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MELBOURNE

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[10.59 a.m.]

MAYNE, Mr Stephen David, Publisher, Crikey.Com.Au

ACTING CHAIR—Welcome. The committee prefers that all evidence be given in public but should you at any stage wish to give any part of your evidence in private you may ask to do so and the committee will consider your request. The committee has before it a written submission from Mr Mayne, submission No. 63. Are there any alterations or additions you would like to make to your submission?

Mr Mayne—I was hoping to table an updated submission this morning.

ACTING CHAIR—We have that new submission; thank you. Does the committee wish to accept that submission for the record?

Senator CONROY—So moved.

Senator MURRAY—Seconded.

ACTING CHAIR—The motion is carried. I now invite you to make a five- to 10-minute opening statement.

Mr Mayne—My updated submission covers quite a wide-ranging territory and I will just focus on a specific area. I have run for 18 boards over the last four or five years, so I have the perspective of an outsider trying to break into the directors club in Australia. I would advise the committee of some of the issues and some of the roadblocks that get placed in front of someone who tries to get elected or present themselves to a board in trying to effect change by improving accountability and transparency in listed corporations which might be going through difficult times.

My key goal is to try and help create a culture of shareholder pressure in Australia, but I find that a number of problems arise with that. The first is extreme concentration in the financial services sector where, compared with most other economies, we have unprecedented concentration with our big banks now also dominating our funds management industry. As someone soliciting votes from fund managers, I constantly come up against their conflicts of interest: you might run for a board and find yourself running against the Chairman of the Commonwealth Bank, who might have long relationships with the board you are running for and is chairman of the fund manager that controls 15 per cent of the stock. It is often quite difficult to break down those conflicts and to approach fund managers who are genuinely independent.

Similarly, the only reason I run for boards is that the directors effectively have a monopoly over the resolutions that get placed before shareholders at annual general meetings. That is because of the practical difficulty a small shareholder faces in getting 100 signatures to sponsor a resolution to be put up at an annual meeting; the odd union group and the odd green group have been able to do it, but for genuine small independent shareholders logistically it is very difficult. So I would love to see some sort of change to the 100-shareholder rule which would make it

easier for shareholders to put up resolutions. I cite the situation in the US; there you only have to own $US2,000 worth of shares to be able to place a resolution on the notice paper. Last year at the Exxon Mobil AGM in Dallas there were 12 shareholder resolutions. If you exclude Boral, we have not had 12 shareholder resolutions in Australia since the Vietnam War.

Senator MURRAY—But that is at an AGM, isn't it?

Mr Mayne—That is at an AGM, yes.

Senator MURRAY—Not an EGM.

Mr Mayne—Yes, that is right. I am more than happy for it to be made more difficult to call an EGM because of the cost involved. But a counterbalancing reform would be to adopt the US system, where shareholders can easily put up resolutions on a notice paper. If you are having an annual meeting anyway, there is no additional cost for the company. The only reason I run for boards is that it is easy; you only need one signature from a shareholder and you are on the notice paper. I run on a platform that I would prefer to put as a resolution at the meeting, but logistically I cannot manage that. So I run as a director not wanting to get elected but just to draw the board's and the shareholders' attention to a particular governance issue. For instance, I ran against every company doing 'cash for comment' with John Laws or Alan Jones as a particular governance issue. I would have rather put that on the notice paper as a resolution.

I would like to deal with a couple of other points. The directors club, I have found, is very tight-knit, and in trying to break into it you come across directors who are overcommitted and who have relationships with each other. I notice that the ASX corporate governance guidelines suggest that individuals only chair one top 100 company each. There are currently seven chairmen who are chairing two, and that is a fairly good example of how tight the system is. If you look at the boards of the big four banks, those directors are on a majority of the top 50 companies. I would say that the apex of the directors club is the big four banks, who dominate now the majority of the funds management industry. Those same directors cover the majority of the top 50, and that is where I think it is too tight. As someone trying to break in, you really cannot do it.

When you are running for a board there are a number of roadblocks that get placed up against you, and I dealt with that in items 17, 18, 19 and 20 of my submission. Firstly, there is the question of open proxy votes. The system that the boards use is that they send out the documentation with reply paid envelopes, and if you merely sign the form and send it back the default mechanism is that that goes to the chairman as an open proxy. Typically they gather about 10 per cent of all votes as open proxies, so that is 10 per cent in their back pocket, which in the vast majority of the boards I have run for they have used against me, sometimes having not stated that they would be doing that. So that is quite a difficult issue.

I want to draw your attention specifically to the NRMA, which I think it is the most egregious example of open proxies being used. There is another system that the directors use: they say that there is no vacancy available. So, when an outsider nominates for a board, they say, 'Sorry, there is no vacancy.' But often the constitution of the company will say they can have between three and 15 directors and there will only be, say, nine or 10. So rather than saying, 'Yes, our constitution allows for another director to come on board,' they say, 'No, there is another

provision in our constitution that says we can say the maximum is whatever it is today.' Then they say to shareholders, 'I'm sorry but there is no vacancy for this candidate so please only tick the box for three out of the four candidates because there is no vacancy.' That is an abuse of the board's powers. That is a decision for the shareholders. It should be included in the Corporations Law that it is the shareholders who decide the size of a board, not the board, provided it is within the bounds of the constitution of the company with the maximum and the minimum set out. When I ran for the NRMA board in 2000 they did the usual: 'I'm sorry, there's no vacancy, sir.' This is what they wrote to the shareholders:

...four candidates are standing for three Board positions. Only three candidates may be elected. In order to be elected a candidate must receive more votes ... in favour ... than against.

That is, from those presenting votes. They went on to state:

If more than four candidates receive such a majority, the three candidates receiving the most votes in favour of their election will be elected as Directors. If you vote in favour of more than three candidates your vote will be invalid.

So they told shareholders, 'Only tick three of the four boxes.' So most shareholders ticked the three incumbents and left my box vacant, as you would because it said, 'Your vote will be invalid if you tick in favour.' But the then Chairman of the NRMA, Nicholas Whitlam, deemed that it was not invalid to have voted against me. He assumed all those people who left my box vacant, as instructed here, as open proxies and voted them all against me. I had 45 per cent of the primary vote, if you like—the proxy vote: I had 60 million in favour and 72 million against. So it was a reasonable performance: 45 per cent of the vote. He then used 163 million open proxies and got my vote down to 17 per cent when he had put out information to the shareholders saying, 'Don't tick the four boxes.'

I think the system needs some sort of Corporations Law guidance as to how elections are conducted on proxies and even on things like proxy information flow. I have never been given a full list of shareholders. I am thinking of running in the federal election as an Independent later this year. As a matter of course, I will get the full voting list. I have never been given that. In 18 board tilts, only two companies, the ASX and AMP, have given me a list of the top 100 beneficial owners. So I would certainly support what Dean Paatsch was saying about the importance of beneficial ownership being released publicly, because someone running for a board should be given that. The last example I would like to give you is News Corporation. I wrote to News Corporation three years ago and said: 'I'm considering running for your board. Can you please provide me with a copy of your constitution so I know the rules.' They refused. A year later I actually ran.

Senator CONROY—You have chased them offshore.

Mr Mayne—I put a nomination form in, and they wrote back after the deadline, saying, 'We're sorry; you haven't qualified in accordance with our constitution.' I needed five shareholders, I think, and they did not tell me the rules. The next year I did run. I put my platform in, and they completely removed the platform. They did not even tell the shareholders how old I was. So another issue to consider is: who controls the information going to the shareholders in a contested election? In the case of News Corp, they completely censored the platform. Other companies—Westfield, Spotless, the NRMA and the Commonwealth Bank—

have all done likewise when I have put a platform up. I would love to see the AEC running contested elections, controlling the information flows that are going out and ensuring that NRMA style rorts do not happen.

With News Corp, I am thinking of running a 'no' campaign later this year on their proposal to move to the US. If I look at the News Corp annual report because I want to find out who the beneficial owners are and I want to contact them, Rupert is there with 29 per cent—626 million shares. Shareholders 2, 3, 4, 5, 6 and 7 are all nominee companies, and they speak for 52 per cent of the stock. The list of the top 20 is mandated by the Corporations Law, but it is completely irrelevant, it is completely inaccurate and it is of no public use whatsoever.

Senator MURRAY—It is worthless.

Mr Mayne—It is completely worthless. So why not change the Corporations Law and say, 'Don't disclose it,' or make the disclosure meaningful? In the case of News Corp, I will not be provided with the full list of shareholders by News Corp—you can be sure of that—and they will put every possible roadblock in my way. I will probably have to run for the board again just to get the authority and the ability to deal with the company, because they will not deal in a reasonable way with me as a shareholder trying to run a 'no' campaign. I will have to put myself forward as a director and run the whole campaign through being a director, when I do not want to be a director. I would rather put up my own resolutions, for instance, but I will not be able to get the 100 shareholders together and I will not get any cooperation. I probably still will not get it as a board candidate, but I have more chance of cooperation if I run as a director. Those are a few introductory remarks, and I will be happy to take questions.

Senator CONROY—Let me go to your NRMA example and a couple of the others and your concern around the moving goalposts on the number of directors. When they sent out their original piece of paper, which I think you were reading from, they had made a decision that there would only be three elected at that point. They had not made a decision that there should be four to be elected—the three who were existing and somebody else whom they were running. So, when they issued the papers, they had set the goalposts. They did not move them on you mid-electoral process, did they?

Mr Mayne—No.

Senator CONROY—I just wanted to clarify that in my mind.

Mr Mayne—But there is no consultation. You only find out on the day the thing turns up in the mail. It is statistically impossible to get elected, when you combine the three effects of your typical incumbent director getting 99 per cent of the vote, no matter how bad they are; your typical AGM having 10 per cent of the proxies as open proxies, because of the way the reply paid envelopes go out and the default mechanism being that they go to the chairman; and the company saying there is no vacancy. In a typical election, I will get 30 per cent and the incumbents will get 99 per cent. To knock off an incumbent, I have to get, effectively, 109 per cent, because I am guaranteed that the chairman is going to use the 10 per cent that he has in his back pocket against me. I could actually get 100 per cent of the votes of those choosing to vote and still not be elected. In the vast majority of board tilts I have done, that would have been the case: with 100 per cent of those choosing to cast a proxy vote voting in my favour, I still would

not have been elected, because the chairman would have used his 10 per cent. He then would have said: 'I'm sorry, but we said that only the three highest-scoring directors would get elected, and we have 99 per cent, 98 per cent and 99½ per cent here. After the allocation of open proxies, I'm sorry, sir, but you only got 90 per cent of the vote, so you have been rejected.' I think that situation is quite scandalous.

Senator CONROY—Your submission says that, prior to the Boral AGM, Australian companies had collectively received fewer than 12 shareholder resolutions during the past 15 years. Why so few, in your view? In the US, for example, almost 40 per cent of resolutions at AGMs each year are sponsored by labour unions. Why is Australia so shy?

Mr Mayne—I think it is a cultural issue. There is a go-to-the-beach culture among shareholders. We do not have a culture of shareholder pressure. That is the most important thing. Secondly, it is the 100-shareholder rule. It is the logistics. I would have fired off dozens of resolutions if we had the $US2,000 rule. I will never call an EGM, as I regard it as disruptive, but the only people who do it in Australia are those that have access to the numbers, that can marshal the numbers—unions, green groups and the Shareholders Association. They are the three groups that have done it.

Senator CONROY—So you even feel that the 100-shareholder rule for the proposing of a resolution is too stringent?

Mr Mayne—Far too stringent, logistically. Think about it from your own lives: to run for state parliament in Victoria you need six signatures; to run for a federal seat, 50 signatures. I would argue that that is probably too draconian. How can you have a system where it is one signature to run for a board and 100 signatures to get a resolution up? Running for a board is a far more substantial issue. Merely getting a resolution up is a fairly run-of-the-mill thing. Why have this roadblock in front of it, when you are having the AGM anyway?

Senator CONROY—What sorts of resolutions have you wanted to put up that you have been denied?

Mr Mayne—Resolutions on all of the platforms. I would love to put a resolution up condemning any company that is doing cash for comment; that would have been part of it. There would be resolutions to reduce the pay of non-executive directors and resolutions to eliminate retirement schemes for directors. All these governance issues which companies are dragged, kicking and screaming, into doing, I would have been putting resolutions up proposing them; sack the auditor of AMP. The auditor of AMP, Brian Long from Ernst and Young, signed the accounts last year, saying that the company had net assets of $18 billion. They were actually close to $5 billion, although some people argued that they were technically broke at the time. So he missed the mark by about $13 billion or $14 billion. Ernst and Young got paid $42 million by AMP last year to advise on the demerger process, which is, I think, a record fee. I would have been putting a resolution up at this coming AGM to sack Ernst and Young, on the basis that they signed the accounts, saying that they were free of any material misstatement and that the company had net assets of $18 billion. It is a complete joke, yet shareholders cannot put these resolutions up. All you can do is stand up and utter meaningless words which the chairman says they will give due consideration to and thank you for your time—but it has no force. That is why I run for boards. At least when you run for a board you can get a vote and you can get some sort

of a protest message. But it is completely misdirected. People look at me and they do not look of the platform; they just say, 'Troublemaker, publicity seeker; I'm going to vote against him.' I ran for the AMP board—this is another amazing situation—

Senator CONROY—You are being very modest; they call you many things other than that, Mr Mayne!

Mr Mayne—last year and I got 13 per cent of the vote. The directors—the chairman of the audit committee and the chairman of the finance committee—had just blown $10 billion in the UK, a record Australian corporate loss, and they got re-elected with 81 per cent of the vote each. I ran on a platform of sack these duds, get rid of the auditor, where is the accountability, and got 13 per cent of the vote. No-one looks at the platform; they all just say, 'There's a chance he could get elected; we'd better vote against him. We don't want a troublemaker on the board: we'll reduce board functionality.'

Senator MURRAY—Now you know how a Democrat feels!

Senator CONROY—I hope not, for your sake. Mr Mayne, in your view, was Boral's decision to nullify the 100-shareholder rule in relation to proposing resolutions under the company's constitution a step back in time for shareholder activism in Australia?

Mr Mayne—Definitely. Ken Moss of Boral seems to have a problem with shareholder democracy. I sympathise with him from the point of view that his AGM does get hijacked by green groups most years; Christine Milne, the Greens Senate candidate in Tasmania, runs for the board. But that is a legitimate issue. I do not see why Boral are kicking up such a huge stink about it, because they could just vote against the resolutions. They will knock them down—95 per cent, without blinking—every time. Silly old Ken Moss chooses to draw attention to the whole issue and is seen to be attacking democracy, when institutions will just line up and vote in support of the board, and they will knock back the resolutions every time.

Senator MURRAY—Senator Conroy and I are going to try to burn him, so we will see!

Senator CONROY—Ken Moss's promotion to the shareholders' friend on the NAB board—it is good to see that the NAB is still keeping its sense of humour.

Mr Mayne—There is an important issue about dud directors getting promoted, and there are some celebrated examples. You are right about Ken Moss, who was audit committee promoted, and Graham Kraehe, who was chairman of risk committee promoted, but at least through this NAB process we are seeing an elevation of the importance of the audit committee. I will give you a very important precedent where there has not been the focus on audit committees that there should have been. Margaret Jackson is now the Chairman of Qantas. She was chairman of the Pacific Dunlop audit committee for five years, and chairman of the BHP audit committee for three years. Both companies went through calamitous, disastrous periods over that phase, yet she managed to slink off as chairman of both of those audit committees because she had been promoted to Qantas. Rather than 'I am being held accountable; my fellow directors or the shareholders have booted me off,' it was 'I have just been promoted to Chairman of Qantas, therefore I am leaving these boards to free up my time commitments.'

Australia has a terrible culture in this regard. We sack our bad chairmen and CEOs, and they often go together within a six month period. If you look back at Aristocrat, Southcorp, ANZ, BHP and NAB, whenever there is a crisis, we have a good record of sacking the chairmen and the CEOs, but we do not have a good record of dealing with the non-executive directors. The best example I have of this is a fellow called Tony Daniels, who had a trifecta of duds: Pasminco, Pacific Dunlop and Orica. At that time Orica's share price had more than halved. He was re-elected to the AGL and Commonwealth Bank boards subsequent to those disasters, with 98 per of the vote. Where is the culture of accountability if a director who has a trifecta of duds and overseen the destruction of vast amounts of money is putting himself up to be re-elected and getting resounding Saddam Hussein-like victories in his re-election quest? It sends a terrible message about the accountability of directors.

If I had a better ability to put up resolutions, I would be putting up resolutions seeking his removal as a director at every AGM where he was running. That often has a powerful effect. If you threaten to run for a board, you can often have the effect of getting the director removed. I announced that I was running for the Telstra board specifically to focus on Steve Vizard's conflicts of interest, and he resigned from the board two weeks later rather than have a public debate about his conflicts. Public exposure, sunlight into the dark corners of boardrooms, is a very powerful thing, but we need the legislative tools to do that and the roadblocks to be removed—the 100 signatures being the largest roadblock—to increase shareholder resolutions, to weed out bad directors and to remove poor corporate practices.

ACTING CHAIR—Could you clarify the responsibilities of a chairman of an audit committee relative to a director of a public company? You are drawing a comparison and saying that those chairmen of audit committees had responsibilities, yet they remained as directors. Could you give us your view of those two responsibilities?

Mr Mayne—Audit committee chairmen, certainly with things such as Sarbanes-Oxley, have been elevated and are clearly now second in line in terms of responsibility, given the heightened powers given to audit committee chairs. The audit committee specifically takes on a lot of the financial responsibilities, so in the case of—

ACTING CHAIR—Surely the audit committee chairman reports to the board and the board make the final recommendation. It is not an independent—

Mr Mayne—That is correct. They are certainly secondary to the chairman. In the NAB case, Catherine Walter, as chairman of the audit committee, was third in line—the chairman was No. 1, the CEO was No. 2 and she was No. 3. There are some specific issues where the role of audit committee chairman is very important. For example, take apparent breaches of Sarbanes-Oxley. Catherine Walter, as audit committee chair, has to deal with those audit governance issues. That is an example of where she is more important than the chairman.

ACTING CHAIR—But she was reporting to the board, though, surely?

Mr Mayne—Yes, but, for instance, she used her casting vote as the audit committee chair to reappoint KPMG as NAB's auditor.

Senator CONROY—She should go for that, if for nothing else.

Mr Mayne—Yes, she should go for that, because NAB's auditor had completely missed the $4 billion HomeSide disaster. We should hold her particularly responsible, as audit committee chair, for the hiring of Christopher Lewis as NAB's executive general manager of risk management, because as audit committee chair she was dealing with him when he was the audit signing partner who signed the accounts, saying they were free of material misstatements when they had missed the $4 billion HomeSide disaster.

Senator CONROY—Did not KPMG actually do the due diligence on HomeSide?

Mr Mayne—He led the due diligence team recommending the purchase of HomeSide, then became the audit partner who missed the coming $4 billion HomeSide write-down.

Senator CONROY—He was auditing his own work, essentially.

Mr Mayne—Yes, exactly. He then became the guy covering up the audit failures at NAB, effectively, as the head of risk management. It was the worst example in recent Australian corporate history—I would say even worse than HIH—to have those three roles. The consultant recommending acquisitions becomes the auditor missing a $4 billion loss and then becomes the in-house executive in charge of risk—the very area the auditor missed. That all comes back to the audit committee chair. That is a really good example of why the audit committee chair is second in line of the non-executive directors when it comes to accountability on boards.

Senator CONROY—Just on that, I have been surprised by some of the media commentary on the PWC report. The media commentary claims it cleared the audit committee. I have a slightly different view; I think it actually demonstrated the complete incompetence of the audit committee because it clearly pointed to the fact that they were being snowed by management and knew so little about their role that they did not ask any questions. They actually did not know the questions to ask. It was not that they were not given the information but that they knew so little about their role that they did not ask the questions when the information was being presented to them. I think it is described as 'bland' information. Why were they not asking the questions?

Mr Mayne—I think that is probably a fair point. Again, it is that issue of whether PWC, as a wannabe auditor of the NAB, is going to tear strips off the audit committee that they are hoping will subsequently hire them. That is a good example of big four conflicts of interest. When you are dealing with a financial conglomerate like the NAB there are conflicts everywhere. So I agree that there was massive audit committee failure at NAB and they probably got off lightly from the PWC report. But I still felt the PWC report was good in the information that it provided as to who said what to whom, the APRA letters and how the losses were accumulated. It was a far better result to have that in the public domain than what happened with HomeSide, where we did not really get the independent report released.

Senator CONROY—Your submission refers to the overlapping requirements between getting elected to the board and proposing resolution for election—the 100 signatures. I think you say it takes one signature to nominate.

Senator MURRAY—But the elections are rigged, so it does not matter.

Senator CONROY—It needs 100 signatures for a resolution, unless you are a Shell or a Boral. You argue in your submission that you support a five per cent rule for the calling of an EGM. Could I put it to you that you are in danger of being a chardonnay activist by being so willing to jump on the corporate bandwagon that virtually says, 'We've got to just make sure nobody can call an EGM at any stage'?

Mr Mayne—No. I think that five per cent is not that difficult. If a major shareholder has a concern—

Senator CONROY—If you are a Telstra shareholder, what chance have you got of ramming up five per cent?

Mr Mayne—You have got no chance. Two or three institutions could get together on Telstra with no problems. You have to have it so that a genuine minority shareholder can call a meeting and a director can call a meeting.

Senator CONROY—What is your definition of a genuine minority shareholder?

Mr Mayne—I think five per cent covers it. That is pretty small. Five per cent is just one or two institutions. I guess the problem is that institutions never do it. That comes back to that concentrated financial sector issue. You have an AGM every year. That is a very good opportunity. It comes around pretty often. You can do everything you need to do at an AGM. You do not need to call a special meeting. I think that it does become a bit—

Senator CONROY—So why is NAB calling a special meeting?

Mr Mayne—Because the board functionality has broken down and you have to deal with that sort of issue quite quickly. I think it is obviously a shame that it has happened. They are seeing all of that negative publicity and additional cost that flows from it. But, when you have a recalcitrant director and board functionality and trust breaks down, I think you have to deal with it.

Senator CONROY—I think you are aware that all parties have argued for an increase in the number that can call an EGM—the 100-shareholder vote is too low. I think Senator Murray and I continue to solicit the government shamelessly to try to get them to compromise on their five per cent proposal. But certainly this committee has always expressed a view that it is keen to raise that limit because it is artificially low and it happened by accident. Your submission notes that the US is moving to full public disclosure of institutional voting from 1 January next year. You recommend that Australia also requires such disclosure because, you say:

... invisible institutions keep returning dud directors with 99% yes votes and we need to know who is doing this for better institutional accountability.

In your view, should the CLERP 9 bill require the disclosure of the voting record of all institutional investors, including trustees of super funds?

Mr Mayne—Yes, in a public web site similar to the mutual fund model in the US.

Senator CONROY—Recently Max Walsh made a comment in the *Bulletin* in relation to proxy voting. He said:

Of course, the instos are not going to exercise their voting power—especially against incumbent boards—unless they are obliged to do so.

First, there is the Mary Magdalene factor. Could you imagine AMP or NAB being among the first stone-throwers against an incumbent board on a governance issue?

He goes on to say:

The only solution is to make it compulsory for instos to exercise their voting rights and to make known their record to their clients. Even then, do not expect too much courage.

Do you agree with Max that legislation is required to force instos to vote?

Mr Mayne—I think if we have it in politics I cannot see why we would not have it in corporate elections. You are still getting some very poor low votes, like only 30 per cent, at the last AMP AGM.

Senator CONROY—AMP was a record low.

Mr Mayne—That was a very fluid share register with placements and large turnovers, so there is a big paper trail and some people just could not get their acts together to vote. The only thing that I have seen which would argue against it is JP Morgan's new technology platform, which is allowing the clients who they are the nominee for to dramatically increase their voting levels. At last year's AGM season, they were typically up around the 70 per cent mark—their clients were voting on 70 per cent of their shares. That had almost doubled from the previous year, totally thanks to this technology platform. You have this shocking paper trail where you have 1,200 AGMs happening in six weeks—you have resolutions flying everywhere, you have to be faxing authorities and it is a logistical nightmare. That is probably the biggest factor. If you were going to mandate compulsory voting, it would be quite a burden on the institutions to actually do it. But technology could be the saviour. If you have those platforms then I think it would be—

Senator CONROY—Japan has all its AGMs on the same day—

Mr Mayne—Yes, to stop the yakuza.

Senator CONROY—because of the yakuza. Are you Australia's equivalent of the yakuza?

Mr Mayne—I am very polite.

Senator CONROY—Your submission says that the company should disclose the votes for and against resolutions as well as the total amount of shares that voted. Should the requirement for companies to disclose these aggregate figures be in addition to the requirement for individual institutions and trustees to disclose?

Mr Mayne—Where I am hoping for that to be disclosed is when the ASX announcement goes out saying 'for', 'against', 'open' and 'abstain'—it should list shares and then shareholders. I have had a former BHP director confide in me that there was easily a majority of BHP shareholders who voted against the Billiton merger. But we do not know. It is about faceless institutions and the classic conflict of interest—we have John Ralph, chairman of the Commonwealth Bank; the Commonwealth Bank, the largest Australian shareholder in BHP; BHP putting full page ads in the *Financial Review* from the directors saying, 'We recommend this deal and we urge shareholders to vote for this deal'; and John Ralph on the board of BHP. Colonial are not going to embarrass its own chairman and vote against the BHP-Billiton merger. We do not know how they voted, but I have been told. Obviously they voted in favour, but there is no public disclosure of it. We have had no disclosure of the fact that an easy majority of shareholders voted against that deal. It would just give the small shareholders more authority if you could say, in the press report or the stock exchange announcements, 'The controversial options resolution was passed with 60 per cent of shares in favour, but 80 per cent of shareholders opposed it.' That would give a lot of moral authority and power.

I would not necessarily advocate that it has to be passed by a majority; I am simply saying it should be disclosed because we shareholders all feel completely powerless when we turn up at AGMs and vote. We all just say, 'Faceless institutions, it will pass at 99 per cent of the vote; what is the point?' If it were disclosed, we would at least feel there was a point.

Senator CONROY—I think you were in the room when we were having a discussion with Mr Paatsch about beneficial ownership. The Offset Alpine case has put the issue of beneficial ownership of shares into the spotlight. In your view, should listed companies be required to keep a publicly accessible register of beneficial owners?

Mr Mayne—Undoubtedly, yes. I think there is a clear benefit to that; these top 20s are completely meaningless. They are public companies and you should not be able to hide the fact that you are a shareholder in a public company. If you do not want to be publicly known, do not buy shares. It is called 'being public'! So I would strongly support—especially as they are mainly paying for the information themselves—the idea that, if the companies have that information, it should be in the possession of the shareholders, who actually own the company.

Senator CONROY—Given your activism, given that the CLERP 9 bill is a response to the corporate governance debate world wide as well as here in Australia, and given your support and encouragement of shareholder activism, are you disappointed that the bill only goes so far? How would you rate it?

Mr Mayne—I think it is an important step forward, but it is quite clear that we have lagged behind the US and to a lesser extent the UK in our legislative response to corporate governance failures. I think that the audit reforms are welcome—things like a four-year cooling-off period are appropriate; I do not think you should ban an auditor for life—but not the reforms in other areas, like the fines for poor disclosure. I thought they were too small and we could have beefed them up dramatically. Obviously, the non-binding vote on executive pay is a good step. That is working well in the UK: Brambles, BHP and Rio Tinto have had no problems due to having greater disclosure of their remuneration. So I would say that it is an important step forward, but there are a lot of issues which I would love to see incorporated into it, particularly those I have addressed today on board voting and the way those elections are conducted. I think they are very

important things that could really drive governance and accountability, and there are some real cowboy acts in the governance of major companies.

Senator CONROY—I would now like to discuss executive remuneration. The previous Parliamentary Secretary to the Treasurer, Mr Ian Campbell, said that the government would require up-front and real-time disclosure of executive contracts. The CLERP 9 bill fails to implement this requirement; however, the ASX listing rules were changed in May last year to require disclosure of material parts of a CEO's contract. In your view, should the requirement to disclose executive contracts in real time and up front extend beyond the CEO to other directors and senior managers?

Mr Mayne—I think that it should definitely apply to directors—for example, if a finance director is on the board and signs a new contract. I do not necessarily think it should extend below that to the chief operating officer or divisional heads, but I do think that the day that a CEO signs a new contract the contract should be released in full. In the US, you can inspect Jack Welsh's one-page contract at GE; you can see it—and you can see it with other companies. You can see the 27 pages spelling out the model of the Merc and the private school fees; it is all on the public record in the US. I think full disclosure of the CEO's contract would be an important thing.

There are a couple of other important things on director pay. When a director leaves a board, there should be disclosure of the payments made on the day. You get a lot of directors leaving on 1 July and you do not get to see it. It is a bit like political donations that come in on 1 July, which you do not get to see until 20 months later, in February. In the case of directors, they can delay it: if there is a 1 July disclosure you do not see it until September the following year—15 months later. I would say: disclose the payments, particularly the director retirement payouts, which are often quite controversial.

The other thing which is disappointing about director pay and things is that there is no requirement that derivative plays by directors and CEOs on their shareholdings are disclosed—and that has been rife. It has been absolutely rife in Australia. You get voluntary disclosure—someone like Roger Corbett or David Clarke at Macquarie Bank have told the Stock Exchange that they have done a put option, a cap-and-collar deal on the options play—but there is nothing in the law. Your typical big bank CEO in Australia has options of over $100 million worth of shares. This is a massive commercial exposure—that is the size of a small listed company that these guys have riding on their options. Of course you have got a massive incentive to manage the exposures there with put and calls and derivatives and this sort of staff—but you do not have to tell the market. I think it is a no-brainer, that one.

Senator CONROY—The existing Corporations Act states that the shareholder approval for retirement benefits is only required where the payment exceeds the amount prescribed by the formula. But, in spite of these provisions, retirement payments can still be made without shareholder approval. This amounts to—I think the formula works out to—3.5 times their average annual income if they have been with the company for 3.5 years; five times their average income if they have been with the company for five years; and seven times for seven years. In your view, should these termination payments be approved by shareholders?

Mr Mayne—Undoubtedly so. I think the situation with John Ducker at Aristocrat is quite outrageous. Why have a resolution if it can be contracted away? That is what has happened at Aristocrat. The shareholders passed a particular retirement scheme for the directors and then a new director joined the board with a contract—a service agreement—that specifically bypassed the shareholder approval which had been given. If you are going to have shareholder approval for something, make it binding; do not let the directors contract their way around it. Why do we have it so that there are two different types of non-executive director pay—cash up-front and retirement benefits—and different resolutions? It should be the one resolution, which is: director pay—maximum for the year $1.5 million spread amongst the directors—and retirement formula—this. It is all the one resolution so you can deal with it. Because often you do not know—it is like a defined benefit super scheme—how the liabilities are spiralling out. When a board member gets an increase in their annual fee from $100,000 to $150,000, if they are getting a five times multiple of their final fee—which is often the formula—you do not realise that the resolution passed back in 1987 on directors' retirement payments, which has not been mentioned in an annual report for 15 years, means that this director is going to retire with an extra $250,000 lump sum in his packet just because he has been able to ratchet up the final fee.

Senator MURRAY—It is a form of indexing.

Mr Mayne—Yes. But you know: 'If I can just become chairman of this committee in the last year, I will get the extra 50 grand and then I will get the extra $250,000 lump at the end of it.'

Senator CONROY—The regulations which apply to the remuneration have not yet been released, so we do not know exactly what needs to be disclosed in the directors reports. Could you advise the committee whether, in your view, the remuneration section of the directors report should require disclosure of the following—and this is in addition to the disclosure of executives' remuneration: 'golden hellos'—you know, the sign-on bonus which you get paid before you've signed it; equity value protection schemes, which you have already mentioned—that is, the hedging instruments; and the duration of the contract? Should they all be on the list for disclosure?

Mr Mayne—I do not think there is anything that should not be disclosed. Everything you cite should be on that list. Relocation packages often run to hundreds of thousands of dollars, but there is no disclosure of that. A company like David Jones has a provision whereby directors get shopping discounts of up to 35 per cent. That is of value—some of them spend many tens of thousands—and the value of the goods they get is not disclosed in the annual report. So I would say every benefit they get, where it extends into large costs for the company, should be disclosed. Often it is a case of a company meeting costs which are providing a benefit for the company—if you agree to relocate six children and put them all in private schools, the shareholders are often spending hundreds of thousands of dollars providing a benefit to the executives—but it is not disclosed.

Senator CONROY—What about a spouse getting free access to a limo?

Mr Mayne—All of that should be included. There is nothing that should not be in there. A classic example is News Corporation and the two corporate jets. The Murdochs use the jets for their personal use—for example, Lachlan wants to go to the Melbourne Cup and jumps in the company jet, flies down for the day and then flies back for a party that night. That happened last

racing season. There is no mention anywhere in the annual report about the value of the corporate jet for private use by directors of News Corp. There are a lot of ways that benefits can be given to directors without disclosure. Therefore, you should try to have a catch-all provision in the legislation.

Senator CONROY—I have one or two more questions. Should non-recourse loans to directors and senior executives be prohibited?

Mr Mayne—No, not necessarily. A loan from the company for housing or to buy shares can be a regular part of any package. As long as it is disclosed, I have no problem with that.

Senator CONROY—But aren't shares supposed to align the interests of shareholders and management? If they are not using their own money—more importantly, if they are using shareholders' money—how are they aligning their own wealth with shareholders?

Mr Mayne—If they do not perform well, they will not get the upside on the shares.

Senator CONROY—A non-recourse loan means that, if the shares tank, the shareholders still pick up the tab.

Mr Mayne—That is right. But take, for example, someone like Ross Wilson at Tabcorp. When he joined the company, he got a $6.25 million loan for three million shares.

Senator CONROY—And how could a monopoly tank?

Mr Mayne—He walked out with $58 million—thanks very much. He performed very well with a big loan from shareholders.

Senator CONROY—He ran a monopoly.

Mr Mayne—My grandmother could have run that one.

Senator CONROY—That is right.

Mr Mayne—Loans are not inherently bad. Yes, shareholders take a risk if the shares flop, but as long as the loan is disclosed—

Senator CONROY—But isn't the point to align the interests? Is this a mechanism which clouds the alignment?

Mr Mayne—You do not want your CEO going bankrupt because the share price falls. You actually want to protect your CEO from that sort of hardship, I would say. You want your CEO to be well 'incentivated' to drive the share price higher. You do not want them worrying about losing millions of dollars and worrying about whether they can pay the loan back if they are struck by some extraneous factor which destroys the whole industry. You can never be sure with these things.

Senator CONROY—So shareholders can lose all their money, but the CEO should not have to worry about losing theirs?

Mr Mayne—I do not think you should have a contract where a CEO can personally go broke if the company does not perform well. So, if you are worried about that, do not go into a loan agreement; just have options. Options are all about avoiding these large financial exposures through loans and things.

Senator CONROY—I will defer to Senator Murray, because I am sure he has some questions. He has indulged me greatly so far today.

Senator MURRAY—I have been entertained. I sometimes think we should refer to many of the CEOs as corporate bureaucrats—then we might get them into more perspective. In my view, not many of them are entrepreneurs. Mr Mayne, you described your attempts to get onto the boards of companies. I think it was very instructive because what you described was corporate oligarchy, not corporate democracy. I want to see if you recognise this string of concepts: best practice regular elections, compulsory voting, representative bodies, independent institutions and people, appointments on merit, the separation of powers, transparency, accountability and full disclosure. That is the language of politics and democracy.

My view is that it does not apply in public corporations—and it should. I think what you have outlined about directors' elections is illustrative of that difficulty and that weakness. I have suggested throughout this inquiry that if people start to think in terms of corporate democracies then the concepts you have been outlining fall into place, because that is what it is about.

I want to specifically focus on the election of directors. If you search through the *Hansard* of this committee and other committees over nearly eight years, you will find that I have constantly asked ASIC questions and debated the issue of best practice election of directors. In this inquiry I have asked witnesses—particularly academic researchers, but also the professions—whether they have ever bothered to assess the constitutions of companies and to look at the mechanics and the methodology by which elections are conducted. The answer universally is no. Politicians understand the mechanics of elections very well. That is why the Electoral Act is so precise. I would suggest to you that one of the first steps we should take to open up access to our boards is to insist that ASIC produce a constitutional pro forma and a paper example of how elections should be constituted in company constitutions and how they should be conducted. How do you react to a standard, known method across all companies?

Mr Mayne—I think that it would be highly desirable. Various constitutions have different little things in them that protect boards. With Qantas you have to have 100 signatures to run for the board; Optus used to require 50. With AMP you have to own 2,000 shares and get 25 signatures. With AGL you have to own 2,000 shares. So they often have little things in there that are barriers. Overall, I would say that that would be highly desirable, specifically if it knocked out the concept of there being no vacancy, which is the key thing that they use to keep outsiders out. It could be an ASIC pro forma, or part of the listing rules could be included in the Corporations Law, so that if you want to become a listed company in Australia there are guiding principles which you must abide by. It would not worry me where it was, but it does need to be laid out because there is no system at the moment.

I will be very interested to see what Rupert Murdoch proposes for the new News Corp constitution on directors running for positions on boards, because I know that he has hated the fact that it was easy for me to run for their board. I will give you one other example while I think of it. I ran for Woolworths in 2000, and their constitution was not clear about whether you could say there was no vacancy, so they did not say there was no vacancy; they did not even say, 'We don't like this guy. Vote against him.' I got quite a large donkey vote from institutions, particularly foreign institutions, and almost got elected. I actually got 58 per cent of the primary vote and needed only 50 per cent. This put the frighteners through all the companies. They were saying, 'My God, this lunatic almost got on the Woolworths board.' The very next year, Woolworths changed their constitution so they could declare that there was no vacancy. The very next year, when two other people ran for the Woolworths' board, they had very large black marks on the proxy form, saying: 'We don't recommend these two outsiders. We recommend you vote against them.'

So there need to be guidelines not just on company constitutions but on how contested elections are conducted, what material should be sent out to shareholders in someone's platform, who controls that material and whether directors can effectively have information on the ballot paper which reflects poorly on some directors and positively on other directors—that they disclose what they are going to do with their open proxies. I had a dialogue before running for the AMP board where—and they were the first company to do it—they sent me through the draft of the notice of meeting and said, 'Is this to your satisfaction?' I said, 'You haven't said what you're doing with your open proxies.' The chairman, Peter Willcox, actually changed the notice of meeting and put in there that they would be voting all the open proxies against me.

These company chairmen have never been down this path before—it is all new territory—and there does need to be something that spells it all out, including the conduct of the meeting: how long you let the director candidates speak for and whether directors can answer questions directly. At the AMP meeting last year Peter Willcox completely shielded the two directors up for election. So, Richard Grellman, chairman of the audit committee, and Lord Killearn, chairman of the finance committee—$10 billion lost, up for election—did not say boo for six hours. People were firing questions at them. How can you vote on someone if they sit there at the public company meeting, are completely protected by the chairman and refuse to answer questions? You cannot make an informed vote. So all of this should be brought under some sort of regulatory guidance—it does not matter if it is under ASX, ASIC or the law—that spells out how these things should be run fairly.

Senator MURRAY—I have asked ASX to do it. They have not, and I think it is because everyone in the system understands that what they have got here are barriers to entry which help prop up a corporate oligarchy, and they are not prepared to overturn it—and here is our opportunity. I focus on directors deliberately because I think this legislation does not go far enough with respect to directors. There is a second key to the election of directors, apart from the mechanics of the constitutional provisions and the process by which information reaches people, and that is the compulsory vote.

The debate should be about whether the compulsory vote should attach to bodies—entities or institutions—or to subject matter, and I am exploring this with witnesses. The Labor position is that it should attach to institutions, and only super funds should be obliged to vote. I have not yet made up my mind on that matter, but I do think there are classes of vote where compulsory

voting should occur. That could only occur, of course, where shares are being held in escrow or under a duty of care. You cannot make mum and dad do that; you would be unable to do so. I think the election of directors might be a subject matter on which they would be obliged to vote. How do you react to that proposition?

Mr Mayne—I would support compulsory voting; and I think, most importantly, it should be accompanied by disclosure of that voting. I think that the most important area where this should be introduced is in director elections. The reason I say that is that we do not have a problem with executive pay in terms of institutions voting. You are getting 'no' votes regularly on options packages of 30 and 40 per cent. News Corp got rolled last year. So now, institutions in Australia, culturally, are voting down and voting against options packages and director benefits. Southern Cross Broadcasting—

Senator CONROY—I think that is a little bit of an overstatement. Only two resolutions were withdrawn; one was the News Ltd one—

Mr Mayne—And Southern Cross Broadcasting.

Senator CONROY—yes—but 100 per cent of other resolutions were passed; every other resolution has been passed.

Mr Mayne—They have been passed, but what I am talking about here is the size of the 'no' vote. You are getting regular 'no' votes of 30 or 40 per cent. Rupert Murdoch should have seen it coming, because for the previous four years he was averaging 'no' votes around the 35 per cent mark for his executive options. But when it comes to director elections there is no culture of 'no' voting; it is 99 per cent for the worst directors. So, that is the area where there is a severe problem—where 'the club', the oligarchy, is self-supporting, and no matter how poorly a director performs they get re-elected.

After HomeSide, Catherine Walter was up for re-election at NAB. She was chairman of the audit committee. I spoke against her election and she got two million votes against and more than 400 million in favour. If there had been a proposal for the directors to get a pay rise after HomeSide, I fairly confidently predict there would have been a no vote of around 30 to 40 per cent. So institutions are onto the issue of executive pay. It has been done to the death in the media. There is movement. On director elections, there is nothing.

Senator MURRAY—Let me summarise. You are saying that you do support on the subject matter basis the election of directors to be compulsory where shares are held in escrow or there is a fiduciary duty to—

Mr Mayne—There would almost be an argument that it be the only area where it be compulsory, because it is the area where the voting patterns show a terrible problem.

Senator MURRAY—Let me turn to another area that has been discussed—that is, the non-binding vote on remuneration. I want to refer you to my questioning to Mr Paatsch, which I hope you heard. Essentially, I take the view that a non-binding vote is, to use popular parlance, just a crock. It seems to me that directors' remuneration as a whole, which they themselves determine, has to be put to the shareholders and that there should be a binding vote. It would need to be

subject to a kind of threshold, because obviously people have to know that they can put bread on their table. The threshold I have recommended, incidentally, is 20 times what is known as MTAWE, which works out at about a million dollars. That is the total package—cash and non-cash. Why would somebody like you support a non-binding vote, when it is non-binding; it is worthless?

Mr Mayne—But it is a step forward. There is no vote at the moment. Anything which advances the—

Senator MURRAY—But here you have the opportunity for the parliament to tell the government—and they could if Senator Conroy agrees with me on this, which he does not yet—that a binding vote should apply.

Mr Mayne—I have no problems with a binding vote, but I take the view that Corporations Law reform is a bit like pulling teeth and progress is slow and any step forward is to be welcomed. Of course you would like to see more. I do not think there would be a problem in having a binding vote, because we already do have binding votes on anything to do with the issuing of shares to executives. Mr Paatsch made the comment that you cannot have a CEO signing up and not knowing for six months if he is going to get paid. CEOs today are signing up and not knowing whether they have got an options package or not, because it has not been approved by shareholders. So we already have binding votes on issuing of shares and on cash payments to non-executive directors.

I would have no problem with it, but I am simply taking the view that any step forward is positive. In the experience of the UK where you have had remuneration policies rejected, the media which flows from that and the whole public focus on it is a very powerful tool. That is why I suggest that legislating about how the shareholders voted, not just the shares, would also be a powerful public force if it were said, 'A majority of the shareholders rejected this particular remuneration package.'

Senator MURRAY—I will wrap up with this set of questions, because I am conscious of time. I thought Senator Conroy's questions were very good, so that does not bother me. He covered many of the areas I would cover.

I want to talk to you about the independence of directors. I think the independence area has been poorly defined by the Corporate Governance Council, by ASIC, in this legislation and everywhere else. I was interested to hear you laud an audit committee, yet the directors who get on to an audit committee are appointed by the board and the directors who get on to the board are appointed as a result of somebody's patronage—generally speaking, the dominant management or the dominant financial interests. It is their patronage, so the whole system is a web of patronage and all I can see is an audit committee is patronage at arm's length.

I have the view that perhaps the legislation should include a principles based admonition that no-one can be appointed to certain committees—such as remuneration, audit or risk—unless they are independent and that independence should be defined on a principles based view as not being subject to the patronage of dominant financial or dominant management interests in appointment, tenure or remuneration. That would cut the link, I think, with the oligarchic control which is present in all our main boards.

Mr Mayne—I think what you are saying is, in principle, a very important thing: all board committees should be entirely independent. In Australia, we have a system where you have large conflicts. A good example is the way the brokerage firms and the big four accounting firms provide office space to professional directors. Graeme Kraehe and Catherine Walter are both part of the JB Were club. Geoff Tomlinson, one of the NAB directors, had his office and consultancy at PWC. He quickly closed the office and moved out when PWC were tendering for a bit of work. I do agree with you that, in principle, you need that. I think the practicality of it involves finding enough directors with the requisite skills, particularly when you get below, say, the top 100 companies. I think there is an argument about that: that it can be difficult to insist on the presence of an audit committee and insist on the audit committee being entirely independent. It can get a bit bureaucratic.

There is one key point. There is going to be a most important test this year on independent directors—that is, the largest related party transaction we have seen in Australia in recent years, which is the proposal for News Corporation to buy the Murdoch family interests in Queensland Press for what is mooted to be about $2 billion. News Corp have said that all non-executive directors who are independent are on the committee overseeing the sales process, appointing the independent expert. They have only ruled out one independent director—the former chairman of the audit committee—because he is a long-serving investment banking adviser to News Corp; he advised them on a series of deals. But included on that committee are three former executives. The definition is that if you have left a company for five years or thereabouts you are deemed to be independent. I do not buy that for a minute. Ken Cowley is Rupert's longest-serving executive in Australia. How can he be deemed independent and be sitting on a board committee, supposedly at arm's length of Rupert Murdoch, when he has worked for him for 40 years?

Senator MURRAY—That would breach my patronage rule.

Mr Mayne—Completely, and there are two others there. How do you deal with friends? Geoffrey Bible is one of Rupert Murdoch's closest friends, but he is deemed to be an independent director and he will sit on this board.

Senator CONROY—How long have they been on the board?

Mr Mayne—Ken Cowley was the managing director in Australia for 20 years or so. I think Geoffrey Bible has been on the board for six or seven years.

Senator CONROY—I am not trying to catch you up about it.

Senator MURRAY—A principles based rule which said that if you were subject to patronage then you were not independent would automatically rule those people out.

Mr Mayne—I would absolutely welcome it.

Senator MURRAY—ASIC could easily adjudicate that. It is not a difficult concept.

Mr Mayne—There would be a sudden dearth of independent directors in Australia.

Senator MURRAY—It would prevent the parliament having to set down a whole set of lists of what is and what is not independent. There is one assumption you have made that I need to test in this last wrapping-up set of questions. The assumption you seem to have made is that we have to be wary of the amount of talent out there. I can see that with respect to specific corporations where you need a very precise skill set on the board that might be so. But one of the advantages, the great privileges, of being a parliamentarian—and I sit on nine committees and currently have 17 inquiries—is that you get access to a huge array of talent that comes along in circumstances like this. In my view, there is acres of talent out there which could fill our boards. You could wipe out every board director right now and probably replace them with people almost as good. I am very wary of the assumption that opening up the process and removing the barriers to entry would endanger the skills ability; I do not buy that. Perhaps I have misread an assumption that I thought I heard in some of your remarks?

Mr Mayne—I have a view that the corporate directors club in Australia has performed appallingly, if you look at the sheer performance of our companies. The best measurement of that is the fact that there are more than 200 foreign companies in Australia turning over more than $200 million a year—

Senator MURRAY—Billion.

Mr Mayne—yet there are only about 40 Australian companies who are generating more than $200 million a year offshore. In this globalised world our companies have simply failed to cut the mustard. That is an indictment on the people in charge of our corporations, and that goes back to the fact that the duds are not weeded out. I would simply say that I am wary of foisting average people onto boards. I am not convinced that there are hundreds of people out there capable of sitting on a board. I think I would be a poor director if I got onto a board—yet I keep putting myself forward.

Senator CONROY—But you are prepared to foist yourself on 18 of them!

Mr Mayne—Yes.

Senator MURRAY—Parliamentary privilege only allows you to go so far!

Senator CONROY—Defaming yourself is an unusual way to proceed.

Mr Mayne—Australia has been badly let down by the fact that too few people have taken on too many jobs. The system has been skewed towards retired CEOs, and NAB has been punished for the fact that their board appointment system was rewarding the CEOs of big clients. It is an appalling system. Our boards lack IT people and advertising people, and we probably need more retired accountants and lawyers. We have a system that says you can only be on a board if you have run a company, if you have been a CEO. That needs to be broken open. I do not think there are hundreds of people out there who could suddenly join the BHP board, but I look at situations like John Fairfax, where there is no-one on the board with any newspaper experience, and say: how can this be? How can it be that this company cannot find anyone to sit on their board who has newspaper experience? That situation is clearly unforgivable.

Senator CONROY—But they are clearly all independent!

Mr Mayne—That is one of the problems that you get. If you run the line that you cannot ever have been a competitor or have worked for the company, you might get eight genuinely independent directors who do not know anything about the industry. That is where Rio Tinto will come up with the argument: 'We have eight directors on the board who have mining experience. Most of them are former managers, but at least we have a vast array of extractive industries experience. Yes, we fail some of the corporate governance tests; yes, the unions are going to put resolutions up. But we've performed and we have experts.' That is where I would worry about a system that threw off a bunch of former Rio Tinto executives because they were deemed to have had patronage or to have compromised this sort of stuff.

Senator MURRAY—But neither you nor I are suggesting that.

Mr Mayne—No. But, when I look at the News Corp situation, I say that it is in moments of big governance situations where you need the independence. If it is just running News Corp, it runs well with all Rupert's mates and all the gurus in the media industry. But, when it comes to doing a $2 billion related party transaction, that is where you need independence. It is when a company is about to collapse that you need your independence. That is when you need the HIH audit committee to not be full of Arthur Andersen people.

Senator MURRAY—I am testing with you the proposition that a non-executive director is an independent director. A non-executive director is not an independent director if they are subject to patronage.

Mr Mayne—No, not at all.

Senator MURRAY—I do not object to all directors being under patronage. But let it at least be acknowledged and known. I do not object to all the directors being not subject to patronage. But at least let it be known and established. The only way to do that is if the criteria for independence are established through a principles based situation.

Mr Mayne—I completely agree with that. I grapple every day with the question of my own independence in presenting myself as a shareholder activist. For instance, I have just been invited to speak at the Australian Institute of Company Directors conference in Port Douglas. I was sitting there thinking: 'Hang on, they are conferring a benefit on me. They are putting me up at a nice resort. They are offering me the golf day. That is going to be a benefit. I am actually reluctant about that. I don't want to owe them for anything.' So I said, 'Obviously there is no fee and I am not staying for the golf day; I don't want you to be in a situation where you can be seen to have one over me.'

Rupert Murdoch flies his directors to New York business class six times a year. It is a trophy board. You are honoured to be on that board and you are in his debt for the fact that he has invited you onto that board. Graham Kraehe's status in Australia leapt when Rupert invited him onto the board, but Graham Kraehe has not been the pioneer for independence and removing related-party transactions that we had all hoped for in the News Corp board. I have the feeling that he just does not have the stomach to take on Rupert, because he feels honoured to be on that board and he loves the six business class flights to New York each year.

The whole question of patronage is very important. As a journalist, I listed $40,000 worth of freebies that I received from corporates over a 10-year period working in newspapers, because I felt that these people all owed me. Once you go to the footy or to the opera with them—you go on a trip to Europe with Mayne Nickless, go to South Africa with someone else or Lion Nathan flies you to New Zealand—you are in their pocket. As a journalist, as a director or as a politician it applies right across the board. Senator Conroy and I have had debates before about AMP and the Olympics. I have a very strong view that to maintain your independence—

Senator CONROY—Do you think AMP thought it was value for money?

Mr Mayne—I do not think so, no.

ACTING CHAIR—Perhaps we should conclude our discussions. We thank you, Mr Mayne, for your contribution. We have gone considerably over time.

Mr Mayne—Yes, I am sorry about that.

ACTING CHAIR—The conversation has been interesting both for the committee and for the record.

Mr Mayne—I thank the committee.