

**ECONOMICS AND INDUSTRY
STANDING COMMITTEE**

**INQUIRY INTO IRONBRIDGE HOLDINGS PTY LTD AND OTHER
MATTERS REGARDING RESIDENTIAL LAND AND PROPERTY
DEVELOPMENTS**

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
TUESDAY, 31 JANUARY 2012**

Members

**Dr M.D. Nahan (Chairman)
Mr W.J. Johnston (Deputy Chairman)
Mr M.P. Murray
Ms A.R. Mitchell
Mr I.C. Blayney**

Hearing commenced at 10.20 am**WALLACE, MR IAN****Director, Ironbridge Holdings Pty Ltd, examined:****YOUNG, MRS DENISE****Director, Charters, examined:**

The CHAIRMAN: Thanks for your appearance before the committee today. This committee hearing is a proceeding of the Parliament and warrants the same respect that proceedings in the house itself demand. Even though you are not required to give evidence on oath, any deliberate misleading of the committee may be regarded as contempt of Parliament. Before we commence there are a number of procedural questions I need you to answer. Have you completed the “Details of Witness” form?

The Witnesses: Yes.

The CHAIRMAN: Do you understand the notes at the bottom of the form?

The Witnesses: Yes?

The CHAIRMAN: Did you receive and read the information for witnesses briefing sheet regarding giving evidence before a parliamentary committee?

Mr Wallace: Yes.

Mrs Young: I do not know whether I got one.

The Principal Research Officer: On the back of the form?

Mrs Young: Yes. Sorry, I thought you meant in the mail.

The CHAIRMAN: Do you have any questions relating to your appearance before the committee today?

The Witnesses: No.

The CHAIRMAN: The committee has considered the responses from the questions you took on notice at the previous meeting. Before we go through these responses and ask some follow-up questions, do you wish to make a brief opening statement that addresses your written response to the terms of reference in general? The committee intends to complete its public hearing process following your appearance today. It is unlikely the committee will agree to offer you the ability to take questions on notice today given the need to meet the report’s deadline of 1 March 2012 given to us by Parliament. With this in mind we urge you to be as complete with your answers as you can be. This is the last time we can go through it. I want to also indicate that the committee is of the view that we will complete our report on 1 March 2012, but we will review the issue in seven months to look at the progress to meeting commitments.

Back to the issue: do you want to make a follow-up opening statement?

Mr Wallace: No.

The CHAIRMAN: We will proceed to questions then. In regard to payment of tax debts of Ironbridge shareholders you have stated that payments were made throughout the year and it was determined at the end of the year that a dividend will be declared in respect of these payments—page 3 and 5 of your response to us dated 24 January. What considerations were made in regard to cash flow and solvency when each of these payments was made? You have confirmed that you assessed the funds that had been withdrawn in 2009 and 2010 to meet ATO liabilities “in

consultation with your accountant”. Can your accountant confirm whether the declaration of a dividend to cover payments already made out of the business is consistent with the Australian Accounting Standards Board’s accounting standards?

Mrs Young: I am actually a visual person and not good on hearing things, so if you have got the question written, it would be much better otherwise you will have to repeat it for me. Sorry; it is just the nature. I just need to write notes all the time.

The CHAIRMAN: You have confirmed that you assessed the funds that were withdrawn from Ironbridge Holdings in 2009 and 2010 to meet ATO liabilities—the recipients—and this was done in consultation with your accountant. Can your accountant, that is you —

Mrs Young: Yes.

The CHAIRMAN: — confirm whether the declaration of a dividend to cover payments already made out of a business is consistent with the Australian Accounting Standards Board’s accounting standards? You stated that you made payments to meet liabilities for the recipients of those payments and later declared these payments as dividends.

Mrs Young: Yes.

The CHAIRMAN: Is that consistent with the accounting standards?

Mrs Young: Just off the top, I do not know whether it is consistent with accounting standards because I would have to refer to the accounting standards, so without specific reference to the accounting standards I cannot say.

Mr W.J. JOHNSTON: Mr Wallace, the last time we were here you explained you were an expert director. Is it your view that making payments and subsequent to the making of payments declaring that those payments were dividends is in accordance with Australian accounting standards?

Mr Wallace: I think my answer is similar to that of my accountant. I rely on my accountant’s advice.

The CHAIRMAN: I understand the board of Ironbridge Holdings sits together and makes a ruling on the basis of a range of information of what the dividend payout for that year should be.

Mr Wallace: Yes.

The CHAIRMAN: You do it on profit and other issues. Is that how it happened—the board got together and said, “We’re going to make a dividend payout of X amount to various shareholders” at that time, and was that decision made prior to the payment? Dividends are a payout of profit to the shareholders from a firm, whatever, irrespective of the liabilities of those individual shareholders. The shareholder liabilities are not relevant to the decision for making a dividend. A dividend is determined by the profitability of the business paying the dividend. Is that not accounting standards?

Mrs Young: I understand that a dividend can only be paid out of retained profits; either current year profit and/or prior year profits.

The CHAIRMAN: Yes; that is right—retained or current.

Mrs Young: As I understand it, that is under the Corporations Law.

The CHAIRMAN: Yes; that is right. The decision is made on the basis of the board assessing the level of profit both retained and current, right. You made the payments as dividends to the shareholders and the board had full knowledge and went through the proper process of deciding the basis for that dividend payment?

Mrs Young: I am not clear on the question.

The CHAIRMAN: It is a procedural issue. Payments were made to meet the tax liabilities of shareholders.

Mrs Young: That is right.

The CHAIRMAN: Those tax liabilities did not necessarily have anything to do with Ironbridge Holdings directly. The liabilities were paid and after that subsequently declared as dividends. There are procedural requirements, as I understand the accounting standards, for the board to decide the dividend payment for a year, half a year or a quarter. I am asking: were those dividend payments made on the basis of the profitability of the firm or the needs of the shareholders?

Mrs Young: There were retained profits. Ironbridge had retained profits to which the shareholders were entitled. The shareholders needed funds to pay their tax so they drew on some of those retained profits to which they were entitled.

[10.30 am]

The CHAIRMAN: And the recipients of the moneys, the shareholders, were also on the board of Ironbridge, were they?

Mrs Young: Two of the shareholders were and are board members.

Mr W.J. JOHNSTON: You say that the directors made those payments to the other entities because they were entitled to do so?

Mrs Young: Sorry?

Mr W.J. JOHNSTON: You said that these payments were made because the directors were entitled to do so?

Mrs Young: No; the shareholders are entitled to share in the profits of the company.

Mr W.J. JOHNSTON: At what point are they entitled to share in that profit? That is a legal question.

Mrs Young: Yes; well, I am not a lawyer.

Mr W.J. JOHNSTON: It is also an accounting question.

Mrs Young: I believe that the shareholders are entitled to the retained profits—that is after all our expense

Mr W.J. JOHNSTON: At what point do they become entitled?

Mrs Young: When the profits have actually been made at the end of the financial year.

Mr W.J. JOHNSTON: Or is it when the dividend is declared?

Mrs Young: They are entitled to it, but they cannot actually —

Mr W.J. JOHNSTON: Sorry, keep going. I just missed the start of the answer, sorry. I was not trying to interrupt. Keep going.

Mrs Young: They came down—I am actually not sure, though.

Mr W.J. JOHNSTON: I suppose the fundamental question that the chairman and myself and the rest of the committee want to know is: What is your advice? Are you entitled to share the profits before the dividend is declared?

Mrs Young: I cannot give you a specific answer on that.

Mr W.J. JOHNSTON: It is a question based on the accounting standards.

Mrs Young: As I said, without reference to the accounting standards —

The CHAIRMAN: Back to the first question. When you made these payments, what considerations were made to the cash flow and solvency of Ironbridge when each of these payments was made? So, there is an issue of retained profits, but there is also an issue of the solvency of the firm. We know that; that is provided in evidence. When you are making payments to shareholders, what

considerations were made about the cash flow and solvency in particular—which is the focus of this—and the priority, perhaps, to meeting some of the liabilities of creditors?

Mrs Young: I am the external accountant, so I do not think I can actually answer that question.

The CHAIRMAN: Mr Wallace?

Mr Wallace: I think you have had a submission from us in relation to cash flow. We always kept our eye on that and we always kept our eye on the solvency position right throughout.

The CHAIRMAN: What you did when you made these payments is that you assessed in terms of the solvency of the firm that the priority was to make the payments to shareholders to meet their own liabilities rather than meet those of the creditors, particularly those with fencing and landscaping. You made a choice here: you had money, you had retained earnings and those could have been made to meet liabilities of the firm, Ironbridge —

Mr Wallace: I think you are talking about throughout the 2008–09 financial year. Really, up until the end of 2009, there was no indication to us of exactly what was going to be in front of us. That is all.

The CHAIRMAN: But in 2009–10 you paid dividends out, and during that period you had outstanding liabilities with some of your purchasers of your property for fencing and other facilities. You made a choice, obviously, to pay the dividends to shareholders rather than meet up-front those liabilities to your purchasers and you assessed that one had a higher priority than another, clearly. I am just asking on what basis were the shareholders given priority over the creditors?

Mr Wallace: I think we have actually answered that question in some of our responses today, and my answer stays as it was.

The CHAIRMAN: Pardon me?

Mr Wallace: My answer stays as we have submitted.

The CHAIRMAN: I just wanted you to summarise that answer now. You were giving priority to your shareholders to meet their ATO liabilities rather than Ironbridge continuing to retain those earnings and paying out its own liabilities to some of its clients.

Mr Wallace: But, we have given a written response here to the same question you have just asked now.

The CHAIRMAN: The way the committee works is that you provide a written response—you can regurgitate that written response if you wish—but when we are exploring this issue and it comes to the nub, you made a decision to make a payout out of the firm rather than meet the liabilities in the firm and I wanted to understand why you did that. There is a reason why you did that.

Mr Wallace: And we have explained that reason very succinctly.

The CHAIRMAN: What is that reason?

Mr Wallace: To meet, as you are aware, the tax liabilities of the shareholders.

The CHAIRMAN: Why were they given priority over the liabilities of the firm?

Mr Wallace: Because we wanted to make sure that we kept the firm afloat.

The CHAIRMAN: And why was the ATO liability—because the shareholders were also underwriting the loans to Ironbridge, is that not the reason? Your shareholders—individual shareholders—were also underwriting, with their own assets, the liabilities to Ironbridge with their loans —

Mr Wallace: Yes.

The CHAIRMAN: I am trying to give you a chance to explain your decision for making that choice, rather than just to go back here.

Mr Wallace: Well, I would prefer to go back here. Again, it is very hard when you have got six people before you to answer off the cuff, and that is why last time we went through making sure that we took everything on notice and gave it due consideration when we responded.

The CHAIRMAN: I am trying to summarise what you said: you made a decision to pay the liabilities and declare, de facto, a dividend to your shareholders so they could meet their own individual ATO liabilities rather than use those moneys to pay off the liabilities to your clients. I understand from reading this that you did that because the shareholders were also underwriting, with their own assets, loans to Ironbridge and they needed to pay their tax liabilities to make sure the banks could continue to support that underwriting.

Mr Wallace: That is right.

The CHAIRMAN: I wanted a summary of that. Is that the situation?

Mr Wallace: Definitely.

The CHAIRMAN: Did the banks put the heavy on you to shore up the shareholders as opposed to meeting the liabilities? Did your bank—I think it is one bank; it is Suncorp, I understand.

Mr Wallace: Look, I cannot recall in detail. We were subject to continuous reviews right throughout.

The CHAIRMAN: By the bank?

Mr Wallace: Yes. I am sorry I cannot remember if there was any specific —

The CHAIRMAN: Okay. You have stated that the Ironbridge funds were used to pay the tax debt of your daughter, Rachel Wallace in 2009 and 2010. Your daughter is not a shareholder of Ironbridge. How is this payment relevant to the operations of Ironbridge Holdings?

Mr Wallace: All I can say is that they were paid and I cannot do anything about it.

The CHAIRMAN: We have just gone through this process of why you decided to pay off the ATO liabilities of shareholders and what we find out is that one payment—a dividend, I assume—was declared as a dividend—was it?—after the fact as a dividend, to a person who is actually not a shareholder.

Mrs Young: May I answer that, please? There are three shareholders of Ironbridge: Ian Wallace, his wife Margaret Wallace and the Wallace family trust. The nature of that under tax is that there should be a distribution of profits in a trust. As I recall, Rachel was the recipient of the profits of the dividend and so she was indirectly —

The CHAIRMAN: Let us get this straight, so the payments to the shareholders were to trusts?

Mrs Young: No; one trust.

The CHAIRMAN: One trust.

Mrs Young: There were three shareholders, Ian Wallace, Margaret Wallace and the trust, and then the trust received the dividends and it distributed that. Rachel Wallace, as I recall—I cannot say what percentage; I cannot recall—but she did receive some of that trust money, which would have included the Ironbridge dividend.

[10.40 am]

The CHAIRMAN: Was that a discretionary trust?

Mrs Young: It is a discretionary trust.

The CHAIRMAN: Okay. Did that distribution in the family trust relate to her tax liabilities?

Mrs Young: As I recall, yes.

The CHAIRMAN: Was that relevant to shore up Ironbridge? Was she a guarantor for Ironbridge's loans with Suncorp? Was that one of the reasons why she was a recipient of these dividends?

Mrs Young: I do not know.

Mr Wallace: No, she is not a guarantor.

The CHAIRMAN: So she got a payment in the form of a dividend distributed through the family trust. But that was paid irrespective of her—it was not meant to shore up the firm. She just received a dividend. The other dividend payments were meant, according to the evidence, to meet tax liabilities, and that was done to keep the whole thing afloat, because they were through the other door guarantors to Ironbridge Holding's loans with Suncorp. So the recipients of that payment had liabilities for Ironbridge in two forms—they were shareholders, and they were separately, as I understand it, guarantors for loans. Rachel Wallace was different. She got just a payment—two payments—of a certain flow of money.

Mr W.J. JOHNSTON: It is very hard for us to ask the questions if you not understand what you did. We are just asking you, "What did you do?", and you cannot answer us.

The CHAIRMAN: And the central point is this—that you have these liabilities. Our major focus is on the liabilities of your clients. We asked Mr Wallace to come back because we read in the newspaper that there were distributions through dividends, and we said: why were you paying dividends when you had all these liabilities? Now you have explained some of it—that the whole thing would go under because you had to meet these tax liabilities that people had for credit loans. Now we find that Ms Rachel Wallace received certain moneys in two years, and she had no tax liabilities, or her liabilities were not relevant to the underwriting of the loans for Ironbridge. So it seems that you are paying money through a family trust, rather than using those moneys to meet the liabilities of the firm.

Mrs Young: Yes, and it would appear —

The CHAIRMAN: And if it is a discretionary trust, you did not really have to make the discretionary payment. The trust gets some money, and it decides how it allocates money to recipients. That is how those discretionary trusts work.

Mrs Young: Yes, but if it was not distributed, the tax would have been far greater. I mean, undistributed taxable profit is at 46.5 per cent, where if it is actually distributed to the individuals and they have lower tax rates, so that would have been —

The CHAIRMAN: Yes, I know that, but her tax liabilities were not relevant. So was it the family trust that had the ATO liabilities that needed to be paid?

Mrs Young: Rachel Wallace received it, because she was a recipient of the trust distribution.

The CHAIRMAN: How is that distribution to her relevant to shoring up Ironbridge, and why would you make a distribution to her rather than your creditors?

Mr Wallace: It was a decision made at the time, and that is all we can say.

The CHAIRMAN: Okay. You were advised on your tax schedule that in 2009 and 2010, ATO payments were made to I. Wallace Family Trust and Ian Wallace Family Trust. Can you clarify the relationship of these entities to Ironbridge Holdings Pty Ltd—that is, two trusts?

Mrs Young: Yes, two trusts. I am just feeling a little overwhelmed and I have had a memory lapse and I cannot recall. There are two trusts there. One trust is the shareholder of Ironbridge Holdings, and the other one owns the real estate from where Ironbridge operates.

The CHAIRMAN: So it is not a shareholder?

Mrs Young: No. There are two trusts with two different functions.

The CHAIRMAN: I. Wallace and Associates is the shareholding trust?

Mrs Young: Yes. That is the corporate trustee of the trust—I. Wallace and Associates Pty Ltd.

The CHAIRMAN: And the Ian Wallace Family Trust is not a shareholder, but you say it has a relationship through ownership of the asset?

Mrs Young: Ownership of the property, and on that property is the office of Ironbridge Holdings.

The CHAIRMAN: So it owns the property that the office is in?

Mrs Young: Yes.

The CHAIRMAN: Is that office used as collateral for the loans?

Mr Wallace: Yes, it is.

The CHAIRMAN: So why was the payment made to Ian Wallace Family Trust, a non-shareholder and therefore not a recipient of dividends? Why was it made to that family trust? Why was a dividend payment made to a non-shareholder and non-dividend recipient entity?

Mrs Young: Well, a dividend was not paid to a non-shareholder.

The CHAIRMAN: A payment was.

Mrs Young: A payment was made to the ATO, and then, as I understand it, that payment was deemed part of the dividend that was actually paid to the shareholder.

The CHAIRMAN: So a payment was made, on behalf of Ian Wallace Family Trust, to the ATO for Ironbridge Holdings. It is called an ATO payment, but it was a payment from Ironbridge to the ATO to meet part or otherwise of the ATO liabilities of Ian Wallace Family Trust, and that was done on 23 August 2008, to the tune of \$1 762. This is just evidence that you provided. I am just trying to understand: was that declared a dividend; and, if so, why was a payment made to a non-shareholder?

Mrs Young: There were these payments that you have in front of you, and, as I understand it, those payments were all deemed to be a dividend to the shareholders.

The CHAIRMAN: How can you make a payment to the ATO on behalf of a non-shareholder and declare it as a dividend?

Mrs Young: But the amount was actually withdrawn from Ironbridge and it was actually put to the shareholders' account, and then the shareholders used that money and paid it to the ATO.

Mr W.J. JOHNSTON: You see, the problem with that evidence is that it is contrary to the evidence that you have provided. Mr Wallace, on 24 January, sent us a letter, and attachment 1(a), which the chairman is reading from—do you have that in front of you, attachment 1(a) of your correspondence of 24 January? Do you have that in front of you, Mr Wallace?

Mr Wallace: Are you referring to these questions on notice?

Mr W.J. JOHNSTON: I am referring to the letter that you sent to us on 24 January. Do you have that in front of you? Ms Young, do you have the letter that Mr Wallace sent to us?

Mrs Young: I do not have it in front of me.

Mr W.J. JOHNSTON: It is extraordinary. It is absolutely extraordinary that you would come to a parliamentary committee and not be prepared to answer questions. It is outrageous.

[10.50 am]

The CHAIRMAN: We have this situation where you declared on 30 June 2009 a dividend of \$1 641 000 and you itemised the payments and recipients at the end; they say they went to ATO payments for various entities.

Mr Wallace: So, sorry—can I just go back to Mr Johnston's question? I have now been given a letter. I have got that sitting in front of me.

Mr W.J. JOHNSTON: So you actually had it in front of you but you refused to acknowledge that.

Mr Wallace: I resent you being as rude as you possibly can.

Mr W.J. JOHNSTON: Look, I am sorry. Mr Wallace, you need to understand what is happening here.

Mr Wallace: That is what I am —

Mr W.J. JOHNSTON: You are here to answer questions and not obfuscate. You are supposed to be prepared.

Mr Wallace: When we —

Mr W.J. JOHNSTON: Okay, can we get back to the question?

Mr Wallace: No, you —

Mr W.J. JOHNSTON: Do you have in front of you —

Mr Wallace: First of all —

Mr W.J. JOHNSTON: —the attachment 1A?

Mr Wallace: I do now.

Mr W.J. JOHNSTON: Okay. Could you explain: are these dates referring to cheque payments? For example, under “I and CMD Wallace ATO payments” there is a date, 8 July 2008.

Mr Wallace: Yes.

Mr W.J. JOHNSTON: And a payment for \$100 000. Is that a cheque payment?

Mr Wallace: It could have been a direct debit.

Mr W.J. JOHNSTON: Okay; it is a payment out of the company to the ATO.

Mr Wallace: That is right.

Mr W.J. JOHNSTON: Okay. At what date was that payment authorised by you as a director?

Mr Wallace: At that date.

Mr W.J. JOHNSTON: And so under what authority did you make a decision to make a payment out of the company’s property for the benefit of I and CMD Wallace? What authority? You are an expert company director. What authority did you rely on to make that \$100 000 payment? You are an expert in these matters. All I am asking you is to explain why you made that payment. What authority did you use? Was there a decision of the board?

Mr Wallace: Well, of course. I do not do it without my wife.

Mr W.J. JOHNSTON: Okay; so are there minutes of the meeting that authorised the payment?

Mr Wallace: That is right.

Mrs Young: There were a lot of informal meetings that are actually —

Mr W.J. JOHNSTON: I am sorry; I asked, “Is there a minute of the meeting?”

Mr Wallace: I do not know. No. I do not think so.

Mr W.J. JOHNSTON: Sorry; you answered yes, and now you are saying no?

Mr Wallace: No; I do not think so. Again —

Mr W.J. JOHNSTON: Which answer was correct—the answer you first gave or the answer you are giving now?

Mr Wallace: I have lost the context.

Mr W.J. JOHNSTON: I asked you, “Is there a minute of the meeting?” And you said yes. You have now said no. Which is the correct answer?

Mr Wallace: No.

Mr W.J. JOHNSTON: So why did you say yes? You are an expert company director —

Mr Wallace: Because you are —

Mr W.J. JOHNSTON: You are an expert in these matters.

Mr Wallace: Because you are deliberately trying to verbal me.

Mr W.J. JOHNSTON: I am not trying to do anything.

Mr Wallace: Yes, you are.

Mr W.J. JOHNSTON: You are the expert. You are the person that knows all the issues.

Mr Wallace: I have answered the question.

Mr W.J. JOHNSTON: I asked you previously, “Are you confident that you understand the law relating to a company director?” And you said that you were an expert in these matters.

Mr Wallace: Sorry, look —

The CHAIRMAN: Okay; let me take this back now. We have this data that you provided to me. You already stated that you made, throughout the year, payments to the ATO on behalf of shareholders. We have gone through a recipient, through a distributed family trust. Rachel Wallace received, you report, in the year 2009, \$6 000 for ATO payments for her, but she is not a shareholder. That has been declared as a dividend.

Mrs Young: Sorry, may I just interrupt? It was not declared as a dividend to Rachel Wallace; it was actually part of the dividend payment to the shareholders.

The CHAIRMAN: The shareholder trust is the Ian—I Wallace and Associates; is that it?

Mrs Young: No; I Wallace and Associates Trust is actually the trust operating the real estate licence of Ironbridge.

The CHAIRMAN: Is that a shareholding trust?

Mrs Young: No.

The CHAIRMAN: Then you have the Ian Wallace Family Trust. Is that the shareholding trust?

Mrs Young: As I said before, I am actually a little overwhelmed here, and I am feeling —

The CHAIRMAN: I am just trying to —

Mrs Young: I know that; so I am actually saying I just cannot recall. And I am not trying to be difficult, but I am just saying I am overwhelmed. Ian Wallace Family Trust and I Wallace Family Trust, one of those is the shareholder of Ironbridge and the other one is the trust that owns the real estate where the office of Ironbridge conducts its business.

The CHAIRMAN: There are two lines of trying to get evidence, and it comes back to why you are using the money to pay shareholders and non-shareholders rather than meet your liabilities to your clients. That is the focus here. I am not clear. It appears to me that you have one shareholding trust and one non-shareholding trust and you are paying them dividends—the non-shareholders—to meet ATO liabilities. Why?

Mrs Young: I am surmising now, but for the trust that owns the property the payment could have been for the GST on the rent that is actually paid —

The CHAIRMAN: My point is: I am sure it has been used for some tax purpose—I accept that—but so what? It is not a shareholder. Why are they receiving dividends?

Mrs Young: To meet the ATO —

The CHAIRMAN: I —

Mrs Young: I know.

The CHAIRMAN: I know what it was used for because you state the payments went to the ATO, but you declared these as dividends and they are not shareholders, and you cannot give non-shareholders dividends.

Mrs Young: But the payments were deemed to be a dividend —

The CHAIRMAN: To non-shareholders?

Mrs Young: The payments that were coming out of Ironbridge, all those payments, were actually deemed part of the dividend. But I think we are going around in circles.

The CHAIRMAN: No, no, no. It is very simple. You made payments to the ATO for entities. You then said they were dividends. We went to that. We answered the Rachel Wallace one in that it went through a distributed trust, which is, I assume, a shareholder. I assume that is a shareholder?

Mrs Young: Yes; through the shareholding.

The CHAIRMAN: But there is another trust that is getting an ATO payment made for them on behalf of Ironbridge that has a relationship with Ironbridge—I assume it rents out the office to it—but it is not a shareholder.

Mrs Young: But it is actually also providing a form of guarantee.

The CHAIRMAN: So we are getting to the point where I thought you were going to. The reason you did that, I think—is this true?—is that the trust that owns the office that Ironbridge is based on is also a guarantor to the loans of Ironbridge; is that it?

Mrs Young: As I understand, yes.

The CHAIRMAN: There is a fault here in that you subsequently declared those payments as dividends, and you cannot make dividend payments to non-shareholders.

Mrs Young: But it was not deemed a dividend payment to the trust; it was deemed as part of the dividend payments to the three shareholders. It means that the company paid the dividend to the shareholders and then the shareholders on-lent the money to these people.

Mr W.J. JOHNSTON: So that is the nub, is it not, that actually these payments never went to the ATO; they actually went to shareholders?

Mrs Young: Well, they actually went directly from Ironbridge to the ATO.

Mr W.J. JOHNSTON: So this is the question I have: was there an authorisation to make payments on behalf of third parties?

Mrs Young: As I see it—I am just saying I am not trying to be difficult or be smart—but as I see it, the directors of Ironbridge authorised the payment and that payment actually then went to the ATO. But in the books of account it was actually deemed as a payment on behalf of the shareholders, and then the shareholders asked Ironbridge to make it direct to the ATO.

Mr W.J. JOHNSTON: Ms Young, this is why it is a little confusing. It would seem, based on the information provided by Mr Wallace, which I understand is in front of you in a schedule with dates and payments, that Ironbridge Holdings Pty Ltd paid money to the ATO. So let us take an example: on 21 April 2009 they paid \$10 000 by cheque or direct debit to the Australian Taxation Office, and that was authorised by the directors. But at the time that payment was made, it was not in respect of any liability existing for Ironbridge Holdings Pty Ltd; is that true?

Mrs Young: As I understand, that is right.

Mr W.J. JOHNSTON: Is that lawful? Was it lawful for the company which owed one and a half million dollars to property buyers in The Tuarts to make a \$10 000 payment in respect of the debt owed by somebody completely unrelated to the person—Ironbridge Holdings—because, as you know, a company can be a person at law? So if this person—Ironbridge Holdings—is making a tax payment on behalf of this other person, who happens to be a shareholder, while at the same time it is not paying its debts to the land purchasers, is that lawful?

[11.00 am]

Mrs Young: I do not know whether it is lawful.

The CHAIRMAN: We are going to have to assume here, given the data for two years in a row, that you made payments to the ATO. I am not sure what these ATO liabilities were due to, but they were paid in some ways. They were paid to meet ATO liabilities before they were declared as dividends. That was ex post. Second, they were made to meet the ATO liabilities unrelated parties—Rachel Wallace and one of these family trusts that were not shareholders. You paid dividends to meet ATO liabilities and Rachel Wallace was not a guarantor to the firm so it was not for solvency reasons and even though the Ian Wallace trust rents an office, it is not clear to us why you would make those payments. And they were made to meet ATO liabilities but only afterwards declared as a dividend. We have no evidence that they were declared dividends or considered dividends and it is not clear if they went to a shareholder and then were distributed to these non-shareholders or otherwise. The central point is that during this period of time there was a need in the firm for cash to meet liabilities and that is why we are delving into Ironbridge Holdings Pty Ltd's accounting treatment and that is why we are here today. We subsequently heard that the dividends were paid. It seems not only sloppy treatment, but not clear if it is indeed legal—paying dividends ex post, declaring payments on behalf of non-shareholders creates their own ATO liabilities and not clearly—well, there is no evidence that they are clearly related to Ironbridge Holdings' solvency and then subsequently declare them as dividends. Any comment?

Mrs Young: I think I have said as much as I can.

The CHAIRMAN: Okay. At your response to question 1 you gave details. You have given the date of 30 June 2012 in reference to a dividend payment.

Mr Wallace: It should be 30 June 2011.

The CHAIRMAN: Okay. Your 2011 financial statement you provided indicates a dividend of \$51 000 was paid. Could you please tell us what this dividend was used for?

Mrs Young: I have not actually brought that information with me. I did not know —

The CHAIRMAN: Mr Wallace?

Mr Wallace: We were not drawing a salary and I am sure it was used to pay some of our living costs.

The CHAIRMAN: It was paid as income to the shareholders?

Mr Wallace: Yes?

The CHAIRMAN: For ATO liabilities?

Mr Wallace: No.

The CHAIRMAN: Because the other dividends payments in the previous year were tied to the ATO. So, it was treated as a traditional dividend for the purposes of the recipient?

Mrs Young: Where is that question?

The CHAIRMAN: In the 2011 financial statement that Mr Wallace provided and has.

Mrs Young: Yes, sorry.

The CHAIRMAN: Why has there been such a delay in the lodgement of the 2011 financial statements with ASIC?

Mr Wallace: They will be lodged in the next seven or eight days. We have just finalised them over the last couple of days.

The CHAIRMAN: Why was there such a long delay?

Mr Wallace: It is just a matter of making sure that we double-check everything. It is probably because we have spent most of our time trying to answer your questions.

The CHAIRMAN: Has ASIC issued a letter of demand in respect of these statements?

Mr Wallace: No.

The CHAIRMAN: In your response to question 11 you said that you simply overlooked the need to make a provision for debts owing on fencing, landscaping and outstanding court orders in the 2009 and 2010 financial reports. Can your accountant confirm whether such provisions should be made?

Mrs Young: I am a tax accountant and from a tax point of view we do not recognise—the ATO is only interested in payments that have actually been made rather than making provisions in accounts.

The CHAIRMAN: Yes, but if you were providing your tax office—only one of the parties interested in accounts of companies. You are here provided as his accountant and not just his tax accountant. But what goes to the focus of this inquiry is those liabilities and they were real and they were large and they were not met. I am just asking you: should these have been included in the financial reports? I am not really interested—there are a number of parties in addition to the ATO and I would think it would be a matter of accounting standards—should you put that in?

Mr Wallace: If you like, I can answer that. In hindsight we should have put them in and we have made sure they are included in this year's.

Mr W.J. JOHNSTON: Mr Wallace, do you have an opinion about whether the inclusion of these liabilities would have impaired your ability to sign the certificate that the company was a going concern?

Mr Wallace: I do not have an opinion.

Mr W.J. JOHNSTON: You do not? Even as an expert with 30 years of experience as a company director, extensive experience as a land developer, you do not have any opinion about whether that would have affected your ability to sign the certificate that the company was a going concern?

Mr Wallace: It did not.

Mr W.J. JOHNSTON: Sorry? It did not have any effect or you do not have an opinion?

Mrs Young: Have the question asked again.

Mr W.J. JOHNSTON: I am asking a simple question. Mr Wallace is a very extensively experienced person. He is, in fact, an expert on these matters. As I understand the answer you have given here at question 11 is that you forgot to include the liabilities —

Mr Wallace: That is right.

Mr W.J. JOHNSTON: — in your accounts. You have also given evidence—we might talk about it in a minute—about how it took you two years to decide whether the company was a going concern. Do you remember that?

Mr Wallace: Yes.

Mr W.J. JOHNSTON: Your forgetting to include those liabilities—if you had included those liabilities on 30 June 2009, would that have prevented you from signing off on the certificate to say that the company was a going concern?

Mr Wallace: No.

Mr W.J. JOHNSTON: It would not have?

Mr Wallace: That is right.

The CHAIRMAN: Can you confirm there have been no impairment charges against your inventories and land for sale in the 2011 draft financial report? A lot of land development firms have made impairment charges—Stocklands, Peet and others. What I need to do is confirm: have you made impairment charges in your 2011 draft financial report against the value of your stock of land?

Mrs Young: We have used the net realisable value.

The CHAIRMAN: Have you discounted those through impairment charges?

Mrs Young: I have heard you actually talking about impairment reading—I really do not understand what you mean by impairment, but we are just saying it is the net realisable value, what we actually believe is the realisable value.

The CHAIRMAN: Did you change that from 2009 to 2010 and 2011?

Mr Wallace: Yes, it has changed.

Mrs Young: Yes.

The CHAIRMAN: So you have discounted those by a certain amount. You changed the valuation and that is usually—in listed firms that is called an impairment charge. They discount that through impairment because of changes in the expectations in the state of the market. In 2011 you had looked at your assets, your landholdings, and re-evaluated the net receivable value of them?

Mr Wallace: That is right.

Mr W.J. JOHNSTON: Did the value go up or down in the most recent case?

Mr Wallace: Some of them went down and some of them went up.

Mr W.J. JOHNSTON: So, overall did they come up?

Mr Wallace: Probably went up. But it related to one particular property.

Mr W.J. JOHNSTON: I am asking in respect of all your properties—in total. The line item, did it go up or down?

Mrs Young: I do not think we can actually without having—Mr Johnston, I know you actually find it hard, but I think Ian Wallace also is a visual person and —

Mr W.J. JOHNSTON: It is probably why he provided the statements.

Mrs Young: I beg your pardon?

Mr W.J. JOHNSTON: It is probably why he provided the reports to us. I am just asking him to read from the reports he has provided to us.

[11.10 am]

So does that go up or down?

Mr Wallace: I did answer your question previously. You have just repeated yourself.

The CHAIRMAN: Can you confirm that you obtained independent valuations of the inventories of land for sale for the financial year 2009, 2010 and 2011; that is, did you get an independent assessment of the net realisable value of your land stocks?

Mr Wallace: Firstly, there were valuations that were done throughout that period on behalf of our financiers, and so any value that was arrived at would have relayed either back to that valuation that

might have been done throughout the year; and, if there was any need to take any further diminution in value or impairment, as you say, that would have been taken into account.

The CHAIRMAN: So the valuations were largely done at the request of and for the use of your financiers?

Mr Wallace: Yes, absolutely.

The CHAIRMAN: And they or a third party did the valuations?

Mr Wallace: That is right.

The CHAIRMAN: So they were a third party to you?

Mr Wallace: Absolutely.

The CHAIRMAN: Can your accountant confirm whether impairments for declining landholding values have been adopted across the property development industry post-GFC? Whether you use impairment values or declining net realisable value, has that been a general trend in the land development area in Western Australia and Australia?

Mrs Young: I cannot comment on that other than the clients I have who have been involved in property development, and they have been realising—recording—the net realisable value.

The CHAIRMAN: You advised that settlement of all outstanding judgements entered against Ironbridge occurred on 18 January 2012.

Mr Wallace: That is right.

The CHAIRMAN: You were asked to provide confirmation of these payments. Are you able to provide evidence to the committee that these payments have been made?

Mr Wallace: Yes, and I was fairly sure they were provided.

The CHAIRMAN: We just had a written assurance.

Mr Wallace: Sorry?

The CHAIRMAN: We just had a statement from you saying they had been paid.

Mr Wallace: I am quite happy to provide you with the evidence. I have got no trouble with that at all.

The CHAIRMAN: Okay; that is good. At your response to question 13(a), you advised that you have secured funding in your own name to lend to Ironbridge to meet that company's outstanding fencing obligations. Can you provide a copy of the documentation from your financier that confirms this funding?

Mr Wallace: Most definitely.

The CHAIRMAN: And you will —

Mr Wallace: Obviously, as you have asked, I should run the answer past the lawyer, because the approval has got a lot of other things in it.

The CHAIRMAN: We can treat it as closed evidence and return it to you.

Mr Wallace: Thank you. I am more than happy to provide it.

The CHAIRMAN: Does this funding also incorporate moneys needed to meet the outstanding fence-painting obligations?

Mr Wallace: Absolutely.

The CHAIRMAN: So it relates not just to the fencing, but the whole fencing liability?

Mr Wallace: Absolutely.

The CHAIRMAN: You have advised that the landscaping contractor has estimated that it will take six months to complete the outstanding landscaping obligations. When will you authorise the contractor to begin work?

Mr Wallace: We have done that already, and he should begin in the next week.

The CHAIRMAN: What progress has been made in arranging for the completion of the fence painting?

Mr Wallace: None at the moment, but I just wanted to get the planting underway. But we will follow up with the fence painting running parallel.

The CHAIRMAN: So planting and then you are putting up the fences?

Mr Wallace: We will do the planting, and as each planting is done, the fencing will be done alongside it.

The CHAIRMAN: When will the fence painting be completed?

Mr Wallace: In line with the landscaping.

The CHAIRMAN: You have provided us with information about payments of court judgements against Ironbridge. You have not mentioned any payments to residents waiting for reimbursements.

Mr Wallace: There have been quite a few payments made over the last 10 days. We continue to make them as we check each one.

The CHAIRMAN: When do you think they will be finished?

Mr Wallace: Within the next week and a half.

The CHAIRMAN: Can you provide us evidence when you are finished?

Mr Wallace: Yes.

The CHAIRMAN: And we would like to have that before we write the report so we can stick this thing on.

Mr Wallace: That is fine.

The CHAIRMAN: How many residents who have not pursued court action are still waiting for reimbursement, and when will these reimbursements be made? Let us know when you have completed them all.

Mr Wallace: Yes.

Mr W.J. JOHNSTON: Mr Wallace, can I just draw your attention to the answer that you gave—it is on page 2 of your document—to question 3(a). You see that the question that was asked was —

Was this delay —

That is, the delay to lodging the accounts of the company —

related to your ability as director to sign a declaration of solvency for the company when due?

Your answer starts —

Yes, the delay was in part related to my ability as a director to sign a declaration of solvency as at the date the accounts were to be lodged with the ASIC.

You see that is your answer, and you continue. I just further draw your attention to your answer on page 4 to question 8. It says —

Prior to the declaration and payment of the dividend on 30 June 2009, did the directors assess the solvency of the company to determine whether the company would

be able to meet its current and future debts as and when they fell due? If so, was this assessment of future cash flow documented?

Then you go —

The answer to the first question is yes.

The directors did assess the solvency of Ironbridge to determine whether it would be able to meet its current and future debts as and when they fell due prior to the declaration of the dividend on 30 June 2009.

Do you see any inconsistency in the answers to 3(a) and 8?

Mr Wallace: No.

Mr W.J. JOHNSTON: I just raise it with you because 3(a) is a question asking whether you felt you could sign a declaration that your company was solvent, and you cannot make a payment as a dividend if your company is not solvent. Yet you were able to determine the company was solvent to pay yourself one point something million dollars, but you did not want to sign a certificate to ASIC to say that you were solvent.

Mr Wallace: First of all, I think there is a lapse of time. You are talking —

Mr W.J. JOHNSTON: No; this is the exact same day.

Mr Wallace: Sorry; you are talking about an ASIC report that was due to be filed, I think, in October of that year. What you are talking about, I think, has occurred as of 30 June.

Mr W.J. JOHNSTON: But the certificate that you were obliged to sign to ASIC is as at 30 June. How could you make a dividend payment and not sign a certificate to say the company was solvent on the identical facts?

Mr Wallace: As we have said in the evidence, it is an auditor's opinion. We had a different opinion, and I will leave it at that.

Mr W.J. JOHNSTON: But the question is not about the audit opinion; this is about your certificate as a director.

Mr Wallace: Yes.

Mr W.J. JOHNSTON: You say for two years you were nervous about signing a declaration to say you were solvent, but you were, at the same day, happy to pay yourself \$1.6 million.

Mr Wallace: Sorry; you are referring to the 2008–09 financial year?

Mr W.J. JOHNSTON: Yes; that is right—30 June 2009.

Mr Wallace: During that period, there was not any great problem.

Mr W.J. JOHNSTON: But why, then, were you not prepared to sign the certificate?

Mr Wallace: Because there was a lapse of time. We are talking four months later when the auditor's report was required to be signed.

Mr W.J. JOHNSTON: But, Mr Wallace, that cannot possibly be true because you are talking about 30 June 2009. On 30 June 2009, you were happy to pay yourself \$1.6 million for the sole reason that you believed the company was a going concern, and that is your answer. But on 30 June 2009, you are not prepared to sign a certificate to an external body to say that it is also a going concern. How can it be consistent that on the one day as a director you have two different opinions? Mr Wallace, why is it that you have got two different opinions on the one day? Your opinion on 30 June 2009 is that it is okay to pay yourself \$1.6 million, but on 30 June 2009 you are not prepared to sign the certificate to say the company is a going concern. I cannot know this; only you can know this. What was your state of mind that led you to these contradictory positions?

[11.20 am]

Mrs Young: May I just interrupt, because the way I see it is that the dividend of that 1.6-odd had actually been paid during the 2009 year and it actually commenced in July 2008 with the first payment. There were payments—substantial payments—in July 2008, so the dividend was not actually made at 30 June because it had actually been the preceding 12 months. My understanding was the declaration of solvency is when somebody actually signs it.

Mr W.J. JOHNSTON: The declaration of solvency is as in respect of 30 June. Now, I do not understand. You made the decision to pay your dividend on 30 June. That is the evidence you have provided to us. Are you saying there was some other date that the decision was made?

Mr Wallace: No, no—we have given you the dates when they were paid and they were not paid —

Mr W.J. JOHNSTON: No, that is not what I asked; I asked about the decision to make the payment.

Mr Wallace: Look —

Mr W.J. JOHNSTON: When did you declare the dividend?

Mr Wallace: We have given names —

Mr W.J. JOHNSTON: Okay, so you are not resiling from the answer you have given?

Mr Wallace: No.

Mr W.J. JOHNSTON: In your own mind, what was your state of mind that led you to think it was okay to pay a \$1.6 million dividend to yourself but not sign a certificate to say the company was a going concern?

Mr Wallace: Can I just take that question on notice? I know that you have said I cannot —

Mr W.J. JOHNSTON: No, I cannot —

Mr Wallace: — because, look, you are trying to ask me to recall something that was three years ago.

Mr W.J. JOHNSTON: That is right; that is exactly what I am asking you to do.

Mr Wallace: Well, I am sorry, I cannot.

Mr W.J. JOHNSTON: Involving a small sum of \$1.6 million at the same time that you owed \$1.5 million to creditors.

The CHAIRMAN: We take that answer as given. Any other questions?

Mr M.P. MURRAY: Probably just a bit of a rough one; it is certainly not a technical one. But the concern that I still have is that while there is some undertaking to do the work, most people in that subdivision would have an email very similar to us already where what you are saying again now. How and what are you going to allay their—I am sure the derision—laughter, when they get the next note to say, “No, it’s going to be done”? How are you going to honour that contract and allay the fears that, “No, this is not another promise”? You can understand, it has been going on for that long, and some people would have six or seven promises already. It is next week; no, the fencing contractor has gone on holidays, no—we have heard it all. How are we going to get a guarantee that you will do that? There is probably a recommendation that I would like to see that you again be audited about your work in the near future, from this committee, because if the work is not done, then I am sure there are going to have to be some other implications as well.

Mr Wallace: Sure. Look, all I can say is that the work will have to be done.

The CHAIRMAN: So, let me list the process. You have procured money guaranteed by your own assets from a financier and you have identified a contract and you got bids from him, I assume—quotes—to do some work, and the work is to complete the fencing —

Mr Wallace: First of all, 99 per cent of the fencing is completed.

The CHAIRMAN: Yes, complete. We are looking at what is outstanding; at the outstanding issues—the fence painting and the landscaping.

Mr Wallace: That is right.

The CHAIRMAN: Is that a single contractor?

Mr Wallace: No, the landscaping is a single contractor; the painting will be a different contractor.

The CHAIRMAN: Okay, and that is yet to procure that contractor?

Mr Wallace: Yes.

The CHAIRMAN: Okay, and the painter is different from the fencing contractor?

Mr Wallace: Well, the two fences that were remaining to be done, we have ordered that already and I think they are being done at the moment.

The CHAIRMAN: Now, how are we, on behalf of the people in The Tuarts, going to know that things are underway and are going to be completed in six months' time? Can you keep us informed of your progress?

Mr Wallace: I am more than happy to do that.

The CHAIRMAN: Okay, and, as I indicated in the opening statements, the intent of this committee is to monitor that. In six, seven months' time we will decide whether we review this issue again. The focus of this is to get those commitments met in a timely manner and you now say you are going to do that and we will be monitoring and might review the whole issue in six, seven months' time depending upon your progress, so we ask you to keep the committee informed of your progress—of your contractors' progress.

Thanks for your evidence before the committee. A transcript of this hearing will be forwarded to you for corrections of minor errors. Please make these corrections and return the transcript within 10 working days of the date of the covering letter. If the transcript is not returned within this period, it is deemed to be correct. New material cannot be introduced via these corrections and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on a particular point, please include a supplementary submission for the committee's consideration when you return your corrected transcript of evidence.

You have indicated that you are going to provide some evidence in relation to the latest financing for these contractors and the officer will write you the questions. We agree to provide that in strict confidence and return it to you, and we will do so.

Mr Wallace: Thank you.

The CHAIRMAN: Thanks for your evidence.

Hearing concluded at 11.25 am
