be on the record.

CHAIR—Order! You can take that up with Mr Carlsund afterward.

Mr ALLAN MORRIS—No. I am sorry. They are from the records, so you can respond—

CHAIR—I am afraid we have run out of time. We have to terminate some other business before we go to the House. I am sorry.

Mr ALLAN MORRIS—Mr Carlsund can respond later. Just give me one minute to place it on the record.

CHAIR—I am sorry.

Mr ALLAN MORRIS—Franchisees, franchisors, negotiators and class actions.

CHAIR—Mr Morris!

Mr ALLAN MORRIS—I would appreciate your responses to those things and how they relate to

your laws—perhaps in writing or a note later.

CHAIR—Can I ask you to take that on notice and respond to the committee accordingly. Thank you very much for your attendance at the hearing. Could you respond to the committee on the matters that have been raised. Feel free to provide us with additional information. I thank you for making the trip down from Sydney today. I apologise for the interruptions that we had. It is one of the facts of parliament. Thank you for your attendance.

Resolved (on motion by Mrs Johnston):

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.

CHAIR—I would like to thank Hansard particularly for their attendance today and for their assistance. Thank you members of the committee. I declare the hearing closed.

Committee adjourned at 1.24 p.m.