

Directions for Australian Wool Innovation

Ian McLachlan

18 October, 2002

In 1998 I got out of politics and Mark Vaile, the then Minister of Primary Industry, asked me if I'd put together a team to write a full and complete report on the future direction the wool industry should take.

I put together that team and seven months later we produced a report known as The Future Directions Taskforce Report.

The reason why I nominated for a position on the Australian Wool Innovation (AWI) Board at this election, with four other shareholder candidates, was mainly because over a period of a year or so I had been persuaded – perhaps against my better judgement – that I was like others, slightly perturbed about reports. Many indications were that I'd heard that the company wasn't being run in the way that we had envisaged exactly in the report, or even generally in the report. And I believed there were some governance problems.

I'm not talking particularly about strategic plans or the research, although there are some areas of that which we all disagree and agree with. That's not the big issue. The issue is transparency, governance and how it's being run. Of course that issue is the issue to do with control of management by the Board.

So we announced that we were going to nominate three people. Almost as we nominated those people, the Board nominated two more. I think one was nominated before we announced our nominations and one was nominated not long afterwards.

In my view when you are going around getting Board directors for a Board, you ought to announce them and put them in place a long time before the annual general meeting.

You sure don't announce them while running up to an election. Incumbents always have an advantage, and it's quite wrong to nominate people as close (to the meeting) as that.

The next thing that happened was instead of taking the option of allowing our nominations to go forward so we could take our chances with the rest, which would have happened under the AWI constitution, the Board insisted that we go out and get 5 per cent of the shareholders to endorse our nomination for this purpose, and that required 1836 signatures for each of any nomination that wanted to come from a shareholder. In our case, by this time five nominees because we increased our nominations by two more after the Board put two more in, this required us to go and get 20,000 signatures. We finally accomplished those 1836 – in fact we got over 4000 each.

Had we not gone out and got at least 1836 signatures, there would have been no candidates standing against the Board. And that was certainly what we had in mind when we wrote the Taskforce Report.

I wrote to the chair, Maree McCaskill, asking her to consider accepting our nominations prior to requiring the 1836 supporters, hoping we would not have to go out and get the signatures. It's an expensive and time-consuming business.

McCaskill wrote back indicating that it was a requirement of the constitution that five per cent of the shareholders would have to nominate. This is seminal to why on earth this whole process is taking place, and why we're finally having a bit of row about the whole thing.

That is wrong. What it (the constitution) says is that a person will be eligible for election to the Board of the general meeting of AWI if a person is nominated by the Board or the person's nomination is accepted by the Board, or failing that, a person is nominated by five per cent of shareholders.

In other words, the Board had the choice if it wanted to, of accepting those nominations and obviously chose the opposite. It said it wasn't going to accept our nominations.

We were then required to go off and get nearly 2000 signatures per nomination. I wrote back to the chair and said, 'I am sorry, but you are wrong. You have misinterpreted the constitution.' What she said to me was that the Board would give our request appropriate consideration, however without pre-empting the Board's decision of this question – given that the constitution specifically requires nominations from shareholders be supported by five per cent of their numbers.

Wrong. It does not specifically require that. It only specifically requires that if the Board has not accepted a nomination from shareholders.

We therefore assumed our nominations weren't acceptable. It was obvious to us that it was simply a defensive mechanism from the Board.

So we had two defensive mechanisms. One, you put up more people approaching an election, and the second one is you make them go out and get an unconscionable number of supporters.

Now I know the wool industry helped to formulate that constitutional clause, but I think that was put in there to make sure you did not get undesirables nominating. We were obviously reasonably undesirable.

I don't think that it's easy for outside directors to replace incumbents, and that is probably appropriate. It should be tougher for outside directors to replace the incumbents, but increasingly since we nominated we've had it confirmed that it was going to be a superbly military defence mechanism.

For example, we wanted to put a statement on the ballot papers. We understood that Corporations law allowed you to put 1000 words on the ballot papers. So we put some extra things in. We had to go and get another 100 supporters over a weekend, in order to put an extra statement on the ballot paper.

I can tell you, that if by any chance we get in we're going to get rid of that nonsense. We will actually require 100 nominators, which you could get from the local area.

And we will encourage change. We will rotate the Board as the constitution more or less says – about a third of the Board each time, and we will encourage people to stand against the Board if they want to.

Now Mr Dorber (AWI managing director) then took part in the election as CEO. A director – however not an elected director, an appointed director. In our view he should not have taken part in the election. He could of course defend AWI about policy. But to disparage the other directors who are standing when he is not standing, we think is not on. There are plenty of their directors. They can get up and say what they like about us. And further, to send writs around like confetti is reasonably unpalatable.

What Mr Dorber did was portray us as the old agri-politicians group. I agree that one of us is older and that is me, and one is an ex-agri-politician and that's me too. But hardly are the others. David Boyd was on the Cotton Foundation. The chairman of AWI was on the Cotton Foundation with David Boyd. Hugh Nivison is 39 so he's hardly old. Brian van Rooyen is a wool processor. He came from South Africa. And Kevin Bell is a consultant in the industry from Western Australia.

So we got more cross then because we thought that was misrepresenting the case. We came to the conclusion that it was not going to be a fair and open election and that the defensive mechanisms were pretty tough.

We put out a policy statement with nine points in it, indicating what we would do – including the business that people would come up by rotation, and including that we would make sure that more than two directors had to be at a meeting to make a decision. Currently the arrangements at AWI are that two directors constitute a forum. We think that's too few.

Including also, that the number of nominators comes down to about 100 so you can get people up, rather than 2000. And we called this the Shareholder's Candidate's Statement. We thought it was fair enough, seeing we were the only candidates put up by shareholders. All the other candidates were being nominated by the Board.

So to differentiate ourselves we had to think up a name.

We wrote down those nine policy points. I personally thought they were innocuous points in a political sense. But immediately we got a letter from AWI saying that whole reams of this was defamatory. They said it was defamatory in the main because if we were stating one position, then we were indicating the Board was for the opposite position. It was described by a QC I spoke to about this as tendentious (biased) nonsense.

We felt when we nominated that we would simply be up there like anyone else – that our nominations when we announced them would be accepted. We put up three people first up and suddenly two more people were put on the Board. So we put up two more people.

Another reason why we are standing is that the Board may not be sufficiently controlling management. This has been my personal experience since we announced our nominations.

There are other matters, and some of them concern the sorts of suggestions that were inherent in our 1999 report. But in the main they are:

- (1) Should the shareholders be given a chance to vote in an election? Of course they should.
- (2) Are the shareholders getting open and transparent support as to where all the money is and where it's going?
- (3) Why is the managing director, chairman of a shearing systems research program when all of these research programs are supposed to be contestable?

The main point we made in the 1999 Future Directions Report is when you're going out to get people to make submissions for funding, that it ought to be contestable. But if you immediately put your CEO as chairman, who else can possibly contest in this case, in a new shearing system.

- (4) And why have two directors left over governance issues? I've only spoken to one of them and he most certainly left over governance issues, and that particular director is currently having a public row with the chairwoman of AWI over who is telling the truth to do with a matter of a raise.

These are the sorts of things that in our view are quite wrong and are part of a wider concern, which is why some of us decided we'd stand.

The issues are governance and transparency. Is the Board in charge of management? In other words, is it a weak Board? Is there an appointment and

election process which allows people to get on the Board to ensure those previous points that I've just made are addressed?

If we get on, we'll find out.

Thankyou.

Answers to Questions

- (1) Governance is a matter of corporate behaviour and it's to do with whether the management of the company is open and transparent. And it is also to do with adhering to the constitution.

I have no doubts that when it came to an election process, AWI wasn't going to have an election. I nominated somebody last year for AWS – Hugh Nivison and he was not allowed to stand and I couldn't understand that. This fellow was a youngster; he is very able; he was the right age. And we wanted somebody to get in there to make sure that things were going along in the right way.

This other matter that has raised itself in the last few days between Mr Vizard and the chairman of AWI – I don't know the facts of that, but it is extremely unpalatable for that debate to be going on in the press.

- (2) One of the directors (and I understand two) resigned because of governance matters.
- (3) AWI and some its supporters have been saying these people are just supporters of WoolProducers. That's not true. You're not allowed to be by Corporate law for a start. We can only represent shareholders. WoolProducers support us, but so do the VFF, so do SAFF, so do NSW Farmers – particularly in the matter of getting people up to allow them to stand.
- (4) The things I know about as an absolute fact –
- letters from the chairman
 - in my view the terrible mistake they made in not allowing people to stand and saying it was a requirement not to stand
- (5) I'm not going to talk to you about rumours that I've heard. I've got a list of them here but you won't see them. Some of them I've no doubt will be wrong, but I am telling you about the things that I do know. To me that is sufficient information for me to know that there are governance problems. Prior to that I was just standing for an election as a Board member.
- (6) I think it's a bit early to discuss whether they've achieved a lot. They've put out a strategic and operating plan and I've read both. Some of it's very good. But I thought to put \$1 million into woodlots was ridiculous, and to have a specific program to cure footrot in Western Australia when we've known how to cure footrot in NSW and Victoria for 40 years. They are not research programs that have an industry-wide result

- (7) Vast parts of the strategic and operating plan are fine. Large parts of it were written pre the Task Force Report. The idea that it will all disappear into oblivion while we wait for an update is wrong.
- (8) As I understand from Mr Price that the requirement was put there for 1830 signatures to stop ridiculous nominations, but it's my view that it's a ridiculous number of people to put there because getting 1830 signatures is a very onerous business and the wool industry should not be put to that expense every time somebody wants to stand.
- (9) If we hadn't been lucky enough to have the support of groups to get those signatures the Board would have no opposition. You wouldn't get anybody who could go out and get 1830 signatures by themselves.
- (10) I don't think the Board has the right cross section of abilities on it. It's been suggested that we don't want to go back to a whole lot of wool producer representatives. I agree, but we don't want none or very few. We wrote in the '99 report if you have nine on the Board, three of them should come from the wool industry with national or international expertise. Three from the processing and downstream industry, and three others to fill out the qualities of that Board.

Now if our five get up and the others don't by some extraordinary fluke, we won't have all those qualifications. We should therefore go out and get some more, or encourage the shareholders to fill the Board to round it off with real quality. But to say you can't stand is just not on.

- (11) AWI did reject the idea of supporting the CRC until certain other pressures came on and that would have knocked back a matching grant from the Federal Government of \$10 million. Benchmarking of Merino sheep and genetics has only really got started in the last eight or 10 years in Australia. If you compare that with the pork, cattle, dairy industries, it is miles behind and I would have thought this is exactly the sort of institution that it ought to be out there bouncing along in front, encouraging everybody to put their genetics in – to find out where the good strong, medium and fine wools are, and the good meat sheep.

It ought to be leading from the front, not just involved in one operation in SA. I'm not saying the direction it is going in is wrong, but nobody knows whether these thousands of millions of dollars of programs are going to be successful or not. How could they? They haven't got to the end of them yet.

But there are some that should never have been, and what is more, that when those programs come forward they must stay contestable. You must not exclude other people from coming into the contest.

We appear to be going back into a divisive area and I for one am not happy with that and that is the very reason I am making a strong bid to support the incumbent Board. However post October 31, I do believe it is important that this incumbent AWI Board listens to what has happened in the vote.

Whatever happens we must try and embrace all of our woolgrower areas. And I think our new genetics program is addressing that issue.

But the two other groups which were excluded in the previous programs under Rampower, which is SRS and your traditional stud breeders. The way it is working at the moment is that those facets are being brought together. And that will be a terrific marriage because I have been applying all three of those and it has been very successful for us.

So whichever way it goes Mr McLachlan, and you are successful on the day, I would implore that we bring and continue to bring all of these groups back in together and I would say to the incumbent Board exactly the same thing.

McLachlan

Don't disagree with anything you said.

We nominated three people. And had we had an indication that we would have got up as nominations we wouldn't have had this competition and none of this would have happened.

We want to make sure that in future that people feel they can nominate for these boards. You would only be rotating one or two people a year because the incumbents always have an advantage.

Comment from Col Dorber, Managing Director (AWI)

I don't think this is the forum where properly I should canvas those constitutional issues which Mr McLachlan has rightly sought to raise, other than to say the AWI Board of which I am a director, took legal advice on each issue and in every instance in respect to this campaign has acted only upon the formal written legal advice that it has received, and those matters concerning that constitution and those issues you raised about the constitution will have to be ventilated at another place by the shareholders or by a future Board. But I do note that despite the clear provisions to do it, not one single shareholder has lodged a resolution in accordance with the constitution to amend it. And therefore there will be no amendment at this AGM. It will be another year unless we have a very expensive interim extraordinary general meeting before the constitution can be reviewed.

I would just like to comment only about the issues that go to myself in terms of references to the Board not having control of management, which must clearly be a direct reference to me as managing director. I say in particular, you will not find my name on a single piece of paper or in a radio interview where I have disparaged a candidate for election to this Board and I have never sought to take advantage of the fact that I am an appointed managing director and not subject to an election. I have tried only as Mr McLachlan rightly acknowledges, to represent AWI as a legal entity in a public company at all times. But not one writ has been issued by AWI. The letters that have been written were written by our lawyers and were private letters and were only disclosed publicly by a decision of the recipients of those letters.

[McLachlan - You are right about that.]

That's the only extent I want to debate about the constitutional issues.

A matter of great personal distress to me is the innuendo by this reference to rumours and 'list of rumours I have some of which may be true and some of which may be untrue'. I'd have to say that is a nice bit of mud to throw. I am willing to have all those rumours addressed and respond to them. The inference there are rumours that relate to my duties as managing director. They ought to be exposed and dealt with. If they turn out to be scurrilous and false, I clearly have my own rights, and if they turn out to be true, I should be dismissed instantly.

In respect to the more important issue however, of the reference to genetic research and development, we made it clear last July, that is only a few short months after we came into existence, that we would put a taskforce together and develop a very strong genetic research and development program that was inclusive. We have actually announced the \$25 million strategic plan, \$5 million for conventional genetics, \$20 million for molecular genetics, and we've invited our shareholders, researchers and scientists to spend the next six weeks commenting on the quality and substance and direction of that plan. And I'm very pleased to say that both the CSIRO and Meat and Livestock Australia have already formally publicly endorsed it.

So we have sought to address an issue Mr McLachlan rightly identified. We have taken the view of the Board that taking 12 months to work out how to spend that \$25 million was not imprudent in any way. And in fact the level of consultation required compelled us to be very careful and methodical about the timing of the release of the strategic plan.

We are not supporting the Sheep CRC and it is wrong to say we changed our mind. The Board voted unanimously not to put funds into the Sheep CRC. That position has not changed. The Federal Government resolved nevertheless to still give the \$19.5 million to the Sheep CRC. We have no issue or criticism of that. We will fund any project by the Sheep CRC where it meets the published requirements and/ or guidelines of the company for funding.

We have been very concerned about policy statement number seven in your published document where you announced that you would review the strategic plan and report back to shareholders within six months. With respect, it is duplicitous to infer that the current Board isn't constantly reviewing the strategic plan. But our concern has been that the current strategic plan cost \$250,000 to bring into existence, involved consultation with over 3000 shareholders of AWI, has been endorsed by the global wool pipeline key stakeholders, and has received Federal Government endorsement. And we felt as a Board that the plan ought to have an opportunity to now be implemented. Given that it started on July 1 this year we would find it very difficult to believe that we could be judging its outcome within two or three short months.

As a director having been privy to all the discussion I can tell you that the question of whether or not there should be candidates was never discussed. Legal advice about candidates was acted and followed carefully and I don't believe it's fair or proper to say in a public forum, for Mr McLachlan to say that the current Board is weak because there is no evidence to support the contention. And I do thank Mr Carson for letting me say something given that I was formally refused permission to come and debate you and I just like to say to you, I wish you well. If shareholders elect you and your colleagues, I am still there as the managing director and I will serve the Board that is elected. I have personal issue with the candidates and never have I inferred otherwise. My only issue is I would like AWI to actually succeed as one of the cogs involving the rebirth of this industry and I would like to comment on one very special issue.

You have referred to the Future Directions Report and expressed your concern at our failure to follow

I sent you a response to chapter six, which deals with research, development and innovation. I didn't hear back from you, but our public position is that that published response demonstrates not only adherence to the Future Directions Report and also we have exceeded a number of its recommendations.

The reason I am chairman of Shear Express is very clear-cut. AWI put \$7 million of your money into Shear Express. It is a subsidiary company owned by AWI. The legal advice is, that is the most cost effective way to achieve one of your recommendations to claw back the ownership of intellectual property to control its exploitation and to ensure the benefits flow to the shareholders of AWI before anyone else. I am the chair by appointment of the AWI Board for the purpose of being the person who will be dismissed, pilloried and hung if that money is wasted and Shear Express fails.

And conversely the person who should get a pat on the back if it succeeds.

McLachlan

I still disagree with your conclusion on Shear Express. Our candidates if they become the Board will make sure that other people do not feel that a particular project has been chosen to be the winner exclusive of all others.

I've heard you say before, had it been an unreasonable constitutional clause that five per cent of the shareholding was required somebody would have changed it. I just say nobody ever thought it would be used. Whoever thought that you'd require 2000 signatures for nomination. I've never seen it and I've been on a few boards. But it will sure get changed now whether we win or lose. I bet it gets changed.

You then raised matters to do with yourself. I'm not going to discuss one single matter of the difference of opinion between your chairman and Mr Vizard. That is between them. If there are some matters we wish to raise later on or anybody wishes to raise, they will get raised, but we trying not to raise any of those matters in a public forum because it gets rid of the main thrust of what we saying.

Dorber

How can I defend my character when you say those things and they may have absolutely no truth or twisted distortions of the facts? Either way you have created a public impression of inferred rumour of wrong-doing by management, which is personally impossible to refute and unfortunate. If you were chairman of the next Board life would be very difficult for us both.

McLachlan

What I've said is that boards shouldn't have allowed management to do certain things. I'm not in management. I could go through this document and we could all agree or disagree on lots of things, but I've instanced three or four of those where I disagree and some of which I agree with. What I'm saying is that the Board ought to be in charge of management.

I do not think it is appropriate for any managing director to get involved in an election between candidates. I don't mind what they say but I haven't heard them say anything yet.

As well other things have happened, For instance if you ring the 1300 number they will tell you AWI has told them not to tell anybody how to fill in their ballot papers. There are difficulties, as you know Mr Dorber, on those ballot papers. For example there is something difficult which you can quite easily do about and that is there is a

whole clause, which seems to be left out which explains to people to fill out their signature securities. We hope those forms will be allowed to go through. These sorts of things have been worrying us.

You ring up ASX and ask 'How many votes have I got?' and the girl says, 'One.' It's wrong – you have a vote for every \$100 of levy. I know that's not deliberate, but it is damn annoying.

I've raised some matters with you being involved and the absolute inappropriateness in my view, of you being chairman of a test. I'm quite happy later on if I get to a position on the Board, to raise all these other matters with you and if I don't, then it won't affect anybody.