

Senator CAMERON—Ms Gibson, you say ‘the system’. There is no system; there are different systems, aren’t there?

Ms GIBSON—The system is established by practice, I suppose. Ultimately, the general law sets the manner of conduct and so on. There are many textbooks on how meetings have to be run in accordance with the law, and there are cases where shareholders have gone to court to contest the voting and the manner of counting. So there are definitely rules. The question is just around the efficacy and the degree of checking. With the new rules coming up on executive remuneration, their approval and the consequences of what might follow from their approval or otherwise, there is room for more discussions with industry about the level of scrutiny of the quality of votes.

Senator CAMERON—But it does not only go to scrutiny; it goes to the process as well as to scrutiny. You could be a shareholder of two or three different companies, you could be participating in votes at AGMs and you could have different systems at different companies, couldn’t you?

Ms GIBSON—The mechanics of the voting could be different; the general rules would be the same.

Senator CAMERON—So tell me how the mechanics would be different.

Ms Gibson—Well, it would depend on how the computer interface works in the calculation of various registers. That is what I suspect would be the major difference.

Senator CAMERON—Can you explain that to me?

Ms Gibson—Most votes would be compiled by brokerage houses. They would collate the proxy forms as they came in. They would compile them and prepare a report. It would be in their back offices as to how they receive the proxies, parcel them up and the manner of reporting through.

Senator CAMERON—What checks and balances are there against fraud at the brokerage houses?

Ms Gibson—I cannot answer that, I am afraid, Senator.

Senator CAMERON—Do you think that you should be able to answer that?

Mr D’Aloisio—Well, the companies themselves and the chairman—

Senator CAMERON—So is it self-regulation?

Mr D’Aloisio—You would appoint them to carry out the scrutiny and count the votes—and count them properly. You appoint them to perform. So the company itself would want to make sure that there has not been any vote rigging or pushing of votes. The fact that we are not aware of it being a problem, in the sense of complaints and issues to us, would indicate that, by and large, it works very well.

Senator CAMERON—What if there is a vested interest? What if there is a corrupt company director involved in establishing the process and there is corruption in the brokerage house? Is that beyond the realms of possibility?

Mr D’Aloisio—Well, it is possible, but the reality is that shareholders know. Institutional shareholders talk to each other, they put their proxies in, other shareholders vote and there is a show of hands at the meeting. I think they would be alerted to it pretty quickly if there had been any rigging. Where there are people who might have a conflict of interest, those conflicts of interest need to be disclosed. I think we could look at it further, but certainly it is not on our radar as a major problem.

Senator CAMERON—I hope that I am putting it on your radar—

Mr D’Aloisio—I am happy to put it on.

Senator CAMERON—because I intend to continue asking questions about this. You say that you are having a look at this issue within your organisation. Can you come back to me and let me know exactly what you are doing and whether you are prepared to have a look at some different processors where shareholders can be sure that there is some consistency in terms of the process, and there are some checks and balances in terms of ensuring that the votes are fair and above board?

Ms Gibson—We can do that.

Senator BUSHBY—I thank you the officers of ASIC for helping us today. Firstly, I commend you for placing the matter of ASIC’s use of coercive powers on your summer school agenda last Monday. It is good that these issues are getting a public hearing. I am not sure, but I suspect that to some extent the questions that have been asked by this committee over the past 12 months or so may have contributed in some way to the greater degree of focus that ASIC is giving to that. I see you nodding.

Mr D'Aloisio—We were onto it just before you raised it, but you certainly brought it to our attention!

Senator BUSHBY—Okay, thank you. How did the session go? I am interested in how many attended that session, what substantive points were raised and how it was received by those who attended.

Ms Gibson—I chaired that session. We had three that afternoon and the rooms were roughly split, so I think there would have been about 150. It was a full room. Frankly, I was a little surprised when everyone filmed it and said that it was a terrific and very interesting session.

Senator BUSHBY—Quite clearly of great interest to Australians!

Ms Gibson—Indeed. It was by and large the litigators. Richard Gilbert from the Rule of Law Institute and Steve Helmich from AMP presented their views on coercive powers. We are still going through our internal review that we mentioned the last time we were here. I reported that our study showed that we are substantially compliant with all of the ARC requirements but that there is probably room for more training on a day-to-day basis.

Industry feedback for some notices is that they would like us to ring up in advance and talk about them before they arrive. But they are very happy when they find that, if it is too wide or too short a time, we will then cut it down. So there is room for more dialogue. With our surveillance notices—which are the ones that we might send to industry looking for a review of industry practices—industry would prefer that we did not serve a notice before we did that. To the extent that they can provide that voluntarily, we will look to do so. They would also like some reports about the outcomes when we do industry surveillance. We will look at how we can do that whilst maintaining confidentiality. So it was a positive discussion. There was a lot of expression of interest in working with us, and for them to get some more value from the notice process, which they all accept is a necessary duty that they have to comply with as part of our industry.

Senator COONAN—Is Richard happy now?

Ms Gibson—He said that he was. He said that he was very happy!

Senator BUSHBY—So overall that particular summer school session has assisted you in a sort of intense focused way as part of the development processes of what you are doing?

Ms Gibson—Indeed.

Senator BUSHBY—Are you intending to go further? You are still developing and examining your processes and looking at how you do that. Are you putting in place specific procedures for things like data capture and release? Will you be putting together a policy procedure manual on the use of coercive powers? What are the possibilities going forward?

Ms Gibson—Our rules on how we use the powers and so on are in place and working well. That was our review.

Senator BUSHBY—They are in place, but you mentioned that there is a need for further training. Are you looking at how you can better enable the employees at ASIC to understand what those rules are and ensure that they are on top of them, comply with them and use them in the way that they are supposed to?

Ms Gibson—We all benefit from a refresher from time to time, and in fact there are training programs always happening on notice issues.

Senator BUSHBY—Is there a policy or procedures manual in respect of this?

Ms Gibson—These issues are built into our internal manuals. What we are looking at is what we can say more publicly about how and when we use that. That was certainly one of the requests of the—

Senator BUSHBY—Which is one of the reasons I have raised it before in terms of public confidence in the use of your powers, which I acknowledge are necessary. But public confidence is also necessary for you to be able use them properly.

Ms Gibson—That is right. We are looking at what we can helpfully say, given the width of our powers. We are looking at what other regulatory bodies do in Australia and overseas and we are also looking at the question of continuing to report in annual reports or somewhere, as we did last time about historical usage. It is a data collection issue for us because it is manual data collection. There is not a central issuer of notices. We are now in train to collect that data.

Senator BUSHBY—As I mentioned, I am pleased to see that it is moving forward and I will no doubt take a greater interest in future to see how that develops. While we are still on the summer school, I note in the