STANDING COMMITTEE ON
UNIFORM LEGISLATION AND STATUTES REVIEW

INQUIRY INTO THE COMMERCIAL ARBITRATION BILL 2011

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 24 OCTOBER 2011

Members

Hon Adele Farina (Chairman)
Hon Nigel Hallett (Deputy Chairman)
Hon Linda Savage
Hon Liz Behjat

Hearing commenced at 2.54 pm

RICHARDS, MR PETER
Legal Policy Officer, Department of the Attorney General, sworn and examined:

The CHAIRMAN: On behalf of the committee, I welcome you to this meeting. Before we begin, I must ask you to take either the oath or the affirmation.

[Witness took the affirmation.]

The CHAIRMAN: You will have signed a document entitled "Information for Witnesses". Have you read and understood that document?

Mr Richards: Yes, I have.

The CHAIRMAN: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record. Please also be aware of the microphones and try to talk into them and ensure that you do not cover them with papers or make noise near them. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Also, please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that premature publication or disclosure of the uncorrected transcript may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Would you like to make any opening statement to the committee before I begin with my list of questions, which I understand you have been provided with an advance copy of?

Mr Richards: I have a bit of hay fever so my voice may go off. If Hansard could let me know if it does. I will be drinking a lot of water.

The CHAIRMAN: That is not a problem.

During the public consultation phase of preparing the bill, what feedback and suggestions did the department receive and what did not make it into the bill?

Mr Richards: At the outset I should probably suggest, as you are aware, that this is a model bill drafted and picked up from New South Wales legislation that was prepared by the Parliamentary Counsel's Committee. A number of people have queried New South Wales as part of the preparation of drafting the model bill, including the Institute of Arbitrators and Mediators Australia and a number of barristers and solicitors in New South Wales and I think in the rest of Australia. I am not aware of any in particular, except for the fact that this bill has been run past the Law Society of Western Australia and at least one of the barristers that I am aware of practising in Perth.

The CHAIRMAN: Do you have the name of that barrister?

Mr Richards: Scott Ellis. I am not sure what did and did not make it into the bill because, as I said, that was dealt with by New South Wales, which is setting up a centre of arbitration in New South Wales based in Sydney, and this is part of a national scheme.

The CHAIRMAN: What are the deficiencies with the current act which is itself the product of a uniform scheme in the mid-1980s?

Mr Richards: I am not an arbitrator and nor have I done any arbitration. It might be more appropriate to ask an arbitrator. However, to my knowledge, there have been no problems with the current act except for the fact that it is 25 years old and therefore might be considered to be a little out of date. It picks up United Nations model legislation whereas before it was only national legislation.

The CHAIRMAN: Could you identify any deviations between the bill and the SCAG 2009 model Commercial Arbitration Bill?

Mr Richards: So far as I am aware, there are no deviations. This might be an opportune time to deal with the elephant. Clause 11 and a number of other clauses have additional sections in them. In their supplementary papers the committee identified one of these clauses at least. I have a letter from the Institute of Arbitrators and Mediators pointing out the clauses that are involved. They are clauses 11, 13, 14, 16, 27H and 27I. They all have a section which provides that the previous subsection does not limit judicial review and is subject to the constitution of the commonwealth. If you look at the model legislation and the New South Wales legislation, clause 11(5) states —

> A decision within the limits of the Court's authority on a matter entrusted by subsection (3) or (4) to the Court is final.

There is a High Court decision called Kirk v Industrial Relations Commission of New South Wales which essentially provided that this may well be beyond state legislative power to enact legislation to deprive a state Supreme Court of the power to review these things. The High Court stated that one of the defining characteristics of a state Supreme Court was a supervisory role and to say something was final would exclude that, especially in relation to prerogative writ. The Kirk case, which was decided in the High Court, says that state legislative power exercised this way may be invalid. I say "may" because it can be subject to other matters and things like that. Kirk was also referred to in a case called Totani in South Australia about outlaw criminal gangs—the motorcycle gangs. I queried the State Solicitor's Office and apparently there is another High Court decision in relation to this same sort of thing going up to the High Court on 29 and 30 November.

The CHAIRMAN: What did the High Court say in Totani?

Mr Richards: It said that that Criminal Organisations Control legislation to exclude judicial review for jurisdictional error from the scope of the legislation was invalid. It read down what they call a privative clause. Privative does not mean private. I had to look this up in the dictionary. It comes from "privare", meaning "to deprive".

The CHAIRMAN: Are you saying that the submission that has been received actually says that this provision in clauses 11, 13, 14, 16, 27H and 27I might actually run into the same problem?

Mr Richards: They may be unconstitutional. What has been drafted by parliamentary council is the drafters' attempt to deal with the issue. If you notice in the WA bill —

The CHAIRMAN: So these provisions in those clauses may be unconstitutional and the following subsection is an attempt to make it constitutional —

(a) does not limit judicial review; and

(b) is subject to the Constitution of the commonwealth section 73(ii).

Mr Richards: Yes.

The CHAIRMAN: Do we have any legal advice that that is actually the case?

Mr Richards: No.

The CHAIRMAN: No. Is that because the High Court has not made a ruling on it?

Mr Richards: The High Court made a ruling in Kirk and it was pretty straightforward but there are other cases coming through the pipeline.

The CHAIRMAN: And the ruling in Kirk would indicate that this would remedy the problem?

Mr Richards: No.

The CHAIRMAN: I did not think so.

Mr Richards: The High Court did not make any comment. Paragraph 95, I think it was, talks about state legislative power and privative provisions and how they have been a part of the landscape. It then says that, as I say, it is something that is unconstitutional, but it also goes on to say —

> This is not to say there can be no legislation affecting the availability of judicial review in the State Supreme Courts.

I think we are finding where the ground is.

The CHAIRMAN: Okay. Can I ask why the view was formed that we should try to avoid judicial review in the state Supreme Courts?

Mr Richards: So far as possible, the intention is for arbitration to be final without necessarily appealing to the state Supreme Court unless there are good reasons.

The CHAIRMAN: Even on an error of law?

Mr Richards: This is one of the problems. Yes, even on an error of law.

The CHAIRMAN: What is the rationale for that? Is it just the objective of making arbitration final?

Mr Richards: Yes. Arbitration relates to businesses. Imagine if the Channel 7 case and some other cases had gone to arbitration how much quicker they might have been resolved. There is an argument that maybe they should have been dealt with by arbitration in some cases and that to make things as final as possible, although there is a power to appeal to the Supreme Court, there may be a power based on Kirk.

The CHAIRMAN: Okay. Have all the other state jurisdictions that have adopted the bill adopted it with these provisions?

Mr Richards: No. The matter has been pointed out to me by the Institute of Arbitrators and Mediators. I will write a note to the Attorney General recommending that he contact his counterparts in the other states with a view to seeing whether there is an issue or not. They might say that they do not consider it to be an issue and we could revert back to what they have or they might consider it to be an issue and they may end up picking up what we have done, or some variation of it. It is an attempt, as you have said, to make the act as constitutional as possible.

The CHAIRMAN: Although I am not sure that it does. I accept that it is an attempt to do that, but I am not sure that it achieves that. Just to clarify, you have said that other jurisdictions have not inserted the same provision?

Mr Richards: No.

The CHAIRMAN: Does that mean that the other jurisdictions, therefore, have allowed for the Supreme Court to be able to adjudicate in a matter?

Mr Richards: No, they have the word “final”, which is saying that they cannot appeal and therefore you may well be taken to the High Court based on the decision in Kirk. We are the only state that has done this particular one.

The CHAIRMAN: But the objective of doing it this particular way is to avoid the Supreme Court having a role to review an arbitration decision, or have I misunderstood that? As I read this, I understand that what we are trying to do here is to avoid the Supreme Court having a role to review.

Mr Richards: As drafted, it says that subsection (3) does not limit judicial review. That means that it is an attempt to allow the Supreme Court the power to have a look at and to review these cases.

The CHAIRMAN: But that is subject to the Constitution of the commonwealth, section 73(ii), which states that the High Court has appellant jurisdiction to hear orders from a Supreme Court.

Mr Richards: Yes.

The CHAIRMAN: So I did misunderstand that. By including this provision we are allowing the Supreme Court jurisdiction to hear a matter, provided the grounds are made for a review in the Supreme Court and it also allows for the High Court to hear an appeal on a Supreme Court decision?

Mr Richards: Yes.

The CHAIRMAN: And other jurisdictions have not allowed for that, so what they have done is proceed down the path of not allowing for a Supreme Court jurisdiction.

Mr Richards: And that may be unconstitutional. It is only a "may" here because it is a technical legal argument. It is a difficult argument and, as I say, there are other cases in the pipeline in South Australia.

The CHAIRMAN: Which might clarify the issue.

Mr Richards: Which might clarify the issue or which might make it worse.

The CHAIRMAN: Are there any other deviations between the bill and the SCAG 2009 model Commercial Arbitration Bill?

Mr Richards: My understanding is that it is only the consequentials at the end.

The CHAIRMAN: Are those deviations in any way significant?

Mr Richards: No.

The CHAIRMAN: In relation to clause 1C(1), "Paramount object of act", what was the motivation for using the term "paramount" in the objects clause of the bill? The committee has noted that the International Arbitration Act 1974, Commonwealth, uses the phrase "Objects of this act" and that it is absent in the United Nations model law. Why is clause 1C(1)necessary?

[3.10 pm]

Mr Richards: The clause was inserted into the model bill. It was prepared and it is also in the legislation in other states, and it was simply picked up and applied in Western Australia. It is considered necessary to ensure that, as far as possible, this is a nationally consistent piece of legislation.

The CHAIRMAN: I just notice that, more and more with WA drafted bills, parliamentary draftspeople are excluding objects in acts. I do not really understand why, but they seem to not be including them. I note that this one does have one, which I actually probably have a preference for. But I just note that there is an inconsistency in the way that we are drafting bills in WA. But you cannot clarify that issue any further. It is probably something we need to take up with parliamentary draftsmen.

Mr Richards: I think it is a drafting style. I think there are more cases where there are objects mentioned in legislation in Western Australia. This is only a personal view. Objects were considered at one stage to be a little bit wishy-washy. From my point of view, I prefer having objects in the actual clause rather than in the preamble. But that is something that, if you wish, you should take up with the drafter.

Hon LIZ BEHJAT: If you say that something is the paramount object of the act, it would automatically imply that there are other objects that are not paramount. Is it your opinion that there are other objects that are not paramount? I do not understand the use of the word "paramount".

Mr Richards: There would be other objects of the act, but my understanding would be that "paramount" means that it is the major reason as opposed to, say, "dominant", which would

probably mean 51 per cent of the act is the most dominant purpose. But with "paramount", I think you are talking about the larger, far greater object of the act is what is stated to be the paramount object.

The CHAIRMAN: And what are the other objects of the act?

Mr Richards: I am not sure, but it is just the various other things that are drawn up in the act. But the paramount object is to facilitate resolution of commercial disputes. There are other things in there but they are not set out in that clause.

The CHAIRMAN: Yes, which makes it even more confusing given the way we are drafting acts these days. You would think that all the objects of an act would be stated very clearly right at the front of an act.

Hon LIZ BEHJAT: If you are going to state the objects, state them; do not state some and not the others.

The CHAIRMAN: But we acknowledge that this has been drafted in New South Wales, and we will move on.

Clause 1C(3) states —

> This Act must be interpreted, and the functions of an arbitral tribunal must be exercised, so that (as far as practicable) the paramount object of this Act is achieved.

What is your response to the view that clause 1C(3) contemplates a fair resolution of matters rather than justice to the parties?

Mr Richards: I think it probably does contemplate fair resolution of matters. Arbitration is meant to be a prompt and economical process that a business will go to if they have both agreed to resolve some sort of business dispute, hopefully with the avoidance of going to a court. Matters are heard by experts normally—expert arbitrators or expert in a particular field—rather than a judge. But I also think that an arbitrator is required to deal with matters as fairly as possible.

The CHAIRMAN: The purpose of clause 1C(1) is for impartial arbitral tribunals to facilitate fair and final resolutions, yet clause 27D(7) states that confidential information must be given to the other party when mediation terminates and arbitration recommences. How is that fair?

Mr Richards: The particular clause, 27D, relates to what happens when an arbitrator acts as a mediator, conciliator or other non-arbitral intermediary. I think it envisages a situation where an arbitrator steps down and attempts to mediate what is going on. Subclause (7) goes on to state that the matters which are made available are those that the arbitrator considers material for the arbitration proceedings. I do not think it gives him open slather to provide all information, only material information with the intention of resolving the dispute quickly and efficiently.

The CHAIRMAN: But does that not then make it an argument that the mediator should not also be the arbitrator?

Mr Richards: It does. That is an argument that was had and it has been decided that the arbitrator can be the mediator. That was something that was pushed very hard by the institute of arbitrators.

The CHAIRMAN: I wonder whether parties would have the same view.

Hon LINDA SAVAGE: Or mediators.

The CHAIRMAN: That sort of raises a question then of whether the mediation process itself would be compromised because parties would be disinclined to provide confidential information, because if the mediation does not reach a resolution and it goes to arbitration, that confidential information may then be released to the other party. If I was taking part in that process, I might be reluctant to provide confidential information, which would then compromise the mediation process.

Mr Richards: Yes, that is a possibility. However, as I say, it is only information that is material. I think you make a fair comment.

The CHAIRMAN: I will move on. Clause 1B(b) provides for the rest of the bill to come into operation on a day to be fixed by proclamation. Given these constitute the substantive provisions of the bill, what is the anticipated time frame for the introduction of the substantive provisions of the bill and why are they not being introduced now?

Mr Richards: It is a standard drafting sort of provision, and the intention would be to get this in position as soon as possible, bearing in mind that this legislation has been in place in other states for a year or so.

The CHAIRMAN: I assume that it also allows for the drafting of any regulations.

Mr Richards: Yes. I do not think there will be any regulations, but you really cannot swear that nothing is going to come in that does not require regulation.

The CHAIRMAN: It is expressly stated that no court must intervene in the arbitration process except where so provided in the bill and that, overall, this is limited to giving assistance to the process—but in respect of appeals from awards, wide power. The courts are seen as championing parties' rights and, historically, courts were reluctant to enforce arbitration agreements because they were perceived as creating injustice. What has changed that necessitates the diminishing role of the courts with respect to resolving commercial disputes?

Mr Richards: That should be taken in recognition of the Kirk decision for a start, because I think the courts are actually going to be able to get involved in these things. As to whether the arbitration agreements were perceived as creating injustice, I am not sure that I agree with that. But maybe that is something that should be directed towards an arbitrator rather than me. My understanding was that it was just meant to be a fair decision.

The CHAIRMAN: Although writing is required, explain why the bill does not require signatures in an arbitration agreement? Here I am referring to clause 7(3)?

Mr Richards: I think it is accepted that, if you look at subclause (1), an arbitration agreement is an agreement. Agreements are normally signed; however, increasingly, having regard to electronic transactions, there is no signature on documents. Requiring a signature may preclude the use of electronic transactions in creating an arbitration agreement. I think that the intention is that there is a perceived acknowledgement of the correct position by both parties.

[3.20 pm]

The CHAIRMAN: How would you know that from reading the document, if on the face of the document there are no signatures?

Mr Richards: If you have electronic transactions, you do not have a signature.

The CHAIRMAN: But why not? I do not understand. I accept what you are saying, but I find that interesting because it is very easy to scan a document with a signature on it and send it electronically.

Mr Richards: Yes, but you could not send it as email if you did put the signature on.

The CHAIRMAN: Yes, you could.

Mr Richards: I think it just recognises that there are different systems that are being developed, and electronic transactions create a new world.

The CHAIRMAN: I am not too sure that I agree there needs to be a new world without signatures, because you can scan documents that have a signature and you can electronically send them anywhere, including by email, because I do that frequently in letters that bear my signature.

Mr Richards: Under subclause (4) an arbitration agreement is in writing if its content is reported in any form, whether or not the arbitration agreement or contract has been concluded orally by conduct or by other means.

The CHAIRMAN: How would a court know that all the parties agree that what is in the agreement accurately reflects what the agreement was, if there is no indication from each of the parties on the face of that document?

Mr Richards: Because under the Electronic Transactions Act there is provision for electronic signatures to be applied to documents. This gives some sort of acknowledgement that the person involved has actually signed the document. I forget the number of the section in the act, but it was specifically referred to by Mr Quigley when he debated the bill in the Assembly last week.

The CHAIRMAN: I will have a look at *Hansard*.

Mr Richards: It is about clause 16 or something like that. There is clause in the Electronic Transactions Act—it is probably still a bill—which deals with just this situation.

The CHAIRMAN: Under clause 12(5), which reads "Grounds for challenge", an arbitrator's appointment may be challenged when there are justifiable doubts as to the impartiality or independence of that person, but there has to be a real danger of bias. This clause is not in the UN model law. It means that the arbitrator can disclose circumstances giving rise to justifiable doubts, but the bill imposes a higher threshold; that is, there must be real danger of bias. Would you explain the current commercial law test of bias and the rationale for imposing this higher threshold test for bias?

Mr Richards: That is a difficult one to answer, except I think that bias is one of the things involved in relation to natural justice, as you are aware. There are a number of issues taken up in natural justice, and one of them is bias. It is basically what a fair-minded person might consider to be in a situation. I am not aware of any current commercial law that tested bias, apart from the test that is supplied by the court, which is if there is a perception of bias then there is an issue and the court will intervene. I am not sure what the rationale is for imposing a higher threshold for bias, but I would suggest that is probably because these arbitrators are normally experts in the area and you may have only one person in the area who can actually do an arbitration, and it is a question of greater trust in the process.

The CHAIRMAN: Or greater risk in the process.

Mr Richards: Or greater risk in the process. It is in the model legislation. It is the way it has been approached. It is not a question that has been raised before, and I do not think arbitrators have any worry with it—whether the parties have a worry might be another issue.

The CHAIRMAN: Also, if a party does have a worry with it, it is a higher test that they need to meet to raise a concern about it.

Mr Richards: Exactly, I agree; it is a higher test.

The CHAIRMAN: Clause 17D of the bill refers to how an arbitral tribunal may modify, suspend or terminate an interim measure. It is granted in exceptional circumstances, but there is no prescription of what those circumstances may be. Would you be able to outline to the committee what those circumstances might be?

Mr Richards: No. I think it is a catch-all, and I note that it has modification on the initiative of the tribunal; basically, on its own initiative. It is something that is taken from model law and it has been inserted in this legislation.

The CHAIRMAN: Have there been incidents that you can point to that have given rise to this —

Mr Richards: No.

The CHAIRMAN: — because it seems to be very peculiar, in that if it has been agreed by the tribunal you would think that it would have given consideration to all these circumstances before making the measure?

Mr Richards: I cannot give any examples.

The CHAIRMAN: I refer to clause 24 in which an arbitral tribunal can decide whether or not to hold an oral hearing for the presentation of evidence of an oral argument. This means that the arbitral tribunal can determine whether to proceed merely on the basis of documents and other material. The committee accepts that there is no right to an oral hearing, but why not provide a right in this bill?

Mr Richards: I just note one point here: sometimes the court can proceed on the papers, and in that respect it is very similar to what happens in a court sometimes. And also it says in the section that the arbitral tribunal is to decide whether to hold oral hearings. The question is up for the arbitral tribunal, and the parties would make submissions and a decision would be made by the arbitrator. There is no right, except what is provided for, and the tribunal is the decider. It is similar to what a court does in a decision on the papers.

The CHAIRMAN: I turn to clause 27D(7) in which the arbitrator may act as a mediator, conciliator, or other non-arbitral intermediary and prescribes that when mediation terminates, confidential information can be disclosed by the mediator now acting as an arbitrator. This is not in the UN model law. Why is clause 27D(7) in the bill; or, what is the rationale for having it in the bill?

Mr Richards: Clause 27D is, of course, the most contentious clause we have had. It has been argued at great length and, in the end, the minister has decided that this was the way to proceed.

The CHAIRMAN: So the best you are able to explain to the committee is that this is a policy decision.

Mr Richards: Yes.

The CHAIRMAN: I will persist a little bit further with clause 27D(7). This is a contentious clause and we note that, following the enactment of the SCAG model bill in New South Wales in 2010, SCAG ministers agreed to conduct further consultations into clause 27D. Given that the closing date for submissions was 30 April 2011, what are the outcomes of that review?

Mr Richards: The decision was—it is a little bit vague—to go with the bill as it is presently drafted. They made no change at all. Ministers agreed to just proceed with the bill as it was. The decision is actually on the SCAG communiqué for July 2011, simply saying that it noted the submissions and decided not to proceed with any changes. I have queried New South Wales and the New South Wales officers just said that the ministers did not agree to the amendment contained in the attachment date of the paper, therefore we do not have to make any changes. It is as simple as that.

The CHAIRMAN: Turning now to clause 35(2), which refers to of copy of an arbitral award. Although it may be implied, it is preferable that from an evidentiary-value perspective the term "certified" or "notarised" be inserted. That requires something more than a photocopy; however, neither the UN law nor the 2010 New South Wales act, nor the commonwealth's act, requires a certified copy. Why is this the case?

Mr Richards: I am not sure. I think in many cases you would be arguing for a certified copy, as you suggest. I think "copy" is meant to include things like certified or notarised copy. If you present documents from overseas, they have to be notarised anyway.

[3.30 pm]

The CHAIRMAN: Turning to clause 45, there may be a minor drafting error in clause 45, item 14. Item 14 makes various consequential amendments to the Petroleum Act 1936. There is a reference to a section 14(4), but the committee queries whether this should be section 14(3).

Mr Richards: I read the provision and I asked the drafter, and he agrees with me that there is a need to make an amendment. It should be section 14(3) of the Petroleum Act 1936.

The CHAIRMAN: Will the government be putting forward an amendment to the bill as part of the consideration of the Committee of the Whole in the Legislative Council, or is the committee required to put forward that amendment?

Mr Richards: However the committee would prefer it to travel. But the amendment will certainly be made, whether it is recommended by the committee or whether the government picks it up, because it is clearly an error.

The CHAIRMAN: We would expect that if it is clearly an error, the government will pick it up, but just to be sure to be sure we will also include put in our recommendations.

Mr Richards: Okay; it is picked up.

The CHAIRMAN: In relation to a review of the act, there is no standard five-year review of the act clause in the bill. As there is no formal IGA, just a SCAG communiqué, how will the act be reviewed?

Mr Richards: The act will be kept under constant consideration. It is a national act, and if there are problems with it, I am sure New South Wales will be letting people know any problems. There is no formal review.

The CHAIRMAN: Well, I do not share your confidence, because we do not actually have access to any of the submissions received by New South Wales and we do not have any information as to which stakeholders New South Wales consulted with. We do not even have the rationale for why SCAG makes the decisions it has made, particularly in respect to clause 27. So, I do not quite share your confidence, but I note your answer.

Does the government intend to make any further amendments to the bill?

Mr Richards: Nothing except in relation to clause 45 just mentioned.

The CHAIRMAN: Have any regulations or rules of court been made?

Mr Richards: No; parliamentary counsel will not do these things until the bill is through.

The CHAIRMAN: Just turning to clause 11(5A), "Appointment of arbitrators", the Law Society has complained about this section. It states that a decision by the Supreme Court is final about appointment procedures and disagreements about whom to appoint, and that the inclusion of (5A) further delays the appointment process with this ability to challenge. I think we have covered this to a large extent already, but I think we just need to note that the Law Society has expressed specific concerns in relation to this. What are your comments in relation to the Law Society's argument that the court referred to in section 11 is the Supreme Court, but it is not apparent that a right of judicial review exists in respect of decisions of the Supreme Court? The Law Society has said judicial review is a power that the Supreme Court exercises in respect of inferior courts and persons exercising statutory power; the Supreme Court does not review itself.

Mr Richards: I think the Law Society's argument falls on the Kirk decision, and (5A) was included in the bill for that reason. As I said before, this is a work in progress. My comments in relation to the Law Society's arguments are that they probably did not take into account the Kirk decision to entertain.

The CHAIRMAN: Also, looking at clause 27D(3)(b), this clause states that mediation proceedings in relation to a dispute terminate if any party to the dispute withdraws consent to the arbitrator acting as mediator in the proceedings. One of the submissions received by the committee pointed

out that this clause allows for one party to withdraw consent on virtually any ground, and could extend the proceedings continually by withdrawing consent with subsequent mediators; in other words, the process could be frustrated by one party. What is your view of this comment?

Mr Richards: Yes, a party could, but is it to anyone's advantage for that to happen? It would eventually end up with a court situation. I agree; a party could continually frustrate the proceedings.

The CHAIRMAN: Was there a view that there should be some sort of provision in the act to ensure that that did not happen?

Mr Richards: No.

The CHAIRMAN: Would the department consider an amendment to prescribe the grounds under which consent could be withdrawn?

Mr Richards: If there is any amendment to prescribe the grounds, it would be referred to the Attorney and the Attorney would consider what to do.

The CHAIRMAN: That is the end of our questions. Is there any concluding comment you would like to make to the committee?

Mr Richards: No, thank you.

The CHAIRMAN: Again, we thank you very much for your time and consideration of these matters, and assistance to the committee.

Hearing concluded at 3.34 pm