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SENATE

RURAL AND REGIONAL AFFAIRS AND TRANSPORT
LEGISLATION COMMITTEE

**Reference: Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2)
2004**

WEDNESDAY, 11 AUGUST 2004

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SENATE
RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION
COMMITTEE
Wednesday, 11 August 2004

Members: Senator Heffernan (*Chair*), Senator Buckland (*Deputy Chair*), Senators Cherry, Colbeck, Ferris and O'Brien

Participating members: Senators Abetz, Allison, Bartlett, Mark Bishop, Boswell, Brown, Carr, Chapman, Coonan, Eggleston, Chris Evans, Faulkner, Ferguson, Greig, Harradine, Harris, Hutchins, Knowles, Lees, Lightfoot, Mason, Sandy Macdonald, Mackay, McGauran, McLucas, Murphy, Payne, Robert Ray, Santoro, Stephens, Tchen, Tierney, Watson and Webber

Senators in attendance: Senators Bartlett, Buckland, Colbeck, Heffernan and O'Brien

Terms of reference for the inquiry:

Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2004.

Committee met at 4.42 p.m.

SHIELL, Mr Kevin George, Chief Executive Officer, LiveCorp

TRIVETT, Dr Richard Keal, Vice Chairman Cattle, Australian Livestock Export Corporation

CHAIR—I declare open this public spectacle of the Senate Rural and Regional Affairs and Transport Legislation Committee. The committee is meeting today to consider the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2004 and I welcome everyone here this afternoon. The committee has authorised recording, broadcasting and rebroadcasting of these proceedings in accordance with the rules of the order of the Senate, 23 August 1990, concerning the broadcasting of committee proceedings. I place on record that all committee witnesses are protected by parliamentary privilege with respect to their submissions and evidence. Any act by any person which may disadvantage a witness on account of their evidence is a breach of privilege.

While the committee prefers to hear evidence in public, the committee may agree to take evidence confidentially. However, the committee may still publish or present confidential evidence to the Senate at a later date. The committee will consult the witness concerned before doing this. The Senate can also order publication of confidential evidence. To date, the committee has received three written submissions for which the committee has now authorised publication. Today's hearing is public and open to all. I welcome the witnesses. If you would like to make an opening statement we will then ask questions.

Mr Shiell—I will make an initial statement on behalf of LiveCorp. We welcome the opportunity to appear at this hearing and we certainly wish to cooperate fully with the conduct of the inquiry. We have put in a submission to facilitate your background knowledge and your

consideration of the issues that are involved in this amendment bill, and I hope that you have had the opportunity to look at it. On arrival, we also provided some additional material to the secretariat. One of the documents there is a strategic plan for the research and development program that the organisation currently has in place in cooperation with Meat and Livestock Australia. That outlines the R&D strategy of the joint program between LiveCorp and MLA and identifies the various projects that are either under way or under consideration. As well as that, we have a copy of our annual report for 2003. We thought that might assist in providing a broader perspective on the organisation and its reporting—12 months ago, admittedly. The current report is in the process of being prepared at the moment. There is also a recent media statement referring to the publication by the Western Australian Department of Agriculture of summaries of industry mortalities during shipment, which show a declining trend and for 2003 show a record low level of losses of animals in transit.

We put that material before the committee so that you are aware that there is a fairly intensive strategic direction in place for this industry that has been operating now—or has been developed further—since 1998. It has really begun to show significant results in the last year, with the introduction of a greater degree of risk assessment in the preparation of consignments, particularly for the Middle East, and I think the results are to be supported by all of us. They are a demonstration of what the industry can do in cooperation with government and with the producers.

Turning to the submission, I will not go through it in detail but I want to say from the outset that we support this bill. We see it as the opportunity to provide a stable underpinning income from the livestock export sector for the programs that have been put in place over the last six years by the industry on a voluntary basis in cooperation with MLA. The industry has strongly supported the submission going forward to government, and that, I think, is a recognition that there are some real advantages in working collectively within the industry. That is really what the effort is all about.

The programs that we would undertake substantially carry on from where we have been working directly with MLA in the past. They will be looking at research and development in the industry, industry standards and quality assurance, overseas technical and veterinary support and industry communications and issues management.

The submission that we put to the government in March in support of a statutory levy for this industry argued for a levy of \$2.50 per head for cattle, 30c for sheep and 25c for goats. Our expectation is that that would raise in the vicinity of \$2.5 million, and that would be the basis on which we would develop a joint program with Meat and Livestock Australia on various activities, as well as run the company's overall activities.

Livecorp has gone through a restructuring in recent times. We included in our submission a media statement issued by the Chairman of LiveCorp advising of the outcome of a board selection process whereby four non-exporter directors have now been selected and will be appointed to the board of LiveCorp. There will be three other directors on the board, selected from and elected by the livestock export industry. That, I think, gives a good balance as we make this transition essentially from an industry based company into a statutory funded company, and it recognises the significant change in the emphasis of the organisation.

From an operational point of view, issues that are changing within the industry include the administration of the industry developed industry standards and a quality assurance program in 1997. That became a test of competence for the licensing arrangements that the government had in place under the previous arrangements. The Keniry investigation undertaken last year recommended—and the government supported this—that government take responsibility for industry standards, and that will impact on our overall administration in that area. However, from a corporate governance point of view, we have made changes in the structure of our board which now give us a majority non-exporter board. Whatever role we have in the future with regard to industry standards will be able to be effectively and independently administered by the board.

The only other thing I would like to say is that I am not sure what the timing of the passage of this legislation will be. We are now confronted with a situation in the livestock export sector where, with the introduction in March this year of the *Cormo* levy, which is more than three times the level of our existing voluntary levy, it is very difficult to encourage exporters to keep funding a voluntary levy when they are confronted with that sort of payment. We are structuring the operations of the company in order to ensure that we can continue to support as much as possible industry programs in this interim period, but, from our point of view, if it is possible to get this bill introduced at the earliest opportunity it would certainly assist our ability to continue to fund the programs. That concludes my opening remarks.

Dr Trivett—I think Kevin has said most of what needs to be said in supporting this legislation. On behalf of the peak council of our industry, I would like to say that the initiatives that are being taken—and, I guess, most of this has come out of the Keniry review—have very strong support from the operatives within our industry. I would just like to reinforce the comments that Kevin has made. It is interesting that prior to the *Cormo Express* matter and the Keniry review, the industry, the government and the producer organisations that support our industry were working very cooperatively on a variety of projects under the auspices of the Livestock Export Industry Consultative Committee. As we know, *Cormo* came along and then Keniry came along. Interestingly to me, projects that the Livestock Export Industry Consultative Committee were working on were the subject of recommendations from Keniry. We are now through the Keniry review and are continuing to work constructively with the government and with our producer organisations in making things really work as far as our industry is concerned.

One example of that—and Kevin alluded to it—was our R&D commitment. We have been working with MLA on that program now since I think 1997-98. We as an industry did have the opportunity through this restructure to perhaps take that program on ourselves. The industry has decided that it wishes to continue working with MLA in having them manage that program and deliver what we feel are some very significant outcomes for our industry to assist us in reducing the risk. I think that is about all I have to say. We look forward to progressing these issues further.

CHAIR—Is there a document of the statutory funding agreement that is in other than draft form?

Mr Shiell—The statutory funding agreement is in draft form at the moment.

CHAIR—You wouldn't like to give us a copy of it?

Mr Shiell—Most certainly. I thought copies had been made available by the minister's office.

CHAIR—I will not pursue that. I will ask a question further down the line. My understanding is that there may be a proposition in the proposed statutory funding—and I stand to be corrected on this—that you are to be given five days notice before they can enter and inspect. Is that true?

Mr Shiell—No.

CHAIR—How much notice is required?

Mr Shiell—Is this to inspect premises?

CHAIR—Yes—or your office, for instance.

Mr Shiell—I would have to check that.

CHAIR—Do you have any comments to make, given that it is a sort of public funded thing now by way of a levy to the Commonwealth and the Commonwealth to you, on the amount of parliamentary scrutiny you think your operation will come under?

Mr Shiell—I have a good feeling for that. I think it is set out very clearly in the statutory funding agreement.

CHAIR—Okay. Thank you.

Senator O'BRIEN—I have a copy of a draft statutory funding agreement between the Commonwealth and ALEC, if I can put it that way—the Australian Livestock Exporters Council.

Dr Trivett—It would be LiveCorp. It is very confusing.

Senator O'BRIEN—The ALEC one has got a five-day notice period to inspect premises in clause 15. So there is a specific draft which is available to the committee for LiveCorp and the Commonwealth?

Mr Shiell—Yes.

Senator O'BRIEN—Could you tell me when LiveCorp commenced discussions with the government about the need for a levy?

Mr Shiell—I do not have an exact recollection of that. Certainly we indicated in writing to the minister in February our intention to put a submission forward and we followed that up in March with a submission.

Senator O'BRIEN—When did you first see a draft bill to provide for that levy?

Mr Shiell—At the time it was introduced.

Senator O'BRIEN—So you did not see a draft; you saw the bill that was introduced?

Mr Shiell—Yes, we saw the bill.

Senator O'BRIEN—When did Livecorp first see a draft of the statutory funding agreement that we have been talking about?

Mr Shiell—Again, I do not have an accurate recollection of the exact time, but certainly we took an early draft, which had substantial need of revision, to the LiveCorp board in May. It has been a backwards and forwards process since that time and we have just recently provided some comments back to the government on the current draft. Even reading the current draft you will identify some drafting errors that are still there.

Senator O'BRIEN—Would it be fair to say that LiveCorp has been pushing the minister very hard for some time to get this process up and running?

Mr Shiell—We have been enthusiastic. We always had the expectation that it would be extremely difficult for us to maintain a commitment to programs with voluntary funding, given the size of the *Cormo* levy being substantially larger than our voluntary funding. We have been taking the issue forward to the government since that time.

Senator O'BRIEN—Since what time?

Mr Shiell—Since February this year, when we realised the impact of the *Cormo* levy that was coming in in March.

Senator O'BRIEN—So you have been saying to the minister effectively since February that maintaining the current voluntary levy was going to be very problematic without legislation.

Mr Shiell—Yes, that was the first time we had indicated that.

Senator O'BRIEN—Have you been given any reason to understand why the process has been so slow to date?

Mr Shiell—The departmental people may be able to comment on that further, but certainly the advice has been that the consequence of the change impacted in a number of areas, because previously Meat and Livestock Australia were the industry body and it then needed to be traced through in other legislation that the change would affect because LiveCorp would become the livestock export body and Meat and Livestock Australia would not have the same broad spread of functions that it did previously. So there were a number of consequential changes and I think the structure of the bill reflects that.

Senator O'BRIEN—Are you aware why this bill was not listed for debate in the House of Representatives until tomorrow?

Mr Shiell—Not entirely, no.

Senator O'BRIEN—Do you know whether it is listed at all for the Senate at this stage?

Mr Shiell—My understanding is that it is listed tomorrow for discussion.

Senator O'BRIEN—That is in the House of Representatives. My understanding is that it is not listed at all in the Senate at the moment, at least on the documents that I have seen. Can you tell me who is currently on the LiveCorp board and who is currently on the ALEC board? I am interested in cross-directorships and the conflict of interest clause in statutory funding agreements.

Mr Shiell—On the LiveCorp board, the chairman is Peter Frawley—he is an independent director—and the members are Dr Richard Trivett, Steve Ellison, Graham Daws, Ian McIvor and Steve Meerwald. The ALEC board—and Richard may wish to comment further on this—

is constructed somewhat differently. It is made up of representatives from the state chapter organisations of the Live Exporters Council, plus a number of other direct nominees. Richard may have the names.

Dr Trivett—I do not have all the names. The bulk of the ALEC board is made up of state chairmen of the various state organisations. Those chairmen change from time to time. I think there are another three nominated directors to that board. That is roughly the make-up. Comparing that board with the LiveCorp board, I am almost certain that Graham Daws and I are the only two LiveCorp directors who are on that board. Ian McIvor, who is on the board of LiveCorp, is the executive officer of ALEC.

Senator O'BRIEN—How is the LiveCorp board selected? Is there some commonality between the ALEC selection process and LiveCorp's?

Dr Trivett—Kevin referred to that. In this whole restructure process, and it was mooted prior to Keniry, the board of LiveCorp now consists of four independent directors. Those four independent directors are selected by an independent selection committee. That was not the case before, but it is the case now. As Kevin mentioned, the selection committee has already convened and has made recommendations to the current LiveCorp board for the four new directors, who will be installed in October at the annual general meeting of LiveCorp. At the same time there will be three exporter directors elected in a variety of ways.

Senator O'BRIEN—Will that mean that there is likely to be more or fewer members of the ALEC board on the LiveCorp board?

Dr Trivett—Proportionately fewer. Significantly fewer, I would imagine.

Senator O'BRIEN—The decision as to those four independent directors selected by the independent selection committee will be ultimately the decision of the LiveCorp board?

Dr Trivett—Yes, but that decision has been taken. The nominations of the selection committee have been accepted. When the new board convenes after the AGM, the board will then select the chairman, as I understand it.

Senator O'BRIEN—Who are the four who have been selected? I am sorry, we arrived with these papers on our desk but no time to read them before we started.

Mr Shiell—Ned McCord, from Broome in Western Australia, who has a background in the management of broadacre cattle properties across Northern Australia; Christopher Buller, of Darkan in south-western Western Australia, who is a broadacre sheep farmer and has a background in local government; Dr Roly Nieper, the Chairman of Animal Health Australia, who is a Queensland veterinarian; and Mr Michael Nugent, of Sydney, who has corporate management and corporate governance skills and background and has some association with livestock industries from previous employment with Elders and Goodman Fielder some years back.

Senator O'BRIEN—Thank you for that. In terms of cross-directorships and the clause that precludes any agripolitical activity, do you see any potential or actual difficulties with directors, hypothetically, sitting on the LiveCorp board in the morning and considering a range of issues that would be of direct interest to ALEC and then sitting on the ALEC board in the afternoon and working out a political strategy to deal with those very issues?

Mr Shiell—Just going from personal experience, I have not sensed any conflict of interest in any of the activities in the past. And if that occurs the chairman is very pedantic in insisting that any conflict is declared and that if necessary the individual leaves the meeting. I would see as we move into the new board structure that it will be important to be able to access people with a knowledge of the industry. The election process will be one that will hopefully give us the right focus of the broader livestock exporter interests in terms of one vote, one value electing that member and of the levy payer interests in terms of that member being elected by one vote per \$100 of levy paid. The other election would be from the Livestock Exporters Council, because we believe it is important to have first-hand access to industry policy in the deliberations of the board, but in a board which in future will have a majority of non-exporter directors.

Senator O'BRIEN—I understand what you are saying but a member sitting on that LiveCorp board—and presumably the statutory funding agreement will ultimately preclude that organisation from being involved in agripolitical issues—could also be a member of the ALEC board, which is what I would describe as specifically an agripolitical organisation. How would you deal with what then would be a very direct connection between the board's decision-making process and the agripolitical considerations, which are removed from the board in that sense but connected by the common membership?

Mr Shiell—We have recently undertaken an amendment to the LiveCorp constitution and one of the clauses we have introduced into the constitution rules out agripolitical activity. That supports what you are saying from the LiveCorp point of view. I have no recollection, in the history of ALEC, of the current definition of agripolitical activity in the statutory funding agreement ever having been breached, even by ALEC—and they are not funded by that agreement.

ALEC is an independent organisation. It is a separate organisation altogether and individuals have the ability to sit on more than one organisation and take part in the activities of those organisations. Our industry is very small. There may be nearly 100 licensed exporters but fewer than 50 of them would have been active in the last 12 months and a much smaller number would be responsible for the bulk of the exports that occur. Getting people to take responsibility for activities in the industry is a constant challenge. If someone steps forward to take on those roles then that is to be commended. The LiveCorp board is a separate body and I do not see any interrelationship or conflict of interest that may be caused by individual board members participating in ALEC.

Senator O'BRIEN—I guess that is a matter to be determined. Of the two, ALEC is the agripolitical organisation, isn't it?

Dr Trivett—It is the peak council. If you look at parallels with other organisations within our industry, you will see that it is normal to have some representation of the peak councils on the bodies that are service delivery providers. As Mr Shiell said, the live export industry—being a far smaller industry than, say, the cattle industry or the sheep industry—has far fewer direct participants and it is quite a challenge. If we accept the fact that there needs to be some exporter representation on the board of LiveCorp it would be quite a challenge not to have one or other of those people in some way involved in the deliberations of the council.

Senator O'BRIEN—I take it that LiveCorp provides funding to ALEC in some ways at the moment?

Mr Shiell—Yes, it has from voluntary funds. But that arrangement is precluded under the statutory funding agreement.

Senator O'BRIEN—Which is being drafted at the moment?

Mr Shiell—Yes.

Senator O'BRIEN—So are you telling us that whatever the relationship is between the two, in that sense, it cannot occur in the future?

Mr Shiell—Certainly the wording is that there cannot be any grant to an industry representative body. That, to me, is quite clear.

Senator O'BRIEN—On the issue of R&D expenditure, there are a number of projects being advanced by MLA—such as beef marketing and market access—that have a general benefit to the industry, but they do not seem to specifically relate to the live export trade. Will the LiveCorp board look at all of those projects and make a judgment about what it will continue to put money into and what it will not?

Mr Shiell—Richard is the chairman of the research and development advisory committee which oversees the decisions taken on the allocation of both the MLA and LiveCorp live export R&D funds.

Dr Trivett—In response to the question, there is very broad representation on our R&D consultative committee. Meat and Livestock Australia have strong representation. In most instances they have two representatives there. We also have direct representation from the Sheepmeat Council and the Cattle Council. The committee accepts proposals from all areas. I cannot remember offhand, but I would be surprised if we had not considered some broad beef marketing and market access issues that have arisen in the past and, perhaps, funded projects. But there is no problem with this R&D committee considering proposals in those areas, even if they are broadly based and covering the whole industry.

Senator O'BRIEN—But that was not what I was asking. I want to know whether the LiveCorp board will reserve the right to select between those general industry projects it wants to fund and those which it does not.

Dr Trivett—I am sorry for not answering directly; I now understand. As Kevin said, I have been on the R&D committee since its inception, and I have been the chairman for the last three years, I think. LiveCorp has not to date—I am not sure if the new board will in the future—endeavoured to influence the decisions of that particular committee. I cannot recall any specific direction from the LiveCorp board in the past. With respect to the LiveCorp board becoming involved in trying to influence the decisions of the R&D committee, this has not previously been an issue. I am still not sure whether that answers your question but, with the new board, it may change.

Senator O'BRIEN—So you are saying that it is up to the new board. It may change; it may not.

Dr Trivett—Yes.

CHAIR—Senator O'Brien, can I appeal to you to let Senator Colbeck ask a couple of questions. I know you have a few to go.

Senator O'BRIEN—You can appeal, yes.

Senator COLBECK—I want to go back to your corporate governance arrangements to start with. What was the model that you used in selecting your corporate governance arrangements? What was the basis of that?

Mr Shiell—We wanted a skills based board. We wanted to ensure that we captured a number of broadly based skills in that board composition, and those skills are now set out in the constitution of the organisation—covering corporate governance; marketing; finance; livestock production, cattle; and livestock production, sheep. There is no specific model as such but just objectives in the way it was put together. We also wanted to ensure there was adequate support and understanding within the livestock export sector. That is why there is one representative elected by the members and one representative elected by the levy payers of the industry. There needs to be an understanding of the policy drivers within the industry, so there is one representative elected by the Australian Live Exporters Council as well.

Dr Trivett—Probably a significant issue as well is the fact that it has been accepted that there will be four independent directors and only three exporter directors. That is a significant change. I guess that is part of the plan and I guess that is enshrined also.

Senator COLBECK—Will the four special qualification directors be appointed or elected?

Mr Shiell—We appointed an independent selection committee. That selection committee has been meeting over the period between June and early July and making a determination as to who the appropriate candidates may be. They have recommended their appointment to the LiveCorp board. The LiveCorp board, at its meeting in the middle of July, accepted that recommendation, but it is subject to final ratification by a majority of the members of LiveCorp at the annual general meeting in October.

Senator COLBECK—What was the process for determining the selection committee?

Mr Shiell—There was an independent chairman selected by the board, and that was Clinton Condon. There was a nominee from the Northern Territory livestock exporters and the Queensland livestock exporters.

Dr Trivett—That was Don McDonald.

Mr Shiell—The Western Australian and South Australian livestock exporter associations together had one nominee, and that was Peter Lang, ex-chairman of the Red Meat Advisory Council and ex-chairman of ALEC as well. The Victorian and Tasmanian livestock exporters councils selected one representative, and that was Vicki Hardwick, who is currently on the MLA board and works in the meat processing industry. One other independent nominee was put forward by the board, and that was Dr Kevin Doyle, from the Australian Veterinary Association. Of the selection committee, none are actively involved in the livestock export industry at the moment.

Senator COLBECK—So essentially they were selected by regional participant groups in the industry?

Mr Shiell—That is right—with the objective of getting an independent group.

Senator COLBECK—When those directors are presented to the membership of LiveCorp through the voting process, it is basically acceptance or otherwise?

Mr Shiell—If there is non-acceptance then we are back to scratch; we start again.

Senator COLBECK—What is the membership of LiveCorp?

Mr Shiell—It is open to any livestock exporter. They have to be a licensed livestock exporter and accredited under the industry's accreditation program. I cannot give you an exact membership number because we make that judgment on an annual basis, we do not make it daily, and fewer people are exporting at the moment. At the last annual general meeting, there were about 70 members. It will be less next year because there are fewer active people in the industry.

Senator COLBECK—Would it be fair to say that most of the membership would be levy payers?

Mr Shiell—It would be pretty close to half-half. We have, in our new constitution, restructured our membership to take that into account, because there is a difference between an active member and an inactive member. Otherwise, people would just say they are members and exercise a vote when they are not actually active in the industry.

Senator COLBECK—What is the process for someone falling off the membership list?

Mr Shiell—If they have not been active in the last 12 months, their position is reviewed and, if they are not actively involved in the industry, a decision is taken to remove them from membership.

Senator COLBECK—What is the process for reinstatement or commencement of membership?

Mr Shiell—They have to be a licensed exporter and accredited under the industry QA program, and they have to apply for membership. A person is eligible to reapply after one month if they have terminated their membership previously.

Senator COLBECK—So, if you do not export for 12 months, you fall off, essentially?

Mr Shiell—Yes.

Senator COLBECK—So all the members get to vote on the elected member. What is the process for selecting each one of those three who are elected within the process? As for the one who is selected by ALEC, that is obvious, but what is the process for selecting, or nomination of, the two other directors who are voted on by the levy payers or the members?

Mr Shiell—We run two vote registers within the company. One is a voting register of members—that is, each member is entitled to one vote. We would call for nominations for what we call the ordinary vote director. Members would vote under a postal ballot prior to the AGM for the election of the ordinary vote member on the basis of one vote per member. The other register we have is a register of special votes, and that is based on the contributions of the exporters in the previous 12-month period to the end of the most recent quarter. For that, we would call for nominations concurrent with the ordinary vote director, and a special vote ballot would be conducted for the special vote director at the same time. Under the voluntary

arrangements, if anyone's fees were in arrears, whether they be an ordinary vote member or a special vote member on either register, they would be declared ineligible to vote.

Senator COLBECK—That raises an interesting question as to the process for collection of the levies. Who is going to be collecting the levies and under what conditions?

Mr Shiell—The levies would be collected by the Levies Revenue Service. They would remit them to us on a more than monthly basis—we understand that it will probably be fortnightly.

Senator COLBECK—So that is controlled by the department?

Mr Shiell—That is right.

Senator COLBECK—Who, then, holds the records of who the members and the levy payers are? Will you hold that or will that be held in the department? How will members have access to that information?

Mr Shiell—Currently the members do not have access to that information, because it is considered commercial-in-confidence within the industry, and we operate that confidentially and internally within the company. It is not available to the board; it is just operated internally, confidentially. With regard to the arrangements under a statutory levy, we are negotiating with DAFF, the department, about the ability for them to provide us with information on the special votes that would be available for any members based on their levy contributions in the previous 12-month period.

Senator COLBECK—So how does a levy contributor, for example, determine what their vote is, and what is the dispute resolution process?

Mr Shiell—At the moment there would not be any mechanism for that other than for them to make their own calculation based on what they know of the levies that they have paid. I would imagine that in most situations that would not be a very difficult calculation for them to make.

Senator COLBECK—So there is no specific dispute resolution process in place and there is no way for them to actually check it, apart from their own records?

Mr Shiell—Not at this stage. That is an issue that we could discuss further with the Levies Revenue Service. We are still negotiating how that information would be made available to us. It is very important to us how we get that voting register in place. As I said, it is important to us and the ultimate fallback is that, if we cannot reach appropriate agreement with the LRS, then we will have to structure an arrangement along the same lines as how the MLA does it: we will have to go back to the members and ask them to give us documentary evidence of the levies that they have paid. That would be a fairly labour intensive process, from our point of view. Our preference would be to be given advice by an independent authority like the LRS on what has actually been paid.

Senator COLBECK—That was the basis of the question in the first place because I have had some concern expressed by MLA members about a dispute resolution process with respect to what levy they might have paid and what vote they are allocated through the MLA voting process. That was the basis of the question but I am not sure that your response has given me all that much comfort, to be honest—but at least the concern has been raised. Could

you give me an example of an R&D program that you might be considering as part of expenditure under the levy and how that might fit in with some of the concerns that have been raised by people interested in animal husbandry, for example?

Dr Trivett—One that springs immediately to mind relates to a contract that has just been entered into with the chair in animal welfare at the University of Queensland. It relates to determining other measures of stress and also measurements of the success of export shipments apart from mortality. The only means that we have at the moment of determining whether a shipment has been successful or not is through the level of mortality that occurs on the voyage. It has been the subject of significant debate for a long period of time, particularly by organisations genuinely concerned as to the welfare of animals being exported. The R&D committee, over the last 12 months, in consultation with the chair in animal welfare at the University of Queensland, has developed this particular project, which aims to identify other measures of animal wellbeing that the industry can use to minimise the risks that occur in the export process.

CHAIR—You might tune up your arguments in that area because, as we speak, Senator Bartlett has got a private member's bill to set up an inquiry into this. You will be able to practise your arguments there.

Dr Trivett—I am certainly ready to do that because it gets back to the issue that Senator O'Brien raised. The issues that we are going to be looking at here relate to stresses that animals are required to bear in the animal live export process. I am sure the findings that come out of this particular project will also have relevance as far as the livestock industries here in Australia are concerned when you look at long-distance transporting of sheep and cattle to abattoirs. It is a very interesting project and I am very pleased that we as a committee have decided to proceed with it. We have some good researchers involved through the chair of animal welfare at the University of Queensland.

Senator COLBECK—Could you provide us with a copy of your constitution, please.

Mr Shiell—Yes.

Senator O'BRIEN—I want to go through the process of the negotiation of the statutory funding agreement with government. Was the dairy industry statutory funding agreement the starting point of those negotiations? In my view that is the benchmark for these things.

Mr Shiell—That is a question probably best directed to the department. We received an initial draft and we have responded to that draft. Certainly from our point of view we did not start with a model. We felt that it was most appropriate that the department put forward a draft and then we worked on that draft from that point. So we did not actually go back to another example.

CHAIR—Are you happy with that draft?

Mr Shiell—We have provided some response back on a number of the points in that, but broadly, yes.

CHAIR—If I were a compliance officer and I had to give you five days notice before I could enter your premises I would think that you were dudding me. What do you reckon?

Mr Shiell—I am not sure of the origin of the five days, Chair. I know it is there.

CHAIR—So you would be happy to see a more meaningful—

Mr Shiell—I would be happy to be consistent with what is required in other industries.

Senator O'BRIEN—Can you tell me what changes there have been in the drafts about reporting arrangements under the statutory funding agreement?

Mr Shiell—Very little. We have not insisted on changes in that. The department has put forward its initial suggestions and from our point of view we do not feel that we are in a position to judge. They are working on it with the inputs of all previous statutory funding agreements, the Senate inquiry into the AWI et cetera.

Senator O'BRIEN—So you have been guided by the department?

Mr Shiell—Very much so.

Senator O'BRIEN—In terms of the obligations as set out in the recitals at the beginning of the agreement, how will you work with them to deliver on the obligation contained in recital D, for example? All compliance provisions now reside with the department, not with LiveCorp, so that function has gone.

Mr Shiell—LiveCorp would enter into the planning process in consultation with its own membership, as it has done in the past and as we have set out in our submission. That planning process is very much linked in or tied in with the operational level or the management level in MLA. Essentially, we come to an agreement on what the program is, and that program reflects the wishes of both LiveCorp and MLA that they have determined through their consultative process. We have always been able to achieve that degree of agreement on the program for the year; we do go into planning sessions in order to achieve that agreement. That is essentially the process. From that point on it is a question of getting the endorsement of industry. Again, that has required subsequently some toing-and-froing to get final agreement between us and MLA on it. It is just a cooperative negotiation.

Senator O'BRIEN—Recital E states that LiveCorp will endeavour to determine funding priorities with MLA for promotion, marketing and R&D, and there is reference to a dispute mechanism. How does that relationship work now? Is there a dispute resolution process currently in place?

Mr Shiell—No, there is not. The process that we have worked on with our own voluntary funds is just as I described in the last answer: we sit down and we work it through until we get agreement. We both see the benefit in working together cooperatively. We get twice the value for the dollar that we put in, or in R&D four times the value. There is a strong imperative to achieve agreement from that point of view. There are activities that we have funded on our own, such as travel of the chief executive to various parts; there are times when we have agreed that that be funded out of the joint program because it makes sense for the joint program that that occur. It is a cooperative approach to that negotiation.

Senator O'BRIEN—Recital F states that LiveCorp agrees to remain a party to the Australian meat and livestock industry MOU, thereby saying it is discretionary because you have become a prescribed body. Are we waiting to actually see how this new arrangement works in practice?

Mr Shiell—We are confident the arrangement is going to work, given the opportunity. That is more a commitment to the principles that were put in place on cooperative activity within the various institutions in the industry back in 1998. I do not see that it suggests any lack of confidence.

Senator O'BRIEN—It is pretty clear the bill will not pass both houses of parliament this week. Some newspapers are saying the election will be called at the end of the week. If there is a delay of several months to the establishment of the levy what are the consequences for LiveCorp and your ability to continue to trade?

Mr Shiell—We can continue to trade for that time period—obviously, the longer that time frame is the more difficult it is. We are now focusing on all areas of our expenditure. We have done that internally, within our LiveCorp only expenditure, but we are also now focusing on that in terms of both timing and priority of expenditure that we put forward under the joint program. We have not made any decisions at this stage to withhold any payment or to seek another arrangement with MLA as a result of that. However, if it was to the extent that the board had to call into question the ability of the company to continue to trade we would want to be in a position to be able to act immediately.

CHAIR—Thank you very much.

[5.45 p.m.]

de HAYR, Mr Brett Raymond, Executive Director, Cattle Council of Australia

HAYWARD, Mr Michael Andrew, General Manager, Livestock Export, Meat and Livestock Australia Ltd

CHAIR—Welcome. If you want to make an opening statement, we would be delighted to hear from you and then we will ask you some questions.

Mr de Hayr—Firstly, to avoid any confusion, I would like to make a clarification. The Cattle Council of Australia specifically does not have an appointed position on the MLA board. That is an area where we just do not go. On the reform process that is under way that has been moving in parallel with this issue of the levy, we are confident that is progressing relatively well—maybe not as quickly as we would all like, but it is under way. The Cattle Council has had a longstanding policy preference for the arrangements set out under the red meat MOU, which was signed by Minister Anderson in 1997 and which is also outlined in our Keniry submission. It was that, if one of the parties under voluntary funding arrangements had to have a statutory levy reimposed then MLA would be the body that would operate a compulsory levy, and that is fairly clearly set out in the MOU in attachment D. However, if we were to go down a different track as proposed by the government, there are some areas about which we would like assurances, and they apply to whether it was the live export sector or the processing sector.

There are more issues of policy. The first is ensuring the separation of political and industry activities so there is not a blurring of those lines. The second is some sort of comfort or guarantee relating to the ongoing nature of joint programs so that the producer sector does not have to backfill programs in the future. The third goes to what implications such a change would have for the MOU as it stands, because it is quite a departure from the arrangements set down for the industry in 1997. We believe one of the reasons why the compliance both on LiveCorp and on the processing sector in the voluntary programs has been quite high is that there has been the threat of the reimposition of a compulsory levy under the arrangements set down in the MOU. I suppose the question is how these proposed changes would affect the rest of the industry down the track. We think the flow-on impacts are a reasonably important question that should be answered when you are looking at making a change in one sector of the industry. Basically, any changes should not be considered in isolation from the rest of the industry. They are the comments I would like to make at this time, thank you.

Mr Hayward—Thank you for the opportunity to make some comments and answer any questions. Meat and Livestock Australia, certainly in their submission to the Keniry review initially and in their response to the Keniry review, were very strongly in favour of the introduction of a compulsory levy to fund the activities that LiveCorp and MLA currently jointly carry out. We believed this would provide the security of funding going forward that was necessary for this industry that is vitally important to our members—particularly in Northern Australia, with cattle exports to South-East Asia, and in Western Australia, with live sheep exports into the Middle East. We saw the need for a more secure funding base than was

there under the voluntary arrangements, so our strong recommendation was for a compulsory levy.

As I said, we see the joint program that supports the livestock industry as vitally important. Under that program, as well as the research and development that we heard a fair amount about from the two earlier witnesses, we jointly fund industry standards programs. In particular, we jointly fund activities in the markets that receive our cattle and our sheep. That has become increasingly important. If the industry is vulnerable in the future, it is in the area of how the animals are handled when they arrive overseas, and we have in the plans a lot of activities to improve the welfare of the animals after arrival in the marketplace. As you would know, the government has committed \$1 million to that sort of activity going forward in the Middle East, and we certainly want to see the joint program well positioned and well funded to enable us to work closely with the government in future in the Middle East. We are very keen to see a good, solid funding base for the program.

We also note that the legislation very specifically and carefully safeguards MLA's position as the recipient of matching funds from the government for R&D. That was a position that the whole of the industry recommended to the government. The live exporters, the Cattle Council and the Sheepmeat Council recommended it to the government and it was taken on board. We were very pleased to see that there, and we see that as an important element of the legislation. More immediately, we are aware that LiveCorp's financial position is deteriorating under the voluntary arrangements, so the need to get the compulsory levy in place is becoming acute. Otherwise, there certainly is the threat that our joint program activities will run into funding difficulties as we go forward.

Senator O'BRIEN—First I have some questions for Mr Hayward going to the Australian meat and livestock industry MOU. Can you take us through the mechanics of how this MOU operates currently from MLA's point of view and what will change once this new arrangement is put in place?

Mr Hayward—The MOU is an agreement largely between the peak councils for each of the industry sectors: the Sheepmeat Council; the Cattle Council; the Australian Livestock Export Council, ALEC; the Australian Meat Industry Council, AMIC; as well as the funding organisations that back up those sectors.

Senator O'BRIEN—But you are going from one prescribed body to two, aren't you?

Mr Hayward—In the legislation there will be, in a sense, a separation out of the live export area so that they are also eligible to receive marketing funds and R&D funds from the government, whereas before MLA was the sole designated recipient of any government funding for marketing or R&D. But the MOU itself is simply an agreement between all of those bodies, including LiveCorp and the meat equivalent of LiveCorp. It is a very extensive body of agreement. The changes to that MOU will not be terribly extensive, but I certainly would see them addressing one of the concerns that the Cattle Council have—that is, some assurances as to how we would interact with LiveCorp in terms of determining program funding and potentially some recourse to appeal or some resolution if we cannot reach agreement.

Senator O'BRIEN—So your relationship with all the organisations that are currently serviced will change. You do not see there being any significant change because of that new set of relationships?

Mr Hayward—No, we do not see any major change. The difference is simply that LiveCorp are no longer a voluntarily funded organisation; they are a compulsorily funded organisation. We expect we will operate and interact with them almost exactly as we have done in the past.

Senator O'BRIEN—Can I take you to annexure D of the MOU that relates to the reintroduction of statutory levies. Can you tell me when the minister wrote to MLA about these changes, when there was a response from MLA and how you responded?

Mr Hayward—We essentially were advised of the government's decision on the introduction of the compulsory levy and who would be the recipient of that levy at the time they made their announcement in response to Keniry. As far as I am aware there has been no direct correspondence on the issue.

Senator O'BRIEN—There was no correspondence from MLA about that?

Mr Hayward—The only formal correspondence that I am aware of has been by way of our submissions to both Keniry and then the government in response to Keniry. In those, as I said earlier, we did recommend a compulsory levy but we were silent on who it should be directed to.

Senator O'BRIEN—The introduction of a new levy, according to annexure D, requires MLA to:

... negotiate conditions of funding with the Minister covering the ongoing provision of statutory collected funds. The conditions will provide for clear separation of the sectors' funds ...

What does that actually mean?

Mr Hayward—The MOU when it was agreed to foresaw that the compulsory levy would be directed to MLA. Then MLA would, consistent with how it operates with the sectors already subject to compulsory levy—for example, the cattle producers—be required to start operating with that new sector in the same way. In other words, we would be required to take broad direction from them as to strategic imperatives and broad, if you like, budgetary allocations. Essentially—and I am trying to remember the other key issues—we would be required to operate with them just as we do with the Sheepmeat Council and the Cattle Council. We are required to very separately report in an auditable sense, a financial sense, so as to account for the expenditure of the money we receive from each individual sector. For example, we very carefully account for what we receive from the sheepmeat sector versus the cattle sector at the moment. That is the other part of the MOU that we were required to follow.

Senator O'BRIEN—So it is a separate accounting, not a separate bank account or something?

Mr Hayward—No, it is simply a separate accounting.

Senator O'BRIEN—Has that process commenced or are you waiting on the legislation's passage?

Mr Hayward—That process is essentially now redundant because the government decided to go in a different direction from what was foreseen under the MOU. They have decided to direct the levy towards LiveCorp.

Senator O'BRIEN—Is that a breach of the memorandum of understanding?

Mr Hayward—Yes, it is certainly contrary to the memorandum of understanding.

Senator O'BRIEN—What does MLA have to say about that?

Mr Hayward—As we said in our submissions, we were silent on where the levy funding should be directed. We were certainly aware that our peak councils—the Cattle Council in particular—were strongly in favour of it being directed towards MLA, but that was not the decision.

Senator O'BRIEN—So MLA made no protest about the breach of the memorandum?

Mr Hayward—No, we did not.

Senator O'BRIEN—Does MLA know how the dispute resolution referred to in the LiveCorp statutory funding agreement draft would deal with disagreement on R&D priorities between LiveCorp and MLA?

Mr Hayward—We have not been involved in the drawing up of that agreement. We have not seen a copy and have had no discussions on the matter.

Senator O'BRIEN—Mr de Hayr, with regard to the Australian meat and livestock industry MOU, what can you tell us about its operation and how it operates from the Cattle Council's point of view?

Mr de Hayr—Broadly, from our perspective, a body such as ourselves, the Sheepmeat Council or the Lot Feeders Association, works in concert with MLA in setting the broad policy under which funds that are collected for our specific sector will be expended. We certainly have a separation of activities. We are involved with the general policy setting; the company is responsible for the day-to-day operations of those funds and we oversee their operations in that respect.

This is a departure from the previous arrangements that were in place in the industry under the old AMLC, where peak councils such as the Cattle Council basically had no direct say or involvement in the expenditure of funds. Under this arrangement, the peak councils are involved with the policy setting and the direction of the board. From our perspective, we certainly have a far stronger role than under previous arrangements. We sign off on the budgets each year, so basically the two areas have to be working in concert rather than in opposition.

Senator O'BRIEN—That is the current situation?

Mr de Hayr—Yes.

Senator O'BRIEN—You are required to put in funding and you have some control over how these funds are spent, and I take it from what you are saying that these arrangements, which have been in place for some time, have been operating satisfactorily.

Mr de Hayr—Yes. As in any organisation, we have our issues from day to day, but so far the arrangements have worked quite well. The clear separation of the political and delivery modes has stood the industry well over that time.

Senator O'BRIEN—What is the impact of these changes we are effectively considering today on the operation of the MOU? Have you got any general comment to make about that?

Mr de Hayr—Our general concern is that we really do not know where this now leaves the MOU that was signed back in 1997. It is a significant departure and we have received no clarification as to what the status of this document is in terms of its implications into the future, specifically for other sectors.

Senator O'BRIEN—Is it unusual for a government to take action in breach of a memorandum with your organisation?

Mr de Hayr—My term with the Cattle Council only goes back a year and a half. I have not seen it, but I am a relative novice in these areas.

Senator O'BRIEN—Did the Cattle Council expect the MOU to be ignored and passed over in this way?

Mr de Hayr—We certainly had no reason to expect it. Our position was built around the MOU as it had stood for a number of years. As the government had introduced the MOU it was our expectation that it would be adhered to.

Senator O'BRIEN—Annexure D of the MOU relates to the reintroduction of statutory levies for the processing sector or live export sector and the processes to be followed in that regard. There is a section headed 'Administrative arrangements and actions'. This process seems to oblige the minister to write to all affected peak bodies advising that a levy is to be applied. Can you recall when the Cattle Council received that advice from Minister Truss?

Mr de Hayr—To my recollection, we received the government's deliberations in relation to the Keniry review which contained that segment. I do not recall a separate advice in this area.

Senator O'BRIEN—So the minister did not in writing advise the relevant peak industry councils affected that the statutory levies will be reintroduced, as required by the MOU?

Mr de Hayr—Certainly my reading of the MOU would be that the minister would in that case be advising the peak councils of the reintroduction of a compulsory levy which would then be going to MLA, and that certainly did not happen.

Senator O'BRIEN—It did not happen whoever it was going to, did it?

Mr de Hayr—Not that I recall.

Senator O'BRIEN—Has the Cattle Council corresponded or spoken to the minister or the department about the non-observance of the MOU?

Mr de Hayr—Our position on the MOU was made clear when the announcement was made. Since then we have endeavoured to move along the path that the government had set out—but having raised those earlier areas of concern, I suppose, that would need to be accommodated.

Senator O'BRIEN—How did you raise those concerns?

Mr de Hayr—Verbally.

Senator O'BRIEN—With the minister?

Mr de Hayr—With the department.

Senator O'BRIEN—Who from the department did you raise them with?

Mr de Hayr—We had a range of discussions. Ron Cullen from DAFF—I would have to go back and check my records for the names of others.

Senator O'BRIEN—If you could do that, thank you. The process in the MOU provides that the preparation of relevant regulation can commence if there is general agreement on the application of the levy or if, in the minister's view, the arguments against the levy are not valid. The process provides for peak councils to be consulted on the new rates to be applied. Was Cattle Council consulted?

Mr de Hayr—There were certainly general discussions relating to the *Cormo* levy and I recall general discussions relating to this, but specifics I do not have at this point in time, I am afraid.

Senator O'BRIEN—Could you take that on notice.

Mr de Hayr—From my recollection we did not receive any advice from the minister relating to the issue of the level of the levy.

Senator O'BRIEN—Under the MOU there is provision for RMAC to commence a review of the MOU to identify any changes that may be required in these circumstances. Where is that process up to?

Mr de Hayr—Earlier this afternoon I contacted the secretary of RMAC and that process has not commenced because, to my understanding, RMAC have not been contacted to initiate that under the terms of the MOU because, as stated earlier, this is a departure from the MOU.

Senator O'BRIEN—Does that mean that RMAC is not required to review the MOU?

Mr de Hayr—That is a very good question. The MOU is very specific in this case that, should a compulsory levy be in place, it would be directed through MLA, and the entire annexure D is written around that. What happens in other instances is the problem we now have. Those instances are not necessarily insurmountable but they just have not been accounted for.

Senator O'BRIEN—I take it that under the MOU the minister can determine levies. What do you know about the involvement of peak councils in those circumstances?

Mr de Hayr—I can only speak from the perspective of our own sector. Usually the approach is this. In relation to, say, grass-fed cattle, the Cattle Council can propose an increase or a decrease in the levy. That then needs to go to the MLA AGM to be either accepted or rejected by the members of MLA. The minister, it is my understanding, then has the power to take the outcome of the AGM as guidance in his deliberation. I do not think he is bound by the outcome of the AGM.

Senator BARTLETT—Can I ask what level of urgency from your point of view this legislation has?

Mr de Hayr—As pointed out earlier, there are issues relating to the joint program and its current level of funding, but we also have to marry up that level of urgency with not creating problems further down the track that may then overshadow this issue. We unfortunately have those two issues to deal with at this point in time.

Senator BARTLETT—If the legislation were not to pass for some months because of elections or other things, that would not bring things crashing down or otherwise cause particular problems?

Mr de Hayr—It would certainly have implications in that, if LiveCorp were unable for various reasons to maintain their commitments to the joint program, because of the importance of a number of the projects that are under way specifically in the animal welfare area, I would expect that the cattle sector would have to—and I would be very surprised if the sheepmeat sector would not also—from a producer's perspective, increase their funding into those programs. I think those programs would be maintained, but we would have to carry an increased level of funding.

Senator BARTLETT—In relation to the process of determining where the funds are directed, are you—either of you—satisfied that it is going to be adequate to ensure that the proper priorities get attention?

Mr de Hayr—Under the proposal?

Senator BARTLETT—Yes.

Mr de Hayr—As outlined earlier, one difficulty we have is that this is largely based on goodwill. I must acknowledge that that has worked reasonably well in the past, but it does not provide any guarantees for the future.

Senator BARTLETT—Do you think a more formalised structure—some extra reporting requirements, oversight, audits or reviews—would assist in increasing the chances of getting the right priorities?

Mr de Hayr—Unfortunately, not having been party to the funding agreement—and we have not received a copy, nor seen one—it is hard to say how far it should go.

Senator BARTLETT—Those were the only bits I wanted to probe, unless there are extra bits your colleague wants to add around those topics. Is there anything else?

Mr Hayward—I guess I can echo Brett's concerns about the ability of LiveCorp to continue funding our joint activities in the event there is a significant delay in their receiving the compulsory levy. That will mean either we will have to wind back some programs in support of live trade or the cattle producers and sheep producers will have to pay a greater share of the funding of those activities.

Senator BARTLETT—Thank you.

CHAIR—Thanks very much.

[6.16 p.m.]

GORDON, Ms Jenni, National Manager, Animal Program, Department of Agriculture, Fisheries and Forestry

MORTIMER, Mr David Kenneth, Executive Director, Food and Agriculture Business, Department of Agriculture, Fisheries and Forestry

WILLIAMSON, Mr Gregory John, General Manager, Meat, Wool and Dairy, Department of Agriculture, Fisheries and Forestry

CHAIR—Welcome. Would you like to make an opening statement?

Mr Mortimer—Thank you. I will make some introductory comments. The issue we are examining here is a matter that arises from the broad ranging review that was undertaken for the government of the livestock export industry following the *MV Cormo Express* incident. Indeed, we are looking at a bill specifically on one of the recommendations of the Keniry report, which was that the livestock export industry should be responsible for research and development and management of enhanced quality assurance systems. Essentially, the bill will allow for the declaration of a livestock export marketing body and a livestock export research body. This is necessary under the constitutional appropriation provisions in order for that body to receive compulsory funding as recommended in the Keniry report and agreed to by the government.

The industry body will be receiving compulsory funding by way of appropriations from consolidated revenue equal to the amount of customs charge raised from livestock exporters and as such will be subject to strict accountability measures through a funding agreement with the Commonwealth. The main function of the body will be to provide its members with marketing and research activities consistent with achieving good outcomes in particular in relation to animal health and welfare.

The bill complements other amendments to the Australian Meat and Livestock Industry Act 1997 and the Export Control Act 1982 that provide for the introduction of tighter regulations across all aspects of the livestock export trade. The intention remains under the Australian Meat and Livestock Industry Act 1997 for Meat and Livestock Australia Ltd, MLA, to continue as the main industry research provider for the whole of the red meat industry. In this regard the industry research body, MLA, will alone be eligible for dollar for dollar matching for research funding. The bill will allow for consistent funding of a livestock industry export body that will serve the specific needs of a livestock export industry.

There is much discussion being held around the draft statutory funding agreement. I emphasise at the outset that this is a draft statutory funding agreement. You will be conscious that there are a number of steps to be gone through before a statutory funding agreement would be signed off by the minister. Essentially, those steps require the passage of the legislation. It also requires, as I think you are aware, that LiveCorp be declared an eligible body by the minister, which is set out in the legislation. The funding agreement would then come into place and would be signed off by the minister at the time the regulations that would

raise the revenue that would go to LiveCorp are put in place. I emphasise that point. It is far from settled. We are working with LiveCorp in finalising that agreement. Thank you.

Senator O'BRIEN—They are your drafts that are being worked on, are they?

Mr Mortimer—The department prepared an initial draft. That was sent to LiveCorp and we have been working through iterations with them in terms of the issues that need to be dealt with.

Senator O'BRIEN—It is quite different from the dairy industry's statutory funding agreement, is it?

Mr Mortimer—I wouldn't necessarily say that. There are some differences between the two exercises but essentially the department looks at what needs to be achieved in terms of the outcomes of the statutory funding agreement; then it draws on the relevant provisions. While there is a fair degree of commonality across them because there are many common issues to be dealt with, they do change from one to another to reflect any particular issues that are specific to those industries.

Senator O'BRIEN—Like the reporting processes? Is there a significant difference between the reporting processes in the present draft for LiveCorp and the dairy industry statutory funding agreement?

Mr Mortimer—There are differences there. One key difference between the two bodies, on which I might ask Mr Williamson to elaborate because he knows more about the dairy arrangements, is that the dairy authority has a custodian role for the dairy structural adjustment fund.

Mr Williamson—The structural adjustment fund is quite a large fund, as you are aware, Senator, and the dairy statutory funding agreement contains substantial additional accountability measures that pick up that very significant exposure in terms of a contractual agreement between the Commonwealth and that company. So there is a clear difference between Dairy Australia and the LiveCorp functions.

Senator O'BRIEN—There will be a new statutory funding agreement when the structural adjustment package ends for the dairy industry?

Mr Williamson—I think it is fair to say that parts of the current statutory funding agreement will be effectively redundant so whether it needs to be renegotiated is an open question.

Senator O'BRIEN—I go now to the recommendations of the Review of Corporate Governance of Portfolio Bodies prepared by Mallesons Stephen Jaques. To what extent have the recommendations of that review been implemented?

Mr Mortimer—I would not claim to be authoritative on corporate governance across the portfolio but the department has been dealing with those recommendations and I expect that they are being dealt with and implemented where necessary. In terms of a formal sign-off on that, I am happy to come back to you with any particular reporting on what has or has not been done and how that has been taken up.

Senator O'BRIEN—The final report was released in June 2002. Recommendation 6.4(f) talks about the responsibility for specific agencies being clearly attributed to designated officers. It says in the summary:

In this regard, the fundamental concern must be that those AFFA officers to whom primarily responsibility is assigned for the portfolio corporate governance of each agency must be very clearly aware of both that assignment of responsibility and of the detailed content of their role.

Who is the designated officer in respect of LiveCorp and who is the designated officer for Dairy Australia?

Mr Mortimer—I will come to the names in a minute. Generally speaking, in the department the reporting for the statutory organisations such as Dairy Australia and LiveCorp goes to officers in the Rural Policy and Innovation Division. They get and scrutinise and report specifically on those reports and the activities that underlie them. They do that within a framework that is settled by the corporate governance area of the department which is separate—and that is consistent with independent audit advice being given, and then implemented by the officers responsible. There is a unit of three or four staff who operate in the Rural Policy and Innovation Division who are responsible for getting those reports. They organise the treatment and handling of those and advising on those reports.

Senator O'BRIEN—And the officer?

Mr Williamson—The current officer would be Andrew Pearson, who is the manager. I cannot recall exactly the name of the—

Senator O'BRIEN—That is for Dairy Australia?

Mr Williamson—It is for Dairy Australia and he would be the contact officer, while he is in that position, for the LiveCorp funding agreement when it comes into force.

Senator O'BRIEN—You assume he will be designated the officer, will he?

Mr Mortimer—That is right.

Senator O'BRIEN—When were the tasks allocated in order to comply with that recommendation?

Mr Mortimer—I cannot give you an answer on that here and now. I will have to take that on notice.

Senator O'BRIEN—Has there been some training associated with the implementation of this particular recommendation?

Mr Mortimer—Again, as it is not something that I am directly responsible for, I will have to take that on notice.

Senator O'BRIEN—In terms of the draft statutory funding agreement for LiveCorp, recital D states that LiveCorp agrees to provide as part of its activities an enhanced and dynamic facilitation role to help its members attain best practice animal health and welfare outcomes in accordance with the code for the export of livestock. Can you tell us how that is going to happen? Or is it simply a matter for the LiveCorp board to determine?

Mr Williamson—I think that is in the first instance the right answer, Senator. It is really a matter of the LiveCorp board determining its R&D and marketing programs that, amongst other things, will contribute to improved animal welfare outcomes in respect of the trade.

Senator O'BRIEN—So it is a matter for them.

Mr Mortimer—There is a sense there, Senator, that it is being treated lightly, but it is an important issue which those two organisations commit to do and that is set out. The recital is an important part of the SFA. Indeed, it reflects the current arrangements which you have heard about whereby there are arrangements in place for LiveCorp and MLA to jointly settle funding priorities and put those in place. Essentially the Commonwealth, as you see there, will facilitate dispute resolution if there are issues between them. It is a statement of the intent of how the bodies will operate.

Senator O'BRIEN—What does 'facilitate dispute resolution' mean? How will the Commonwealth facilitate dispute resolution?

Mr Mortimer—There are provisions later in the SFA which deal specifically with that, in section 23. That takes you through those requirements. The Commonwealth can act as a sort of independent umpire in terms of assisting the process—that is probably the best way of describing it.

Senator O'BRIEN—Until legal proceedings are commenced.

Mr Mortimer—There is provision for legal proceedings, if need be. You are quite right—if they proceed then they proceed according to law.

Senator O'BRIEN—How do legal proceedings resolve a dispute over funding priorities for joint livestock export marketing, promotion and research and development programs?

Mr Mortimer—My sense is that in that instance you probably would not go to legal proceedings. That is the sort of thing that is typically agreed by discussion and negotiation between the two parties. In effect you have got two boards, one the board of LiveCorp and the other the board of MLA, and those two boards have responsibility for their particular activities and they will sort it out.

Senator O'BRIEN—If, say, LiveCorp's board has a view and you cannot facilitate agreement, what happens? That is the question I am really asking. Does that mean then that MLA are required to do particular work that LiveCorp requires as distinct from work in common between the MLA constituents, as they are now, and LiveCorp?

Mr Mortimer—My sense is that very rarely do boards go to legal action on this sort of stuff because it is not a particularly effective way to do business. They are better off consulting and negotiating amongst themselves. In the absence of agreement, they will not do certain things. That is typically the case. In the absence of agreement between them, certain activities will not go forward.

Senator O'BRIEN—How do the elements of the first Keniry bill, as I will describe it, fit with this commitment?

Mr Mortimer—They are consistent with the outcome in the sense that the first Keniry bill put in place a series of mechanisms that AQIS and other parties will undertake in terms of

better regulating the trade. This is not, of itself, a regulatory activity; this is a facilitating measure. That is the way it was described in the recommendation of the Keniry report, where it was put forward as a way of strengthening the capability of the industry and facilitating their getting better outcomes in the animal welfare issues that underlie many parts of the trade.

Senator O'BRIEN—Can you tell us to what extent, with the regulatory regime that will emerge with the provisions of the first bill, that will build a framework within which the LiveCorp board must operate? For example, how much flexibility do these arrangements give the LiveCorp board?

Mr Mortimer—Sorry, which arrangements?

Senator O'BRIEN—The arrangements set down in the bill.

Mr Mortimer—This bill?

Senator O'BRIEN—Yes.

Mr Mortimer—The arrangements themselves in the bill do not actually specify that. Rather, they provide for a separate marketing body to be declared by the minister for the livestock export trade and for a separate research body to be designated by the minister for the livestock export trade. Currently—or previously; whichever way you would like to put it—the legislation provides for only a single body to be declared for those purposes. The legislation in itself is quite simple and straightforward and allows the minister to declare another body to do those tasks. Behind that, regulations will come down the track which will deal with the raising of money, and then the statutory funding agreement essentially sets out the related activities consistent with the AMLI Act itself.

Senator O'BRIEN—Let us go back to the Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004. To what extent will the regulatory regime that will emerge from that bill go to building a framework within which LiveCorp must operate?

Mr Mortimer—I might ask Jenni Gordon to comment on the bill you have referred to. Essentially, Jenni and her staff at AQIS were involved with the previous bill that was passed, and we have responsibility for this bill here. I would not want to lead to any confusion.

Senator O'BRIEN—You would not do that, would you, Mr Mortimer?

Mr Mortimer—Not at all, Senator.

Ms Gordon—Through the amendments to the AMLI Act and the Export Control Act, the government is putting in place arrangements whereby the government will be responsible for the setting of standards and for assessing compliance with those standards in respect of exporters, export licences and the granting of export permits. It would be our expectation that within that regime the industry itself through LiveCorp would be looking to the sorts of standards that the industry itself needs to adopt to ensure that its members are able to meet the regulator's standards that government is applying.

Senator O'BRIEN—There were two sets of subordinate legislation to flow from that first bill, if I can describe it that way. The first was the determination of principles for the code,

and I think we were told on 17 June that they would be drafted in about three months. Can you tell us where that work is up to?

Ms Gordon—We are currently settling the drafting instructions that we will then provide to the Office of Legislative Drafting to draft the principles for the minister's consideration, so that they can be made under the AMLI Act. The other regulations, which will specify the inspection certification regime to be put in place for the issuing of export permits, will be made under the Export Control Act.

Senator O'BRIEN—Where is the drafting of that up to?

Ms Gordon—We have now settled drafting instructions. We are having discussions with the Office of Legislative Drafting on the drafts as they are developed. We would hope to be in a position soon to share the drafts with interested stakeholders to finalise them, but not before putting them to the minister for consideration.

Senator O'BRIEN—How far away is that process?

Ms Gordon—It is a matter of weeks. It depends very much on the capacity of the Office of Legislative Drafting to complete the work. Some of the drafting instructions have proven more complex than we had first anticipated and have taken longer to settle. Others have been clearer and we have early drafts where we are seeking some further amendments. The drafts are at varying stages but we have virtually finished setting our policy requirements and drafting instructions.

Senator O'BRIEN—I take it that this process weaves into recital D of the proposed LiveCorp-Commonwealth of Australia statutory funding agreement?

Ms Gordon—The process we are going through to develop the subordinate legislation for the AMLI Act and the Export Control Act are separate from the processes that are being put in place for the industry through the statutory funding agreement. Recital D anticipates that once these arrangements are in place LiveCorp will be in a position to contribute fairly actively to the various consultative processes for the development of standards for all stages of the livestock export chain and to work with its members to ensure that they are able to meet those standards so that when they apply for export licences or for export permits we in AQIS would have no difficulty in agreeing that they have met the particular standards and that we are able to issue either the appropriate licence or export permit.

Senator O'BRIEN—Mr Mortimer, you might be able to answer this. Can you confirm that there is currently funding agreement between LiveCorp and MLA that requires LiveCorp to make an appropriate financial contribution to MLA sponsored programs?

Mr Mortimer—We cannot confirm that, Senator.

Senator O'BRIEN—Can you confirm that under these proposed new arrangements there is no obligation for LiveCorp to accept the spending priorities determined for MLA sponsored programs?

Mr Mortimer—I think what you are referencing there is the nature of the arrangements at the moment as opposed to what they might be in the future. As you would appreciate, LiveCorp does not have a statutory levy at the moment. It operates with the benefit of voluntary contributions from its members. It operates a joint research program with MLA at

the moment. As I understand it, there is no formal document that sets out those arrangements. Rather, it is done by mutual agreement. There is an issue for the future as to whether that will continue or what the nature of the agreement would be between MLA and LiveCorp. Certainly, I expect that will be addressed over the next period of time in terms of settling how they want to do business for the joint research program in the light of having a statutory funding arrangement in place.

Senator O'BRIEN—Is it true that in this case the minister has determined that a case exists for the introduction of a statutory levy?

Mr Mortimer—I think the government decided, as part of its response to the Keniry report, that they would implement a range of measures and one of those was the statutory levy.

Senator O'BRIEN—According to the MOU between the Commonwealth and Meat and Livestock Australia, there is a particular process for the reintroduction of statutory levies. What can you tell us about that process and how it has been followed?

Mr Williamson—I assume you are referring to annexure D in the MOU?

Senator O'BRIEN—Yes.

Mr Williamson—That annexure refers to the existing statutory levies that are meant to flow to MLA in the event that this annexure is triggered. The statutory levy that we are discussing in respect of this bill is a new statutory levy. It is not this statutory levy. It is an entirely different statutory levy. As far as we are aware this annexure does not apply to that levy.

Senator O'BRIEN—You say 'as far as you are aware'. Was there any consultation with other parties to the MOU about their views on the matter?

Mr Mortimer—It is fair to say that there has been discussion with all members of the industry—all the different organisations.

Senator O'BRIEN—After the event?

Mr Mortimer—No, right throughout. The Keniry report took submissions from all parties and then there were obviously discussions from there. Essentially, the point that Mr Williamson is making is that the current legislation, the AMLI Act, had provisions for specific levies but those were put at zero. Essentially, the government has adopted a different approach on this and it has followed it through in a different way.

Senator O'BRIEN—Is this a reintroduction of a statutory levy for the live export sector?

Mr Mortimer—I would not say it is a reintroduction; it is a new levy that has not existed before.

Senator O'BRIEN—It is a new levy. Is it a statutory levy?

Mr Mortimer—Yes, it will be because it exists by statute.

Senator O'BRIEN—Was there a statutory levy before?

Mr Williamson—There is a statutory levy which is rated zero which is intended to flow to Meat and Livestock Australia but the current levy that is being contemplated in this bill is a

different levy which requires an act of parliament and that levy will flow directly to LiveCorp and not to MLA.

Senator O'BRIEN—I am interested because annexure D refers to LiveCorp.

Mr Mortimer—Mr Williamson is pointing out that under that arrangement, which was set out when the MOU was agreed upon, the logic was that if the voluntary levies were not sufficient a compulsory levy would be triggered—indeed the minister could do that by regulation, I understand, but the money would go directly to MLA. In this case, it is the government's intent, as I mentioned earlier, that the funding from the levies go directly to LiveCorp which is a different approach and indeed reflects recommendations of the Keniry report which were that industry should have responsibility for the R&D matters and should be accountable for them.

Senator O'BRIEN—I take it that you agree that there is no requirement for RMAC to commence a review of the MOU?

Mr Mortimer—We have not seen any need to initiate a review by RMAC.

Senator O'BRIEN—It would not require you to do anything if it was covered by the MOU, would it? The MOU says that RMAC will commence review of the MOU and the MISP to identify any changes that may be required as a result. You are saying that that is not required?

Mr Mortimer—Essentially, we are saying that the government decided to take a different course and that is what we are seeing. It did not seem that these requirements were in themselves relevant in this instance.

Senator O'BRIEN—So these changes are not relevant to the MOU. Is that what you are saying?

Mr Mortimer—They are relevant to the MOU but they are not relevant to the changes that the government has initiated in light of the Keniry report.

Senator O'BRIEN—Even though the MOU talks about LiveCorp.

Mr Mortimer—The name 'LiveCorp' is there in many instances, but a different role is being envisaged for LiveCorp than that referenced in the MOU. The same names are there—it is the same groups—but a different set of relationships is being proposed.

Senator O'BRIEN—Is it possible for the LiveCorp board to choose to initiate research on its own behalf, without matching funding from the Commonwealth, or must it only undertake R&D through MLA?

Mr Williamson—It is possible for LiveCorp to initiate R&D on its own behalf. It is not compelled to go through MLA; however, there is a very strong incentive for LiveCorp to channel R&D funding through MLA by virtue of the fact that only MLA receives the matching funds. It is also worth pointing out that, in the current MOU, LiveCorp is not compelled to pass on its voluntary contributions to MLA; it can seek outside research providers if it wishes, so conceptually there is very little difference.

Senator O'BRIEN—Is it true that currently the Cattle Council and the Sheepmeat Council are required to invest their R&D through MLA?

Mr Mortimer—My sense, off the top of my head, is that they are probably not.

Senator O'BRIEN—Don't speculate; I would rather a specific—

Mr Mortimer—Okay, let me quickly put a couple of propositions on the table.

Mr Williamson—The peak councils do not pay levies to MLA. It is the producer-members of MLA who are required to pay a levy, and those levies are channelled to MLA.

Mr Mortimer—That is exactly what I was going to say. I am not sure what the logic of your question is, in the sense that industry representative bodies do not do research and development.

Senator O'BRIEN—I did not say they would do it; but they could channel it outside MLA. You are saying that LiveCorp can do that at the moment—

Mr Mortimer—No.

Senator O'BRIEN—and will be able to in the future. I think that was the evidence. But it does not seem that the Sheepmeat Council and the Cattle Council can.

Mr Mortimer—Let me draw an issue there with the analogy. The sheepmeat and cattle councils essentially organise advice from their members about a range of things, including levy rates. Those levy rates are then agreed, the government accepts or does not accept what the levy rate will be, the money is funded and then the actual expenditure of that money is established by the board of MLA. In this case, the analogy is that LiveCorp would be the board that would be determining the R&D, but it is separate from an industry representative organisation.

Mr Williamson—I can add to that. Meat and Livestock Australia is a producer owned company, so in effect they have control over the levies that are flowing to that company via the board processes. It would not necessarily be appropriate for LiveCorp to be compelled to pass on R&D levies to MLA, because LiveCorp is not a member of MLA and does not have that sort of corporate control, if you like, through membership. I think there is quite a bit of difference in terms of giving LiveCorp that flexibility. Whether or not it chooses to pass R&D funds on to MLA, vis-a-vis the members of MLA, who do not have that choice but do have a choice ultimately through the board voting processes, is another matter.

Senator O'BRIEN—And that choice, through the board voting process, is what? The money has gone to MLA.

Mr Williamson—MLA is a Corporations Act company and it is required to hold an annual general meeting each year.

Senator O'BRIEN—They can change the management of MLA, but the money has gone to MLA. That is the point I am making.

Mr Mortimer—Yes, I accept that, but I am not quite sure what the point is that you are making.

Senator O'BRIEN—I will make it clearer. Can you tell me to what extent this bill will change the red meat model agreed in 1988?

Mr Mortimer—Essentially, in broad terms the industry architecture is still preserved. MLA continues to exist as the chief R&D body. The legislation declares that LiveCorp can receive funds directly from a levy for the purpose of marketing and research and development. But the structure of the arrangements are such that, because the money goes directly to LiveCorp but the matching dollar does not go to their own expenditure, there is a very strong incentive indeed to protect the current cooperative arrangements between LiveCorp and MLA. Essentially, as mentioned earlier, the LiveCorp contribution to R&D funding, through those arrangements, gets first off joint funding from MLA and then that is matched by the government on their expenditure. The broad architecture remains the same, but a different and distinct role has been introduced for LiveCorp.

Senator O'BRIEN—I think we have established that the LiveCorp board can opt out of some MLA programs. You are suggesting that there would be a financial incentive for them not to do that. Is that how I should understand you?

Mr Mortimer—I am saying that it is not an 'opt in' or 'opt out' situation. Essentially, they jointly agree, as is currently the case. You have two boards of separately and independently constituted companies—each with their own constitutions, each operating under Corporations Law—coming to agreement on how they jointly do activities.

Senator O'BRIEN—Or not agreeing on how they jointly do activities?

Mr Mortimer—That is right, yes.

Senator O'BRIEN—In which case LiveCorp would have, for example, some R&D funds or some promotional funds that it might choose to spend elsewhere?

Mr Mortimer—Quite so. That is right.

Senator O'BRIEN—It is possible that LiveCorp could say, 'We don't want to invest in MLA program 1.2.1, which relates to export trade and consumer promotion for beef in the Middle East.' Is that right?

Mr Mortimer—We are saying that they will discuss with MLA what they want to do and they will work it out between themselves.

Senator O'BRIEN—But the potential is there for them to do just that, is it not?

Mr Mortimer—Yes, the potential is there. That is right.

Senator O'BRIEN—Whether or not an activity of MLA directly delivers a benefit to the live export sector, there will be no obligation for LiveCorp to fund it?

Mr Mortimer—They will fund it where they see a benefit.

Senator O'BRIEN—That is not answering the question. I asked whether or not a specific program has a direct benefit for the live export industry, there will be no obligation on LiveCorp to fund MLA for that program?

Mr Mortimer—That is true. There is nothing in legislation that impels them.

Senator O'BRIEN—So there will be the potential for a free ride, if you like?

Mr Mortimer—There is potential for mutual benefit.

Senator O'BRIEN—And there is potential for a free ride as well?

Mr Mortimer—That is a matter of perspective.

Senator O'BRIEN—I think that is just what you agreed with, is it not? I am just putting it a different way.

CHAIR—You are not trying to put words into his mouth, are you, Senator O'Brien?

Senator O'BRIEN—I am trying to get him to agree to an obvious proposition that arises from his previous answer.

Mr Mortimer—At the end of the day, people essentially do business when it is a mutual agreement. I think that it is probably the most sensible way to put it.

Senator O'BRIEN—People do business that suits their business.

Mr Mortimer—That is right: Adam Smith first famously said it.

Senator O'BRIEN—So if a program is to happen anyway there is no requirement for LiveCorp to contribute, because they are getting the benefit without contribution, potentially. I am not saying they will do; I am saying the potential is there with this arrangement.

Mr Mortimer—All I would say on that is that the MLA board can respond to that in whichever way it wants. You have two separate boards that I am sure will be pretty sensible about how they do it.

Senator O'BRIEN—I take it that the case would be the same for program 1.1.3 'Market access beef', which goes to the issue of trade barriers and live cattle exports. If the LiveCorp board or a board in the future decided that it could do a better job on its own, it could say that it does not want MLA to have any money for that program.

Mr Mortimer—My previous comments prevail: it is essentially to be sorted out between themselves, and there is no change to the current arrangements.

Senator O'BRIEN—Was this type of outcome discussed with all the stakeholders as part of the development of this package?

Mr Mortimer—There were certainly consultations in the development of the arrangements.

Senator O'BRIEN—But was that type of outcome discussed with all stakeholders as part of developing this package?

Mr Mortimer—My understanding is that, essentially, the discussion revolved around giving effect to the Keniry committee recommendations and the role they proposed for LiveCorp but doing it in a way that did not unnecessarily disturb the current arrangements.

Senator O'BRIEN—Can you outline for us just what the consultative process was?

Mr Williamson—Consultations took place between LiveCorp and the department and also between the Cattle Council and the Sheepmeat Council about the general nature of the arrangements being put forward as part of this bill. There were discussions on how LiveCorp will relate to MLA and there was discussion around the nature of agreements that might be struck between those two companies. So these issues have been discussed with the stakeholders concerned.

Senator O'BRIEN—When you say 'discussed', do you mean they were told what the arrangements were to be or was some consent process entered into?

Mr Williamson—The department sought to reach a consensus view with industry on the nature of the arrangements being proposed.

Senator O'BRIEN—Mr de Hayr gave us some evidence that the department was approached about what the Cattle Council believed was a departure from the requirements of the MOU. What can you tell us about that?

Mr Williamson—I recall that that was indeed the case, and from that flowed a consultation in respect of the Cattle Council's concerns and how we might work with LiveCorp, the Cattle Council and the Sheepmeat Council to address those concerns.

Senator O'BRIEN—Are you still working with them, or have they been addressed?

Mr Williamson—We believe that, by and large, they have been addressed. It will be important for the boards of MLA and LiveCorp to come to an agreement, but it is not an agreement that we are looking to impose on those two organisations.

Senator O'BRIEN—To what extent is the current draft statutory funding agreement in what might be considered an advanced version of the drafting process?

Mr Mortimer—It is not finalised, clearly. I am not sure whether I would like to hazard a guess as to whether it is 50 per cent there, 70 per cent there or 80 per cent there. My experience in these things is that, typically, you get a lot of stuff done fairly readily and then it tapers off as other issues of more concern need to be addressed, so things get put aside in the interests of making progress.

Senator O'BRIEN—What are the outstanding issues?

Mr Mortimer—As you will see, there is a number of issues in square brackets there that remain to be addressed, and we are happy to point you to those. In terms of the rest, though, I am not sure whether it is all 100 per cent settled with LiveCorp or whether we are awaiting comment from them. Perhaps, Greg, you could comment.

Mr Williamson—I think it is obvious that this is a draft and it requires further development, but I think it is fair to say that it is certainly an advanced draft. We are reasonably close to finalising the agreement. There are, as Mr Mortimer pointed out, some outstanding issues.

Senator O'BRIEN—The ones in square brackets. Is that is how we should understand it?

Mr Williamson—That is correct.

Mr Mortimer—There might be other areas as well, quite frankly, that need to be re-addressed. I would not like to be authoritative in terms of saying it is all there except for those things in square brackets. At the end of the day, the relevant parties need to be in a room and tick off that jointly between themselves. I cannot say authoritatively that I could give an assurance on that here and now.

Mr Williamson—We will be seeking to reference the code and the standards in this document ultimately.

Senator O'BRIEN—How does the minister designate LiveCorp as the industry body? Is it a declaration, a regulation or an order of the minister?

Mr Williamson—It is literally a declaration that is made, and I am fairly certain it is gazetted as required under—

Senator O'BRIEN—So it is a process that requires the approval, if only tacit, of the parliament.

Mr Williamson—The normal course of events would be that we would advise the minister as to whether or not the requirements for a prescribed body to be declared have been met, and we would recommend to the minister that that indeed occur. Following that process, that declaration would be gazetted.

Senator O'BRIEN—Is it tabled in the parliament?

Mr Williamson—Not that I am aware of, Senator, but the gazette is a public document.

CHAIR—Before you ask your next question, could you give consideration to putting a box around 15.1? In five days I could be hidden in the Antarctic.

Mr Mortimer—I have heard your previous comments about that. We will certainly put square brackets around that. Thanks very much.

Mr Williamson—I think it is the case where the dairy SFA was about the choice there.

Senator O'BRIEN—Section 5 of the draft statutory funding agreement relates to the management of funds by LiveCorp. The wording is substantially identical to that contained in the AWI statutory funding agreement, but there is an additional clause, 5.3, which states:

LiveCorp must comply with its obligations under this clause 5 separately in respect of each of the Marketing Funds and the R&D Funds.

Can you tell me exactly what that means?

Mr Williamson—The act provides for two livestock export industry bodies to be declared. We can prescribe LiveCorp to be both those bodies, in effect. You will have separate funds flowing to LiveCorp that pick up marketing, the other flow being R&D. There is a requirement in this draft SFA for those funds to be accounted for separately.

Senator O'BRIEN—I assumed you would require accounting systems, procedures and controls for total expenditure but separate arrangements for marketing and R&D. Do I understand that correctly?

Mr Williamson—Essentially there are two approaches that can be taken. One is that we rely upon modern accounting practices, if you like, to provide auditors with an audit trail in respect of what funds are being used for marketing and what funds are being used for R&D. This is really only important in terms of the matching contributions. The other approach, which has been followed in the statutory funding agreement, is for those funds to have been specifically identified for the purposes of an audit if one is required.

Mr Mortimer—You will see, Senator, that that is bolstered by section 17.3, audit, which specifically requires that the annual financial audit et cetera address the obligations under clauses 5 and 6 in relation to the funds.

Senator O'BRIEN—Can I compare that to the requirements imposed on Dairy Australia in relation to the management of funds through its statutory funding agreement. Section 5 is headed 'Dairy Service Levy Account'. Section 5.1 states:

The Company must deposit and hold in 1 or more Australian Bank accounts controlled solely by the Company ... all the following:

- (a) Dairy Service Payments;
- (b) Matching Payments;
- (c) amounts received from DRDC ...
- (d) all receipts derived from the Commercialisation of R&D Activities ...
- (e) all proceeds from the sale ... or other exploitation of ... Assets ...
- (f) all refunds or repayments of amounts paid out of the Dairy Service Levy Account;
- (g) interest earned on amounts in the relevant Account.

That is a considerable additional rigour to the accountability provisions in that agreement. Where are the comparable provisions in the LiveCorp draft statutory funding agreement? Those things do not relate to any special additional responsibilities for Dairy Australia; they are to do with R&D activities, for example, and dairy service payments.

Mr Williamson—We accept that. The dairy arrangements were set up on the basis that the board would effectively determine how much it expended on R&D and how much it expended on promotion. There were not any designated 'Funds' nominated within the statutory funding agreement. In other words, the dairy agreement provides maximum flexibility to shift R&D funds into promotion and vice versa. The LiveCorp SFA provides for 'Funds' to be established, and this limits the flexibility to shift funds between the two and provides for a different sort of accountability, if you like. The dairy one relies upon basically modern accounting practices, in effect, to identify where those funds are moved around. In the LiveCorp one you have a 'Fund' and the amount of money in that fund tells you how much you have expended or how much you have available for promotion and/or R&D.

Mr Mortimer—It is actually quite complex. You would have to look through and tie in a number of the different dimensions of the requirements of the SFA as a totality. If you like, we could provide on notice a comprehensive listing of all the relevant accountability requirements and show how they fit together.

Senator O'BRIEN—That may well be necessary.

Mr Mortimer—We are happy to do that. Otherwise, we could have a very complex discussion here about how these different pieces hang together.

Senator O'BRIEN—Section 5.2 of the dairy funding agreement says:

No amounts other than those mentioned in clause 5.1 must be paid into or held in a Dairy Service Levy Account.

I hear what you are saying: that the approach is different. You are saying that it does not matter so much how the funds are held; it is the accounting process that you are going to rely upon. I am trying to get an understanding of why you would take a different approach for similar funds. Perhaps you have told me and I have not understood.

Mr Mortimer—If I may paraphrase Mr Williamson—I am not an expert on dairy—he seems to be saying that there is one account, as you see nominated in 5.1, which says:

The Company must deposit and hold in 1 or more Australian Bank accounts ...

So, arguably, they can hold all the money in one account. But, because it specifies one account, it then goes to some trouble to make sure that that potentially one account can capture all the relevant funds and there are mechanisms that flow from that. Whereas, in the case of the LiveCorp SFA, my understanding is that there are two specified accounts required—one for the R&D and one for the marketing—so there is a separation of the funding trail, if you want to put it like that, right at the outset, then the management and auditing follow through from that. Is that more or less it?

Mr Williamson—That is correct.

Senator O'BRIEN—Where does it say it must have two accounts in the LiveCorp survey?

Mr Williamson—I cannot point to it exactly, but I think it is implied.

Senator O'BRIEN—It doesn't say it in section 5.

Mr Williamson—It implies it in 5.3 with reference to a 'Marketing Fund' and an 'R&D Fund'.

Mr Mortimer—So they have to manage two streams of funds: marketing funds and R&D funds.

Senator O'BRIEN—You have to 'establish and maintain accounting systems, procedures and controls' et cetera in relation to marketing funds and in relation to R&D funds. It does not say you have to have two different bank accounts.

Mr Mortimer—That is true. I accept that. It is essentially a different way of doing business. Whether one is right or one is wrong is a matter of judgment.

Senator O'BRIEN—Why is there a different way of doing business for this compared to the dairy statutory funding agreement?

Mr Mortimer—I think it is essentially because there is no stock standard model on the shelf, so to speak. Each statutory funding agreement is looked at anew and is done in the light of the issues that have to be addressed. There is a lot of material in this that reflects the Dairy Australia arrangements. It also picks up elements that have come from the review of how Australian Wool Innovation operates. There are constant changes here, reflecting not just the differences that come from the different industries but also the feedback from the reviews—including the Senate committee review and others—as well as any advice or information we get from the specialists in the department in corporate governance or such matters.

Senator O'BRIEN—Someone has changed their mind, have they?

CHAIR—Senator O'Brien, should the box be around the LiveCorp statutory funding agreement, or should the box be around the dairy one?

Senator O'BRIEN—The dairy one is not a draft one. It is pretty hard to put a box around one that is already signed.

CHAIR—I know, but which are you saying—

Senator O'BRIEN—I am obviously saying that the LiveCorp statutory funding agreement may need a box around it. I am trying to find out why there is a difference. Is it a change on a whim, is there a policy approach—is there a reason? For example, section 5.3 in the dairy statutory funding agreement, which is not in LiveCorp, says:

5.3 The Company must:

- (a) give written notice to the Australian Bank specifying the purposes for which amounts may be withdrawn from the Dairy Service Levy Account under this deed; and
- (b) give the Commonwealth a copy of each such notice as soon as practicable.

Note This provision is to ensure that the Bank is put on notice of the purposes for which amounts in the Dairy Service Levy Account can be spent, thereby limiting the Bank's rights to apply the Account to satisfy the Company's liabilities to it in the event of the Company's insolvency.

I take it that that is not necessary for LiveCorp, that there is a reason it is not necessary and that you can tell me what that reason is.

CHAIR—Or would it be just as easy to put a box around it so that we can move on?

Mr Mortimer—Let me assure you that it is not done by whim. We go to a lot of trouble to get these things right, for obvious reasons—we do not want to have to come back and have a discussion with you guys about how something did not work very well. There are a lot of incentives for everyone to get this as right as possible, if you don't mind me putting it like that.

We do take it very seriously and, as I said, there is no whim involved. We do a draft in the light of 'best practice'—if you can call it that—with advice from lawyers and corporate governance experts. We test that, so to speak, in the light of our experience. Does it meet what came out of, say, an AWI review or, as you specified, the Skehill review or anything else? Are we on track? Because essentially the government is committed to best practice in terms of how it handles both its legal issues and its financial accounting mechanisms.

Senator O'BRIEN—The dairy one was not best practice; you moved on from that?

Mr Mortimer—I do not think any particular one will be best practice for any length of time.

Senator O'BRIEN—You just used the term.

CHAIR—I am sure that he did not mean it was a whim; I am sure that he is searching for a logic.

Senator O'BRIEN—I agree with you, Mr Chairman; he is.

Mr Mortimer—I will put it this way: essentially, the logic is that all the agreements try in ways—which probably do not vary a whole lot—to ensure that any funds coming in can be identified, can be audited, can be reported upon and that a clear trail can be followed so that any auditor or any review can come through and quickly and readily grab the lot. I note Senator Heffernan's comments about not having five days notice to go and dump the records somewhere.

CHAIR—I do it with separate accounts; it is easier.

Senator O'BRIEN—Mr Mortimer, you would agree that that is not a best practice?

Senator COLBECK—You have them in different shoe boxes!

CHAIR—No. I would have them in different shoe boxes.

Senator O'BRIEN—They would be big shoe boxes.

Mr Mortimer—I am not sure that I am giving you complete satisfaction here, but let me assure you that there is no whim. It is done to the best that we can and to the highest standards.

Senator O'BRIEN—Would you take on notice the question that I have asked—that is, for an explanation as to why there are such substantial differences?

Mr Mortimer—We will do that and we will come back to you on that.

Senator O'BRIEN—We may need to talk about it again, depending on the answer.

Mr Mortimer—That is fine. I am happy to do that.

Senator O'BRIEN—I assume that section 6.4 of the LiveCorp statutory funding agreement means that the industry cannot use any levy money—or from matching funds for that matter—to fund ALEC?

Mr Mortimer—I think you asked that question of Mr Shiell earlier when I was in the room. We concur with his answer. Indeed, he referred to the fact that it is reinforced in the constitution of LiveCorp. That represents a change from the Dairy Australia arrangements in terms of tightening the agreement to make sure that we have it as closely defined and managed as possible.

Senator O'BRIEN—Can LiveCorp, if it wishes, acquire services from ALEC, as long as the transaction is done in an open and transparent manner?

Mr Mortimer—Section 6.4 states:

Nothing ... will prevent LiveCorp from acquiring property, goods or services on arms length, transparent and competitive terms.

Senator O'BRIEN—So the answer is yes?

Mr Mortimer—Under the terms set out in 6.4.

Senator O'BRIEN—Section 6.5 goes to the issue of agripolitical activity. It states 'LiveCorp must not engage in Agri-political activity.' It would be fair to say that those activities would instead come under the Australian Live Exporters Council.

Mr Mortimer—That is right.

Senator O'BRIEN—I asked questions—which you heard—about the boards of LiveCorp and ALEC sharing a number of directors or one director. It seems to me that there would be a very thin Chinese wall between the two boards. Have there been any discussions about this arrangement—that is, how joint directors will operate in relation to compliance with section 6.5?

Mr Mortimer—We have examined it and taken it probably as far as we sensibly and practically can within the confines of Corporations Law. You have two different organisations. I accept that there may be an overlap of directors, but the directors of LiveCorp will have their constitution in front of them not only in terms of broad Corporations Law that they need to act

on in the interests of their corporation and their corporation alone but also in terms of agripolitical activities. The provisions of the statutory funding agreement, which they would be signed up to, are reflected in their constitution. So the responsibility lies with them to observe those strictures.

Senator O'BRIEN—There are parallel provisions again between this draft statutory funding agreement and dairy industry's to an extent, about the prohibition on spending money on agripolitical activity. But the case of the dairy industry statutory funding agreement states that, if the company plans to levy money or undertake any activity and:

(b) any Director of the Company is of the opinion that the activity constitutes Agri-Political Activity; the Company must ensure that the Chairperson of the Company consults with the Minister, or his or her nominated representative, and that the Directors of the Company consider the outcome of the consultation, before the Company spends the amount or undertakes the activity.

I cannot find a similar provision in this draft statutory funding agreement. Why?

Mr Mortimer—I think you will find that that is actually in the new constitution of LiveCorp. I stand to be corrected on that if Mr Shiell is in the room, but that is my understanding.

Senator O'BRIEN—You could take that on notice, perhaps, and give us a precise answer.

Mr Mortimer—I have a copy of it here so, if you hold on a minute and I can just find it, I might be able to answer here and now and perhaps give some satisfaction on that. My sense is, if that is the case—and I am just looking to confirm it—that will be consistent with the notion that it is an obligation on the board of directors of the company to do that and it does not need to be referenced in the SFA. Mr Shiell might be able to give me his copy. I thought I had mine with me. In the constitution of ALEC at section 2.1, 'General Objects', the requirements are 'the company must not engage in agripolitical activity'. Then there are provisions very similar to those in the dairy SFA, which read essentially that, if any director is of the opinion that the activity might constitute agripolitical activity, that director must advise the other directors accordingly and the chair must consult with the minister or his or her nominated representative. The directors must consider the outcome of that consultation prior to the company engaging in the activity concerned. Then it goes on, as Mr Shiell referenced earlier, to prohibiting payments by the company to representative bodies.

Senator O'BRIEN—I take it the minister could cancel the nomination of LiveCorp if they changed their—

Mr Mortimer—Yes. I think the SFA sets out that somewhere the minister needs to be advised of any change to the constitution of LiveCorp.

Senator O'BRIEN—I thought you were about to tell me whereabouts in the statutory funding agreement draft I would find that. You can take that on notice.

Mr Mortimer—Yes, I am happy to take that on notice, Senator.

Senator O'BRIEN—I am not sure what your intentions are, Chair, but I have pages and pages to go.

CHAIR—Can you put them on notice? I have a water hearing to go to today.

Senator O'BRIEN—What time does that start?

CHAIR—At nine o'clock or something like that. We had better have a break or these blokes will faint and you will faint.

Senator O'BRIEN—That would not be very helpful.

CHAIR—Try to put a few questions on notice. Senator Bartlett, you are looking pretty composed. What is in your head? What do you want to do?

Senator BARTLETT—I am wanting to ask some questions.

CHAIR—Are you going to put some of them on notice?

Senator O'BRIEN—You had better have a turn now then.

Senator BARTLETT—I am sitting here because I want to ask some questions; I am not sitting here for fun.

CHAIR—Away you go; ask some questions.

Senator BARTLETT—Thank you. Out of these levies, how is it intended to break down the proportion of funds between marketing and R&D? They are specifically separated, as I understand it.

Mr Mortimer—Yes. Separate levy rates will be established for each. Mr Williamson will explain the details.

Mr Williamson—It is important to note that the bill does provide for separate flows of marketing funds under section 44A of the act, and it provides for separate flows of R&D funds under section 64B of the act. The actual split, as far as I know, between marketing and R&D has not been agreed at this stage. It will be agreed in consultation with the industry.

Senator BARTLETT—What mechanism will be used to lock that split in place? Will there be some regulation or will there just be an agreement?

Mr Williamson—It will be a regulation.

Senator BARTLETT—These specific levies are exempt from matching funds. Is that right? They would be purely industry driven; there will not be any Commonwealth matching funds.

Mr Williamson—Certainly the marketing funds do not attract matching Commonwealth funds. However, the R&D funds, provided they are passed to MLA for R&D purposes, will attract matching funds, subject to MLA not going above its GVP limit.

Mr Mortimer—I need to clarify that: the funds would be matched in 'the hands of MLA', if I can use that language, so that the matching funding would not go to the hands of LiveCorp, rather it would go to the hands of MLA on expenditure.

Senator BARTLETT—But expenditure on R&D for the live export trade?

Mr Mortimer—Absolutely; that is right.

Senator BARTLETT—How can you determine at this stage what the likely taxpayer expenditure is going to be?

Mr Williamson—There is a cap on the matching payments that can be paid to MLA, and I think it is 0.5 per cent of GVP for the red meat industry.

Senator BARTLETT—Is the marketing component currently in existence?

Mr Williamson—LiveCorp currently has marketing programs.

Senator BARTLETT—So, from the government's point of view, or the legislation framework's point of view, it is just maintaining that component with the money that is raised by the industry. Is it likely to mean an increase overall in money into that arena, or can't you tell at the moment?

Mr Williamson—It is fair to say that the aggregate envisaged levy rates will be significantly higher than the current levels of voluntary contributions to LiveCorp.

Senator BARTLETT—Is there a definition of marketing, in terms of how easy it is to separate marketing from R&D? Is there a legislative definition?

Mr Williamson—As far as I know, marketing is defined in the bill. In fact, the statutory funding agreement references marketing funds to mean amounts paid to LiveCorp under section 64A of the act. In this case, they mean the bill.

Mr Mortimer—The AMLI Act.

Senator BARTLETT—You would be aware, I imagine, of the brief submissions from the RSPCA and Animals Australia to this inquiry?

Mr Mortimer—We have not seen them, Senator.

Senator BARTLETT—You said you were developing memorandums and agreements et cetera with stakeholders. That seems to be totally industry specific. There does not seem to be any involvement of animal welfare organisations in any of these discussions.

Mr Mortimer—Not in the actual structural industry arrangements. I expect the animal industries would be very much involved with issues to do with the code of conduct et cetera but the issues we are talking about here relate to the structure of the industry. The stakeholders are seen as organisations such as the Cattle Council, the Sheepmeat Council, ALEC, LiveCorp, MLA and suchlike.

Senator BARTLETT—Given that a primary concern that drove the Keniry review and all of those things was the animal welfare problems with the industry—all of us know that is something that has been an ongoing matter for decades—how is the structure of determining the expenditure of money going to ensure that animal welfare gets that priority and primary consideration?

Mr Mortimer—There are two dimensions to that. One is that LiveCorp on behalf of live trade will be better equipped and more capable to deal with the issues around live trade. The response to the Keniry committee as a whole in terms of the different pieces of legislation that have been touched on are all designed to come together to get better outcomes for the live trade, including the welfare of the animals. Secondly, in establishing both their research priorities and the joint program I would expect that the board of LiveCorp will be consulting to ensure that they meet these issues specifically. This government has given clear signals to the industry that it wants the industry to perform better on those matters.

Senator BARTLETT—Who are they consulting with?

Mr Mortimer—They consult with whomsoever they choose; it is not for us to prescribe. The board of LiveCorp will do that. They can consult widely with whomsoever they think is relevant in terms of establishing R&D priorities.

Senator BARTLETT—What mechanisms are you aiming to put in place or likely to feel are necessary to ensure proper scrutiny of the expenditure of this money? Are there going to be annual audits or independent oversights of the decision making about where it is directed and the priorities that are chosen?

Mr Williamson—There are a number of layers of accountability that the company will be subjected to. At the highest level, if you like, they it will be required under the Corporations Act to produce an annual report, and the statutory funding agreement specifically sets out the Commonwealth's reporting requirements that have to be included in the annual report.

Senator BARTLETT—I am not thinking so much of corporate performance requirements. I do not anticipate there will be any problems there with dodgy misuse of funds. I mean ways to ensure that sufficient weight is given to animal welfare in decision making and that things labelled 'animal welfare' are not just disguised better ways to make sure that animals are still alive at the other end when you pack more of them in and all those sorts of things that we have seen in the past. How are we going to make sure that animal welfare gets the priority it deserves in the decision-making process?

Mr Mortimer—I do not think it is something that can be legislated. Essentially the answer is to have the most open and fulsome reporting and for that to be scrutinised by that group of interests, that broader set of stakeholders—if I can put it like that. I think LiveCorp will know what the challenge is for them, and they will be under scrutiny at a number of levels on whether they are achieving that, whether gains are being made to animal welfare and whether the community at large is happy with them.

Senator BARTLETT—The scrutiny has been there for 20 years, even by this body—since we did the Senate inquiry into the live export trade. That does not seem to have alleviated community concern about it—if anything, I would think it has become worse.

Mr Mortimer—I will not speak on behalf of the live trade because that is not my job. But my sense is that there is a lot of scrutiny by the community and the media about the nature of this trade and how it is conducted, and my expectation is that the community will expect government to be responsive to that, and that will flow through to how these documents are scrutinised.

Mr Williamson—It is also fair to say that a different regulatory framework is in place now to that which existed prior to this bill going forward. As Jenni Gordon said, LiveCorp does not have any regulatory role in the industry anymore. Its role is capacity building, and it does that in the interests of its members. Ultimately its members will judge whether it performs well in that sense because it is the members who will have to operate within that regulatory framework, which is independent entirely from LiveCorp.

Senator BARTLETT—Turning to the process to decide how to spend this money, the submissions provided, again at quite short notice, by the animal welfare groups have

suggested some form of advisory committee that has the permanent presence of an animal welfare organisation so as to ensure that is automatically part of the ongoing decision-making process. By the sounds of it and from the look of the drafts, that is not something that is part of your agenda.

Mr Williamson—I think that is a matter for the LiveCorp board to consider. As we have indicated, they do not have a regulatory role in the industry anymore. Their role is to facilitate capacity building, and it would seem sensible for the LiveCorp board to engage the animal welfare lobby, if you like, to take on board issues that might assist their members to work better in the community.

CHAIR—Has questioning completed?

Senator O'BRIEN—I think we might adjourn to a later date, so that we can have a look at some of the documents that have been provided. I think we need to explore some of these matters further.

Senator COLBECK—You have put a box around clause 15.1; is five days the industry standard? I did note that LiveCorp said they would be prepared to abide by the industry standard. They did not really say that they would be prepared to have the chairman turning up at 10 minutes notice with the jackboots on. I was just interested to know whether that is a standard across the statutory funding agreements. The other question I had is whether there is some sort of template for these things and how you apply some sort of quality management or benchmarking system across those?

Mr Mortimer—We will take the first question on notice, as to whether there is some standard either across the industry or across SFAs. In terms of the question about a template, I talked earlier about the way these things evolve and develop. I will check and come back on notice as to whether there is some sort of template in some expert's head that gets built upon, and give you some comment on that, if you are happy with that.

Senator COLBECK—Yes. There is the issue with respect to changing the constitution. Section 3 of the funding agreement relates to change of the constitution, but in what situation? The only thing this does is provide for notification to be given. What would the circumstance be if LiveCorp did change their constitution to remove the sections that relate to, for example, agripolitical business? What impact would that have on the statutory funding agreement?

Mr Williamson—If I understand your question correctly, you are asking about the implications of a change to the constitution when the Commonwealth does not think it is appropriate.

Senator COLBECK—Yes.

Mr Williamson—Essentially, that is set out in section 7.1, under 'Suspension or termination of fund payments'. So the Commonwealth has that option under section 7.1(f). The Commonwealth may look at that change and elect to either suspend or terminate payments to the company.

Senator COLBECK—But there is no capacity to change the funding agreement, is there, to reflect what the requirements of the Commonwealth might be with respect to maintaining the relationship? How is that dealt with?

Mr Mortimer—What you are saying is quite right. Essentially, in a business sense, there is a notification procedure that you referenced, under section 3. That would be notified to the Commonwealth and the Commonwealth would clearly need to give a view. What is in section 7.1(f) is a fairly significant way of terminating the funds. In a business sense, it would clearly cause concerns.

Senator COLBECK—That is an end case outcome.

Mr Mortimer—Yes. In between that, there would be negotiation between the two parties as to whether this was really in their mutual interest, and the Commonwealth would have discussions and negotiations with the board of LiveCorp as to exactly what that signified, with a view to settling it in some shape or form that would hopefully not go to the very abrupt and, as you said, extreme measure of cutting off the funds.

Senator COLBECK—So the only recourse would be through clause 26, which has two lines relating to alteration. It states:

Except as expressly permitted under this Agreement, this Agreement may be altered only by an agreement in writing signed by each party.

Mr Mortimer—Yes, that is right.

Mr Williamson—Finally, it is worth pointing out that, in terms of suspension or termination of payments, the Commonwealth is able to suspend some payments; it does not have to suspend all payments. There is a graduated response that could be contemplated if need be.

Mr Mortimer—I think your analysis is quite right, in terms of how it would be done and what the scope is within the arrangements for actually negotiating an outcome.

CHAIR—Thank you.

Committee adjourned at 7.44 p.m.